

JOURNAL OF THE HOUSE

Fifty-fourth Legislative Assembly

* * * * *

Bismarck, February 2, 1995

The House convened at 8:30 a.m., with Speaker Martin presiding.

The prayer was offered by the Rev. Garry Crites, Peace Congregational Church, New Salem.

The roll was called and all members were present except Representative D. Henegar.

A quorum was declared by the Speaker.

CORRECTION AND REVISION OF THE JOURNAL

MR. SPEAKER: Your Committee on Correction and Revision of the Journal (Rep. DROVDAL, Chairman) has carefully examined the Journal of the Twenty-second Day and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 334, line 41, replace "507 that pertains to house bills and resolutions other than" with "329, paragraph 4"

Page 334, line 42, remove "appropriations measures being in committee"

REP. RETZER MOVED that the report be adopted, which motion prevailed.

MOTION

REP. DORSO MOVED that HB 1045, which is on the Sixth order, be rereferred to the Education Committee, which motion prevailed. Pursuant to Rep. Dorso's motion, HB 1045 was rereferred.

MOTION

REP. CLAYBURGH MOVED that the House reconsider its action whereby Engrossed HB 1340 passed.

REQUEST

REP. CLAYBURGH REQUESTED a verification vote on the motion that the House reconsider its action whereby Engrossed HB 1340 passed, which request was granted.

The question was on the motion of Rep. Clayburgh that the House reconsider its action whereby Engrossed HB 1340 passed, which motion lost on a verification vote.

SIXTH ORDER OF BUSINESS

REP. DORSO MOVED that the amendments on the Sixth order of business to HB 1041, HB 1275, HB 1281, HB 1306, HB 1353, HB 1389, HB 1398, HB 1476, and HB 1499 be adopted, which motion prevailed.

HB 1041, HB 1275, HB 1281, HB 1306, HB 1353, HB 1389, HB 1398, HB 1476, and HB 1499, as amended, were placed on the Eleventh order of business on the calendar for the succeeding legislative day.

THE HOUSE RECOGNIZED THE PRESENCE OF:

Governor Valeriy Mikhaylovich Zubov, Krasnoyarsk Kray, Siberian region of Russia, who was accompanied by his U.S. Escort/Interpreter Mr. Yuriy Menis.

SECOND READING OF HOUSE BILL

HB 1211: A BILL for an Act to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to yield or stop signs to be erected at intersections of paved and unpaved highways.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 21 YEAS, 74 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

YEAS: Christenson; Delmore; Drovdal; Galvin; Gorder; Gulleon; Gunter; Hagle; Holm; Kunkel; Laughlin; Lloyd; Maragos; Monson; Mutzenberger; Nicholas; Oban; Olson; Shide; Thompson; Speaker Martin

NAYS: Aarsvold; Austin; Bateman; Belter; Berg; Bernstein; Boehm; Brown; Byerly; Carlisle; Carlson; Christopherson; Clark; Clayburgh; Dalrymple; DeKrey; Delzer; DeWitz; Dobrinski; Dorso; Freier; Froseth; Gerntholz; Glassheim; Gorman; Grosz; Grumbo; Hanson; Hausauer; Henegar, K.; Howard; Huether; Jacobs; Johnson; Kaldor; Keiser; Kelsch; Kempenich; Kerzman; Klein; Kliniske; Koppelman; Kretschmar; Kroeber; Mahoney; Martinson; Mickelson; Nichols; Nottestad; Payne; Poolman; Price; Rennerfeldt; Retzer; Rydell; Sabby; Sandvig; Schimke; Schmidt; Sitz; Skarphol; Soukup; Stenehjelm; Svedjan; Sveen; Thoreson; Timm; Tollefson; Torgerson; Wald; Walker; Wardner; Wentz; Wilkie

ABSENT AND NOT VOTING: Boucher; Coats; Henegar, D.

Engrossed HB 1211 was declared lost.

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The House has passed and your favorable consideration is requested on: HB 1016, HB 1019, HB 1020, HB 1026, HB 1247, HB 1280, HB 1300, HB 1312, HB 1318, HB 1339, HB 1340, HB 1343, HB 1348, HB 1361, HB 1482.

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The House has passed unchanged and the emergency clause carried on: SB 2071.

