



March 14, 2003

ENGROSSED HOUSE BILL No. 1117

DIGEST OF HB 1117 (Updated March 12, 2003 10:14 AM - DI 106)

Citations Affected: IC 32-17.5.

Synopsis: Uniform disclaimer of property interests act. Adopts the uniform disclaimer of property interests act. Repeals statutes that are superseded concerning disclaimer of property interests. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2003.

Kuzman, Foley

(SENATE SPONSORS — ZAKAS, ANTICH, LAWSON C)

January 7, 2003, read first time and referred to Committee on Judiciary.
January 16, 2003, amended, reported — Do Pass.
January 21, 2003, read second time, ordered engrossed. Engrossed.
January 23, 2003, read third time, passed. Yeas 93, nays 0.

SENATE ACTION

February 11, 2003, read first time and referred to Committee on Judiciary.
March 13, 2003, reported favorably — Do Pass.

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EH 1117—LS 6888/DI 87+



March 14, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1117

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-17.5 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2003]:
4 **ARTICLE 17.5. UNIFORM DISCLAIMER OF PROPERTY**
5 **INTERESTS ACT**
6 **Chapter 1. General Provisions**
7 **Sec. 1. This article applies to a disclaimer of an interest in or**
8 **power over property regardless of when the interest or power was**
9 **created.**
10 **Sec. 2. This chapter does not limit the right of a person to waive,**
11 **release, disclaim, or renounce an interest in or power over**
12 **property under a law other than this article.**
13 **Sec. 3. Except as otherwise provided in IC 32-17.5-8, an interest**
14 **in or power over property existing on July 1, 2003, may be**
15 **disclaimed after June 30, 2003, if the time for delivering or filing**
16 **a disclaimer under IC 32-17-7 (before its repeal) has not expired.**
17 **Sec. 4. In applying and construing this article, consideration**

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1 must be given to the need to promote uniformity of the law with
2 respect to its subject matter among states that enact it.

3 Sec. 5. This article may be cited as the "Uniform Disclaimer of
4 Property Interests Act (1999)".

5 Chapter 2. Definitions

6 Sec. 1. "Beneficiary designation" means an instrument, other
7 than an instrument creating a trust, naming the beneficiary of:

- 8 (1) an annuity or insurance policy;
- 9 (2) an account with a designation for payment on death;
- 10 (3) a security registered in beneficiary form;
- 11 (4) a pension, profit sharing, retirement, or other employment
12 related benefit plan; or
- 13 (5) any other nonprobate transfer at death, except for
14 property held as joint tenants with rights of survivorship or
15 as tenants by the entireties.

16 Sec. 2. "Disclaimant" means the person to whom a disclaimed
17 interest or power would have passed had the disclaimer not been
18 made.

19 Sec. 3. "Disclaimed interest" means the interest that would have
20 passed to the disclaimant had the disclaimer not been made.

21 Sec. 4. "Disclaimer" means a refusal to accept an interest in or
22 power over property.

23 Sec. 5. "Fiduciary" means:

- 24 (1) a personal representative, a trustee, or an agent acting
25 under a power of attorney; or
- 26 (2) a person authorized to act as a fiduciary with respect to
27 the property of another person.

28 Sec. 6. "Future interest" means an interest that, if it takes effect
29 in possession or enjoyment, takes effect later than the time of its
30 creation.

31 Sec. 7. "Jointly held property" means property held in the name
32 of at least two (2) persons under an arrangement in which:

- 33 (1) all holders have concurrent interests; and
- 34 (2) the last surviving holder is entitled to the whole of the
35 property.

36 Sec. 8. "Person" means an individual, a corporation, a business
37 trust, an estate, a trust, a partnership, a limited liability company,
38 an association, a joint venture, a government, a governmental
39 subdivision, an agency, or instrumentality, a public corporation, or
40 any other legal or commercial entity.

41 Sec. 9. "State" means a state of the United States, the District of
42 Columbia, Puerto Rico, the United States Virgin Islands, or any

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1 territory or insular possession subject to the jurisdiction of the
 2 United States. The term includes an Indian tribe or band or
 3 Alaskan native village recognized by federal law or formally
 4 acknowledged by a state.

5 **Sec. 10. "Time of distribution"** means the time when a
 6 disclaimed interest would otherwise have taken effect in possession
 7 or enjoyment.

8 **Sec. 11. "Trust"** means:

9 (1) a charitable or noncharitable express trust and any
 10 additions to the trust, regardless of when or how the trust is
 11 created; and

12 (2) a trust created under a statute, judgment, or decree which
 13 requires the trust to be administered in the manner of an
 14 express trust.

15 **Chapter 3. Power to Disclaim; Irrevocability of Disclaimer**

16 **Sec. 1.** A person may disclaim, in whole or part, any interest in
 17 or power over property, including a power of appointment. A
 18 person may disclaim the interest or power even if the creator of the
 19 interest or power imposed:

20 (1) a spendthrift provision or similar restriction on transfer;
 21 or

22 (2) a restriction or limitation on the right to disclaim.

