

AN ACT

relating to the adoption of the Texas Uniform Disclaimer of Property Interests Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 24.002(12), Business & Commerce Code, is amended to read as follows:

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance. The term does not include a transfer under a disclaimer filed under Chapter 240, [~~Section 37A, Texas Probate Code, or Section 112.010,~~] Property Code.

SECTION 2. The heading to Subchapter A, Chapter 122, Estates Code, is amended to read as follows:

SUBCHAPTER A. [~~GENERAL PROVISIONS RELATING TO~~] DISCLAIMER OF INTEREST OR POWER

SECTION 3. Sections 122.001 and 122.002, Estates Code, are amended to read as follows:

Sec. 122.001. DEFINITIONS. In this subchapter [~~chapter, other than Subchapter E~~]:

(1) "Beneficiary" includes a person who would have been entitled, if the person had not made a disclaimer, to receive property as a result of the death of another person:

(A) by inheritance;

(B) under a will;

(C) by an agreement between spouses for community property with a right of survivorship;

(D) by a joint tenancy with a right of survivorship;

(E) by a survivorship agreement, account, or interest in which the interest of the decedent passes to a surviving beneficiary;

(F) by an insurance, annuity, endowment, employment, deferred compensation, or other contract or arrangement; or

(G) under a pension, profit sharing, thrift, stock bonus, life insurance, survivor income, incentive, or other plan or program providing retirement, welfare, or fringe benefits with respect to an employee or a self-employed individual.

(2) "Disclaim" and "disclaimer" have the meanings assigned by Section 240.002, Property Code [~~"Disclaimer" includes renunciation~~].

~~[(3) "Property" includes all legal and equitable interests, powers, and property, present or future, vested or contingent, and beneficial or burdensome, in whole or in part.]~~

Sec. 122.002. DISCLAIMER [~~WHO MAY DISCLAIM~~]. [~~(a)~~] A person who may be entitled to receive property as a beneficiary may disclaim the person's interest in or power over the property in accordance with Chapter 240, Property Code [~~who on or after September 1, 1977, intends to irrevocably disclaim all or any part~~]

1 ~~of the property shall evidence the disclaimer as provided by this~~  
2 ~~chapter].~~

3 ~~[(b) Subject to Subsection (c), the legally authorized~~  
4 ~~representative of a person who may be entitled to receive property~~  
5 ~~as a beneficiary who on or after September 1, 1977, intends to~~  
6 ~~irrevocably disclaim all or any part of the property on the~~  
7 ~~beneficiary's behalf shall evidence the disclaimer as provided by~~  
8 ~~this chapter.~~

9 ~~[(c) A disclaimer made by a legally authorized~~  
10 ~~representative described by Subsection (d)(1), (2), or (3), other~~  
11 ~~than an independent executor, must be made with prior court~~  
12 ~~approval of the court that has or would have jurisdiction over the~~  
13 ~~legally authorized representative. A disclaimer made by an~~  
14 ~~independent executor on behalf of a decedent may be made without~~  
15 ~~prior court approval.~~

16 ~~[(d) In this section, "legally authorized representative"~~  
17 ~~means:~~

18 ~~[(1) a guardian if the person entitled to receive the~~  
19 ~~property as a beneficiary is an incapacitated person;~~

20 ~~[(2) a guardian ad litem if the person entitled to~~  
21 ~~receive the property as a beneficiary is an unborn or unascertained~~  
22 ~~person;~~

23 ~~[(3) a personal representative, including an~~  
24 ~~independent executor, if the person entitled to receive the~~  
25 ~~property as a beneficiary is a decedent; or~~

26 ~~[(4) an attorney in fact or agent appointed under a~~  
27 ~~durable power of attorney authorizing disclaimers if the person~~

1 ~~entitled to receive the property as a beneficiary executed the~~  
2 ~~power of attorney as a principal.]~~

3 SECTION 4. Section 122.201, Estates Code, is amended to  
4 read as follows:

5 Sec. 122.201. ASSIGNMENT. A person who is entitled to  
6 receive property or an interest in property from a decedent under a  
7 will, by inheritance, or as a beneficiary under a life insurance  
8 contract, and does not disclaim the property under Chapter 240,  
9 Property Code, ~~[this chapter]~~ may assign the property or interest  
10 in property to any person.

11 SECTION 5. Section 122.202, Estates Code, is amended to  
12 read as follows:

13 Sec. 122.202. FILING OF ASSIGNMENT. An assignment may, at  
14 the request of the assignor, be delivered or filed as provided for  
15 the delivery or filing of a disclaimer under Subchapter C, Chapter  
16 240, Property Code ~~[B]~~.

17 SECTION 6. Section 122.204, Estates Code, is amended to  
18 read as follows:

19 Sec. 122.204. FAILURE TO COMPLY. Failure to comply with  
20 Chapter 240, Property Code, ~~[Subchapters A, B, C, and D]~~ does not  
21 affect an assignment.

22 SECTION 7. Section 122.205, Estates Code, is amended to  
23 read as follows:

24 Sec. 122.205. GIFT. An assignment under this subchapter is  
25 a gift to the assignee and is not a disclaimer under Chapter 240,  
26 Property Code ~~[Subchapters A, B, C, and D]~~.

