

1-1 By: Wray (Senate Sponsor - Rodríguez) H.B. No. 2428
1-2 (In the Senate - Received from the House May 4, 2015;
1-3 May 4, 2015, read first time and referred to Committee on State
1-4 Affairs; May 18, 2015, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 May 18, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Huffman	X		
1-10	Ellis	X		
1-11	Birdwell	X		
1-12	Creighton	X		
1-13	Estes		X	
1-14	Fraser	X		
1-15	Nelson	X		
1-16	Schwertner	X		
1-17	Zaffirini	X		

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 2428 By: Huffman

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the adoption of the Texas Uniform Disclaimer of
1-22 Property Interests Act.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 24.002(12), Business & Commerce Code, is
1-25 amended to read as follows:

1-26 (12) "Transfer" means every mode, direct or indirect,
1-27 absolute or conditional, voluntary or involuntary, of disposing of
1-28 or parting with an asset or an interest in an asset, and includes
1-29 payment of money, release, lease, and creation of a lien or other
1-30 encumbrance. The term does not include a transfer under a
1-31 disclaimer filed under Chapter 240, [~~Section 37A, Texas Probate~~
1-32 ~~Code, or Section 112.010,~~] Property Code.

1-33 SECTION 2. The heading to Subchapter A, Chapter 122,
1-34 Estates Code, is amended to read as follows:

1-35 SUBCHAPTER A. [~~GENERAL PROVISIONS RELATING TO~~] DISCLAIMER OF
1-36 INTEREST OR POWER

1-37 SECTION 3. Sections 122.001 and 122.002, Estates Code, are
1-38 amended to read as follows:

1-39 Sec. 122.001. DEFINITIONS. In this subchapter [~~chapter,~~
1-40 ~~other than Subchapter E~~]:

1-41 (1) "Beneficiary" includes a person who would have
1-42 been entitled, if the person had not made a disclaimer, to receive
1-43 property as a result of the death of another person:

1-44 (A) by inheritance;

1-45 (B) under a will;

1-46 (C) by an agreement between spouses for community
1-47 property with a right of survivorship;

1-48 (D) by a joint tenancy with a right of
1-49 survivorship;

1-50 (E) by a survivorship agreement, account, or
1-51 interest in which the interest of the decedent passes to a surviving
1-52 beneficiary;

1-53 (F) by an insurance, annuity, endowment,
1-54 employment, deferred compensation, or other contract or
1-55 arrangement; or

1-56 (G) under a pension, profit sharing, thrift,
1-57 stock bonus, life insurance, survivor income, incentive, or other
1-58 plan or program providing retirement, welfare, or fringe benefits
1-59 with respect to an employee or a self-employed individual.

1-60 (2) "Disclaim" and "disclaimer" have the meanings

2-1 assigned by Section 240.002, Property Code [~~"Disclaimer" includes~~
2-2 ~~renunciation~~].

2-3 [~~(3) "Property" includes all legal and equitable~~
2-4 ~~interests, powers, and property, present or future, vested or~~
2-5 ~~contingent, and beneficial or burdensome, in whole or in part.~~]

2-6 Sec. 122.002. DISCLAIMER [WHO MAY DISCLAIM]. [~~(a)~~] A
2-7 person who may be entitled to receive property as a beneficiary may
2-8 disclaim the person's interest in or power over the property in
2-9 accordance with Chapter 240, Property Code [who on or after
2-10 September 1, 1977, intends to irrevocably disclaim all or any part
2-11 of the property shall evidence the disclaimer as provided by this
2-12 chapter].

2-13 [~~(b) Subject to Subsection (c), the legally authorized~~
2-14 ~~representative of a person who may be entitled to receive property~~
2-15 ~~as a beneficiary who on or after September 1, 1977, intends to~~
2-16 ~~irrevocably disclaim all or any part of the property on the~~
2-17 ~~beneficiary's behalf shall evidence the disclaimer as provided by~~
2-18 ~~this chapter.~~

2-19 [~~(c) A disclaimer made by a legally authorized~~
2-20 ~~representative described by Subsection (d)(1), (2), or (3), other~~
2-21 ~~than an independent executor, must be made with prior court~~
2-22 ~~approval of the court that has or would have jurisdiction over the~~
2-23 ~~legally authorized representative. A disclaimer made by an~~
2-24 ~~independent executor on behalf of a decedent may be made without~~
2-25 ~~prior court approval.~~

2-26 [~~(d) In this section, "legally authorized representative"~~
2-27 ~~means:~~

2-28 [~~(1) a guardian if the person entitled to receive the~~
2-29 ~~property as a beneficiary is an incapacitated person;~~

2-30 [~~(2) a guardian ad litem if the person entitled to~~
2-31 ~~receive the property as a beneficiary is an unborn or unascertained~~
2-32 ~~person;~~

2-33 [~~(3) a personal representative, including an~~
2-34 ~~independent executor, if the person entitled to receive the~~
2-35 ~~property as a beneficiary is a decedent; or~~

2-36 [~~(4) an attorney in fact or agent appointed under a~~
2-37 ~~durable power of attorney authorizing disclaimers if the person~~
2-38 ~~entitled to receive the property as a beneficiary executed the~~
2-39 ~~power of attorney as a principal.]~~

2-40 SECTION 4. Section 122.201, Estates Code, is amended to
2-41 read as follows:

2-42 Sec. 122.201. ASSIGNMENT. A person who is entitled to
2-43 receive property or an interest in property from a decedent under a
2-44 will, by inheritance, or as a beneficiary under a life insurance
2-45 contract, and does not disclaim the property under Chapter 240,
2-46 Property Code, [~~this chapter~~] may assign the property or interest
2-47 in property to any person.

2-48 SECTION 5. Section 122.202, Estates Code, is amended to
2-49 read as follows:

2-50 Sec. 122.202. FILING OF ASSIGNMENT. An assignment may, at
2-51 the request of the assignor, be delivered or filed as provided for
2-52 the delivery or filing of a disclaimer under Subchapter C, Chapter
2-53 240, Property Code [~~B~~].

