

SENATE BILL NO. 44—COMMITTEE ON JUDICIARY

PREFILED JANUARY 30, 2007

Referred to Committee on Judiciary

SUMMARY—Enacts the Uniform Disclaimer of Property Interests Act. (BDR 10-754)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to property; enacting the Uniform Disclaimer of Property Interests Act (1999); and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill repeals the provisions of existing law concerning the disclaimer of property interests and enacts the Uniform Disclaimer of Property Interests Act (1999). Disclaimers are used by those who receive property as heirs or legatees in an estate, or by beneficiaries of a nontestamentary transfer of property at death, such as the beneficiaries of a trust. A disclaimer is simply a declaration by the person entitled to property that the interest in that property is disclaimed or renounced. A disclaimer allows the disclaiming heir, legatee or beneficiary to disclaim an interest in such a fashion that the right to the property that is disclaimed is treated as if it never existed. The Act provides the authority to make a disclaimer, establishes what interests may be disclaimed, sets forth the time when a disclaimer is effective and addresses the effect of a disclaimer on the distribution of the disclaimed property interests. According to the National Conference of Commissioners on Uniform State Laws, the Act is designed to be a useful tool for estate planners, trustees, beneficiaries, heirs and devisees when the transfer of an interest in an estate, trust or other nontestamentary transfer would be better done without an interest actually transferring.

Under existing law, if a person disclaims an interest in property, the disclaimed interest is distributed as provided in the instrument creating the interest or, if that instrument does not provide for the distribution of a disclaimed interest, the disclaimed interest is distributed as if the person disclaiming the interest had predeceased the person creating the interest. (NRS 120.060) **Section 15** of this bill states that if the instrument creating the interest does not provide for the disposition of a disclaimed interest, the disclaimed interest passes as if the disclaimant had died before the time that it is certain to whom the disclaimed interest belongs. If the



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25 death of the disclaimant would cause the disclaimed interest to pass to the
26 descendants of the disclaimant, the disclaimed interest passes only to the
27 descendants who are alive at the time that it is certain to whom the disclaimed
28 interest belongs. However, if the death of the disclaimant would cause the
29 disclaimed interest to pass to the estate of the disclaimant, the disclaimed interest
30 passes to the descendants of the disclaimant who are alive at the time that it is
31 certain to whom the disclaimed interest belongs. If no descendant is alive at that
32 time, the disclaimed interest passes according to the law of intestate succession of
33 the domicile of the person who created the interest.

34 Existing law requires a disclaimer to be filed within a reasonable time after the
35 person making the disclaimer obtains knowledge of the interest in the property. In
36 addition, existing law provides that, in certain circumstances, a disclaimer is
37 conclusively presumed to have been filed within a reasonable time, while, in other
38 circumstances, a disclaimer is conclusively presumed not to have been filed within
39 a reasonable time. (NRS 120.030) The Uniform Act does not express any time
40 limitations on the making and filing of a disclaimer. However, **section 22** of this
41 bill states that, in certain circumstances, the right to disclaim is barred or limited.
42 Under **section 22**, a disclaimer of a power of appointment which is barred has no
43 effect, but a disclaimer of an interest in property which is barred has the same effect
44 as a transfer of the interest to the person who would have taken the interest if the
45 disclaimer had not been barred.

46 Under existing law, a disclaimer that affects real property must be recorded in
47 the same manner as a deed of real property. (NRS 120.040) Under **section 24** of
48 this bill, a disclaimer may be recorded, but a failure to record a disclaimer does not
49 affect the validity of the disclaimer as between the disclaimant and the persons who
50 take the property because of the disclaimer.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 120 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 27, inclusive, of this
3 act.

4 **Sec. 2.** *This chapter may be cited as the Uniform Disclaimer*
5 *of Property Interests Act (1999).*

6 **Sec. 3.** *As used in this chapter, the words and terms defined*
7 *in sections 4 to 11, inclusive, of this act have the meanings*
8 *ascribed to them in those sections.*

9 **Sec. 4.** *“Disclaimant” means the person to whom a*
10 *disclaimed interest or power would have passed had the disclaimer*
11 *not been made.*

12 **Sec. 5.** *“Disclaimed interest” means the interest that would*
13 *have passed to the disclaimant had the disclaimer not been made.*

14 **Sec. 6.** *“Disclaimer” means the refusal to accept an interest*
15 *in or power over property.*

16 **Sec. 7.** *“Fiduciary” means a personal representative, trustee,*
17 *agent acting under a power of attorney or other person authorized*
18 *to act as a fiduciary with respect to the property of another person.*



1 **Sec. 8.** *“Jointly held property” means property held in the*
2 *name of two or more persons under an arrangement in which all*
3 *holders have concurrent interests and under which the last*
4 *surviving holder is entitled to the whole of the property.*

