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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **265**

January 26, 2009

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The bill was read for the first time and referred to the Committee on Health Care and Human Services Policy and Oversight

March 16, 2009

By motion, recalled and re-referred to the Committee on Civil Justice

1.1 A bill for an act
1.2 relating to disposition of items on death; clarifying certain references; providing
1.3 for collection of certain property by affidavit; amending the Darlene Luther
1.4 Revised Uniform Anatomical Gifts Act and other statutes to clarify and conform
1.5 inconsistent provisions authorizing agents to make medical decisions, control
1.6 final disposition of remains, and make anatomical gifts; correcting an erroneous
1.7 reference and making other corrections and clarifications; amending Minnesota
1.8 Statutes 2008, sections 149A.80, subdivision 2; 524.1-304; 524.3-413;
1.9 524.3-1201; 524.3-1203, subdivision 5; 525A.03; 525A.09; 525A.14; 525A.19.

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

1.11 ARTICLE 1
1.12 UNIFORM PROBATE CODE AMENDMENTS

1.13 Section 1. Minnesota Statutes 2008, section 524.1-304, is amended to read:

1.14 **524.1-304 PRACTICE IN COURT.**

1.15 (a) Unless inconsistent with the provisions of this chapter or chapter 525, pleadings,
1.16 practice, procedure and forms in all probate proceedings shall be governed insofar as
1.17 practicable by Rules of Civil Procedure provided for in section 487.23 and adopted
1.18 pursuant thereto.

1.19 (b) Notwithstanding subsection (a), and in addition to its general powers, the court
1.20 shall have power to correct, modify, vacate, or amend its records, orders, and decrees:

1.21 (1) at any time, for the correction of clerical error or pursuant to the provisions of
1.22 section 524.3-413;

1.23 (2) within the time for taking an appeal, for the correction of judicial error;

1.24 (3) within two years after petitioner's discovery thereof, for fraud, whether intrinsic
1.25 or extrinsic, or misrepresentation unless petitioner be a party to such fraud; or

2.1 (4) within two years after the date of filing of any record, order, or decree, for
 2.2 excusable neglect, inadvertence, or mistake.

2.3 In any case, the petitioner must proceed with due diligence and may be barred by
 2.4 laches or the court may deny relief where it appears that the granting thereof would be
 2.5 inequitable in view of all the facts and circumstances appearing.

2.6 Sec. 2. Minnesota Statutes 2008, section 524.3-413, is amended to read:

2.7 **524.3-413 FORMAL TESTACY PROCEEDINGS; VACATION OF ORDER**
 2.8 **FOR OTHER CAUSE AND MODIFICATION OF ORDERS, JUDGMENTS, AND**
 2.9 **DECREES.**

2.10 For good cause shown, an order, judgment or decree in a formal proceeding may
 2.11 be modified or vacated within the time limits and upon the grounds stated in section
 2.12 ~~525.02~~ 524.1-304, except that the same may be modified to include omitted property or to
 2.13 correct a description at any time, as hereinafter provided.

2.14 Whenever real or personal property or any interest therein has been omitted from
 2.15 probate proceedings, from a deed or transfer of distribution, a decree of distribution, or an
 2.16 order for distribution, or has been incorrectly described therein, any person interested in
 2.17 the estate or claiming an interest in such property may petition the probate court of the
 2.18 county in which such proceedings were had for a decree to determine its descent and to
 2.19 assign it to the persons entitled thereto, or to amend the deed or transfer of distribution,
 2.20 decree of distribution, or order of distribution to include such omitted property, or to
 2.21 correct the description, with or without notice. No order or decree of omitted property
 2.22 shall be entered under this section until any inheritance taxes due are paid or the court
 2.23 finds there are no taxes due.