2-54 SECTION 6. Section 122.204, Estates Code, is amended to
2-55 read as follows:

2-56 Sec. 122.204. FAILURE TO COMPLY. Failure to comply with
2-57 Chapter 240, Property Code, [~~Subchapters A, B, C, and D~~] does not
2-58 affect an assignment.

2-59 SECTION 7. Section 122.205, Estates Code, is amended to
2-60 read as follows:

2-61 Sec. 122.205. GIFT. An assignment under this subchapter is
2-62 a gift to the assignee and is not a disclaimer under Chapter 240,
2-63 Property Code [~~Subchapters A, B, C, and D~~].

2-64 SECTION 8. Section 124.004, Estates Code, is amended to
2-65 read as follows:

2-66 Sec. 124.004. EFFECT OF DISCLAIMERS. This subchapter shall
2-67 be applied after giving effect to any disclaimers made in
2-68 accordance with Chapter 240, Property Code [~~Subchapters A, B, C,~~
2-69 ~~and D, Chapter 122~~].

3-1 SECTION 9. Section 814.005(a), Government Code, is amended
3-2 to read as follows:

3-3 (a) A person may, on a form prescribed by and filed with the
3-4 retirement system, waive all or a portion of any benefits from the
3-5 retirement system to which the person is entitled. The retirement
3-6 system also shall give effect as a waiver to a full or partial
3-7 disclaimer executed in accordance with Chapter 240, Property
3-8 [~~Section 37A, Texas Probate~~] Code, unless the benefit to be
3-9 disclaimed is a lifetime annuity. A person may revoke a waiver of
3-10 benefits in the same manner as the original waiver was made, unless
3-11 the original waiver by its terms was made irrevocable.

3-12 SECTION 10. Section 834.005, Government Code, is amended to
3-13 read as follows:

3-14 Sec. 834.005. DISCLAIMER OF BENEFITS. The retirement
3-15 system shall give effect to a full or partial disclaimer of benefits
3-16 executed in accordance with Chapter 240, Property [~~Section 37A,
3-17 Texas Probate~~] Code, unless the benefit to be disclaimed is a
3-18 lifetime annuity.

3-19 SECTION 11. Section 839.004, Government Code, is amended to
3-20 read as follows:

3-21 Sec. 839.004. DISCLAIMER OF BENEFITS. The retirement
3-22 system shall give effect to a full or partial disclaimer of benefits
3-23 executed in accordance with Chapter 240, Property [~~Section 37A,
3-24 Texas Probate~~] Code, unless the benefit to be disclaimed is a
3-25 lifetime annuity.

3-26 SECTION 12. Section 1551.259(e), Insurance Code, is amended
3-27 to read as follows:

3-28 (e) The board of trustees shall give effect to a full or
3-29 partial disclaimer of benefits executed in accordance with Chapter
3-30 240, Property [~~Section 37A, Texas Probate~~] Code.

3-31 SECTION 13. The heading to Section 112.010, Property Code,
3-32 is amended to read as follows:

3-33 Sec. 112.010. PRESUMED ACCEPTANCE [OR DISCLAIMER] BY [OR ON
3-34 BEHALF OF] BENEFICIARY; DISCLAIMER.

3-35 SECTION 14. Section 112.010(b), Property Code, is amended
3-36 to read as follows:

3-37 (b) A disclaimer of an interest in or power over trust
3-38 property is governed by Chapter 240 [If a trust is created by will,
3-39 a beneficiary may disclaim an interest in the manner and with the
3-40 effect for which provision is made in the applicable probate law].

3-41 SECTION 15. The Property Code is amended by adding Title 13
3-42 to read as follows:

3-43 TITLE 13. DISCLAIMER OF PROPERTY INTERESTS
3-44 CHAPTER 240. TEXAS UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT
3-45 SUBCHAPTER A. GENERAL PROVISIONS

3-46 Sec. 240.001. SHORT TITLE. This chapter may be cited as the
3-47 Texas Uniform Disclaimer of Property Interests Act.

3-48 Sec. 240.002. DEFINITIONS. In this chapter:

3-49 (1) "Current beneficiary" and "presumptive remainder
3-50 beneficiary" have the meanings assigned by Section 112.071.

3-51 (2) "Disclaim" means to refuse to accept an interest
3-52 in or power over property, including an interest or power the person
3-53 is entitled to:

3-54 (A) by inheritance;

3-55 (B) under a will;

3-56 (C) by an agreement between spouses for community
3-57 property with a right of survivorship;

3-58 (D) by a joint tenancy with a right of
3-59 survivorship;

3-60 (E) by a survivorship agreement, account, or
3-61 interest in which the interest of the decedent passes to a surviving
3-62 beneficiary;

3-63 (F) by an insurance, annuity, endowment,
3-64 employment, deferred compensation, or other contract or
3-65 arrangement;

3-66 (G) under a pension, profit sharing, thrift,
3-67 stock bonus, life insurance, survivor income, incentive, or other
3-68 plan or program providing retirement, welfare, or fringe benefits
3-69 with respect to an employee or a self-employed individual; or

4-1 (H) by an instrument creating a trust.

4-2 (3) "Disclaimant" means:

4-3 (A) the person to whom a disclaimed interest or

4-4 power would have passed had the disclaimer not been made;

4-5 (B) the estate to which a disclaimed interest or

4-6 power would have passed had the disclaimer not been made by the

4-7 personal representative of the estate; or

4-8 (C) the trust into which a disclaimed interest or

4-9 power would have passed had the disclaimer not been made by the

4-10 trustee of the trust.

4-11 (4) "Disclaimed interest" means the interest that

4-12 would have passed to the disclaimant had the disclaimer not been

4-13 made.

4-14 (5) "Disclaimed power" means the power that would have

4-15 been possessed by the disclaimant had the disclaimer not been made.

4-16 (6) "Disclaimer" means the refusal to accept an

4-17 interest in or power over property.

4-18 (7) "Estate" has the meaning assigned by Section

4-19 [22.012](#), Estates Code.

4-20 (8) "Fiduciary" means a personal representative, a

4-21 trustee, an attorney in fact or agent acting under a power of

4-22 attorney, or any other person authorized to act as a fiduciary with

4-23 respect to the property of another person.

