

APPROVED AND SIGNED BY THE GOVERNOR

Date 2-16-82

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 1015

(By Mr. Brenda + Mr Norman, 33rd Dist)

— ● —

Passed February 4, 1982

In Effect Ninety Days From Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1015

(By MR. BRENDA and MR. HARMAN, 33rd Dist.)

[Passed February 4, 1982; in effect ninety days from passage.]

AN ACT to repeal section three, article four, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter forty-two by adding thereto a new article, designated article six, relating to the uniform disclaimer of property interests act; the right to disclaim interest in property; the time period and procedure for disclaiming; the form of disclaimer; the effect of a disclaimer; certain prohibitions to disclaimer; and application of the article.

Be it enacted by the Legislature of West Virginia:

That section three, article four, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter forty-two be amended by adding thereto a new article, designated article six, to read as follows:

ARTICLE 6. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT.

§42-6-1. Title.

1 This article may be cited as the "Uniform Disclaimer of
2 Property Interests Act."

§42-6-2. Right to disclaim interest in property.

1 A person, or the representative of a deceased, incapacitated

2 or protected person, to whom any property or interest therein
3 devolves, by whatever means, may disclaim it in whole or in
4 part by delivering a written disclaimer under this article. The
5 right to disclaim exists notwithstanding any limitation on the
6 interest of the disclaimant in the nature of a spendthrift pro-
7 vision or similar restriction.

§42-6-3. Time of disclaimer; delivery.

1 (a) Except as provided in subsection (c) of this section
2 if the property or interest has devolved to the disclaimant
3 under a testamentary instrument or by the laws of intestacy,
4 the disclaimer shall be delivered, as to a present interest, not
5 later than six months after the death of the deceased owner or
6 deceased donee of a power of appointment and, as to a future
7 interest, not later than six months after the event determining
8 that the taker of the property or interest has become finally
9 ascertained and his interest is indefeasibly vested. The dis-
10 claimer shall be delivered in person or mailed by registered or
11 certified mail to any personal representative, or other fidu-
12 ciary, of the decedent or the donee of the power, to the holder
13 of the legal title to which the interest relates or to the person
14 entitled to the property or interest in the event of disclaimer. A
15 fully executed and acknowledged copy of the disclaimer shall
16 be filed and recorded with the probate documents in the office
17 of the clerk of the county commission of the county in which
18 proceedings for the administration of the estate of the deceased
19 owner or deceased donee of the power have been commenced.

20 (b) Except as provided in subsection (c), if the property or
21 interest has devolved to the disclaimant under a nontesta-
22 mentary instrument or contract, the disclaimer shall be deliver-
23 ed as to a present interest, not later than six months after the
24 effective date of the nontestamentary instrument or contract
25 and, as to a future interest, not later than six months after the
26 event determining that the taker of the property or interest
27 has become finally ascertained and his interest indefeasibly
28 vested. If the person entitled to disclaim does not have actual
29 knowledge of the existence of the interest, the disclaimer shall
30 be delivered not later than six months after he has actual
31 knowledge of the existence of the interest. The effective date of
32 a revocable instrument or contract is the date on which the

33 maker no longer has power to revoke it or to transfer to him-
34 self or another the entire legal and equitable ownership of the
35 interest. The disclaimer shall be delivered in person or mailed
36 by registered or certified mail to the person who has legal title
37 to or possession of the interest disclaimed.

38 (c) In any case, as to a transfer creating an interest in the
39 disclaimant made after the thirty-first day of December, one
40 thousand nine hundred seventy-six, and subject to tax under
41 chapters eleven, twelve or thirteen of the Internal Revenue
42 Code of 1954, as amended, a disclaimer intended as a qualified
43 disclaimer thereunder must specifically so state and must be
44 delivered not later than nine months after the later of the
45 date the transfer is made or the day on which the person dis-
46 claiming attains age twenty-one.

47 (d) A surviving joint tenant may disclaim as a separate in-
48 terest any property or interest therein devolving to him by
49 right of survivorship. A surviving joint tenant may disclaim the
50 entire interest in any property or interest therein that is the
51 subject of a joint tenancy devolving to him, if the joint ten-
52 ancy was created by act of a deceased joint tenant and the
53 survivor did not join in creating the joint tenancy.

