

BILL ANALYSIS

Senate Research Center

H.B. 2428
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State Affairs
5/7/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As part of its ongoing review of Texas law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed H.B. 2428, which replaces the current Estates Code and Property Code provisions regarding disclaimers with the Texas Uniform Disclaimer of Property Interests Act (UDPIA).

A disclaimer is where a person entitled to receive a gift or inheritance refuses to accept it. The disclaimer statutes provide how this is done and the effect of doing it. The use of disclaimers has grown, and the interests being disclaimed have increased in complexity and variety. The UDPIA, which has been adopted in 17 states, modernizes disclaimer law to better address this complexity and variety. This bill modifies some provisions of the UDPIA to adapt it to Texas, to provide clarity, and to provide greater protection to Texans who are beneficiaries of estates and trusts.

Current law provides complex rules to follow, and failure to follow any of those rules makes a disclaimer ineffective. For example, under current law the disclaimer of property passing from a decedent whose estate is being administered must be (1) filed in the probate case, (2) delivered or sent to the executor by certified mail, and (3) received by the executor before a certain deadline. The person wishing to disclaim cannot control when the executor receives it, so the deadline may be missed and the disclaimer may be ineffective.

The proposed law clearly states the rules about disclaiming different types of property and removes the traps contained in the current law. For example, delivery of the disclaimer may be accomplished by any method likely to result in the disclaimer's receipt, and a disclaimer mailed to the intended recipient by certified mail is considered to have occurred on the date of mailing regardless of receipt.

It is unclear under current law if a trustee may disclaim property on behalf of a trust. The UDPIA allows trustee disclaimers, which can be a valuable tool for tax and other reasons. H.B. 2428 modifies the authority of a trustee to disclaim under the Uniform Act so that the trustee either must obtain court approval or must give 30 days' notice to the beneficiaries before disclaiming. Also, no fiduciary may disclaim property if that property would pass to the person disclaiming unless court approval is obtained. These and other modifications to the UDPIA protect the interests of Texas beneficiaries.

H.B. 2428 amends current law relating to the adoption of the Texas Uniform Disclaimer of Property Interests Act.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Property Code by adding Title 13, 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.** Authorizes this chapter to be cited as the "Texas Uniform Disclaimer of Property Interests Act."

Sec. 240.002. **DEFINITIONS.** Defines "disclaimant," "disclaimed interest," "disclaimed power," "disclaimer," "estate," "guardian," "fiduciary," "person," "personal representative," "state," "survivorship property," "trust," and "ward."

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

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

(b) Provides that 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 law other than this chapter.

Sec. 240.005. **UNIFORMITY OF APPLICATION AND CONSTRUCTION.** Requires that consideration 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 similar to this chapter in applying and construing this chapter.

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

(b) Authorizes a person other than a fiduciary to 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) Authorizes a person designated to serve or serving as a fiduciary to disclaim, in whole or in part, any power over property, including a power of appointment, held in a fiduciary capacity, except to the extent that 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.

(b) Authorizes a person designated to serve or serving as a fiduciary to disclaim a power under this section even if:

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

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

Sec. 240.008. **POWER TO DISCLAIM BY FIDUCIARY ACTING IN FIDUCIARY CAPACITY.** (a) Authorizes a fiduciary acting in a fiduciary capacity to disclaim, in whole or in part, any interest in or power over property, including a power of appointment, that would have passed to the ward, estate, trust, or principal with respect to which the fiduciary was acting had the disclaimer not been made, subject to Subsection (e) and except to the extent the fiduciary's right to disclaim is expressly restricted or limited by a law of this state or by the instrument creating the fiduciary relationship.

(b) Authorizes a fiduciary acting in a fiduciary capacity to disclaim an interest or power under this section even if the creator of the power or duty imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(c) Provides that, except for a disclaimer by a personal representative subject to court supervision or a disclaimer by the trustee of a management trust described in Chapter 1301 (Management Trusts), Estates Code, a disclaimer by a fiduciary acting in a fiduciary capacity does not require court approval to be effective unless the instrument that created the fiduciary relationship requires court approval.