27 SECTION 8. Section 124.004, Estates Code, is amended to

1 read as follows:

2       Sec. 124.004. EFFECT OF DISCLAIMERS. This subchapter shall  
3 be applied after giving effect to any disclaimers made in  
4 accordance with Chapter 240, Property Code [~~Subchapters A, B, C,~~  
5 ~~and D, Chapter 122~~].

6       SECTION 9. Section 814.005(a), Government Code, is amended  
7 to read as follows:

8       (a) A person may, on a form prescribed by and filed with the  
9 retirement system, waive all or a portion of any benefits from the  
10 retirement system to which the person is entitled. The retirement  
11 system also shall give effect as a waiver to a full or partial  
12 disclaimer executed in accordance with Chapter 240, Property  
13 [~~Section 37A, Texas Probate~~] Code, unless the benefit to be  
14 disclaimed is a lifetime annuity. A person may revoke a waiver of  
15 benefits in the same manner as the original waiver was made, unless  
16 the original waiver by its terms was made irrevocable.

17       SECTION 10. Section 834.005, Government Code, is amended to  
18 read as follows:

19       Sec. 834.005. DISCLAIMER OF BENEFITS. The retirement  
20 system shall give effect to a full or partial disclaimer of benefits  
21 executed in accordance with Chapter 240, Property [~~Section 37A,~~  
22 ~~Texas Probate~~] Code, unless the benefit to be disclaimed is a  
23 lifetime annuity.

24       SECTION 11. Section 839.004, Government Code, is amended to  
25 read as follows:

26       Sec. 839.004. DISCLAIMER OF BENEFITS. The retirement  
27 system shall give effect to a full or partial disclaimer of benefits

executed in accordance with Chapter 240, Property [~~Section 37A, Texas Probate~~] Code, unless the benefit to be disclaimed is a lifetime annuity.

SECTION 12. Section 1551.259(e), Insurance Code, is amended to read as follows:

(e) The board of trustees shall give effect to a full or partial disclaimer of benefits executed in accordance with Chapter 240, Property [~~Section 37A, Texas Probate~~] Code.

SECTION 13. The heading to Section 112.010, Property Code, is amended to read as follows:

Sec. 112.010. PRESUMED ACCEPTANCE [~~OR DISCLAIMER~~] BY [~~OR ON BEHALF OF~~] BENEFICIARY; DISCLAIMER.

SECTION 14. Section 112.010(b), Property Code, is amended to read as follows:

(b) A disclaimer of an interest in or power over trust property is governed by Chapter 240 [~~If a trust is created by will, a beneficiary may disclaim an interest in the manner and with the effect for which provision is made in the applicable probate law~~].

SECTION 15. The Property Code is amended by adding Title 13 to read as follows:

TITLE 13. DISCLAIMER OF PROPERTY INTERESTS

CHAPTER 240. TEXAS UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 240.001. SHORT TITLE. This chapter may be cited as the Texas Uniform Disclaimer of Property Interests Act.

Sec. 240.002. DEFINITIONS. In this chapter:

(1) "Current beneficiary" and "presumptive remainder

beneficiary" have the meanings assigned by Section 112.071.

(2) "Disclaim" means to refuse to accept an interest in or power over property, including an interest or power the person is entitled to:

(A) by inheritance;

(B) under a will;

(C) by an agreement between spouses for community property with a right of survivorship;

(D) by a joint tenancy with a right of survivorship;

(E) by a survivorship agreement, account, or interest in which the interest of the decedent passes to a surviving beneficiary;

(F) by an insurance, annuity, endowment, employment, deferred compensation, or other contract or arrangement;

(G) under a pension, profit sharing, thrift, stock bonus, life insurance, survivor income, incentive, or other plan or program providing retirement, welfare, or fringe benefits with respect to an employee or a self-employed individual; or

(H) by an instrument creating a trust.

(3) "Disclaimant" means:

(A) the person to whom a disclaimed interest or power would have passed had the disclaimer not been made;

(B) the estate to which a disclaimed interest or power would have passed had the disclaimer not been made by the personal representative of the estate; or

1                   (C) the trust into which a disclaimed interest or  
2 power would have passed had the disclaimer not been made by the  
3 trustee of the trust.

4                   (4) "Disclaimed interest" means the interest that  
5 would have passed to the disclaimant had the disclaimer not been  
6 made.

7                   (5) "Disclaimed power" means the power that would have  
8 been possessed by the disclaimant had the disclaimer not been made.

9                   (6) "Disclaimer" means the refusal to accept an  
10 interest in or power over property.

11                   (7) "Estate" has the meaning assigned by Section  
12 [22.012](#), Estates Code.

13                   (8) "Fiduciary" means a personal representative, a  
14 trustee, an attorney in fact or agent acting under a power of  
15 attorney, or any other person authorized to act as a fiduciary with  
16 respect to the property of another person.

17                   (9) "Guardian" has the meaning assigned by Section  
18 [1002.012](#), Estates Code.

19                   (10) Notwithstanding Section [311.005](#), Government  
20 Code, "person" means an individual, corporation, including a public  
21 corporation, business trust, partnership, limited liability  
22 company, association, joint venture, governmental entity,  
23 including a political subdivision, agency, or instrumentality, or  
24 any other legal entity.

