

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 2428  
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State Affairs  
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Committee Report (Substituted)

### **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 UDPIA 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. (Original Author's / Sponsor's Statement of Intent)

C.S.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 Section 24.002(12), Business & Commerce Code, to redefine "transfer."

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

#### **SUBCHAPTER A. DISCLAIMER OF INTEREST OR POWER**

SECTION 3. Amends Sections 122.001 and 122.002, Estates Code, as follows:

Sec. 122.001. DEFINITIONS. Redefines "beneficiary" and defines "disclaim" and "disclaimer." Deletes existing text defining "property."

Sec. 122.002. New heading: DISCLAIMER. Authorizes a person who may be entitled to receive property as a beneficiary to disclaim the person's interest in or power over the property in accordance with Chapter 240, Property Code.

Deletes existing Subsection (a) providing that a person who may be entitled to receive property as a beneficiary who on or after September 1, 1977, intends to irrevocably disclaim all or any part of the property shall evidence the disclaimer as provided by this chapter.

Deletes existing Subsection (b) requiring the legally authorized representative of a person who may be entitled to receive property as a beneficiary who on or after September 1, 1977, intends to irrevocably disclaim all or any part of the property on the beneficiary's behalf, subject to Subsection (c), to evidence the disclaimer as provided by this chapter.

Deletes existing Subsection (c) requiring that a disclaimer made by a legally authorized representative described by Subsection (d)(1), (2), or (3), other than an independent executor, be made with prior court approval of the court that has or would have jurisdiction over the legally authorized representative. Deletes existing text providing that a disclaimer made by an independent executor on behalf of a decedent may be made without prior court approval.

Deletes existing Subsection (d) and following Subdivisions (1)-(4) text defining "legally authorized representative."

SECTION 4. 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, rather than under this chapter, to assign the property or interest in property to any person.

SECTION 5. Amends Section 122.202, Estates Code, as follows:

Sec. 122.202. FILING OF ASSIGNMENT. Authorizes an assignment to, 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 under Subchapter B.

SECTION 6. Amends Section 122.204, Estates Code, as follows:

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

SECTION 7. Amends Section 122.205, Estates Code, to make a conforming change.

SECTION 8. Amends Section 124.004, Estates Code, to change a reference to Subchapters A, B, C, D, Chapter 122, to Chapter 240, Property Code.

SECTION 9. Amends Section 814.005(a), Government Code, to change a reference to Section 37A, Texas Probate Code, to Chapter 240, Property Code.

SECTION 10. Amends Section 834.005, Government Code, to change a reference to Section 37A, Texas Probate Code, to Chapter 240, Property Code.

SECTION 11. Amends Section 839.004, Government Code, to change a reference to Section 37A, Texas Probate Code, to Chapter 240, Property Code.

SECTION 12. Amends Section 1551.259(e), Insurance Code, to change a reference to Section 37A, Texas Probate Code, to Chapter 240, Property Code.

SECTION 13. Amends the heading to Section 112.010, Property Code, as follows:

Sec. 112.010. PRESUMED ACCEPTANCE BY BENEFICIARY; DISCLAIMER.

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

(b) Provides that a disclaimer of an interest in or power over trust property is governed by Chapter 240. Deletes existing text authorizing a beneficiary, if a trust is created by will, to disclaim an interest in the manner and with the effect for which provision is made in the applicable probate law.

SECTION 15. 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 "current beneficiary," "disclaim," "disclaimant," "disclaimed interest," "disclaimed power," "disclaimer," "estate," "fiduciary," "guardian," "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 statute 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 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) 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, 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, to 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) Provides that 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) the person may disclaim only on or after accepting the trust;
- (2) the disclaimer must be compatible with the trustee's fiduciary obligations; and
- (3) if the disclaimer is made on accepting the trust, the trustee is considered to have never possessed the power disclaimed.

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

Sec. 240.008. POWER TO DISCLAIM BY FIDUCIARY ACTING IN FIDUCIARY CAPACITY. (a) Authorizes a fiduciary acting in a fiduciary capacity to disclaim, subject to this section 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, in whole or in part, any interest in or power over property, including a power of appointment and the power to disclaim, 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 even if:

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

(b) Provides that, except as provided by Subsection (c), (d), or (f), 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.

(c) Provides that the following disclaimers by a fiduciary acting in a fiduciary capacity are not effective unless approved by a court of competent jurisdiction:

- (1) a disclaimer by a personal representative who is not an independent administrator or independent executor;
- (2) a disclaimer by the trustee of a management trust created under Chapter 1301 (Management Trusts), Estates Code;
- (3) a disclaimer by the trustee of a trust created under Section 142.005 (Trust for Property); or
- (4) a disclaimer that would result in an interest in or power over property passing to the person making the disclaimer.

(d) Prohibits a trustee acting in a fiduciary capacity from disclaiming an interest in property that would cause the interest in property not to become trust property unless:

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

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

(e) Authorizes a natural guardian as described by Section 1104.051 (Guardian of Minor Children), Estates Code, 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, 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.

(f) Provides that unless a court of competent jurisdiction approves the disclaimer, a disclaimer by a fiduciary acting in a fiduciary capacity must be compatible with the fiduciary's fiduciary obligations. Provides that a disclaimer by a fiduciary acting in a fiduciary capacity is not a per se breach of the fiduciary's fiduciary obligations.

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

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

(b) Provides that for the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice under Subsection (a), a beneficiary is determined as of the date the notice is sent.