MOTION

REP. FREIER MOVED that the absent member be excused, which motion prevailed.

MOTION

REP. FREIER MOVED that the House be on the Fifth, Twelfth, and Thirteenth orders of business and at the conclusion of those orders, the House stand adjourned until 8:00 a.m., Friday, February 3, 1995, which motion prevailed.

REPORT OF STANDING COMMITTEE

HB 1009: Appropriations Committee (Rep. Dalrymple, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (21 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1009 was placed on the Sixth order on the calendar.

Page 1, line 13, replace "4,334,990" with "4,262,842"

Page 1, line 15, replace "92,500" with "82,500"

Page 1, line 17, replace "6,341,511" with "6,259,363"

Page 1, line 18, replace "4,333,514" with "4,297,440"

Page 1, line 19, replace "2,007,997" with "1,961,923"

Page 2, line 4, replace "2,423,804" with "2,377,730"

Page 2, line 5, replace "4,333,514" with "4,297,440"

Page 2, line 6, replace "6,757,318" with "6,675,170"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

DEPARTMENT 313 - VETERANS HOME

HOUSE - This amendment reduces the salaries and wages line item by \$72,148, of which \$36,074 is from the general fund, to accurately reflect the executive budget salary compensation package and reduces the equipment line item by \$10,000 from the general fund to reduce the amount allowed for computer equipment.

REPORT OF STANDING COMMITTEE

HB 1038: Education Committee (Rep. Rydell, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1038 was rereferred to the Appropriations Committee.

REPORT OF STANDING COMMITTEE

HB 1088: Education Committee (Rep. Rydell, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1088 was placed on the Sixth order on the calendar.

Page 1, line 13, after the period, insert "Rules governing operation of the university system motor pool must be consistent with similar rules governing operation of the central vehicle management system. The university system shall coordinate its purchases, sales and, whenever practical, its operations with the central vehicle management system."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1111: Judiciary Committee (Rep. Kretschmar, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1111 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "subsection" with "subsections 4, 5, and"

Page 1, line 9, replace "subdivision b of subsection 2 of section" with "sections"

Page 1, line 10, replace "section" with "30.1-09-07, 30.1-09-08, 30.1-09-10,"

Page 1, line 11, replace the second "section" with "sections"

Page 1, line 12, remove "subsection 3 of section" and remove the second "section"

Page 1, line 13, replace "subsection 5" with "subsections 5, 8, and 9", and replace "subsection 4" with "subsections 4, 7, and 8"

Page 1, line 14, after "as" insert "amended or"

Page 1, line 15, after the fourth comma insert "33, 34, 36,"

Page 1, line 18, after the comma insert "nonademption, power of appointment," and after "transfers" insert "; to amend and reenact section 51 of chapter 334 of the 1993 Session Laws, relating to the effective date of

amendments to the Uniform Probate Code; to repeal section 30.1-04-06 of the North Dakota Century Code, relating to representation; and to provide an effective date

Page 1, after line 19, insert:

"SECTION 1. AMENDMENT. Subsection 4 of section 30.1-01-06 of the North Dakota Century Code as amended by section 2 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

4. "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an insurance or annuity policy, of an account with a payable on death designation, of a security registered in beneficiary form transferable on death, or of a pension, profit sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised."

Page 1, line 20, replace "Subsection" with "Subsections 5 and"

Page 1, line 22, replace "is" with "are"

Page 1, after line 22, insert:

- "5. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance annuity policy, of an account with payable on death designation, of a security registered in beneficiary form transferable on death, or of a pension, profit sharing, retirement, or similar benefit plan, or other nonprobate transfer at death."

Page 2, line 13, overstrike "elective-share amount equal to"

Page 2, line 14, overstrike "the value of the elective-share percentage" and insert immediately thereafter "elective-share of one-half", and overstrike the comma

Page 2, overstrike lines 15 through 29

Page 3, overstrike lines 1 through 5 and insert immediately thereafter an underscored period

Page 7, line 25, after the second "spouse" insert "created by the decedent during the marriage"

Page 8, line 9, after the first "interest" insert "contributed by the decedent during the marriage"

Page 8, remove lines 19 through 26

Page 8, line 27, remove "(d)" and overstrike "Proceeds of insurance, including accidental death"

