

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005

# A Bill

HOUSE BILL 1025

4  
5 By: Representative Walters  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO ADOPT THE ARKANSAS UNIFORM SIMULTANEOUS  
10 DEATH ACT (2005); AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 TO ADOPT THE ARKANSAS UNIFORM  
14 SIMULTANEOUS DEATH ACT (2005).  
15  
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 SECTION 1. Arkansas Code Title 28, Chapter 10, is amended to add an  
20 additional subchapter to read as follows:

21 Subchapter 2 - Uniform Simultaneous Death Act.  
22

23 28-10-201. Definitions.

24 In this subchapter:

25 (1) "Co-owners with right of survivorship" includes joint tenants,  
26 tenants by the entireties, and other co-owners of property or accounts held  
27 under circumstances that entitles one (1) or more to the whole of the  
28 property or account on the death of the other or others;

29 (2) "Governing instrument" means a deed, will, trust, insurance or  
30 annuity policy, account with POD designation, pension, profit-sharing,  
31 retirement, or similar benefit plan, instrument creating or exercising a  
32 power of appointment or a power of attorney, or a dispositive, appointive, or  
33 nominative instrument of any similar type; and

34 (3) "Payor" means a trustee, insurer, business entity, employer,  
35 government, governmental agency, subdivision, or instrumentality, or any  
36 other person authorized or obligated by law or a governing instrument to make



1 payments.

2

3 28-10-202. Requirement of survival by 120 hours under probate code.

4 Except as provided in § 28-10-206, if the title to property, the  
5 devolution of property, the right to elect an interest in property, or the  
6 right to exempt property, homestead or family allowance depends upon an  
7 individual's survivorship of the death of another individual, an individual  
8 who is not established by clear and convincing evidence to have survived the  
9 other individual by one hundred twenty (120) hours is deemed to have  
10 predeceased the other individual. This section does not apply if its  
11 application would result in a taking of intestate estate by the state.

12

13 28-10-203. Requirement of survival by 120 hours under governing  
14 instruments.

15 Except as provided in § 28-10-206, for purposes of a provision of a  
16 governing instrument that relates to an individual surviving an event,  
17 including the death of another individual, an individual who is not  
18 established by clear and convincing evidence to have survived the event by  
19 one hundred twenty (120) hours is deemed to have predeceased the event.

20

21 28-10-204. Co-owners with right of survivorship; requirement of  
22 survival by one hundred twenty 120 hours.

23 Except as provided in § 28-10-206, if:

24 (1) It is not established by clear and convincing evidence that one  
25 (1) of two (2) co-owners with right of survivorship survived the other co-  
26 owner by one hundred twenty (120) hours, one-half (1/2) of the property  
27 passes as if one had survived by one hundred twenty (120) hours and one-half  
28 (1/2) as if the other had survived by one hundred twenty (120) hours; and

29 (2) There are more than two (2) co-owners and it is not established by  
30 clear and convincing evidence that at least one (1) of them survived the  
31 others by one hundred twenty (120) hours, the property passes in the  
32 proportion that one bears to the whole number of co-owners.

33

34 28-10-205. Evidence of death or status.

35 In addition to the rules of evidence in courts of general jurisdiction,  
36 the following rules relating to a determination of death and status apply:

1           (1)(A) Death occurs when an individual has sustained either:

2                   (i) Irreversible cessation of circulatory and respiratory  
 3 functions; or

4                   (ii) Irreversible cessation of all functions of the entire  
 5 brain, including the brain stem.

6                   (B) A determination of death must be made in accordance  
 7 with accepted medical standards;

8           (2) A certified or authenticated copy of a death certificate  
 9 purporting to be issued by an official or agency of the place where the death  
 10 purportedly occurred is prima facie evidence of the fact, place, date, and  
 11 time of death and the identity of the decedent;

12           (3) A certified or authenticated copy of any record or report of  
 13 a governmental agency, domestic or foreign, that an individual is missing,  
 14 detained, dead, or alive is prima facie evidence of the status and of the  
 15 dates, circumstances, and places disclosed by the record or report;

16           (4) In the absence of prima facie evidence of death under  
 17 subdivision (2) or (3) of this section, the fact of death may be established  
 18 by clear and convincing evidence, including circumstantial evidence;

19           (5) An individual whose death is not established under this  
 20 section who is absent for a continuous period of five (5) years, during which  
 21 he or she has not been heard from, and whose absence is not satisfactorily  
 22 explained after diligent search or inquiry, is presumed to be dead. His or  
 23 her death is presumed to have occurred at the end of the period unless there  
 24 is sufficient evidence for determining that death occurred earlier; and

25           (6) In the absence of evidence disputing the time of death  
 26 stipulated on a document described in subdivision (2) or (3) of this section,  
 27 a document described in subdivision (2) or (3) of this section that  
 28 stipulates a time of death one hundred twenty (120) hours or more after the  
 29 time of death of another individual, however the time of death of the other  
 30 individual is determined, establishes by clear and convincing evidence that  
 31 the individual survived the other individual by one hundred twenty (120)  
 32 hours.

