

SENATE BILL NO. 2075

Introduced by

Judiciary Committee

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

1 A BILL for an Act to create and enact chapter 30.1-10.1 of the North Dakota Century Code,
2 relating to the disclaimer of property interests; to amend and reenact subsection 1 of section
3 47-24.1-18 of the North Dakota Century Code, relating to the disclaimer of custodian duties;
4 and to repeal section 30.1-10-01 of the North Dakota Century Code, relating to the disclaimer of
5 property interests.

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

7 **SECTION 1.** Chapter 30.1-10.1 of the North Dakota Century Code is created and
8 enacted as follows:

9 **30.1-10.1-01. Definitions.** In this chapter:

- 10 1. "Beneficiary designation" means an instrument, other than an instrument creating a
11 trust, naming the beneficiary of an insurance or annuity policy; an account with a
12 designation for payment on death; a security registered in beneficiary form; a
13 pension, profit-sharing, retirement, or other employment-related benefit plan; or
14 any other nonprobate transfer at death.
- 15 2. "Disclaimant" means the person to whom the disclaimed interest or power would
16 have passed had the disclaimer not been made.
- 17 3. "Disclaimed interest" means the interest or share to which the disclaimant would
18 have been entitled had the disclaimer not been made.
- 19 4. "Disclaimer" means a refusal to accept an interest in, or power over, property.
- 20 5. "Distribution date" means the time when the disclaimed interest would have taken
21 effect in possession or enjoyment.
- 22 6. "Fiduciary" means a personal representative, trustee, an agent acting under a
23 power of attorney, or other person authorized to act as a fiduciary with respect to
24 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. "State" means a state of the United States, the District of Columbia, Puerto Rico,
9 the United States Virgin Islands, or any territory or insular possession subject to
10 the jurisdiction of the United States. The term includes an Indian tribe or band, or
11 Alaskan native village, which is recognized by federal law or formally
12 acknowledged by a state.

13 11. "Trust" means an express trust, charitable or noncharitable, with additions,
14 whenever and however created; or a trust created pursuant to a statute, judgment,
15 or decree under which the trust is to be administered in the manner of an express
16 trust.

17 **30.1-10.1-02. General provisions.**

18 1. A person may disclaim, in whole or in part, any interest in or power over property,
19 including a power of appointment. A person may disclaim notwithstanding a
20 spendthrift provision or similar restriction on transfer or any restriction or limitation
21 on the right to disclaim imposed by the creator of the interest or power.

22 2. Except to the extent the fiduciary's power to disclaim is expressly limited by
23 another statute of this state or by the instrument creating the fiduciary relationship,
24 a fiduciary may disclaim, in whole or in part, any interest in or power over property,
25 including a power of appointment, whether acting in a personal or representative
26 capacity. A fiduciary may disclaim notwithstanding a spendthrift provision or
27 similar restriction on transfer imposed by the creator of the interest or power, or a
28 restriction or limitation on the right to disclaim imposed by an instrument other than
29 the instrument that created the fiduciary relationship.

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.

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 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. 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 the instrument the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant predeceased the distribution date.

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

6. Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist

1 immediately before the distribution date, but a future interest held by the
2 disclaimant does not accelerate in possession or enjoyment.

3 **30.1-10.1-04. Disclaimer of rights of survivorship in jointly held property.**

4 1. Upon the death of a holder of jointly held property, a surviving holder may disclaim
5 in whole or in part the greater of a fractional share of the property determined by
6 dividing the number one by the number of joint holders alive immediately before
7 the death of the holder to whose death the disclaimer relates; or all of the property
8 except that part of the value of the entire interest attributable to the contribution
9 furnished by the disclaimant.

10 2. The disclaimer takes effect as of the death of the holder to whose death the
11 disclaimer relates.

12 3. An interest disclaimed by a surviving holder of jointly held property passes as if the
13 person whose interest is being disclaimed predeceased the holder to whose death
14 the disclaimer relates.

15 **30.1-10.1-05. Disclaimer of interest by trustee.** If a trustee disclaims an interest in
16 property, the interest does not become part of the trust.

17 **30.1-10.1-06. Disclaimer of powers of appointment and other powers not held in**
18 **fiduciary capacity.**

19 1. If a holder disclaims a power of appointment or other power not held in a fiduciary
20 capacity and the holder has not exercised the power, the disclaimer takes effect as
21 of the time the instrument creating the power becomes irrevocable.

