

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 641

Short Title: Joint Account Right of Survivorship.

(Public)

Sponsors: Senator Robinson.

Referred to: Commerce.

March 30, 1999

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE FINANCIAL INSTITUTIONS TO INFORM CUSTOMERS
2 OPENING JOINT ACCOUNTS WITH RIGHT OF SURVIVORSHIP THAT THE
3 FUNDS HELD IN THE ACCOUNT WILL NOT PASS BY INHERITANCE TO
4 THE HEIRS OF THE DECEASED JOINT OWNER OR BE CONTROLLED BY
5 THE DECEASED JOINT OWNER'S WILL.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 41-2.1 reads as rewritten:

9 **"§ 41-2.1. Right of survivorship in bank deposits created by written agreement.**

10 (a) A deposit account may be established with a banking institution in the names
11 of two or more persons, payable to either or the survivor or survivors, with incidents as
12 provided by subsection (b) of this section, when both or all parties have signed a written
13 agreement, either on the signature card or by separate instrument, expressly providing for
14 the right of survivorship. At the time an account is established pursuant to this section, a
15 representative of the banking institution shall orally explain to each of the persons
16 establishing the account the incidents set forth in subdivision (3) of subsection (b) of this
17 section and that, upon the death of one joint owner of the account, the money remaining
18 in the account will not pass by inheritance to the heirs of the deceased joint owner or be
19 controlled by the deceased joint owner's will.

1 (b) A deposit account established under subsection (a) of this section shall have
2 the following incidents:

3 (1) Either party to the agreement may add to or draw upon any part or all of
4 the deposit account, and any withdrawal by or upon the order of either
5 party shall be a complete discharge of the banking institution with
6 respect to the sum withdrawn.

7 (2) During the lifetime of both or all the parties, the deposit account shall be
8 subject to their respective debts to the extent that each has contributed to
9 the unwithdrawn account. In the event their respective contributions are
10 not determined, the unwithdrawn fund shall be deemed owned by both
11 or all equally.

12 (3) Upon the death of either or any party to the agreement, the survivor, or
13 survivors, become the sole owner, or owners, of the entire unwithdrawn
14 deposit, subject to the following claims listed below in subdivisions a.
15 through e. upon that portion of the unwithdrawn deposit which would
16 belong to the deceased had the unwithdrawn deposit been divided
17 equally between both or among all the joint tenants at the time of the
18 death of the deceased:

19 a. The allowance of the year's allowance to the surviving spouse of
20 the deceased;

21 b. The funeral expenses of the deceased;

22 c. The cost of administering the estate of the deceased;

23 d. The claims of the creditors of the deceased; and

24 e. Governmental rights.

25 (4) Upon the death of one of the joint tenants provided herein the banking
26 institution in which said joint deposit is held shall pay to the legal
27 representative of the deceased, or to the clerk of the superior court if the
28 amount is less than two thousand dollars (\$2,000), the portion of the
29 unwithdrawn deposit made subject to the claims and expenses as
30 provided in subdivision (3) above, and may pay the remainder to the
31 surviving joint tenant or joint tenants. Said legal representative shall
32 hold the portion of said unwithdrawn deposit paid to him and not use
33 the same for the payment of the claims and expenses as provided in
34 subdivision (3) above unless and until all other personal assets of the
35 estate have been exhausted, and shall then use so much thereof as may
36 be necessary to pay said claims and expenses. Any part of said
37 unwithdrawn deposit not used for the payment of said claims and
38 expenses shall, upon the settlement of the estate, be paid to the
39 surviving joint tenant or tenants.

40 (c) This section shall be subject to the provisions of law applicable to transfers in
41 fraud of creditors.

(d) This section shall not be deemed exclusive; deposit accounts not conforming to this section, and other property jointly owned, shall be governed by other applicable provisions of the law.

(e) As used in this section:

(1) 'Banking institution' includes commercial banks, industrial banks, building and loan associations, savings and loan associations, and credit unions.

(2) 'Deposit account' includes both time and demand deposits in commercial banks and industrial banks, installment shares, optional shares and fully paid share certificates in building and loan associations and savings and loan associations, and deposits and shares in credit unions.

