

1977 Senate Bill 585

Date published: **May 12, 1978**

CHAPTER 309, Laws of 1977

AN ACT to repeal 853.21 and 853.23; to renumber 702.13 (1) (c); to amend 45.37 (9) (g), 72.15 (3), 72.28 (1) (d), 701.06 (3), 701.24, 702.05 (4) and 852.13; and to create 701.27, 702.08, 702.13 (1) (c) and 853.40 of the statutes, relating to disclaimers of transfers of property or an interest in property.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 45.37 (9) (g) of the statutes, as affected by chapter 105, laws of 1977, is amended to read:

45.37 (9) (g) *"Income" defined.* "Income", in this section, means money, property or anything of monetary value received from any source to which a member may become entitled subsequent to admission, including without limitation because of enumeration: all pensions from state, federal or private sources, annuities, social security payments, railroad retirement, public or private retirement, compensation, wages, salary, maintenance payments, rents, interest, dividends, profits, return on investment, moneys received for loss, damage or injury, awards, gifts, devises, bequests and hereditaments, inheritances, discoveries, powers and insurance benefits but shall not include devises, bequests, hereditaments and inheritances from a member's spouse, payment to a member for services rendered to the home under its work therapy program or income received by a member from the sale of products or services through the hobby shop. Any renunciation, disclaimer or transfer of income by a member shall be void.

SECTION 2. 72.15 (3) of the statutes is amended to read:

72.15 (3) In the event of a ~~renunciation~~ disclaimer under s. ~~852.13, 853.21 or 853.23~~ 853.40, the transfer from the decedent shall be taxed to the distributee taking as a result of the ~~renunciation~~ disclaimer.

SECTION 3. 72.28 (1) (d) of the statutes is amended to read:

72.28 (1) (d) *Estate for life or years.* Where an estate for life or years can be divested by the act or omission of the distributee, it shall be valued as if there were no possibility of such divesting, subject to ~~renunciation~~ disclaimer under s. ~~852.13, 853.21 or 853.23~~ 853.40.

SECTION 4. 701.06 (3) of the statutes is amended to read:

701.06 (3) (title) **DISCLAIMER OR RENUNCIATION NOT AN ASSIGNMENT.** A disclaimer or renunciation by a beneficiary of part or all of his or her interest under a trust shall not be considered an assignment under sub. (1) or (2).

SECTION 5. 701.24 of the statutes is amended to read:

701.24 (title) Applicability of ss. 701.01 to 701.23. Except as otherwise provided in s. 701.19 (9) (a) and (10), ~~the provisions of this chapter ss. 701.01 to 701.23~~ are applicable to a trust existing on July 1, 1971, as well as a trust created after such date and shall govern trustees acting under such trusts. If application of any provision of ~~this chapter ss. 701.01 to 701.23~~ to a trust in existence on ~~the effective date of this chapter August 1, 1971,~~ is unconstitutional, it shall not affect application of the provision to a trust created after ~~the effective that date of this chapter.~~

SECTION 6. 701.27 of the statutes is created to read:

701.27 Disclaimer of transfers under nontestamentary instruments. (1) **DEFINITIONS.** In this section:

(a) "Beneficiary under a nontestamentary instrument" includes any person who receives or might receive property or an interest in property under the terms or legal effect of a nontestamentary instrument.

(b) "Nontestamentary instrument" means any instrument other than a will which effectively controls the disposition of property or an interest in property. This term includes, without limitation, an inter vivos instrument exercising a power of appointment whether created by will or by nontestamentary instrument, life insurance policies and annuity contracts, inter vivos trusts, conveyances, contracts and choses in action.

(c) "Power" has the meaning designated in s. 702.01 (1).

(d) "Property" has the meaning as designated in s. 851.27.

(2) **RIGHT TO DISCLAIM.** (a) *In general.* A person who is a beneficiary under a nontestamentary instrument, person succeeding to a disclaimed interest created by a nontestamentary instrument, donee of a power created by nontestamentary instrument, appointee under a power exercised by nontestamentary instrument or taker in default under a power created by nontestamentary instrument, may disclaim any property or interest in property, including contingent or future interests or the right to receive discretionary distributions, by delivering a written instrument of disclaimer under this section.

(b) *Joint tenants.* Upon the death of a joint tenant, a surviving joint tenant may not disclaim any property or interest in property which is the subject of the joint tenancy.

(c) *Partial disclaimer.* Property may be disclaimed in whole or in part, except that a partial disclaimer of property passing by nontestamentary instrument or by the exercise of a power may not be made if partial disclaimer is expressly prohibited by the instrument or by the instrument exercising the power.

