

Fifty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2062

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to amend and reenact sections 30.1-10.1-01, 30.1-10.1-02, 30.1-10.1-03,  
2 30.1-10.1-04, 30.1-10.1-05, 30.1-10.1-06, 30.1-10.1-07, 30.1-10.1-08, 30.1-10.1-09,  
3 30.1-10.1-10, and 30.1-10.1-12 of the North Dakota Century Code, relating to technical  
4 corrections in and under signatures under the Uniform Disclaimer of Property Interests Act.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 30.1-10.1-01 of the North Dakota Century Code  
7 is amended and reenacted as follows:

8 **30.1-10.1-01. Definitions.** In this chapter:

- 9 1. "Beneficiary designation" means an instrument, other than an instrument creating  
10 a trust, naming the beneficiary of an insurance or annuity policy; an account with a  
11 designation for payment on death; a security registered in beneficiary form; a  
12 pension, profit-sharing, retirement, or other employment-related benefit plan; or  
13 any other nonprobate transfer at death.
- 14 2. "Disclaimant" means the person to whom the disclaimed interest or power would  
15 have passed had the disclaimer not been made.
- 16 3. "Disclaimed interest" means the interest or share to which the disclaimant would  
17 have been entitled had the disclaimer not been made.
- 18 4. "Disclaimer" means a refusal to accept an interest in, or power over, property.
- 19 5. "Distribution ~~date~~ time" means the time when the disclaimed interest would have  
20 taken effect in possession or enjoyment.
- 21 6. "Fiduciary" means a personal representative, trustee, an agent acting under a  
22 power of attorney, or other person authorized to act as a fiduciary with respect to  
23 the property of another person.

- 1           7. "Future interest" means an interest that takes effect in possession or enjoyment, if  
2           at all, after the time of its creation.
- 3           8. "Jointly held property" means property held in the name of two or more persons  
4           under an arrangement in which all holders have concurrent interests and under  
5           which the last surviving holder is entitled to the whole of the property.
- 6           9. "Record" means information that is inscribed on a tangible medium or that is stored  
7           in an electronic or other medium and is retrievable in perceivable form.
- 8           10. "Signed" means, with present intent to authenticate or adopt a record, to execute  
9           or adopt a tangible symbol, or attach to or logically associate with the record an  
10           electronic sound, symbol, or process.
- 11          11. "State" means a state of the United States, the District of Columbia, Puerto Rico,  
12           the United States Virgin Islands, or any territory or insular possession subject to  
13           the jurisdiction of the United States. The term includes an Indian tribe or band, or  
14           Alaskan native village, which is recognized by federal law or formally  
15           acknowledged by a state.
- 16          ~~11.~~ 12. "Trust" means an express trust, charitable or noncharitable, with additions,  
17           whenever and however created; ~~or~~ and means a trust created pursuant to a  
18           statute, judgment, or decree ~~under which~~ requires the trust ~~is~~ to be administered in  
19           the manner of an express trust.

20           **SECTION 2. AMENDMENT.** Section 30.1-10.1-02 of the North Dakota Century Code  
21   is amended and reenacted as follows:

22           **30.1-10.1-02. General provisions.**

- 23           1. A person may disclaim, in whole or in part, any interest in or power over property,  
24           including a power of appointment. A person may disclaim ~~notwithstanding the~~  
25           interest or power even if its creator imposed a spendthrift provision or similar  
26           restriction on transfer or ~~any~~ a restriction or limitation on the right to disclaim  
27           ~~imposed by the creator of the interest or power.~~
- 28           2. Except to the extent the fiduciary's power to disclaim is expressly limited by  
29           another statute of this state or by the instrument creating the fiduciary relationship,  
30           a fiduciary may disclaim, in whole or in part, any interest in or power over property,  
31           including a power of appointment, whether acting in a personal or representative

capacity. A fiduciary may disclaim ~~notwithstanding the interest or power even if its~~  
~~creator imposed~~ a spendthrift provision or similar restriction on transfer ~~imposed by~~  
~~the creator of the interest or power~~, or a restriction or limitation on the right to  
disclaim ~~imposed by, or~~ an instrument other than the instrument that created the  
fiduciary relationship imposed a restriction or limitation on the right to disclaim.

3. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or as any other interest or estate in the property.
4. A disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in section 30.1-10.1-09.
5. A disclaimer becomes irrevocable upon the later to occur of its delivery or filing as provided in section 30.1-10.1-09, or when it becomes effective as provided in sections 30.1-10.1-03 through 30.1-10.1-08.
6. A disclaimer made under this chapter is not a transfer, assignment, or release.

**SECTION 3. AMENDMENT.** Section 30.1-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-10.1-03. Disclaimer of interest in property.**

1. Except for disclaimers governed by sections 30.1-10.1-04 and 30.1-10.1-05, subsections 2 through 6 apply to a disclaimer of an interest in property.
2. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the intestate's death.
3. The disclaimed interest passes according to a provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.
4. If the instrument does not contain a provision described in subsection 3 and if the disclaimant is an individual ~~and subsection 3 does not apply~~, the disclaimed interest passes as if the disclaimant had died immediately before the distribution date time. However, ~~the disclaimed interest passes only to the descendants of the~~ disclaimant ~~who survive the distribution date if by law or according to a provision in~~

1           under the instrument the descendants of the disclaimant would share in the  
2           disclaimed interest by any method of representation had the disclaimant  
3           ~~predeceased the~~ died before the distribution date time, the disclaimed interest  
4           passes only to the descendants of the disclaimant who survive the time of  
5           distribution.

6           ~~5.~~ If the disclaimant is ~~a person other than~~ not an individual ~~and subsection 3 does~~  
7           ~~not apply~~, the disclaimed interest passes as if the disclaimant did not exist.

8           ~~6.~~ 5. Upon the disclaimer of a preceding interest, a future interest held by a person  
9           other than the disclaimant takes effect as if the disclaimant had died or ceased to  
10          exist immediately before the distribution ~~date time~~, but a future interest held by the  
11          disclaimant does not accelerate in possession or enjoyment.

12          **SECTION 4. AMENDMENT.** Section 30.1-10.1-04 of the North Dakota Century Code  
13 is amended and reenacted as follows:

14          **30.1-10.1-04. Disclaimer of rights of survivorship in jointly held property.**

- 15          1. Upon the death of a holder of jointly held property, a surviving holder may disclaim  
16          in whole or in part the greater of a fractional share of the property determined by  
17          dividing the number one by the number of joint holders alive immediately before  
18          the death of the holder to whose death the disclaimer relates; or all of the property  
19          except that part of the value of the entire interest attributable to the contribution  
20          furnished by the disclaimant.
- 21          2. The disclaimer under subsection 1 takes effect as of the death of the holder to  
22          whose death the disclaimer relates.
- 23          3. An interest disclaimed by a surviving holder of jointly held property passes as if the  
24          person whose interest is being disclaimed predeceased the holder to whose death  
25          the disclaimer relates.

26          **SECTION 5. AMENDMENT.** Section 30.1-10.1-05 of the North Dakota Century Code  
27 is amended and reenacted as follows:

28          **30.1-10.1-05. Disclaimer of interest by trustee.** If a trustee disclaims an interest in  
29          property that otherwise would have become trust property, the interest does not become ~~part of~~  
30          ~~the trust property.~~

**SECTION 6. AMENDMENT.** Section 30.1-10.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-10.1-06. Disclaimer of powers of appointment and other powers not held in fiduciary capacity.**

1. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity and if the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.
2. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity and if the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the date of the last exercise of the power; ~~or is a subsequent disclaimer of a presently exercisable general power of appointment, the disclaimer is without effect.~~
3. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the instrument creating the power is construed as if the power ceased to exist when the disclaimer became effective.

