

**Sixty-first Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1072  
(Judiciary Committee)  
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact sections 30.1-04-14, 30.1-04-15, 30.1-04-16, 30.1-04-17, 30.1-04-18, 30.1-04-19, 30.1-04-20, 30.1-04-21, 30.1-10-05, and 30.1-10-06 of the North Dakota Century Code, relating to the Uniform Probate Code; and to amend and reenact sections 30.1-01-06, 30.1-04-02, 30.1-04-03, 30.1-04-04, 30.1-04-08, 30.1-04-09, 30.1-05-01, 30.1-07-01, 30.1-07-03, 30.1-08-02, 30.1-08-04, 30.1-09.1-05, 30.1-09.1-06, 30.1-09.1-07, 30.1-15-06, and 30.1-35-01 of the North Dakota Century Code, relating to the Uniform Probate Code.

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

**SECTION 1. AMENDMENT.** Section 30.1-01-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-01-06. (1-201) General definitions.** Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.
2. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.
3. "Augmented estate" means the estate described in section 30.1-05-02.
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 account with a payable on death designation, of a security registered in beneficiary form transferable on death, 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, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.
5. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an account with payable on death designation, of a security registered in beneficiary form transferable on death, or other nonprobate transfer at death.
6. "Child" includes an individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.
7. "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding

title of a decedent or protected person to specific assets alleged to be included in the estate.

8. "Conservator" means a person who is appointed by a court to manage the estate of a protected person, and includes limited conservators as defined in this section.
9. "Court" means the court having jurisdiction in matters relating to the affairs of decedents.
10. "Descendant" of an individual means all descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.
11. "Devise", when used as a noun, means a testamentary disposition of real or personal property, and when used as a verb, means to dispose of real or personal property by will.
12. "Devisee" means a person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.
13. "Disability" means cause for a protective order as described in section 30.1-29-01.
14. "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will to the extent of the devised assets.
15. "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.
16. "Exempt property" means that property of a decedent's estate which is described in section 30.1-07-01.
17. "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
18. "Foreign personal representative" means a personal representative appointed by another jurisdiction.
19. "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.
20. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with payable on death designation, security registered in beneficiary form transferable on death, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.
21. "Guardian" means a person who or nonprofit corporation that has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, and includes limited guardians as defined in this section, but excludes one who is merely a guardian ad litem.
22. "Heirs", except as controlled by section 30.1-09.1-11, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

23. "Incapacitated person" means an individual described in section 30.1-26-01.
24. "Informal proceedings" means those conducted by the court for probate of a will or appointment of a personal representative without notice to interested persons.
25. "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.
26. "Issue" of a person means descendant as defined in subsection 10.
27. "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.
28. "Lease" includes an oil, gas, or other mineral lease.
29. "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
30. "Limited conservator" means a person or nonprofit corporation, appointed by the court, to manage only those financial resources specifically enumerated by the court for the person with limited capacity, and includes limited conservators as described by section 30.1-29-20.
31. "Limited guardian" means a person or nonprofit corporation, appointed by the court, to supervise certain specified aspects of the care of a person with limited capacity, and includes limited guardians as described by section 30.1-28-04.
32. "Minor" means a person who is under eighteen years of age.
33. "Mortgage" means any conveyance, agreement, or arrangement in which property is encumbered or used as security.
34. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.
35. "Organization" means a corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.
36. "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.
37. "Payer" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.
38. "Person" means an individual, a corporation, a limited liability company, an organization, or other legal entity.

- 39. "Person with limited capacity" is as defined in section 30.1-26-01.
- 40. "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.
- 41. "Petition" means a written request to the court for an order after notice.
- 42. "Proceeding" includes action at law and suit in equity.
- 43. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
- 44. "Protected person" is as defined in section 30.1-26-01.
- 45. "Protective proceeding" means a proceeding described in section 30.1-26-01.
- 46. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- ~~47.~~ 48. "Security" includes any note, stock, treasury stock, bond, debenture, membership interest in a limited liability company, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.
- ~~47.~~ 48. "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
- ~~48.~~ 49. "Sign" means, with present intent to authenticate or adopt a record other than a will, to execute or adopt a tangible symbol or to attach to or logically associate with the record an electronic symbol, sound, or process.
- ~~48.~~ 50. "Special administrator" means a personal representative as described by sections 30.1-17-14 through 30.1-17-18.
- ~~49.~~ 51. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
- ~~50.~~ 52. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
- ~~51.~~ 53. "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.
- ~~52.~~ 54. "Supervised administration" refers to the proceedings described in chapter 30.1-16.
- ~~53.~~ 55. "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor predeceased an event under sections 30.1-04-04 and 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".
- ~~54.~~ 56. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- ~~55.~~ 57. "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or

decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24, chapter 47-24.1, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

