

22 2/2/88 (p. 1704) (p. 1704)

FEB 3 1988

Place On Calendar

HOUSE FILE 2166

BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(Formerly House Study Bill 514)

Passed House, Date 2/2/88 (p. 1704) Passed Senate, Date 5/06/88 (p. 1757)

Vote: Ayes 97 Nays 0 Vote: Ayes 44 Nays 0

Approved April 11, 1988 (p. 1704)

A BILL FOR

1 An Act relating to a disclaimer of interest by a beneficiary also
2 acting as a fiduciary.

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

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HF 2166

1 Section 1. Section 633.704, subsection 4, Code 1987, is
2 amended to read as follows:

3 4. WAIVER AND BAR. An assignment, conveyance,
4 encumbrance, pledge, or transfer of any property, interest, or
5 right, or a contract therefor, or a written waiver of the
6 right to disclaim, or an acceptance of any property, interest,
7 or right, by an heir, devisee, donee, transferee, joint owner,
8 person succeeding to a disclaimed interest, annuitant,
9 beneficiary under a life insurance policy, or person
10 designated to take pursuant to a power of appointment
11 exercised by testamentary instrument, or a sale of property by
12 execution, made before the expiration of the period in which a
13 person may disclaim as provided in this section, bars the
14 right to disclaim that property, interest, or right. An
15 election by a surviving spouse under sections 633.236 to
16 633.246 is not a waiver or bar of the right to disclaim. The
17 right to disclaim exists irrespective of any limitation on the
18 interest of the disclaimant in the nature of a spendthrift
19 provision or similar restriction. A disclaimer, when
20 received, as provided in this section, or a written waiver of
21 the right to disclaim, is binding upon the disclaimant or
22 person waiving and all parties claiming by, through, and under
23 the disclaimant or person waiving. If a beneficiary who
24 disclaims any property, interest, or right is also a
25 fiduciary, actions taken by the person in the exercise of
26 fiduciary powers to preserve or maintain the property,
27 interest, or right shall not be treated as an acceptance of
28 the property, interest, or right. ~~A-fiduciary,-however,-does~~
29 ~~not-retain-discretionary-power-to-direct-the-enjoyment-of-the~~
30 ~~disclaimed-property,-interest,-or-right.~~ A fiduciary power to
31 distribute any property, interest, or right to designated
32 beneficiaries, if subject to an ascertainable standard, does
33 not bar the right to disclaim by a beneficiary who is also a
34 fiduciary.

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EXPLANATION

1 This bill authorizes a beneficiary, who is also a fiduciary
2 with the power to distribute any property, interest, or right
3 to designated beneficiaries, to disclaim any property,
4 interest, or right if the power to distribute is subject to an
5 ascertainable standard. The bill also strikes language
6 denying the fiduciary, who is also a beneficiary, the
7 discretionary power to direct the enjoyment of any disclaimed
8 property, interest, or right.

9 SUCCESSOR TO HSB 514 (LSB 7592HC)

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Judiciary and Law Enforcement: McKinney, Chair; Chapman, Lageschulte, Peterson
of Carroll and Siegrist.

Judiciary & Law Enforcement

HOUSE FILE

new
5/16/10

BY (PROPOSED COMMITTEE ON
JUDICIARY AND LAW
ENFORCEMENT BILL)

Passed House, Date _____ Passed Senate, Date _____

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

Approved _____

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6 right to disclaim, or an acceptance of any property, interest,
7 or right, by an heir, devisee, donee, transferee, joint owner,
8 person succeeding to a disclaimed interest, annuitant,
9 beneficiary under a life insurance policy, or person
10 designated to take pursuant to a power of appointment
11 exercised by testamentary instrument, or a sale of property by
12 execution, made before the expiration of the period in which a
13 person may disclaim as provided in this section, bars the
14 right to disclaim that property, interest, or right. An
15 election by a surviving spouse under sections 633.236 to
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17 right to disclaim exists irrespective of any limitation on the
18 interest of the disclaimant in the nature of a spendthrift
19 provision or similar restriction. A disclaimer, when
20 received, as provided in this section, or a written waiver of
21 the right to disclaim, is binding upon the disclaimant or
22 person waiving and all parties claiming by, through, and under
23 the disclaimant or person waiving. If a beneficiary who
24 disclaims any property, interest, or right is also a
25 fiduciary, actions taken by the person in the exercise of
26 fiduciary powers to preserve or maintain the property,
27 interest, or right shall not be treated as an acceptance of
28 the property, interest, or right. ~~A-fiduciary,-however,-does~~
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8 property, interest, or right.

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HOUSE FILE 2166

AN ACT

RELATING TO A DISCLAIMER OF INTEREST BY A BENEFICIARY
ALSO ACTING AS A FIDUCIARY.

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

Section 1. Section 633.704, subsection 4, Code 1987, is amended to read as follows:

4. WAIVER AND BAR. An assignment, conveyance, encumbrance, pledge, or transfer of any property, interest, or right, or a contract therefor, or a written waiver of the right to disclaim, or an acceptance of any property, interest, or right, by an heir, devisee, donee, transferee, joint owner, person succeeding to a disclaimed interest, annuitant, beneficiary under a life insurance policy, or person designated to take pursuant to a power of appointment exercised by testamentary instrument, or a sale of property by execution, made before the expiration of the period in which a person may disclaim as provided in this section, bars the right to disclaim that property, interest, or right. An election by a surviving spouse under sections 633.236 to 633.246 is not a waiver or bar of the right to disclaim. The right to disclaim exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction. A disclaimer, when received, as provided in this section, or a written waiver of the right to disclaim, is binding upon the disclaimant or person waiving and all parties claiming by, through, and under the disclaimant or person waiving. If a beneficiary who disclaims any property, interest, or right is also a fiduciary, actions taken by the person in the exercise of fiduciary powers to preserve or maintain the property, interest, or right shall not be treated as an acceptance of

the property, interest, or right. ~~A fiduciary, however, does not retain discretionary power to direct the enjoyment of the disclaimed property, interest, or right.~~ A fiduciary power to distribute any property, interest, or right to designated beneficiaries, if subject to an ascertainable standard, does not bar the right to disclaim by a beneficiary who is also a fiduciary.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2166, Seventy-second General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved April 11, 1988

TERRY E. BRANSTAD
Governor

HF 2166