Page 8, line 28, overstrike "benefits, on the life of the decedent"

Page 8, line 29, overstrike ", if"

Page 9, line 1, overstrike "the decedent owned the insurance policy"

Page 9, remove lines 4 and 5

Page 9, overstrike line 6

Page 9, line 12, replace "over the policy or its" with "(c) The decedent's ownership interest in property or accounts held in POD, TOD, or coownership registration with the right of survivorship; the amount included is the value of the decedent's ownership interest, to the extent that the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse"

Page 9, remove lines 13 through 15

Page 9, line 16, remove "other than the decedent's estate or surviving spouse"

Page 11, line 15, remove the underscore under the period

Page 11, remove lines 16 through 24

Page 11, line 25, overstrike "(c)"

Page 12, line 4, after "{d}" insert "(b)"

Page 13, line 2, remove "and"

Page 13, after line 2, insert:

"(3) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent that the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds; the amount included is the value of the proceeds, to the extent that they were payable at the decedent's death; and"

Page 13, line 3, replace "(3)" with "(4)"

Page 14, line 3, after "amounts" insert "~~that would have been includable in the surviving spouse's reclaimable estate under paragraph 3 of subdivision b of subsection 2 are not valued as if the spouse were deceased.~~"

Page 14, line 10, remove "For purposes of this paragraph,"

Page 14, remove lines 11 through 14

Page 14, line 15, remove "not valued as if the spouse were deceased."

Page 14, line 27, after the period insert "Life insurance, accident insurance, pension, profit-sharing, retirement, and other benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate are also excluded from the decedent's nonprobate transfers."

Page 19, line 23, remove "up to the applicable"

Page 19, replace lines 24 through 28 with an underscored period

Page 20, line 6, replace "c" with "b"

Page 22, line 29, after "shall" insert "serve a copy of the petition for the elective share on, and shall" and after "give" insert "written"

Page 23, line 3, overstrike "will" and insert immediately thereafter "may"

Page 28, line 12, replace "a program of public" with "medical or other forms of"

Page 28, line 13, after "assistance" insert "from any state or federal government or governmental agency for which the surviving spouse must qualify on the basis of need"

Page 29, line 17, remove "good faith"

Page 29, line 23, after "liable" insert "only", remove "payments made or other", and after "taken" insert "two or more business days"

Page 29, line 26, after the underscored period insert "The written notice must indicate the name of the decedent, the date of the decedent's death, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that the spouse intends to file a petition for the elective share or that a petition for the elective share has been filed. Any form of service of notice other than that described in subsection 2 is not sufficient to impose liability on a payer or other third party for actions taken pursuant to the governing instrument."

Page 29, line 27, remove "of intention to file a petition for the elective"

Page 29, line 28, remove "share or that a petition for the elective share has been filed"

Page 30, line 2, after the underscored period insert "Notice to a sales representative of the payer or other third party does not constitute notice to the payer or other third party."

Page 30, line 11, after the underscored period insert "The availability of an action under this section does not prevent the payer or other third party from taking any other action authorized by law or the governing instrument. If no probate proceedings have been commenced, the payer or other third party shall file with the court a copy of the written notice received by the payer or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payer or other third party for any such payment, transfer, or deposit with the court, even if no probate proceedings have been commenced before the payment, transfer, or deposit."

Page 30, line 18, after the underscored period insert "A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court."

Page 30, line 20, after "claims" insert "under the governing instrument or applicable law"

Page 32, line 18, replace "Subdivision b of subsection 2 of section" with "Section"

Page 32, replace lines 21 through 29 with:

"30.1-09-05. (2-603) Antilapse - Deceased devisee - Class gifts.

