

UNIFORM PROBATE CODE

CHAPTER 295

HOUSE BILL NO. 1321
(Winkjer)

PROBATE CODE AMENDMENTS

AN ACT to create and enact a new section to chapter 30.1-04, a new subsection to section 30.1-05-02, and a new subsection to section 30.1-14-01 of the North Dakota Century Code, relating to persons related to decedent through two lines, bona fide purchaser, and applicant's submission to jurisdiction; to amend and reenact sections 30.1-04-09 and 30.1-05-02, subsection 1 of section 30.1-05-05, section 30.1-05-06, subsection 1 of section 30.1-05-07, sections 30.1-08-04, 30.1-09-08, 30.1-09-11, 30.1-10-01, subsection 2 of section 30.1-10-02, sections 30.1-12-06, 30.1-14-01, 30.1-15-07, 30.1-19-02, 30.1-19-14, 30.1-20-10, 30.1-21-04, 30.1-31-04, and 30.1-31-06 of the North Dakota Century Code, to provide amendments to the Uniform Probate Code and relating to meaning of child, augmented estate, proceeding for elective share, effect of election on benefits by will or statute, charging spouse with gifts received, self-proved will, nonademption of specific devises in certain cases, construction of generic terms to accord with relationships as defined for intestate succession, renunciation of succession, definition of surviving spouse, proceedings within the exclusive jurisdiction of court, informal probate or appointment proceedings, formal testacy proceedings, statute of limitations, encumbered assets, purchasers from distributees protected, liability of distributees to claimants, right of survivorship, and accounts and transfers nontestamentary.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 30.1-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-04-09 (2-109). MEANING OF CHILD AND RELATED TERMS.)
If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

1. An adopted person is the child of an adopting parent and not of the natural parents, except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and

either natural parent.

2. In cases not covered by subsection 1, a person is the child of its parents regardless of the marital status of its parents and the parent and child relationship may be established under the Uniform Parentage Act.

SECTION 2.) A new section to chapter 30.1-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

PERSONS RELATED TO DECEDENT THROUGH TWO LINES.) A person related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle him to the larger share.

SECTION 3. AMENDMENT.) Section 30.1-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-05-02 (2-202). AUGMENTED ESTATE.) The augmented estate means the estate reduced by funeral and administration expenses, homestead as defined in section 47-18-01, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

1. The value of property transferred to any person other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:
 - a. Any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property.
 - b. Any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit.
 - c. Any transfer whereby property is held at the time of the decedent's death by decedent and another with right of survivorship.
 - d. Any transfer made to a donee within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed three thousand dollars.

Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

2. The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includable in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:
 - a. Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit, or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors are deemed to have been paid by the decedent.

- b. Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.
- c. Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

SECTION 4.) A new subsection to section 30.1-05-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

For purposes of this section a bona fide purchaser is a purchaser for value in good faith and without notice of adverse claim.

SECTION 5. AMENDMENT.) Subsection 1 of section 30.1-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The surviving spouse may elect to take his elective share in the augmented net estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of death, or within six months after the probate of the decedent's will, whichever limitation last expires. However, a nonprobate transfer described in subsection 1 of section 30.1-05-02 may not be included in the augmented estate for the purpose of computing the elective share, if the petition is filed later than nine months after death. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

SECTION 6. AMENDMENT.) Section 30.1-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-05-06 (2-206). EFFECT OF ELECTION ON BENEFITS BY WILL OR STATUTE.) A surviving spouse is entitled to homestead allowance, exempt property, and family allowance whether or not he elects to take an elective share.

SECTION 7. AMENDMENT.) Subsection 1 of section 30.1-05-07

of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. In the proceeding for an elective share, values included in the augmented estate which pass or have passed to the surviving spouse, or which would have passed to the spouse but were renounced, are applied first to satisfy the elective share and to reduce any contributions due from other recipients of transfers included in the augmented estate. For purposes of this subsection, the electing spouse's beneficial interest in any life estate or trust shall be computed as if worth one half of the total value of the property subject to the life estate or trust estate, unless higher or lower values for those interests are established by proof.