25                   (11) "Personal representative" has the meanings  
26 assigned by Sections [22.031](#) and [1002.028](#), Estates Code.

27                   (12) "State" means a state of the United States, the



District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state.

(13) "Survivorship property" means property held in the name of two or more persons under an arrangement in which, on the death of one of the persons, the property passes to and is vested in the other person or persons. The term includes:

(A) property held by an agreement described in Section 111.001, Estates Code;

(B) property held by a community property survivorship agreement defined in Section 112.001, Estates Code; and

(C) property in a joint account held by an agreement described in Section 113.151, Estates Code.

(14) "Trust" has the meaning assigned by Section 111.003.

(15) "Ward" has the meaning assigned by Section 22.033, Estates Code.

Sec. 240.003. APPLICABILITY OF CHAPTER. This chapter applies to disclaimers of any interest in or power over property, whenever created.

Sec. 240.004. CHAPTER SUPPLEMENTED BY OTHER LAW. (a) Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to

waive, release, disclaim, or renounce an interest in or power over property under a statute other than this chapter.

Sec. 240.005. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law, with respect to the subject matter of this chapter, among states that enact a law based on the uniform act on which this chapter is based.

Sec. 240.006. POWER TO DISCLAIM BY PERSON OTHER THAN FIDUCIARY. (a) A person other than a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment.

(b) A person other than a fiduciary may disclaim an interest or power under this section even if the creator of the interest or power imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

Sec. 240.007. POWER TO DISCLAIM POWER HELD IN FIDUCIARY CAPACITY BY PERSON DESIGNATED TO SERVE AS OR SERVING AS FIDUCIARY.

(a) Subject to Subsection (b) and except to the extent the person's right to disclaim is expressly restricted or limited by a law of this state or by the instrument creating the fiduciary relationship, a person designated to serve or serving as a fiduciary may disclaim, in whole or in part, any power over property, including a power of appointment and the power to disclaim, held in a fiduciary capacity.

(b) If a power being disclaimed under Subsection (a) by a person designated to serve or serving as a trustee affects the distributive rights of any beneficiary of the trust:

1           (1) the person may disclaim only on or after accepting  
2 the trust;

3           (2) the disclaimer must be compatible with the  
4 trustee's fiduciary obligations; and

5           (3) if the disclaimer is made on accepting the trust,  
6 the trustee is considered to have never possessed the power  
7 disclaimed.

8           (c) A person designated to serve or serving as a fiduciary  
9 may disclaim a power under this section even if the creator of the  
10 power imposed a spendthrift provision or similar restriction on  
11 transfer.

12           Sec. 240.008. POWER TO DISCLAIM BY FIDUCIARY ACTING IN  
13 FIDUCIARY CAPACITY. (a) Subject to this section and except to the  
14 extent the fiduciary's right to disclaim is expressly restricted or  
15 limited by a law of this state or by the instrument creating the  
16 fiduciary relationship, a fiduciary acting in a fiduciary capacity  
17 may disclaim, in whole or in part, any interest in or power over  
18 property, including a power of appointment and the power to  
19 disclaim, that would have passed to the ward, estate, trust, or  
20 principal with respect to which the fiduciary was acting had the  
21 disclaimer not been made even if:

22           (1) the creator of the interest or power imposed a  
23 spendthrift provision or similar restriction on transfer or a  
24 restriction or limitation on the right to disclaim; or

25           (2) an instrument other than the instrument that  
26 created the fiduciary relationship imposed a restriction or  
27 limitation on the right to disclaim.

1        (b) Except as provided by Subsection (c), (d), or (f), a  
2 disclaimer by a fiduciary acting in a fiduciary capacity does not  
3 require court approval to be effective unless the instrument that  
4 created the fiduciary relationship requires court approval.

5        (c) The following disclaimers by a fiduciary acting in a  
6 fiduciary capacity are not effective unless approved by a court of  
7 competent jurisdiction:

8            (1) a disclaimer by a personal representative who is  
9 not an independent administrator or independent executor;

10          (2) a disclaimer by the trustee of a management trust  
11 created under Chapter 1301, Estates Code;

12          (3) a disclaimer by the trustee of a trust created  
13 under Section 142.005; or

14          (4) a disclaimer that would result in an interest in or  
15 power over property passing to the person making the disclaimer.

16        (d) A trustee acting in a fiduciary capacity may not  
17 disclaim an interest in property that would cause the interest in  
18 property not to become trust property unless:

19            (1) a court of competent jurisdiction approves the  
20 disclaimer; or

21            (2) the trustee provides written notice of the  
22 disclaimer in accordance with Section 240.0081.

23        (e) In the absence of a court-appointed guardian, without  
24 court approval, a natural guardian as described by Section  
25 1104.051, Estates Code, may disclaim on behalf of a minor child of  
26 the natural guardian, in whole or in part, any interest in or power  
27 over property, including a power of appointment, that the minor

1 child is to receive solely as a result of another disclaimer, but  
2 only if the disclaimed interest or power does not pass to or for the  
3 benefit of the natural guardian as a result of the disclaimer.