- ~~56:~~ 58. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.
- ~~57:~~ 59. "Ward" means an individual described in section 30.1-26-01.
- ~~58:~~ 60. "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

**SECTION 2. AMENDMENT.** Section 30.1-04-02 of the North Dakota Century Code is amended and reenacted as follows:

**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 ~~two~~ 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 ~~one~~ two hundred ~~fifty~~ 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.

**SECTION 3. AMENDMENT.** Section 30.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-03. (2-103) Share of heirs other than surviving spouse.** Any part of the intestate estate not passing to ~~the~~ 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 ~~designated below~~ 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, ~~half of the estate passes:~~
  - 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 ~~descendant's~~ descendants taking by representation; and ~~the other half passes~~
  - b. Half to the decedent's maternal ~~relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes~~ 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 ~~other~~ side with one or more surviving members in the ~~same~~ manner ~~as the half~~ 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.

**SECTION 4. AMENDMENT.** Section 30.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**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 ~~for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly.~~ If it is not established by clear and convincing evidence that an individual who ~~would otherwise be an heir~~ 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. ~~This section is not to be applied if its application would result in a taking of intestate estate by the state under section 30.1-04-05.~~
  - 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.

**SECTION 5. AMENDMENT.** Section 30.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-08. (2-108) ~~Afterborn heirs~~ Reserved.** ~~An individual in gestation at a particular time is treated as living at that time if the individual lives one hundred twenty hours or more after birth.~~

**SECTION 6. AMENDMENT.** Section 30.1-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-09. (2-114) ~~Meaning of child and related terms~~ Parent barred from inheriting in certain circumstances.** ~~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 individual is the child of an adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on the relationship between the child and that natural parent or the right of the child or a descendant of the child to inherit from or through the other natural parent.~~
2. ~~Inheritance from and through a child by either natural parent or kindred is precluded unless that natural parent has openly treated the child as the parent's, and has not refused to support the child.~~
3. ~~In cases not covered by subsections 1 and 2, an individual is the child of its natural parents regardless of the marital status of its parents. The parent and child relationship may be established under chapter 14-17. 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 reestablished 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.

**SECTION 7.** Section 30.1-04-14 of the North Dakota Century Code is created and enacted as follows:

**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.

**SECTION 8.** Section 30.1-04-15 of the North Dakota Century Code is created and enacted as follows:

**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.

**SECTION 9.** Section 30.1-04-16 of the North Dakota Century Code is created and enacted as follows:

**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.

**SECTION 10.** Section 30.1-04-17 of the North Dakota Century Code is created and enacted as follows:

**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.

**SECTION 11.** Section 30.1-04-18 of the North Dakota Century Code is created and enacted as follows:



**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.

**SECTION 12.** Section 30.1-04-19 of the North Dakota Century Code is created and enacted as follows:

**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.

**SECTION 13.** Section 30.1-04-20 of the North Dakota Century Code is created and enacted as follows:

**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.

**SECTION 14.** Section 30.1-04-21 of the North Dakota Century Code is created and enacted as follows:

**30.1-04-21. 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.

**SECTION 15. AMENDMENT.** Section 30.1-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-05-01. (2-201) Elective share.**

1. The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this chapter, to take an elective share of ~~one-half~~ amount equal to fifty percent of the augmented estate.
2. If the sum of the amounts described in subdivision d of subsection 2 of section 30.1-05-02, subdivision a of subsection 1 of section 30.1-05-03, and that part of the elective-share amount payable from the decedent's probate estate and nonprobate transfers to others under subsections 2 and 3 of section 30.1-05-03 is less than ~~fifty~~ seventy-five thousand dollars, the surviving spouse is entitled to a supplemental elective-share amount equal to ~~fifty~~ seventy-five thousand dollars minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in subsections 2 and 3 of section 30.1-05-03.
3. If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against, but are in addition to, the elective-share and supplemental elective-share amounts.
4. The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

