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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-FIFTH  
SESSION

**HOUSE FILE No. 3125**

February 18, 2008

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

1.1 A bill for an act  
1.2 relating to probate; changing certain provisions of the Uniform Probate Code;  
1.3 amending Minnesota Statutes 2006, sections 524.2-301; 524.2-402; 524.3-801;  
1.4 524.3-803.

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

1.6 Section 1. Minnesota Statutes 2006, section 524.2-301, is amended to read:

1.7 **524.2-301 ENTITLEMENT OF SPOUSE; PREMARITAL WILL.**

1.8 (a) ~~A testator's surviving spouse, who~~ If a testator ~~married the testator after the~~  
1.9 ~~testator's making a will was executed, is entitled to~~ and the spouse survives the testator,  
1.10 the surviving spouse shall receive, as an intestate a share, no less than the value of the  
1.11 ~~share~~ of the estate of the testator equal in value to that which the surviving spouse would  
1.12 have received if the testator had died intestate ~~as to that portion of the testator's estate,~~  
1.13 ~~if any, that neither is devised to a child of the testator who was born before the testator~~  
1.14 ~~married the surviving spouse and who is not a child of the surviving spouse nor is devised~~  
1.15 ~~to a descendant of such a child or passes under section 524.2-603 or 524.2-604 to such a~~  
1.16 ~~child or to a descendant of such a child, unless:~~

1.17 (1) ~~it appears from the will or other evidence that the will was made in contemplation~~  
1.18 ~~of the testator's marriage to the surviving spouse~~ provision has been made for, or waived  
1.19 by, the spouse by prenuptial or postnuptial agreement;

1.20 (2) the will ~~expresses the~~ discloses an intention that it is to be effective  
1.21 ~~notwithstanding any subsequent marriage~~ not to make provision for the spouse; or

1.22 (3) ~~the testator~~ the spouse is provided for the spouse by transfer outside in the will  
1.23 ~~and the intent that the transfer be in lieu of a testamentary provision is shown by the~~

2.1 ~~testator's statements or is reasonably inferred from the amount of the transfer or other~~  
2.2 ~~evidence.~~

2.3 (b) In satisfying the share provided by this section, devises made by the will ~~to~~  
2.4 ~~the testator's surviving spouse, if any, are applied first, and other devises,~~ other than a  
2.5 devise to a child of the testator who was born before the testator married the surviving  
2.6 spouse and who is not a child of the surviving spouse or a devise or substitute gift under  
2.7 section 524.2-603 or 524.2-604 to a descendant of such a child, abate as provided in  
2.8 section 524.3-902.

2.9 Sec. 2. Minnesota Statutes 2006, section 524.2-402, is amended to read:

2.10 **524.2-402 DESCENT OF HOMESTEAD.**

2.11 (a) If there is a surviving spouse, the homestead, including a manufactured home  
2.12 which is the family residence, descends free from any testamentary or other disposition of  
2.13 it to which the spouse has not consented in writing or as provided by law, as follows:

2.14 (1) if there is no surviving descendant of decedent, to the spouse; or

2.15 (2) if there are surviving descendants of decedent, then to the spouse for the term of  
2.16 the spouse's natural life and the remainder in equal shares to the decedent's descendants  
2.17 by representation.

2.18 (b) If there is no surviving spouse and the homestead has not been disposed of by  
2.19 will it descends as other real estate.

2.20 (c) If the homestead passes by descent or will to the spouse or decedent's descendants  
2.21 or to a trustee of a trust of which the spouse or the decedent's descendants are the sole  
2.22 current beneficiaries, it is exempt from all debts which were not valid charges on it at the  
2.23 time of decedent's death except that the homestead is subject to a claim filed pursuant  
2.24 to section 246.53 for state hospital care or 256B.15 for medical assistance benefits. If  
2.25 the homestead passes to a person other than a spouse or decedent's descendants or to a  
2.26 trustee of a trust of which the spouse or the decedent's descendants are the sole current  
2.27 beneficiaries, it is subject to the payment of expenses of administration, funeral expenses,  
2.28 expenses of last illness, taxes, and debts. The claimant may seek to enforce a lien or other  
2.29 charge against a homestead so exempted by an appropriate action in the district court.