(d) *Spendthrift provision.* The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(e) *After death.* A person's right to disclaim survives the person's death and may be exercised by the person's personal representative or special administrator upon receiving approval from the court having jurisdiction of the person's estate after hearing upon notice to all interested persons if the personal representative or special administrator has not taken any action which would bar the right to disclaim under sub. (7).

(3) **INSTRUMENT OF DISCLAIMER.** (a) The instrument of disclaimer shall:

1. Describe the property or interest disclaimed;
2. Declare the disclaimer and the extent of the disclaimer;
3. Be signed by the disclaimant; and
4. Be delivered within the time and in the manner provided under subs. (4) and (5).

(b) Notwithstanding par. (a), any disclaimer which meets the requirements of section 2518 of the U.S. internal revenue code of 1954, or any other provisions of federal law, constitutes an effective disclaimer under this section.

(4) **TIME FOR EFFECTIVE DISCLAIMER.** (a) *Disclaiming a present interest.* An instrument disclaiming a present interest shall be executed and delivered not later than 9 months after the effective date of the nontestamentary instrument, except that, for cause shown, the period may be extended by a court of competent jurisdiction, either within or after the 9-month period, for such additional time as the court deems just. The effective date of a revocable instrument or contract is the date on which the person having the power to revoke no longer has the power to revoke it or to transfer to himself, herself or another person the equitable ownership of the property or interest which is the subject of the disclaimer.

(b) *Disclaiming a future interest.* An instrument disclaiming a future interest shall be executed and delivered not later than 9 months after the event that determines that the taker of the property or interest is finally ascertained and his or her interest indefeasibly fixed, except that, for cause shown, the period may be extended by a court of competent jurisdiction, either within or after the 9-month period, for such additional time as the court deems just.

(c) *Future right to income or profits.* Notwithstanding pars. (a) and (b), an instrument disclaiming the future right to receive mandatory distributions of income or profits from any source may be executed and delivered at any time.

(d) *Persons under 21.* Notwithstanding pars. (a) and (b), a person under 21 years of age may disclaim at any time not later than 9 months after the date on which the person attains 21 years of age.

(e) *Interests arising by disclaimer.* Notwithstanding pars. (a) and (b), a person whose interest in property arises by disclaimer or by default of exercise of a power created by nontestamentary instrument may disclaim at any time not later than 9 months after the day on which the prior instrument of disclaimer is delivered, or the date of death of the donee of the power, as the case may be.

(5) DELIVERY AND FILING OF DISCLAIMER. (a) *Delivery.* In addition to any requirements imposed by the creating instrument, the instrument of disclaimer is effective only if, within the time specified under sub. (4), it is delivered to and received by:

1. The transferor of the property or interest disclaimed, if living;
2. The personal representative or special administrator of the deceased transferor of the property; or
3. The holder of legal title to the property.

(b) *Delivery to trustee.* If the trustee of any trust to which the interest or power relates does not receive the instrument of disclaimer under par. (a), a copy shall also be delivered to the trustee.

(c) *Filing.* When delivery is made to the personal representative or special administrator of a deceased transferor, a copy of the instrument of disclaimer shall be filed in the probate court having jurisdiction.

(d) *Failure to deliver or file.* Failure to deliver a copy of the instrument of disclaimer to the trustee under par. (b) or to file a copy in the probate court under par. (c), within the time specified under sub. (4), does not affect the validity of any disclaimer.

(e) *Recording.* If real property or an interest in real property is disclaimed, a copy of the instrument of disclaimer may be recorded in the office of the register of deeds of the county in which the real estate is situated.

(6) EFFECT OF DISCLAIMER. (a) *Property not vested.* The property or interest disclaimed under this section shall be deemed not to have been vested in, created in or transferred to the disclaimant.

(b) *Devolution.* Unless the transferor of the property or donee of the power has otherwise provided, the property or interest disclaimed devolves as if the disclaimant had died before the effective date of the nontestamentary instrument; or if the disclaimant is an appointee under a power exercised by nontestamentary instrument, as if the disclaimant had died before the effective date of the exercise of the power; or if the disclaimant is a taker in default under a power created by nontestamentary instrument, as if the disclaimant had predeceased the donee of the power. A disclaimer relates back for all purposes to the effective date of the nontestamentary instrument; or if the disclaimant is an appointee under a power exercised by nontestamentary instrument, to the effective date of the exercise of the power; or if the disclaimant is a taker in default under a power created by nontestamentary instrument, to the last possible date for exercise of the power. A disclaimer of the future right to receive mandatory distributions of income or profits relates to the period stated in the disclaimer.

