

1 **H. B. 4011**

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3 (By Delegates P. Smith, R. Phillips, Ellington,  
4 Ferro, Reynolds, Skinner and Storch)

5 [Introduced January 8, 2014; referred to the  
6 Committee on the Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §36-12-1, §36-12-2,  
12 §36-12-3, §36-12-4, §36-12-5, §36-12-6, §36-12-7, §36-12-8,  
13 §36-12-9, §36-12-10, §36-12-11, §36-12-12, §36-12-13,  
14 §36-12-14, §36-12-15, §36-12-16 and §36-12-17, all relating to  
15 creating the Uniform Real Property Transfer on Death Act;  
16 authorizing the transfer of real property effective at the  
17 time of a transferor's death; providing for applicability and  
18 nonexclusivity of this method of transferring real property;  
19 providing that a transfer on death deed is revocable and  
20 nontestamentary; establishing the capacity of transferor;  
21 setting forth requirements for a transfer of death deed;  
22 providing that transfer of death deed exempt from payment of  
23 excise tax on the privilege of transferring real estate;

1 providing that notice, delivery, acceptance or consideration  
 2 are not required; providing requirements for revocation of  
 3 deed; setting forth the effect of transfer on death deed  
 4 during a transferor's life and effect of the deed at  
 5 transferor's death; providing a disclaimer; providing for  
 6 liberal construction; providing for uniformity of application  
 7 and construction; setting forth the article's relation to the  
 8 Electronic Signatures in Global and National Commerce Act; and  
 9 defining terms.

10 *Be it enacted by the Legislature of West Virginia:*

11 That the Code of West Virginia, 1931, as amended, be amended  
 12 by adding thereto a new article, designated §36-12-1, §36-12-2,  
 13 §36-12-3, §36-12-4, §36-12-5, §36-12-6, §36-12-7, §36-12-8,  
 14 §36-12-9, §36-12-10, §36-12-11, §36-12-12, §36-12-13, §36-12-14,  
 15 §36-12-15, §36-12-16 and §36-12-17, all to read as follows:

16 **ARTICLE 12. UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT.**

17 **§36-12-1. Short Title.**

18 This article may be cited as the Uniform Real Property  
 19 Transfer on Death Act.

20 **§36-12-2. Definitions.**

21 In this article:

22 (1) "Beneficiary" means a person who receives property under  
 23 a transfer on death deed.

1       (2) "Contingent beneficiary" means a person designated in a  
2 transfer on death deed to receive property only if a different  
3 person fails to survive the transferor.

4       (3) "Designated beneficiary" means a person designated to  
5 receive property in a transfer on death deed. The term includes  
6 contingent beneficiaries.

7       (4) "Joint owner" means an individual who owns property  
8 concurrently with one or more other individuals with a right of  
9 survivorship.

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

15       (6) "Property" means an interest in real property located in  
16 this state which is transferable on the death of the owner.

17       (7) "Transfer on death deed" means a deed authorized under  
18 this article.

19       (8) "Transferor" means an individual who makes a transfer on  
20 death deed.

21 **§36-12-3. Applicability.**

22       This article applies to a transfer on death deed made on or  
23 after the effective date of this article, by a transferor dying on

1 or after the effective date of this article.

2 **§36-12-4. Nonexclusivity.**

3 This article does not affect any method of transferring  
4 property otherwise permitted under the law of this state.

5 **§36-12-5. Transfer on death deed authorized.**

6 An individual may transfer property to one or more  
7 beneficiaries or contingent beneficiaries effective at the  
8 transferor's death by a transfer on death deed.

9 **§36-12-6. Transfer on death deed revocable.**

10 A transfer on death deed is revocable even if the deed or  
11 another instrument contains a contrary provision.

12 **§36-12-7. Transfer on death deed nontestamentary.**

13 A transfer on death deed is nontestamentary.

14 **§36-12-8. Capacity of transferor.**

15 The capacity required to make or revoke a transfer on death  
16 deed is the same as the capacity required to make a will.

