

As Reported by the House Civil and Commercial Law Committee

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H. B. No. 160

Representative Bubp

Cosponsors: Representatives Latta, Seitz, Book

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A B I L L

To amend section 5815.36 of the Revised Code to 1
clarify and modify the law relating to disclaimers 2
under the Ohio Trust Code. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 5815.36 of the Revised Code be 4
amended to read as follows: 5

Sec. 5815.36. (A) As used in this section: 6

(1) "Disclaimant" means any person, any guardian or personal 7
representative of a person or estate of a person, or any 8
attorney-in-fact or agent of a person having a general or specific 9
authority to act granted in a written instrument, who is any of 10
the following: 11

(a) With respect to testamentary instruments and intestate 12
succession, an heir, next of kin, devisee, legatee, donee, person 13
succeeding to a disclaimed interest, surviving joint tenant, 14
surviving tenant by the entirety, surviving tenant of a tenancy 15
with a right of survivorship, beneficiary under a testamentary 16
instrument, or person designated to take pursuant to a power of 17
appointment exercised by a testamentary instrument; 18

(b) With respect to nontestamentary instruments, a grantee, donee, person succeeding to a disclaimed interest, surviving joint tenant, surviving tenant by the entireties, surviving tenant of a tenancy with a right of survivorship, beneficiary under a nontestamentary instrument, or person designated to take pursuant to a power of appointment exercised by a nontestamentary instrument;

(c) With respect to fiduciary rights, privileges, powers, and immunities, a fiduciary under a testamentary or nontestamentary instrument. This Division (A)(1)(c) of this section does not authorize a fiduciary who disclaims fiduciary rights, privileges, powers, and immunities to disclaim cause the rights of beneficiaries any beneficiary to be disclaimed unless the instrument creating the fiduciary relationship authorizes the fiduciary to make such a disclaimer.

(d) Any person entitled to take an interest in property upon the death of a person or upon the occurrence of any other event.

(2) "Personal representative" includes any fiduciary as defined in section 2109.01 of the Revised Code and any executor, trustee, guardian, or other person or entity having a fiduciary relationship with regard to any interest in property passing to the fiduciary, executor, trustee, guardian, or other person or entity by reason of a disclaimant's death.

(3) "Property" means all forms of property, real and personal, tangible and intangible.

(B)(1) A disclaimant, other than a fiduciary under an instrument who is not authorized by the instrument to disclaim the interest of a beneficiary, may disclaim, in whole or in part, the succession to any property by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided in this section.

(2) A disclaimant who is a fiduciary under an instrument may 50
disclaim, in whole or in part, any right, power, privilege, or 51
immunity, by executing and by delivering, filing, or recording a 52
written disclaimer instrument in the manner provided in this 53
section. 54

(3) The written instrument of disclaimer shall be signed and 55
acknowledged by the disclaimant and shall contain all of the 56
following: 57

(a) A reference to the donative instrument; 58

(b) A description of the property, part of property, or 59
interest disclaimed, and of any fiduciary right, power, privilege, 60
or immunity disclaimed; 61

(c) A declaration of the disclaimer and its extent. 62

(4) The guardian of the estate of a minor or an incompetent, 63
or the personal representative of a deceased person, whether or 64
not authorized by the instrument to disclaim, with the consent of 65
the probate division of the court of common pleas, may disclaim, 66
in whole or in part, the succession to any property, or interest 67
in property, that the ward, if an adult and competent, or the 68
deceased, if living, might have disclaimed. The guardian or 69
personal representative, or any interested person may file an 70
application with the probate division of the court of common pleas 71
that has jurisdiction of the estate, asking that the court order 72
the guardian or personal representative to execute and deliver, 73
file, or record the disclaimer on behalf of the ward ~~or~~ estate, 74
or deceased person. The court shall order the guardian or personal 75
representative to execute and deliver, file, or record the 76
disclaimer if the court finds, upon hearing after notice to 77
interested parties and such other persons as the court shall 78
direct, that: 79

