

SENATE BILL NO. 2174

Introduced by

Judiciary Committee

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

1 A BILL for an Act to create and enact section 30.1-31-01.1 of the North Dakota Century Code,
2 relating to claims against nonprobate transferees; to amend and reenact sections 30.1-03-03,
3 30.1-09-08, subsection 3 of section 30.1-10-03, subsection 2 of section 30.1-10-04,
4 subsection 2 of section 30.1-18-03, subsection 1 of section 30.1-19-03, sections 30.1-31-01,
5 30.1-31-11, and 30.1-31-29 of the North Dakota Century Code, relating to the Uniform Probate
6 Code; and to repeal section 30.1-31-12 of the North Dakota Century Code, relating to claims
7 against nonprobate transferees.

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

9 **SECTION 1. AMENDMENT.** Section 30.1-03-03 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **30.1-03-03. (1-403) Pleadings - When parties bound by others - Notice.** In formal
12 proceedings involving trusts or estates of decedents, minors, protected persons, or
13 incapacitated persons, and in judicially supervised settlements, the following apply:

14 1. Interests to be affected ~~shall~~ must be described in pleadings ~~which~~ that give
15 reasonable information to owners by name or class, by reference to the instrument
16 creating the interests; or in ~~other~~ another appropriate manner.

17 2. ~~Persons are~~ A person is bound by ~~orders~~ an order binding ~~ethers~~ another in the
18 following cases:

19 a. ~~Orders~~ An order binding the sole holder or all coholders of a power of
20 revocation or a presently exercisable general power of appointment, including
21 one in the form of a power of amendment, ~~bind other persons~~ binds another
22 person to the extent ~~their~~ that person's interests, as objects, takers in default,
23 or otherwise, are subject to the power.

- 1 b. To the extent there is no conflict of interest between them or among persons
2 represented, ~~orders an order~~ binding a conservator ~~bind~~ binds the person
3 whose estate the conservator controls; ~~orders an order~~ binding a guardian
4 ~~bind~~ binds the ward if no conservator of the ward's estate has been
5 appointed; ~~orders an order~~ binding a trustee ~~bind~~ beneficiaries binds a
6 beneficiary of the trust in proceedings to probate a will establishing or adding
7 to a trust, to review the acts or accounts of a ~~prior~~ former fiduciary and in
8 proceedings involving creditors or other third parties; ~~and orders an order~~
9 binding a personal representative ~~bind~~ persons binds a person interested in
10 the undistributed assets of a decedent's estate in actions or proceedings by or
11 against the estate. ~~If there is no conflict of interest and no conservator or~~
12 ~~guardian has been appointed, a parent may represent that parent's minor~~
13 ~~child;~~ and an order binding a sole holder or all coholders of a general
14 testamentary power of appointment binds other persons to the extent their
15 interests as objects, takers in default, or otherwise are subject to the power.
16 c. ~~An~~ Unless otherwise represented, a minor or an incapacitated, unborn, or
17 unascertained person ~~who is not otherwise represented~~ is bound by an order
18 to the extent the person's interest is adequately represented by another party
19 having a substantially identical interest in the proceeding.
- 20 3. If no conservator or guardian has been appointed, a parent may represent a minor
21 child.
- 22 4. Notice is required as follows:
- 23 a. ~~Notice as~~ The notice prescribed by section 30.1-03-01 ~~shall~~ must be given to
24 every interested person or to one who can bind an interested person as
25 described in subdivision a or b of subsection 2. Notice may be given both to a
26 person and to another who may bind that person.
- 27 b. Notice is given to unborn or unascertained persons who are not represented
28 under subdivision a or b of subsection 2 by giving notice to all known persons
29 whose interests in the proceedings are substantially identical to those of the
30 unborn or unascertained persons.

1 4- 5. At any point in a proceeding, a court may appoint a guardian ad litem to represent
2 the interest of a minor, an incapacitated, unborn, or unascertained person, or a
3 person whose identity or address is unknown, if the court determines that
4 representation of the interest otherwise would be inadequate. If not precluded by
5 conflict of interests, a guardian ad litem may be appointed to represent several
6 persons or interests. The court shall ~~set-out~~ state its reasons for appointing a
7 guardian ad litem as a part of the record of the proceeding.