SECTION 8. AMENDMENT.) Section 30.1-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-08-04 (2-504). SELF-PROVED WILL.)

1. Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, attached or annexed to the will in substantially the following form:

THE STATE OF _____

COUNTY OF _____

I, _____, the testator, sign my name to this instrument this _____ day of _____, _____, and being first sworn, declare to the undersigned authority that I sign and execute this instrument as my last will, that I sign it willingly or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____, the witnesses, sign our names to this instrument, and being first sworn, declare to the undersigned authority that the testator signed and executed this instrument as his last will, that he signed

it willingly or willingly directed another to sign for him, that each of us, in the presence and hearing of the testator, signs this will as a witness to the testator's signing, and that to the best of our knowledge the testator is eighteen year of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

(SEAL)

(Signed) _____

(Official capacity of officer)

- 2. An attested will may at any time after its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under official seal, attached or annexed to the will in substantially the following form:

THE STATE OF _____

COUNTY OF _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of our knowledge the testator was at that time eighteen or more years of age, of sound mind, and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____.

(SEAL)

(Signed) _____

(Official capacity of officer)

SECTION 9. AMENDMENT.) Section 30.1-09-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-09-08 (2-608). NONADEMPTION OF SPECIFIC DEVISES IN CERTAIN CASES - UNPAID PROCEEDS OF SALE, CONDEMNATION, OR INSURANCE - SALE BY CONSERVATOR.)

1. A specific devisee has the right to the remaining specifically devised property 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 the property.
 - d. Any property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

2. If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if, after the sale, condemnation, fire, or casualty, it is adjudicated that the disability of the testator has ceased and the

testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection 1.

SECTION 10. AMENDMENT.) Section 30.1-09-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-09-11 (2-611). CONSTRUCTION OF GENERIC TERMS TO ACCORD WITH RELATIONSHIPS AS DEFINED FOR INTESTATE SUCCESSION.) Half-bloods, adopted persons, and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession.

SECTION 11. AMENDMENT.) Section 30.1-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-10-01 (2-801). RENUNCIATION OF SUCCESSION.)

1. A person, or the representative of an incapacitated or protected person, who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument may renounce, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written renunciation under this section. The right to renounce does not survive the death of the person having it. The instrument shall:
 - a. Describe the property or interest renounced.
 - b. Declare the renunciation and the extent thereof.
 - c. Be signed by the person renouncing.
2.
 - a. An instrument renouncing a present interest shall be filed not later than six months after the death of the decedent or the donee of the power.
 - b. An instrument renouncing a future interest shall be filed not later than six months after the event that determines that the taker of the property or interest is finally ascertained and his interest indefeasibly vested.
 - c. The renunciation shall be filed in the county court of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power

or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the register of deeds of the county in which the real estate is situated.

SECTION 12. AMENDMENT.) Subsection 2 of section 30.1-10-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. For purposes of chapters 30.1-04 through 30.1-07, and section 30.1-13-03, a surviving spouse does not include:
 - a. A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife.
 - b. A person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person.
 - c. A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

SECTION 13. AMENDMENT.) Section 30.1-12-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-12-06 (3-106). PROCEEDINGS WITHIN THE EXCLUSIVE JURISDICTION OF COURT - SERVICE - JURISDICTION OVER PERSONS.) In proceedings within the exclusive jurisdiction of the court where notice is required by this title or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with section 30.1-03-01. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

SECTION 14. AMENDMENT.) Section 30.1-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-14-01 (3-301). INFORMAL PROBATE OR APPOINTMENT
PROCEEDINGS - APPLICATION - CONTENTS.)

