

HOUSE BILL NO. 1268

Introduced by

Representative Keiser

1 A BILL for an Act to create and enact a new subsection to section 47-02-27.4 of the North
2 Dakota Century Code, relating to exclusions from the statutory rule against perpetuities; and to
3 amend and reenact sections 47-02-27.1 and 47-02-27.2 of the North Dakota Century Code,
4 relating to the rule against perpetuities and contingent property interests.

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

6 **SECTION 1. AMENDMENT.** Section 47-02-27.1 of the 1997 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **47-02-27.1. Statutory rule against perpetuities - Invalidity of certain contingent**
9 **property interests, general powers of appointment, special powers of appointment, and**
10 **general testamentary powers of appointment.**

- 11 1. A contingent property interest is invalid unless:
- 12 a. When the interest is created, it is certain to vest or terminate no later than
- 13 twenty-one years after the death of an individual then alive; or
- 14 b. The interest either vests or terminates within ninety years after its creation.
- 15 2. A general power of appointment not presently exercisable because of a condition
- 16 precedent is invalid unless:
- 17 a. When the power is created, the condition precedent is certain to be satisfied
- 18 or to become impossible to satisfy no later than twenty-one years after the
- 19 death of an individual then alive; or
- 20 b. The condition precedent either is satisfied or becomes impossible to satisfy
- 21 within ninety years after its creation.
- 22 3. A special power of appointment or a general testamentary power of appointment is
- 23 invalid unless:

- 1 a. When the power is created, it is certain to be irrevocably exercised or
2 otherwise to terminate no later than twenty-one years after the death of an
3 individual then alive; or
4 b. The power is irrevocably exercised or otherwise terminates within ninety years
5 after its creation.
- 6 4. In determining whether a contingent property interest or a power of appointment is
7 valid under subdivision a of subsection 1, subdivision a of subsection 2, or
8 subdivision a of subsection 3, the possibility that a child will be born to an individual
9 after the individual's death is disregarded.
- 10 5. ~~If, in measuring a period from the creation of a trust or other property arrangement,~~
11 ~~language in a governing instrument seeks to disallow the vesting or termination of~~
12 ~~any interest or trust beyond, seeks to postpone the vesting or termination of any~~
13 ~~interest or trust until, or seeks to operate in effect in any similar fashion upon, the~~
14 ~~later of (a) the expiration of a period of time not exceeding twenty one years after~~
15 ~~the death of the survivor of specified lives in being at the creation of the trust or~~
16 ~~other property arrangement or (b) the expiration of a period of time that exceeds or~~
17 ~~might exceed twenty one years after the death of the survivor of lives in being at~~
18 ~~the creation of the trust or other property arrangement, that language is inoperative~~
19 ~~to the extent it produces a period of time that exceeds twenty one years after the~~
20 ~~death of the survivor of the specified lives.~~

21 **SECTION 2. AMENDMENT.** Section 47-02-27.2 of the 1997 Supplement to the North
22 Dakota Century Code is amended and reenacted as follows:

23 **47-02-27.2. When contingent property interest or power of appointment created.**

- 24 1. Except as provided in subsections 2 and 3 of this section and in subsection 1 of
25 section 47-02-27.5, the time of creation of a contingent property interest or a power
26 of appointment is determined under general principles of property law.
- 27 2. For purposes of sections 47-02-27.1 through 47-02-27.5, if there is a person who
28 alone can exercise a power created by a governing instrument to become an
29 unqualified beneficial owner of a contingent property interest or a property interest
30 subject to a power of appointment described in subsection 2 or 3 of section

1 47-02-27.1, the contingent property interest or power of appointment is created
2 when the power to become the unqualified beneficial owner terminates.

3 3. ~~For purposes of sections 47-02-27.1 through 47-02-27.5, a contingent property~~
4 ~~interest or a power of appointment arising from a transfer of property to a~~
5 ~~previously funded trust or other existing property arrangement is created when the~~
6 ~~contingent property interest or power of appointment in the original contribution~~
7 ~~was created.~~

8 **SECTION 3.** A new subsection to section 47-02-27.4 of the 1997 Supplement to the
9 North Dakota Century Code is created and enacted as follows:

10 An irrevocable trust regardless of when or how the trust was created or when the
11 trust became irrevocable.