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LaCosta Rickford
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10/15/03
Date

2003 SENATE JUDICIARY

SB 2062

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2062

Senate Judiciary Committee

☐ Conference Committee

Hearing Date: January 15, 2003

Tape Number	Side A	Side B	Meter #
SB 2062	X		22.5-28.5
Committee Clerk Signature <i>Maria L. Salberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Sen. Traynor requested meeting starts with testimony on the bill.

Testimony in support of SB 2062

Senator Thomas L. Trenbeath (23 meter) spoke on behalf of the bill- Attachment. We adopted the Uniform Disclaimer of Property Interests last session 2001. At that time what we were trying to do was integrate this into the Uniform Probate Code rather than have it as a stand alone act. We tried our best last session to do this. This bill will help us complete this task.

Senator John T. Traynor, Chairman asked if the disclaimer technique applied to joint issues?

Yes-and any interest in property.

See attached proposed amendment

Testimony in opposition of SB 2062:

There was no testimony in opposition.

Testimony neutral to SB 2062:

Page 2

Senate Judiciary Committee

Bill/Resolution Number 2062

Hearing Date January 15, 2003

There were no neutral testimony on SB 2062

Amendment made by Sen. Trenbeath, seconded by Senator Dennis Bercier

as presented.

Roll Call Vote: 6Yes. 0 No. 0 Absent

Motion carried, amendment passed.

Senator Dennis Bercier moved a DO PASS as amended. Senator Dick Dever second the motion.

Roll Call Vote: 6Yes. 0 No. 0 Absent

Motion carried,

Carrier: Senator Thomas L. Trenbeath

30308.0101
Title.0200

Prepared by the Legislative Council staff for
the Senate Judiciary Committee
January 15, 2003

JB
1-15-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2062

Page 2, line 17, overstrike "or"

Page 8, line 31, replace "provision" with "provisions"

Page 9, line 2, replace "disclaimed" with "disclaimer"

Renumber accordingly

La Costa Rickford
Operator's Signature

10/15/03
Date

Date: January 15, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2062

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30308.0101

Action Taken Amended

Motion Made By Senator Thomas L. Trenbeath Seconded By Senator Dennis Bercier

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six (6) No Zero (0)

Absent ALL PRESENT

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Lacosta Rickford 10/15/03
Operator's Signature Date

Date: January 15, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2062

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Senator Dennis Bercier Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six (6) No Zero (0)

Absent ALL PRESENT

Floor Assignment Senator Thomas L. Trenbeath

If the vote is on an amendment, briefly indicate intent:

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LaCosta Rickford 10/15/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
January 16, 2003 8:54 a.m.

Module No: SR-08-0633
Carrier: Trenbeath
Insert LC: 30308.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2062: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2062 was placed on the Sixth order on the calendar.

Page 2, line 17, overstrike "or"

Page 8, line 31, replace "provision" with "provisions"

Page 9, line 2, replace "disclaimed" with "disclaimer"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

SR-08-0635

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LaCosta Rickford

Date

10/15/03

2003 HOUSE JUDICIARY

SB 2062

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Operator's Signature

10/15/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2062

House Judiciary Committee

☐ Conference Committee

Hearing Date 3-3-03

Tape Number	Side A	Side B	Meter #
1	xx		50.3-end
1		xx	0-16.8
Committee Clerk Signature <i>Delmore</i>			

Minutes: 12 members present, 1 members absent (Rep. Klemin)

Chairman DeKrey: We will open the hearing on SB 2062.

Sen. Tom Trenbeath: Introduced the bill. This is the Uniform Disclaimer of Property Interests Act. This basically has to do with the probate code. Disclaimers are used by those who receive property as heirs in an estate or by beneficiaries of a non-testamentary transfer of property at death. This is a modernization of existing law.

Rep. Delmore: You would say these two bills are more housekeeping bills.

Sen. Trenbeath: The first bill (SB 2061) are updates and 2nd bill (SB 2062) is housekeeping.

Chairman DeKrey: Further testimony in support of SB 2062. Opposition? We will close the hearing. What are the committee's wishes in regard to SB 2062.

Rep. Delmore: I move a Do Pass.

Rep. Grande: Seconded.

13 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Kretschmar

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La Costa Rickford
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10/15/03
Date

Date: 3/3/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2062

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Delmore Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 3, 2003 3:28 p.m.

Module No: HR-37-3791
Carrier: Kretschmar
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2062, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO
PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2062 was
placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-37-3791

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10/15/03
Date

2003 TESTIMONY

SB 2062

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LaCosta Rickford

10/15/03

Date

NO 2001

conformal to Uniform Probate Code



Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws



Section Title: Introductions & Adoptions Of Uniform Acts.