2.24 Sec. 3. Minnesota Statutes 2008, section 524.3-1201, is amended to read:

2.25 **524.3-1201 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.**

2.26 (a) Thirty days after the death of a decedent, (i) any person indebted to the
 2.27 decedent, (ii) any person having possession of tangible personal property or an instrument
 2.28 evidencing a debt, obligation, stock, or chose in action belonging to the decedent, or (iii)
 2.29 any safe deposit company, as defined in section 55.01, controlling the right of access to
 2.30 decedent's safe deposit box shall make payment of the indebtedness or deliver the tangible
 2.31 personal property or an instrument evidencing a debt, obligation, stock, or chose in
 2.32 action or deliver the entire contents of the safe deposit box to a person claiming to be the
 2.33 successor of the decedent, or a state or county agency with a claim authorized by section

3.1 256B.15, upon being presented a certified death record of the decedent and an affidavit, ~~in~~
3.2 ~~duplicate~~, made by or on behalf of the successor stating that:

3.3 (1) the value of the entire probate estate, determined as of the date of death,
3.4 wherever located, including specifically any contents of a safe deposit box, less liens and
3.5 encumbrances, does not exceed ~~\$20,000~~ \$50,000;

3.6 (2) 30 days have elapsed since the death of the decedent or, in the event the property
3.7 to be delivered is the contents of a safe deposit box, 30 days have elapsed since the filing
3.8 of an inventory of the contents of the box pursuant to section 55.10, paragraph (h);

3.9 (3) no application or petition for the appointment of a personal representative is
3.10 pending or has been granted in any jurisdiction;

3.11 (4) if presented, by a state or county agency with a claim authorized by section
3.12 256B.15, to a financial institution with a multiple-party account in which the decedent
3.13 had an interest at the time of death, the amount of the affiant's claim and a good faith
3.14 estimate of the extent to which the decedent was the source of funds or beneficial owner
3.15 of the account; and

3.16 (5) the claiming successor is entitled to payment or delivery of the property.

3.17 (b) A transfer agent of any security shall change the registered ownership on
3.18 the books of a corporation from the decedent to the successor or successors upon the
3.19 presentation of an affidavit as provided in subsection (a).

3.20 (c) The claiming successor or state or county agency shall disburse the proceeds
3.21 collected under this section to any person with a superior claim under section 524.2-403
3.22 or 524.3-805.

3.23 (d) A motor vehicle registrar shall issue a new certificate of title in the name of the
3.24 successor upon the presentation of an affidavit as provided in subsection (a).

3.25 (e) The person controlling access to decedent's safe deposit box need not open the
3.26 box or deliver the contents of the box if:

3.27 (1) the person has received notice of a written or oral objection from any person or
3.28 has reason to believe that there would be an objection; or

3.29 (2) the lessee's key or combination is not available.

3.30 Sec. 4. Minnesota Statutes 2008, section 524.3-1203, subdivision 5, is amended to read:

3.31 Subd. 5. **Exhaustion of estate.** In any summary, special, or other administration
3.32 in which it appears that the estate will not be exhausted in payment of the priority items
3.33 enumerated in subdivisions 1 to 4, the estate may nevertheless be summarily closed
3.34 without further notice, and the property assigned to the proper persons, if the gross probate
3.35 estate, exclusive of any exempt homestead as defined in section 524.2-402, and any

4.1 exempt property as defined in section 524.2-403, does not exceed the value of \$100,000.
4.2 If the closing and distribution of assets is made pursuant to the terms of a will, no decree
4.3 shall issue until a hearing has been held for formal probate of the will as provided in
4.4 sections 524.3-401 to 524.3-413.

4.5 No summary closing of an estate shall be made to any distributee under this
4.6 subdivision, unless a showing is made by the personal representative or the petitioner, that
4.7 all property selected by and allowances to the spouse and children as provided in section
4.8 524.2-403 and the expenses and claims provided in section 524.3-805 have been paid,
4.9 and provided, further, that a bond shall be filed by the personal representative or the
4.10 petitioner, conditioned upon the fact that all such obligations have been paid and that all
4.11 the facts shown on the petition are true, with sufficient surety approved by the court in
4.12 an amount as may be fixed by the court to cover potential improper distributions. If a
4.13 personal representative is appointed, the representative's bond shall be sufficient for such
4.14 purpose unless an additional bond is ordered, and the sureties on the bond shall have the
4.15 same obligations and liabilities as provided for sureties on a distribution bond.