8 **SECTION 2. AMENDMENT.** Section 30.1-09-08 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **30.1-09-08. (2-606) Nonademption of specific devises - Unpaid proceeds of sale,**
11 **condemnation, or insurance - Sale by conservator.**

- 12 1. A specific devisee has the right to ~~the~~ specifically devised property in the testator's
13 estate at the testator's death and to:
- 14 a. Any balance of the purchase price, together with any security interest, ~~owing~~
15 ~~from~~ owed by a purchaser ~~to~~ at the ~~testator at~~ testator's death by reason of
16 sale of the property by the testator.
- 17 b. Any amount of a condemnation award for the taking of the property unpaid at
18 death.
- 19 c. Any proceeds unpaid at death on fire or casualty insurance on or other
20 recovery for injury to the property.
- 21 d. ~~Property~~ Any property owned by the testator at death and acquired as a result
22 of foreclosure, or obtained in lieu of foreclosure, of the security interest for a
23 specifically devised obligation.
- 24 2. If specifically devised property is sold ~~or~~ mortgaged, or otherwise encumbered by
25 a conservator or by an agent acting within the authority of a durable power of
26 attorney for an incapacitated ~~principal~~ person, or ~~if~~ a condemnation award,
27 insurance proceeds, or recovery for injury to the property ~~are~~ is paid to a
28 conservator or to an agent acting within the authority of a durable power of attorney
29 for an incapacitated ~~principal~~ person, the specific devisee has the right to a general
30 pecuniary devise equal to the net sale price, the amount of the unpaid loan, the
31 condemnation award, the insurance proceeds, or the recovery. This subsection

1 does not apply if, after the sale, ~~mortgage~~ encumbrance, condemnation, casualty,
2 or recovery, it was adjudicated that the testator's incapacity ceased and the
3 testator survived the adjudication by at least one year. The right of a specific
4 devisee under this subsection is reduced by any right the devisee has under
5 subsection 1.

6 **SECTION 3. AMENDMENT.** Subsection 3 of section 30.1-10-03 of the 1997
7 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 8 3. The intentional and felonious killing of the decedent:
- 9 a. Revokes any revocable disposition or appointment of property made by the
10 decedent to the killer in a governing instrument, provision in a governing
11 instrument conferring a general or nongeneral power of appointment on the
12 killer, and nomination of the killer in a governing instrument, nominating or
13 appointing the killer to serve in any fiduciary or representative capacity,
14 including a personal representative, executor, trustee, or agent.
- 15 b. Severs the interests of the decedent and killer in property held by them at the
16 time of the killing as joint tenants with the right of survivorship, transforming
17 the interests of the decedent and killer into equal tenancies in common.

18 **SECTION 4. AMENDMENT.** Subsection 2 of section 30.1-10-04 of the North Dakota
19 Century Code is amended and reenacted as follows:

- 20 2. Except as provided by the express terms of a governing instrument, a court order,
21 or a contract relating to the division of the marital estate made between the
22 divorced individuals before or after the marriage, divorce, or annulment, the divorce
23 or annulment of a marriage:
- 24 a. Revokes any revocable disposition or appointment of property made by a
25 divorced individual to the individual's former spouse in a governing instrument
26 and any disposition or appointment created by law or in a governing
27 instrument to a relative of the divorced individual's former spouse, provision in
28 a governing instrument conferring a general or special power of appointment
29 on the divorced individual's former spouse or on a relative of the divorced
30 individual's former spouse, and nomination in a governing instrument,
31 nominating a divorced individual's former spouse or a relative of the divorced

1 individual's former spouse to serve in any fiduciary or representative capacity,
2 including a personal representative, executor, trustee, conservator, agent, or
3 guardian.

4 b. Severs the interests of the former spouses in property held by them at the
5 time of the divorce or annulment as joint tenants with the right of survivorship,
6 transforming the interests of former spouses into equal tenancies in common.