(d) Authorizes a natural guardian as described by Section 1104.051 (Guardian of Minor Children), Estates Code, to disclaim on behalf of a minor child of the natural guardian, in whole or in part, any interest in or power over property, including a power of appointment, that the minor child is to receive solely as a result of another disclaimer, but only if the disclaimed interest or power does not pass to or for the benefit of the natural guardian as a result of the disclaimer.

(e) Requires a disclaimer by a fiduciary acting in a fiduciary capacity to be compatible with the fiduciary's fiduciary obligations, unless a court of proper jurisdiction orders otherwise.

Sec. 240.009. POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN IRREVOCABLE. (a) Requires a disclaimer, to be effective, to:

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

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

(c) Provides that a disclaimer is irrevocable on the later of the date the disclaimer:

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

(d) Provides that a disclaimer made under this chapter is not a transfer, assignment, or release.

SUBCHAPTER B. TYPE AND EFFECT OF DISCLAIMER

Sec. 240.051. DISCLAIMER OF INTEREST IN PROPERTY. (a) Defines "future interest" and "time of distribution."

(b) Provides that this section applies to a disclaimer of an interest in property other than a disclaimer subject to Section 240.052 or 240.053.

(c) Provides that a disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(d) Provides that 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) Provides that 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 otherwise provided in Paragraph (B) or (C), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution;

(B) if by law or under the instrument the descendants of a disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution; and

(C) if the disclaimed interest would have passed to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution.

(f) Provides that if a descendant of the disclaimant does not survive the time of distribution under Subsection (e)(2)(C), the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would have succeeded to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution, except that if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is considered to have died unmarried at the time of distribution.

(g) Provides that on the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

Sec. 240.052. DISCLAIMER OF RIGHTS IN SURVIVORSHIP PROPERTY. (a) Authorizes a surviving holder to disclaim, on the death of a holder of survivorship property, in whole or in part:

(1) if the survivorship property is held by a community property survivorship agreement defined by Section 112.001 (Definition of Community Property Survivorship Agreement), Estates Code, one-half of the survivorship property; or

(2) if the survivorship property is held by an agreement described in Section 111.001 (Right of Survivorship Agreements Authorized), Estates

Code, or in a joint account held by an agreement described in Section 113.151 (Establishment of Right of Survivorship in Joint Account; Ownership on Death of Party), Estates Code, the greater of:

(A) a fractional share of the property determined by dividing the number one by the number of holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(B) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(b) Provides that a disclaimer under Subsection (a) takes effect as of the death of the holder of survivorship property to whose death the disclaimer relates.

(c) Provides that an interest in survivorship property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Sec. 240.053. DISCLAIMER OF INTEREST BY TRUSTEE. Provides that if a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

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

(b) Provides that if the holder:

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

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

(c) Provides that the instrument creating the power is construed as if the power had expired when the disclaimer became effective.

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

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

Sec. 240.056. DISCLAIMER OF POWER HELD IN FIDUCIARY CAPACITY. (a) Provides that if a person designated to serve or serving as a fiduciary disclaims a power held or to be held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

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

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

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

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

Sec. 240.057. TAX QUALIFIED DISCLAIMER. Provides that notwithstanding any other provision of this chapter, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated under the Internal Revenue Code of 1986 or any successor law as never having been transferred to the disclaimant, the disclaimer or transfer is effective as a disclaimer under this chapter.

SUBCHAPTER C. DELIVERY OR FILING

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

(b) Provides that, 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 the date of receipt.

Sec. 240.102. DISCLAIMER OF INTEREST CREATED UNDER INTESTATE SUCCESSION OR WILL. Provides that 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 the county in which the decedent:

(A) was domiciled; or

(B) owned real property.