(c) Requires the trustee, addition to the notice required under Subsection (a), to give written notice of the trustee's disclaimer to the attorney general if:

(1) a charity is entitled to notice;

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

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

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

(d) Requires the notice required to be given by this section, if the beneficiary has a court-appointed guardian or conservator, be given to that guardian or conservator. Requires that the notice required to be given by this section, if the beneficiary is a minor for whom no guardian or conservator has been appointed, be given to a parent of the minor.

(e) Provides that the trustee is not required to provide the notice to a beneficiary who:

- (1) is known to the trustee and cannot be located by the trustee after reasonable diligence;
- (2) is not known to the trustee;
- (3) waives the requirement of the notice under this section; or
- (4) is a descendant of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary's ancestor have similar interests in the trust and no apparent conflict of interest exists between them.

(f) Requires that the notice required under Subsection (a):

- (1) include a statement that meets certain requirements set forth;
- (2) describe the interest in property the trustee intends to disclaim;
- (3) specify the earliest date the trustee intends to make the disclaimer;
- (4) include the name and mailing address of the trustee;
- (5) be given not later than the 30th day before the date the disclaimer is made; and
- (6) be sent by personal delivery, first-class mail, facsimile, e-mail, or any other method likely to result in the notice's receipt.

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

(h) Provides that, if the trustee makes the disclaimer for which notice is provided under this section, the beneficiary does not lose the beneficiary's right, if any, to sue the trustee for breach of the trustee's fiduciary obligations in connection with making the disclaimer. Provides that Section 240.008(g) applies to remedies sought in connection with the alleged breach.

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. 240.0501. DEFINITION. Defines "future interest" for purposes of this subchapter.

Sec. 240.051. DISCLAIMER OF INTEREST IN PROPERTY. (a) Provides that this section and Sections 240.0511 and 240.0512 apply to a disclaimer of an interest in property other than a disclaimer subject to Section 240.052 or 240.053.

(b) Provides that if an interest in property passes because of the death of a decedent:

(1) a disclaimer of the interest:

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

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

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

(c) Provides that if an interest in property passes because of an event not related to the death of a decedent:

(1) a disclaimer of the interest takes effect in certain cases set forth;

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

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

Sec. 240.0511. DISPOSITION OF INTEREST PASSING BECAUSE OF EVENT OTHER THAN DECEDENT'S DEATH AND DISCLAIMED BY INDIVIDUAL. (a) Provides that 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) Provides that 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) 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 immediately before the time the disclaimer takes effect under Section 240.051(c)(1)(A), 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, on the death of a holder of survivorship property, to disclaim, in whole or in part, an interest in the property of the deceased holder that would have otherwise passed to the surviving holder by reason of the deceased holder's death.

(b) Provides that if an interest in survivorship property is disclaimed by a surviving holder of the property:

(1) the disclaimer:

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

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

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

(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. (a) Provides that if a trustee disclaims an interest in property that otherwise would have become trust property:



(1) the interest does not become trust property;

(2) the disclaimer:

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

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

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

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

(c) Provides that if the instrument creating the disclaimed interest does not contain a provision described by Subsection (b), the disclaimed interest passes as if:

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

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

(d) Provides that Subsection (c) applies only for purposes of determining the disposition of an interest in property disclaimed by a trustee that otherwise would have become trust property and applies only with respect to the trust affected by the disclaimer. Provides that Subsection (c) does not apply with respect to other trusts governed by the instrument and does not apply for other purposes under the instrument or under the laws of intestacy.

**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, OF, OR OBJECT, 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.** (a) Defines "Internal Revenue Code" for purposes of this section.

(b) 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 as never having been transferred to the disclaimant, the disclaimer or transfer is effective as a disclaimer under this chapter.

Sec. 240.058. **PARTIAL DISCLAIMER BY SPOUSE.** Provides that a disclaimer by a decedent's surviving spouse of an interest in property transferred as the result of the death of the decedent is not a disclaimer by the surviving spouse of any other transfer from the 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) 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 disclaimant'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 disclaimant'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.** 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 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. 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 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. 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 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 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 BY OBJECT OR TAKER IN DEFAULT OF EXERCISE OF POWER 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, 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.** 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 on 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 by:

(A) taking possession of the interest; or

(B) exercising dominion and control over the interest;

(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 the acceptance of an interest in property by a person in the person's fiduciary capacity is not an acceptance of the interest in the person's individual capacity and does not bar the person from disclaiming the interest in the person's individual capacity.

(d) 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.

(e) 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.

(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, if Subsection (g) applies, 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 16. Repealers: Sections 122.003 (Effective Date; Creditor' Claims), 122.004 (Disclaimer Irrevocable), and 122.005 (Power to Provide Method of Disclaimer), Estates Code.

Repealers: Subchapters B (Form, Filing, and Notice of Disclaimer), C (Effect of Disclaimer), and D (Partial Disclaimer), Chapter 122, Estates Code.

Repealer: Section 122.203 (Notice), Estates Code.

Repealers: Sections 112.010(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 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 (e) (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 17. 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, the time for delivering notice of the disclaimer under Section 122.056 (Notice), Estates Code, or the time for delivering a written memorandum of disclaimer under Section 112.010, Property 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 18. Provides that Sections 122.201 (Assignment), 122.202 (Filing of Assignment), 122.204 (Failure to Comply), and 122.205 (Gift), Estates Code, as amended by this Act, apply to property or an interest in or power over property 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 19. Effective date: September 1, 2015.