5 **Sec. 9.** *“Person” means an individual, corporation, business*
6 *trust, estate, trust, partnership, limited-liability company,*
7 *association, joint venture, public corporation, government,*
8 *governmental subdivision, agency or instrumentality, or any other*
9 *legal or commercial entity.*

10 **Sec. 10.** *“State” means a state of the United States, the*
11 *District of Columbia, Puerto Rico, the United States Virgin*
12 *Islands or any territory or insular possession subject to the*
13 *jurisdiction of the United States. The term includes an Indian tribe*
14 *or band, or Alaskan native village, recognized by federal law or*
15 *formally acknowledged by a state.*

16 **Sec. 11.** *“Trust” means:*

17 1. *An express trust, charitable or noncharitable, with*
18 *additions thereto, whenever and however created; and*

19 2. *A trust created pursuant to a statute, judgment or decree*
20 *which requires the trust to be administered in the manner of an*
21 *express trust.*

22 **Sec. 12.** *This chapter applies to disclaimers of any interest in*
23 *or power over property, whenever created.*

24 **Sec. 13.** 1. *Unless displaced by a provision of this chapter,*
25 *the principles of law and equity supplement this chapter.*

26 2. *This chapter does not limit any right of a person to waive,*
27 *release, disclaim or renounce an interest in or power over property*
28 *under a law other than this chapter.*

29 **Sec. 14.** 1. *A person may disclaim, in whole or part, any*
30 *interest in or power over property, including a power of*
31 *appointment. A person may disclaim the interest or power even if*
32 *its creator imposed a spendthrift provision or similar restriction on*
33 *transfer or a restriction or limitation on the right to disclaim.*

34 2. *Except to the extent a fiduciary’s right to disclaim is*
35 *expressly restricted or limited by another statute of this State or by*
36 *the instrument creating the fiduciary relationship, a fiduciary may*
37 *disclaim, in whole or part, any interest in or power over property,*
38 *including a power of appointment, whether acting in a personal or*
39 *representative capacity. A fiduciary may disclaim the interest or*
40 *power even if its creator imposed a spendthrift provision or similar*
41 *restriction on transfer or a restriction or limitation on the right to*
42 *disclaim, or an instrument other than the instrument that created*
43 *the fiduciary relationship imposed a restriction or limitation on*
44 *the right to disclaim.*



3. To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer and be delivered or filed in the manner provided in section 21 of this act. As used in this subsection:

(a) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(b) "Signed" means, with present intent to authenticate or adopt a record, to:

(1) Execute or adopt a tangible symbol; or

(2) Attach to or logically associate with the record an electronic sound, symbol or process.

4. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power or any other interest or estate in the property.

5. A disclaimer becomes irrevocable when it is delivered or filed pursuant to section 21 of this act or when it becomes effective as provided in sections 15 to 20, inclusive, of this act, whichever occurs later.

6. A disclaimer made under this chapter is not a transfer, assignment or release.

Sec. 15. 1. Except for a disclaimer governed by section 16 or 17 of this act, the following rules apply to a disclaimer of an interest in property:

(a) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(b) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(c) If the instrument does not contain a provision described in paragraph (b), the following rules apply:

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

(2) If the disclaimant is an individual, except as otherwise provided in subparagraphs (3) and (4), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(3) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the



1 descendants of the disclaimant who survive the time of
2 distribution.

3 (4) If the disclaimed interest would pass to the
4 disclaimant's estate had the disclaimant died before the time of
5 distribution, the disclaimed interest instead passes by
6 representation to the descendants of the disclaimant who survive
7 the time of distribution. If no descendant of the disclaimant
8 survives the time of distribution, the disclaimed interest passes to
9 those persons, including the State but excluding the disclaimant,
10 and in such shares as would succeed to the transferor's intestate
11 estate under the intestate succession law of the transferor's
12 domicile had the transferor died at the time of distribution.
13 However, if the transferor's surviving spouse is living but is
14 remarried at the time of distribution, the transferor is deemed to
15 have died unmarried at the time of distribution.

16 (d) Upon the disclaimer of a preceding interest, a future
17 interest held by a person other than the disclaimant takes effect as
18 if the disclaimant had died or ceased to exist immediately before
19 the time of distribution, but a future interest held by the
20 disclaimant is not accelerated in possession or enjoyment.

21 2. As used in this section:

22 (a) "Future interest" means an interest that takes effect in
23 possession or enjoyment, if at all, later than the time of its
24 creation.

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

27 **Sec. 16.** 1. Upon the death of a holder of jointly held
28 property, a surviving holder may disclaim, in whole or part, the
29 greater of:

30 (a) A fractional share of the property determined by dividing
31 the number one by the number of joint holders alive immediately
32 before the death of the holder to whose death the disclaimer
33 relates; or

34 (b) All of the property except that part of the value of the entire
35 interest attributable to the contribution furnished by the
36 disclaimant.

