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H.546

Introduced by Representative LaLonde of South Burlington

Referred to Committee on

Date:

Subject: Decedents' estates; Uniform Disclaimer of Property Interests Act

Statement of purpose of bill as introduced: This bill proposes to enact the

Uniform Disclaimer of Property Interests Act in Vermont.

An act relating to the Uniform Disclaimer of Property Interests Act

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 14 V.S.A. chapter 129 is added to read:

CHAPTER 129. VERMONT DISCLAIMER OF PROPERTY INTERESTS

ACT

§ 4101. SHORT TITLE

This chapter may be cited as the "Vermont Uniform Disclaimer of Property Interests Act."

§ 4102. DEFINITIONS

As used in this chapter:

(1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

1 (2) “Disclaimed interest” means the interest that would have passed to
2 the disclaimant had the disclaimer not been made.

3 (3) “Disclaimer” means the refusal to accept an interest in or power over
4 property.

5 (4) “Fiduciary” means a personal representative, trustee, agent acting
6 under a power of attorney, or other person authorized to act as a fiduciary with
7 respect to the property of another person.

8 (5) “Jointly held property” means property held in the name of two or
9 more persons under an arrangement in which all holders have concurrent
10 interests and under which the last surviving holder is entitled to the whole of
11 the property.

12 (6) “Person” means an individual, corporation, business trust, estate,
13 trust, partnership, limited liability company, association, joint venture,
14 government, governmental subdivision, governmental agency, governmental
15 instrumentality, public corporation, or any other legal or commercial entity.

16 (7) “Personal representative” means a duly appointed representative of a
17 probate estate, such as an executor or administrator.

18 (8) “State” means a state of the United States, the District of Columbia,
19 Puerto Rico, the United States Virgin Islands, or any territory or insular
20 possession subject to the jurisdiction of the United States. The term includes

1 an Indian tribe or band, or Alaskan native village, recognized by federal law or
2 formally acknowledged by a state.

3 (9) “Trust” means:

4 (A) an express trust, charitable or noncharitable, with additions
5 thereto, whenever and however created; or

6 (B) a trust created pursuant to a statute, judgment, or decree that
7 requires the trust to be administered in the manner of an express trust.

8 § 4103. SCOPE

9 This chapter applies to disclaimers of any interest in or power over
10 property, whenever created.

11 § 4104. SUPPLEMENTED BY OTHER LAW

12 (a) Unless displaced by a provision of this chapter, the principles of law
13 and equity supplement this chapter.

14 (b) This chapter does not limit any right of a person to waive, release,
15 disclaim, or renounce an interest in or power over property under a law other
16 than this chapter.

17 § 4105. POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN

18 IRREVOCABLE

19 (a) A person may disclaim, in whole or in part, any interest in or power
20 over property, including a power of appointment. A person may disclaim the

1 interest or power even if its creator imposed a spendthrift provision or similar
2 restriction on transfer or a restriction or limitation on the right to disclaim.

3 (b) Except to the extent a fiduciary's right to disclaim is expressly
4 restricted or limited by another statute of this State or by the instrument
5 creating the fiduciary relationship, a fiduciary may disclaim, in whole or in
6 part, any interest in or power over property, including a power of appointment,
7 whether acting in a personal or representative capacity. A fiduciary may
8 disclaim the interest or power even if its creator imposed a spendthrift
9 provision or similar restriction on transfer or a restriction or limitation on the
10 right to disclaim, or an instrument other than the instrument that created the
11 fiduciary relationship imposed a restriction or limitation on the right to
12 disclaim.

13 (c) To the extent that there is no material conflict of interest, a parent, as
14 defined in 15C V.S.A. § 102(16), can disclaim on behalf of the parent's minor
15 or incapacitated child, if a guardian has not been or is not required to be
16 appointed for the child.

17 (d) To be effective, a disclaimer shall be in a writing or other record,
18 declare the disclaimer, describe the interest or power disclaimed, be signed,
19 and be delivered or filed in the manner provided in section 4112 of this title.

20 As used in this subsection:

1 (1) “Record” means information that is inscribed on a tangible medium
2 or that is stored in an electronic or other medium and is retrievable in
3 perceivable form.

