CHAPTER 30.1-04
INTESTATE SUCCESSION

30.1-04-01. (2-101) Intestate estate.

1. Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this title, except as modified by the decedent's will.
2. A decedent, by will, may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the intestate share.

30.1-04-02. (2-102) Share of spouse.

The intestate share of a decedent's surviving spouse is:

1. The entire intestate estate if:
   a. No descendant or parent of the decedent survives the decedent; or
   b. All of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent.
2. The first three hundred thousand dollars, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent.
3. The first two hundred twenty-five thousand dollars, plus one-half of any balance of the intestate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent.
4. The first one hundred fifty thousand dollars, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

30.1-04-03. (2-103) Share of heirs other than surviving spouse.

Any part of the intestate estate not passing to a decedent's surviving spouse under section 30.1-04-02, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:

1. To the decedent's descendants by representation.
2. If there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent.
3. If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation.
4. If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:
   a. Half to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and
   b. Half to the decedent's maternal grandparents equally if both survive, or to the surviving maternal grandparent, or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, the descendants taking by representation.
5. If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to

the decedent's relatives on the side with one or more surviving members in the manner as described in subsection 4.

6. If there is no surviving spouse, descendant, parent, descendant of a parent, grandparent, or descendant of a grandparent, but the intestate decedent has one deceased spouse who has one or more descendants who survive the decedent, to those descendants by representation or has more than one deceased spouse who has one or more descendants who survive the decedent, the estate is divided into as many equal shares as there are deceased spouses, each share passing to those descendants by representation.

30.1-04-03.1. (2-113) Individuals related to decedent through two lines.

An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

30.1-04-04. (2-104) Requirement that heir survive decedent for one hundred twenty hours - Individual in gestation.

1. For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in subsection 2:
   a. An individual who was born before a decedent's death but who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual who was born before the decedent's death survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period.
   b. An individual who was in gestation at a decedent's death is deemed to be living at the decedent's death if the individual lives one hundred twenty hours after birth. If it is not established by clear and convincing evidence that an individual who was in gestation at the decedent's death lived one hundred twenty hours after birth, it is deemed that the individual failed to survive for the required period.
2. This section does not apply if it would result in a taking of the intestate estate by the state under section 30.1-04-05.

30.1-04-05. (2-105) No taker.

If there is no taker under the provisions of this title, the intestate estate passes to the state for the support of the common schools and an action for the recovery of such property and to reduce it into the possession of the state or for its sale and conveyance may be brought by the attorney general or by the state's attorney in the district court of the county in which the property is situated.

30.1-04-06. (2-106) Representation.

Repealed by S.L. 1995, ch. 322, § 26.

30.1-04-07. (2-107) Kindred of half blood.

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

30.1-04-08. (2-108) Reserved.

30.1-04-09. (2-114) Parent barred from inheriting in certain circumstances.

1. A parent is barred from inheriting from or through a child of the parent if the parent's parental rights were terminated and the parent-child relationship was not judicially re-established or the child died before reaching eighteen years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the child's parent could have been terminated under other law of this state on

the basis of nonsupport, abandonment, abuse, or neglect, or other actions or inactions of the parent toward the child.

2. For purposes of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

30.1-04-10. (2-109) Advancements.

1. If an individual dies intestate as to all or a portion of the individual's estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement or the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.
2. For purposes of subsection 1, property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.
3. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

30.1-04-11. (2-110) Debts to decedent.

A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

30.1-04-12. (2-111) Alienage.

No individual is disqualified to take as an heir because the individual or an individual through whom that individual claims is or has been an alien.

30.1-04-13. (2-112) Dower and curtesy abolished.

The estates of dower and curtesy are abolished.

30.1-04-14. (2-115) Definitions.