37 2. A disclaimer under subsection 1 takes effect as of the death
38 of the holder of jointly held property to whose death the disclaimer
39 relates.

40 3. An interest in jointly held property disclaimed by a
41 surviving holder of the property passes as if the disclaimant
42 predeceased the holder to whose death the disclaimer relates.

43 **Sec. 17.** If a trustee disclaims an interest in property that
44 otherwise would have become trust property, the interest does not
45 become trust property.



1 **Sec. 18.** *If a holder disclaims a power of appointment or*
2 *other power not held in a fiduciary capacity, the following rules*
3 *apply:*

4 1. *If the holder has not exercised the power, the disclaimer*
5 *takes effect as of the time the instrument creating the power*
6 *becomes irrevocable.*

7 2. *If the holder has exercised the power and the disclaimer is*
8 *of a power other than a presently exercisable general power of*
9 *appointment, the disclaimer takes effect immediately after the last*
10 *exercise of the power.*

11 3. *The instrument creating the power is construed as if the*
12 *power expired when the disclaimer became effective.*

13 **Sec. 19.** 1. *A disclaimer of an interest in property by an*
14 *appointee of a power of appointment takes effect as of the time the*
15 *instrument by which the holder exercises the power becomes*
16 *irrevocable.*

17 2. *A disclaimer of an interest in property by an object or taker*
18 *in default of an exercise of a power of appointment takes effect as*
19 *of the time the instrument creating the power becomes irrevocable.*

20 **Sec. 20.** 1. *If a fiduciary disclaims a power held in a*
21 *fiduciary capacity which has not been exercised, the disclaimer*
22 *takes effect as of the time the instrument creating the power*
23 *becomes irrevocable.*

24 2. *If a fiduciary disclaims a power held in a fiduciary*
25 *capacity which has been exercised, the disclaimer takes effect*
26 *immediately after the last exercise of the power.*

27 3. *A disclaimer under this section is effective as to another*
28 *fiduciary if the disclaimer so provides and the fiduciary*
29 *disclaiming has the authority to bind the estate, trust or other*
30 *person for whom the fiduciary is acting.*

31 **Sec. 21.** 1. *Subject to subsections 2 to 11, inclusive, delivery*
32 *of a disclaimer may be effected by personal delivery, first-class*
33 *mail or any other method likely to result in its receipt.*

34 2. *In the case of an interest created under the law of intestate*
35 *succession or an interest created by will, other than an interest in*
36 *a testamentary trust:*

37 (a) *A disclaimer must be delivered to the personal*
38 *representative of the decedent's estate; or*

39 (b) *If no personal representative is then serving, it must be*
40 *filed with a court having jurisdiction to appoint the personal*
41 *representative.*

42 3. *In the case of an interest in a testamentary trust:*

43 (a) *A disclaimer must be delivered to the trustee then serving*
44 *or, if no trustee is then serving, to the personal representative of*
45 *the decedent's estate; or*



1 (b) If no personal representative is then serving, it must be
2 filed with a court having jurisdiction to enforce the trust.

3 4. In the case of an interest in an inter vivos trust:

4 (a) A disclaimer must be delivered to the trustee then serving;

5 (b) If no trustee is then serving, it must be filed with a court
6 having jurisdiction to enforce the trust; or

7 (c) If the disclaimer is made before the time the instrument
8 creating the trust becomes irrevocable, it must be delivered to the
9 settlor of a revocable trust or the transferor of the interest.

10 5. In the case of an interest created by a beneficiary
11 designation made before the time the designation becomes
12 irrevocable, a disclaimer must be delivered to the person making
13 the beneficiary designation.

14 6. In the case of an interest created by a beneficiary
15 designation made after the time the designation becomes
16 irrevocable, a disclaimer must be delivered to the person obligated
17 to distribute the interest.

18 7. In the case of a disclaimer by a surviving holder of jointly
19 held property, the disclaimer must be delivered to the person to
20 whom the disclaimed interest passes.

21 8. In the case of a disclaimer by an object or taker in default
22 of exercise of a power of appointment at any time after the power
23 was created:

24 (a) The disclaimer must be delivered to the holder of the power
25 or to the fiduciary acting under the instrument that created the
26 power; or

27 (b) If no fiduciary is then serving, it must be filed with a court
28 having authority to appoint the fiduciary.

29 9. In the case of a disclaimer by an appointee of a
30 nonfiduciary power of appointment:

31 (a) The disclaimer must be delivered to the holder, the
32 personal representative of the holder's estate or to the fiduciary
33 under the instrument that created the power; or

34 (b) If no fiduciary is then serving, it must be filed with a court
35 having authority to appoint the fiduciary.