**SECTION 16. AMENDMENT.** Section 30.1-07-01 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-07-01. (2-403) Exempt property.** In addition to the homestead defined in section 47-18-01, the decedent's surviving spouse is entitled from the estate to a value, not exceeding ~~ten~~ fifteen thousand dollars in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's minor children, whom the decedent was obligated to support and children who were in fact being supported by the decedent, are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than ~~ten~~ fifteen thousand dollars, or if there is not ~~ten~~ fifteen thousand dollars worth of exempt property in the estate, the spouse or such children are entitled to other assets of the estate, if any, to the extent necessary to make up the ~~ten~~ fifteen thousand dollar value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of the homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective share.

**SECTION 17. AMENDMENT.** Section 30.1-07-03 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-07-03. (2-405) Source, determination, and documentation.**

1. If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time, or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property. The personal representative may determine the family allowance in a lump sum not exceeding ~~eighteen~~ twenty-seven thousand dollars or periodic installments not exceeding ~~one two~~ five two thousand ~~five~~ hundred fifty dollars per month for one year and may disburse funds of the estate in payment of the family allowance. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.
2. If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under subsection 2 of section 30.1-05-06.

**SECTION 18. AMENDMENT.** Section 30.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-08-02. (2-502) Execution - Witnessed wills - Holographic wills.**

1. Except as provided in subsection 2 and in sections 30.1-08-06 and 30.1-08-13, a will must be:
  - a. In writing.
  - b. Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.

c. ~~Signed by~~ Either signed:

- (1) By at least two individuals, each of whom signed within a reasonable time after witnessing either the signing of the will as described in subdivision b or the testator's acknowledgment of that signature or acknowledgment of the will; or
  - (2) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments.
2. A will that does not comply with subsection 1 is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.
  3. Intent that ~~the~~ a document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

**SECTION 19. AMENDMENT.** Section 30.1-08-04 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-08-04. (2-504) Self-proved will.**

1. A will that is executed with attesting witnesses 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 will and 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~~ 18 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 signs and executes this instrument as the testator's will and that the testator signs it willingly or willingly directs another to sign for the testator, and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is ~~eighteen~~ 18 years 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 \_\_\_\_\_, ~~witness~~ witnesses, this \_\_\_\_\_ day of \_\_\_\_\_.

(SEAL)

(Signed) \_\_\_\_\_  
\_\_\_\_\_

(Official capacity of officer)

2. ~~An attested~~ A will that is executed with attesting witnesses 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 the 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 the testator's will and that the testator had signed willingly or willingly directed another to sign for the testator, and that the testator executed it as the testator's 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~~ 18 years of age or older, 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)

3. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

**SECTION 20. AMENDMENT.** Section 30.1-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09.1-05. (2-705) Class gifts construed to accord with intestate succession - Exceptions.**

1. ~~Adopted individuals~~ In this section:
- "Adoptee" has the meaning set forth in section 30.1-04-14.
  - "Child of assisted reproduction" has the meaning set forth in section 30.1-04-19.
  - "Distribution date" means the time when an immediate or a postponed class gift is to take effect in possession or enjoyment.
  - "Functioned as a parent of the adoptee" has the meaning set forth in section 30.1-04-14, substituting "adoptee" for "child" in that definition.
  - "Functioned as a parent of the child" has the meaning set forth in section 30.1-04-14.

- f. "Genetic parent" has the meaning set forth in section 30.1-04-14.
- g. "Gestational child" has the meaning set forth in section 30.1-04-20.
- h. "Relative" has the meaning set forth in section 30.1-04-14.

2. A child of assisted reproduction, a gestational child, and except as otherwise provided in subsections 3 and 4, an adoptee and ~~individuals born out of wedlock~~ a child born to parents not married to each other, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship in a governing instrument which do not differentiate relationships by the half blood from those by the whole blood, such as brothers, sisters, nieces, or nephews, are construed to include both types of relationships. Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by affinity marriage, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. ~~Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships~~ marriage unless:

- a. When the governing instrument was executed, the class was then and foreseeably would be empty; or
- b. The language or circumstances otherwise establish that relatives by marriage were intended to be included.