4-24 (9) "Guardian" has the meaning assigned by Section

4-25 [1002.012](#), Estates Code.

4-26 (10) Notwithstanding Section [311.005](#), Government

4-27 Code, "person" means an individual, corporation, including a public

4-28 corporation, business trust, partnership, limited liability

4-29 company, association, joint venture, governmental entity,

4-30 including a political subdivision, agency, or instrumentality, or

4-31 any other legal entity.

4-32 (11) "Personal representative" has the meanings

4-33 assigned by Sections [22.031](#) and [1002.028](#), Estates Code.

4-34 (12) "State" means a state of the United States, the

4-35 District of Columbia, Puerto Rico, the United States Virgin

4-36 Islands, or any territory or insular possession subject to the

4-37 jurisdiction of the United States. The term includes an Indian

4-38 tribe or band, or Alaskan native village, recognized by federal law

4-39 or formally acknowledged by a state.

4-40 (13) "Survivorship property" means property held in

4-41 the name of two or more persons under an arrangement in which, on

4-42 the death of one of the persons, the property passes to and is

4-43 vested in the other person or persons. The term includes:

4-44 (A) property held by an agreement described in

4-45 Section [111.001](#), Estates Code;

4-46 (B) property held by a community property

4-47 survivorship agreement defined in Section [112.001](#), Estates Code;

4-48 and

4-49 (C) property in a joint account held by an

4-50 agreement described in Section [113.151](#), Estates Code.

4-51 (14) "Trust" has the meaning assigned by Section

4-52 [111.003](#).

4-53 (15) "Ward" has the meaning assigned by Section

4-54 [22.033](#), Estates Code.

4-55 Sec. 240.003. APPLICABILITY OF CHAPTER. This chapter

4-56 applies to disclaimers of any interest in or power over property,

4-57 whenever created.

4-58 Sec. 240.004. CHAPTER SUPPLEMENTED BY OTHER LAW. (a)

4-59 Unless displaced by a provision of this chapter, the principles of

4-60 law and equity supplement this chapter.

4-61 (b) This chapter does not limit any right of a person to

4-62 waive, release, disclaim, or renounce an interest in or power over

4-63 property under a statute other than this chapter.

4-64 Sec. 240.005. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

4-65 In applying and construing this chapter, consideration must be

4-66 given to the need to promote uniformity of the law, with respect to

4-67 the subject matter of this chapter, among states that enact a law

4-68 based on the uniform act on which this chapter is based.

4-69 Sec. 240.006. POWER TO DISCLAIM BY PERSON OTHER THAN

5-1 FIDUCIARY. (a) A person other than a fiduciary may disclaim, in
5-2 whole or in part, any interest in or power over property, including
5-3 a power of appointment.

5-4 (b) A person other than a fiduciary may disclaim an interest
5-5 or power under this section even if the creator of the interest or
5-6 power imposed a spendthrift provision or similar restriction on
5-7 transfer or a restriction or limitation on the right to disclaim.

5-8 Sec. 240.007. POWER TO DISCLAIM POWER HELD IN FIDUCIARY
5-9 CAPACITY BY PERSON DESIGNATED TO SERVE AS OR SERVING AS FIDUCIARY.

5-10 (a) Subject to Subsection (b) and except to the extent the person's
5-11 right to disclaim is expressly restricted or limited by a law of
5-12 this state or by the instrument creating the fiduciary
5-13 relationship, a person designated to serve or serving as a
5-14 fiduciary may disclaim, in whole or in part, any power over
5-15 property, including a power of appointment and the power to
5-16 disclaim, held in a fiduciary capacity.

5-17 (b) If a power being disclaimed under Subsection (a) by a
5-18 person designated to serve or serving as a trustee affects the
5-19 distributive rights of any beneficiary of the trust:

5-20 (1) the person may disclaim only on or after accepting
5-21 the trust;

5-22 (2) the disclaimer must be compatible with the
5-23 trustee's fiduciary obligations; and

5-24 (3) if the disclaimer is made on accepting the trust,
5-25 the trustee is considered to have never possessed the power
5-26 disclaimed.

5-27 (c) A person designated to serve or serving as a fiduciary
5-28 may disclaim a power under this section even if the creator of the
5-29 power imposed a spendthrift provision or similar restriction on
5-30 transfer.

5-31 Sec. 240.008. POWER TO DISCLAIM BY FIDUCIARY ACTING IN
5-32 FIDUCIARY CAPACITY. (a) Subject to this section and except to the
5-33 extent the fiduciary's right to disclaim is expressly restricted or
5-34 limited by a law of this state or by the instrument creating the
5-35 fiduciary relationship, a fiduciary acting in a fiduciary capacity
5-36 may disclaim, in whole or in part, any interest in or power over
5-37 property, including a power of appointment and the power to
5-38 disclaim, that would have passed to the ward, estate, trust, or
5-39 principal with respect to which the fiduciary was acting had the
5-40 disclaimer not been made even if:

5-41 (1) the creator of the interest or power imposed a
5-42 spendthrift provision or similar restriction on transfer or a
5-43 restriction or limitation on the right to disclaim; or

5-44 (2) an instrument other than the instrument that
5-45 created the fiduciary relationship imposed a restriction or
5-46 limitation on the right to disclaim.

5-47 (b) Except as provided by Subsection (c), (d), or (f), a
5-48 disclaimer by a fiduciary acting in a fiduciary capacity does not
5-49 require court approval to be effective unless the instrument that
5-50 created the fiduciary relationship requires court approval.

5-51 (c) The following disclaimers by a fiduciary acting in a
5-52 fiduciary capacity are not effective unless approved by a court of
5-53 competent jurisdiction:

5-54 (1) a disclaimer by a personal representative who is
5-55 not an independent administrator or independent executor;

5-56 (2) a disclaimer by the trustee of a management trust
5-57 created under Chapter 1301, Estates Code;

5-58 (3) a disclaimer by the trustee of a trust created
5-59 under Section 142.005; or

5-60 (4) a disclaimer that would result in an interest in or
5-61 power over property passing to the person making the disclaimer.

