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# JOHN J. MACCO

STATE REPRESENTATIVE • 88<sup>TH</sup> ASSEMBLY DISTRICT

**To:** Assembly Committee on Agriculture

**From:** Representative John Macco

**Date:** February 8, 2022

## In Favor of AB 948

Chairman Tauchen and Committee Members,

Under current Wisconsin law, the probate process uses the courts to assist in the transfer of assets after an individual's passing. In the case of our farms across Wisconsin, the beneficiary is able to receive the farmland shortly after the death, but probate restricts the transfer of farming equipment for a minimum of 90 days or usually longer. Recipients are left without the legal rights to their equipment preventing persons from managing their assets as they see fit.

This bill will allow the farming equipment to be passed on through the Transfer on Death process. We already use Transfer on Death with IRA's, 401k's, and life insurance. We need to provide direct access to these assets by eliminating probate transfers for farming equipment. Using transfer on death will remove unnecessary delays and the burden of court fees for farming families.

The 50,000 small family farms in Wisconsin are the backbone of our state, and when they are suffering a loss in the family the last thing they need is obstructive regulations that threaten their livelihood. We need to see this bill through the finish line and help our small family farmers by cutting through the red tape.



**JOAN BALLWEG**

STATE SENATOR · 14<sup>TH</sup> SENATE DISTRICT

Assembly Bill 948: Nonprobate Transfers of Farming Implements at Death  
Assembly Committee on Agriculture  
Testimony of Senator Joan Ballweg  
February 8, 2022

Good afternoon, members of the committee. Thank you for hearing this important piece of legislation.

Probate is the formal legal process of transferring assets after death. This can often be a lengthy court process where assets are held until final determinations are made.

For farmers, any disruption in their agricultural cycle can cost them important time and revenue in lost production. Under current law, beneficiaries who are receiving farm equipment must use the probate process. However, beneficiaries receiving farmland can use a more expedient process called transfer on death (TOD). TOD allows, through written designation of a beneficiary, for a more efficient transfer of possession without the need for the court to get involved.

Assembly Bill 948 will allow farming implements to be transferred through TOD like farmland, therefore allowing farms to continue their work with minimal disruption.

Farm succession planning can be a huge stress. I believe this legislation will reduce this procedural burden, especially for small farms who typically transfer equipment between family members.

There is an amendment that we introduced after discussions with the State Bar that make two technical changes. The first change deletes a reference in the bill to record the document with the local Register of Deeds since that is not a requirement. The other change adds a requirement that one of the two witnesses to the execution of the TOD be a "disinterested witness", which is defined as an individual who is not designated as a beneficiary on the document that he or she is acting as a witness to.

Thank you for your time. I am happy to answer any questions you may have.





DAIRY BUSINESS  
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FORWARD

February 8, 2022

### **Assembly Agriculture Committee**

*Testimony in Favor of Assembly Bill 948 – transfer-on-death bill of sale for agriculture equipment*

Good morning, Chairman Tauchen, Ranking Member Considine and committee members. Thank you for the opportunity to provide testimony today in support of Assembly Bill 948.

My name is Chad Zuleger. I am the associate director of government affairs representing the Dairy Business Association. Our members include dairy farmers, processors and a variety of affiliated businesses that help ensure farmers are successful in our state and that the products they produce remain delicious, nutritious, desired, and available at home and around the world.

I'd like to start by thanking Representative Macco and Senator Ballweg for authoring this helpful legislation. Wisconsin law already features several mechanisms to help estates avoid probate. This includes exemptions of certain types and amounts of property. It also includes transfer-on-death deeds that allow real estate to transfer upon an owner's death to designated parties outside of the probate process. Assembly Bill 948 would create a similar mechanism for the transfer of farm implements.

This is important because while a certain amount of personal property is allowed to transfer without triggering a probate proceeding, expensive farm equipment can quickly add up and tip an estate over the threshold requiring it to go through probate. For most Wisconsinites, the current personal property exemptions are sufficient to allow the transfer of one's personal belongings upon his or her passing. For many Wisconsin farm families that is not possible because farm implements' value can force the entire estate into the probate process.