36 10. In the case of a disclaimer by a fiduciary of a power over
37 a trust or estate, the disclaimer must be delivered as provided in
38 subsection 2, 3 or 4, as if the power disclaimed were an interest in
39 property.

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

43 12. As used in this section, "beneficiary designation" means
44 an instrument, other than an instrument creating a trust, naming
45 the beneficiary of:



- 1 (a) *An annuity or insurance policy;*
- 2 (b) *An account with a designation for payment on death;*
- 3 (c) *A security registered in beneficiary form;*
- 4 (d) *A pension, profit-sharing, retirement or other employment-*
- 5 *related benefit plan; or*
- 6 (e) *Any other nonprobate transfer at death.*

7 **Sec. 22. 1.** *A disclaimer is barred by a written waiver of the*

8 *right to disclaim.*

9 2. *A disclaimer of an interest in property is barred if any of*

10 *the following events occur before the disclaimer becomes effective:*

11 (a) *The disclaimant accepts the interest sought to be*

12 *disclaimed;*

13 (b) *The disclaimant voluntarily assigns, conveys, encumbers,*

14 *pledges or transfers the interest sought to be disclaimed or*

15 *contracts to do so; or*

16 (c) *A judicial sale of the interest sought to be disclaimed*

17 *occurs.*

18 3. *A disclaimer, in whole or part, of the future exercise of a*

19 *power held in a fiduciary capacity is not barred by its previous*

20 *exercise.*

21 4. *A disclaimer, in whole or part, of the future exercise of a*

22 *power not held in a fiduciary capacity is not barred by its previous*

23 *exercise unless the power is exercisable in favor of the*

24 *disclaimant.*

25 5. *A disclaimer is barred or limited if so provided by law other*

26 *than this chapter.*

27 6. *A disclaimer of a power over property which is barred by*

28 *this section is ineffective. A disclaimer of an interest in property*

29 *which is barred by this section takes effect as a transfer of the*

30 *interest disclaimed to the persons who would have taken the*

31 *interest under this chapter had the disclaimer not been barred.*

32 **Sec. 23.** *Notwithstanding any other provision of this chapter,*

33 *if as a result of a disclaimer or transfer the disclaimed or*

34 *transferred interest is treated pursuant to the provisions of Title 26*

35 *of the United States Code, as now or hereafter amended, or any*

36 *successor statute thereto, and the regulations promulgated*

37 *thereunder, as never having been transferred to the disclaimant,*

38 *then the disclaimer or transfer is effective as a disclaimer under*

39 *this chapter.*

40 **Sec. 24.** *If an instrument transferring an interest in or power*

41 *over property subject to a disclaimer is required or permitted by*

42 *law to be filed, recorded or registered, the disclaimer may be so*

43 *filed, recorded or registered. Failure to file, record or register the*

44 *disclaimer does not affect its validity as between the disclaimant*



1 *and persons to whom the property interest or power passes by*
2 *reason of the disclaimer.*

3 **Sec. 25.** *Except as otherwise provided in section 22 of this*
4 *act, an interest in or power over property existing on October 1,*
5 *2007, as to which the time for delivering or filing a disclaimer*
6 *under law superseded by this chapter has not expired may be*
7 *disclaimed after October 1, 2007.*

8 **Sec. 26.** *This chapter modifies, limits and supersedes the*
9 *federal Electronic Signatures in Global and National Commerce*
10 *Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or*
11 *supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or*
12 *authorize electronic delivery of any of the notices described in*
13 *section 103(b) of that act, 15 U.S.C. § 7003(b).*

14 **Sec. 27.** *In applying and construing the Uniform Disclaimer*
15 *of Property Interests Act, consideration must be given to the need*
16 *to promote uniformity of the law with respect to its subject matter*
17 *among states that enact it.*

18 **Sec. 28.** NRS 120.010, 120.020, 120.030, 120.040, 120.050,
19 120.060, 120.070, 120.080, 120.090, 132.105 and 132.110 are
20 hereby repealed.

LEADLINES OF REPEALED SECTIONS

- 120.010 Definitions.
- 120.020 Right to disclaim; requisites of disclaimer.
- 120.030 Time for filing.
- 120.040 Place of filing; acknowledgment, proof and recording.
- 120.050 Persons bound by disclaimer; waiver of right to disclaim.
- 120.060 Effect of disclaimer.
- 120.070 Acceptance of interest precludes disclaimer.
- 120.080 Right to disclaim: Spendthrift provisions and similar restrictions.
- 120.090 Disclaimer of interest arising before April 16, 1979.
- 132.105 "Disclaimant" defined.
- 132.110 "Disclaimer" defined.

