

SENATE AMENDMENTS

2nd Printing

By: Wray

H.B. No. 2428

A BILL TO BE ENTITLED

1 AN ACT

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

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

5 SECTION 1. The Property Code is amended by adding Title 13
6 to read as follows:

7 TITLE 13. DISCLAIMER OF PROPERTY INTERESTS

8 CHAPTER 240. TEXAS UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

9 SUBCHAPTER A. GENERAL PROVISIONS

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

12 Sec. 240.002. DEFINITIONS. In this chapter:

13 (1) "Disclaimant" means:

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

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

19 (C) the ward to whom a disclaimed interest or
20 power would have passed had the disclaimer not been made by the
21 guardian of the ward's estate; or

22 (D) the trust into which a disclaimed interest or
23 power would have passed had the disclaimer not been made by the
24 trustee of the trust.

1 (2) "Disclaimed interest" means the interest that
2 would have passed to the disclaimant had the disclaimer not been
3 made.

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

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

8 (5) "Estate" has the meaning assigned by Section
9 22.012, Estates Code.

10 (6) "Guardian" has the meaning assigned by Section
11 1002.012, Estates Code.

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

16 (8) Notwithstanding Section 311.005, Government Code,
17 "person" means an individual, corporation, including a public
18 corporation, business trust, partnership, limited liability
19 company, association, joint venture, governmental entity,
20 including a political subdivision, agency, or instrumentality, or
21 any other legal entity.

22 (9) "Personal representative" has the meanings
23 assigned by Sections 22.031 and 1002.028, Estates Code.

24 (10) "State" means a state of the United States, the
25 District of Columbia, Puerto Rico, the United States Virgin
26 Islands, or any territory or insular possession subject to the
27 jurisdiction of the United States. The term includes an Indian

1 tribe or band, or Alaskan native village, recognized by federal law
2 or formally acknowledged by a state.

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

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

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

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

14 (12) "Trust" means a trust described in Section
15 111.003.

16 (13) "Ward" has the meaning assigned by Section
17 22.033, Estates Code.

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

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

24 (b) This chapter does not limit any right of a person to
25 waive, release, disclaim, or renounce an interest in or power over
26 property under a law other than this chapter.

27 Sec. 240.005. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

1 In applying and construing this chapter, consideration must be
2 given to the need to promote uniformity of the law, with respect to
3 the subject matter of this chapter, among states that enact a law
4 similar to this chapter.

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

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

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

15 (a) Except to the extent the person's right to disclaim is
16 expressly restricted or limited by a law of this state or by the
17 instrument creating the fiduciary relationship, a person
18 designated to serve or serving as a fiduciary may disclaim, in whole
19 or in part, any power over property, including a power of
20 appointment, held in a fiduciary capacity.

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

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

26 (2) an instrument other than the instrument that
27 created the fiduciary relationship imposed a restriction or

1 limitation on the right to disclaim.

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

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

19 (c) Except for a disclaimer by a personal representative
20 subject to court supervision or a disclaimer by the trustee of a
21 management trust described in Chapter 1301, Estates Code, a
22 disclaimer by a fiduciary acting in a fiduciary capacity does not
23 require court approval to be effective unless the instrument that
24 created the fiduciary relationship requires court approval.

25 (d) In the absence of a court-appointed guardian, without
26 court approval, a natural guardian as described by Section
27 1104.051, Estates Code, may disclaim on behalf of a minor child of

1 the natural guardian, in whole or in part, any interest in or power
2 over property, including a power of appointment, that the minor
3 child is to receive solely as a result of another disclaimer, but
4 only if the disclaimed interest or power does not pass to or for the
5 benefit of the natural guardian as a result of the disclaimer.

6 (e) A disclaimer by a fiduciary acting in a fiduciary
7 capacity must be compatible with the fiduciary's fiduciary
8 obligations, unless a court of proper jurisdiction orders
9 otherwise.

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

12 (1) be in writing;

13 (2) declare the disclaimer;

14 (3) describe the interest or power disclaimed;

15 (4) be signed by the person making the disclaimer; and

16 (5) be delivered or filed in the manner provided by

17 Subchapter C.

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

21 (c) A disclaimer is irrevocable on the later of the date the
22 disclaimer:

23 (1) is delivered or filed under Subchapter C; or

24 (2) takes effect as provided in Sections
25 240.051-240.056.

