

able to the owner of the real property for not less than \$5,000 or for actual damages caused thereby, whichever is greater, together with costs and reasonable attorney fees. Additional punitive damages may be assessed by the court. A grantee or other person purportedly benefited by a recorded document that creates a nonconsensual common law lien against real property and is forged or groundless, contains a material misstatement or false claim, or is otherwise invalid, who willfully refuses to release the document or record upon request of the owner of the real property affected, is liable to the owner for the damages and attorney fees provided in this section.

Subd. 6. SUNSET. This section expires on August 1, 2002.

Presented to the governor May 13, 1999

Signed by the governor May 17, 1999, 4:36 p.m.

### CHAPTER 171—S.F.No. 1094

*An act relating to probate; changing provisions of the Uniform Probate Code; changing nomination provisions for conservators and guardians; amending Minnesota Statutes 1998, sections 524.2-101; 524.2-702; 524.3-916; and 525.544, subdivision 1.*

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

Section 1. Minnesota Statutes 1998, section 524.2-101, is amended to read:

#### 524.2-101 INTESTATE ESTATE.

(a) Any part of a decedent's estate not effectively ~~The intestate estate of the decedent consists of any part of the decedent's estate not allowed to the decedent's spouse or descendants under sections 524.2-402, 524.2-403, and 524.2-404, and not disposed of by will. The intestate estate passes by intestate succession to the decedent's heirs as prescribed in this chapter, except as modified by the decedent's will.~~

(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed an intestate share.

Sec. 2. Minnesota Statutes 1998, section 524.2-702, is amended to read:

#### 524.2-702 UNIFORM REQUIREMENT OF SURVIVAL FOR 120 HOURS FOR DEVISEES, BENEFICIARIES OF CERTAIN TRUSTS, AND APPOINTEES OF CERTAIN POWERS OF APPOINTMENT; SIMULTANEOUS DEATH ACT FOR OTHER CASES.

Subdivision 1. TITLE. (a) REQUIREMENT OF SURVIVAL FOR 120 HOURS. A beneficiary of a trust in which the grantor has reserved a power to alter, amend, revoke, or terminate the provisions of the trust who fails to survive the grantor by 120 hours, a devisee who fails to survive the testator by 120 hours, or an appointee of a power of appointment taking effect at the death of the holder of the power who fails to

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survive the holder of the power by 120 hours is deemed to have predeceased the grantor, testator, or holder of the power for purposes of determining title to property passing by the trust instrument, by the testator's will, or by the exercise of the power of appointment.

(b)(1) **TITLE TO PROPERTY IN OTHER CASES.** In cases not governed by section 524.2-104 or paragraph (a), where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if the person had survived, except as provided otherwise in this ~~section~~ paragraph.

~~Subd. 2.~~ (2) **DIVISION OF PROPERTY.** Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

~~Subd. 3.~~ (3) **DIVISION OF PROPERTY.** Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

~~Subd. 4.~~ (4) **DIVISION OF PROPERTY.** Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

~~Subd. 5.~~ (c) **NOT RETROACTIVE.** This section shall does not apply to the distribution of the property of a person who has died before it takes effect. Paragraph (a) applies only to persons who die on or after August 1, 1999.

~~Subd. 6.~~ (d) **APPLICATION.** This section shall does not apply in the case of wills, living trusts, deeds, or contracts of insurance, or documents exercising powers of appointment wherein provision has been made for distribution of property different from the provisions of this section. Paragraph (a) does not apply to trusts which are part of a qualified or nonqualified retirement plan or individual retirement accounts.

~~Subd. 7.~~ **CITATION.** This section may be cited as the Uniform Simultaneous Death Act.

Sec. 3. Minnesota Statutes 1998, section 524.3-916, is amended to read:

**524.3-916 APPORTIONMENT OF ESTATE TAXES AND GENERATION-SKIPPING TAX.**

(a) For purposes of this section:

(1) "estate" means the gross estate of a decedent as determined for the purpose of federal estate tax or the estate tax payable to this state;

(2) "decedent's generation-skipping transfers" means all generation-skipping transfers as determined for purposes of the federal generation-skipping tax which occur

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by reason of the decedent's death which relate to property which is included in the decedent's estate;

(3) "person" means any individual, partnership, association, joint stock company, corporation, limited liability company, government, political subdivision, governmental agency, or local governmental agency;

(4) "person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, guardian, conservator, trustee, and custodian;

(5) "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(6) "estate tax" means the federal estate tax and the state estate tax determined by the commissioner of revenue pursuant to chapter 291 and interest and penalties imposed in addition to the tax;

(7) "decedent's generation-skipping tax" means the federal generation-skipping tax imposed on the decedent's generation-skipping transfers and interest and penalties imposed in addition to the tax;

(8) "fiduciary" means personal representative or trustee.

(b) Unless the will or other governing instrument otherwise provides:

(1) the estate tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose; and

(2) the decedent's generation-skipping tax shall be apportioned as provided by federal law. To the extent not provided by federal law, the decedent's generation-skipping tax shall be apportioned among all persons receiving the decedent's generation-skipping transfers whose tax apportionment is not provided by federal law in the proportion that the value of the transfer to each person bears to the total value of all such transfers.