7 **SECTION 5. AMENDMENT.** Subsection 2 of section 30.1-18-03 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 2. A personal representative ~~shall~~ may not be surcharged for acts of administration or
10 distribution if the conduct in question was authorized at the time. Subject to other
11 obligations of administration, an informally probated will ~~is authority~~ authorizes a
12 personal representative to administer and distribute the estate according to its
13 terms. An order of appointment of a personal representative, whether issued in
14 informal or formal proceedings, ~~is authority to~~ authorizes the personal
15 representative to distribute apparently intestate assets to the heirs of the decedent
16 if, at the time of distribution, the personal representative is not aware of a pending
17 testacy proceeding, a proceeding to vacate an order entered in an earlier testacy
18 proceeding, a formal proceeding questioning his appointment or fitness to
19 continue, or a supervised administration proceeding. ~~Nothing in this~~ This section
20 ~~affects~~ does not affect the duty of the personal representative to administer and
21 distribute the estate in accordance with the rights of claimants whose claims have
22 been allowed, the surviving spouse, any minor and dependent children, and any
23 pretermitted child of the decedent as described ~~elsewhere~~ in this title.

24 **SECTION 6. AMENDMENT.** Subsection 1 of section 30.1-19-03 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 1. All claims against a decedent's estate which arose before the death of the
27 decedent, including claims of the state ~~and~~ or any political subdivision ~~thereof~~,
28 whether due or to become due, absolute or contingent, liquidated or unliquidated,
29 founded on contract, tort, or other legal basis, if not barred earlier by other statute
30 of limitations, are barred against the estate, the personal representative, ~~and~~ the

1 heirs and devisees of the decedent, and nonprobate transferees unless presented
2 as follows:

- 3 a. Within three months after the date of the first publication and mailing of notice
4 to creditors if notice is given in compliance with section 30.1-19-01; provided,
5 claims barred by the nonclaim statute at the decedent's domicile before the
6 first publication for claims in this state are also barred in this state.
- 7 b. Within three years after the decedent's death, if notice to creditors has not
8 been published and mailed.

9 **SECTION 7. AMENDMENT.** Section 30.1-31-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **30.1-31-01. (6-101) Nonprobate transfers on death.**

12 ~~4.~~ A provision for a nonprobate transfer on death in an insurance policy, contract of
13 employment, bond, mortgage, promissory note, certificated or uncertificated
14 security, account agreement, custodial agreement, deposit agreement,
15 compensation plan, pension plan, individual retirement plan, employee benefit
16 plan, trust, conveyance, deed of gift, marital property agreement, or other written
17 instrument of a similar nature is nontestamentary. This ~~subsection~~ section
18 includes a written provision that:

- 19 ~~a.~~ 1. Money or other benefits due to, controlled by, or owned by a decedent before
20 death must be paid after the decedent's death to a person whom the
21 decedent designates either in the instrument or in a separate writing, including
22 a will, executed either before or at the same time as the instrument, or later;
- 23 ~~b.~~ 2. Money due or to become due under the instrument ceases to be payable in
24 the event of death of the promisee or the promisor before payment or
25 demand; or
- 26 ~~e.~~ 3. Any property controlled by or owned by the decedent before death which is
27 the subject of the instrument passes to a person the decedent designates
28 either in the instrument or in a separate writing, including a will, executed
29 either before or at the same time as the instrument, or later.
- 30 ~~2. Subsection 1 does not limit rights of creditors under other laws of this state.~~

1 **SECTION 8.** Section 30.1-31-01.1 of the North Dakota Century Code is created and
2 enacted as follows:

3 **30.1-31-01.1. (6-102) Liability of nonprobate transferees for creditor claims and**
4 **statutory allowances.**