5-62 (d) A trustee acting in a fiduciary capacity may not
5-63 disclaim an interest in property that would cause the interest in
5-64 property not to become trust property unless:

5-65 (1) a court of competent jurisdiction approves the
5-66 disclaimer; or

5-67 (2) the trustee provides written notice of the
5-68 disclaimer in accordance with Section 240.0081.

5-69 (e) In the absence of a court-appointed guardian, without

6-1 court approval, a natural guardian as described by Section
 6-2 1104.051, Estates Code, may disclaim on behalf of a minor child of
 6-3 the natural guardian, in whole or in part, any interest in or power
 6-4 over property, including a power of appointment, that the minor
 6-5 child is to receive solely as a result of another disclaimer, but
 6-6 only if the disclaimed interest or power does not pass to or for the
 6-7 benefit of the natural guardian as a result of the disclaimer.

6-8 (f) Unless a court of competent jurisdiction approves the
 6-9 disclaimer, a disclaimer by a fiduciary acting in a fiduciary
 6-10 capacity must be compatible with the fiduciary's fiduciary
 6-11 obligations. A disclaimer by a fiduciary acting in a fiduciary
 6-12 capacity is not a per se breach of the fiduciary's fiduciary
 6-13 obligations.

6-14 (g) Possible remedies for a breach of fiduciary obligations
 6-15 do not include declaring an otherwise effective disclaimer void or
 6-16 granting other legal or equitable relief that would make the
 6-17 disclaimer ineffective.

6-18 Sec. 240.0081. NOTICE REQUIRED BY TRUSTEE DISCLAIMING
 6-19 CERTAIN INTERESTS IN PROPERTY; EFFECT OF NOTICE. (a) A trustee
 6-20 acting in a fiduciary capacity may disclaim an interest in property
 6-21 that would cause the interest in property not to become trust
 6-22 property without court approval if the trustee provides written
 6-23 notice of the disclaimer to all of the current beneficiaries and
 6-24 presumptive remainder beneficiaries of the trust.

6-25 (b) For the purpose of determining who is a current
 6-26 beneficiary or presumptive remainder beneficiary entitled to the
 6-27 notice under Subsection (a), a beneficiary is determined as of the
 6-28 date the notice is sent.

6-29 (c) In addition to the notice required under Subsection (a),
 6-30 the trustee shall give written notice of the trustee's disclaimer
 6-31 to the attorney general if:

- 6-32 (1) a charity is entitled to notice;
 6-33 (2) a charity entitled to notice is no longer in
 6-34 existence;
 6-35 (3) the trustee has the authority to distribute trust
 6-36 assets to one or more charities that are not named in the trust
 6-37 instrument; or
 6-38 (4) the trustee has the authority to make
 6-39 distributions for a charitable purpose described in the trust
 6-40 instrument, but no charity is named as a beneficiary for that
 6-41 purpose.

6-42 (d) If the beneficiary has a court-appointed guardian or
 6-43 conservator, the notice required to be given by this section must be
 6-44 given to that guardian or conservator. If the beneficiary is a
 6-45 minor for whom no guardian or conservator has been appointed, the
 6-46 notice required to be given by this section must be given to a
 6-47 parent of the minor.

6-48 (e) The trustee is not required to provide the notice to a
 6-49 beneficiary who:

- 6-50 (1) is known to the trustee and cannot be located by
 6-51 the trustee after reasonable diligence;
 6-52 (2) is not known to the trustee;
 6-53 (3) waives the requirement of the notice under this
 6-54 section; or
 6-55 (4) is a descendant of a beneficiary to whom the
 6-56 trustee has given notice if the beneficiary and the beneficiary's
 6-57 ancestor have similar interests in the trust and no apparent
 6-58 conflict of interest exists between them.

6-59 (f) The notice required under Subsection (a) must:

- 6-60 (1) include a statement that:
 6-61 (A) the trustee intends to disclaim an interest
 6-62 in property;
 6-63 (B) if the trustee makes the disclaimer, the
 6-64 property will not become trust property and will not be available to
 6-65 distribute to the beneficiary from the trust;
 6-66 (C) the beneficiary has the right to object to
 6-67 the disclaimer; and
 6-68 (D) the beneficiary may petition a court to
 6-69 approve, modify, or deny the disclaimer;

7-1 (2) describe the interest in property the trustee
 7-2 intends to disclaim;
 7-3 (3) specify the earliest date the trustee intends to
 7-4 make the disclaimer;
 7-5 (4) include the name and mailing address of the
 7-6 trustee;
 7-7 (5) be given not later than the 30th day before the
 7-8 date the disclaimer is made; and
 7-9 (6) be sent by personal delivery, first-class mail,
 7-10 facsimile, e-mail, or any other method likely to result in the
 7-11 notice's receipt.

7-12 (g) A beneficiary is not considered to have accepted the
 7-13 disclaimed interest solely because the beneficiary acts or does not
 7-14 act on receipt of a notice provided under this section.

7-15 (h) If the trustee makes the disclaimer for which notice is
 7-16 provided under this section, the beneficiary does not lose the
 7-17 beneficiary's right, if any, to sue the trustee for breach of the
 7-18 trustee's fiduciary obligations in connection with making the
 7-19 disclaimer. Section 240.008(g) applies to remedies sought in
 7-20 connection with the alleged breach.

7-21 Sec. 240.009. POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN
 7-22 IRREVOCABLE. (a) To be effective, a disclaimer must:

- 7-23 (1) be in writing;
- 7-24 (2) declare the disclaimer;
- 7-25 (3) describe the interest or power disclaimed;
- 7-26 (4) be signed by the person making the disclaimer; and
- 7-27 (5) be delivered or filed in the manner provided by

7-28 Subchapter C.

7-29 (b) A partial disclaimer may be expressed as a fraction,
 7-30 percentage, monetary amount, term of years, limitation of a power,
 7-31 or any other interest or estate in the property.

7-32 (c) A disclaimer is irrevocable on the later of the date the
 7-33 disclaimer:

- 7-34 (1) is delivered or filed under Subchapter C; or
- 7-35 (2) takes effect as provided in Sections
 7-36 240.051-240.056.