(3) 'Unwithdrawn deposit' shall be the amount in the deposit account held by the banking institution at the time of the death of the joint tenant; provided, however, that the banking institution shall not be held responsible for any amount properly paid out of said account prior to notice of such death.

(f) This section does not repeal or modify any provisions of the law relating to inheritance taxes.

(g) A deposit account under subsection (a) of this section may be established by a written ~~agreement~~ agreement, signed by each person establishing the account, in substantially the following form:

'We, A representative of the banking institution (or name of the institution) has explained to each of us that upon the death of one joint owner of the account, the money remaining in the account will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will. We, the undersigned, hereby agree that all sums deposited at any time, including sums deposited prior to this date, in the (name of institution) in the joint account of the undersigned, shall be held by us as co-owners with the right of survivorship, regardless of whose funds are deposited in said account and regardless of who deposits the funds in said account. Either or any of us shall have the right to draw upon said account, without limit, and in case of the death of either or any of us the survivor or survivors shall be the sole owner or owners of the entire account. This agreement is governed by the provisions of § 41-2.1 of the General Statutes of North Carolina.

Witness our hands and seals, this day of....., 19.....

.....(Seal)

.....(Seal)

.....(Seal)

.....(Seal)''.

Section 2. G.S. 53-146.1(a) reads as rewritten:

"(a) Any two or more persons may establish a deposit account or accounts by written contract. The deposit account and any balance thereof shall be held for them as joint tenants, with or without right of survivorship, as the contract shall provide; the

1 account may also be held pursuant to G.S. 41-2.1 and have the incidents set forth in that
 2 section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract
 3 shall set forth that fact as well. Unless the persons establishing the account have agreed
 4 with the bank that withdrawals require more than one signature, payment by the bank to,
 5 or on the order of, any persons designated in the contract authorized by this section shall
 6 be a total discharge of the bank's obligation as to the amount so paid. Funds in a joint
 7 account established with right of survivorship shall belong to the surviving joint tenant or
 8 tenants upon the death of a joint tenant, and the funds shall be subject only to the personal
 9 representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in
 10 G.S. 41-2.1 if the account is established pursuant to the provisions of that section.
 11 Payment by the bank of funds in the joint account to a surviving joint tenant or tenants
 12 shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to
 13 collect against the bank for the funds so paid, but the personal representative's authority
 14 to collect such funds from the surviving joint tenant or tenants is not terminated. A
 15 pledge of such account by any owner or owners, unless otherwise specifically agreed
 16 upon, shall be a valid pledge and transfer of such account, or of the amount so pledged,
 17 and shall not operate to sever or terminate the joint ownership of all or any part of the
 18 account. At the time an account is established pursuant to this section, a representative of
 19 the bank shall orally explain to each of the persons establishing the account that, upon the
 20 death of one joint owner of the account, the money remaining in the account will belong
 21 to the surviving joint owners and will not pass by inheritance to the heirs of the deceased
 22 joint owner or be controlled by the deceased joint owner's will. ~~Persons~~ Each person
 23 establishing an account under this section shall sign a statement showing ~~their~~ that
 24 person's election of the right of survivorship in the account, and containing language set
 25 forth in a conspicuous manner and substantially similar to the following:

26 **'BANK (OR NAME OF INSTITUTION)**
 27 **JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP**
 28 **G.S. 53-146.1**

29 We ~~A~~ representative of the bank (or name of institution) has explained to each of us
 30 and we understand that by establishing a joint account under the provisions of North
 31 Carolina General Statute 53-146.1 that:

- 32 1. The bank (or name of institution) may pay the money in the account to,
 33 or on the order of, any person named in the account unless we have
 34 agreed with the bank that withdrawals require more than one signature;
 35 and
- 36 2. Upon the death of one joint owner the money remaining in the account
 37 will belong to the surviving joint owners and will not pass by
 38 inheritance to the heirs of the deceased joint owner or be controlled by
 39 the deceased joint owner's will.

