



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5835/1
JPC:cdc

2021 SENATE BILL 893

January 28, 2022 - Introduced by Senator BALLWEG, cosponsored by Representatives MACCO, TAUCHEN, GUNDRUM, KRUG, KURTZ, LOUDENBECK, MAGNAFICI, MOSES, OLDENBURG, PENTERMAN and EDMING. Referred to Committee on Agriculture and Tourism.

1 **AN ACT to amend** 863.27, 865.201 (1), 867.046 (1) (c), 867.046 (1m) and 867.046
2 (2) (intro.); and **to create** 705.18 and 867.046 (2) (L) of the statutes; **relating**
3 **to:** nonprobate transfers of farming implements at death.

Analysis by the Legislative Reference Bureau

This bill allows any interest in a farm implement to be transferred without probate to a designated beneficiary, referred to under the bill as a “TOD beneficiary,” at the death of the sole owner, or at the death of the last of multiple owners, subject to any lien or encumbrance against the farm implement, if certain conditions are met. Under the bill, “farm implement” is defined to mean a tractor or machine, including any associated accessories, attachments, fuel, and repair parts, used exclusively and directly in farming, with certain exceptions. In order to pass an interest in a farm implement without probate under the bill, the owner or owners must execute a document that designates a TOD beneficiary of the farm implement, lists all of the owners of the farm implement, and states that the transfer is effective only upon the death of the owner or owners. Further, under the bill, a document designating a TOD beneficiary must be executed pursuant to certain formalities, including that all owners sign the document and that their signatures be witnessed by two witnesses who, at the time they witnessed the signature, would be competent to testify as witnesses in court to the facts relating to execution. Any designation of an interest in a farm implement under the bill may be canceled or changed at any time by the sole owner or all then surviving owners, without the consent of the TOD beneficiary, by executing and recording another document that designates a different TOD beneficiary or no beneficiary.

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For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 705.18 of the statutes is created to read:

2 **705.18 Nonprobate transfer of farming implements at death. (1)** In this
3 section:

4 (a) “Conscious presence” means within the range of any of an individual’s
5 senses.

6 (b) 1. “Farm implement” means a tractor or machine, including any associated
7 accessories, attachments, fuel, and repair parts, used exclusively and directly in
8 farming.

9 2. “Farm implement” does not include personal property that is attached to,
10 fastened to, connected to, or built into real property or that becomes an addition to,
11 component of, or capital improvement to real property, and does not include
12 buildings or improvements to real property, regardless of any contribution that the
13 personal property makes to the production process of any machine and regardless of
14 the extent to which that personal property functions as a machine.

15 3. For purposes of subd. 2., the following items retain their character as a “farm
16 implement,” regardless of the extent to which they are fastened to, connected to, or
17 built into real property:

18 a. Auxiliary power generators.

19 b. Bale loaders.

20 c. Barn elevators.

21 d. Conveyors.

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- 1 e. Feed elevators and augers.
- 2 f. Grain dryers and grinders.
- 3 g. Milk coolers.
- 4 h. Milking machines, including piping, pipeline washers, and compressors.
- 5 i. Silo unloaders.
- 6 j. Powered feeders, but not including platforms or troughs constructed from
- 7 ordinary building materials.

8 (c) "Person" means an individual, corporation, business trust, estate, trust,
9 partnership, limited liability company, association, joint venture, government,
10 government subdivision, agency or instrumentality, public corporation, or any other
11 legal or commercial entity.

12 (d) "TOD beneficiary" means a person designated as a beneficiary in a
13 document that complies with sub. (3) (a).

14 **(2)** Any interest in a farm implement may be transferred without probate to
15 a designated TOD beneficiary as provided in this section on the death of the sole
16 owner or the last to die of multiple owners.

17 **(3)** (a) A TOD beneficiary may be designated on a document that includes all
18 of the following:

19 1. The name of the owner or owners of the interest in a farm implement that
20 will be transferred.

21 2. The name of the designated TOD beneficiary.

22 3. That the transfer is effective only upon the death of the owner or owners.

23 4. If the interest that will be transferred is an interest in property owned by a
24 spouse as marital property, the signatures of both spouses who have an interest in
25 the marital property.

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1 (b) The designation of a TOD beneficiary may be made by use of the words
2 “transfer on death” or “pay on death,” or the abbreviation “TOD” or “POD,” after the
3 name of the owner or owners of the property and before the name of the TOD
4 beneficiary or beneficiaries. The owner or owners may designate one or more persons
5 as a primary TOD beneficiary and may designate one or more persons as a contingent
6 TOD beneficiary if a primary TOD beneficiary does not survive the sole owner or the
7 last to die of multiple owners. The designation may be included on the original
8 document that passes the property interest to the owner or owners or may be made
9 at a later time by the sole owner or all then surviving owners by executing another
10 document that designates a TOD beneficiary.