4.16 In the event that an improper distribution or disbursement is made in a summary
4.17 closing, in that not all of said obligations have been paid or that other facts as shown by
4.18 the personal representative or the petitioner, are not true, resulting in damage to any
4.19 party, the court may vacate its summary decree or closing order, and the petitioner or
4.20 the personal representative, together with the surety, shall be liable for damages to any
4.21 party determined to be injured thereby as herein provided. The personal representative,
4.22 petitioner, or the surety, may seek reimbursement for damages so paid or incurred from
4.23 any distributee or recipient of assets under summary decree or order, who shall be required
4.24 to make a contribution to cover such damages upon a pro rata basis or as may be equitable
4.25 to the extent of assets so received. The court is hereby granted complete and plenary
4.26 jurisdiction of any and all such proceedings and may enter such orders and judgments as
4.27 may be required to effectuate the purposes of this subdivision.

4.28 Any judgment rendered for damages or the recovery of assets in such proceedings
4.29 shall be upon petition and only after hearing held thereon on 14 days' notice of hearing and
4.30 a copy of petition served personally upon the personal representative and the surety and
4.31 upon any distributee or recipient of assets where applicable. Any action for the recovery
4.32 of money or damages under this subdivision is subject to the time and other limitations
4.33 imposed by section ~~525.02~~ 524.1-304.

5.1
5.2

ARTICLE 2 ANATOMICAL GIFTS

5.3 Section 1. Minnesota Statutes 2008, section 149A.80, subdivision 2, is amended to
5.4 read:

5.5 Subd. 2. **Determination of right to control and duty of disposition.** The right to
5.6 control the disposition of the remains of a deceased person, including the location and
5.7 conditions of final disposition, unless other directions have been given by the decedent
5.8 pursuant to subdivision 1, vests in, and the duty of final disposition of the body devolves
5.9 upon, the following in the order of priority listed:

5.10 (1) the person or persons appointed in a dated written instrument signed by the
5.11 decedent. Written instrument includes, but is not limited to, a health care directive
5.12 executed under chapter 145C. Written instrument does not include a durable or nondurable
5.13 power of attorney which terminates on the death of the principal pursuant to sections
5.14 523.08 and 523.09;

5.15 (2) the spouse of the decedent;

5.16 (3) the adult child or the majority of the adult children of the decedent, provided
5.17 that, in the absence of actual knowledge to the contrary, a funeral director or mortician
5.18 may rely on instructions given by the child or children who represent that they are the sole
5.19 surviving child, or that they constitute a majority of the surviving children;

5.20 (4) the surviving parent or parents of the decedent, each having equal authority;

5.21 (5) the adult sibling or the majority of the adult siblings of the decedent, provided
5.22 that, in the absence of actual knowledge to the contrary, a funeral director or mortician
5.23 may rely on instructions given by the sibling or siblings who represent that they are the
5.24 sole surviving sibling, or that they constitute a majority of the surviving siblings;

5.25 (6) the adult grandchild or the majority of the adult grandchildren of the decedent,
5.26 provided that, in the absence of actual knowledge to the contrary, a funeral director or
5.27 mortician may rely on instructions given by a grandchild or grandchildren who represent
5.28 that they are the only grandchild or grandchildren reasonably available to control final
5.29 disposition of the decedent's remains or represent a majority of grandchildren reasonably
5.30 available to control final disposition of the decedent's remains;

5.31 (7) the grandparent or the grandparents of the decedent, each having equal authority;

5.32 (8) the adult nieces and nephews of the decedent, or a majority of them, provided
5.33 that, in the absence of actual knowledge to the contrary, a funeral director or mortician
5.34 may rely on instructions given by a niece, nephew, or nieces or nephews who represent
5.35 that they are the only niece, nephew, or nieces or nephews reasonably available to control

6.1 final disposition of the decedent's remains or represent a majority of nieces and nephews
 6.2 reasonably available to control final disposition of the decedent's remains;

6.3 (9) the person or persons who were acting as the guardians of the person of the
 6.4 decedent with authority to make health care decisions for the decedent at the time of death;

6.5 (10) an adult who exhibited special care and concern for the decedent;

6.6 (11) the person or persons respectively in the next degree of kinship in the order
 6.7 named by law to inherit the estate of the decedent; and

6.8 ~~(7)~~ (12) the appropriate public or court authority, as required by law.

6.9 For purposes of this subdivision, the appropriate public or court authority includes
 6.10 the county board of the county in which the death occurred if the person dies without
 6.11 apparent financial means to provide for final disposition or the district court in the county
 6.12 in which the death occurred.