22 2. If a holder disclaims a power of appointment or other power not held in a fiduciary
23 capacity and the holder has exercised the power and the disclaimer is of a power
24 other than a presently exercisable general power of appointment, the disclaimer
25 takes effect immediately after the date of the last exercise of the power; or is a
26 subsequent disclaimer of a presently exercisable general power of appointment,
27 the disclaimer is without effect.

28 3. If a holder disclaims a power of appointment or other power not held in a fiduciary
29 capacity, the instrument creating the power is construed as if the power ceased to
30 exist when the disclaimer became effective.

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

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

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

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

30.1-10.1-09. Delivery.

1. In subsections 2 through 11, delivery of a disclaimer may be accomplished by personal delivery, mailing by first-class mail, or any other method likely to result in its receipt.
2. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, delivery is made by delivering the disclaimer to the personal representative of the decedent's estate, or if no personal representative is then serving, by filing it with the court having jurisdiction to appoint the personal representative.

- 1 3. In the case of an interest in a testamentary trust, delivery is made by delivering the
2 disclaimer to the trustee then serving, or if no trustee is then serving, to the
3 personal representative of the decedent's estate, or if no personal representative is
4 then serving, by filing the disclaimer with a court having jurisdiction to appoint the
5 trustee.
- 6 4. In the case of an interest in an inter vivos trust, delivery is made by delivering the
7 disclaimer to the trustee then serving, or if no trustee is then serving, by filing it with
8 a court having jurisdiction to appoint the trustee, or if the disclaimer is made before
9 the time the instrument creating the trust becomes irrevocable, by delivering it to
10 the settlor of a revocable trust or the transferor of the interest.
- 11 5. In the case of an interest created by a beneficiary designation made before the
12 time the designation becomes irrevocable, delivery is made by delivering the
13 disclaimer to the person making the beneficiary designation.
- 14 6. In the case of an interest created by a beneficiary designation made after the time
15 the designation becomes irrevocable, delivery is made by delivering the disclaimer
16 to the person obligated to distribute the interest.
- 17 7. In the case of a disclaimer by a surviving holder of jointly held property, delivery is
18 made by delivering it to the person to whom the disclaimed interest passes.
- 19 8. In the case of a disclaimer by an object or taker in default of exercise of a power of
20 appointment, delivery is made by delivering it to the holder of the power or to the
21 fiduciary acting under the instrument that created the power, or if no fiduciary is
22 then serving, by filing it with the court having authority to appoint the fiduciary.
23 Delivery of the disclaimer may be 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 appointment,
25 delivery is made by delivering it to the personal representative of the holder's
26 estate or to the fiduciary under the instrument that created the power, or if no
27 fiduciary is then serving, by filing it with the court having authority to appoint the
28 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 as provided in subsection 2, 3, or 4, these
31 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 to the principal or the principal's representative.

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 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 or complete, of the future exercise of a power held in a fiduciary capacity is not barred by its past exercise.

4. A disclaimer, whether partial or complete, 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 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.

30.1-10.1-11. Recording of disclaimer. If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

30.1-10.1-12. Applicability.

- 1 1. This chapter does not limit the right of a person to waive, release, disclaim, or
2 renounce property or an interest in or power over property under any law other
3 than this chapter.
- 4 2. This chapter applies to all interests in and powers over property, whenever
5 created.
- 6 3. Except as otherwise provided in section 30.1-10.1-10, an interest in or power over
7 property existing on August 1, 2001, as to which the time for delivering or filing a
8 disclaimer under law superseded by this chapter has not expired may be
9 disclaimed after August 1, 2001.

10 **SECTION 2. AMENDMENT.** Subsection 1 of section 47-24.1-18 of the North Dakota
11 Century Code is amended and reenacted as follows:

- 12 1. A person nominated under section 47-24.1-03 or designated under section
13 47-24.1-09 as custodian may decline to serve by delivering a valid disclaimer
14 under ~~section 30.1-10-01~~ chapter 30.1-10.1 to the person who made the
15 nomination or to the transferor or the transferor's legal representative. If the event
16 giving rise to a transfer has not occurred and no substitute custodian able, willing,
17 and eligible to serve was nominated under section 47-24.1-03, the person who
18 made the nomination may nominate a substitute custodian under section
19 47-24.1-03; otherwise the transferor or the transferor's legal representative shall
20 designate a substitute custodian at the time of the transfer, in either case from
21 among the persons eligible to serve as custodian for that kind of property under
22 subsection 1 of section 47-24.1-09. The custodian so designated has the rights of
23 a successor custodian.

24 **SECTION 3. REPEAL.** Section 30.1-10-01 of the North Dakota Century Code is
25 repealed.