> Summary

UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT (1999)

In 1978, the National Conference of Commissioners on Uniform State Laws promulgated three separate acts, the Uniform Disclaimer of Property Interests Act, the Uniform Disclaimer of Transfers by Will, Int Appointment Act, and the Uniform Disclaimer of Transfers under Nontestamentary Instruments Act. The 1978 were promulgated to meet the varying conditions of state law respecting disclaimers of property in states had law governing disclaimers during the probate of an estate, and were given the opportunity to e governing disclaimers of nontestamentary transfers that would parallel disclaimers of property interests : vice versa. The Uniform Disclaimer of Property Interests Act (1978) was designed for states with no dis whatsoever. In 1999, all three of these acts have been replaced by the Uniform Disclaimer of Property Ir (1999).

Disclaimers are used by those who receive property as heirs or legatees in an estate, or by beneficiaries c nontestamentary transfer of property at death; for example, the beneficiaries of a trust. A disclaimer is si declaration by the person entitled to property that the interest in that property is disclaimed or renounced allows the disclaiming heir, legatee or beneficiary to disclaim an interest in such a fashion that the right that is disclaimed is treated as if it never existed. Why do these kinds of disclaimers occur? A simple fac illustrates their utility. A father creates a trust in which his wife is the income beneficiary during her life child, and grandchildren by that child are the remainder beneficiaries—receiving the assets of the trust a settlor's wife. The son determines that the most efficient distribution at the end of the trust would be to ti grandchildren. The son wants to increase their estate and not pass the property through his own estate. S executes a disclaimer of the interest in the trust. The disclaimer will extinguish that interest as if it had n granted. The settlor's grandchildren will have an increased estate, skipping a generation in effect. This is example to suggest the need and use of disclaimers. It does not attempt to deal with tax and other issues distribution that might apply in the individual case.

The Uniform Disclaimers of Property Interests Act (1999) provides the authority to make disclaimers, w may be disclaimed, the time when disclaimers are effective, and the effect on the distribution of the disc interests.

Who may disclaim a property interest under UDPIA (1999)? Basically, an heir in an intestate estate, a di a beneficiary of a trust or other nontestamentary transfer, a joint tenant in a joint tenancy with right of su trustee of a trust, or any other fiduciary acting in a fiduciary capacity may disclaim. Neither trustees or o are specifically covered in the earlier disclaimer acts. Nothing in UDPIA abrogates fiduciary obligations to disclaim is subject to those obligations.

What interests may be disclaimed? Any interest that may come to the person entitled to disclaim, may b

including a distribution of property in a probate estate, property due under a trust instrument, the property of a joint tenant at the death of another joint tenant, or the beneficiary rights following any other kind of nonprobate transfer at death. The transfer for example can be by an insurance policy, a pay-on-death bank account, a TOD security registration, a pension plan or any other nonprobate transfer at death. The disclaimer, when properly drafted, treats the interest as if it had never been granted. This relation-back effect of disclaimers is what makes them effective. In the prior example, the grandchildren receive as if their father had never had an interest.

An important addition to UDPIA (1999) is the express addition of disclaimers for powers of appointment. The prior uniform acts did not provide an express authority to disclaim powers of appointment.

Disclaimers become effective generally when the instrument providing for the interest disclaimed cannot be changed by the grantor of these interests. In many cases that time occurs when the grantor of an interest dies. But a trust may become irrevocable before the death of the settlor.

The prior uniform acts provided fairly short time periods for disclaiming interests after the grantor can no longer change the grant of an interest. UDPIA (1999) does not express any time limits as the prior acts did. The prior acts provided time periods that responded to federal tax requirements. Under UDPIA (1999) there is no link to federal tax law. In any case, federal tax law continues to control the effectiveness of any disclaimer for tax purposes.

Generally, a disclaimer means that those who receive a distribution, minus the person disclaiming, will receive the full benefit. Other heirs or devisees in an estate, or other beneficiaries of a trust, are examples of those who will receive the full benefit. Disclaimers are used to achieve exactly those increased benefits in others, i.e., the parent benefitting the children, the grandchild benefitting the grandchildren, etc. are the grandchildren of the original source of the property as in the earlier simple example. UDPIA (1999) limits disclaiming benefits, however, to avoid windfalls. In the earlier example, if there are two children who share the remainder beneficiaries of the trust, with grandchildren to take by right of representation, then it is possible for a disclaimer by one child to upset the balance of distributions to all the grandchildren. UDPIA (1999) makes the disclaimer only the proportionate share that the disclaiming person would take that would not upset the balance for the other beneficiaries, so that windfalls are prevented. These rules clarify problems with the prior uniform acts.

The new UDPIA (1999) is a useful tool for estate planners, trustees, beneficiaries, heirs and devisees, with respect to an interest in an estate, trust or other nontestamentary transfer would be better done without an interest in the property being transferred. The new UDPIA (1999) is up-to-date and ready to serve, and should be carefully considered for enactment.

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211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
(312) 915-0195 ~ fax (312) 915-0187 e-mail the office - click here

SITE MAP

http://www.nccusl.org/nccusl/uniformact_summaries/uniformacts-s-udpia99.asp

1/15/2003

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