4 (2) “Signed” means:

5 (A) by the person making the disclaimer, or by another individual
6 directed by the person making the disclaimer to sign the name of the person
7 making the disclaimer in the presence of the person making the disclaimer and
8 two credible witnesses who shall also sign the record in the presence of all
9 parties hereto; and

10 (B) with present intent to authenticate or adopt a record to:

11 (i) execute or adopt a tangible symbol; or

12 (ii) attach to or logically associate with the record an electronic
13 sound, symbol, or process.

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

17 (f) A disclaimer becomes irrevocable when it is delivered or filed pursuant
18 to section 4112 of this title or when it becomes effective as provided in
19 sections 4107–4111 of this title, whichever occurs later.

20 (g) A disclaimer made under this chapter is not a transfer, assignment, or
21 release.

1 § 4106. DISCLAIMER OF INTEREST IN PROPERTY

2 (a) As used in this section:

3 (1) “Future interest” means an interest that takes effect in possession or
4 enjoyment, if at all, later than the time of its creation.

5 (2) “Time of distribution” means the time when a disclaimed interest
6 would have taken effect in possession or enjoyment.

7 (b) Except for a disclaimer governed by section 4107 or 4108 of this title,
8 the following rules apply to a disclaimer of an interest in property:

9 (1) The disclaimer takes effect as of the time the instrument creating the
10 interest becomes irrevocable, or, if the interest arose under the law of intestate
11 succession, as of the time of the intestate’s death.

12 (2) The disclaimed interest passes according to any provision in the
13 instrument creating the interest providing for the disposition of the interest,
14 should it be disclaimed, or of disclaimed interests in general.

15 (3) If the instrument does not contain a provision described in
16 subdivision (2) of this subsection, the following rules apply:

17 (A) If the disclaimant is not an individual, the disclaimed interest
18 passes as if the disclaimant did not exist.

19 (B) If the disclaimant is an individual, except as otherwise provided
20 in subdivisions (C) and (D) of this subdivision (3), the disclaimed interest

1 passes as if the disclaimant had died immediately before the time of
2 distribution.

3 (C) If by law or under the instrument, the descendants of the
4 disclaimant would share in the disclaimed interest by any method of
5 representation had the disclaimant died before the time of distribution, the
6 disclaimed interest passes only to the descendants of the disclaimant who
7 survive the time of distribution.

8 (D) If the disclaimed interest would pass to the disclaimant's estate
9 had the disclaimant died before the time of distribution, the disclaimed interest
10 instead passes by representation to the descendants of the disclaimant who
11 survive the time of distribution. If no descendant of the disclaimant survives
12 the time of distribution, the disclaimed interest passes to those persons,
13 including the state but excluding the disclaimant, and in such shares as would
14 succeed to the transferor's intestate estate under the intestate succession law of
15 the transferor's domicile had the transferor died at the time of distribution.
16 However, if the transferor's surviving spouse is living but is remarried at the
17 time of distribution, the transferor is deemed to have died unmarried at the
18 time of distribution.

19 (4) Upon the disclaimer of a preceding interest, a future interest held by
20 a person other than the disclaimant takes effect as if the disclaimant had died

1 or ceased to exist immediately before the time of distribution, but a future
2 interest held by the disclaimant is not accelerated in possession or enjoyment.

3 § 4107. DISCLAIMER OF RIGHTS OF SURVIVORSHIP IN JOINTLY

4 HELD PROPERTY

5 (a) Upon the death of a holder of jointly held property, a surviving holder
6 may disclaim, in whole or part, the greater of:

7 (1) a fractional share of the property determined by dividing the number
8 one by the number of joint holders alive immediately before the death of the
9 holder to whose death the disclaimer relates; or

10 (2) all of the property except that part of the value of the entire interest
11 attributable to the contribution furnished by the disclaimant.

12 (b) A disclaimer under subsection (a) of this section takes effect as of the
13 death of the holder of jointly held property to whose death the disclaimer
14 relates.

15 (c) An interest in jointly held property disclaimed by a surviving holder of
16 the property passes as if the disclaimant predeceased the holder to whose death
17 the disclaimer relates.

18 § 4108. DISCLAIMER OF INTEREST BY TRUSTEE

19 If a trustee disclaims an interest in property that otherwise would have
20 become trust property, the interest does not become trust property.