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

SUBCHAPTER B. TYPE AND EFFECT OF DISCLAIMER

Sec. 240.051. DISCLAIMER OF INTEREST IN PROPERTY. (a) In this section:

(1) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of the interest's creation.

(2) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

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

(c) 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) 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:

1 (A) except as otherwise provided in Paragraph (B)
2 or (C), the disclaimed interest passes as if the disclaimant had
3 died immediately before the time of distribution;

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

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

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

24 (g) On the disclaimer of a preceding interest, a future
25 interest held by a person other than the disclaimant takes effect as
26 if the disclaimant had died or ceased to exist immediately before
27 the time of distribution, but a future interest held by the

1 disclaimant is not accelerated in possession or enjoyment.

2 Sec. 240.052. DISCLAIMER OF RIGHTS IN SURVIVORSHIP
3 PROPERTY. (a) On the death of a holder of survivorship property, a
4 surviving holder may disclaim, in whole or in part:

5 (1) if the survivorship property is held by a
6 community property survivorship agreement defined by Section
7 112.001, Estates Code, one-half of the survivorship property; or

8 (2) if the survivorship property is held by an
9 agreement described in Section 111.001, Estates Code, or in a joint
10 account held by an agreement described in Section 113.151, Estates
11 Code, the greater of:

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

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

19 (b) A disclaimer under Subsection (a) takes effect as of the
20 death of the holder of survivorship property to whose death the
21 disclaimer relates.

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

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

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

5 (b) If the holder:

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

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

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

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

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

24 Sec. 240.056. DISCLAIMER OF POWER HELD IN FIDUCIARY
25 CAPACITY. (a) If a person designated to serve or serving as a
26 fiduciary disclaims a power held or to be held in a fiduciary
27 capacity that has not been exercised, the disclaimer takes effect

1 as of the time the instrument creating the power becomes
2 irrevocable.

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

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

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

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

13 Sec. 240.057. TAX QUALIFIED DISCLAIMER. Notwithstanding
14 any other provision of this chapter, if, as a result of a disclaimer
15 or transfer, the disclaimed or transferred interest is treated
16 under the Internal Revenue Code of 1986 or any successor law as
17 never having been transferred to the disclaimant, the disclaimer or
18 transfer is effective as a disclaimer under this chapter.

19 SUBCHAPTER C. DELIVERY OR FILING

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

25 (b) If a disclaimer is mailed to the intended recipient by
26 certified mail, return receipt requested, at an address the
27 disclaimant in good faith believes is likely to result in the

1 disclaimer's receipt, delivery is considered to have occurred on
2 the date of mailing regardless of the date of receipt.

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

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

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

12 (A) was domiciled; or

13 (B) owned real property.

14 Sec. 240.103. DISCLAIMER OF INTEREST IN TESTAMENTARY TRUST.
15 In the case of an interest in a testamentary trust:

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

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

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

24 (A) was domiciled; or

25 (B) owned real property.

26 Sec. 240.104. DISCLAIMER OF INTEREST IN INTER VIVOS TRUST.
27 In the case of an interest in an inter vivos trust:

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

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

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

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

10 (ii) the settlor is domiciled or was
11 domiciled at the date of the settlor's death; or

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

16 Sec. 240.105. DISCLAIMER OF INTEREST CREATED BY BENEFICIARY
17 DESIGNATION. (a) In this section, "beneficiary designation" means
18 an instrument, other than an instrument creating a trust, naming
19 the beneficiary of:

20 (1) an annuity or insurance policy;

21 (2) an account with a designation for payment on
22 death;

23 (3) a security registered in beneficiary form;

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

26 (5) any other nonprobate transfer at death.

27 (b) In the case of an interest created by a beneficiary

1 designation that is disclaimed before the designation becomes
2 irrevocable, the disclaimer must be delivered to the person making
3 the beneficiary designation.

4 (c) In the case of an interest created by a beneficiary
5 designation that is disclaimed after the designation becomes
6 irrevocable:

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

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

13 Sec. 240.106. DISCLAIMER BY SURVIVING HOLDER OF
14 SURVIVORSHIP PROPERTY. In the case of a disclaimer by a surviving
15 holder of survivorship property, the disclaimer must be delivered
16 to the person to whom the disclaimed interest passes.