4 (f) Unless a court of competent jurisdiction approves the  
5 disclaimer, a disclaimer by a fiduciary acting in a fiduciary  
6 capacity must be compatible with the fiduciary's fiduciary  
7 obligations. A disclaimer by a fiduciary acting in a fiduciary  
8 capacity is not a per se breach of the fiduciary's fiduciary  
9 obligations.

10 (g) Possible remedies for a breach of fiduciary obligations  
11 do not include declaring an otherwise effective disclaimer void or  
12 granting other legal or equitable relief that would make the  
13 disclaimer ineffective.

14 Sec. 240.0081. NOTICE REQUIRED BY TRUSTEE DISCLAIMING  
15 CERTAIN INTERESTS IN PROPERTY; EFFECT OF NOTICE. (a) A trustee  
16 acting in a fiduciary capacity may disclaim an interest in property  
17 that would cause the interest in property not to become trust  
18 property without court approval if the trustee provides written  
19 notice of the disclaimer to all of the current beneficiaries and  
20 presumptive remainder beneficiaries of the trust.

21 (b) For the purpose of determining who is a current  
22 beneficiary or presumptive remainder beneficiary entitled to the  
23 notice under Subsection (a), a beneficiary is determined as of the  
24 date the notice is sent.

25 (c) In addition to the notice required under Subsection (a),  
26 the trustee shall give written notice of the trustee's disclaimer  
27 to the attorney general if:

1           (1) a charity is entitled to notice;

2           (2) a charity entitled to notice is no longer in  
3 existence;

4           (3) the trustee has the authority to distribute trust  
5 assets to one or more charities that are not named in the trust  
6 instrument; or

7           (4) the trustee has the authority to make  
8 distributions for a charitable purpose described in the trust  
9 instrument, but no charity is named as a beneficiary for that  
10 purpose.

11          (d) If the beneficiary has a court-appointed guardian or  
12 conservator, the notice required to be given by this section must be  
13 given to that guardian or conservator. If the beneficiary is a  
14 minor for whom no guardian or conservator has been appointed, the  
15 notice required to be given by this section must be given to a  
16 parent of the minor.

17          (e) The trustee is not required to provide the notice to a  
18 beneficiary who:

19               (1) is known to the trustee and cannot be located by  
20 the trustee after reasonable diligence;

21               (2) is not known to the trustee;

22               (3) waives the requirement of the notice under this  
23 section; or

24               (4) is a descendant of a beneficiary to whom the  
25 trustee has given notice if the beneficiary and the beneficiary's  
26 ancestor have similar interests in the trust and no apparent  
27 conflict of interest exists between them.

1       (f) The notice required under Subsection (a) must:

2               (1) include a statement that:

3                       (A) the trustee intends to disclaim an interest  
4 in property;

5                       (B) if the trustee makes the disclaimer, the  
6 property will not become trust property and will not be available to  
7 distribute to the beneficiary from the trust;

8                       (C) the beneficiary has the right to object to  
9 the disclaimer; and

10                      (D) the beneficiary may petition a court to  
11 approve, modify, or deny the disclaimer;

12               (2) describe the interest in property the trustee  
13 intends to disclaim;

14               (3) specify the earliest date the trustee intends to  
15 make the disclaimer;

16               (4) include the name and mailing address of the  
17 trustee;

18               (5) be given not later than the 30th day before the  
19 date the disclaimer is made; and

20               (6) be sent by personal delivery, first-class mail,  
21 facsimile, e-mail, or any other method likely to result in the  
22 notice's receipt.

23       (g) A beneficiary is not considered to have accepted the  
24 disclaimed interest solely because the beneficiary acts or does not  
25 act on receipt of a notice provided under this section.

26       (h) If the trustee makes the disclaimer for which notice is  
27 provided under this section, the beneficiary does not lose the

1 beneficiary's right, if any, to sue the trustee for breach of the  
2 trustee's fiduciary obligations in connection with making the  
3 disclaimer. Section 240.008(g) applies to remedies sought in  
4 connection with the alleged breach.

5 Sec. 240.009. POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN  
6 IRREVOCABLE. (a) To be effective, a disclaimer must:

7 (1) be in writing;  
8 (2) declare the disclaimer;  
9 (3) describe the interest or power disclaimed;  
10 (4) be signed by the person making the disclaimer; and  
11 (5) be delivered or filed in the manner provided by  
12 Subchapter C.

13 (b) A partial disclaimer may be expressed as a fraction,  
14 percentage, monetary amount, term of years, limitation of a power,  
15 or any other interest or estate in the property.

16 (c) A disclaimer is irrevocable on the later of the date the  
17 disclaimer:

18 (1) is delivered or filed under Subchapter C; or  
19 (2) takes effect as provided in Sections  
20 240.051-240.056.

21 (d) A disclaimer made under this chapter is not a transfer,  
22 assignment, or release.

23 SUBCHAPTER B. TYPE AND EFFECT OF DISCLAIMER

24 Sec. 240.0501. DEFINITION. In this subchapter, "future  
25 interest" means an interest that:

26 (1) takes effect in possession or enjoyment, if at  
27 all, later than the time at which the instrument creating the



1 interest becomes irrevocable; and

2 (2) passes to the holder of the interest at the time of  
3 the event that causes the taker of the interest to be finally  
4 ascertained and the interest to be indefeasibly vested.