11 (c) A document designating a TOD beneficiary under this section is not effective
12 unless it is in writing and executed with all of the following formalities:

13 1. It must be signed by all owners. If an owner is unable to sign, another person
14 may sign for the owner with the owner’s consent and in the owner’s conscious
15 presence.

16 2. It must be signed by at least 2 witnesses who signed within a reasonable time
17 after any of the following:

18 a. The signing of the document designating a TOD beneficiary as provided in
19 subd. 1., in the conscious presence of the witness.

20 b. The owner’s implicit or explicit acknowledgment of the owner’s signature on
21 the document designating a TOD beneficiary, in the conscious presence of the
22 witness.

23 c. The owner’s implicit or explicit acknowledgment of the document
24 designating a TOD beneficiary, in the conscious presence of the witness.

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1 3. The 2 witnesses required under subd. 2. may observe the signing or
2 acknowledgment under subd. 2. a. to c. at different times.

3 4. If there are multiple owners, each signature of an owner must be witnessed
4 by at least 2 witnesses. For purposes of this paragraph, a witness may be a witness
5 for multiple owners.

6 5. Any person who, at the time of execution of the document designating a TOD
7 beneficiary, would be competent to testify as a witness in court to the facts relating
8 to execution may act as a witness to the document designating a TOD beneficiary.
9 Subsequent incompetency of a witness is not a ground for denying or voiding the TOD
10 beneficiary designation if the execution of the document designating a TOD
11 beneficiary is otherwise satisfactorily proved.

12 (4) The designation of a TOD beneficiary on a document does not affect
13 ownership of the property until the death of the sole owner or the last to die of
14 multiple owners regardless of whether the document provides otherwise. The
15 designation may be canceled or changed at any time by the sole owner or all then
16 surviving owners, without the consent of the TOD beneficiary, by executing and
17 recording another document that designates a different TOD beneficiary or no
18 beneficiary. The execution of a document that designates a TOD beneficiary or no
19 beneficiary revokes any designation made in a previously executed document
20 relating to the same property interest.

21 (5) On the death of the sole owner or the last to die of multiple owners,
22 ownership of the interest in the farm implement passes, subject to any lien or
23 encumbrance against the farm implement, to the designated TOD beneficiary or
24 beneficiaries who survive all owners and to any predeceased beneficiary's issue who
25 would take under s. 854.06 (3). If no TOD beneficiary or predeceased TOD

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1 beneficiary's issue who would take under s. 854.06 (3) survives the death of all
2 owners, the interest in the farm implement passes to the estate of the deceased sole
3 owner or the estate of the last to die of the multiple owners.

4 (6) A TOD beneficiary's interest in the property on the death of the sole owner
5 or the last to die of multiple owners may be confirmed as provided in s. 863.27,
6 865.201, or 867.046.

7 (7) Chapter 854 applies to transfers on death under this section.

8 (8) The capacity required to designate a TOD beneficiary or to revoke a
9 designation of a TOD beneficiary is the same as the capacity to make or revoke a will
10 under s. 853.01.

11 (9) Unless previously adjudicated in a formal testacy proceeding or otherwise
12 barred, the claim of any claimant to recover a farm implement transferred to a TOD
13 beneficiary under this section is barred unless, by no later than 120 days after the
14 death of the sole owner or the last to die of multiple owners, a complaint is filed in
15 an action in which the relief demanded may confirm or change interests in the farm
16 implement transferred under this section.

17 **SECTION 2.** 863.27 of the statutes is amended to read:

18 **863.27 Contents of final judgment.** In the final judgment the court shall
19 approve the final account, designate the persons to whom assignment and
20 distribution are being made, and assign to each of them the property or proportions
21 or parts of the estate or the amounts to which each is entitled. The findings of fact
22 which support the judgment shall include a determination of the heirs of the
23 decedent; facts showing that all jurisdictional requirements have been met; the date
24 of death of the decedent and the decedent's testacy or intestacy; facts relating to the
25 payment of state death tax, state income tax, and claims and charges against the