1. Applications for informal probate or informal appointment shall be directed to the court, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information:
 - a. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:
 - (1) A statement of the interest of the applicant.
 - (2) The name and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs, and devisees, and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant.
 - (3) If the decedent was not domiciled in the state at the time of his death, a statement showing venue.
 - (4) A statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated.
 - (5) A statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.
 - (6) A statement that the time limit for informal probate or appointment under this chapter has not expired because three years or less have elapsed since the decedent's death, or, if more than three years from the death have elapsed, circumstances described in section 30.1-12-08 have occurred authorizing tardy probate or appointment.
 - b. An application for informal probate of a will shall state the following, in addition to the statements required by subdivision a of subsection 1:

- (1) That the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application.
 - (2) That the applicant, to the best of his knowledge, believes the will to have been validly executed.
 - (3) That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.
- c. An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought.
- d. An application for informal appointment of an administrator in intestacy shall state, in addition to the statements required by subdivision a of subsection 1:
- (1) That after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 30.1-02-01, or, a statement why any such instrument of which he may be aware is not being probated.
 - (2) The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 30.1-13-03.
- e. An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

- f. An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in subsection 3 of section 30.1-17-10, or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

SECTION 15.) A new subsection to section 30.1-14-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

By verifying an application for informal probate or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.

SECTION 16. AMENDMENT.) Section 30.1-15-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-15-07 (3-407). FORMAL TESTACY PROCEEDINGS - BURDENS IN CONTESTED CASES.) In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, revocation, or other cause affecting its validity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

SECTION 17. AMENDMENT.) Section 30.1-19-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* 30.1-19-02 (3-802). STATUTES OF LIMITATIONS.) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate.

*NOTE: Section 30.1-19-02 was also amended by section 2 of House Bill No. 1426, chapter 298.

If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the three months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 30.1-19-04 is equivalent to commencement of a proceeding on the claim.

SECTION 18. AMENDMENT.) Section 30.1-19-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-19-14 (3-814). ENCUMBERED ASSETS.) If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

SECTION 19. AMENDMENT.) Section 30.1-20-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-20-10 (3-910). PURCHASERS FROM DISTRIBUTEES PROTECTED.) If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee of the distributee, the purchaser or lender takes title free of any right of an interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, and a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution.

SECTION 20. AMENDMENT.) Section 30.1-21-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-21-04 (3-1004). LIABILITY OF DISTRIBUTEES TO CLAIMANTS.) After assets of an estate have been distributed and subject to section 30.1-21-06, an undischarged claim, not barred, may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

SECTION 21. AMENDMENT.) Section 30.1-31-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-31-04 (6-104). RIGHT OF SURVIVORSHIP.)

1. Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under section 30.1-31-03 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.
2. If the account is a P.O.D. account:
 - a. On death of one of two or more original payees the rights to any sums remaining on deposit are governed by subsection 1.
 - b. On death of the sole original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payees, if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, a right of survivorship does not exist in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit

agreement expressly provide for survivorship between them.

3. If the account is a trust account:
 - a. On death of one of two or more trustees, the rights to any sums remaining on deposit are governed by subsection 1.
 - b. On death of the sole trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent; if two or more beneficiaries survive, a right of survivorship does not exist in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.
4. In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.
5. A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation cannot be changed by will.

SECTION 22. AMENDMENT.) Section 30.1-31-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-31-06 (6-106). ACCOUNTS AND TRANSFERS NONTESTAMENTARY.) Any transfers resulting from the application of section 30.1-31-04 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to chapters 30.1-01 through 30.1-25, except as provided in sections 30.1-05-01 through 30.1-05-07, and except as a consequence of, and to the extent directed by, section 30.1-31-07.

Approved March 23, 1977

CHAPTER 296

SENATE BILL NO. 2198
(Freed)

ANTE-MORTEM PROBATE OF WILLS

AN ACT to provide for ante-mortem probate of wills.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. SHORT TITLE.) This Act shall be known and may be cited as the "North Dakota Ante-Mortem Probate Act".

SECTION 2. DECLARATORY JUDGMENT.) Any person who executes a will disposing of his estate in accordance with the uniform probate code as adopted in North Dakota may institute a proceeding under chapter 32-23 for a judgment declaring the validity of the will as to the signature on the will, the required number of witnesses to the signature and their signatures, and the testamentary capacity and freedom from undue influence of the person executing the will.