1. ~~In this section:~~

- a. ~~"Alternative devise" means that a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition precedent, condition subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause.~~
 - b. ~~"Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.~~
 - c. ~~"Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.~~
 - d. ~~"Devisee" includes a class member if the devise is in the form of a class gift, an individual or class member who was deceased at the time the testator executed the will as well as an individual or class member who was then living but who failed to survive the testator, and an appointee under a power of appointment exercised by the testator's will.~~
 - e. ~~"Stepchild" is a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, and not of the testator.~~
 - f. ~~"Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is deemed to have predeceased the testator under section 30.1-09-1-02.~~
 - g. ~~"Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.~~
2. ~~If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:~~
- a. ~~Except as provided in subdivision d, if a devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.~~
 - b. ~~Except as provided in subdivision d, if a devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", "family", or a class described by language of similar import, a substitute gift is created~~

~~in the deceased devisee or devisee's surviving descendants. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which that deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this subdivision, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.~~

- ~~c. For purposes of section 30.1 00 03, words of survivorship, such as in a devise to an individual "if the individual survives me", or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.~~
 - ~~d. If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.~~
 - ~~e. Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section, whether or not the descendant is an object of the power.~~
- ~~3. If under subsection 2, substitute gifts are created and not superseded with respect to more than one devise and the devisees are alternative devisees, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:~~
- ~~a. Except as provided in subdivision b, the devised property passes under the primary substitute gift.~~
 - ~~b. If there is a younger generation devise, the devised property passes under the younger generation substitute gift and not under the primary substitute gift.~~
 - ~~c. In this subsection:~~
 - ~~(1) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devisees who left surviving descendants survived the testator.~~
 - ~~(2) "Primary substitute gift" means the substitute gift created with respect to the primary devise.~~
 - ~~(3) "Younger generation devise" means a devise that is to a descendant of a devisee of the primary devise, is an alternative devise with respect to the primary devise, is a devise for which a substitute gift is created, and would have taken effect had all the~~

~~deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.~~

- (4) ~~"Younger generation substitute gift" means the substitute gift created with respect to the younger generation devise. If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if the devisee predeceased the testator, the issue of the deceased devisee who survive the testator by one hundred twenty hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree, then those of more remote degree take by representation. One who would have been a devisee under a class gift if that person had survived the testator is treated as a devisee for purposes of this section where that person's death occurred before or after the execution of the will.~~

SECTION 9. AMENDMENT. Section 30.1-09-07 of the North Dakota Century Code as amended by section 33 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

30.1-09-07. (2-605) ~~Increase~~ Change in securities - Accessions - Nonademption.

1. ~~If a testator executes a will that devises intended a specific devise of certain securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types rather than the equivalent value thereof, the specific devisee is entitled only to:~~
 - a. ~~Securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options. As much of the devised securities as is a part of the estate at the time of the testator's death.~~
 - b. ~~Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization. Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options.~~
 - c. ~~Securities of the same organization acquired as a result of a plan of reinvestment. Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity.~~
 - d. ~~Any additional securities of the entity owned by the testator as a result of a plan of reinvestment.~~

2. Distributions ~~in cash~~ before death with respect to a described specifically devised security not provided for in subsection 1 are not part of the specific devise.

SECTION 10. AMENDMENT. Section 30.1-09-08 of the North Dakota Century Code as amended by section 34 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

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

1. A specific devisee has the right to the specifically devised property in the testator's estate at death and:
 - a. Any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property.
 - b. Any amount of a condemnation award for the taking of the property unpaid at death.
 - c. Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property.
 - d. Property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.
 - e. ~~Real or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real or tangible personal property.~~
2. If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery. This subsection does not apply if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.
- ~~3. The right of a specific devisee under this subsection 2 is reduced by any right the devisee has under subsection 1.~~
- ~~4. For the purposes of the references in subsection 2 to a conservator, subsection 2 does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.~~
- ~~5. For the purposes of the references in subsection 2 to an agent acting within the authority of a durable power of attorney for an incapacitated principal, "incapacitated principal" means a principal who is an incapacitated person, no adjudication of incapacity before death is necessary, and the acts of an agent within the authority of a durable power~~

~~of attorney are presumed to be for an incapacitated principal.~~

SECTION 11. AMENDMENT. Section 30.1-09-10 of the North Dakota Century Code as amended by section 36 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

30.1-09-10. (2-608) Exercise of power of appointment. ~~In the absence of a requirement that a power of appointment be exercised by a reference, or by an express or specific reference, to the power, a A general residuary clause in a will, or a will making general disposition of all of the testator's property, expresses an intention to does not exercise a power of appointment held by the testator only if the power is a general power and the creating instrument does not contain a gift if the power is not exercised or the testator's will manifests an unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power."~~

Page 33, remove lines 1 through 9

Page 43, line 12, replace "Subsection 3 of section" with "Section"

Page 43, replace lines 15 through 22 with:

"30.1-09.1-09. (2-709) Representation — Per capita at each generation - Representation - Per stirpes.