**SECTION 7. AMENDMENT.** Section 30.1-10.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-10.1-07. Disclaimer by appointee, object, or taker in default of exercise of power of appointment.**

1. The disclaimer by ~~the~~ an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.
2. A disclaimer by the object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.
- ~~3. Disposition of an interest in property disclaimed by an appointee is governed by subsection 3, 4, or 5 of section 30.1-10.1-03. A disclaimer of a power created in an appointee is governed by section 30.1-10.1-06.~~

- 1           4.   ~~Disposition of an interest in property disclaimed by an object or a taker in default of~~  
2               ~~exercise of a power of appointment is governed by subsection 3 or 4 of section~~  
3               ~~30.1-10.1-03.~~

4           **SECTION 8. AMENDMENT.** Section 30.1-10.1-08 of the North Dakota Century Code  
5 is amended and reenacted as follows:

6           **30.1-10.1-08. Disclaimer of powers held in fiduciary capacity.**

- 7           1.   If a fiduciary disclaims a power held in a fiduciary capacity which has not been  
8               exercised, the disclaimer takes effect as of the time the instrument creating the  
9               power becomes irrevocable.
- 10          2.   If a fiduciary disclaims a power held in a fiduciary capacity which has been  
11               exercised, the disclaimer takes effect immediately after the last exercise of the  
12               power.
- 13          3.   A disclaimer under this section is effective as to other fiduciaries if ~~expressly so~~  
14               ~~provided in the disclaimer~~ so provides and the fiduciary ~~or fiduciaries~~ disclaiming  
15               have has the authority to bind the estate, trust, or other person for whom the  
16               fiduciary is acting.

17          **SECTION 9. AMENDMENT.** Section 30.1-10.1-09 of the North Dakota Century Code  
18 is amended and reenacted as follows:

19          **30.1-10.1-09. Delivery.**

- 20          1.   In subsections 2 through 11, delivery of a disclaimer may be ~~accomplished~~  
21               effected by personal delivery, ~~mailing by~~ first-class mail, or any other method likely  
22               to result in its receipt.
- 23          2.   In the case of an interest created under the law of intestate succession or an  
24               interest created by will, other than an interest in a testamentary trust, ~~delivery is~~  
25               ~~made by delivering the~~ a disclaimer must be delivered to the personal  
26               representative of the decedent's estate, or if ~~no~~ a personal representative is not  
27               then serving, ~~by filing it~~ must be filed with the court having jurisdiction to appoint  
28               the personal representative.
- 29          3.   In the case of an interest in a testamentary trust, ~~delivery is made by delivering the~~  
30               a disclaimer must be delivered to the trustee then serving, or if ~~no~~ a trustee is not  
31               then serving, to the personal representative of the decedent's estate, or if ~~no~~ a

- 1           personal representative is not then serving, ~~by filing the disclaimer~~ it must be filed  
2           with a court having jurisdiction to ~~appoint~~ enforce the ~~trustee trust~~.
- 3           4. In the case of an interest in an inter vivos trust, ~~delivery is made by delivering the a~~  
4           disclaimer must be delivered to the trustee then serving, or if ~~no~~ a trustee is not  
5           then serving, ~~by filing~~ it must be filed with a court having jurisdiction to ~~appoint~~  
6           enforce the ~~trustee trust~~, or if the disclaimer is made before the time the instrument  
7           creating the trust becomes irrevocable, ~~by delivering~~ it must be delivered to the  
8           settlor of a revocable trust or the transferor of the interest.
- 9           5. In the case of an interest created by a beneficiary designation made before the  
10          time the designation becomes irrevocable, ~~delivery is made by delivering the~~  
11          disclaimer must be delivered to the person making the beneficiary designation.
- 12          6. In the case of an interest created by a beneficiary designation made after the time  
13          the designation becomes irrevocable, ~~delivery is made by delivering the a~~  
14          disclaimer must be delivered to the person obligated to distribute the interest.
- 15          7. In the case of a disclaimer by a surviving holder of jointly held property, ~~delivery is~~  
16          ~~made by delivering it~~ the disclaimer must be delivered to the person to whom the  
17          disclaimed interest passes.
- 18          8. In the case of a disclaimer by an object or taker in default of exercise of a power of  
19          appointment, ~~delivery is made by delivering it~~ the disclaimer must be delivered to  
20          the holder of the power or to the fiduciary acting under the instrument that created  
21          the power, or if ~~no~~ a fiduciary is not then serving, ~~by filing~~ it must be filed with the  
22          court having authority to appoint the fiduciary. ~~Delivery of the disclaimer may be~~  
23          ~~made at any time after the power was created.~~
- 24          9. In the case of a disclaimer by an appointee of a nonfiduciary power of  
25          appointment, ~~delivery is made by delivering it~~ to the holder, personal  
26          representative of the holder's estate or to the fiduciary under the instrument that  
27          created the power, or if ~~no~~ a fiduciary is not then serving, ~~by filing~~ it must be filed  
28          with the court having authority to appoint the fiduciary.
- 29          10. In the case of a disclaimer by a fiduciary of a power over a trust or estate, ~~delivery~~  
30          ~~is made by delivering~~ the disclaimer must be delivered as provided in subsection 2,