33  
 34           28-10-206. Exceptions.

35           This subchapter does not apply if:

36                   (1) The governing instrument contains language dealing

1 explicitly with simultaneous deaths or deaths in a common disaster and that  
 2 language is operable under the facts of the case;

3 (2) The governing instrument expressly indicates that an  
 4 individual is not required to survive an event, including the death of  
 5 another individual, by any specified period or expressly requires the  
 6 individual to survive the event for a stated period;

7 (3) The imposition of a 120-hour requirement of survival would  
 8 cause a nonvested property interest or a power of appointment to be invalid  
 9 under the Rule Against Perpetuities; or

10 (4) The application of this subchapter to multiple governing  
 11 instruments would result in an unintended failure or duplication of a  
 12 disposition.

13  
 14 28-10-207. Protection of payors, bona fide purchasers, and other third  
 15 parties; personal liability of recipient.

16 (a)(1) A payor or other third party is not liable for having made a  
 17 payment or transferred an item of property or any other benefit to a person  
 18 designated in a governing instrument who, under this subchapter is not  
 19 entitled to the payment or item of property, or for having taken any other  
 20 action in good faith reliance on the person's apparent entitlement under the  
 21 terms of the governing instrument, before the payor or other third party  
 22 received written notice of a claimed lack of entitlement under this  
 23 subchapter. A payor or other third party is liable for a payment made or  
 24 other action taken after the payor or other third party received written  
 25 notice of a claimed lack of entitlement under this subchapter.

26 (2) Written notice of a claimed lack of entitlement under  
 27 subdivision (a)(1) of this section must be mailed to the payor's or other  
 28 third party's main office or home by registered or certified mail, return  
 29 receipt requested, or served upon the payor or other third party in the same  
 30 manner as a summons in a civil action. Upon receipt of written notice of a  
 31 claimed lack of entitlement under this subchapter, a payor or other third  
 32 party may pay any amount owed or transfer or deposit any item of property  
 33 held by it to or with the court having jurisdiction of the probate  
 34 proceedings relating to the decedent's estate, or if no proceedings have been  
 35 commenced, to or with the court having jurisdiction of probate proceedings  
 36 relating to decedents' estates located in the county of the decedent's

1 residence. The court shall hold the funds or item of property and, upon its  
 2 determination under this subchapter, shall order disbursement in accordance  
 3 with the determination. Payments, transfers, or deposits made to or with the  
 4 court discharge the payor or other third party from all claims for the value  
 5 of amounts paid to or items of property transferred to or deposited with the  
 6 court.

7 (b)(1) A person who purchases property for value and without notice,  
 8 or who receives a payment or other item of property in partial or full  
 9 satisfaction of a legally enforceable obligation, is neither obligated under  
 10 this subchapter to return the payment, item of property, or benefit nor  
 11 liable under this subchapter for the amount of the payment or the value of  
 12 the item of property or benefit. But a person who, not for value, receives a  
 13 payment, item of property, or any other benefit to which the person is not  
 14 entitled under this subchapter is obligated to return the payment, item of  
 15 property, or benefit, or is personally liable for the amount of the payment  
 16 or the value of the item of property or benefit, to the person who is  
 17 entitled to it under this subchapter.

18 (2) If this subchapter or any part of this subchapter is  
 19 preempted by federal law with respect to a payment, an item of property, or  
 20 any other benefit covered by this subchapter, a person who, not for value,  
 21 receives the payment, item of property, or any other benefit to which the  
 22 person is not entitled under this subchapter is obligated to return the  
 23 payment, item of property, or benefit, or is personally liable for the amount  
 24 of the payment or the value of the item of property or benefit, to the person  
 25 who would have been entitled to it were this subchapter or part of this  
 26 subchapter not preempted.

27  
 28 28-10-208. Uniformity of application and construction.

29 This subchapter shall be applied and construed to effectuate its  
 30 general purpose to make uniform the law with respect to the subject of this  
 31 subchapter among states enacting it.

32  
 33 28-10-209. Short title.

34 This subchapter may be cited as the “Arkansas Uniform Simultaneous  
 35 Death Act (2005)”.

36

1           28-10-210. Severability clause.

2           If any provision of this subchapter or its application to any persons  
 3 or circumstance is held invalid, the invalidity does not affect other  
 4 provisions or applications of the subchapter which can be given effect  
 5 without the invalid provision or application, and to this end the provisions  
 6 of this subchapter are severable.

7  
 8           28-10-211. Effective date.

9           (a) This subchapter takes effect January 1, 2006.