54 (e) If real property or an interest therein is disclaimed, in
55 addition to recording the disclaimer in the county wherein
56 administration is had or commenced, a fully executed and ac-
57 knowledged copy of the disclaimer shall be recorded in the
58 deed books in the office of the clerk of the county commission
59 of the county in which the property or interest disclaimed is
60 located.

§42-6-4. Form of disclaimer.

1 The disclaimer shall (a) describe the property or interest
2 disclaimed, (b) declare the disclaimer and extent thereof, (c)
3 be signed by the disclaimant and (d) be acknowledged in
4 such a manner as would authorize a deed to be admitted to
5 record.

§42-6-5. Effect of disclaimer.

1 (a) If the property or interest devolved to a disclaimant
2 under a testamentary instrument or under the laws of intestacy

3 and the deceased owner or donee of a power of appointment
4 has not provided for another disposition, it devolves as if
5 the disclaimant had predeceased the decedent or, if the
6 disclaimant was designated to take under a power of ap-
7 pointment exercised by a testamentary instrument, as if the
8 disclaimant had predeceased the donee of the power. Any
9 future interest that takes effect in possession or enjoyment
10 after the termination of the estate or interest disclaimed
11 takes effect as if the disclaimant had died before the event
12 determining that the taker of the property or interest had
13 become finally ascertained and his interest is indefeasibly
14 vested. A disclaimer relates back for all purposes to the
15 date of death of the decedent, or of the donee of the power,
16 or the determinative event, as the case may be.

17 (b) If the property or interest devolved to a disclaimant
18 under a nontestamentary instrument or contract and the
19 instrument or contract does not provide for another disposition,
20 (1) it devolves as if the disclaimant had died before the
21 effective date of the instrument or contract; and (2) a future
22 interest that takes effect in possession or enjoyment at or
23 after the termination of the disclaimed interest takes effect
24 as if the disclaimant had died before the event determining
25 that the taker of the property or interest had become finally
26 ascertained and his interest indefeasibly vested. A dis-
27 claimer relates back for all purposes to the effective date
28 of the instrument or contract or the date of the determinative
29 event, as the case may be.

30 (c) The disclaimer or the written waiver of the right to
31 disclaim is binding upon the disclaimant or person waiving
32 and all persons claiming through or under him.

§42-6-6. Waiver and bar.

1
2 The right to disclaim property or an interest therein is
3 barred by (a) an assignment, conveyance, encumbrance,
4 pledge or transfer of the property or interest, or a contract
5 therefor, (b) a written waiver of the right to disclaim, (c)
6 an acceptance of the property or interest or a benefit there-
7 under or (d) a sale of the property or interest under judicial
sale made before the disclaimer is effected.

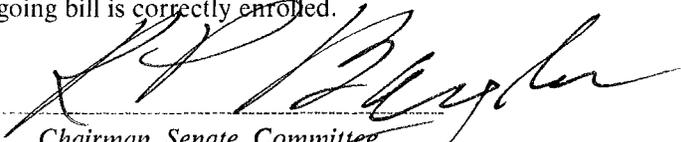
§42-6-7. Remedy not exclusive.

1 This article does not abridge the right of person to waive,
2 release, disclaim or renounce property or an interest therein
3 under any other statute.

§42-6-8. Application.

1 An interest in property that exists on the effective date
2 of this article as to which, if a present interest, the time for
3 delivering a disclaimer under this article has not expired or,
4 if a future interest, the interest has not become indefeasibly
5 vested or the taker finally ascertained, may be disclaimed
6 within six months after the effective date of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee


Chairman House Committee

Originating in the House.

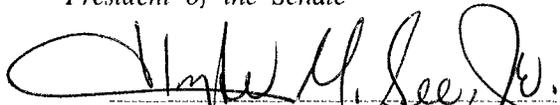
Takes effect ninety days from passage.


Clerk of the Senate



Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 16
day of February, 1982.


Governor



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