Sec. 240.103. DISCLAIMER OF INTEREST IN TESTAMENTARY TRUST. Provides that 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, if no trustee is then serving; or

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

(A) was domiciled; or

(B) owned real property.

Sec. 240.104. DISCLAIMER OF INTEREST IN INTER VIVOS TRUST. Provides that 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, requires that a disclaimer 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 at the date of the settlor's death; or

(2) if a disclaimer is made before the time the instrument creating the trust becomes irrevocable, a disclaimer must be delivered to the settlor of a revocable trust or the transferor of the interest.

Sec. 240.105. **DISCLAIMER OF INTEREST CREATED BY BENEFICIARY DESIGNATION.** (a) Defines "beneficiary designation."

(b) Requires that the disclaimer be delivered to the person making the beneficiary designation in the case of an interest created by a beneficiary designation that is disclaimed before the designation becomes irrevocable.

(c) Provides that, in the case of an interest created by a beneficiary designation that is disclaimed after the designation becomes irrevocable:

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

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

Sec. 240.106. **DISCLAIMER BY SURVIVING HOLDER OF SURVIVORSHIP PROPERTY.** Requires that the disclaimer be delivered to the person to whom the disclaimed interest passes in the case of a disclaimer by a surviving holder of survivorship property.

Sec. 240.107. **DISCLAIMER OF CERTAIN POWERS OF APPOINTMENT.** Provides that in the case of a disclaimer by an object or taker in default of 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, a 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 at the date of the creator's death.

Sec. 240.108. **DISCLAIMER BY CERTAIN APPOINTEES.** Provides that, 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

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

Sec. 240.109. **DISCLAIMER BY CERTAIN FIDUCIARIES.** Provides that a disclaimer may be delivered as provided by Section 240.102, 240.103, or 240.104 as if the power disclaimed were an interest in property in the case of the disclaimer by a fiduciary of a power over a trust or estate.

Sec. 240.110. **DISCLAIMER OF POWER BY AGENT.** Requires that the disclaimer be delivered to the principal or the principal's representative in the case of a disclaimer of a power by an agent.

Sec. 240.111. **RECORDING OF DISCLAIMER.** Authorizes that the disclaimer be filed, recorded, or registered as that instrument, if an instrument transferring an interest in or power over property subject to a disclaimer is required or authorized by law to be filed, recorded, or registered. Provides that, except as otherwise provided by Section 240.105(c)(2), failure to file, record, or register the disclaimer does not affect the disclaimer's validity between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

SUBCHAPTER D. DISCLAIMER BARRED OR LIMITED

Sec. 240.151. **WHEN DISCLAIMER BARRED OR LIMITED.** (a) Provides that a disclaimer is barred by a written waiver of the right to disclaim.

(b) Provides that a disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) the disclaimant accepts the interest sought to be disclaimed;

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

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

(c) Provides that a disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by the previous exercise of the power.

(d) Provides that a disclaimer, in whole or in part, of the future exercise of a power not held in a fiduciary capacity is not barred by the previous exercise of the power unless the power is exercisable in favor of the disclaimant.

(e) Provides that a disclaimer is barred or limited if provided by other law.

(f) Provides that a disclaimer of:

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

(2) an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under Subchapter B had the disclaimer not been barred.

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

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

(2) confirmed and reduced to judgment as provided by Section 157.263 (Confirmation of Arrearages), Family Code.

(h) Authorizes the child support obligee to whom child support arrearages are owed to enforce the child support obligation against the disclaimant as to disclaimed property by a lien or by any other remedy provided by law.

SECTION 2. Amends the heading to Chapter 122, Estates Code, to read as follows:

CHAPTER 122. ASSIGNMENTS

SECTION 3. Amends Section 122.201, Estates Code, as follows:

Sec. 122.201. ASSIGNMENT. Authorizes a person who is entitled to receive property or an interest in property from a decedent under a will, by inheritance, or as a beneficiary under a life insurance contract, and does not disclaim the property under Chapter 240, Property Code, to assign the property or interest in property to any person. Makes a nonsubstantive change.

