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FILED MAR 18 1981

SENATE FILE 434

BY COMMITTEE ON JUDICIARY

(FORMERLY SSB 55)

Approved 3/17 (9-8-81)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the disclaimer of succession to property
2 and providing a January 1 effective date.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SENATE FILE 434

S-3434

1 Amend Senate File 434 as follows:

2 1. Page 3, line 14, by inserting after the period
3 the following:

4 "However, if such person disclaims only the future
5 interest, in whole or in part, that person shall
6 retain the present interest, and the disclaimer shall
7 only effect the future interest involved."

S-3434 FILED
APRIL 9, 1981

BY A. R. BUD KUDART

1 Section 1. Section 633.704, Code 1981, is amended by
2 striking the section and inserting in lieu thereof the fol-
3 lowing:

4 633.704 DISCLAIMER.

5 1. RIGHT OF DISCLAIMER. A person, including a person
6 designated to take pursuant to a power of appointment, is
7 not required to take as a distributee, as a beneficiary, as
8 an annuitant, or as a transferee including as a transferee
9 in joint tenancy, or otherwise, and a person, as a donee of
10 a power, is not required to accept any right of appointment.
11 If the requirements of this section are met, a person may
12 disclaim, in whole or in part, the transfer of a power, or
13 the transfer, receipt of, or entitlement or succession to,
14 any property, real or personal, or any interest in property,
15 including but not limited to an interest in trust, and
16 including but not limited to ownership, proceeds of, or other
17 benefits to or under a life insurance policy or annuity
18 contract, by delivering a written instrument of disclaimer
19 within the time and in the manner provided in this section.
20 The instrument shall:

21 a. Describe the property, interest, or right disclaimed.
22 b. Declare the disclaimer and the extent of the dis-
23 claimer.

24 c. Be signed and acknowledged by the disclaimant.

25 2. TIME OF DISCLAIMER--FILING--IRREVOCABILITY.

26 a. TIME OF DISCLAIMER. The disclaimer instrument shall
27 be received by the transferor of the property, interest, or
28 right, the transferor's fiduciary, or the holder of the legal
29 title to which the property, interest, or right relates, not
30 later than the date which is nine months after the later of
31 the date on which the transfer of the property, interest,
32 or right is made, or the date on which the disclaimant attains
33 eighteen years of age. The nine-month period for making a
34 disclaimer shall be determined with reference to each transfer.
35 With respect to a testamentary transfer, the transfer occurs

1 upon the date of the decedent's death. Any property, interest,
2 or right may be disclaimed nine months after the date of the
3 disclaimant's eighteenth birthday even though the disclaimant
4 received benefits from the property, interest, or right with-
5 out any action on the disclaimant's part before attaining
6 eighteen years of age. However, if a person entitled to dis-
7 claim does not have actual knowledge of the existence of the
8 transfer, the disclaimer may be made not later than nine
9 months after the person has actual knowledge of the existence
10 of the transfer.

11 b. FILING. A copy of an instrument of disclaimer affecting
12 real estate shall be filed in the office of the county recorder
13 of the county where the real estate is located. Failure to
14 file with the county recorder within the time permitted for
15 disclaimer does not invalidate the disclaimer. A copy of
16 an instrument of disclaimer, regardless of subject, may be
17 filed with the clerk of court of the county in which
18 proceedings for administration have been commenced, if
19 applicable.

20 c. IRREVOCABILITY. An instrument of disclaimer shall
21 be unqualified and is irrevocable from and after the date
22 of its receipt.

23 3. EFFECTIVE DISCLAIMER.

24 a. PASSAGE OF DISCLAIMED INTEREST OR PROPERTY. Unless
25 the transferor has otherwise provided, the property, interest,
26 or right disclaimed, and any future interest which is to take
27 effect in possession or enjoyment at or after the termination
28 of the interest or right disclaimed, descends or shall be
29 distributed as if the disclaimant has died prior to the date
30 of the transfer, or if the disclaimant is one designated to
31 take pursuant to a power of appointment exercised by
32 testamentary instrument, then as if the disclaimant has
33 predeceased the donee of the power unless the donee of the
34 power has otherwise provided. In every case, the disclaimer
35 relates back for all purposes to the date of the transfer.