3, or 4, ~~these subsections to be applied~~ as if the power disclaimed were an interest in property.

11. In the case of a disclaimer of a power by an agent, ~~delivery is made by delivering~~ the disclaimer must be delivered to the principal or the principal's representative.

**SECTION 10. AMENDMENT.** Section 30.1-10.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-10.1-10. When disclaimer barred or limited.**

1. A disclaimer ~~of an interest in or power over property~~ is barred by a written waiver of the right to disclaim.
2. A disclaimer of an interest in property is barred if before the disclaimer becomes effective the disclaimant accepts the interest sought to be disclaimed; the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or makes a contract to do so; or, a judicial sale of the interest sought to be disclaimed occurs ~~before the disclaimer is delivered or filed~~.
3. A disclaimer, ~~whether partial in whole or complete part~~, of the future exercise of a power held in a fiduciary capacity is not barred by its ~~past~~ previous exercise.
4. A disclaimer, ~~whether partial in whole or complete part~~, of the future exercise of a power not held in a fiduciary capacity is not barred by its past exercise unless the power is exercisable in favor of the disclaimant.
5. A disclaimer is barred or limited if so provided by law other than this chapter.
6. A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.
7. A Notwithstanding any other provision of this chapter, if as a result of a disclaimer is not barred by this section if it meets the requirements of a qualified disclaimer under section 2518 of the Internal Revenue Code [26 U.S.C. 2518], nor does the failure of a disclaimer to qualify under that section operate as a bar under this section or transfer the disclaimed or transferred interest is treated pursuant to the provisions of title 26 of the United States Code or regulations promulgated under

1           that title, as never having been transferred to the disclaimant, then the disclaimer  
2           or transfer is effective as a disclaimer under this chapter.

3           **SECTION 11. AMENDMENT.** Section 30.1-10.1-12 of the North Dakota Century Code  
4 is amended and reenacted as follows:

5           **30.1-10.1-12. Applicability.**

- 6           1. This chapter does not limit the right of a person to waive, release, disclaim, or  
7           renounce property or an interest in or power over property under any law other  
8           than this chapter.
- 9           2. This chapter applies to ~~all interests~~ any interest in and powers or power over  
10          property, whenever created.
- 11          3. Except as otherwise provided in section 30.1-10.1-10, an interest in or power over  
12          property existing on August 1, 2001, as to which the time for delivering or filing a  
13          disclaimer under law superseded by this chapter has not expired may be  
14          disclaimed after August 1, 2001.
- 15          4. This chapter modifies, limits, and supersedes the federal Electronic Signatures in  
16          Global and National Commerce Act [15 U.S.C. 7001, et seq.] but does not modify,  
17          limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize  
18          electronic delivery of any of the notices described in section 103(b) of that Act  
19          [15 U.S.C. Section 7003(b)].