1. In this section:

- a. "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date under section 30.1-09.1-02.
- b. "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.
- c. "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 30.1-09.1-02.

2. If ~~an applicable statute or~~ a governing instrument calls for property to be distributed ~~"by representation" or~~ "per capita at each generation", the property is divided into as many equal shares as there are surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.
3. If an applicable statute or a governing instrument calls for property to be distributed "by representation" or "per stirpes", the property is divided into as many equal shares as there are surviving children of the designated ancestor

and deceased children who left surviving descendants. Each surviving child is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

4. For the purposes of subsections 2 and 3, an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share."

Page 45, line 26, replace "Subsection" with "Subsections" and after "5" insert ", 8, and 9"

Page 45, line 28, replace "is" with "are"

Page 46, after line 5, insert:

- "8. a. A payer or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payer or other third party received written notice of a claimed forfeiture or revocation under this section. A payer or other third party does not have a duty or obligation to make any determination as to whether the decedent was a victim of a felonious killing or to seek any evidence with respect to a felonious killing even if the circumstances of the decedent's death are suspicious or questionable as to the beneficiary's participation in any such felonious killing. A payer or other third party is only liable for a payment made or other action actions taken two or more business days after the actual receipt by the payer or other third party received of written notice of a claimed forfeiture or revocation under this section. The payer or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subdivision b.
- b. The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture or revocation is being made under this section. Written notice of a claimed forfeiture or revocation under this subsection must be mailed to the payer's or third party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payer or other third party does not constitute notice to the payer or other third party. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates

located in the county of the decedent's residence. In addition to the actions available under this section, the payer or other third party may take any action authorized by law or the governing instrument. If no probate proceedings have been commenced, the payer or other third party shall file with the court a copy of the written notice received by the payer or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payer or other third party for the payment to the court of amounts owed or transferred to or deposit with the court of any item of property, even if no probate proceedings have been commenced before the payment, transfer, or deposit. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

9. a. A person bona fide purchaser who purchases property ~~for value and without notice~~, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.
- b. If this section or any part of this section is preempted by federal law, other than the federal Employee Retirement Income Security Act of 1974, as amended, with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

Page 46, line 6, replace "Subsection" with "Subsections", and after "4" insert ", 7, and 8"

Page 46, line 8, replace "is" with "are"

Page 46, after line 15, insert:

- "7. a. A payer or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or

remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payer or other third party received written notice of the divorce, annulment, or remarriage. A payer or other third party does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital relationship. A payer or other third party is only liable for a payment made or other action actions taken two or more business days after the actual receipt by the payer or other third party received of written notice of a claim for forfeiture or revocation under this section. The payer or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subdivision b.

- b. The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a divorce, annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce, annulment, or remarriage under this subdivision must be mailed to the payer's or other third party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payer or other third party may take any action authorized by law or the governing instrument. If no probate proceedings have been commenced, the payer or other third party shall file with the court a copy of the written notice received by the payer or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payer or other third party for the payment to the court of amounts owed or transferred to or deposit with the court of any item of property, even if no probate proceedings have been commenced before the payment, transfer, or deposit. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

8. a. A person bona fide purchaser who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally

enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

- b. If this section or any part of this section is preempted by federal law, other than the federal Employee Retirement Income Security Act of 1974, as amended, with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

Page 52, after line 18, insert:

"SECTION 26. REPEAL. Section 30.1-04-06 of the North Dakota Century Code, as amended by section 8 of chapter 334 of the 1993 Session Laws, is repealed.

SECTION 27. AMENDMENT. Section 51 of chapter 334 of the 1993 Session Laws is amended and reenacted as follows:

SECTION 51. EFFECTIVE DATE. This Act becomes effective on ~~August 1, 1995~~ January 1, 1996.

SECTION 28. EFFECTIVE DATE. Sections 1 through 26 of this Act become effective on January 1, 1996."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1216: Education Committee (Rep. Rydell, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1216 was placed on the Sixth order on the calendar.