10          (b) On the effective date of this subchapter:

11               (1) An act done before the effective date in any proceeding and  
 12 any accrued right is not impaired by this subchapter. If a right is acquired,  
 13 extinguished, or barred upon the expiration of a prescribed period of time  
 14 that has commenced to run by the provisions of any statute before the  
 15 effective date, the provisions remain in force with respect to that right;  
 16 and

17               (2) Any rule of construction or presumption provided in this  
 18 subchapter applies to instruments executed and multiple-party accounts opened  
 19 before the effective date unless there is a clear indication of a contrary  
 20 intent.

21  
 22          SECTION 2. Effective date of repeal.

23          Except as provided in § 28-10-211, §§ 28-10-101 through 28-10-112 shall  
 24 be repealed and superseded by §§ 28-10-201 through 28-10-211 on January 1,  
 25 2006.

26  
 27          SECTION 3. Arkansas Code §§ 28-10-101 through 28-10-112 are repealed.

28          ~~28-10-101. No sufficient evidence of survivorship.~~

29          ~~Where the title to property or the devolution thereof depends upon~~  
 30 ~~priority of death and there is no sufficient evidence that the persons have~~  
 31 ~~died otherwise than simultaneously, the property of each person shall be~~  
 32 ~~disposed of as if he had survived, except as provided otherwise in this~~  
 33 ~~chapter.~~

34  
 35          ~~28-10-102. Beneficiaries of another person's disposition of property.~~  
 36 ~~If property is so disposed of that the right of a beneficiary to~~

1 ~~succeed to any interest therein is conditional upon his surviving another~~  
 2 ~~person, and both persons die, and there is no sufficient evidence that the~~  
 3 ~~two (2) have died otherwise than simultaneously, the beneficiary shall be~~  
 4 ~~deemed not to have survived. If there is no sufficient evidence that two (2)~~  
 5 ~~or more beneficiaries have died otherwise than simultaneously and property~~  
 6 ~~has been disposed of in such a way that at the time of their death each of~~  
 7 ~~the beneficiaries would have been entitled to the property if he had survived~~  
 8 ~~the others, the property shall be divided into as many equal portions as~~  
 9 ~~there were beneficiaries, and these portions shall be distributed~~  
 10 ~~respectively to those who would have taken in the event that each of the~~  
 11 ~~beneficiaries had survived.~~

12  
 13 ~~28-10-103. Joint tenants or tenants by the entirety.~~

14 ~~Where there is no sufficient evidence that two (2) joint tenants or~~  
 15 ~~tenants by the entirety have died otherwise than simultaneously, the property~~  
 16 ~~so held shall be distributed one half (1/2) as if one (1) had survived and~~  
 17 ~~one half (1/2) as if the other had survived. If there are more than two (2)~~  
 18 ~~joint tenants and all of them have so died, the property thus distributed~~  
 19 ~~shall be in the proportion that one bears to the whole number of joint~~  
 20 ~~tenants.~~

21 ~~The term "joint tenants" includes owners of property held under~~  
 22 ~~circumstances which entitled one (1) or more to the whole of the property on~~  
 23 ~~the death of the other or others.~~

24  
 25 ~~28-10-104. [Reserved.]~~

26  
 27 ~~28-10-105. Insurance policies.~~

28 ~~When the insured and the beneficiary in a policy of life or accident~~  
 29 ~~insurance have died and there is no sufficient evidence that they have died~~  
 30 ~~otherwise than simultaneously, the proceeds of the policy shall be~~  
 31 ~~distributed as if the insured had survived the beneficiary.~~

32  
 33 ~~28-10-106. Chapter not retroactive.~~

34 ~~This chapter shall not apply to the distribution of the property of a~~  
 35 ~~person who dies before it takes effect.~~

1           ~~28-10-107. Chapter does not apply if decedent provides otherwise.~~  
2           ~~This chapter shall not apply in the case of wills, living trusts,~~  
3 ~~deeds, or contracts of insurance, or any other situation where provision is~~  
4 ~~made for distribution of property different from the provisions of this~~  
5 ~~chapter, or where provision is made for a presumption as to survivorship~~  
6 ~~which results in a distribution of property different from that here~~  
7 ~~provided.~~

8  
9           ~~28-10-108. Uniformity of interpretation.~~  
10          ~~This chapter shall be so construed and interpreted as to effectuate its~~  
11 ~~general purpose to make uniform the law in those states which enact it.~~

12  
13          ~~28-10-109. Short title.~~  
14          ~~This chapter may be cited as the "Uniform Simultaneous Death Act."~~

15  
16          ~~28-10-110. Repeal.~~  
17          ~~All laws or parts of laws inconsistent with the provisions of this~~  
18 ~~chapter are hereby repealed.~~

19  
20          ~~28-10-111. Severability.~~  
21          ~~If any of the provisions of this chapter or the application thereof to~~  
22 ~~any persons or circumstances is held invalid, such invalidity shall not~~  
23 ~~affect other provisions or applications of the chapter which can be given~~  
24 ~~effect without the invalid provisions or application, and to this end the~~  
25 ~~provisions of this chapter are declared to be severable.~~

26  
27          ~~28-10-112. [Reserved.]~~  
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