(a) It is in the best interests of those interested in the 80

estate of the person and of those who will take the disclaimed interest; 81
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(b) It would not materially, adversely affect the minor or incompetent, or the beneficiaries of the estate of the decedent, taking into consideration other available resources and the age, probable life expectancy, physical and mental condition, and present and reasonably anticipated future needs of the minor or incompetent or the beneficiaries of the estate of the decedent. 83
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A written instrument of disclaimer ordered by the court under this division shall be executed and be delivered, filed, or recorded within the time and in the manner in which the person could have disclaimed if the person were living, an adult, and competent. 89
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(C) A partial disclaimer of property that is subject to a burdensome interest created by the donative instrument is not effective unless the disclaimed property constitutes a gift that is separate and distinct from undisclaimed gifts. 94
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(D) The disclaimant shall deliver, file, or record the disclaimer, or cause the same to be done, ~~not later than nine months~~ prior to accepting any benefits of the disclaimed interest and at any time after the latest of the following dates: 98
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(1) The effective date of the donative instrument if both the taker and the taker's interest in the property are finally ascertained on that date; 102
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(2) The date of the occurrence of the event upon which both the taker and the taker's interest in the property become finally ascertainable; 105
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(3) The date on which the disclaimant attains ~~twenty-one~~ eighteen years of age or is no longer an incompetent, without tendering or repaying any benefit received while the disclaimant was under ~~twenty-one~~ eighteen years of age or an incompetent, and 108
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even if a guardian of a minor or incompetent had filed an 112
application pursuant to division (B)(4) of this section and the 113
probate division of the court of common pleas involved did not 114
consent to the guardian executing a disclaimer. 115

(E) No disclaimer instrument is effective under this section 116
if either of the following applies under the terms of the 117
disclaimer instrument: 118

(1) The disclaimant has power to revoke the disclaimer. 119

(2) The disclaimant may transfer, or direct to be 120
transferred, to self the entire legal and equitable ownership of 121
the property subject to the disclaimer instrument. 122

(F)(1) Subject to division (F)(2) of this section, if the 123
interest disclaimed is created by a nontestamentary instrument, 124
the disclaimer instrument shall be delivered personally or by 125
certified mail to the trustee or other person who has legal title 126
to, or possession of, the property disclaimed. 127

(2) If the interest disclaimed is created by a testamentary 128
instrument, by intestate succession, by a transfer on death deed 129
pursuant to section 5302.22 of the Revised Code, or by a 130
certificate of title to a motor vehicle, watercraft, or outboard 131
motor that evidences ownership of the motor vehicle, watercraft, 132
or outboard motor that is transferable on death pursuant to 133
section 2131.13 of the Revised Code, the disclaimer instrument 134
shall be filed in the probate division of the court of common 135
pleas in the county in which proceedings for the administration of 136
the decedent's estate have been commenced, and an executed copy of 137
the disclaimer instrument shall be delivered personally or by 138
certified mail to the personal representative of the decedent's 139
estate. 140

(3) If no proceedings for the administration of the 141
decedent's estate have been commenced, the disclaimer instrument 142

shall be filed in the probate division of the court of common 143
pleas in the county in which proceedings for the administration of 144
the decedent's estate might be commenced according to law. The 145
disclaimer instrument shall be filed and indexed, and fees 146
charged, in the same manner as provided by law for an application 147
to be appointed as personal representative to administer the 148
decedent's estate. The disclaimer is effective whether or not 149
proceedings thereafter are commenced to administer the decedent's 150
estate. If proceedings thereafter are commenced for the 151
administration of the decedent's estate, they shall be filed 152
under, or consolidated with, the case number assigned to the 153
disclaimer instrument. 154

(4) If an interest in real estate is disclaimed, an executed 155
copy of the disclaimer instrument also shall be recorded in the 156
office of the recorder of the county in which the real estate is 157
located. The disclaimer instrument shall include a description of 158
the real estate with sufficient certainty to identify it, and 159
shall contain a reference to the record of the instrument that 160
created the interest disclaimed. If title to the real estate is 161
registered under Chapters 5309. and 5310. of the Revised Code, the 162
disclaimer interest shall be entered as a memorial on the last 163
certificate of title. A spouse of a disclaimant has no dower or 164
other interest in the real estate disclaimed. 165

(G) ~~Unless the~~ If a donative instrument expressly provides 166
~~that, if there is for the distribution of property, part of~~ 167
~~property, or interest in property if there is a disclaimer, there~~ 168
~~shall not be any acceleration of remainders or other interests,~~ 169
~~the property, part of property, or interest disclaimed shall be~~ 170
~~distributed or disposed of, and accelerated or not accelerated, in~~ 171
~~accordance with the donative instrument. In the absence of express~~ 172
~~provisions to the contrary in the donative instrument, the~~ 173
property, part of property, or interest in property disclaimed, 174

and any future interest that is to take effect in possession or 175
enjoyment at or after the termination of the interest disclaimed, 176
shall descend, be distributed, or otherwise be disposed of, and 177
shall be accelerated, in the following manner: 178

(1) If intestate or testate succession is disclaimed, as if 179
the disclaimant had predeceased the decedent; 180

(2) If the disclaimant is one designated to take pursuant to 181
a power of appointment exercised by a testamentary instrument, as 182
if the disclaimant had predeceased the donee of the power; 183