7-37 (d) A disclaimer made under this chapter is not a transfer,
 7-38 assignment, or release.

7-39 SUBCHAPTER B. TYPE AND EFFECT OF DISCLAIMER

7-40 Sec. 240.0501. DEFINITION. In this subchapter, "future
 7-41 interest" means an interest that:

- 7-42 (1) takes effect in possession or enjoyment, if at
 7-43 all, later than the time at which the instrument creating the
 7-44 interest becomes irrevocable; and
- 7-45 (2) passes to the holder of the interest at the time of
 7-46 the event that causes the taker of the interest to be finally
 7-47 ascertained and the interest to be indefeasibly vested.

7-48 Sec. 240.051. DISCLAIMER OF INTEREST IN PROPERTY. (a) This
 7-49 section and Sections 240.0511 and 240.0512 apply to a disclaimer of
 7-50 an interest in property other than a disclaimer subject to Section
 7-51 240.052 or 240.053.

7-52 (b) If an interest in property passes because of the death
 7-53 of a decedent:

- 7-54 (1) a disclaimer of the interest:
 - 7-55 (A) takes effect as of the time of the decedent's
 7-56 death; and
 - 7-57 (B) relates back for all purposes to the time of
 7-58 the decedent's death; and
- 7-59 (2) the disclaimed interest is not subject to the
 7-60 claims of any creditor of the disclaimant.

7-61 (c) If an interest in property passes because of an event
 7-62 not related to the death of a decedent:

- 7-63 (1) a disclaimer of the interest:
 - 7-64 (A) takes effect:
 - 7-65 (i) as of the time the instrument creating
 7-66 the interest became irrevocable; or
 - 7-67 (ii) in the case of an irrevocable transfer
 7-68 made without an instrument, at the time of the irrevocable
 7-69 transfer; and

8-1 (B) relates back for all purposes to the time the
8-2 instrument became irrevocable or the time of the irrevocable
8-3 transfer, as applicable; and

8-4 (2) the disclaimed interest is not subject to the
8-5 claims of any creditor of the disclaimant.

8-6 (d) A disclaimed interest passes according to any provision
8-7 in the instrument creating the interest that provides for:

8-8 (1) the disposition of the interest if the interest
8-9 were to be disclaimed; or

8-10 (2) the disposition of disclaimed interests in
8-11 general.

8-12 (e) If the instrument creating the disclaimed interest does
8-13 not contain a provision described by Subsection (d) and:

8-14 (1) if the disclaimant is not an individual, the
8-15 disclaimed interest passes as if the disclaimant did not exist; or

8-16 (2) if the disclaimant is an individual:

8-17 (A) except as provided by Section 240.0511, if
8-18 the interest is passing because of the death of a decedent, the
8-19 disclaimed interest passes as if the disclaimant had died
8-20 immediately before the time as of which the disclaimer takes effect
8-21 under Subsection (b); or

8-22 (B) except as provided by Section 240.0512, if
8-23 the interest is passing because of an event not related to the death
8-24 of a decedent, the disclaimed interest passes as if the disclaimant
8-25 had died immediately before the time as of which the disclaimer
8-26 takes effect under Subsection (c).

8-27 (f) A disclaimed interest that passes by intestacy passes as
8-28 if the disclaimant died immediately before the decedent.

8-29 Sec. 240.0511. DISPOSITION OF INTEREST PASSING BECAUSE OF
8-30 DECEDENT'S DEATH AND DISCLAIMED BY INDIVIDUAL. (a) Subject to
8-31 Subsection (b):

8-32 (1) if by law or under the instrument creating the
8-33 disclaimed interest the descendants of a disclaimant of an interest
8-34 passing because of the death of a decedent would share in the
8-35 disclaimed interest by any method of representation under Section
8-36 240.051(e)(2)(A), the disclaimed interest passes only to the
8-37 descendants of the disclaimant who survive the decedent; or

8-38 (2) if the disclaimed interest would have passed to
8-39 the disclaimant's estate under Section 240.051(e)(2)(A), the
8-40 disclaimed interest instead passes by representation to the
8-41 descendants of the disclaimant who survive the decedent.

8-42 (b) If no descendant of the disclaimant survives the
8-43 decedent, the disclaimed interest passes to those persons,
8-44 including the state but excluding the disclaimant, and in such
8-45 shares as would succeed to the transferor's intestate estate under
8-46 the intestate succession law of the transferor's domicile had the
8-47 transferor died immediately before the decedent, except that if the
8-48 transferor's surviving spouse is living but remarried before the
8-49 decedent's death, the transferor is considered to have died
8-50 unmarried immediately before the decedent's death.

8-51 (c) On the disclaimer of a preceding interest, a future
8-52 interest held by a person other than the disclaimant takes effect as
8-53 if the disclaimant had died immediately before the decedent, but a
8-54 future interest held by the disclaimant is not accelerated in
8-55 possession or enjoyment.

8-56 Sec. 240.0512. DISPOSITION OF INTEREST PASSING BECAUSE OF
8-57 EVENT OTHER THAN DECEDENT'S DEATH AND DISCLAIMED BY INDIVIDUAL.

8-58 (a) Subject to Subsection (b):

8-59 (1) if by law or under the instrument creating the
8-60 disclaimed interest the descendants of a disclaimant of an interest
8-61 passing because of an event not related to the death of a decedent
8-62 would share in the disclaimed interest by any method of
8-63 representation under Section 240.051(e)(2)(B), the disclaimed
8-64 interest passes only to the descendants of the disclaimant living
8-65 at the time of the event that causes the interest to pass; or

8-66 (2) if the disclaimed interest would have passed to
8-67 the disclaimant's estate under Section 240.051(e)(2)(B), the
8-68 disclaimed interest instead passes by representation to the
8-69 descendants of the disclaimant living at the time of the event that

9-1 causes the interest to pass.