(c) *Future interest.* Unless the instrument creating the future interest manifests a contrary intent, a future interest limited to take effect in possession or enjoyment after the termination of the interest which is disclaimed takes effect as if the disclaimant had died before the effective date of the nontestamentary instrument or, if the disclaimant is an appointee under a power exercised by nontestamentary instrument, as if the disclaimant had died before the effective date of the exercise of the power.

(7) BAR. (a) *Method.* A person's right to disclaim property or an interest in property is barred by the person's:

1. Assignment, conveyance, encumbrance, pledge or transfer of the property or interest or a contract therefor;

2. Written waiver of the right to disclaim; or
3. Acceptance of the property or interest or benefit of the property.

(b) *Effect upon successors in interest.* The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under him or her.

(8) **NONEXCLUSIVENESS OF REMEDY.** This section does not abridge the right of a person to waive, release, disclaim or renounce property or an interest in property under any other statute, the common law, or as provided in the creating instrument.

(9) **APPLICABILITY.** This section applies to property or an interest in property existing or created on or after the effective date of this act (1977) if the time for delivery of a disclaimer under this section has not expired.

SECTION 7. 702.05 (4) of the statutes is amended to read:

702.05 (4) **POWER VESTED IN 2 OR MORE DONEES.** Unless the donor manifests a contrary intent, when a power is vested in 2 or more persons, all must unite in its exercise, but if one or more of the donees dies, becomes incapable of exercising the power or renounces ~~or~~, releases or disclaims the power, the power may be exercised by the others.

SECTION 8. 702.08 of the statutes is created to read:

702.08 Disclaimer of powers. The donee of any power may disclaim all or part of the power as provided under s. 701.27 or 853.40.

SECTION 9. 702.13 (1) (c) of the statutes is renumbered 702.13 (1) (d).

SECTION 10. 702.13 (1) (c) of the statutes is created to read:

702.13 (1) (c) A disclaimer;

SECTION 11. 852.13 of the statutes is amended to read:

852.13 (title) Right to disclaim intestate share. Any person to whom property would otherwise pass under s. 852.01 may ~~renounce~~ disclaim all or part of the property. ~~A renunciation shall be made by filing a signed declaration of renunciation with the court and serving a copy on the personal representative, if any, within 6 months after the date of the decedent's death. For cause shown the court may grant additional time by order entered within or after such 6-month period. No interest in the property renounced vests in such person, but the renounced property passes as if such person had predeceased the decedent. However, a renunciation is invalid to the extent that the person renouncing has prior to filing the renunciation effectively assigned or contracted to assign the renounced property, if prior to entry of the final judgment, or earlier distribution by the personal representative in reliance on the renunciation, the assignee files with the court a copy of the assignment or contract and serves a copy on the personal representative as provided under s. 853.40.~~

SECTION 12. 853.21 of the statutes is repealed.

SECTION 13. 853.23 of the statutes is repealed.

SECTION 14. 853.40 of the statutes is created to read:

853.40 Disclaimer of transfers by will, intestacy or appointment. (1) **DEFINITIONS.** In this section:

(a) "Beneficiary under a will" includes a beneficiary of a trust or any other interest created by a will.

(b) "Power" has the meaning designated in s. 702.01 (1).

(c) "Property" has the meaning designated in s. 851.27.

(2) **RIGHT TO DISCLAIM.** (a) *In general.* A person who is an heir, person succeeding to a disclaimed intestate interest, beneficiary under a will, person succeeding to a disclaimed interest created by will, donee of a power created by will, appointee under a power exercised by will or taker in default under a power created by will, may disclaim any property or interest in property, including contingent or future interests or the

right to receive discretionary distributions, by delivering a written instrument of disclaimer under this section.

(b) *Partial disclaimer.* Property may be disclaimed in whole or in part, except that a partial disclaimer of property passing by will or by the exercise of a power may not be made if partial disclaimer is expressly prohibited by the will or by the instrument exercising the power.

(c) *Spendthrift provision.* The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(d) *After death.* A person's right to disclaim survives the person's death and may be exercised by the person's personal representative or special administrator upon receiving approval from the court having jurisdiction of such person's estate after hearing upon notice to all interested persons if the personal representative or special administrator has not taken any action which would bar the right to disclaim under sub. (7).