(3) If the donative instrument is a nontestamentary 184
instrument, as if the disclaimant had died before the effective 185
date of the nontestamentary instrument; 186

(4) If the disclaimer is of a fiduciary right, power, 187
privilege, or immunity, as if the right, power, privilege, or 188
immunity was never in the donative instrument. 189

(H) A disclaimer pursuant to this section is effective as of, 190
and relates back for all purposes to, the date upon which the 191
taker and the taker's interest have been finally ascertained. 192

(I) A disclaimant who has a present and future interest in 193
property, and disclaims the disclaimant's present interest in 194
whole or in part, is considered to have disclaimed the 195
disclaimant's future interest to the same extent, unless a 196
contrary intention appears in the disclaimer instrument or the 197
donative instrument. A disclaimant is not precluded from 198
receiving, as an alternative taker, a beneficial interest in the 199
property disclaimed, unless a contrary intention appears in the 200
disclaimer instrument or in the donative instrument. 201

(J) The disclaimant's right to disclaim under this section is 202
barred if, ~~before the expiration of the period within which the~~ 203
~~disclaimant may disclaim the interest,~~ the disclaimant does any of 204
the following: 205

(1) Assigns, conveys, encumbers, pledges, or transfers, or contracts to assign, convey, encumber, pledge, or transfer, the property or any interest in it;	206 207 208
(2) Waives in writing the disclaimant's right to disclaim and executes and delivers, files, or records the waiver in the manner provided in this section for a disclaimer instrument;	209 210 211
(3) Accepts the property or an interest in it;	212
(4) Permits or suffers a sale or other disposition of the property pursuant to judicial action against the disclaimant.	213 214
(K) A <u>Neither a</u> fiduciary's application for appointment or assumption of duties as a fiduciary does not waive <u>nor a beneficiary's application for appointment as a personal representative or fiduciary waives</u> or bar <u>bars</u> the disclaimant's right to disclaim a right, power, privilege, or immunity <u>as a personal representative or fiduciary or the beneficiary's right to disclaim property.</u>	215 216 217 218 219 220 221
(L) The right to disclaim under this section exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.	222 223 224
(M) A disclaimer instrument or written waiver of the right to disclaim that has been executed and delivered, filed, or recorded as required by this section is final and binding upon all persons.	225 226 227
(N) The right to disclaim and the procedures for disclaimer established by this section are in addition to, and do not exclude or abridge, any other rights or procedures existing <u>that exist or formerly existed</u> under any other section of the Revised Code or at common law to assign, convey, release, refuse to accept, renounce, waive, or disclaim property.	228 229 230 231 232 233
(O)(1) No person is liable for distributing or disposing of property in a manner inconsistent with the terms of a valid	234 235

disclaimer if the distribution or disposition is otherwise proper 236
and the person has no actual knowledge of the disclaimer. 237

(2) No person is liable for distributing or disposing of 238
property in reliance upon the terms of a disclaimer that is 239
invalid because the right of disclaimer has been waived or barred 240
if the distribution or disposition is otherwise proper and the 241
person has no actual knowledge of the facts that constitute a 242
waiver or bar to the right to disclaim. 243

(P)(1) A disclaimant may disclaim pursuant to this section 244
any interest in property that is in existence on September 27, 245
1976, if either the interest in the property or the taker of the 246
interest in the property is not finally ascertained on that date. 247

(2) No disclaimer executed pursuant to this section destroys 248
or diminishes an interest in property that exists on September 27, 249
1976, in any person other than the disclaimant. 250

(Q) This section may be applied separately to different 251
interests or powers created in the disclaimant by the same 252
testamentary or nontestamentary instrument. 253

Section 2. That existing section 5815.36 of the Revised Code 254
is hereby repealed. 255

Section 3. The amendments to divisions (A), (B), (G), (K), 256
(N), and (Q) of section 5815.36 of the Revised Code contained in 257
Section 1 of this act are intended to clarify and be declaratory 258
of the law as it existed prior to the enactment of this act and 259
shall be construed accordingly. 260

Section 4. The General Assembly recognizes that section 2518 261
of the Internal Revenue Code defines a qualified disclaimer, in 262
part, as a written refusal by a person to accept an interest in 263
property that is received by the transferor of the interest within 264
nine months after the later of the date on which the transfer 265

creating the interest is made and the date on which the person 266
attains twenty-one years of age. By amending division (D) of 267
section 5815.36 of the Revised Code to eliminate a reference to 268
the nine-month period, the General Assembly intends to create the 269
possibility that some disclaimers governed by the law of this 270
state will be qualified under section 2518 of the Internal Revenue 271
Code and some will not be qualified under that section. 272