9-2 (b) If no descendant of the disclaimant is living at the
 9-3 time of the event described by Subsection (a)(1), the disclaimed
 9-4 interest passes to those persons, including the state but excluding
 9-5 the disclaimant, and in such shares as would succeed to the
 9-6 transferor's intestate estate under the intestate succession law of
 9-7 the transferor's domicile had the transferor died immediately
 9-8 before the event described by Subsection (a)(1), except that if the
 9-9 transferor's surviving spouse is living but remarried before the
 9-10 event, the transferor is considered to have died unmarried
 9-11 immediately before the event.

9-12 (c) On the disclaimer of a preceding interest, a future
 9-13 interest held by a person other than the disclaimant takes effect as
 9-14 if the disclaimant had died immediately before the time the
 9-15 disclaimer takes effect under Section 240.051(c)(1)(A), but a
 9-16 future interest held by the disclaimant is not accelerated in
 9-17 possession or enjoyment.

9-18 Sec. 240.052. DISCLAIMER OF RIGHTS IN SURVIVORSHIP
 9-19 PROPERTY. (a) On the death of a holder of survivorship property, a
 9-20 surviving holder may disclaim, in whole or in part, an interest in
 9-21 the property of the deceased holder that would have otherwise
 9-22 passed to the surviving holder by reason of the deceased holder's
 9-23 death.

9-24 (b) If an interest in survivorship property is disclaimed by
 9-25 a surviving holder of the property:

9-26 (1) the disclaimer:

9-27 (A) takes effect as of the time of the deceased
 9-28 holder's death; and

9-29 (B) relates back for all purposes to the time of
 9-30 the deceased holder's death; and

9-31 (2) the disclaimed interest is not subject to the
 9-32 claims of any creditor of the disclaimant.

9-33 (c) An interest in survivorship property disclaimed by a
 9-34 surviving holder of the property passes as if the disclaimant
 9-35 predeceased the holder to whose death the disclaimer relates.

9-36 Sec. 240.053. DISCLAIMER OF INTEREST BY TRUSTEE. (a) If a
 9-37 trustee disclaims an interest in property that otherwise would have
 9-38 become trust property:

9-39 (1) the interest does not become trust property;

9-40 (2) the disclaimer:

9-41 (A) takes effect as of the time the trust became
 9-42 irrevocable; and

9-43 (B) relates back for all purposes to the time the
 9-44 trust became irrevocable; and

9-45 (3) the disclaimed interest is not subject to the
 9-46 claims of any creditor of the trustee, the trust, or any trust
 9-47 beneficiary.

9-48 (b) If the instrument creating the disclaimed interest
 9-49 contains a provision that provides for the disposition of the
 9-50 interest if the interest were to be disclaimed, the disclaimed
 9-51 interest passes according to that provision.

9-52 (c) If the instrument creating the disclaimed interest does
 9-53 not contain a provision described by Subsection (b), the disclaimed
 9-54 interest passes as if:

9-55 (1) all of the current beneficiaries, presumptive
 9-56 remainder beneficiaries, and contingent beneficiaries of the trust
 9-57 affected by the disclaimer who are individuals died before the
 9-58 trust became irrevocable; and

9-59 (2) all beneficiaries of the trust affected by the
 9-60 disclaimer who are not individuals ceased to exist without
 9-61 successor organizations and without substitution of beneficiaries
 9-62 under the cy pres doctrine before the trust became irrevocable.

9-63 (d) Subsection (c) applies only for purposes of determining
 9-64 the disposition of an interest in property disclaimed by a trustee
 9-65 that otherwise would have become trust property and applies only
 9-66 with respect to the trust affected by the disclaimer. Subsection
 9-67 (c) does not apply with respect to other trusts governed by the
 9-68 instrument and does not apply for other purposes under the
 9-69 instrument or under the laws of intestacy.

10-1 Sec. 240.054. DISCLAIMER OF POWER OF APPOINTMENT OR OTHER
 10-2 POWER NOT HELD IN FIDUCIARY CAPACITY. (a) If a holder disclaims a
 10-3 power of appointment or other power not held in a fiduciary
 10-4 capacity, this section applies.

10-5 (b) If the holder:

10-6 (1) has not exercised the power, the disclaimer takes
 10-7 effect as of the time the instrument creating the power becomes
 10-8 irrevocable; or

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

10-13 (c) The instrument creating the power is construed as if the
 10-14 power had expired when the disclaimer became effective.

10-15 Sec. 240.055. DISCLAIMER BY APPOINTEE OF, OR OBJECT OR
 10-16 TAKER IN DEFAULT OF EXERCISE OF, POWER OF APPOINTMENT. (a) A
 10-17 disclaimer of an interest in property by an appointee of a power of
 10-18 appointment takes effect as of the time the instrument by which the
 10-19 holder exercises the power becomes irrevocable.

10-20 (b) A disclaimer of an interest in property by an object or
 10-21 taker in default of an exercise of a power of appointment takes
 10-22 effect as of the time the instrument creating the power becomes
 10-23 irrevocable.

10-24 Sec. 240.056. DISCLAIMER OF POWER HELD IN FIDUCIARY
 10-25 CAPACITY. (a) If a person designated to serve or serving as a
 10-26 fiduciary disclaims a power held or to be held in a fiduciary
 10-27 capacity that has not been exercised, the disclaimer takes effect
 10-28 as of the time the instrument creating the power becomes
 10-29 irrevocable.

10-30 (b) If a person designated to serve or serving as a
 10-31 fiduciary disclaims a power held or to be held in a fiduciary
 10-32 capacity that has been exercised, the disclaimer takes effect
 10-33 immediately after the last exercise of the power.

10-34 (c) A disclaimer subject to this section is effective as to
 10-35 another person designated to serve or serving as a fiduciary if:

10-36 (1) the disclaimer provides that it is effective as to
 10-37 another person designated to serve or serving as a fiduciary; and

10-38 (2) the person disclaiming has the authority to bind
 10-39 the estate, trust, or other person for whom the person is acting.

10-40 Sec. 240.057. TAX QUALIFIED DISCLAIMER. (a) In this
 10-41 section, "Internal Revenue Code" has the meaning assigned by
 10-42 Section 111.004.