If the decedent's will or other written instrument directs a method of apportionment of estate tax or of the decedent's generation-skipping tax different from the method described in this code section, the method described in the will or other written instrument controls provided, however, that:

(i) unless the decedent's will or other written instrument specifically indicates an intent to waive any right of recovery under section 2207A of the Internal Revenue Code of 1986, as amended, estate taxes must be apportioned under the method described in this section to property included in the decedent's estate under section 2044 of the Internal Revenue Code of 1986, as amended; and

(ii) unless the decedent's will or other written instrument specifically indicates an intent to waive any right of recovery under section 2207B of the Internal Revenue Code of 1986, as amended, estate taxes must be apportioned under the method described in this section to property included in the decedent's estate under section 2036 of the Internal Revenue Code of 1986, as amended.

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(c)(1) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the estate tax or of the decedent's generation-skipping tax.

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(3) If the court finds that the assessment of penalties and interest assessed in relation to the estate tax or the decedent's generation-skipping tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(4) In any action to recover from any person interested in the estate the amount of the estate tax or of the decedent's generation-skipping tax apportioned to the person in accordance with this code section the determination of the court in respect thereto shall be prima facie correct.

(d)(1) The personal representative or other person in possession of the property of the decedent required to pay the estate tax or the decedent's generation-skipping tax may withhold from any property distributable to any person interested in the estate, upon its distribution, the amount of any taxes attributable to the person's interest. If the property in possession of the personal representative or other person required to pay any taxes and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the taxes determined to be due from the person, the personal representative or other person required to pay any taxes may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay any taxes, the personal representative or the other person required to pay any taxes may recover from any person interested in the estate the amount of any taxes apportioned to the person in accordance with this section.

(2) If property held by the personal representative or other person in possession of the property of the decedent required to pay the estate tax or the decedent's generation-skipping tax is distributed prior to final apportionment of the estate tax or the decedent's generation-skipping tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative or other person, as the case may be.

(e)(1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent, by reason of the purposes of the gift, or by allocation to the gift (either by election by the fiduciary or by operation of federal law), inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or the decedent's estate inures to the proportionate benefit of all persons liable to apportionment.

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(4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or devise is not an allowable deduction for purposes of the estate tax solely by reason of an estate tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b)(1) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1986, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(f) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The estate tax on the temporary interest and the estate tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder. The decedent's generation-skipping tax is chargeable against the property which constitutes the decedent's generation-skipping transfer.

(g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the estate tax or of the decedent's generation-skipping tax apportioned to the person until the final determination of the tax. A personal representative or other person required to pay the estate tax or decedent's generation-skipping tax who institutes the action within a reasonable time after final determination of the tax is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the estate tax or decedent's generation-skipping tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment of the tax involved.

(h) A personal representative acting in another state or a person required to pay the estate tax or decedent's generation-skipping tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, or of the decedent's generation-skipping tax, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

Sec. 4. Minnesota Statutes 1998, section 525.544, subdivision 1, is amended to read:

Subdivision 1. **BY PROPOSED WARD OR CONSERVATEE.** (a) In the petition or in a written instrument executed before or after the petition is filed, the proposed ward

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or conservatee may, if acting with sufficient capacity to form an intelligent preference, nominate a conservator or guardian or give instructions to the conservator or guardian.

(b) The written instrument ~~shall~~ must either

(1) be executed and attested in the same manner as a will; or

(2) be signed by the proposed ward or conservatee, or in the proposed ward's or conservatee's name by some other individual in the presence of and at the direction of the proposed ward or conservatee, and acknowledged by the proposed ward or conservatee before a notary public who is not the nominated conservator or guardian.

(c) The court shall appoint the person so nominated as conservator or guardian and shall charge the person with the instructions, unless the court finds that the appointment of the nominee or the instructions are not in the best interests of the proposed ward or conservatee.

#### Sec. 5. INSTRUCTION TO REVISOR.

The revisor of statutes is directed to remove the words "executor" and "administrator" or similar terms each place that the words appear in chapter 48 of Minnesota Statutes and replace those words with "personal representative" or similar terms; provided that any reference to the "administrator of veterans affairs" shall not be changed. The revisor of statutes is directed to add the word "conservator" or similar term to each section of chapter 48 of Minnesota Statutes where there appears the word "guardian," except where the word "guardian" is followed by the words "of a minor".

Presented to the governor May 13, 1999

Signed by the governor May 17, 1999, 4:38 p.m.

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### CHAPTER 172—H.F.No. 718

*An act relating to professions; regulating advanced practice registered nursing; amending Minnesota Statutes 1998, sections 62A.15, subdivision 3a; 148.171; 148.191, subdivision 2; 148.235; 148.261, subdivisions 1 and 5; 148.262, subdivision 1; 148.263, subdivisions 3 and 4; 148.271; 148.281, subdivision 1; 148.283; 245.462, subdivision 18; and 245.4871, subdivision 27; proposing coding for new law in Minnesota Statutes, chapter 148; repealing Minnesota Rules, chapter 6340.*

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

Section 1. Minnesota Statutes 1998, section 62A.15, subdivision 3a, is amended to read:

Subd. 3a. **NURSING SERVICES.** All benefits provided by a policy or contract referred to in subdivision 1, relating to expenses incurred for medical treatment or services of a duly licensed physician must include services provided by a registered nurse who is licensed pursuant to section 148.171 and who is certified by the profession to engage in as an advanced nursing practice registered nurse. "~~Advanced nursing practice registered nurse~~" means the performance of health services by professional nurses who have gained

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