5 Sec. 240.051. DISCLAIMER OF INTEREST IN PROPERTY. (a) This  
6 section and Sections 240.0511 and 240.0512 apply to a disclaimer of  
7 an interest in property other than a disclaimer subject to Section  
8 240.052 or 240.053.

9 (b) If an interest in property passes because of the death  
10 of a decedent:

11 (1) a disclaimer of the interest:

12 (A) takes effect as of the time of the decedent's  
13 death; and

14 (B) relates back for all purposes to the time of  
15 the decedent's death; and

16 (2) the disclaimed interest is not subject to the  
17 claims of any creditor of the disclaimant.

18 (c) If an interest in property passes because of an event  
19 not related to the death of a decedent:

20 (1) a disclaimer of the interest:

21 (A) takes effect:

22 (i) as of the time the instrument creating  
23 the interest became irrevocable; or

24 (ii) in the case of an irrevocable transfer  
25 made without an instrument, at the time of the irrevocable  
26 transfer; and

27 (B) relates back for all purposes to the time the

instrument became irrevocable or the time of the irrevocable transfer, as applicable; and

(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.

(d) A disclaimed interest passes according to any provision in the instrument creating the interest that provides for:

(1) the disposition of the interest if the interest were to be disclaimed; or

(2) the disposition of disclaimed interests in general.

(e) If the instrument creating the disclaimed interest does not contain a provision described by Subsection (d) and:

(1) if the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist; or

(2) if the disclaimant is an individual:

(A) except as provided by Section 240.0511, if the interest is passing because of the death of a decedent, the disclaimed interest passes as if the disclaimant had died immediately before the time as of which the disclaimer takes effect under Subsection (b); or

(B) except as provided by Section 240.0512, if the interest is passing because of an event not related to the death of a decedent, the disclaimed interest passes as if the disclaimant had died immediately before the time as of which the disclaimer takes effect under Subsection (c).

(f) A disclaimed interest that passes by intestacy passes as if the disclaimant died immediately before the decedent.

1       Sec. 240.0511. DISPOSITION OF INTEREST PASSING BECAUSE OF  
2 DECEDENT'S DEATH AND DISCLAIMED BY INDIVIDUAL. (a) Subject to  
3 Subsection (b):

4           (1) if by law or under the instrument creating the  
5 disclaimed interest the descendants of a disclaimant of an interest  
6 passing because of the death of a decedent would share in the  
7 disclaimed interest by any method of representation under Section  
8 240.051(e)(2)(A), the disclaimed interest passes only to the  
9 descendants of the disclaimant who survive the decedent; or

10          (2) if the disclaimed interest would have passed to  
11 the disclaimant's estate under Section 240.051(e)(2)(A), the  
12 disclaimed interest instead passes by representation to the  
13 descendants of the disclaimant who survive the decedent.

14          (b) If no descendant of the disclaimant survives the  
15 decedent, the disclaimed interest passes to those persons,  
16 including the state but excluding the disclaimant, and in such  
17 shares as would succeed to the transferor's intestate estate under  
18 the intestate succession law of the transferor's domicile had the  
19 transferor died immediately before the decedent, except that if the  
20 transferor's surviving spouse is living but remarried before the  
21 decedent's death, the transferor is considered to have died  
22 unmarried immediately before the decedent's death.

23          (c) On the disclaimer of a preceding interest, a future  
24 interest held by a person other than the disclaimant takes effect as  
25 if the disclaimant had died immediately before the decedent, but a  
26 future interest held by the disclaimant is not accelerated in  
27 possession or enjoyment.

Sec. 240.0512. DISPOSITION OF INTEREST PASSING BECAUSE OF  
EVENT OTHER THAN DECEDENT'S DEATH AND DISCLAIMED BY INDIVIDUAL.

(a) Subject to Subsection (b):

(1) if by law or under the instrument creating the  
disclaimed interest the descendants of a disclaimant of an interest  
passing because of an event not related to the death of a decedent  
would share in the disclaimed interest by any method of  
representation under Section 240.051(e)(2)(B), the disclaimed  
interest passes only to the descendants of the disclaimant living  
at the time of the event that causes the interest to pass; or

(2) if the disclaimed interest would have passed to  
the disclaimant's estate under Section 240.051(e)(2)(B), the  
disclaimed interest instead passes by representation to the  
descendants of the disclaimant living at the time of the event that  
causes the interest to pass.

(b) If no descendant of the disclaimant is living at the  
time of the event described by Subsection (a)(1), the disclaimed  
interest passes to those persons, including the state but excluding  
the disclaimant, and in such shares as would succeed to the  
transferor's intestate estate under the intestate succession law of  
the transferor's domicile had the transferor died immediately  
before the event described by Subsection (a)(1), except that if the  
transferor's surviving spouse is living but remarried before the  
event, the transferor is considered to have died unmarried  
immediately before the event.

(c) On the disclaimer of a preceding interest, a future  
interest held by a person other than the disclaimant takes effect as

1 if the disclaimant had died immediately before the time the  
2 disclaimer takes effect under Section 240.051(c)(1)(A), but a  
3 future interest held by the disclaimant is not accelerated in  
4 possession or enjoyment.