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1 estate. If immediately before death the decedent had an estate for life or an interest
2 as a joint tenant in any property in regard to which a certificate of termination has
3 not been issued under s. 867.04 or an interest in marital property for which a
4 certificate has not been issued under s. 865.201 or 867.046, the findings of fact which
5 support the judgment shall set forth the termination of the life estate, the right of
6 survivorship of any joint tenant, or the decedent's interest in marital property and,
7 upon the petition of the decedent's spouse, the confirmation of the one-half interest
8 held by the surviving spouse in marital property immediately before the death of the
9 decedent spouse. In addition, the findings of fact shall, upon petition of a designated
10 person, trust, or other entity under s. 766.58 (3) (f) or of a TOD beneficiary under s.
11 705.15 or 705.18, set forth the confirmation of an interest in property passing by
12 nontestamentary disposition under s. 705.15, 705.18, or 766.58 (3) (f). Every tract
13 of real property in which an interest is assigned or terminated shall be specifically
14 described. If a fund is withheld from distribution for the payment of contingent
15 claims, for meeting possible tax liability, or for any other reasonable purpose, the
16 judgment shall provide for the distribution of the fund if all or a part of it is not
17 needed.

18 **SECTION 3.** 865.201 (1) of the statutes is amended to read:

19 865.201 (1) As an alternative to s. 867.046 the personal representative may file
20 with the probate registrar a verified statement describing property in which the
21 decedent had an interest in marital property or in which any designated person,
22 trust, or other entity has an interest passing by nontestamentary disposition under
23 s. 705.15, 705.18, or 766.58 (3) (f), including the recording data, if any, of the
24 document creating the interest and any right of survivorship. Valuations need not
25 be set forth in the statement.

SENATE BILL 893**SECTION 4**

1 **SECTION 4.** 867.046 (1) (c) of the statutes is amended to read:

2 867.046 (1) (c) “TOD beneficiary” means a person designated on a deed as a
3 transfer on death beneficiary under s. 705.15 or a person designated on a document
4 as a transfer on death beneficiary under s. 705.18.

5 **SECTION 5.** 867.046 (1m) of the statutes is amended to read:

6 867.046 (1m) UPON DEATH; GENERALLY. If a domiciliary of this state dies who
7 immediately prior to death had an interest in property in this state, including an
8 interest in survivorship marital property or an interest in property passing under s.
9 705.10 (1) or 705.18 (2), or if a person not domiciled in this state dies having an
10 interest in property in this state, including an interest in survivorship marital
11 property or an interest in property passing under s. 705.10 (1) or 705.18 (2), upon
12 petition of the decedent’s spouse, a beneficiary of a marital property agreement, a
13 TOD beneficiary, or a beneficiary of a transfer under s. 705.10 (1) or 705.18 (2) to the
14 court of the county of domicile of the decedent or, if the decedent was not domiciled
15 in this state, of any county where the property is situated, the court shall issue a
16 certificate under the seal of the court. The certificate shall set forth the fact of the
17 death of the decedent, the termination or transfer of the decedent’s interest in the
18 property, the interest of the petitioner in the property and any other facts essential
19 to a determination of the rights of persons interested. The certificate is prima facie
20 evidence of the facts recited, and if the certificate relates to an interest in real
21 property or to a debt secured by an interest in real property, the petitioner shall
22 record a certified copy or duplicate original of the certificate in the office of the
23 register of deeds in each county in this state in which the real property is located.

24 **SECTION 6.** 867.046 (2) (intro.) of the statutes is amended to read:

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1 867.046 (2) UPON DEATH; INTEREST IN PROPERTY. (intro.) As an alternative to sub.
2 (1m), upon the death of any person having an interest in any real property, a vendor's
3 interest in a land contract, an interest in a savings or checking account, an interest
4 in a security, a mortgagee's interest in a mortgage, or an interest in property passing
5 under s. 705.10 (1) or 705.18 (2), including an interest in survivorship marital
6 property, the decedent's spouse, a beneficiary of a marital property agreement, a
7 TOD beneficiary, or a beneficiary of a transfer under s. 705.10 (1) or 705.18 (2) may
8 obtain evidence of the termination of that interest of the decedent and confirmation
9 of the applicant's interest in the property by providing to the register of deeds of the
10 county in which the property is located, on an application supplied by the register of
11 deeds for that purpose, the name, residence, and post-office address of the decedent,
12 the name, residence, and post-office address of the applicant, and the date of the
13 decedent's death. A person providing an application to the register of deeds under
14 this subsection or, if the person is not an individual, a representative of the person
15 shall sign the application and verify, under oath, the correctness of the information
16 provided in the application. The applicant shall also provide to the register of deeds
17 the following information:

18 **SECTION 7.** 867.046 (2) (L) of the statutes is created to read:

19 867.046 (2) (L) In the case of a transfer under s. 705.18 (2), except as described
20 in par. (j), a copy of the document described in s. 705.18 (2).

21 **(END)**