

CHAPTER 210—H.F.No. 88

An act relating to probate; changing and clarifying certain powers of trustees; redefining "augmented estate" for certain purposes; amending Minnesota Statutes 1986, sections 501.125, subdivision 1; 501.66, subdivision 28; and 524.2-202; proposing coding for new law in Minnesota Statutes, chapter 501; repealing Minnesota Statutes 1986, sections 501.125, subdivision 1a; and 501.66, subdivision 6a.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 501.125, subdivision 1, is amended to read:

Subdivision 1. **GENERAL PROPERTIES AND INVESTMENTS.** (a) ~~In acquiring, investing, reinvesting, exchanging and managing property;~~ A trustee is authorized to acquire invest in every kind of real or personal property; ~~real, personal or mixed;~~ and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other individual or corporate obligations, mutual funds, and corporate stocks. ~~A trustee, in determining the prudence of a particular investment, shall consider the role that the proposed investment or investment course of action plays within the overall portfolio of assets. In applying the total asset management approach, that a prudent person would invest in having in mind the preservation of the trust estate and the amount and regularity of the income derived. In considering an investment, a trustee shall exercise the care, skill, and judgment and care under the circumstances then prevailing, which persons that a person of ordinary prudence, discretion, and intelligence would exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds the person's own property; and shall consider the role that the investment plays within the trust's overall portfolio of assets. If the trustee has special greater skills or expertise than a person of ordinary prudence or if the trustee holds itself out as having special skills or expertise is named trustee by representing that the trustee has greater skills than a person of ordinary prudence, the trustee is under a duty to use those skills or expertise.~~

(b) ~~Except as may be provided to the contrary in the instrument, the following are Among the factors that should to be considered by a trustee in applying the total asset management approach determining the prudence of a particular investment are the following:~~

(1) the probable income of the trust as well as the probable safety of the capital of the trust;

(2) ~~marketability of investments~~ the composition of the portfolio of the trust with regard to diversification;

(3) the length of the term of investments of the trust;

(4) the duration of the trust;

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(5) the liquidity needs and current return of the trust's portfolio relative to the anticipated cash requirements of the trust;

(6) requirements of the beneficiary or beneficiaries;

(7) other assets of the beneficiary or beneficiaries, known to the trustees, including earning capacity; and

(8) effect of investments in increasing or diminishing liability for taxes

(7) the relative interests of income and remainder beneficiaries; and

(8) the tax consequences.

(c) If a trustee is a national banking association or holds a certificate under section 48.37 or if a trustee retains or employs an investment advisor registered under the Investment Advisors Act of 1940, an investment which is otherwise prudent is not imprudent solely because it is in new, unproven, untried, or other enterprises with a potential for a significant growth or in a limited partnership or commingled fund investing in these enterprises.

Sec. 2. [501.155] EMPLOYEES AND AGENTS OF TRUSTEE.

Unless otherwise provided in the instrument, a trustee may employ attorneys, accountants, investment advisors, agents, or other persons, even if they are associated with the trustee, to advise or assist the trustee in the performance of duties. The trustee may act without independent investigation upon their recommendations or, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary, except that:

(1) the trustee may not delegate all of the trustee's duties;

(2) the employment does not relieve the trustee of liability for the acts of a person that, if done by the trustee, would result in liability to the trustee; and

(3) the employment does not relieve the trustee of the duty to select and retain a person with reasonable care.

Sec. 3. Minnesota Statutes 1986, section 501.66, subdivision 28, is amended to read:

Subd. 28. The trustee may employ attorneys, accountants, investment advisors, agents or other persons, even if they are associated with the trustee, to advise or assist the trustee in the performance of duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary; ~~except that:~~

(1) ~~the trustee may not delegate all of the trustee's duties; and~~

(2) ~~the employment does not relieve the trustee of liability for the discre-~~

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tionary acts of a person, which if done by the trustee, would result in liability to the trustee, or of the duty to select and retain a person with reasonable care.

Sec. 4. Minnesota Statutes 1986, section 524.2-202, is amended to read:

524.2-202 AUGMENTED ESTATE.

The augmented estate means the estate reduced by funeral and administration expenses, the homestead, family allowances and exemptions, liens, mortgages, and enforceable claims, to which is added the sum of the following amounts:

(1) The value of property, other than the homestead, transferred by the decedent at any time during the marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(i) any transfer under which the decedent retained at the time of death the possession or enjoyment of, or right to income from, the property;

(ii) any transfer to the extent that the decedent retained at the time of death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for personal benefit;

(iii) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(iv) any transfer made within one year of death of the decedent to the extent that the aggregate transfers to any one donee in the year exceeds \$30,000.

Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first.

Notwithstanding the provisions of (i) to (iv), the augmented estate includes the proceeds of property described in clause (3) only to the extent provided in clause (3).