Page 1, line 22, replace "within thirty" with "expeditiously, but no later than one hundred eighty"

Page 2, line 12, replace "or the school" with ". In determining a school district's existing indebtedness, the superintendent shall include outstanding indebtedness authorized by an election under section 21-03-07 but not issued, and indebtedness authorized to be paid with dedicated tax levies under subsection 7 of section 21-03-07 but not issued"

Page 2, remove lines 13 and 14

Page 2, line 15, remove "indebtedness above fifteen percent of its taxable valuation"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1243: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **DO NOT PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1243 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1267: Education Committee (Rep. Rydell, Chairman) recommends **DO NOT PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1267 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1286: Education Committee (Rep. Rydell, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1286 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the suspension of licenses, certificates, permits, or the authority of persons practicing professions, trades, or occupations for failure to pay student loans guaranteed by the state guaranteed student loan program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

Definitions. For purposes of this Act, unless the context otherwise requires:

1. "Director" means the director of the state guaranteed student loan program or a person designated by the director.
2. "Program" means the state guaranteed student loan program.

Suspension of occupational or professional license for nonpayment of defaulted state guaranteed student loans. Any license, certificate, permit, or authority granted by this state to practice an occupation or profession may be suspended if the director finds that:

1. The holder owes a legally enforceable loan obligation made for the purpose of financing postsecondary education and guaranteed by the program.
2. The holder is in default according to the terms of the promissory note signed by the borrower.
3. The program has purchased the obligation from the originator or holder of the loan under a written agreement with the originator or holder.
4. Efforts to collect the unpaid balance of the obligation have failed.
5. The borrower has been notified in writing of the intent to suspend the borrower's license, certification, permit, or authority.

Notice and opportunity for hearing - Procedure.

1. Before suspending a license, certificate, permit, or authority under this Act, the director shall send a written order by registered mail to the borrower at the last known address of the borrower. The borrower may request an informal review of the proposed suspension by mailing a written request by registered mail to the director. If no written request is received by the director within thirty days from the date the order is mailed, the order is final.
2. Upon receipt of a timely request for review, the director shall conduct an informal review. The informal review must include an opportunity for the borrower to present relevant evidence and testimony. The director shall set the time for the informal review and send a written notice of the informal review to the borrower by registered mail to the borrower's last known address. The notice of the review must state:
 - a. The grounds, charges, or conduct that justify suspension under this section, including a summary description of the actions taken by the program to collect the loan.
 - b. A specific time for the review, which may not be less than twenty nor more than thirty days after the mailing of the notice of the review.
 - c. A specific place for the review.
3. The director shall conduct the informal review. After the informal review, a copy of the director's decision must be provided to the borrower by registered mail.
4. The borrower may request reconsideration of an informal review decision to suspend. The request for reconsideration must be sent by registered mail to the director within thirty days of mailing of the notice that the informal hearing has resulted in a determination to suspend. The director shall review the basis for the appeal and if the director determines that the request raises issues not considered in the informal review or new facts that could not have been presented at the informal review, the director shall request the office of administrative hearings to conduct a hearing and make a decision. The office of administrative hearings shall schedule the hearing within sixty days of the director's request unless the parties agree to an extension. The hearing officer shall consider the evidence provided and reach a decision within thirty days of the latter of the close of the hearing or the date any post hearing briefs requested by the hearing officer are filed. The decision of the office of administrative hearings is final and must be provided by registered mail to the borrower, the program, and the appropriate licensing authority or occupational or professional board.
5. If the borrower does not request reconsideration under subsection 4, the director shall notify the appropriate licensing authority or occupational or professional board of the requirement to suspend the license, certificate, permit, or authority.

Surrender of license, certificate, permit, or authority. A borrower whose license, certificate, permit, or authority has been suspended under this chapter shall promptly deliver the license, certificate, permit, or authority to the director in person or by registered mail. The director shall forward the license, certificate,

permit, or authority to the appropriate licensing agency or other appropriate board.

Reinstatement of license, certificate, permit, or authority. The borrower may make a written request for reinstatement of any license, certificate, permit, or authority to practice the borrower's profession, trade, or occupation. A determination to grant or deny a request to reinstate must be made by the director. In considering a decision to reinstate, the director shall consider:

1. The receipt of payment in full of any amount owed including any interest and collection costs.
2. The state guaranteed student loan balance.
3. Satisfactory compliance with alternative repayment terms.