23 **Sec. 2.** Except to the extent a fiduciary's right to disclaim is
 24 expressly restricted or limited by another statute or by the
 25 instrument creating the fiduciary relationship, a fiduciary may
 26 disclaim, in whole or part, any interest in or power over property,
 27 including a power of appointment, whether acting in a personal or
 28 representative capacity. A fiduciary may disclaim the interest or
 29 power even if:

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

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

36 **Sec. 3. (a)** As used in this section, "record" means information
 37 that is inscribed on a tangible medium or that is stored in an
 38 electronic or other medium and is retrievable in perceivable form.

39 **(b)** A disclaimer must:

40 (1) be in a writing or other record;

41 (2) state that it is a disclaimer;

42 (3) describe the interest or power disclaimed;

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- 1 (4) be signed by the person making the disclaimer; and
- 2 (5) be delivered or filed in the manner provided in
- 3 IC 32-17.5-7.
- 4 **Sec. 4. A partial disclaimer may be expressed as:**
- 5 (1) a fraction;
- 6 (2) a percentage;
- 7 (3) a monetary amount;
- 8 (4) a term of years;
- 9 (5) a limitation of a power; or
- 10 (6) any other interest or estate in the property.
- 11 **Sec. 5. A disclaimer becomes irrevocable upon the occurrence**
- 12 **of the later of the following to occur:**
- 13 (1) The disclaimer is delivered or filed as set forth in
- 14 IC 32-17.5-7.
- 15 (2) The disclaimer becomes effective as set forth in
- 16 IC 32-17.5-4 through IC 32-17.5-6.
- 17 **Sec. 6. A disclaimer made under this article is not a transfer, an**
- 18 **assignment, or a release.**
- 19 **Chapter 4. Disclaimer of Interest in Property**
- 20 **Sec. 1. Except for a disclaimer under IC 32-17.5-5 or**
- 21 **IC 32-17.5-6-1, the following rules apply to a disclaimer of an**
- 22 **interest in property:**
- 23 (1) A disclaimer takes effect:
- 24 (A) when the instrument creating the interest becomes
- 25 irrevocable; or
- 26 (B) upon the intestate's death if the interest arose under
- 27 the law of intestate succession.
- 28 (2) A disclaimed interest passes according to any provision in
- 29 the instrument creating the interest:
- 30 (A) that provides for the disposition of the interest should
- 31 the interest be disclaimed; or
- 32 (B) that concerns disclaimed interests in general.
- 33 (3) If an instrument does not contain a provision described in
- 34 subdivision (2), the following rules apply:
- 35 (A) If the disclaimant is an individual, the following rules
- 36 apply:
- 37 (i) Except as provided in item (ii), the disclaimed interest
- 38 passes as if the disclaimant had died immediately before
- 39 the time of distribution.
- 40 (ii) If, by law or under the instrument, the descendants
- 41 of the disclaimant would share in the disclaimed interest
- 42 by any method of representation had the disclaimant

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died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive at the time of distribution.

(B) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(4) Upon the disclaimer of a preceding interest:

(A) a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution; and

(B) a future interest held by the disclaimant is not accelerated in possession or enjoyment.

Chapter 5. Disclaimer of Rights of Survivorship in Jointly Held Property

Sec. 1. (a) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of the following:

(1) A fractional share of the property determined by dividing one (1) by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates.

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

(b) A disclaimer under subsection (a) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

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

Chapter 6. Disclaimer of Certain Powers or Interests

Sec. 1. If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

Sec. 2. If the holder of a power of appointment or other power not held in a fiduciary capacity disclaims the power, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power

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of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

Sec. 3. (a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by:
(1) persons eligible to receive property upon exercise of the power of appointment; or
(2) a taker in default of an exercise of a power of appointment;
takes effect as of the time the instrument creating the power becomes irrevocable.

Sec. 4. (a) If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

Chapter 7. Delivery or Filing of Disclaimer

Sec. 1. Subject to sections 2 through 11 of this chapter, a disclaimer may be delivered by:

- (1) personal delivery;
- (2) first class mail; or
- (3) any other method likely to result in receipt of the disclaimer.

Sec. 2. A disclaimer of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, must be:

- (1) delivered to the personal representative of the decedent's estate; or
- (2) filed with a court having jurisdiction to appoint the personal representative if no personal representative is then serving.