1 In the case of a disclaiming beneficiary under a will, other
2 than a spouse, the property, interest, or right disclaimed
3 passes to the heirs of the disclaimant unless from the terms
4 of the transferor's will the intent is clear and explicit
5 to the contrary, in which event the property, interest, or
6 right disclaimed passes pursuant to the will. In the case
7 of a disclaimer under a will by a spouse the property,
8 interest, or right disclaimed lapses unless from the terms
9 of the transferor's will the intent is clear and explicit
10 to the contrary.

11 b. FUTURE INTEREST. A person who has a present and a
12 future interest in property and who disclaims the present
13 interest, in whole or in part, shall be deemed to have
14 disclaimed the future interest to the same extent.

15 c. DEATH OR DISABILITY OF DISCLAIMANT. If a person eligi-
16 ble to disclaim dies within the time allowed for a disclaimer,
17 the right to disclaim continues for the time allowed and the
18 personal representative of the person eligible to disclaim
19 has the same right to disclaim as the disclaimant and may
20 disclaim on behalf of his or her decedent. If a person
21 entitled to disclaim is disabled, the court may authorize
22 or direct a conservator or guardian to exercise the right
23 to disclaim on behalf of the person under disability if the
24 court finds it is in the person's best interests.

25 4. WAIVER AND BAR. An assignment, conveyance, encumbrance,
26 pledge, or transfer of any property, interest, or right, or
27 a contract therefor, or a written waiver of the right to dis-
28 claim, or an acceptance of any property, interest, or right,
29 by an heir, devisee, donee, transferee, joint owner, person
30 succeeding to a disclaimed interest, annuitant, beneficiary
31 under a life insurance policy, or person designated to take
32 pursuant to a power of appointment exercised by testamentary
33 instrument, or a sale of property by execution, made before
34 the expiration of the period in which a person may disclaim
35 as provided in this section, bars the right to disclaim that

1 property, interest, or right. An election by a surviving
2 spouse under sections 633.236 through 633.246 is not a waiver
3 or bar of the right to disclaim. The right to disclaim exists
4 irrespective of any limitation on the interest of the
5 disclaimant in the nature of a spendthrift provision or similar
6 restriction. A disclaimer, when received, as provided in
7 this section, or a written waiver of the right to disclaim,
8 is binding upon the disclaimant or person waiving and all
9 parties claiming by, through, and under the disclaimant or
10 person waiving. If a beneficiary who disclaims any property,
11 interest, or right is also a fiduciary, actions taken by the
12 person in the exercise of fiduciary powers to preserve or
13 maintain the property, interest, or right shall not be treated
14 as an acceptance of the property, interest, or right. A
15 fiduciary, however, does not retain discretionary power to
16 direct the enjoyment of the disclaimed property, interest,
17 or right.

18 5. EXCLUSIVENESS OF REMEDY. This section does not abridge
19 the right of a person to assign, convey, release, or renounce
20 any property, interest, or right arising under any other
21 statute.

22 6. EFFECTIVE DATE--REPEAL. This section applies only
23 to transfers occurring on or after the effective date of this
24 Act.

25 Sec. 2. Section 1 of this Act does not apply to any trans-
26 fer occurring prior to the effective date of this Act. A
27 transfer occurring prior to the effective date of this Act
28 shall be governed by the law as it existed prior to the ef-
29 fective date of this Act.

30 EXPLANATION

31 This bill amends section 633.704 of the probate code, re-
32 lating to the rights of persons to disclaim interests in
33 property passing under the laws of inheritance or succession.

34 The bill modifies the manner in which disclaimer must be
35 made and the dates which determine the time limits for dis-

1 claiming, and the bill establishes statutory rules of distribu-
2 tion to apply to disclaimed property.

3 The bill would take effect July 1 following enactment and
4 would apply only to transfers occurring on or after that date.

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