1 § 4109. DISCLAIMER OF POWER OF APPOINTMENT OR OTHER
2 POWER NOT HELD IN FIDUCIARY CAPACITY

3 If a holder disclaims a power of appointment or other power not held in a
4 fiduciary capacity, the following rules apply:

5 (1) If the holder has not exercised the power, the disclaimer takes effect
6 as of the time the instrument creating the power becomes irrevocable.

7 (2) If the holder has exercised the power and the disclaimer is of a
8 power other than a presently exercisable general power of appointment, the
9 disclaimer takes effect immediately after the last exercise of the power.

10 (3) The instrument creating the power is construed as if the power
11 expired when the disclaimer became effective.

12 § 4110. DISCLAIMER BY APPOINTEE, OBJECT, OR TAKER IN
13 DEFAULT OF EXERCISE OF POWER OF APPOINTMENT

14 (a) A disclaimer of an interest in property by an appointee of a power of
15 appointment takes effect as of the time the instrument by which the holder
16 exercises the power becomes irrevocable.

17 (b) A disclaimer of an interest in property by a permissible appointee or
18 taker in default of an exercise of a power of appointment takes effect as of the
19 time the instrument creating the power becomes irrevocable.

1 § 4111. DISCLAIMER OF POWER HELD IN FIDUCIARY CAPACITY

2 (a) If a fiduciary disclaims a power held in a fiduciary capacity that has not
3 been exercised, the disclaimer takes effect as of the time the instrument
4 creating the power becomes irrevocable.

5 (b) If a fiduciary disclaims a power held in a fiduciary capacity that has
6 been exercised, the disclaimer takes effect immediately after the last exercise
7 of the power.

8 (c) A disclaimer under this section is effective as to another fiduciary if the
9 disclaimer so provides and the fiduciary disclaiming has the authority to bind
10 the estate, trust, or other person for whom the fiduciary is acting.

11 § 4112. DELIVERY OR FILING

12 (a) As used in this section, “beneficiary designation” means an instrument,
13 other than an instrument creating a trust, naming the beneficiary of:

14 (1) an annuity or insurance policy;

15 (2) an account with a designation for payment on death;

16 (3) a security registered in beneficiary form;

17 (4) a pension, profit-sharing, retirement, or other employment-related
18 benefit plan; or

19 (5) any other nonprobate transfer at death, including an enhanced life
20 estate deed created pursuant to 27 V.S.A. chapter 6.

1 (b) Subject to subsections (c)–(m) of this section, delivery of a disclaimer
2 may be effected by personal delivery, first-class mail, or any other method
3 likely to result in its receipt.

4 (c) In the case of an interest created under the law of intestate succession or
5 an interest created by will, other than an interest in a testamentary trust:

6 (1) the disclaimer shall be delivered to the personal representative of the
7 decedent’s estate; or

8 (2) if no personal representative is then serving, the disclaimer shall be
9 filed with a court having jurisdiction to appoint the personal representative.

10 (d) In the case of an interest in a testamentary trust:

11 (1) the disclaimer shall be delivered to the trustee then serving, or if no
12 trustee is then serving, to the personal representative of the decedent’s estate;
13 or

14 (2) if no personal representative is then serving, the disclaimer shall be
15 filed with a court having jurisdiction to enforce the trust.

16 (e) In the case of an interest in an inter vivos trust:

17 (1) the disclaimer must be delivered to the trustee then serving;

18 (2) if no trustee is then serving, the disclaimer shall be filed with a court
19 having jurisdiction to enforce the trust; or

1 (3) if the disclaimer is made before the time the instrument creating the
2 trust becomes irrevocable, the disclaimer shall be delivered to the settlor of a
3 revocable trust or the transferor of the interest.

4 (f) In the case of an interest created by a beneficiary designation that is
5 disclaimed before the designation becomes irrevocable, the disclaimer shall be
6 delivered to the person making the beneficiary designation.

7 (g) In the case of an interest in personal property created by a beneficiary
8 designation that is disclaimed after the designation becomes irrevocable, the
9 disclaimer shall be delivered to the person obligated to distribute the interest.

10 (h) If real property or an interest in real property is disclaimed, a copy of
11 the disclaimer shall be recorded in the land records of the town in which the
12 property or interest disclaimed is located.

13 (i) In the case of a disclaimer by a surviving holder of jointly held property,
14 the disclaimer shall be delivered to the person to whom the disclaimed interest
15 passes.