17 **§36-12-9. Requirements.**

18 A transfer on death deed:

19 (1) Except as otherwise provided in subdivision (2) of this  
20 section, must contain the essential elements and formalities of a  
21 properly recordable *inter vivos* deed;

22 (2) Must state that the transfer to the designated beneficiary

1 is to occur at the transferor's death; and

2 (3) Must be recorded before the transferor's death in the  
3 office of the clerk of the county commission in the county where  
4 the property is located: *Provided, That, notwithstanding section*  
5 two, article twenty-two, chapter eleven of this code, a transfer on  
6 death deed is exempt from the payment of excise tax on the  
7 privilege of transferring real estate for the reason that no  
8 interest in the property is at the time of recording being passed  
9 to the beneficiary and the deed remains revocable until the death  
10 of the transferor.

11 **§36-12-10. Notice, delivery, acceptance and consideration not**  
12 **required.**

13 A transfer on death deed is effective without:

14 (1) Notice or delivery to or acceptance by the designated  
15 beneficiary during the transferor's life; or

16 (2) Consideration.

17 **§36-12-11. Revocation by instrument authorized; revocation by act**  
18 **not permitted.**

19 (a) Subject to subsection (b) of this section, an instrument  
20 is effective to revoke a recorded transfer on death deed, or any  
21 part of it, only if the instrument:

22 (1) Is one of the following:

23 (A) A transfer on death deed that revokes the deed or part of

1 the deed expressly or by inconsistency;

2 (B) An instrument of revocation that expressly revokes the  
3 deed or part of the deed; or

4 (C) An *inter vivos* deed that expressly revokes the transfer on  
5 death deed or part of the deed; and

6 (2) Is acknowledged by the transferor after the acknowledgment  
7 of the deed being revoked and recorded before the transferor's  
8 death in the public records in the office of the clerk of the  
9 county commission of the county where the deed is recorded.

10 (b) If a transfer on death deed is made by more than one  
11 transferor:

12 (1) Revocation by a transferor does not affect the deed as to  
13 the interest of another transferor; and

14 (2) A deed of joint owners is revoked only if it is revoked by  
15 all of the living joint owners.

16 (c) After a transfer on death deed is recorded it may not be  
17 revoked by a revocatory act on the deed.

18 (d) This section does not limit the effect of an *inter vivos*  
19 transfer of the property.

20 **§36-12-12. Effect of transfer on death deed during transferor's**  
21 **life.**

22 During a transferor's life, a transfer on death deed does not:

23 (1) Affect an interest or right of the transferor or any other

1 owner, including the right to transfer or encumber the property;

2 (2) Affect an interest or right of a transferee, even if the  
3 transferee has actual or constructive notice of the deed;

4 (3) Affect an interest or right of a secured or unsecured  
5 creditor or future creditor of the transferor even if the creditor  
6 has actual or constructive notice of the deed;

7 (4) Affect the transferor's or designated beneficiary's  
8 eligibility for any form of public assistance;

9 (5) Create a legal or equitable interest in favor of the  
10 designated beneficiary; or

11 (6) Subject the property to claims or process of a creditor of  
12 the designated beneficiary.

13 **§36-12-13. Effect of transfer on death deed at transferor's death.**

14 (a) Except as otherwise provided in the transfer on death deed  
15 in this article, section six, article one, chapter forty-one of  
16 this code, section three, article three, chapter forty-one of this  
17 code, article three, chapter forty-two of this code, section two,  
18 article four, chapter forty-two of this code or article five,  
19 chapter forty-two of this code, on the death of the transferor the  
20 following rules apply to property that is the subject of a transfer  
21 on death deed and owned by the transferor at death:

22 (1) Subject to subdivision (2) of this subsection, the  
23 interest in the property is transferred to the designated

1 beneficiary in accordance with the deed.