2.30 (d) For purposes of this section, except as provided in section 524.2-301, the  
2.31 surviving spouse is deemed to consent to any testamentary or other disposition of the  
2.32 homestead to which the spouse has not previously consented in writing unless the spouse  
2.33 files in the manner provided in section 524.2-211, paragraph (f), a petition that asserts the  
2.34 homestead rights provided to the spouse by this section.

3.1 Sec. 3. Minnesota Statutes 2006, section 524.3-801, is amended to read:

3.2 **524.3-801 NOTICE TO CREDITORS.**

3.3 (a) Unless notice has already been given under this section, upon appointment of a  
 3.4 general personal representative in informal proceedings or upon the filing of a petition  
 3.5 for formal appointment of a general personal representative, notice thereof, in the form  
 3.6 prescribed by court rule, shall be given under the direction of the court administrator by  
 3.7 publication once a week for two successive weeks in a legal newspaper in the county  
 3.8 wherein the proceedings are pending giving the name and address of the general personal  
 3.9 representative and notifying creditors of the estate to present their claims within four  
 3.10 months after the date of the court administrator's notice which is subsequently published  
 3.11 or be forever barred, unless they are entitled to further service of notice under paragraph  
 3.12 (b) or (c).

3.13 ~~(b)(1) Within three months after: (i) the date of the first publication of the notice; or~~  
 3.14 ~~(ii) June 16, 1989, whichever is later, the personal representative may determine, in the~~  
 3.15 ~~personal representative's discretion, that it is or is not advisable to conduct a reasonably~~  
 3.16 ~~diligent search for creditors of the decedent who are either not known or not identified. If~~  
 3.17 ~~the personal representative determines that a reasonably diligent search is advisable, the~~  
 3.18 ~~personal representative shall conduct the search.~~

3.19 ~~(2) If the notice is first published after June 16, 1989; The personal representative~~  
 3.20 ~~shall, within three months after the date of the first publication of the notice, serve a copy~~  
 3.21 ~~of the notice upon each then known and identified creditor in the manner provided in~~  
 3.22 ~~paragraph (c). Notice If the decedent or a predeceased spouse of the decedent received~~  
 3.23 ~~assistance for which a claim could be filed under section 246.53, 256B.15, 256D.16, or~~  
 3.24 ~~261.04, notice to the commissioner of human services must be given under paragraph (d)~~  
 3.25 ~~does not satisfy the notice requirements instead of under this paragraph and or paragraph~~  
 3.26 ~~(c). If notice was first published under the applicable provisions of law under the direction~~  
 3.27 ~~of the court administrator before June 16, 1989, and if a personal representative is~~  
 3.28 ~~empowered to act at any time after June 16, 1989, the personal representative shall, within~~  
 3.29 ~~three months after June 16, 1989, serve upon the then known and identified creditors in~~  
 3.30 ~~the manner provided in paragraph (c) a copy of the notice as published, together with a~~  
 3.31 ~~supplementary notice requiring each of the creditors to present any claim within one~~  
 3.32 ~~month after the date of the service of the notice or be forever barred.~~

3.33 ~~(3) Under this section; A creditor is "known" if: (i) the personal representative~~  
 3.34 ~~knows that the creditor has asserted a claim that arose during the decedent's life against~~  
 3.35 ~~either the decedent or the decedent's estate; or (ii) the creditor has asserted a claim that~~  
 3.36 ~~arose during the decedent's life and the fact is clearly disclosed in accessible financial~~

4.1 records known and available to the personal representative; or (iii) the claim of the  
4.2 creditor would be revealed by a reasonably diligent search for creditors of the decedent in  
4.3 accessible financial records known and available to the personal representative. Under this  
4.4 section, a creditor is "identified" if the personal representative's knowledge of the name  
4.5 and address of the creditor will permit service of notice to be made under paragraph (c).

4.6 (c) Unless the claim has already been presented to the personal representative or  
4.7 paid, the personal representative shall serve a copy of ~~any notice and any supplementary~~  
4.8 ~~the notice~~ required by paragraph (b), ~~clause (1) or (2)~~; upon each creditor of the decedent  
4.9 who is then known to the personal representative and identified, ~~except a creditor whose~~  
4.10 ~~claim has either been presented to the personal representative or paid~~; either by delivery  
4.11 of a copy of the required notice to the creditor, or by mailing a copy of the notice to the  
4.12 creditor by certified, registered, or ordinary first class mail addressed to the creditor at  
4.13 the creditor's office or place of residence.