If the director determines reinstatement is appropriate, the director shall notify the appropriate board or agency that the copy of the license, certificate, permit, or authority must be returned to the borrower and that the borrower may be reinstated to practice the profession, trade, or occupation from which the borrower was suspended. The director shall mail a reinstatement notice to the borrower at the address specified in the records of the program and to the appropriate licensing agency or other appropriate board.

Effect of suspension. A person whose license, certificate, permit, or authority is suspended may not engage in the profession, trade, or occupation from which the person has been suspended during the period of suspension. A board, commission, or agency that receives notice of suspension of a license, certificate, permit, or authority to practice a profession, trade, or occupation under this Act may not issue or renew a license, certificate, permit, or authority to the affected borrower during the period of suspension.

Suspension not exclusive remedy. The suspension of a license, certificate, permit, or authority under this chapter is in addition to any other remedy provided by law."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1370: Natural Resources Committee (Rep. Olson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1370 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 36-01 of the North Dakota Century Code, relating to the identification of mountain lions, wolves, and wolf hybrids held in captivity; and to"

Page 1, line 11, overstrike "commissioner" and insert immediately thereafter "director"

Page 1, after line 17, insert:

"SECTION 2. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

Mountain lions, wolves, and wolf hybrids held in captivity - Identification required. Any person who keeps a mountain lion, wolf, or wolf hybrid in captivity must obtain an identification number from the board. The number must be tattooed in indelible ink inside the ear of the animal for permanent identification purposes."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1374: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1374 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1380: Finance and Taxation Committee (Rep. Timm, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1380 was placed on the Sixth order on the calendar.

Page 3, line 11, replace "forty years" with "thirteen months"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1388: Education Committee (Rep. Rydell, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (9 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1388 was placed on the Sixth order on the calendar.

Page 1, line 10, after "labor" insert "at the request of the North Dakota school-to-work transition team"

Page 2, line 6, after "labor" insert "at the request of the North Dakota school-to-work transition team"

Page 4, line 22, after "labor" insert "at the request of the North Dakota school-to-work transition team"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1390: Finance and Taxation Committee (Rep. Timm, Chairman) recommends DO NOT PASS (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1390 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1405: Finance and Taxation Committee (Rep. Timm, Chairman) recommends DO PASS (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1405 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1409: Finance and Taxation Committee (Rep. Timm, Chairman) recommends DO NOT PASS (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1409 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1417: Finance and Taxation Committee (Rep. Timm, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1417 was placed on the Sixth order on the calendar.

Page 1, line 7, overstrike "Beginning in 1991, and" and insert immediately thereafter "For" and after "each" insert "taxable"

Page 1, line 8, overstrike "thereafter," remove the overstrike over "~~through~~", after "1996" insert "2006", and remove the overstrike over the second overstruck comma

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1467: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO NOT PASS (12 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1467 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1470: Finance and Taxation Committee (Rep. Timm, Chairman) recommends DO NOT PASS (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1470 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HCR 3019: Education Committee (Rep. Rydell, Chairman) recommends DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3019 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HCR 3026: Education Committee (Rep. Rydell, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3026 was placed on the Tenth order on the calendar.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM C. PARKER, SECRETARY)

MR. SPEAKER: The Senate has passed and your favorable consideration is requested on: SB 2040, SB 2054, SB 2224.

FIRST READING OF SENATE BILLS

SB 2040: A BILL for an Act to amend and reenact subsection 1 of section 12.1-32-02 and section 12.1-32-06.1 of the North Dakota Century Code, relating to sentencing alternatives and to an additional period of probation that may be imposed for a person found guilty of a sexual offense against a minor.

Was read the first time and referred to the Judiciary Committee.

SB 2054: A BILL for an Act to amend and reenact section 15-40.1-05 of the North Dakota Century Code, relating to the distribution of payments to school districts.

Was read the first time and referred to the Education Committee.

SB 2224: A BILL for an Act to amend and reenact subsection 1 of section 23-12-13 of the North Dakota Century Code, relating to the order of priority of persons authorized to provide informed consent to health care for an incapacitated person.

Was read the first time and referred to the Judiciary Committee.

The House stood adjourned pursuant to Representative Freier's motion.

ROY GILBREATH, Chief Clerk