

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3536

03/23/2016 Authored by Hilstrom and Yarusso

The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

1.1 A bill for an act
1.2 relating to probate; changing the effect of financial exploitation of a vulnerable
1.3 adult in a probate; allowing an emergency order to protect the assets of the
1.4 decedent when the decedent has been a victim of financial exploitation; proposing
1.5 coding for new law in Minnesota Statutes, chapter 524.

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

1.7 Section 1. **[524.2-805] EFFECT OF FINANCIAL EXPLOITATION ON**
1.8 **INTESTATE SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE, AND**
1.9 **BENEFICIARY DESIGNATIONS; EMERGENCY ORDER.**

1.10 (a) A surviving spouse, heir, or devisee who has committed an act of financial
1.11 exploitation under section 609.2335 against the decedent may be barred from any benefits
1.12 under the will or under this article, including an intestate share, an elective share, an
1.13 omitted spouse's or child's share, homestead, exempt property, and a family allowance;
1.14 and the estate of the decedent may pass as if the person who committed an act of financial
1.15 exploitation under section 609.2335 had predeceased the decedent. In the absence of a
1.16 conviction under section 609.2335, or when the crime was not prosecuted, the court may
1.17 find by a preponderance of the evidence that an act of financial exploitation occurred
1.18 under section 609.2335. The court shall consider the following factors in determining
1.19 whether or not the person who committed an act of financial exploitation may be barred
1.20 from receiving benefits in this section:

1.21 (1) the seriousness of the crime, including the value of property lost or transferred
1.22 and the impact of the financial exploitation on the decedent;

1.23 (2) the use of harassment, duress, force, compulsion, or coercion;

1.24 (3) the relationship between the decedent and the person who committed the act of
1.25 financial exploitation; and

2.1 (4) the wishes of the decedent and the wishes of potential beneficiaries and heirs
2.2 not disqualified by this section, if known.

2.3 (b) If the court has found that an act of financial exploitation occurred under section
2.4 609.2335, the court may use the factors in paragraph (a) to determine that the person who
2.5 committed the act of financial exploitation is barred from receiving benefits from the
2.6 decedent in any of the following circumstances, and may determine that the interest passes
2.7 as if the person had predeceased the decedent:

2.8 (1) right of survivorship in a joint tenancy for real or personal property and jointly
2.9 held accounts in banks, savings associations, credit unions, and other institutions;

2.10 (2) benefit to a bond or other contractual arrangement;

2.11 (3) benefit to a life insurance policy;

2.12 (4) benefit of restitution, including restitution for the crime of financial exploitation;
2.13 and

2.14 (5) any other benefit or property interest of the decedent.

2.15 (c) An insurance company shall, pending court order, withhold payment of the
2.16 policy proceeds to all beneficiaries when written notice has been provided to the insurance
2.17 company at its home office that the insured may have been the victim of the crime of
2.18 financial exploitation and the beneficiary may have perpetrated the crime. The proceeds of
2.19 the policy shall be paid and distributed by order of the court as hereinafter provided. In
2.20 the event that the notice has not been received by the insurance company before payment
2.21 of the policy proceeds, the insurance company shall be fully and finally discharged and
2.22 released from any and all responsibility under the policy to the extent that the policy
2.23 proceeds have been paid. The named beneficiary, the insurance company, or any other
2.24 party claiming an interest in the policy proceeds may commence an action in the district
2.25 court to compel payment of the policy proceeds. The court may order the insurance
2.26 company to pay the policy proceeds to any person equitably entitled thereto, including
2.27 the deceased insured's spouse, children, issue, parents, creditors, or estate, and may order
2.28 the insurance company to pay the proceeds of the policy to the court pending the final
2.29 determination of distribution of the proceeds by the court. The insurance company, upon
2.30 receipt of a court order, judgment, or decree ordering payment of the policy proceeds,
2.31 shall pay the policy proceeds according to the terms of the order, and upon payment of
2.32 such proceeds according to the terms of the court order, shall be fully and completely
2.33 discharged and released from any and all responsibility for payment under the policy.

2.34 (d) This section does not affect the rights of any person who, before rights under this
2.35 section have been adjudicated, purchases property from the person who committed an act of
2.36 financial exploitation consistent with this section, and did not have notice that the property

would not have been acquired except for this section, but the person who committed the act of financial exploitation is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section, unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

(e) If a complaint or indictment is issued charging a defendant with the crime of financial exploitation of the decedent, the personal representative, special administrator, or an interested person may file with the court a copy of the complaint or indictment and an inventory of the decedent's personal property that may be affected by a determination under this section, including the following:

(1) personal property that is the subject of a specific devise under the decedent's will or separate writing under section 524.2-513;

(2) exempt property identified in section 524.2-403;

(3) personal property claimed to have sentimental value to an eligible child under section 525.152; or

(4) any other personal property believed, in good faith, to belong to the decedent.

The person filing the inventory shall attest that the inventory is correct and complete to the best of the person's knowledge. The inventory and affidavit shall be filed with the court administrator.

(f) Upon motion of the personal representative, special administrator, or an interested person, and for good cause shown, the court may issue an order regarding property identified under paragraph (e) that includes any or all of the following relief:

(1) reserving a determination of distribution of property;

(2) holding the property in trust or escrow for any and all beneficiaries or heirs not disqualified by this section;

(3) prohibiting the sale, disposition, removal, transfer, or destruction of the property;

(4) permitting the sale, disposition, removal, or transfer of property jointly held by the decedent and a person disqualified under this section only to the extent necessary for reasonable and ordinary living expenses by the disqualified individual, subject to approval and on the terms the court deems just and proper; or

(5) any other relief prescribed by the court.

An order may be granted without notice to other interested persons if the court finds from affidavit or other sworn testimony that the rights of decedent's heirs and beneficiaries may be irreparably harmed before a hearing can be held. If an ex parte order is granted, notice must be given to interested persons known by the court and as the court directs within 48 hours of issuing the order and the court shall hold a hearing within five days of issuing the

4.1 order. In all other cases, reasonable notice of the time and place of hearing on the petition
4.2 must be given to interested persons known by the court and as the court directs. An order
4.3 issued under this paragraph shall be effective pending a final determination under this
4.4 section, unless the court specifies a shorter time period or rescinds the order.

4.5 **EFFECTIVE DATE.** This section is effective on August 1, 2017, and applies to
4.6 probate cases filed on or after that date.