4.14 (d)(1) Effective for decedents dying on or after July 1, 1997, if the decedent or a  
4.15 predeceased spouse of the decedent received assistance for which a claim could be filed  
4.16 under section 246.53, 256B.15, 256D.16, or 261.04, the personal representative or the  
4.17 attorney for the personal representative shall serve the commissioner of human services  
4.18 with notice in the manner prescribed in paragraph (c) as soon as practicable after the  
4.19 appointment of the personal representative. The notice must state the decedent's full name,  
4.20 date of birth, and Social Security number and, to the extent then known after making a  
4.21 reasonably diligent inquiry, the full name, date of birth, and Social Security number for  
4.22 each of the decedent's predeceased spouses. The notice may also contain a statement that,  
4.23 after making a reasonably diligent inquiry, the personal representative has determined that  
4.24 the decedent did not have any predeceased spouses or that the personal representative  
4.25 has been unable to determine one or more of the previous items of information for a  
4.26 predeceased spouse of the decedent. A copy of the notice to creditors must be attached to  
4.27 and be a part of the notice to the commissioner.

4.28 (2) Notwithstanding a will or other instrument or law to the contrary, except as  
4.29 allowed in this paragraph, no property subject to administration by the estate may be  
4.30 distributed by the estate or the personal representative until 70 days after the date the  
4.31 notice is served on the commissioner as provided in paragraph (c), unless the local agency  
4.32 consents as provided for in clause (6). This restriction on distribution does not apply to  
4.33 the personal representative's sale of real or personal property, but does apply to the net  
4.34 proceeds the estate receives from these sales. The personal representative, or any person  
4.35 with personal knowledge of the facts, may provide an affidavit containing the description  
4.36 of any real or personal property affected by this paragraph and stating facts showing

5.1 compliance with this paragraph. If the affidavit describes real property, it may be filed  
5.2 or recorded in the office of the county recorder or registrar of titles for the county where  
5.3 the real property is located. This paragraph does not apply to proceedings under sections  
5.4 524.3-1203 and 525.31, or when a duly authorized agent of a county is acting as the  
5.5 personal representative of the estate.

5.6 (3) At any time before an order or decree is entered under section 524.3-1001  
5.7 or 524.3-1002, or a closing statement is filed under section 524.3-1003, the personal  
5.8 representative or the attorney for the personal representative may serve an amended notice  
5.9 on the commissioner to add variations or other names of the decedent or a predeceased  
5.10 spouse named in the notice, the name of a predeceased spouse omitted from the notice, to  
5.11 add or correct the date of birth or Social Security number of a decedent or predeceased  
5.12 spouse named in the notice, or to correct any other deficiency in a prior notice. The  
5.13 amended notice must state the decedent's name, date of birth, and Social Security number,  
5.14 the case name, case number, and district court in which the estate is pending, and the date  
5.15 the notice being amended was served on the commissioner. If the amendment adds the  
5.16 name of a predeceased spouse omitted from the notice, it must also state that spouse's full  
5.17 name, date of birth, and Social Security number. The amended notice must be served on  
5.18 the commissioner in the same manner as the original notice. Upon service, the amended  
5.19 notice relates back to and is effective from the date the notice it amends was served,  
5.20 and the time for filing claims arising under section 246.53, 256B.15, 256D.16 or 261.04  
5.21 is extended by 60 days from the date of service of the amended notice. Claims filed  
5.22 during the 60-day period are undischarged and unbarred claims, may be prosecuted by  
5.23 the entities entitled to file those claims in accordance with section 524.3-1004, and the  
5.24 limitations in section 524.3-1006 do not apply. The personal representative or any person  
5.25 with personal knowledge of the facts may provide and file or record an affidavit in the  
5.26 same manner as provided for in clause (1).

