

By: Representative Simmons

To: Judiciary A

HOUSE BILL NO. 321

1 AN ACT TO CREATE THE MISSISSIPPI TRANSFER-ON-DEATH OF
 2 INTEREST IN REAL PROPERTY AND NONREGISTERED PERSONAL PROPERTY ACT;
 3 TO DEFINE CERTAIN TERMS; TO PROVIDE FOR THE CONVEYANCE OF
 4 PROPERTY; TO PROVIDE FOR THE EFFECT OF TRANSFER ON DEATH PROVISION
 5 IN A CONVEYANCE; TO PROVIDE FOR OWNERSHIP ON THE DEATH OF THE
 6 OWNER; TO PROVIDE FOR NONTESTAMENTARY TRANSFER ON DEATH; TO
 7 PROVIDE FOR TERMS, CONDITIONS AND FORM OF CONVEYANCE; TO PROVIDE
 8 EXAMPLES; AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 SECTION 1. This act shall be known and may be cited as the
 11 "Mississippi Transfer-On-Death of Interest in Real Property and
 12 Nonregistered Personal Property Act."

13 SECTION 2. In this chapter, unless the context otherwise
 14 requires:

15 (a) "Person" means an individual, a corporation, an
 16 organization or other legal entity.

17 (b) "Property" includes real property or any interest
 18 therein and nonregistered personal property or any interest
 19 therein.

20 (c) "Nonregistered Personal Property" means any
 21 personal property that is not actually registered under the
 22 provisions of the Mississippi Uniform Transfer-On-Death Security
 23 Registration Act as set forth in Sections 91-21-1, et seq.

24 (d) "Conveyance" means deeds of all types and bills of
 25 sale, all with or without warranty.

26 (e) "Beneficiary" or "Substituted Beneficiary" means a
 27 person as defined in this act.

28 SECTION 3. An interest or estate in property that will vest
 29 in a beneficiary or beneficiaries only upon the death of the owner

30 or owners may be created by conveyance to the owner (grantee) or
31 owners (grantees) followed by the words "Transfer on Death" (or
32 the abbreviation there of "TOD") followed by the name or names of
33 the beneficiary or beneficiaries. The conveyance of an interest
34 or estate in property to two (2) or more owners shall provide for
35 survivorship between the owners as joint tenants or as tenants by
36 the entirety.

37 SECTION 4. The designation of a TOD beneficiary in a
38 conveyance has no effect on the ownership until the owner's death
39 and the beneficiary has no ownership or right in the property
40 until the death of the owner. The sole owner or all of the
41 surviving owners may, without the consent of any beneficiary or
42 beneficiaries, take any action with respect to the property that
43 could be taken by the sole owner or all of the surviving owners if
44 no beneficiary or beneficiaries had been named.

45 SECTION 5. On death of a sole owner or the last to die of
46 all multiple owners, ownership of the property passes to the
47 beneficiary or beneficiaries who survive all owners. No interest
48 shall vest in a beneficiary unless the beneficiary survives all
49 owners. Until division of the property after the death of all
50 owners, multiple beneficiaries surviving the death of all owners
51 hold their interests as tenants in common. If no beneficiary
52 survives the death of all owners, the property belongs to the
53 estate of the deceased sole owner or the estate of the last to die
54 of all multiple owners.

55 SECTION 6. (1) A transfer to the beneficiary or
56 beneficiaries upon the death of a sole owner or the last to die of
57 all multiple owners is effective by reason of the provisions of
58 the conveyance and the provision of this chapter and is not
59 testamentary.

60 (2) This chapter does not limit the rights of creditors of
61 the owner against beneficiaries and other transferees under other
62 laws of this state, but no new rights are created in a creditor
63 under the provisions of this chapter.

64 SECTION 7. Substitution for a beneficiary may be indicated
65 by appending to the name of the primary beneficiary the letters
66 "LDPS" standing for "lineal descendants per stirpes" or the

67 letters "SUB BENE" standing for "substitute beneficiary." This
68 designation "LDPS" substitutes a deceased beneficiary's
69 descendants who survive the owner for a beneficiary who fails to
70 so survive, the descendants to be identified and to share in
71 accordance with laws of inheritance by descendants of an
72 intestate. The designation "SUB BENE" followed by the name of a
73 substitute beneficiary is effective to substitute the person so
74 named to receive the property that the beneficiary would have
75 received by surviving the primary beneficiary.

76 SECTION 8. Without establishing any limitations, the
77 following are examples of some conveyance that may be utilized:

78 (a) **Sole Owner-Sole Beneficiary:** To John R. Brown TOD
79 John R. Brown, Jr.

80 (b) **Sole Owner-Primary and Substituted Beneficiary:** To
81 John R. Brown TOD John R. Brown, Jr., SUB BENE John R. Brown, III.

82 (c) **Sole Owner-Primary and Substituted Beneficiary:** To
83 John R. Brown TOD John R. Brown, Jr., LDPS.

84 (d) **Sole Owner-Primary Beneficiaries and Secondary**
85 **Beneficiary:** To John R. Brown TOD John R. Brown, Jr., and Betty
86 B. Smith SUB BENE ABC Corporation.

87 (e) **Sole Owner-Undivided Interest to Different**
88 **Beneficiaries:** To John R. Brown TOD John R. Brown, Jr., an
89 undivided one-half (1/2) interest; and to Betty B. Smith TOD
90 Sandra S. Jones, an undivided one-half (1/2) interest.

91 (f) **Husband and Wife Owners-Sole Beneficiary:** To John
92 R. Brown and wife, Mary S. Brown, as an estate by the entirety with
93 full right of survivorship as between them and not as tenants in
94 common TOD John R. Brown, Jr.

95 (g) **Husband and Wife Owners-Primary Beneficiary and**
96 **Substituted Beneficiary:** To John R. Brown and wife, Mary S.
97 Brown, as an estate by the entirety with the full right of
98 survivorship as between them and not as tenants in common TOD John
99 R. Brown, Jr., SUB BENE John R. Brown, III.

100 (h) **Husband and Wife Owners-Primary Beneficiary and**
101 **Substituted Beneficiary:** To John R. Brown and wife, Mary S. Brown,
102 as an estate by the entirety with full right of survivorship as
103 between them and not as tenants in common TOD John R. Brown, Jr.,
104 LDPS.

105 (i) **Sole Mineral Owner-Sole Beneficiary:** To John R.
106 Brown TOD John R. Brown, Jr., an undivided one-fourth (1/4) of all
107 oil, gas and other minerals.

108 SECTION 9. This act shall take effect and be in force from
109 and after July 1, 1999.