5 Sec. 240.052. DISCLAIMER OF RIGHTS IN SURVIVORSHIP  
6 PROPERTY. (a) On the death of a holder of survivorship property, a  
7 surviving holder may disclaim, in whole or in part, an interest in  
8 the property of the deceased holder that would have otherwise  
9 passed to the surviving holder by reason of the deceased holder's  
10 death.

11 (b) If an interest in survivorship property is disclaimed by  
12 a surviving holder of the property:

13 (1) the disclaimer:

14 (A) takes effect as of the time of the deceased  
15 holder's death; and

16 (B) relates back for all purposes to the time of  
17 the deceased holder's death; and

18 (2) the disclaimed interest is not subject to the  
19 claims of any creditor of the disclaimant.

20 (c) An interest in survivorship property disclaimed by a  
21 surviving holder of the property passes as if the disclaimant  
22 predeceased the holder to whose death the disclaimer relates.

23 Sec. 240.053. DISCLAIMER OF INTEREST BY TRUSTEE. (a) If a  
24 trustee disclaims an interest in property that otherwise would have  
25 become trust property:

26 (1) the interest does not become trust property;

27 (2) the disclaimer:

1                   (A) takes effect as of the time the trust became  
2 irrevocable; and

3                   (B) relates back for all purposes to the time the  
4 trust became irrevocable; and

5                   (3) the disclaimed interest is not subject to the  
6 claims of any creditor of the trustee, the trust, or any trust  
7 beneficiary.

8                   (b) If the instrument creating the disclaimed interest  
9 contains a provision that provides for the disposition of the  
10 interest if the interest were to be disclaimed, the disclaimed  
11 interest passes according to that provision.

12                   (c) If the instrument creating the disclaimed interest does  
13 not contain a provision described by Subsection (b), the disclaimed  
14 interest passes as if:

15                   (1) all of the current beneficiaries, presumptive  
16 remainder beneficiaries, and contingent beneficiaries of the trust  
17 affected by the disclaimer who are individuals died before the  
18 trust became irrevocable; and

19                   (2) all beneficiaries of the trust affected by the  
20 disclaimer who are not individuals ceased to exist without  
21 successor organizations and without substitution of beneficiaries  
22 under the cy pres doctrine before the trust became irrevocable.

23                   (d) Subsection (c) applies only for purposes of determining  
24 the disposition of an interest in property disclaimed by a trustee  
25 that otherwise would have become trust property and applies only  
26 with respect to the trust affected by the disclaimer. Subsection  
27 (c) does not apply with respect to other trusts governed by the

1 instrument and does not apply for other purposes under the  
2 instrument or under the laws of intestacy.

3 Sec. 240.054. DISCLAIMER OF POWER OF APPOINTMENT OR OTHER  
4 POWER NOT HELD IN FIDUCIARY CAPACITY. (a) If a holder disclaims a  
5 power of appointment or other power not held in a fiduciary  
6 capacity, this section applies.

7 (b) If the holder:

8 (1) has not exercised the power, the disclaimer takes  
9 effect as of the time the instrument creating the power becomes  
10 irrevocable; or

11 (2) has exercised the power and the disclaimer is of a  
12 power other than a presently exercisable general power of  
13 appointment, the disclaimer takes effect immediately after the last  
14 exercise of the power.

15 (c) The instrument creating the power is construed as if the  
16 power had expired when the disclaimer became effective.

17 Sec. 240.055. DISCLAIMER BY APPOINTEE OF, OR OBJECT OR  
18 TAKER IN DEFAULT OF EXERCISE OF, POWER OF APPOINTMENT. (a) A  
19 disclaimer of an interest in property by an appointee of a power of  
20 appointment takes effect as of the time the instrument by which the  
21 holder exercises the power becomes irrevocable.

22 (b) A disclaimer of an interest in property by an object or  
23 taker in default of an exercise of a power of appointment takes  
24 effect as of the time the instrument creating the power becomes  
25 irrevocable.

26 Sec. 240.056. DISCLAIMER OF POWER HELD IN FIDUCIARY  
27 CAPACITY. (a) If a person designated to serve or serving as a

1 fiduciary disclaims a power held or to be held in a fiduciary  
2 capacity that has not been exercised, the disclaimer takes effect  
3 as of the time the instrument creating the power becomes  
4 irrevocable.

5 (b) If a person designated to serve or serving as a  
6 fiduciary disclaims a power held or to be held in a fiduciary  
7 capacity that has been exercised, the disclaimer takes effect  
8 immediately after the last exercise of the power.

9 (c) A disclaimer subject to this section is effective as to  
10 another person designated to serve or serving as a fiduciary if:

11 (1) the disclaimer provides that it is effective as to  
12 another person designated to serve or serving as a fiduciary; and

13 (2) the person disclaiming has the authority to bind  
14 the estate, trust, or other person for whom the person is acting.

15 Sec. 240.057. TAX QUALIFIED DISCLAIMER. (a) In this  
16 section, "Internal Revenue Code" has the meaning assigned by  
17 Section [111.004](#).

