
HOUSE BILL No. 1117

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-17.5; IC 32-17-7.

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 Repeals statutes that are superseded concerning disclaimer of property interests.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

January 7, 2003, read first time and referred to Committee on Judiciary.

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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.

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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**



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.

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

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

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

21 Sec. 5. "Fiduciary" means:

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

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

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

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

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

39 Sec. 9. "State" means a state of the United States, the District of
 40 Columbia, Puerto Rico, the United States Virgin Islands, or any
 41 territory or insular possession subject to the jurisdiction of the
 42 United States. The term includes an Indian tribe or band or

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

3 Sec. 10. "Time of distribution" means the time when a
4 disclaimed interest would have taken effect in possession or
5 enjoyment.

6 Sec. 11. "Trust" means:

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

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

13 Chapter 3. Power to Disclaim; Irrevocability of Disclaimer

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

18 (1) a spendthrift provision or similar restriction on transfer;
19 or

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

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

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

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

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

37 (b) A disclaimer must:

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

39 (2) declare the disclaimer;

40 (3) describe the interest or power disclaimed;

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

42 (5) be delivered or filed in the manner provided in

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

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1 who survive at the time of distribution.

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

4 (4) Upon the disclaimer of a preceding interest:

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

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

11 **Chapter 5. Disclaimer of Rights of Survivorship in Jointly Held**
12 **Property**

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

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

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

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

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

29 **Chapter 6. Disclaimer of Certain Powers or Interests**

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

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

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

39 (2) If the holder has exercised the power and the disclaimer is
40 of a power other than a presently exercisable general power
41 of appointment, the disclaimer takes effect immediately after
42 the last exercise of the power.

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(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) an object; 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:

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

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

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1 chapter as if the power disclaimed were an interest in property.

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

5 **Chapter 8. Limitation or Bar of Disclaimer**

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

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

10 (1) The disclaimant accepts the interest sought to be
11 disclaimed.

12 (2) The disclaimant voluntarily:

13 (A) assigns, conveys, encumbers, pledges, or transfers the
14 interest sought to be disclaimed; or

15 (B) contracts to take an action described in clause (A).

16 (3) A judicial sale of the interest sought to be disclaimed
17 occurs.

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

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

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

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

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

33 **Chapter 9. Tax Qualified Disclaimer**

34 Sec. 1. Notwithstanding any other provision of this article, if, as
35 a result of a disclaimer or transfer, the disclaimed or transferred
36 interest is treated under:

37 (1) Title 26 of the United States Code, in effect on July 1, 2003,
38 or later amended or a successor statute; and

39 (2) the regulations promulgated under the statute referred to
40 in subdivision (1);

41 as never having been transferred to the disclaimant, then the
42 disclaimer or transfer is effective as a disclaimer under this article.



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Chapter 10. Recording of Disclaimer
Sec. 1. If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. However, the failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.
SECTION 2. IC 32-17-7 IS REPEALED [EFFECTIVE JULY 1, 2003].

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