10-43 (b) Notwithstanding any other provision of this chapter,
 10-44 if, as a result of a disclaimer or transfer, the disclaimed or
 10-45 transferred interest is treated under the Internal Revenue Code as
 10-46 never having been transferred to the disclaimant, the disclaimer or
 10-47 transfer is effective as a disclaimer under this chapter.

10-48 Sec. 240.058. PARTIAL DISCLAIMER BY SPOUSE. A disclaimer
 10-49 by a decedent's surviving spouse of an interest in property
 10-50 transferred as the result of the death of the decedent is not a
 10-51 disclaimer by the surviving spouse of any other transfer from the
 10-52 decedent to or for the benefit of the surviving spouse, regardless
 10-53 of whether the interest that would have passed under the disclaimed
 10-54 transfer passes because of the disclaimer to or for the benefit of
 10-55 the surviving spouse by the other transfer.

10-56 SUBCHAPTER C. DELIVERY OR FILING

10-57 Sec. 240.101. DELIVERY OR FILING GENERALLY. (a) Subject to
 10-58 applicable requirements of this subchapter, a disclaimant may
 10-59 deliver a disclaimer by personal delivery, first-class mail,
 10-60 facsimile, e-mail, or any other method likely to result in the
 10-61 disclaimer's receipt.

10-62 (b) If a disclaimer is mailed to the intended recipient by
 10-63 certified mail, return receipt requested, at an address the
 10-64 disclaimant in good faith believes is likely to result in the
 10-65 disclaimer's receipt, delivery is considered to have occurred on
 10-66 the date of mailing regardless of receipt.

10-67 Sec. 240.102. DISCLAIMER OF INTEREST CREATED UNDER
 10-68 INTESTATE SUCCESSION OR WILL. In the case of an interest created
 10-69 under the law of intestate succession or an interest created by

11-1 will, other than an interest in a testamentary trust:
 11-2 (1) a disclaimer must be delivered to the personal
 11-3 representative of the decedent's estate; or
 11-4 (2) if no personal representative is then serving, a
 11-5 disclaimer must be filed in the official public records of any
 11-6 county in which the decedent:
 11-7 (A) was domiciled on the date of the decedent's
 11-8 death; or
 11-9 (B) owned real property.
 11-10 Sec. 240.103. DISCLAIMER OF INTEREST IN TESTAMENTARY TRUST.
 11-11 In the case of an interest in a testamentary trust:
 11-12 (1) a disclaimer must be delivered to the trustee then
 11-13 serving;
 11-14 (2) if no trustee is then serving, a disclaimer must be
 11-15 delivered to the personal representative of the decedent's estate;
 11-16 or
 11-17 (3) if no trustee or personal representative is then
 11-18 serving, a disclaimer must be filed in the official public records
 11-19 of any county in which the decedent:
 11-20 (A) was domiciled on the date of the decedent's
 11-21 death; or
 11-22 (B) owned real property.
 11-23 Sec. 240.104. DISCLAIMER OF INTEREST IN INTER VIVOS TRUST.
 11-24 In the case of an interest in an inter vivos trust:
 11-25 (1) a disclaimer must be delivered to the trustee then
 11-26 serving, or, if no trustee is then serving, a disclaimer must be
 11-27 filed:
 11-28 (A) with a court having jurisdiction to enforce
 11-29 the trust; or
 11-30 (B) in the official public records of the county
 11-31 in which:
 11-32 (i) the situs of administration of the
 11-33 trust is maintained; or
 11-34 (ii) the settlor is domiciled or was
 11-35 domiciled on the date of the settlor's death; and
 11-36 (2) if a disclaimer is made before the time the
 11-37 instrument creating the trust becomes irrevocable, a disclaimer
 11-38 must be delivered to the settlor of a revocable trust or the
 11-39 transferor of the interest.
 11-40 Sec. 240.105. DISCLAIMER OF INTEREST CREATED BY BENEFICIARY
 11-41 DESIGNATION. (a) In this section, "beneficiary designation" means
 11-42 an instrument, other than an instrument creating a trust, naming
 11-43 the beneficiary of:
 11-44 (1) an annuity or insurance policy;
 11-45 (2) an account with a designation for payment on
 11-46 death;
 11-47 (3) a security registered in beneficiary form;
 11-48 (4) a pension, profit-sharing, retirement, or other
 11-49 employment-related benefit plan; or
 11-50 (5) any other nonprobate transfer at death.
 11-51 (b) In the case of an interest created by a beneficiary
 11-52 designation that is disclaimed before the designation becomes
 11-53 irrevocable, the disclaimer must be delivered to the person making
 11-54 the beneficiary designation.
 11-55 (c) In the case of an interest created by a beneficiary
 11-56 designation that is disclaimed after the designation becomes
 11-57 irrevocable:
 11-58 (1) a disclaimer of an interest in personal property
 11-59 must be delivered to the person obligated to distribute the
 11-60 interest; and
 11-61 (2) a disclaimer of an interest in real property must
 11-62 be recorded in the official public records of the county where the
 11-63 real property that is the subject of the disclaimer is located.
 11-64 Sec. 240.106. DISCLAIMER BY SURVIVING HOLDER OF
 11-65 SURVIVORSHIP PROPERTY. In the case of a disclaimer by a surviving
 11-66 holder of survivorship property, the disclaimer must be delivered
 11-67 to the person to whom the disclaimed interest passes.
 11-68 Sec. 240.107. DISCLAIMER BY OBJECT OR TAKER IN DEFAULT OF
 11-69 EXERCISE OF POWER OF APPOINTMENT. In the case of a disclaimer by an

12-1 object or taker in default of an exercise of a power of appointment
 12-2 at any time after the power was created:

12-3 (1) the disclaimer must be delivered to the holder of
 12-4 the power or to the fiduciary acting under the instrument that
 12-5 created the power; or

12-6 (2) if no fiduciary is then serving, the disclaimer
 12-7 must be filed:

12-8 (A) with a court having authority to appoint the
 12-9 fiduciary; or

12-10 (B) in the official public records of the county
 12-11 in which the creator of the power is domiciled or was domiciled on
 12-12 the date of the creator's death.