In sections 30.1-04-14 through 30.1-04-20:

1. "Adoptee" means an individual who is adopted.
2. "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.
3. "Divorce" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage.
4. "Functioned as a parent of the child" means behaving toward the child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, such as fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as regular members of that household.
5. "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under subdivision a, b, or c of subsection 2 of section 14-20-07, the term means only the man for whom that relationship is established.
6. "Genetic mother" means the woman whose egg was fertilized by the sperm of the child's genetic father.
7. "Genetic parent" means a child's genetic father or genetic mother.

8. "Incapacity" means the inability of an individual to function as a parent of a child because of the individual's physical or mental condition.
9. "Relative" means a grandparent or a descendant of a grandparent.

30.1-04-15. (2-116) Parent-child relationship - Effect.

Except as otherwise provided in subsections 2 through 4 of section 30.1-04-18, if a parent-child relationship exists or is established under sections 30.1-04-14 through 30.1-04-20, the parent is a parent of the child and the child is a child of the parent for purposes of intestate succession.

30.1-04-16. (2-117) Parent-child relationship - No distinction based on marital status.

Except as otherwise provided in section 30.1-04-09, 30.1-04-18, 30.1-04-19, or 30.1-04-20, a parent-child relationship exists between a child and the child's genetic parents, regardless of their marital status.

30.1-04-17. (2-118) Parent-child relationship - Adoptee and adoptee's adoptive parent or parents.

1. A parent-child relationship exists between an adoptee and the adoptee's adoptive parent or parents.
2. For purposes of subsection 1:
   a. An individual who is in the process of being adopted by a married couple when one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's surviving spouse.
   b. A child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by one hundred twenty hours.
3. If, after a parent-child relationship is established between a child of assisted reproduction and a parent under section 30.1-04-19 or between a gestational child and a parent under section 30.1-04-20, the child is in the process of being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the deceased spouse for purposes of subdivision b of subsection 2.

30.1-04-18. (2-119) Parent-child relationship - Adoptee and adoptee's genetic parents.

1. Except as otherwise provided in subsections 2 through 4, a parent-child relationship does not exist between an adoptee and the adoptee's genetic parents.
2. A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and:
   a. The genetic parent whose spouse adopted the individual; and
   b. The other genetic parent, but only for purposes of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.
3. A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for purposes of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.
4. A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for purposes of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.
5. If, after a parent-child relationship is established between a child of assisted reproduction and a parent or parents under section 30.1-04-19 or between a gestational child and a parent or parents under section 30.1-04-20, the child is adopted by another or others, the child's parent or parents under section 30.1-04-19 or 30.1-04-20 are deemed the child's genetic parent or parents for purposes of this section.

30.1-04-19. (2-120) Parent-child relationship - Child conceived by assisted reproduction other than a child born to a gestational carrier.

1. In this section:
   a. "Birth mother" means a woman, other than a gestational carrier under section 30.1-04-20, who gives birth to a child of assisted reproduction. The term is not limited to a woman who is the child's genetic mother.
   b. "Child of assisted reproduction" means a child conceived by means of assisted reproduction by a woman other than a gestational carrier under section 30.1-04-20.
   c. "Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction by the wife; the birth mother of a child of assisted reproduction; or an individual who is determined under subsection 5 or 6 to have a parent-child relationship with a child of assisted reproduction.
2. A parent-child relationship does not exist between a child of assisted reproduction and a third-party donor.
3. A parent-child relationship exists between a child of assisted reproduction and the child's birth mother.
4. Except as otherwise provided in subsections 9 and 10, a parent-child relationship exists between a child of assisted reproduction and the husband of the child's birth mother if the husband provided the sperm that the birth mother used during his lifetime for assisted reproduction, and the husband is the genetic father of the child.
5. A birth certificate identifying an individual other than the birth mother as the other parent of a child of assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.
6. Except as otherwise provided in subsections 7, 9, and 10, and unless a parent-child relationship is established under subsection 4 or 5, a parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:
   a. Before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the individual's consent; or
   b. In the absence of a signed record under subdivision a, functioned as a parent of the child no later than two years after the child's birth; intended to function as a parent of the child no later than two years after the child's birth but was prevented from carrying out that intent by death, incapacity, or other circumstances; or intended to be treated as a parent of a posthumously conceived child if that intent is established by clear and convincing evidence.
7. For purposes of subdivision a of subsection 6, neither an individual who signed a record more than two years after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached the age of majority.
8. For purposes of subdivision b of subsection 6, if the birth mother is married and no divorce proceedings are pending or if the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceedings were then pending then, in the absence of clear and convincing evidence to the contrary, her spouse or deceased spouse is deemed to have satisfied subdivision b of subsection 6.
9. If a married couple are divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.
10. If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction

is not a child of that individual, unless the individual subsequently satisfies the requirements of subsection 6.

11. If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of subdivision b of subsection 1 of section 30.1-04-04 if the child is in utero not later than thirty-six months after the individual's death; or born not later than forty-five months after the individual's death.

30.1-04-20. (2-121) Parent-child relationship - Child born to a gestational carrier.

1. In this section:
   a. "Gestational agreement" means an enforceable or unenforceable agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent, intended parents, or an individual described in subsection 5.
   b. "Gestational carrier" means a woman who is not an intended parent and who gives birth to a child under a gestational agreement. The term is not limited to a woman who is the child's genetic mother.
   c. "Gestational child" means a child born to a gestational carrier under a gestational agreement.
   d. "Intended parent" means an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term is not limited to an individual who has a genetic relationship with the child.
2. A parent-child relationship is conclusively established by a court order designating the parent or parents of a gestational child.
3. A parent-child relationship between a gestational child and the child's gestational carrier does not exist unless the gestational carrier is:
   a. Designated as a parent of the child in a court order described in subsection 2; or
   b. The child's genetic mother and a parent-child relationship does not exist with an individual other than the gestational carrier under this section.
4. In the absence of a court order under subsection 2, a parent-child relationship exists between a gestational child and an intended parent who:
   a. Functioned as a parent of the child no later than two years after the child's birth; or
   b. Died while the gestational carrier was pregnant if:
      (1) There were two intended parents and the other intended parent survived the birth of the child and functioned as a parent of the child no later than two years after the child's birth;
      (2) There were two intended parents, the other intended parent also died while the gestational carrier was pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child's birth; or
      (3) There was no other intended parent and a relative of or the spouse or surviving spouse of a relative of the deceased intended parent functioned as a parent of the child no later than two years after the child's birth.
5. In the absence of a court order under subsection 2, a parent-child relationship exists between a gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to conceive a child under a gestational agreement entered into after the individual's death or incapacity if the individual intended to be treated as the parent of the child. The individual's intent can be shown by:
   a. A record, signed by the individual that, considering all the facts and circumstances, evidences the individual's intent; or
   b. Other facts and circumstances establishing the individual's intent by clear and convincing evidence.

6. Except as otherwise provided in subsection 7, and unless there is clear and convincing evidence of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child for purposes of subdivision b of subsection 5 if:
   a. The individual, before death or incapacity, deposited the sperm or eggs that were used to conceive the child;
   b. When the individual deposited the sperm or eggs, the individual was married and no divorce proceedings were pending; and
   c. The individual's spouse or surviving spouse functioned as a parent of the child not later than two years after the child's birth.
7. The presumption under subsection 6 does not apply if there is a court order under subsection 2 or a signed record that satisfies subdivision a of subsection 5.
8. If, under this section, an individual is a parent of a gestational child who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of subdivision b of subsection 1 of section 30.1-04-04 if the child is in utero not later than thirty-six months after the individual's death or born not later than forty-five months after the individual's death.
9. This section does not affect other law of this state regarding the enforceability or validity of a gestational agreement.

30.1-04-21. (2-122) Equitable adoption.

Sections 30.1-04-14 through 30.1-04-20 do not preclude, limit, or affect application of the doctrine of equitable adoption.