SECTION 3. PARTIES - PROCESS.) Any beneficiary named in the will and all the testator's present intestate successors shall be named parties to the proceeding. For the purposes of this Act, any beneficiary named in the will and all the testator's present intestate successors shall be deemed possessed of inchoate property rights. Service of process upon the parties to the proceeding shall be made in accordance with rule 4 of the North Dakota Rules of Civil Procedure.

SECTION 4. FINDING OF VALIDITY - REVOCATION.) If the court finds under chapter 32-23 that the will has been properly executed and that the plaintiff testator has the requisite testamentary capacity and freedom from undue influence, it shall declare the will valid and order it placed on file with the court. For the purposes of section 30.1-12-02, a finding of validity under this Act shall constitute an adjudication of probate. The will shall be binding in North Dakota unless and until the plaintiff-testator executes a new will and institutes a new proceeding under this Act naming the appropriate parties to the new proceeding as well as the parties to any former proceeding brought under this Act.

SECTION 5. ADMISSIBILITY OF FACTS - EFFECT ON OTHER ACTIONS.) The facts found in a proceeding brought under this

Act shall not be admissible in evidence in any proceeding other than one brought in North Dakota to determine the validity of a will; nor shall the determination in a proceeding under this Act be binding, upon the parties to such proceeding, in any action not brought to determine the validity of a will.

Approved March 23, 1977

CHAPTER 297

SENATE BILL NO. 2378
(Fritzell)

INFORMAL PROBATE OR APPOINTMENT
PROCEDURE FORMS

AN ACT to create and enact a new section to chapter 30.1-14 of the North Dakota Century Code, relating to forms to be provided by a county court and county courts of increased jurisdiction to an applicant for informal probate or informal appointment proceedings under the Uniform Probate Code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 30.1-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

DUTY OF COURT TO PROVIDE FORMS TO AN APPLICANT.) The court shall provide the necessary forms to an applicant who requests aid in using the informal probate or appointment procedure. The forms shall be provided with charge to an applicant not represented by counsel. The North Dakota judicial council shall approve standard printed forms to be used under this chapter.

Approved April 20, 1977

CHAPTER 298

HOUSE BILL NO. 1426
(Weber)

CLAIMS AGAINST AN ESTATE

AN ACT to amend and reenact sections 30.1-19-01, 30.1-19-02, and 30.1-19-03, and subsection 1 of section 30.1-19-07 of the North Dakota Century Code, relating to notice to creditors, statutes of limitation, limitations on presentation of claims, and payment of claims.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 30.1-19-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-19-01 (3-801). NOTICE TO CREDITORS.) Unless notice has already been given under this section, a personal representative upon his appointment may publish a notice once a week for three successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within three months after the date of the first publication of the notice or be forever barred.

SECTION 2. AMENDMENT.) Section 30.1-19-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* 30.1-19-02 (3-802). STATUTES OF LIMITATIONS.) Unless an estate is insolvent, the personal representative, with the consent of all successors, whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the three months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 30.1-19-04 is equivalent to commencement of a proceeding on the claim.

SECTION 3. AMENDMENT.) Section 30.1-19-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

*NOTE: Section 30.1-19-02 was also amended by section 17 of House Bill No. 1321, chapter 295.

30.1-19-03 (3-803). LIMITATIONS ON PRESENTATION OF CLAIMS.)

1. All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:
 - a. Within three months after the date of the first publication of notice to creditors if notice is given in compliance with section 30.1-19-01; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state.
 - b. Within three years after the decedent's death, if notice to creditors has not been published.
2. All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:
 - a. A claim based on a contract with the personal representative, within four months after performance by the personal representative is due.
 - b. Any other claim, within three months after it arises.
3. Nothing in this section affects or prevents:
 - a. Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate.
 - b. To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

SECTION 4. AMENDMENT.) Subsection 1 of section 30.1-19-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Upon the expiration of three months from the date of the first publication of the notice to creditors, the personal

representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

Approved March 31, 1977