17 Sec. 240.107. DISCLAIMER OF CERTAIN POWERS OF APPOINTMENT.
18 In the case of a disclaimer by an object or taker in default of
19 exercise of a power of appointment at any time after the power was
20 created:

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

24 (2) if no fiduciary is then serving, a disclaimer must
25 be filed:

26 (A) with a court having authority to appoint the
27 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 at
3 the date of the creator's death.

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

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

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

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

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

17 Sec. 240.109. DISCLAIMER BY CERTAIN FIDUCIARIES. In the
18 case of a disclaimer by a fiduciary of a power over a trust or
19 estate, the disclaimer must be delivered as provided by Section
20 240.102, 240.103, or 240.104 as if the power disclaimed were an
21 interest in property.

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

25 Sec. 240.111. RECORDING OF DISCLAIMER. If an instrument
26 transferring an interest in or power over property subject to a
27 disclaimer is required or authorized by law to be filed, recorded,

1 or registered, the disclaimer may be filed, recorded, or registered
2 as that instrument. Except as otherwise provided by Section
3 240.105(c)(2), failure to file, record, or register the disclaimer
4 does not affect the disclaimer's validity between the disclaimant
5 and persons to whom the property interest or power passes by reason
6 of the disclaimer.

7 SUBCHAPTER D. DISCLAIMER BARRED OR LIMITED

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

10 (b) A disclaimer of an interest in property is barred if any
11 of the following events occur before the disclaimer becomes
12 effective:

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

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

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

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

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

27 (e) A disclaimer is barred or limited if provided by other

1 law.

2 (f) A disclaimer of:

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

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

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

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

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

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

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

24 CHAPTER 122. [~~DISCLAIMERS AND~~] ASSIGNMENTS

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

27 Sec. 122.201. ASSIGNMENT. A person who is entitled to

1 receive property or an interest in property from a decedent under a
2 will, by inheritance, or as a beneficiary under a life insurance
3 contract, and does not disclaim the property under Chapter 240,
4 Property Code, [~~this chapter~~] may assign the property or interest
5 in property to any person.

6 SECTION 4. Section 122.202, Estates Code, is amended to
7 read as follows:

8 Sec. 122.202. FILING OF ASSIGNMENT. An assignment may, at
9 the request of the assignor, be delivered or filed as provided for
10 the delivery or filing of a disclaimer under Subchapter C, Chapter
11 240, Property Code [~~B~~].

12 SECTION 5. Section 122.204, Estates Code, is amended to
13 read as follows:

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

17 SECTION 6. Section 122.205, Estates Code, is amended to
18 read as follows:

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

22 SECTION 7. Section 122.206, Estates Code, is amended to
23 read as follows:

24 Sec. 122.206. SPENDTHRIFT PROVISION. An assignment of
25 property or interest that would defeat a spendthrift provision
26 imposed in a trust may not be made under this chapter [~~subchapter~~].

27 SECTION 8. The following provisions are repealed:

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

8 SECTION 9. Title 13, Property Code, as added by this Act,
9 applies to an interest in or power over property existing on or
10 after the effective date of this Act if the time for delivering or
11 filing a disclaimer under former law, including the time for filing
12 a written memorandum of disclaimer under Section 122.055, Estates
13 Code, or the time for delivering notice of the disclaimer under
14 Section 122.056, Estates Code, as those sections existed
15 immediately before the effective date of this Act, has not elapsed.
16 If the time for filing or delivering notice of a written memorandum
17 of disclaimer under former law has elapsed, the former law applies
18 and is continued in effect for that purpose.

19 SECTION 10. Chapter 122, Estates Code, as amended by this
20 Act, applies to property or an interest in or power over property
21 existing on or after the effective date of this Act if the time for
22 delivering or filing an assignment under former law, including the
23 time for filing an assignment under Section 122.202, Estates Code,
24 or the time for delivering notice of the filing of assignment under
25 Section 122.203, Estates Code, as those sections existed
26 immediately before the effective date of this Act, has not elapsed.
27 If the time for filing or delivering notice of an assignment under

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1 former law has elapsed, the former law applies and is continued in
2 effect for that purpose.

3 SECTION 11. This Act takes effect September 1, 2015.

ADOPTED

MAY 22 2015

Atay Spaw
Secretary of the Senate

By: Rodriguez

H.B. No. 2428

Substitute the following for H.B. No. 2428 :

By: Joan Huffman

C.S. H.B. No. 2428

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the adoption of the Texas Uniform Disclaimer of
3 Property Interests Act.