40 We DO elect to create the right of survivorship in this account.

41 Witness our hands and seals, this
 42 day of....., _____

43(Seal)

.....(Seal)
.....(Seal)
.....(Seal)."

Section 3. G.S. 54-109.58(a) reads as rewritten:

"(a) Shares may be issued to and deposits received from any two or more persons opening or holding an account or accounts, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee. The account and any balance thereof shall be held by them as joint tenants, with or without right of survivorship, as the contract shall provide; the account may also be held pursuant to G.S. 41-2.1 and have the incidents set forth in that section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract shall set forth that fact as well. Unless the persons establishing the account have agreed with the credit union that withdrawals require more than one signature, payment by the credit union to, or on the order of, any persons holding an account authorized by this section shall be a total discharge of the credit union's obligations as to the amount so paid. Funds in a joint account established with right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that section. Payment by the credit union of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the credit union for the funds so paid, but the personal representative's authority to collect such funds from the surviving joint tenant or tenants is not terminated. A pledge of such account by any holder or holders shall, unless otherwise specifically agreed upon, be a valid pledge and transfer of such account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account. At the time an account is established pursuant to this section, a representative of the credit union shall orally explain to each of the persons establishing the account that, upon the death of one joint owner of the account, the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will. ~~Persons~~ Each person establishing an account under this section shall sign a statement showing ~~their~~ that person's election of the right of survivorship in the account, and containing language set forth in a conspicuous manner and substantially similar to the following:

**'CREDIT UNION (OR NAME OF INSTITUTION)
JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP
G.S. 54-109.58**

~~We~~ A representative of the credit union (or name of institution) has explained to each of us and we understand that by establishing a joint account under the provisions of North Carolina General Statute 54-109.58 that:

1. The credit union (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless

1 we have agreed with the credit union that withdrawals require more than
2 one signature; and

3 2. Upon the death of one joint owner the money remaining in the account
4 will belong to the surviving joint owners and will not pass by
5 inheritance to the heirs of the deceased joint owner or be controlled by
6 the deceased joint owner's will.

7 We DO elect to create the right of survivorship in this account.

8
9 Witness our hands and seals, this
10 day of.....,

11(Seal)
12(Seal)
13(Seal)
14(Seal)."

15 Section 4. G.S. 54B-129(a) reads as rewritten:

16 "(a) Any two or more persons may open or hold a withdrawable account or
17 accounts. The withdrawable account and any balance thereof shall be held by them as
18 joint tenants, with or without right of survivorship, as the contract shall provide; the
19 account may also be held pursuant to G.S. 41-2.1 and have incidents set forth in that
20 section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract
21 shall set forth that fact as well. Unless the persons establishing the account have agreed
22 with the association that withdrawals require more than one signature, payment by the
23 association to, or on the order of, any persons holding an account authorized by this
24 section shall be a total discharge of the association's obligation as to the amount so paid.
25 Funds in a joint account established with right of survivorship shall belong to the
26 surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be
27 subject only to the personal representative's right of collection as set forth in G.S. 28A-
28 15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the
29 provisions of that section. Payment by the association of funds in the joint account to a
30 surviving joint tenant or tenants shall terminate the personal representative's authority
31 under G.S. 28A-15-10(a)(3) to collect against the association for the funds so paid, but
32 the personal representative's authority to collect such funds from the surviving joint
33 tenant or tenants is not terminated. A pledge of such account by any holder or holders
34 shall, unless otherwise specifically agreed upon, be a valid pledge and transfer of such
35 account, or of the amount so pledged, and shall not operate to sever or terminate the joint
36 ownership of all or any part of the account. At the time an account is established pursuant
37 to this section, a representative of the savings and loan association shall orally explain to
38 each of the persons establishing the account that, upon the death of one joint owner of the
39 account, the money remaining in the account will belong to the surviving joint owners
40 and will not pass by inheritance to the heirs of the deceased joint owner or be controlled
41 by the deceased joint owner's will. ~~Persons~~ Each person establishing an account under
42 this section shall sign a statement showing ~~their~~ that person's election of the right of