SECTION 4. Amends Section 122.202, Estates Code, as follows:

Sec. 122.202. FILING OF ASSIGNMENT. Provides that an assignment, at the request of the assignor, be delivered or filed as provided for the delivery or filing of a disclaimer under Subchapter C, Chapter 240, Property Code, rather than Subchapter B.

SECTION 5. Amends Section 122.204, Estates Code, as follows:

Sec. 122.204. FAILURE TO COMPLY. Provides that failure to comply with Chapter 240, Property Code, rather than Subchapters A, B, C, and D, does not affect an assignment.

SECTION 6. Amends Section 122.205, Estates Code, as follows:

Sec. 122.205. GIFT. Provides that an assignment under this chapter, rather than subchapter, is a gift to the assignee and is not a disclaimer under Chapter 240, Property Code, rather than Subchapters A, B, C, and D.

SECTION 7. Amends Section 122.206, Estates Code, as follows:

Sec. 122. 206. SPENDTHRIFT PROVISION. Prohibits an assignment of property or interest that would defeat a spendthrift provision imposed in a trust from being made under this chapter, rather than subchapter.

SECTION 8. Repealers: Subchapters A (General Provisions Relating to Disclaimer), B (Form, Filing, and Notice of Disclaimer), C (Effect of Disclaimer), and D (Partial Disclaimer), Chapter 122, Estates Code;

Repealer: the heading to Subchapter E (Assignment of Interest), Chapter 122, Estates Code.

Repealer: Section 122.203 (Notice), Estates Code.

Repealers: Sections 112.010(b) (authorizing a beneficiary to disclaim an interest); (c) (authorizing a beneficiary to disclaim an interest in a trust created in any manner other than by will); (c-1) (prohibiting a person authorized to disclaim an interest in a trust from disclaiming the interest if the person in has either exercised dominion and control over

the interest or accepted any benefits from the trust); (c-2) (authorizing a person, authorized to disclaim an interest in a trust, to disclaim an interest in whole or in part by evidencing his irrevocable and unqualified refusal to accept the interest by meeting certain requirements); (d) (providing that a disclaimer under this section is effective as of the date of the transfer of the interest involved and relates back for all purposes to the date of the transfer and is not subject to the claims of any creditor of the disclaimant); and (providing that failure to comply with this section makes a disclaimer ineffective except as an assignment of the interest to those who would have received the interest being disclaimed had the person attempting the disclaimer died prior to the transferor of the interest), Property Code.

SECTION 9. Provides that Title 13, Property Code, as added by this Act, applies to an interest in or power over property existing on or after the effective date of this Act if the time for delivering or filing a disclaimer under former law, including the time for filing a written memorandum of disclaimer under Section 122.055 (Filing Deadline), Estates Code, or the time for delivering notice of the disclaimer under Section 122.056 (Notice), Estates Code, as those sections existed immediately before the effective date of this Act, has not elapsed. Provides that if the time for filing or delivering notice of a written memorandum of disclaimer under former law has elapsed, the former law applies and is continued in effect for that purpose.

SECTION 10. Provides that Chapter 122, Estates Code, as amended by this Act, applies to property or an interest in or power existing on or after the effective date of this Act if the time for delivering or filing an assignment under former law, including the time for filing an assignment under Section 122.202 (Filing of Assignment), Estates Code, or the time for delivering notice of the filing of assignment under Section 122.203 (Notice), Estates Code, as those sections existed immediately before the effective date of this Act, has not elapsed. Provides that if the time for filing or delivering notice of an assignment under former law has elapsed, the former law applies and is continued in effect for that purpose.

SECTION 11. Effective date: September 1, 2015.