6.13 Sec. 2. Minnesota Statutes 2008, section 525A.03, is amended to read:

6.14 **525A.03 APPLICABILITY.**

6.15 This chapter applies to an anatomical gift or amendment to, revocation of, or refusal
 6.16 to make an anatomical gift, whenever made. Any condition, restriction, or limitation of
 6.17 anatomical gift contained in a document of gift which becomes effective prior to April 1,
 6.18 2010, shall continue to be effective under this chapter. A refusal to make an anatomical
 6.19 gift shall be effective whenever made if the refusal is effective in accordance with the laws
 6.20 of this state in effect at the time of the refusal, and shall be governed by the provisions of
 6.21 this chapter regarding the treatment and effect of a refusal.

6.22 Sec. 3. Minnesota Statutes 2008, section 525A.09, is amended to read:

6.23 **525A.09 WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY**
 6.24 **OR PART.**

6.25 (a) Subject to paragraphs (b) and (c) and unless barred by section 525A.07 or
 6.26 525A.08, an anatomical gift of a decedent's body or part for the purpose of transplantation,
 6.27 therapy, research, or education may be made by any member of the following classes of
 6.28 persons who is reasonably available, in the order of priority listed:

6.29 (1) ~~an~~ a health care agent of appointed by the decedent at the time of in accordance
 6.30 with chapter 145C who immediately prior to the decedent's death who could have made a
 6.31 health care decision for the decedent if the decedent would have lacked capacity to make a
 6.32 medical decision; an agent appointed by the decedent who could have made an anatomical
 6.33 gift on behalf of the decedent under section 525A.04, clause ~~(2)~~ (3), immediately before

7.1 the decedent's death; or an agent appointed by the decedent under section 149A.80 for the
 7.2 purpose of controlling final disposition of the decedent's remains after the decedent's death;

7.3 (2) the spouse of the decedent;

7.4 (3) the adult child or the majority of the adult children of the decedent;

7.5 (4) the surviving parent or parents of the decedent, each having equal authority;

7.6 (5) the adult sibling or the majority of the adult siblings of the decedent, provided
 7.7 that, in the absence of actual knowledge to the contrary, a procurement organization may
 7.8 rely on instructions given by the sibling or siblings who represent that they are the sole
 7.9 surviving sibling, or that they constitute a majority of the surviving siblings;

7.10 (6) the adult grandchild or the majority of the adult grandchildren of the decedent,
 7.11 provided that, in the absence of actual knowledge to the contrary, a procurement
 7.12 organization may rely on instructions given by a grandchild or grandchildren who
 7.13 represent that they are the only grandchild or grandchildren reasonably available to
 7.14 authorize an anatomical gift or represent a majority of grandchildren reasonably available
 7.15 to authorize an anatomical gift;

7.16 (7) the grandparent or the grandparents of the decedent, each having equal authority;

7.17 (8) the adult nieces and nephews of the decedent, or a majority of them, provided
 7.18 that, in the absence of actual knowledge to the contrary, a procurement organization may
 7.19 rely on instructions given by a niece, nephew, or nieces or nephews who represent that
 7.20 they are the only niece, nephew, or nieces or nephews reasonably available to authorize
 7.21 an anatomical gift or represent a majority of nieces and nephews reasonably available
 7.22 to authorize an anatomical gift;

7.23 (9) the person or persons who were acting as the guardians of the person of the
 7.24 decedent with authority to make health care decisions for the person at the time of death;

7.25 ~~(9)~~ (10) an adult who exhibited special care and concern for the decedent; and

7.26 ~~(10)~~ (11) any other person having lawful authority to dispose of the decedent's body.

7.27 (b) If there is more than one member of a class listed in paragraph (a), clause (1),
 7.28 (3), (4), (5), (6), (7), or ~~(9)~~ (10), entitled to make an anatomical gift, an anatomical gift
 7.29 may be made by a member of the class unless that member or a person to which the
 7.30 gift may pass under section 525A.11 knows of an objection by another member of the
 7.31 class. If an objection is known, the gift may be made only by a majority of the members
 7.32 of the class who are reasonably available.

7.33 (c) A person may not make an anatomical gift if, at the time of the decedent's death,
 7.34 a person in a prior class under paragraph (a) is reasonably available to make or to object to
 7.35 the making of an anatomical gift.