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

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

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

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

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

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

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

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

- 1 (A) by inheritance;
- 2 (B) under a will;
- 3 (C) by an agreement between spouses for community
4 property with a right of survivorship;
- 5 (D) by a joint tenancy with a right of
6 survivorship;
- 7 (E) by a survivorship agreement, account, or
8 interest in which the interest of the decedent passes to a surviving
9 beneficiary;
- 10 (F) by an insurance, annuity, endowment,
11 employment, deferred compensation, or other contract or
12 arrangement; or
- 13 (G) under a pension, profit sharing, thrift,
14 stock bonus, life insurance, survivor income, incentive, or other
15 plan or program providing retirement, welfare, or fringe benefits
16 with respect to an employee or a self-employed individual.

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

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

23 Sec. 122.002. DISCLAIMER [~~WHO MAY DISCLAIM~~]. [~~(a)~~] A
24 person who may be entitled to receive property as a beneficiary may
25 disclaim the person's interest in or power over the property in
26 accordance with Chapter 240, Property Code [~~who on or after~~
27 ~~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

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

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

6 (e) The board of trustees shall give effect to a full or
7 partial disclaimer of benefits executed in accordance with Chapter
8 240, Property [~~Section 37A, Texas Probate~~] Code.

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

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

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

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

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

21 TITLE 13. DISCLAIMER OF PROPERTY INTERESTS

22 CHAPTER 240. TEXAS UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

23 SUBCHAPTER A. GENERAL PROVISIONS

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

26 Sec. 240.002. DEFINITIONS. In this chapter:

27 (1) "Current beneficiary" and "presumptive remainder

1 beneficiary" have the meanings assigned by Section 112.071.

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

5 (A) by inheritance;

6 (B) under a will;

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

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

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

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

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

21 (H) by an instrument creating a trust.

22 (3) "Disclaimant" means:

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

25 (B) the estate to which a disclaimed interest or
26 power would have passed had the disclaimer not been made by the
27 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

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

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

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

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

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

17 (14) "Trust" has the meaning assigned by Section
18 111.003.

19 (15) "Ward" has the meaning assigned by Section
20 22.033, Estates Code.

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

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

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

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

3 Sec. 240.005. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
4 In applying and construing this chapter, consideration must be
5 given to the need to promote uniformity of the law, with respect to
6 the subject matter of this chapter, among states that enact a law
7 based on the uniform act on which this chapter is based.

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

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

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

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

25 (b) If a power being disclaimed under Subsection (a) by a
26 person designated to serve or serving as a trustee affects the
27 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

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

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

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

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

9 (2) the disposition of disclaimed interests in
10 general.

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

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

15 (2) if the disclaimant is an individual:

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

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

26 (f) A disclaimed interest that passes by intestacy passes as
27 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.

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

3 (a) Subject to 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 an event not related to the death of a decedent
7 would share in the disclaimed interest by any method of
8 representation under Section 240.051(e)(2)(B), the disclaimed
9 interest passes only to the descendants of the disclaimant living
10 at the time of the event that causes the interest to pass; or

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

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

26 (c) On the disclaimer of a preceding interest, a future
27 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

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

4 SUBCHAPTER C. DELIVERY OR FILING

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

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

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

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

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

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

26 (B) owned real property.

27 Sec. 240.103. DISCLAIMER OF INTEREST IN TESTAMENTARY TRUST.

1 In the case of an interest in a testamentary trust:

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

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

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

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

12 (B) owned real property.

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

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

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

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

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

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

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

26 (2) if a disclaimer is made before the time the
27 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

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

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

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

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

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

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

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

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

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

26 (A) with a court having authority to appoint the
27 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.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 22, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2428 by Wray (Relating to the adoption of the Texas Uniform Disclaimer of Property Interests Act.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, AG, FR, SD, SJS

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 15, 2015

TO: Honorable Joan Huffman, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2428 by Wray (Relating to the adoption of the Texas Uniform Disclaimer of Property Interests Act.), **Committee Report 2nd House, Substituted**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, AG, FR, SD, SJS

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 5, 2015

TO: Honorable Joan Huffman, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2428 by Wray (Relating to the adoption of the Texas Uniform Disclaimer of Property Interests Act.), **As Engrossed**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, AG, FR, SD, SJS

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 5, 2015

TO: Honorable John T. Smithee, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2428 by Wray (Relating to the adoption of the Texas Uniform Disclaimer of Property Interests Act.), **As Introduced**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, FR, SD, SJS