Sec. 3. A disclaimer of an interest in a testamentary trust must be:

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- 1 (1) delivered to the trustee then serving;
 2 (2) delivered to the personal representative of the decedent's
 3 estate if no trustee is then serving; or
 4 (3) filed with a court having jurisdiction to enforce the trust
 5 if no personal representative is then serving.
 6 **Sec. 4. A disclaimer of an interest in an inter vivos trust must**
 7 **be:**
 8 (1) delivered to the trustee then serving;
 9 (2) filed with a court having jurisdiction to enforce the trust
 10 if no trustee is then serving; or
 11 (3) delivered to the settlor of a revocable trust or the
 12 transferor of the interest if the disclaimer is made before the
 13 time the instrument creating the trust becomes irrevocable.
 14 **Sec. 5. A disclaimer of an interest created by a beneficiary**
 15 **designation made before the time the designation becomes**
 16 **irrevocable must be delivered to the person making the beneficiary**
 17 **designation.**
 18 **Sec. 6. A disclaimer of an interest created by a beneficiary**
 19 **designation made after the time the designation becomes**
 20 **irrevocable must be delivered to the person obligated to distribute**
 21 **the interest.**
 22 **Sec. 7. A disclaimer by a surviving holder of jointly held**
 23 **property must be delivered to the person to whom the disclaimed**
 24 **interest passes.**
 25 **Sec. 8. (a) This section applies to a disclaimer of an interest in**
 26 **property by:**
 27 (1) an object; or
 28 (2) a taker in default;
 29 **of exercise of a power of appointment.**
 30 **(b) At any time after the power was created, the disclaimer must**
 31 **be:**
 32 (1) delivered to the holder of the power or to the fiduciary
 33 acting under the instrument that created the power; or
 34 (2) filed with a court having authority to appoint a fiduciary
 35 if no fiduciary is then serving.
 36 **Sec. 9. A disclaimer by an appointee of a nonfiduciary power of**
 37 **appointment must be:**
 38 (1) delivered to:
 39 (A) the holder;
 40 (B) the personal representative of the holder's estate; or
 41 (C) the fiduciary under the instrument that created the
 42 power; or

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(2) filed with a court having authority to appoint the fiduciary if no fiduciary is then serving.

Sec. 10. A disclaimer by a fiduciary of a power over a trust or estate must be delivered as provided in section 2, 3, or 4 of this chapter as if the power disclaimed were an interest in property.

Sec. 11. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

Chapter 8. Limitation or Bar of Disclaimer

Sec. 1. A disclaimer is barred by a written waiver of the right to disclaim if the waiver is:

- (1) executed before the date of the disclaimer;
- (2) executed by the person having the right to disclaim; and
- (3) delivered or filed in the same manner that a disclaimer would be delivered or filed under IC 32-17.5-7.

Sec. 2. A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

- (1) The disclaimant accepts the interest sought to be disclaimed.
- (2) The disclaimant voluntarily:
 - (A) assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed; or
 - (B) contracts to take an action described in clause (A).
- (3) A judicial sale of the interest sought to be disclaimed occurs.

Sec. 3. A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by the previous exercise of the power.

Sec. 4. A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by the previous exercise of the power unless the power is exercisable in favor of the disclaimant.

Sec. 5. A disclaimer is barred or limited if the disclaimer is barred or limited by Indiana law other than this article.

Sec. 6. (a) A disclaimer of a power over property that is barred by this article is ineffective.

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

Chapter 9. Tax Qualified Disclaimer

Sec. 1. Notwithstanding any other provision of this article, if, as

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1 a result of a disclaimer or transfer, the disclaimed or transferred
 2 interest is treated under:
 3 (1) Title 26 of the United States Code, in effect on July 1, 2003,
 4 or later amended or a successor statute; and
 5 (2) the regulations promulgated under the statute referred to
 6 in subdivision (1);
 7 as never having been transferred to the disclaimant, then the
 8 disclaimer or transfer is effective as a disclaimer under this article.
 9 **Chapter 10. Recording of Disclaimer**
 10 **Sec. 1. If an instrument transferring an interest in or power**
 11 **over property subject to a disclaimer is required or permitted by**
 12 **law to be filed, recorded, or registered, the disclaimer may be so**
 13 **filed, recorded, or registered. However, the failure to file, record,**
 14 **or register the disclaimer does not affect its validity as between the**
 15 **disclaimant and persons to whom the property interest or power**
 16 **passes by reason of the disclaimer.**
 17 SECTION 2. IC 32-17-7 IS REPEALED [EFFECTIVE JULY 1,
 18 2003].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1117, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 13, delete "." and insert "**, except for property held as joint tenants with rights of survivorship or as tenants by the entireties.**".

Page 3, line 4, after "would" insert "**otherwise**".

Page 3, line 39, delete "declare the" and insert "**state that it is a**".

Page 6, line 8, delete "an object;" and insert "**persons eligible to receive property upon exercise of the power of appointment;**".

Page 6, line 9, delete ";" and insert "**of an exercise of a power of appointment;**".

Page 6, line 10, delete "of an exercise of a power of appointment".

Page 8, line 7, delete "." and insert "**if the waiver is:**

- (1) executed before the date of the disclaimer;**
- (2) executed by the person having the right to disclaim; and**
- (3) delivered or filed in the same manner that a disclaimer would be delivered or filed under IC 32-17.5-7.**

Page 8, line 26, after "by" insert "**Indiana**".

and when so amended that said bill do pass.

(Reference is to HB 1117 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 12, nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred House Bill No. 1117, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1117 as printed January 17, 2003.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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