1 survivorship in the account, and containing language set forth in a conspicuous manner
2 and substantially similar to the following:

3 **'SAVINGS AND LOAN (OR NAME OF INSTITUTION)**
4 **JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP**
5 **G.S. 54B-129**

6 ~~We~~A representative of the savings and loan (or name of institution) has explained to
7 each of us and we understand that by establishing a joint account under the provisions of
8 North Carolina General Statute 54B-129 that:

- 9 1. The savings and loan association (or name of institution) may pay the
10 money in the account to, or on the order of, any person named in the
11 account unless we have agreed with the association that withdrawals
12 require more than one signature; and
- 13 2. Upon the death of one joint owner the money remaining in the account
14 will belong to the surviving joint owners and will not pass by
15 inheritance to the heirs of the deceased joint owner or be controlled by
16 the deceased joint owner's will.

17 We DO elect to create the right of survivorship in this account.

18 Witness our hands and seals, this
19 day of....., _____

20(Seal)
21(Seal)
22(Seal)
23(Seal)."

24 Section 5. G.S. 54C-165(a) reads as rewritten:

25 "(a) Any two or more persons may open or hold a withdrawable account or
26 accounts. The withdrawable account and any balance of the account is held by them as
27 joint tenants, with or without right of survivorship, as the contract shall provide. The
28 account may also be held under G.S. 41-2.1 and have incidents set forth in that section,
29 but if the account is held under G.S. 41-2.1, the contract shall set forth that fact as well.
30 Unless the persons establishing the account have agreed with the savings bank that
31 withdrawals require more than one signature, payment by the savings bank to, or on the
32 order of, any persons holding an account authorized by this section is a total discharge of
33 the savings bank's obligation as to the amount so paid. Funds in a joint account
34 established with the right of survivorship shall belong to the surviving joint tenant or
35 tenants upon the death of a joint tenant, and the funds are subject only to the personal
36 representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in
37 G.S. 41-2.1 if the account is established under that section. Payment by the savings bank
38 of funds in the joint account to a surviving joint tenant or tenants shall terminate the
39 personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the
40 savings bank for the funds so paid, but the personal representative's authority to collect
41 the funds from the surviving joint tenant or tenants is not terminated. A pledge of the
42 account by a holder shall, unless otherwise specifically agreed upon, be a valid pledge
43 and transfer of the account, or of the amount so pledged, and shall not operate to sever or

1 terminate the joint ownership of all or any part of the account. At the time an account is
2 established pursuant to this section, a representative of the savings bank shall orally
3 explain to each of the persons establishing the account that, upon the death of one joint
4 owner of the account, the money remaining in the account will belong to the surviving
5 joint owners and will not pass by inheritance to the heirs of the deceased joint owner or
6 be controlled by the deceased joint owner's will. ~~Persons~~ Each person establishing an
7 account under this section shall sign a statement showing ~~their~~ that person's election of
8 the right of survivorship in the account, and containing language set forth in a
9 conspicuous manner and substantially similar to the following:

10 **'SAVINGS BANK (OR NAME OF INSTITUTION) JOINT ACCOUNT**
11 **WITH RIGHT OF SURVIVORSHIP**
12 **G.S. 54C-165**

13 ~~We~~ A representative of the savings bank (or name of institution) has explained to each
14 of us and we understand that by establishing a joint account under G.S. 54C-165 that:

- 15 1. The savings bank (or name of institution) may pay the money in the
16 account to, or on the order of, any person named in the account unless
17 we have agreed with the savings bank that withdrawals require more
18 than one signature; and
- 19 2. Upon the death of one joint owner the money remaining in the account
20 will belong to the surviving joint owners and will not pass by
21 inheritance to the heirs of the deceased joint owner or be controlled by
22 the deceased joint owner's will.

23 We DO elect to create the right of survivorship in this account.

24 Witness our hands and seals, this
25 day of....., _____

26(Seal)
27(Seal)
28(Seal)
29(Seal)."

30 Section 6. This act becomes effective October 1, 1999, and applies to accounts
31 established on or after that date.