

## **BILL ANALYSIS**

H.B. 2428  
By: Wray  
Judiciary & Civil Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties have proposed several updates to the law regarding estates designed, among other things, to keep the Estates Code in line with developments in case law and other substantive areas of law, streamline and simplify estates related issues, clarify ambiguities, and correct technical deficiencies. H.B. 2428 seeks to clarify and update the Estates Code.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 2428 repeals Estates Code provisions relating to a disclaimer of property interests and amends the Property Code to set out provisions relating to a disclaimer of property interests.

H.B. 2428 amends the Property Code to authorize a person other than a fiduciary to disclaim, in whole or in part, any interest in or power over property 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. The bill authorizes a person designated to serve or serving as a fiduciary, except to the extent the person's right to disclaim is expressly restricted or limited by state law or by the instrument creating the fiduciary relationship, to disclaim, in whole or in part, any power over property held in a fiduciary capacity even if 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 an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

H.B. 2428 authorizes a fiduciary acting in a fiduciary capacity, except to the extent the fiduciary's right to disclaim is expressly restricted or limited by state law or by the instrument creating the fiduciary relationship, to disclaim, in whole or in part, any interest in or power over property 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. The bill authorizes a fiduciary acting in a fiduciary capacity to disclaim such an interest or power 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. The bill does not require such a disclaimer by a fiduciary acting in a fiduciary capacity, except for a disclaimer by a personal representative subject to court supervision or a disclaimer by the trustee of a

management trust, to have court approval to be effective unless the instrument that created the fiduciary relationship requires court approval. The bill authorizes a natural guardian, in the absence of a court-appointed guardian, without court approval, to disclaim on behalf of a minor child of the natural guardian, in whole or in part, any interest in or power over property 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. The bill 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.

H.B. 2428 requires a disclaimer, in order to be effective, to be in writing, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided by the bill's provisions. The bill 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. The bill establishes that a disclaimer is irrevocable on the later of the date the disclaimer is delivered or filed or takes effect. The bill specifies that a disclaimer made under the bill's provisions is not a transfer, assignment, or release.

H.B. 2428 sets out provisions relating to, and establishing conditions under which the provisions take effect, a general disclaimer of interest in property, a disclaimer of rights in a survivorship property, a disclaimer of an interest in property that otherwise would have become trust property, a disclaimer of a power of appointment or other power not held in a fiduciary capacity, a disclaimer of an interest in property by an appointee of a power of appointment or an object or taker in default of an exercise of a power of appointment, a disclaimer of power held in a fiduciary capacity, and a tax qualified disclaimer.

H.B. 2428 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 and specifies 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. The bill sets out provisions establishing required delivery or filing methods for a disclaimer of an interest created under intestate succession or will, a disclaimer of interest in a testamentary trust, a disclaimer of interest in an inter vivos trust, a disclaimer of an interest created by beneficiary designation, a disclaimer by a surviving holder of survivorship property, a disclaimer by an object or taker in default of exercise of certain powers of appointment, a disclaimer by an appointee of a nonfiduciary power of appointment, a disclaimer by a fiduciary of a power over a trust or estate, a disclaimer of a power by an agent, and the recording of a disclaimer.

H.B. 2428 establishes that a disclaimer is barred by a written waiver of the right to disclaim. The bill specifies that a disclaimer of an interest in property is barred if, before the disclaimer becomes effective, the disclaimant accepts the interest sought to be disclaimed; the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or the interest sought to be disclaimed is sold under a judicial sale. The bill specifies 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. The bill specifies 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. The bill specifies that a disclaimer is barred or limited if provided by other law. The bill establishes that a disclaimer of a power over property that is barred by these provisions is ineffective and that a disclaimer of an interest in property that is barred by these provisions takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest had the disclaimer not been barred.

H.B. 2428 establishes 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 administratively determined by the office of the attorney general in a Title IV-D case or confirmed and reduced to one cumulative money judgment. The bill 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.

H.B. 2428 applies to disclaimers of any interest in or power over property, whenever created. The bill specifies that, unless displaced by a bill provision, the principles of law and equity supplement the bill's provisions. The bill 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 the bill's provisions. The bill requires consideration to be given, in applying and construing its provisions, to the need to promote uniformity of the law, with respect to disclaimers, among states that enact a law similar to the bill's provisions.

H.B. 2428 amends the Estates Code to make conforming changes.

H.B. 2428 repeals the following provisions:

- Subchapters A, B, C, and D, Chapter 122, Estates Code
- the heading to Subchapter E, Chapter 122, Estates Code
- Section 122.203, Estates Code
- Sections 112.010(b), (c), (c-1), (c-2), (d), and (e), Property Code

#### **EFFECTIVE DATE**

September 1, 2015.