18 (b) Notwithstanding any other provision of this chapter,  
19 if, as a result of a disclaimer or transfer, the disclaimed or  
20 transferred interest is treated under the Internal Revenue Code as  
21 never having been transferred to the disclaimant, the disclaimer or  
22 transfer is effective as a disclaimer under this chapter.

23 Sec. 240.058. PARTIAL DISCLAIMER BY SPOUSE. A disclaimer  
24 by a decedent's surviving spouse of an interest in property  
25 transferred as the result of the death of the decedent is not a  
26 disclaimer by the surviving spouse of any other transfer from the  
27 decedent to or for the benefit of the surviving spouse, regardless



of whether the interest that would have passed under the disclaimed transfer passes because of the disclaimer to or for the benefit of the surviving spouse by the other transfer.

SUBCHAPTER C. DELIVERY OR FILING

Sec. 240.101. DELIVERY OR FILING GENERALLY. (a) Subject to applicable requirements of this subchapter, a disclaimant may deliver a disclaimer by personal delivery, first-class mail, facsimile, e-mail, or any other method likely to result in the disclaimer's receipt.

(b) If a disclaimer is mailed to the intended recipient by certified mail, return receipt requested, at an address the disclaimant in good faith believes is likely to result in the disclaimer's receipt, delivery is considered to have occurred on the date of mailing regardless of receipt.

Sec. 240.102. DISCLAIMER OF INTEREST CREATED UNDER INTESTATE SUCCESSION OR WILL. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, a disclaimer must be filed in the official public records of any county in which the decedent:

(A) was domiciled on the date of the decedent's death; or

(B) owned real property.

Sec. 240.103. DISCLAIMER OF INTEREST IN TESTAMENTARY TRUST.

In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, a disclaimer must be delivered to the personal representative of the decedent's estate; or

(3) if no trustee or personal representative is then serving, a disclaimer must be filed in the official public records of any county in which the decedent:

(A) was domiciled on the date of the decedent's death; or

(B) owned real property.

Sec. 240.104. DISCLAIMER OF INTEREST IN INTER VIVOS TRUST.

In the case of an interest in an inter vivos trust:

(1) a disclaimer must be delivered to the trustee then serving, or, if no trustee is then serving, a disclaimer must be filed:

(A) with a court having jurisdiction to enforce the trust; or

(B) in the official public records of the county in which:

(i) the situs of administration of the trust is maintained; or

(ii) the settlor is domiciled or was domiciled on the date of the settlor's death; and

(2) if a disclaimer is made before the time the instrument creating the trust becomes irrevocable, a disclaimer

1 must be delivered to the settlor of a revocable trust or the  
2 transferor of the interest.

3 Sec. 240.105. DISCLAIMER OF INTEREST CREATED BY BENEFICIARY  
4 DESIGNATION. (a) In this section, "beneficiary designation" means  
5 an instrument, other than an instrument creating a trust, naming  
6 the beneficiary of:

7 (1) an annuity or insurance policy;

8 (2) an account with a designation for payment on  
9 death;

10 (3) a security registered in beneficiary form;

11 (4) a pension, profit-sharing, retirement, or other  
12 employment-related benefit plan; or

13 (5) any other nonprobate transfer at death.

14 (b) In the case of an interest created by a beneficiary  
15 designation that is disclaimed before the designation becomes  
16 irrevocable, the disclaimer must be delivered to the person making  
17 the beneficiary designation.

18 (c) In the case of an interest created by a beneficiary  
19 designation that is disclaimed after the designation becomes  
20 irrevocable:

21 (1) a disclaimer of an interest in personal property  
22 must be delivered to the person obligated to distribute the  
23 interest; and

24 (2) a disclaimer of an interest in real property must  
25 be recorded in the official public records of the county where the  
26 real property that is the subject of the disclaimer is located.

27 Sec. 240.106. DISCLAIMER BY SURVIVING HOLDER OF

SURVIVORSHIP PROPERTY. In the case of a disclaimer by a surviving holder of survivorship property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

Sec. 240.107. DISCLAIMER BY OBJECT OR TAKER IN DEFAULT OF EXERCISE OF POWER OF APPOINTMENT. In the case of a disclaimer by an object or taker in default of an exercise of a power of appointment at any time after the power was created:

(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, the disclaimer must be filed:

(A) with a court having authority to appoint the fiduciary; or

(B) in the official public records of the county in which the creator of the power is domiciled or was domiciled on the date of the creator's death.

Sec. 240.108. DISCLAIMER BY CERTAIN APPOINTEES. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) the disclaimer must be delivered to the holder, the personal representative of the holder's estate, or the fiduciary under the instrument that created the power; or

(2) if no fiduciary is then serving, the disclaimer must be filed:

(A) with a court having authority to appoint the fiduciary; or

1                   (B) in the official public records of the county  
2 in which the creator of the power is domiciled or was domiciled on  
3 the date of the creator's death.

4           Sec. 240.109. DISCLAIMER BY CERTAIN FIDUCIARIES. In the  
5 case of a disclaimer by a fiduciary of a power over a trust or  
6 estate, the disclaimer must be delivered as provided by Section  
7 240.102, 240.103, or 240.104 as if the power disclaimed were an  
8 interest in property.