12-13 Sec. 240.108. DISCLAIMER BY CERTAIN APPOINTEES. In the
 12-14 case of a disclaimer by an appointee of a nonfiduciary power of
 12-15 appointment:

12-16 (1) the disclaimer must be delivered to the holder,
 12-17 the personal representative of the holder's estate, or the
 12-18 fiduciary under the instrument that created the power; or

12-19 (2) if no fiduciary is then serving, the disclaimer
 12-20 must be filed:

12-21 (A) with a court having authority to appoint the
 12-22 fiduciary; or

12-23 (B) in the official public records of the county
 12-24 in which the creator of the power is domiciled or was domiciled on
 12-25 the date of the creator's death.

12-26 Sec. 240.109. DISCLAIMER BY CERTAIN FIDUCIARIES. In the
 12-27 case of a disclaimer by a fiduciary of a power over a trust or
 12-28 estate, the disclaimer must be delivered as provided by Section
 12-29 240.102, 240.103, or 240.104 as if the power disclaimed were an
 12-30 interest in property.

12-31 Sec. 240.110. DISCLAIMER OF POWER BY AGENT. In the case of
 12-32 a disclaimer of a power by an agent, the disclaimer must be
 12-33 delivered to the principal or the principal's representative.

12-34 Sec. 240.111. RECORDING OF DISCLAIMER. If an instrument
 12-35 transferring an interest in or power over property subject to a
 12-36 disclaimer is required or authorized by law to be filed, recorded,
 12-37 or registered, the disclaimer may be filed, recorded, or registered
 12-38 as that instrument. Except as otherwise provided by Section
 12-39 240.105(c)(2), failure to file, record, or register the disclaimer
 12-40 does not affect the disclaimer's validity between the disclaimant
 12-41 and persons to whom the property interest or power passes by reason
 12-42 of the disclaimer.

12-43 SUBCHAPTER D. DISCLAIMER BARRED OR LIMITED

12-44 Sec. 240.151. WHEN DISCLAIMER BARRED OR LIMITED. (a) A
 12-45 disclaimer is barred by a written waiver of the right to disclaim.

12-46 (b) A disclaimer of an interest in property is barred if any
 12-47 of the following events occur before the disclaimer becomes
 12-48 effective:

12-49 (1) the disclaimant accepts the interest sought to be
 12-50 disclaimed by:

12-51 (A) taking possession of the interest; or
 12-52 (B) exercising dominion and control over the

12-53 interest;

12-54 (2) the disclaimant voluntarily assigns, conveys,
 12-55 encumbers, pledges, or transfers the interest sought to be
 12-56 disclaimed or contracts to do so; or

12-57 (3) the interest sought to be disclaimed is sold under
 12-58 a judicial sale.

12-59 (c) The acceptance of an interest in property by a person in
 12-60 the person's fiduciary capacity is not an acceptance of the
 12-61 interest in the person's individual capacity and does not bar the
 12-62 person from disclaiming the interest in the person's individual
 12-63 capacity.

12-64 (d) A disclaimer, in whole or in part, of the future
 12-65 exercise of a power held in a fiduciary capacity is not barred by
 12-66 the previous exercise of the power.

12-67 (e) A disclaimer, in whole or in part, of the future
 12-68 exercise of a power not held in a fiduciary capacity is not barred
 12-69 by the previous exercise of the power unless the power is

13-1 exercisable in favor of the disclaimant.

13-2 (f) A disclaimer of:

13-3 (1) a power over property that is barred by this
13-4 section is ineffective; and

13-5 (2) an interest in property that is barred by this
13-6 section takes effect as a transfer of the interest disclaimed to the
13-7 persons who would have taken the interest under Subchapter B had the
13-8 disclaimer not been barred.

13-9 (g) A disclaimer by a child support obligor is barred as to
13-10 disclaimed property that could be applied to satisfy the
13-11 disclaimant's child support obligations if those obligations have
13-12 been:

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

13-16 (2) confirmed and reduced to judgment as provided by
13-17 Section 157.263, Family Code.

13-18 (h) If Subsection (g) applies, the child support obligee to
13-19 whom child support arrearages are owed may enforce the child
13-20 support obligation against the disclaimant as to disclaimed
13-21 property by a lien or by any other remedy provided by law.

13-22 SECTION 16. The following provisions are repealed:

13-23 (1) Sections 122.003, 122.004, and 122.005, Estates
13-24 Code;

13-25 (2) Subchapters B, C, and D, Chapter 122, Estates
13-26 Code;

13-27 (3) Section 122.203, Estates Code; and

13-28 (4) Sections 112.010(c), (c-1), (c-2), (d), and (e),
13-29 Property Code.

13-30 SECTION 17. Title 13, Property Code, as added by this Act,
13-31 applies to an interest in or power over property existing on or
13-32 after the effective date of this Act if the time for delivering or
13-33 filing a disclaimer under former law, including the time for filing
13-34 a written memorandum of disclaimer under Section 122.055, Estates
13-35 Code, the time for delivering notice of the disclaimer under
13-36 Section 122.056, Estates Code, or the time for delivering a written
13-37 memorandum of disclaimer under Section 112.010, Property Code, as
13-38 those sections existed immediately before the effective date of
13-39 this Act, has not elapsed. If the time for filing or delivering
13-40 notice of a written memorandum of disclaimer under former law has
13-41 elapsed, the former law applies and is continued in effect for that
13-42 purpose.

13-43 SECTION 18. Sections 122.201, 122.202, 122.204, and
13-44 122.205, Estates Code, as amended by this Act, apply to property or
13-45 an interest in or power over property existing on or after the
13-46 effective date of this Act if the time for delivering or filing an
13-47 assignment under former law, including the time for filing an
13-48 assignment under Section 122.202, Estates Code, or the time for
13-49 delivering notice of the filing of assignment under Section
13-50 122.203, Estates Code, as those sections existed immediately before
13-51 the effective date of this Act, has not elapsed. If the time for
13-52 filing or delivering notice of an assignment under former law has
13-53 elapsed, the former law applies and is continued in effect for that
13-54 purpose.

13-55 SECTION 19. This Act takes effect September 1, 2015.

13-56 * * * * *