The Dairy Business Association advocates on behalf of Wisconsin's dairy farmers and allied businesses. The idea of allowing non-probate transfers of farming implements at death has been raised by attorneys that work with our farmer members. It would give them one more tool to aid these farm families in making sound estate planning and business transition decisions.

This legislation is revenue neutral or could perhaps even save government money. It does not have any estate tax implications. It merely helps farmers and their descendants save the time



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and money associated with going through probate court. In turn, this should also save time and money for our state's court system. In short, existing law provides many ways for estates to avoid probate because this is advantageous to all parties. The additional carveout provided by this legislation also makes good sense. Therefore, we ask the members of this committee to support AB 948.

Again, thank you for the opportunity to testify today in favor of this bill. I appreciate your time and attention to this matter. I would be happy to answer any questions you may have.

# TODD H. ANDERSON

C.J. Strang 1880-1958

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February 2, 2022

To: Chad Zuleger

A large part of our practice is helping our clients with the estate planning process. I tell our clients that when a person passes away, their solely owned assets must go through the probate process. I also tell our clients that the probate process is good for the probate attorney but not for the beneficiaries of the deceased.

What we attempt to accomplish for our clients is to change the status of assets from probate assets to non-probate assets. We accomplish that goal using the following vehicles to avoid probate:

1. Real Estate: We draft a Transfer on Death Deed, also known as a TODD. This deed retains ownership in the name of the grantors, but upon the death of the last grantor, the real estate transfers to the grantee WITHOUT going through the probate process.
2. Bank Accounts, including checking accounts, savings accounts, CDs, and money market accounts: Our client goes to their bank and changes the account from an individual or joint account to a Payable on Death or POD account. Example: James Johnson and Karen Johnson as survivorship marital property POD to Jack Johnson and Jane Johnson. On the last death of James or Karen Johnson, the account transfers to Jack and Jane Johnson WITHOUT going through the probate process. It takes less than ½ hour to set those accounts up at the bank, and our clients are happy to hear there is no cost to set up a Payable on Death or POD account. I also tell our clients if Jack or Jane do something the parents do not approve of, they can always change the names on the POD account.
3. Local stocks such as our local telephone company: These shares can be taken to the home office of the telephone company and have the names on the account changed to James Johnson and Karen Johnson, husband and wife, as survivorship marital property, TRANSFER ON DEATH to Jack Johnson and Jane Johnson as joint tenants or as tenants in common, depending on the wishes of their parents. When both James Johnson and Karen Johnson are deceased, the stock in the telephone company passes to James Johnson and Karen Johnson WITHOUT going through the probate process.
4. Life Insurance: If there are beneficiaries noted on the policy, the life insurance proceeds to the beneficiaries WITHOUT going through the probate process.
5. Stock Brokerage Accounts: If beneficiaries are listed on the account, the account passes to the beneficiaries WITHOUT going through the probate process.

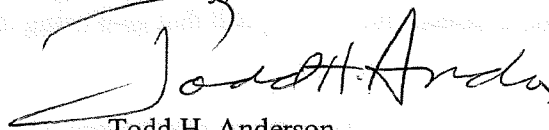
The problem or the hole in the doughnut is personal property, and specifically farm equipment. Farm equipment is often conveyed using a Bill of Sale. There is no provision for a Bill of Sale that has a Transfer on Death component.

We can use a Transfer by Affidavit which is a short-cut probate process if the total value of the probate assets is less than \$50,000. This simply does not work for farmers based on the value of their equipment. The farmers' heirs are therefore forced into the lengthy and time-consuming probate process.

If the legislature could pass legislation to provide for a Transfer on Death Bill of Sale, the beneficiaries could possibly be saved the time and expense of the probate process, depending on the value of other probate assets.

I think you would be doing a great service to our Wisconsin farmers if such legislation could be implemented.

Sincerely,



Todd H. Anderson

THA/rb