9           Sec. 240.110. DISCLAIMER OF POWER BY AGENT. In the case of  
10 a disclaimer of a power by an agent, the disclaimer must be  
11 delivered to the principal or the principal's representative.

12           Sec. 240.111. RECORDING OF DISCLAIMER. If an instrument  
13 transferring an interest in or power over property subject to a  
14 disclaimer is required or authorized by law to be filed, recorded,  
15 or registered, the disclaimer may be filed, recorded, or registered  
16 as that instrument. Except as otherwise provided by Section  
17 240.105(c)(2), failure to file, record, or register the disclaimer  
18 does not affect the disclaimer's validity between the disclaimant  
19 and persons to whom the property interest or power passes by reason  
20 of the disclaimer.

21                   SUBCHAPTER D. DISCLAIMER BARRED OR LIMITED

22           Sec. 240.151. WHEN DISCLAIMER BARRED OR LIMITED. (a) A  
23 disclaimer is barred by a written waiver of the right to disclaim.

24           (b) A disclaimer of an interest in property is barred if any  
25 of the following events occur before the disclaimer becomes  
26 effective:

27                   (1) the disclaimant accepts the interest sought to be

1 disclaimed by:

2 (A) taking possession of the interest; or

3 (B) exercising dominion and control over the  
4 interest;

5 (2) the disclaimant voluntarily assigns, conveys,  
6 encumbers, pledges, or transfers the interest sought to be  
7 disclaimed or contracts to do so; or

8 (3) the interest sought to be disclaimed is sold under  
9 a judicial sale.

10 (c) The acceptance of an interest in property by a person in  
11 the person's fiduciary capacity is not an acceptance of the  
12 interest in the person's individual capacity and does not bar the  
13 person from disclaiming the interest in the person's individual  
14 capacity.

15 (d) A disclaimer, in whole or in part, of the future  
16 exercise of a power held in a fiduciary capacity is not barred by  
17 the previous exercise of the power.

18 (e) A disclaimer, in whole or in part, of the future  
19 exercise of a power not held in a fiduciary capacity is not barred  
20 by the previous exercise of the power unless the power is  
21 exercisable in favor of the disclaimant.

22 (f) A disclaimer of:

23 (1) a power over property that is barred by this  
24 section is ineffective; and

25 (2) an interest in property that is barred by this  
26 section takes effect as a transfer of the interest disclaimed to the  
27 persons who would have taken the interest under Subchapter B had the

1 disclaimer not been barred.

2 (g) A disclaimer by a child support obligor is barred as to  
3 disclaimed property that could be applied to satisfy the  
4 disclaimant's child support obligations if those obligations have  
5 been:

6 (1) administratively determined by the Title IV-D  
7 agency as defined by Section 101.033, Family Code, in a Title IV-D  
8 case as defined by Section 101.034, Family Code; or

9 (2) confirmed and reduced to judgment as provided by  
10 Section 157.263, Family Code.

11 (h) If Subsection (g) applies, the child support obligee to  
12 whom child support arrearages are owed may enforce the child  
13 support obligation against the disclaimant as to disclaimed  
14 property by a lien or by any other remedy provided by law.

15 SECTION 16. The following provisions are repealed:

16 (1) Sections 122.003, 122.004, and 122.005, Estates  
17 Code;

18 (2) Subchapters B, C, and D, Chapter 122, Estates  
19 Code;

20 (3) Section 122.203, Estates Code; and

21 (4) Sections 112.010(c), (c-1), (c-2), (d), and (e),  
22 Property Code.

23 SECTION 17. Title 13, Property Code, as added by this Act,  
24 applies to an interest in or power over property existing on or  
25 after the effective date of this Act if the time for delivering or  
26 filing a disclaimer under former law, including the time for filing  
27 a written memorandum of disclaimer under Section 122.055, Estates

1 Code, the time for delivering notice of the disclaimer under  
2 Section 122.056, Estates Code, or the time for delivering a written  
3 memorandum of disclaimer under Section 112.010, Property Code, as  
4 those sections existed immediately before the effective date of  
5 this Act, has not elapsed. If the time for filing or delivering  
6 notice of a written memorandum of disclaimer under former law has  
7 elapsed, the former law applies and is continued in effect for that  
8 purpose.

9       SECTION 18. Sections 122.201, 122.202, 122.204, and  
10 122.205, Estates Code, as amended by this Act, apply to property or  
11 an interest in or power over property existing on or after the  
12 effective date of this Act if the time for delivering or filing an  
13 assignment under former law, including the time for filing an  
14 assignment under Section 122.202, Estates Code, or the time for  
15 delivering notice of the filing of assignment under Section  
16 122.203, Estates Code, as those sections existed immediately before  
17 the effective date of this Act, has not elapsed. If the time for  
18 filing or delivering notice of an assignment under former law has  
19 elapsed, the former law applies and is continued in effect for that  
20 purpose.

21       SECTION 19. This Act takes effect September 1, 2015.



H.B. No. 2428

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2428 was passed by the House on April 30, 2015, by the following vote: Yeas 139, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2428 on May 23, 2015, by the following vote: Yeas 131, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2428 was passed by the Senate, with amendments, on May 22, 2015, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor