

Senate Bill 133

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Attorney General Hardy Myers for Attorney General's Restitution Reform Task Force)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that disclaimer is barred if transfer resulting from disclaimer would be fraudulent as to creditors of disclaimant.

Repeals requirement that Uniform Disclaimer of Property Interests Act be construed to promote uniformity of law on disclaimers.

A BILL FOR AN ACT

1 Relating to disclaimers; amending ORS 105.629 and 105.643; and repealing ORS 105.648 and 105.649.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1.** ORS 105.643 is amended to read:

4 105.643. (1) A disclaimer is barred by a written waiver of the right to disclaim.

5 (2) A disclaimer of an interest in property is barred if any of the following events occurs before
6 the disclaimer becomes effective:

7 (a) The disclaimant accepts the interest sought to be disclaimed;

8 (b) The disclaimant voluntarily assigns, conveys, encumbers, pledges or transfers the interest
9 sought to be disclaimed or contracts to do so; or

10 (c) The interest sought to be disclaimed is sold pursuant to a judicial sale.

11 (3) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity
12 is not barred by the previous exercise of the power.

13 (4) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary ca-
14 pacity is not barred by its previous exercise unless the power is exercisable in favor of the dis-
15 claimant.

16 (5) A disclaimer is barred or limited if so provided by a law other than ORS 105.623 to 105.649.

17 **(6) A disclaimer is barred if the transfer resulting from the disclaimer would be fraudu-
18 lent as to the creditors of the disclaimant under the provisions of ORS 95.200 to 95.310.**

19 **(7) A disclaimer is barred if the purpose or effect of the disclaimer is to prevent recovery
20 of money or property under ORS 411.620.**

21 [(6)] **(8)** A disclaimer of a power over property that is barred under this section is ineffective.
22 A disclaimer of an interest in property that is barred under this section takes effect as a transfer
23 of the interest disclaimed to the persons who would have taken the interest under ORS 105.623 to
24 105.649 had the disclaimer not been barred.

25 **SECTION 2.** ORS 105.629 is amended to read:

26 105.629. (1) A person may disclaim, in whole or part, any interest in property or any power over
27 property, including a power of appointment. A person may disclaim the interest or power even if the
28 person who created the interest or power imposed a spendthrift provision or similar restriction on
29

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 transfer or imposed a restriction or limitation on the right to disclaim.

2 (2) Except to the extent that a fiduciary's right to disclaim is expressly restricted or limited by
3 another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary
4 may disclaim, in whole or part, any interest in property or power over property, including a power
5 of appointment, without regard to whether the fiduciary is acting in a personal or representative
6 capacity. A fiduciary may disclaim the interest or power even if the creator of the interest or power
7 imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on
8 the right to disclaim, or an instrument other than the instrument that created the fiduciary re-
9 lationship imposed a restriction or limitation on the right to disclaim.

10 (3) To be effective, a disclaimer must:

11 (a) Be in writing or otherwise recorded by inscription on a tangible medium or by storage in
12 an electronic or other medium in a manner that allows the disclaimer to be retrieved in perceivable
13 form;

14 (b) Declare that the person disclaims the interest in the property or in the power;

15 (c) Describe the interest in property or power over property that is disclaimed;

16 (d) Be signed by the person making the disclaimer; and

17 (e) Be delivered or filed in the manner provided in ORS 105.642.

18 (4) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of
19 years, limitation of a power or as any other interest or estate in the property.

20 (5) A disclaimer is irrevocable when the disclaimer is delivered or filed pursuant to ORS 105.642
21 or when the disclaimer becomes effective as provided in ORS 105.633 to 105.641, whichever occurs
22 later.

23 (6) **Except as provided in subsection (7) of this section**, a disclaimer made under ORS 105.623
24 to 105.649 is not a transfer, assignment or release.

25 (7) **A disclaimer made under ORS 105.623 to 105.649 is a transfer for the purposes of ORS**
26 **95.200 to 95.310.**

27 **SECTION 3. ORS 105.648 and 105.649 are repealed.**
28