2 (2) The interest of a designated beneficiary is contingent on  
3 the designated beneficiary surviving the transferor. The interest  
4 of a designated beneficiary that fails to survive the transferor  
5 lapses.

6 (3) Subject to subdivision (4) of this subsection, concurrent  
7 interests are transferred to the beneficiaries in equal and  
8 undivided shares with no right of survivorship.

9 (4) If the transferor has identified two or more designated  
10 beneficiaries to receive concurrent interests in the property, the  
11 share of one which lapses or fails for any reason is transferred to  
12 the other, or to the others in proportion to the interest of each  
13 in the remaining part of the property held concurrently.

14 (b) Subject to article two, chapter thirty-nine and chapter  
15 thirty-eight of this code, a beneficiary takes the property subject  
16 to all conveyances, encumbrances, assignments, contracts,  
17 mortgages, liens and other interests to which the property is  
18 subject at the transferor's death. For purposes of this subsection,  
19 article two, chapter thirty-nine and chapter thirty-eight of this  
20 code, the recording of the transfer on death deed is deemed to have  
21 occurred at the transferor's death.

22 (c) If a transferor is a joint owner and is:

23 (1) Survived by one or more other joint owners, the property



1 that is the subject of a transfer on death deed belongs to the  
2 surviving joint owner or owners with right of survivorship; or

3 (2) The last surviving joint owner, the transfer on death deed  
4 is effective.

5 (d) A transfer on death deed transfers property without  
6 covenant or warranty of title even if the deed contains a contrary  
7 provision.

8 **§36-12-14. Disclaimer.**

9 A beneficiary may disclaim all or part of the beneficiary's  
10 interest as provided by article six, chapter forty-two of this  
11 code.

12 **§36-12-15. Prior transfer on death liberally construed.**

13 (a) Any transfer on death deed properly recorded in an office  
14 of the clerk of a county commission before the effective date of  
15 this article containing language that shows a clear intent to  
16 designate a transfer on death beneficiary shall be liberally  
17 construed to do so.

18 (b) Any survivorship clause in a deed properly recorded before  
19 the effective date of this article in an office of the clerk of a  
20 county commission that attempts to create a right of survivorship  
21 tenancy, which survivorship tenancy otherwise fails, but otherwise  
22 is an effective deed, and shows a clear intent to designate a  
23 beneficiary to receive the property upon death of one or more

1 cotenants by survivorship shall be liberally construed to be an  
2 effective transfer on death deed governed by this article.

3 **§36-12-16. Uniformity of application and construction.**

4 In applying and construing this uniform act, consideration  
5 must be given to the need to promote uniformity of the law with  
6 respect to its subject matter among the states that enact it.

7 **§36-12-17. Relation to Electronic Signatures in Global and**  
8 **National Commerce Act.**

9 This article modifies, limits and supersedes the federal  
10 Electronic Signatures in Global and National Commerce Act, 15  
11 U.S.C. §7001, et seq., but does not modify, limit or supersede  
12 section 101(c) of that act, 15 U.S.C. §7001(c) or authorize  
13 electronic delivery of any of the notices described in section  
14 103(b) of that act, 15 U.S.C. §7003(b).

NOTE: The purpose of this bill is to create the Real Property Transfer on Death Act. The bill enables an owner of real property to pass the property simply and directly to a beneficiary upon the owner's death without probate. The bill permits real property to be transferred by operation of law by means of a recorded transfer on death deed. The bill permits, on an owner's death, the property to pass to the beneficiary, much like the survivorship feature of joint tenancy. The bill also provides that the owner retains full power to transfer or encumber the property or to revoke the transfer on death deed. At Least nineteen states (Arizona, Arkansas, Colorado, Hawaii, Illinois, Indiana, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Virginia and Wisconsin) and the District of Columbia have enacted legislation authorizing transfer on death deeds.

This article is new; therefore, it has been completely underscored.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Commission on Interstate Cooperation.