2. 3. In ~~addition to the requirements of subsection 1,~~ in construing a dispositive provision of a transferor who is not the natural genetic parent, an individual ~~born to the natural~~ a child of a genetic parent is not considered the child of that parent unless the individual ~~lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse~~ parent, a relative of the genetic parent, or the spouse or surviving spouse of a relative of the genetic parent functioned as a parent of the child before the child reached eighteen years of age.

3. 4. In ~~addition to the requirements of subsection 1,~~ in construing a dispositive provision of a transferor who is not the adopting adoptive parent, an ~~adopted individual~~ adoptee is not considered the child of the adopting adoptive parent unless ~~the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent:~~

- a. The adoption took place before the adoptee reached eighteen years of age;
- b. The adoptive parent was the adoptee's stepparent or foster parent; or
- c. The adoptive parent functioned as a parent of the adoptee before the adoptee reached eighteen years of age.

5. The following rules apply for purposes of the class-closing rules:

- a. A child in utero at a particular time is treated as living at that time if the child lives one hundred twenty hours after birth.
- b. If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent's death, the child is treated as living on the distribution date if the child lives one hundred twenty hours after birth and was in utero not later than thirty-six months after the deceased parent's death or born not later than forty-five months after the deceased parent's death.



- c. An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.

**SECTION 21. AMENDMENT.** Section 30.1-09.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09.1-06. (2-706) Life insurance - Retirement plan - Account with payable on death designation - Transfer-on-death registration - Deceased beneficiary.**

1. In this section:
  - a. "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.
  - b. "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes a class member if the beneficiary designation is in the form of a class gift and includes an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.
  - c. "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.
  - d. "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.
  - e. "Descendant of a grandparent", as used in subsection 2, means an individual who qualifies as a descendant of a grandparent of the decedent under the rules of construction applicable to a class gift created in the decedent's beneficiary designation if the beneficiary designation is in the form of a class gift or rules for intestate succession if the beneficiary designation is not in the form of a class gift.
  - f. "Descendants", as used in the phrase "surviving descendants" of a deceased beneficiary or class member in subdivisions a and b of subsection 2, mean the descendants of a deceased beneficiary or class member who would take under a class gift created in the beneficiary designation.
  - g. "Stepchild" means a child of the decedent's surviving, deceased, or former spouse, and not of the decedent.
  - h. "Surviving" in the phrase "surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 30.1-09.1-02.
2. If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following apply:
  - a. Except as provided in subdivision d, if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

- b. Except as provided in subdivision d, if the beneficiary designation is in the form of a class gift, other than a beneficiary designation 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 surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this subdivision, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.
  - c. For purposes of section 30.1-09.1-01, words of survivorship, such as in a beneficiary designation to an individual "if the individual survives me", or in a beneficiary designation 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 a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative beneficiary designation ~~only if an expressly designated beneficiary of the alternative beneficiary designation:~~
    - (1) The alternative beneficiary designation is in the form of a class gift and one or more members of the class is entitled to take; or
    - (2) The alternative beneficiary designation is not in the form of a class gift and the expressly designated beneficiary of the alternative beneficiary designation is entitled to take.
3. If, under subsection 2, substitute gifts are created and not superseded with respect to more than one beneficiary designation, and the beneficiary designations are alternative beneficiary designations, 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 property passes under the primary substitute gift.
  - b. If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.
  - c. In this subsection:
    - (1) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.
    - (2) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.
    - (3) "Younger-generation beneficiary designation" means a beneficiary designation that is to a descendant of a beneficiary of the primary beneficiary designation, is an alternative beneficiary designation with respect to the primary beneficiary designation, is a beneficiary designation for which a substitute gift is created, and would have taken effect had all the deceased beneficiaries who left

surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

- (4) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.
4. a. A payer is protected from liability in making payments under the terms of the beneficiary designation until the payer has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payer, but not the recipient, from all claims for the amounts paid. A payer is liable for a payment made after the payer has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.
- b. The written notice of the claim must be mailed to the payer's main office or home by registered mail, return receipt requested, or served upon the payer in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payer may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payer from all claims for the amounts paid.
5. a. A person 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 is 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 or 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 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.