5.27 (4) Within one year after the date an order or decree is entered under section  
5.28 524.3-1001 or 524.3-1002 or a closing statement is filed under section 524.3-1003, any  
5.29 person who has an interest in property that was subject to administration by the estate may  
5.30 serve an amended notice on the commissioner to add variations or other names of the  
5.31 decedent or a predeceased spouse named in the notice, the name of a predeceased spouse  
5.32 omitted from the notice, to add or correct the date of birth or Social Security number of a  
5.33 decedent or predeceased spouse named in the notice, or to correct any other deficiency  
5.34 in a prior notice. The amended notice must be served on the commissioner in the same  
5.35 manner as the original notice and must contain the information required for amendments  
5.36 under clause (3). If the amendment adds the name of a predeceased spouse omitted from

6.1 the notice, it must also state that spouse's full name, date of birth, and Social Security  
6.2 number. Upon service, the amended notice relates back to and is effective from the date  
6.3 the notice it amends was served. If the amended notice adds the name of an omitted  
6.4 predeceased spouse or adds or corrects the Social Security number or date of birth of the  
6.5 decedent or a predeceased spouse already named in the notice, then, notwithstanding any  
6.6 other laws to the contrary, claims against the decedent's estate on account of those persons  
6.7 resulting from the amendment and arising under section 246.53, 256B.15, 256D.16, or  
6.8 261.04 are undischarged and unbarred claims, may be prosecuted by the entities entitled  
6.9 to file those claims in accordance with section 524.3-1004, and the limitations in section  
6.10 524.3-1006 do not apply. The person filing the amendment or any other person with  
6.11 personal knowledge of the facts may provide and file or record an affidavit describing  
6.12 affected real or personal property in the same manner as clause (1).

6.13 (5) After one year from the date an order or decree is entered under section  
6.14 524.3-1001 or 524.3-1002, or a closing statement is filed under section 524.3-1003, no  
6.15 error, omission, or defect of any kind in the notice to the commissioner required under  
6.16 this paragraph or in the process of service of the notice on the commissioner, or the  
6.17 failure to serve the commissioner with notice as required by this paragraph, makes any  
6.18 distribution of property by a personal representative void or voidable. The distributee's  
6.19 title to the distributed property shall be free of any claims based upon a failure to comply  
6.20 with this paragraph.

6.21 (6) The local agency may consent to a personal representative's request to distribute  
6.22 property subject to administration by the estate to distributees during the 70-day period  
6.23 after service of notice on the commissioner. The local agency may grant or deny the  
6.24 request in whole or in part and may attach conditions to its consent as it deems appropriate.  
6.25 When the local agency consents to a distribution, it shall give the estate a written certificate  
6.26 evidencing its consent to the early distribution of assets at no cost. The certificate must  
6.27 include the name, case number, and district court in which the estate is pending, the name  
6.28 of the local agency, describe the specific real or personal property to which the consent  
6.29 applies, state that the local agency consents to the distribution of the specific property  
6.30 described in the consent during the 70-day period following service of the notice on the  
6.31 commissioner, state that the consent is unconditional or list all of the terms and conditions  
6.32 of the consent, be dated, and may include other contents as may be appropriate. The  
6.33 certificate must be signed by the director of the local agency or the director's designees  
6.34 and is effective as of the date it is dated unless it provides otherwise. The signature of the  
6.35 director or the director's designee does not require any acknowledgment. The certificate  
6.36 shall be prima facie evidence of the facts it states, may be attached to or combined with a

7.1 deed or any other instrument of conveyance and, when so attached or combined, shall  
7.2 constitute a single instrument. If the certificate describes real property, it shall be accepted  
7.3 for recording or filing by the county recorder or registrar of titles in the county in which  
7.4 the property is located. If the certificate describes real property and is not attached to or  
7.5 combined with a deed or other instrument of conveyance, it shall be accepted for recording  
7.6 or filing by the county recorder or registrar of titles in the county in which the property is  
7.7 located. The certificate constitutes a waiver of the 70-day period provided for in clause (2)  
7.8 with respect to the property it describes and is prima facie evidence of service of notice on  
7.9 the commissioner. The certificate is not a waiver or relinquishment of any claims arising  
7.10 under section 246.53, 256B.15, 256D.16, or 261.04, and does not otherwise constitute a  
7.11 waiver of any of the personal representative's duties under this paragraph. Distributees  
7.12 who receive property pursuant to a consent to an early distribution shall remain liable to  
7.13 creditors of the estate as provided for by law.

