

IN THE SENATE

SENATE BILL NO. 1121

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO INTESTATE SUCCESSION AND WILLS; AMENDING SECTION 15-2-801,
2 IDAHO CODE, TO REVISE THE TIME FRAME FOR FILING A DISCLAIMER UNDER CER-
3 TAIN CIRCUMSTANCES, TO REMOVE OUTDATED PROVISIONS AND TO MAKE TECHNICAL
4 CORRECTIONS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICA-
5 TION.
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 15-2-801, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 15-2-801. RENUNCIATION.

11 (1) (a) ~~(1)~~ A person or the representative of an incapacitated or
12 unascertained person who is an heir, devisee, person succeeding to a re-
13 nounced interest, donee, beneficiary under a testamentary or nontesta-
14 mentary instrument, donee of a power of appointment, grantee, surviving
15 joint owner or surviving joint tenant, beneficiary of an insurance con-
16 tract, person designated to take pursuant to a power of appointment ex-
17 exercised by a testamentary or nontestamentary instrument, or otherwise
18 the recipient of any benefit under a testamentary or nontestamentary
19 instrument, may renounce in whole or in part, powers, future interests,
20 specific parts, fractional shares or assets thereof by filing a written
21 instrument within the time and at the place hereinafter provided.

22 (2b) The instrument shall:

- 23 (i) ~~a~~Describe the property or interest renounced;
24 (ii) ~~b~~Be signed by the person renouncing; and
25 (iii) ~~a~~Declare the renunciation and the extent thereof.

26 (3c) The appropriate court may direct or permit a trustee under a tes-
27 tamentary or nontestamentary instrument to renounce or to deviate from
28 any power of administration, management or allocation of benefit upon
29 finding that exercise of such power may defeat or impair the accomplish-
30 ment of the purposes of the trust whether by the imposition of tax or
31 the allocation of beneficial interest inconsistent with such purposes.
32 Such authority shall be exercised after hearing and upon notice to all
33 known persons beneficially interested in such trust or estate, in the
34 manner ~~provided by this act~~ pursuant to part 4, chapter 1, title 15,
35 Idaho Code.

36 (b2) Except as provided in subsection (9) of the this section, tThe
37 writing specified in subsection (a1) of this section must be filed within
38 nine (9) months after the transfer or the death of the decedent, or donee of
39 the power, ~~(whichever is the later),~~ or, if the taker of the property is not
40 then finally ascertained, not later than nine (9) months after the event that
41 determines that the taker of the property or interest is finally ascertained
42 or his interest indefeasibly vested. The writing must be filed in the court

1 of the county where proceedings concerning the decedent's estate are pend-
 2 ing, or where they would be pending if commenced. If an interest in real es-
 3 tate is renounced, a copy of the writing may also be recorded in the office of
 4 the recorder in the county in which said real estate lies. A copy of the writ-
 5 ing also shall be delivered in person or mailed by registered or certified
 6 mail to the personal representative of the decedent, the trustee of any trust
 7 in which the interest renounced exists, and no such personal representative,
 8 trustee, or person shall be liable for any otherwise proper distribution or
 9 other disposition made without actual notice of the renunciation.

10 (e3) Unless the decedent or donee of the power has otherwise indicated,
 11 the property or interest renounced passes as if the person renouncing had
 12 predeceased the decedent, or if the person renouncing is designated to take
 13 under a power of appointment as if the person renouncing had predeceased the
 14 donee of the power. A future interest that takes effect in possession or en-
 15 joyment after the termination of the estate or interest renounced takes ef-
 16 fect as if the person renouncing had predeceased the decedent or the donee of
 17 the power. In every case the renunciation relates back for all purposes to
 18 the date of death of the decedent or the donee, as the case may be.

19 (d4) The right to renounce property or an interest therein is barred by:

20 (1a) ~~a~~Assignment, conveyance, encumbrance, pledge or transfer of prop-
 21 erty therein or any contract therefor;

22 (2b) ~~w~~Written waiver of the right to renounce; or

23 (3c) ~~s~~Sale or other disposition of property pursuant to judicial
 24 process, made before the renunciation is effective.

25 (e5) The right to renounce granted by this section exists irrespective
 26 of any limitation on the interest of the person renouncing in the nature of a
 27 spendthrift provision or similar restriction.

28 (f6) The renunciation or the written waiver of the right to renounce is
 29 binding upon the person renouncing or person waiving and all persons claim-
 30 ing through or under him.

31 (g7) This section does not abridge the right of any person to assign,
 32 convey, release, or renounce any property or an interest therein arising un-
 33 der any other statute.

34 (h8) ~~An interest in property existing on the effective date of this act~~
 35 ~~as to which, if a present interest, the time for filing a renunciation has~~
 36 ~~not expired, or, if a future interest, the interest has not become indefeasi-~~
 37 ~~bly vested or the taker finally ascertained may be renounced within nine (9)~~
 38 ~~months after the effective date of this act.~~

39 (i) In clarification and amplification of subsection (1) (a) (1) of this
 40 section, and to make clear the existing terms thereof, a renunciation may
 41 be made by an agent appointed under a power of attorney, by a conservator or
 42 guardian on behalf of an incapacitated person, or by the personal represen-
 43 tative or administrator of a deceased person. The ability to renounce on be-
 44 half of the person does not need to be specifically set forth in a power of
 45 attorney if the power is general in nature.

46 (9) The due date for filing a timely disclaimer under subsection (2) of
 47 this section, where the decedent died after December 31, 2009, but before De-
 48 cember 17, 2010, shall be not earlier than September 19, 2011.

49 SECTION 2. An emergency existing therefor, which emergency is hereby
 50 declared to exist, this act shall be in full force and effect on and after its

1 passage and approval and retroactively to January 1, 2010, for all decedents
2 who die on or after January 1, 2010.