**SECTION 22. AMENDMENT.** Section 30.1-09.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09.1-07. (2-707) Survivorship with respect to future interests under the terms of a trust - Substitute takers.**

1. In this section:
- a. "Alternative future interest" means to an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary

devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

- b. "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.
  - c. "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.
  - d. "Descendants", in the phrase "surviving descendants" of a deceased beneficiary or class member in subdivisions a and b of subsection 2, mean the descendants of a deceased beneficiary or class member who would take under a class gift created in the trust.
  - e. "Distribution date", with respect to a future interest, means the time when the future 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.
  - e. f. "Future interest" includes an alternative future interest and a future interest in the form of a class gift.
  - f. g. "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.
  - g. h. "Surviving" in the phrase "surviving beneficiary" or "surviving descendant" means a beneficiary 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. A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:
- a. Except as provided in subdivision d, if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.
  - b. Except as provided in subdivision d, if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this ~~paragraph~~ subdivision, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

- c. For purposes of section 30.1-09.1-01, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.
  - d. If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative future interest ~~only if an expressly designated beneficiary of the alternative future interest:~~
    - (1) The alternative future interest is in the form of a class gift and one or more members of the class is entitled to take in possession or enjoyment; or
    - (2) The alternative future interest is not in the form of a class gift and the expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.
3. If, under subsection 2, substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, 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 property passes under the primary substitute gift.
  - b. If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.
  - c. In this subsection:
    - (1) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interest who left surviving descendants survived the distribution date.
    - (2) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.
    - (3) "Younger-generation future interest" means a future interest that is to a descendant of a beneficiary of the primary future interest, is an alternative future interest with respect to the primary future interest, is a future interest for which a substitute gift is created, and would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary of beneficiaries of the primary future interest.
    - (4) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.
4. Except as provided in subsection 5, if, after the application of subsections 2 and 3, there is no surviving taker, the property passes in the following order:
- a. If the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.
  - b. If no taker is produced by the application of subdivision a, the property passes to the transferor's heirs under section 30.1-09.1-11.

5. If, after the application of subsections 2 and 3, there is no surviving taker and if the future interest was created by the exercise of a power of appointment:
  - a. The property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and
  - b. If no taker is produced by the application of subdivision a, the property passes as provided in subsection 4. For purposes of subsection 4, "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power.

**SECTION 23.** Section 30.1-10-05 of the North Dakota Century Code is created and enacted as follows:

**30.1-10-05. (2-805) Reformation to correct mistakes.** The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence that the transferor's intent and the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

**SECTION 24.** Section 30.1-10-06 of the North Dakota Century Code is created and enacted as follows:

**30.1-10-06. (2-806) Modification to achieve transferor's tax objectives.** To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

**SECTION 25. AMENDMENT.** Section 30.1-15-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-15-06. (3-406) Formal testacy proceedings - Contested cases —~~Testimony of attesting witnesses.~~** In a contested case in which the proper execution of a will is at issue, the following rules apply:

1. ~~If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state, competent, and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence. If the will is self-proved pursuant to section 30.1-08-04, the will complies with the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.~~
2. ~~If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed, subject to rebuttal, without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit. If the will is notarized pursuant to paragraph 2 of subdivision c of subsection 1 of section 30.1-08-02, but not self-proved, there is a rebuttable presumption that the will complies with the requirements for execution upon filing the will.~~
3. If the will is witnessed pursuant to paragraph 1 of subdivision c of subsection 1 of section 30.1-08-02, but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

**SECTION 26. AMENDMENT.** Section 30.1-35-01 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-35-01. Time of taking effect - Provisions for transition.**

1. This title takes effect on July 1, 1975.
2. Except as provided elsewhere in this title, on the effective date of this title or any amendment to this title:
  - a. ~~§~~ The title or amendment applies to any wills of decedents dying thereafter. No provision of this title, however, shall be effective to invalidate any will executed prior to July 1, 1975, when that will would be valid under the laws of this state in effect at the time of its execution.
  - b. The title or amendment applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this title.
  - c. Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date continues to hold the appointment but has only the powers conferred by this title or the amendment and is subject to the duties imposed with respect to any act occurring or done thereafter.
  - d. An act done before the effective date in any proceeding and any accrued right is not impaired by this title or the amendment. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right.
  - e. Any rule of construction or presumption provided in this title or the amendment applies to instruments executed and multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.
  - f. A person holding office as judge of the court on the effective date of this title may continue the office of judge of this court and may be selected for additional terms after the effective date of this title.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1072.

House Vote:      Yeas    91      Nays    1      Absent    2

Senate Vote:    Yeas    46      Nays    0      Absent    1

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State