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2      Introduced by Senator Hashim  
3      Referred to Committee on  
4      Date:  
5      Subject: Decedents' estates; Uniform Disclaimer of Property Interests Act  
6      Statement of purpose of bill as introduced: This bill proposes to enact the  
7      Uniform Disclaimer of Property Interests Act in Vermont.

8                   An act relating to the Uniform Disclaimer of Property Interests Act

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

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

11                  CHAPTER 129. VERMONT DISCLAIMER OF PROPERTY INTEREST

12                  ACT

13                  § 4101. SHORT TITLE

14                  This chapter may be cited as the “Vermont Uniform Disclaimer of Proper

15                  Interests Act.”

16                  § 4102. DEFINITIONS

17                  As used in this chapter:

18                  (1) “Disclaimer” means the person to whom a disclaimed interest or

19                  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.