(3) INSTRUMENT OF DISCLAIMER. (a) The instrument of disclaimer shall:

1. Describe the property or interest disclaimed;
2. Declare the disclaimer and the extent of the disclaimer;
3. Be signed by the disclaimant; and
4. Be delivered within the time and in the manner provided under subs. (4) and (5).

(b) Notwithstanding par. (a), any disclaimer which meets the requirements of section 2518 of the U.S. internal revenue code of 1954, or any other provisions of federal law, constitutes an effective disclaimer under this section.

(4) TIME FOR EFFECTING DISCLAIMER. (a) *Disclaiming a present interest.* An instrument disclaiming a present interest shall be executed and delivered not later than 9 months after the death of the deceased transferor of property or the deceased donee of a power, except that, for cause shown, the period may be extended by a court of competent jurisdiction, either within or after the 9-month period, for such additional time as the court deems just.

(b) *Disclaiming a future interest.* An instrument disclaiming a future interest shall be executed and delivered not later than 9 months after the event that determines that the taker of the property or interest is finally ascertained and his or her interest indefeasibly fixed, except that, for cause shown, the period may be extended by a court of competent jurisdiction, either within or after the 9-month period, for such additional time as the court deems just.

(c) *Future right to income or profits.* Notwithstanding pars. (a) and (b), an instrument disclaiming the future right to receive mandatory distributions of income or profits from any source may be executed and delivered at any time.

(d) *Persons under 21.* Notwithstanding pars. (a) and (b), a person under 21 years of age may disclaim at any time not later than 9 months after the day on which the person attains 21 years of age.

(e) *Interests arising by disclaimer.* Notwithstanding pars. (a) and (b), a person whose interest in property arises by disclaimer, or by default of exercise of a power created by will, may disclaim at any time not later than 9 months after the day on which the prior instrument of disclaimer is delivered or the date of death of the donee of the power, as the case may be.

(5) DELIVERY AND FILING OF DISCLAIMER. (a) *Delivery.* In addition to any requirements imposed by the creating instrument, the instrument of disclaimer is effective only if, within the time specified under sub. (4), it is delivered to and received by:

1. The personal representative or special administrator of the deceased transferor of the property; or

2. The holder of legal title to the property.

(b) *Delivery to trustee.* If the trustee of any trust to which the interest or power relates does not receive the instrument of disclaimer under par. (a), a copy shall also be delivered to the trustee.

(c) *Filing.* A copy of the instrument of disclaimer shall be filed in the probate court having jurisdiction.

(d) *Failure to deliver or file.* Failure to deliver a copy of the instrument of disclaimer to the trustee under par. (b), or to file a copy in the probate court under par. (c), within the time specified under sub. (4), does not affect the validity of any disclaimer.

(e) *Recording.* If real property or an interest in real property is disclaimed, a copy of the instrument of disclaimer may be recorded in the office of the register of deeds of the county in which the real estate is situated.

(6) EFFECT OF DISCLAIMER. (a) *Property not vested.* The property or interest disclaimed under this section shall be deemed not to have been vested in, created in or transferred to the disclaimant.

(b) *Devolution.* Unless the deceased transferor of the property or deceased donee of the power has otherwise provided, the property or interest disclaimed devolves as if the disclaimant had predeceased the deceased transferor of the property, or, if the disclaimant is an appointee under a power exercised by will or a taker in default under a power created by will, as if the disclaimant had predeceased the donee of the power. A disclaimer relates back for all purposes to the date of death of the deceased transferor of the property or the deceased donee of the power, except that a disclaimer of the future right to receive mandatory distributions of income or profits relates to the period stated in the disclaimer.

(c) *Future interest.* Unless the instrument creating the future interest manifests a contrary intent, a future interest to take effect in possession or enjoyment after the termination of the interest which is disclaimed takes effect as if the disclaimant had predeceased the deceased transferor of the property or the deceased donee of the power.

(7) BAR. (a) *Method.* A person's right to disclaim property or an interest in property is barred by the person's:

1. Assignment, conveyance, encumbrance, pledge or transfer of the property or interest or a contract therefor;

2. Written waiver of the right to disclaim; or

3. Acceptance of the property or interest or benefit of the property.

(b) *Effect upon successor in interest.* The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under that person.

(8) NONEXCLUSIVENESS OF REMEDY. This section does not abridge the right of a person to waive, release, disclaim or renounce property or an interest in property under any other statute, the common law or as provided in the creating instrument.

(9) APPLICABILITY. This section applies to property or an interest in property existing or created on or after the effective date of this act (1977) if the time for delivery of a disclaimer under this section has not expired.