7.14 (7) All affidavits provided for under this paragraph:

7.15 (i) shall be provided by persons who have personal knowledge of the facts stated  
7.16 in the affidavit;

7.17 (ii) may be filed or recorded in the office of the county recorder or registrar of  
7.18 titles in the county in which the real property they describe is located for the purpose of  
7.19 establishing compliance with the requirements of this paragraph; and

7.20 (iii) are prima facie evidence of the facts stated in the affidavit.

7.21 (8) This paragraph applies to the estates of decedents dying on or after July 1, 1997.  
7.22 Clause (5) also applies with respect to all notices served on the commissioner of human  
7.23 services before July 1, 1997, under Laws 1996, chapter 451, article 2, section 55. All  
7.24 notices served on the commissioner before July 1, 1997, pursuant to Laws 1996, chapter  
7.25 451, article 2, section 55, shall be deemed to be legally sufficient for the purposes for  
7.26 which they were intended, notwithstanding any errors, omissions or other defects.

7.27 Sec. 4. Minnesota Statutes 2006, section 524.3-803, is amended to read:

7.28 **524.3-803 LIMITATIONS ON PRESENTATION OF CLAIMS.**

7.29 (a) All claims as defined in section 524.1-201(6), against a decedent's estate which  
7.30 arose before the death of the decedent, including claims of the state and any subdivision  
7.31 thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated,  
7.32 if not barred earlier by other statute of limitations, are barred against the estate, the personal  
7.33 representative, and the heirs and devisees of the decedent, unless presented as follows:

7.34 (1) in the case of a creditor who is only entitled, under the United States Constitution  
7.35 and under the Minnesota Constitution, to notice by publication under section 524.3-801,

8.1 within four months after the date of the court administrator's notice to creditors which  
8.2 is subsequently published pursuant to section 524.3-801;

8.3 (2) in the case of a creditor who was served with notice under section 524.3-801(c),  
8.4 within the later to expire of four months after the date of the first publication of notice to  
8.5 creditors or one month after the service;

8.6 (3) ~~within the later to expire of one year after the decedent's death, or one year after~~  
8.7 ~~June 16, 1989~~, whether or not notice to creditors has been published or served under  
8.8 section 524.3-801, ~~provided, however, that in the case of a decedent who died before June~~  
8.9 ~~16, 1989, no claim which was then barred by any provision of law may be deemed to have~~  
8.10 ~~been revived by the amendment of this section.~~

8.11 (b) All claims against a decedent's estate which arise at or after the death of the  
8.12 decedent, including claims of the state and any subdivision thereof, whether due or to  
8.13 become due, absolute or contingent, liquidated or unliquidated, are barred against the  
8.14 estate, the personal representative, and the heirs and devisees of the decedent, unless  
8.15 presented as follows:

8.16 (1) a claim based on a contract with the personal representative, within four months  
8.17 after performance by the personal representative is due;

8.18 (2) any other claim, within four months after it arises.

8.19 (c) Nothing in this section affects or prevents:

8.20 (1) any proceeding to enforce any mortgage, pledge, or other lien upon property  
8.21 of the estate;

8.22 (2) any proceeding to establish liability of the decedent or the personal representative  
8.23 for which there is protection by liability insurance, to the limits of the insurance protection  
8.24 only;

8.25 (3) the presentment and payment at any time within one year after the decedent's  
8.26 death of any claim arising before the death of the decedent that is referred to in section  
8.27 524.3-715, clause (18), although the same may be otherwise barred under this section; or

8.28 (4) the presentment and payment at any time before a petition is filed in compliance  
8.29 with section 524.3-1001 or 524.3-1002 or a closing statement is filed under section  
8.30 524.3-1003, of:

8.31 (i) any claim arising after the death of the decedent that is referred to in section  
8.32 524.3-715, clause (18), although the same may be otherwise barred hereunder;

8.33 (ii) any other claim, including claims subject to clause (3), which would otherwise be  
8.34 barred hereunder, upon allowance by the court upon petition of the personal representative  
8.35 or the claimant for cause shown on notice and hearing as the court may direct.