
HOUSE BILL 1138

State of Washington

56th Legislature

1999 Regular Session

By Representatives Sheahan and Constantine

Read first time 01/15/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to disclaimer of interests; amending RCW 11.86.041;
2 creating a new section; providing an effective date; and declaring an
3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 11.86.041 and 1997 c 252 s 73 are each amended to read
6 as follows:

7 (1) Unless the instrument creating an interest directs to the
8 contrary, the interest disclaimed shall pass as if the beneficiary had
9 died immediately prior to the date of the transfer of the interest.
10 The disclaimer shall relate back to this date for all purposes.

11 ~~(2) ((Unless the beneficiary is the surviving spouse of a deceased~~
12 ~~creator of the interest, the beneficiary shall also be deemed to have~~
13 ~~disclaimed all interests in the property, including all beneficial~~
14 ~~interests in any trust into which the disclaimed property may pass.~~
15 ~~This subsection applies unless the disclaimer specifically refers to~~
16 ~~this subsection and states to the contrary.))~~ Unless the beneficiary
17 provides otherwise in the disclaimer, in addition to the interests
18 disclaimed, the beneficiary shall also be deemed to have disclaimed the
19 minimum of all interests in the disclaimed property necessary to make

1 the disclaimer a qualified disclaimer for purposes of section 2518 of
2 the Internal Revenue Code.

3 (3) Any future interest taking effect in possession or enjoyment
4 after termination of the interest disclaimed takes effect as if the
5 beneficiary had died prior to the date of the beneficiary's final
6 ascertainment as a beneficiary and the indefeasible vesting of the
7 interest.

8 (4) The disclaimer is binding upon the beneficiary and all persons
9 claiming through or under the beneficiary.

10 (5) Unless the instrument creating the interest directs to the
11 contrary, a beneficiary whose interest in a devise or bequest under a
12 will has been disclaimed shall be deemed to have died for purposes of
13 RCW 11.12.110.

14 ~~(6) ((In the case of a disclaimer that results in property passing~~
15 ~~to a trust over which the disclaimant has any power to direct the~~
16 ~~beneficial enjoyment of the disclaimed property, the disclaimant shall~~
17 ~~also be deemed to have disclaimed any power to direct the beneficial~~
18 ~~enjoyment of the disclaimed property, unless the power is limited by an~~
19 ~~ascertainable standard for the health, education, support, or~~
20 ~~maintenance of any person as described in section 2041 or 2514 of the~~
21 ~~Internal Revenue Code and the applicable regulations adopted under~~
22 ~~those sections. This subsection applies unless the disclaimer~~
23 ~~specifically refers to this subsection and states to the contrary.~~
24 ~~This subsection shall not be deemed to otherwise prevent such a~~
25 ~~disclaimant from acting as trustee or executor over disclaimed~~
26 ~~property.))~~ In the case of a disclaimer of property over which the
27 disclaimant has any power to direct the beneficial enjoyment of the
28 disclaimed property, the disclaimant shall also be deemed to have
29 disclaimed any power to direct the beneficial enjoyment of the
30 disclaimed property, unless the power is limited by an ascertainable
31 standard relating to the health, education, support, or maintenance of
32 any person as described in section 2041 or 2514 of the Internal Revenue
33 Code and applicable regulations adopted under those sections. This
34 subsection applies unless the disclaimer specifically provides
35 otherwise. This subsection shall not be deemed to otherwise prevent
36 such a disclaimant from acting as trustee or personal representative
37 over disclaimed property.

1 NEW SECTION. **Sec. 2.** This act applies retroactively to all
2 disclaimers made after December 31, 1997.

3 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 July 1, 1999.

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