8.1 Sec. 4. Minnesota Statutes 2008, section 525A.14, is amended to read:

8.2 **525A.14 RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION**
8.3 **AND OTHERS.**

8.4 (a) When a hospital refers an individual at or near death to a procurement
8.5 organization, the organization shall make a reasonable search of the records of the
8.6 procurement organization, the Department of Public Safety, and any donor registry that it
8.7 knows exists for the geographical area in which the individual resides to ascertain whether
8.8 the individual has made an anatomical gift.

8.9 (b) A procurement organization must be allowed reasonable access to information
8.10 in the records of the Department of Public Safety to ascertain whether an individual at
8.11 or near death is a donor.

8.12 (c) When a hospital refers an individual at or near death to a procurement
8.13 organization, the organization may conduct any reasonable examination necessary to
8.14 ensure the medical suitability of a part that is or could be the subject of an anatomical gift
8.15 for transplantation, therapy, research, or education from a donor or a prospective donor.
8.16 During the examination period, measures necessary to ensure the medical suitability of the
8.17 part may not be withdrawn unless the hospital or procurement organization knows that
8.18 the individual expressed a contrary intent.

8.19 (d) Unless prohibited by law other than this chapter, at any time after a donor's death,
8.20 the person to which a part passes under section 525A.11 may conduct any reasonable
8.21 examination necessary to ensure the medical suitability of the body or part for its intended
8.22 purpose.

8.23 (e) Unless prohibited by law other than this chapter, an examination under paragraph
8.24 (c) or (d) may include an examination of all medical and dental records of the donor or
8.25 prospective donor.

8.26 (f) Upon the death of a minor who was a donor or had signed a refusal, unless a
8.27 procurement organization knows the minor is emancipated, the procurement organization
8.28 shall conduct a reasonable search for the parents of the minor and provide the parents with
8.29 an opportunity to revoke or amend the anatomical gift or revoke the refusal.

8.30 (g) Upon referral by a hospital under paragraph (a), a procurement organization shall
8.31 make a reasonable search for any person listed in section 525A.09 having priority to make
8.32 an anatomical gift on behalf of a prospective donor. If a procurement organization receives
8.33 information that an anatomical gift to any other person was made, amended, or revoked, it
8.34 shall promptly advise the other person of all relevant information.

8.35 (h) Subject to sections 525A.11, paragraph (i), and 525A.23, the rights of the person
8.36 to which a part passes under section 525A.11 are superior to the rights of all others with

9.1 respect to the part. The person may accept or reject an anatomical gift in whole or in part.
9.2 Subject to the terms of the document of gift and this chapter, a person that accepts an
9.3 anatomical gift of an entire body may allow embalming, burial, or cremation, and use of
9.4 remains in a funeral service. If the gift is of a part, the person to which the part passes
9.5 under section 525A.11, upon the death of the donor and before embalming, burial, or
9.6 cremation, shall cause the part to be removed without unnecessary mutilation.

9.7 (i) Neither the physician who attends the decedent at death nor the physician who
9.8 determines the time of the decedent's death may participate in the procedures for removing
9.9 or transplanting a part from the decedent.

9.10 (j) A physician or technician may remove a donated part from the body of a donor
9.11 that the physician or technician is qualified to remove.

9.12 Sec. 5. Minnesota Statutes 2008, section 525A.19, is amended to read:

9.13 **525A.19 LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO**
9.14 **EXECUTION OF DOCUMENT OF GIFT; PRESUMPTION OF VALIDITY.**

9.15 (a) A document of gift is valid if executed in accordance with:

9.16 (1) this chapter;

9.17 (2) the laws of the state or country where it was executed; ~~or~~

9.18 (3) the laws of the state or country where the person making the anatomical gift
9.19 was domiciled, has a place of residence, or was a national at the time the document of
9.20 gift was executed; or

9.21 (4) the laws of this state prior to April 1, 2008.

9.22 (b) If a document of gift is valid under this section, the law of this state governs
9.23 the interpretation of the document of gift.

9.24 (c) A person may presume that a document of gift or amendment of an anatomical
9.25 gift is valid unless that person knows that it was not validly executed or was revoked.

9.26 Sec. 6. **EFFECTIVE DATE.**

9.27 Sections 1 to 5 are effective the day following final enactment.