(2) The value of property, other than the homestead, owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includable in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession or as an obligation of support without a full consideration in money or money's worth. For purposes of this clause:

(i) Property derived from the decedent includes, but is not limited to, any

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beneficial interest of the surviving spouse in a trust created by the decedent during the decedent's lifetime; any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse; any proceeds of insurance, including accidental death benefits, on the life of the decedent attributable to premiums paid by the decedent; any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by the decedent; the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, benefit, or retirement plan or account, excluding the federal social security system and tier 1 railroad retirement benefits, by reason of service performed, disabilities incurred, or deposits made by the decedent; any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship; any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death; and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent.

(ii) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(iii) Property owned by the surviving spouse as of the decedent's death of the kind described in clause (2)(i) is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source. All other property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed not to have been derived from the decedent except to the extent that an interested party establishes that it was derived from the decedent.

(3) The value of property paid to, or for the benefit of, a person other than the surviving spouse as a result of the decedent's death if the property is any of the following types:

(i) proceeds of insurance, including accidental death benefits; ~~but excluding (1) insurance required by a judgment and decree or court order; (2) credit life insurance; (3) insurance required by the terms of a contract; (4) insurance obtained for the purpose of discharging any other liability, contingent or fixed, to the extent the proceeds are used to discharge the liability; or (5) insurance obtained for a bona fide business purpose attributable to premiums paid by the decedent during the marriage except that: (a) if an enforceable claim satisfied with proceeds of insurance on the decedent's life is not deducted in computing the augmented estate, the proceeds must not be included separately; (b) if the value of a business interest is included in the augmented estate, the proceeds of insurance on the decedent's life that are paid to the business or are applied in performance of a purchase agreement relating to the business interest must not be included separately; (c) if the decedent was required by a decree or order~~

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dissolving a prior marriage to pay premiums on insurance on the decedent's life for the benefit of specified persons, the proceeds of that insurance must not be included separately; and (d) in other similar cases the proceeds of insurance must not be included separately;

(ii) a lump sum immediately payable, or the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by the decedent during the marriage; or

(iii) the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, benefit, or retirement plan or account, ~~excluding the federal social security system and tier 1 railroad retirement benefits,~~ by reason of service performed, disabilities incurred, or deposits made by the decedent, attributable to premiums or contributions paid by the decedent during the marriage.

For purposes of this clause, premiums or contributions paid by the decedent's employer, the decedent's partner, a partnership of which the decedent was a member, or the decedent's creditors, are deemed to have been paid by the decedent, and any amounts otherwise includable in the augmented estate are excluded if made with the written consent or joinder of the surviving spouse.

Unless the payer of the property has received written notice of intention to file a petition for the elective share, the property may be paid, upon request and satisfactory proof of the decedent's death, to the designated beneficiary of the property. Payment made discharges the payer from all claims for the amounts paid. This does not extend to payments made after the payer has received written notice of intention to file a petition for the elective share. Unless the notice is withdrawn by the surviving spouse, the surviving spouse must concur in any demand for withdrawal.

For an insurer, the written notice of intention to file a petition for the elective share must be mailed to its home office by registered mail, return receipt requested, or served upon the insurer in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share, an insurer may pay any amounts owed by it specified in clause (3) to the court in which the probate proceedings relating to the estate of the decedent are venued, or if no proceedings have been commenced, to the court having jurisdiction of decedents' estates located in the county of the insured's residence. The court shall hold the funds and, upon its determination under section 524.2-205, subsection (d), shall order its disbursement in accordance with the determination. If no petition is filed in the court within the specified time under section 524.2-205, subsection (a), or if filed, the demand for an elective share is withdrawn under section 524.2-205, subsection (c), the court shall order disbursement to the designated beneficiary. Payment made to the court discharges the insurer from all claims for the amounts paid.

Upon petition to the probate court by the designated beneficiary, the court may order that all or part of the property be paid to the designated beneficiary in an amount and subject to conditions consistent with this section.

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Sec. 5. REPEALER.

Minnesota Statutes 1986, sections 501.125, subdivision 1a, and 501.66, subdivision 6a, are repealed.

Sec. 6. EFFECTIVE DATE.

This act is effective the day following final enactment.

Approved May 26, 1987

CHAPTER 211—H.F.No. 200

An act relating to abuse and neglect reporting; providing a standard for the disclosure of a reporter's name under the child abuse reporting act and the vulnerable adults reporting act; amending Minnesota Statutes 1986, sections 626.556, subdivision 11; and 626.557, subdivision 12.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 626.556, subdivision 11, is amended to read:

Subd. 11. **RECORDS.** All records concerning individuals maintained by a local welfare agency under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff, and except as otherwise provided in subdivisions 10b and 10d. Report records maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority. The welfare board shall make available to the investigating, petitioning, or prosecuting authority any records which contain information relating to a specific incident of neglect or abuse which is under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. In conducting investigations and assessments pursuant to this section, the notice required by section 13.04, subdivision 2, need not be provided to a minor under the age of ten who is the alleged victim of abuse or neglect. An individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be confidential while the report is under assessment or investigation except as otherwise permitted by this subdivision. Any person conducting an investigation or assessment under this section who intentionally discloses the identity of a reporter prior to the completion of the investigation or assessment is guilty of a misdemeanor. After the assessment or investigation is completed, the name of

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