16 (j) In the case of a disclaimer by a permissible appointee or taker in default
17 of exercise of a power of appointment at any time after the power was created:

18 (1) the disclaimer shall be delivered to the holder of the power or to the
19 fiduciary acting under the instrument that created the power; or

20 (2) if no fiduciary is then serving, the disclaimer shall be filed with a
21 court having authority to appoint the fiduciary.

1 (k) In the case of a disclaimer by an appointee of a nonfiduciary power of
2 appointment:

3 (1) the disclaimer shall be delivered to the holder, the personal
4 representative of the holder's estate or to the fiduciary under the instrument
5 that created the power; or

6 (2) if no fiduciary is then serving, the disclaimer shall be filed with a
7 court having authority to appoint the fiduciary.

8 (l) In the case of a disclaimer by a fiduciary of a power over a trust or
9 estate, the disclaimer shall be delivered as provided in subsection (c), (d), or
10 (e) of this section, as if the power disclaimed were an interest in property.

11 (m) In the case of a disclaimer of a power by an agent, the disclaimer shall
12 be delivered to the principal or the principal's representative.

13 § 4113. WHEN DISCLAIMER BARRED OR LIMITED

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

15 (b) A disclaimer of an interest in property is barred if any of the following
16 events occur before the disclaimer becomes effective:

17 (1) the disclaimant accepts the interest sought to be disclaimed;

18 (2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or
19 transfers the interest sought to be disclaimed or contracts to do so; or

20 (3) a judicial sale of the interest sought to be disclaimed occurs.

1 (c) A disclaimer, in whole or part, of the future exercise of a power held in
2 a fiduciary capacity is not barred by its previous exercise.

3 (d) A disclaimer, in whole or part, of the future exercise of a power not
4 held in a fiduciary capacity is not barred by its previous exercise unless the
5 power is exercisable in favor of the disclaimant.

6 (e) A disclaimer is barred or limited if so provided by law other than this
7 chapter.

8 (f) A disclaimer of a power over property that is barred by this section is
9 ineffective. A disclaimer of an interest in property that is barred by this section
10 takes effect as a transfer of the interest disclaimed to the persons who would
11 have taken the interest under this chapter had the disclaimer not been barred.

12 § 4114. TAX QUALIFIED DISCLAIMER

13 Notwithstanding any other provision of this chapter, if as a result of a
14 disclaimer or transfer the disclaimed or transferred interest is treated pursuant
15 to the provisions of the Internal Revenue Code, as may be amended, or any
16 regulations promulgated under it, as never having been transferred to the
17 disclaimant, then the disclaimer or transfer is effective as a disclaimer under
18 this chapter.

19 § 4115. RECORDING OF DISCLAIMER

20 If an instrument transferring an interest in or power over property subject to
21 a disclaimer is required or permitted by law to be filed, recorded, or registered,

1 then the disclaimer may be so filed, recorded, or registered. Failure to file,
2 record, or register the disclaimer does not affect its validity as between the
3 disclaimant and persons to whom the property interest or power passes by
4 reason of the disclaimer.

5 § 4116. APPLICATION TO EXISTING RELATIONSHIPS

6 Except as otherwise provided in section 4113 of this title, an interest in or
7 power over property existing on the effective date of this chapter as to which
8 the time for delivering or filing a disclaimer under law superseded by this
9 chapter has not expired may be disclaimed after the effective date of this
10 chapter.

11 § 4117. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
12 NATIONAL COMMERCE ACT

13 This chapter modifies, limits, and supersedes the federal Electronic
14 Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.)
15 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C.
16 § 7001(c)) or authorize electronic delivery of any of the notices described in
17 Section 103(b) of that act (15 U.S.C. § 7003(b)).

18 § 4118. UNIFORMITY OF APPLICATION AND CONSTRUCTION

19 In applying and construing this uniform act, consideration shall be given to
20 the need to promote uniformity of the law with respect to its subject matter
21 among states that enact it.

1 § 4119. SEVERABILITY CLAUSE

2 If any provision of this chapter or its application to any person or
3 circumstance is held invalid, the invalidity does not affect other provisions or
4 applications of this chapter that can be given effect without the invalid
5 provision or application, and to this end the provisions of this chapter are
6 severable.

7 Sec. 2. REPEAL

8 14 V.S.A. chapter 83 (Uniform Disclaimer of Property Interests Act) is
9 repealed.

10 Sec. 3. EFFECTIVE DATE

11 This act shall take effect on passage.