- 5 1. In this section, "nonprobate transfer" means a valid transfer effective at death,
6 other than a transfer of a survivorship interest in a joint tenancy of real estate, by a
7 transferor whose last domicile was in this state to the extent that the transferor
8 immediately before death had power, acting alone, to prevent the transfer by
9 revocation or withdrawal and instead to use the property for the benefit of the
10 transferor or apply it to discharge claims against the transferor's probate estate.
- 11 2. Except as otherwise provided by statute, a transferee of a nonprobate transfer is
12 subject to liability to any probate estate of the decedent for allowed claims against
13 decedent's probate that estate and statutory allowances to the decedent's spouse
14 and children to the extent the estate is insufficient to satisfy those claims and
15 allowances. The liability of a nonprobate transferee may not exceed the value of
16 nonprobate transfers received or controlled by that transferee.
- 17 3. Nonprobate transferees are liable for the insufficiency described in subsection 2 in
18 the following order of priority:
- 19 a. A transferee designated in the decedent's will or any other governing
20 instrument, as provided in the instrument.
- 21 b. The trustee of a trust serving as the principal nonprobate instrument in the
22 decedent's estate plan as shown by its designation as devisee of the
23 decedent's residuary estate or by other facts or circumstances, to the extent
24 of the value of the nonprobate transfer received or controlled.
- 25 c. Other nonprobate transferees, in proportion to the values received.
- 26 4. Unless otherwise provided by the trust instrument, interests of beneficiaries in all
27 trusts incurring liabilities under this section abate as necessary to satisfy the
28 liability, as if all of the trust instruments were a single will and the interests were
29 devised under it.
- 30 5. A provision made in one instrument may direct the apportionment of the liability
31 among the nonprobate transferees taking under that or any other governing

- 1 instrument. If a provision in one instrument conflicts with a provision in another,
2 the later one prevails.
- 3 6. Upon due notice to a nonprobate transferee, the liability imposed by this section is
4 enforceable in proceedings in this state, whether or not the transferee is located in
5 this state.
- 6 7. A proceeding under this section may not be commenced unless the personal
7 representative of the decedent's estate has received a written demand for the
8 proceeding from the surviving spouse or a child, to the extent that statutory
9 allowances are affected, or a creditor. If the personal representative declines or
10 fails to commence a proceeding after demand, a person making demand may
11 commence the proceeding in the name of the decedent's estate, at the expense of
12 the person making the demand and not of the estate. A personal representative
13 who declines in good faith to commence a requested proceeding incurs no
14 personal liability for declining.
- 15 8. A proceeding under this section must be commenced within one year after the
16 decedent's death, but a proceeding on behalf of a creditor whose claim was
17 allowed after proceedings challenging disallowance of the claim may be
18 commenced within sixty days after final allowance of the claim.
- 19 9. Unless a written notice asserting that a decedent's probate estate is nonexistent or
20 insufficient to pay allowed claims and statutory allowances has been received from
21 the decedent's personal representative, the following rules apply:
- 22 a. Payment or delivery of assets by a financial institution, registrar, or other
23 obligor, to a nonprobate transferee in accordance with the terms of the
24 governing instrument controlling the transfer releases the obligor from all
25 claims for amounts paid or assets delivered.
- 26 b. A trustee receiving or controlling a nonprobate transfer is released from
27 liability under this section with respect to any assets distributed to the trust's
28 beneficiaries. Each beneficiary to the extent of the distribution received
29 becomes liable for the amount of the trustee's liability attributable to assets
30 received by the beneficiary.

1 **SECTION 9. AMENDMENT.** Section 30.1-31-11 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **30.1-31-11. (6-214) Accounts and transfers nontestamentary.** Except as provided
4 in chapter 30.1-05 or as a consequence of, and to the extent directed by, section ~~30.1-31-12~~
5 30.1-31-01.1, a transfer resulting from the application of section 30.1-31-09 is effective by
6 reason of the terms of the account involved and this part and is not testamentary or subject to
7 chapters 30.1-01 through 30.1-25.

8 **SECTION 10. AMENDMENT.** Section 30.1-31-29 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **30.1-31-29. (6-309) Nontestamentary transfer on death.**

11 4. A transfer on death resulting from a registration in beneficiary form is effective by
12 reason of the contract regarding the registration between the owner and the
13 registering entity and sections 30.1-31-21 through 30.1-31-30 and is not
14 testamentary.

15 2. ~~Sections 30.1-31-21 through 30.1-31-30 do not limit the rights of creditors of~~
16 ~~security owners against beneficiaries and other transferees under other laws of this~~
17 ~~state.~~

18 **SECTION 11. REPEAL.** Section 30.1-31-12 of the North Dakota Century Code is
19 repealed.