

This Document can be made available
in alternative formats upon request

State of Minnesota

Printed
Page No. **100**

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **265**

January 26, 2009

Authored by Hortman

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

March 26, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

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; correcting an erroneous reference
1.4 and making other corrections and clarifications; amending Minnesota Statutes
1.5 2008, sections 524.1-304; 524.3-413; 524.3-1201; 524.3-1203, subdivision 5.

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

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

1.8 **524.1-304 PRACTICE IN COURT.**

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

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

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

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

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

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

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

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

2.2 **524.3-413 FORMAL TESTACY PROCEEDINGS; VACATION OF ORDER**
 2.3 **FOR OTHER CAUSE AND MODIFICATION OF ORDERS, JUDGMENTS, AND**
 2.4 **DECREES.**

2.5 For good cause shown, an order, judgment or decree in a formal proceeding may
 2.6 be modified or vacated within the time limits and upon the grounds stated in section
 2.7 ~~525.02~~ 524.1-304, except that the same may be modified to include omitted property or to
 2.8 correct a description at any time, as hereinafter provided.

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

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

2.20 **524.3-1201 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.**

2.21 (a) Thirty days after the death of a decedent, (i) any person indebted to the
 2.22 decedent, (ii) any person having possession of tangible personal property or an instrument
 2.23 evidencing a debt, obligation, stock, or chose in action belonging to the decedent, or (iii)
 2.24 any safe deposit company, as defined in section 55.01, controlling the right of access to
 2.25 decedent's safe deposit box shall make payment of the indebtedness or deliver the tangible
 2.26 personal property or an instrument evidencing a debt, obligation, stock, or chose in
 2.27 action or deliver the entire contents of the safe deposit box to a person claiming to be the
 2.28 successor of the decedent, or a state or county agency with a claim authorized by section
 2.29 256B.15, upon being presented a certified death record of the decedent and an affidavit, ~~in~~
 2.30 ~~duplicate~~, made by or on behalf of the successor stating that:

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

3.1 (2) 30 days have elapsed since the death of the decedent or, in the event the property
3.2 to be delivered is the contents of a safe deposit box, 30 days have elapsed since the filing
3.3 of an inventory of the contents of the box pursuant to section 55.10, paragraph (h);

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

3.6 (4) if presented, by a state or county agency with a claim authorized by section
3.7 256B.15, to a financial institution with a multiple-party account in which the decedent
3.8 had an interest at the time of death, the amount of the affiant's claim and a good faith
3.9 estimate of the extent to which the decedent was the source of funds or beneficial owner
3.10 of the account; and

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

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

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

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

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

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

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

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

3.26 Subd. 5. **Exhaustion of estate.** In any summary, special, or other administration
3.27 in which it appears that the estate will not be exhausted in payment of the priority items
3.28 enumerated in subdivisions 1 to 4, the estate may nevertheless be summarily closed
3.29 without further notice, and the property assigned to the proper persons, if the gross probate
3.30 estate, exclusive of any exempt homestead as defined in section 524.2-402, and any
3.31 exempt property as defined in section 524.2-403, does not exceed the value of \$100,000.
3.32 If the closing and distribution of assets is made pursuant to the terms of a will, no decree
3.33 shall issue until a hearing has been held for formal probate of the will as provided in
3.34 sections 524.3-401 to 524.3-413.

4.1 No summary closing of an estate shall be made to any distributee under this
4.2 subdivision, unless a showing is made by the personal representative or the petitioner, that
4.3 all property selected by and allowances to the spouse and children as provided in section
4.4 524.2-403 and the expenses and claims provided in section 524.3-805 have been paid,
4.5 and provided, further, that a bond shall be filed by the personal representative or the
4.6 petitioner, conditioned upon the fact that all such obligations have been paid and that all
4.7 the facts shown on the petition are true, with sufficient surety approved by the court in
4.8 an amount as may be fixed by the court to cover potential improper distributions. If a
4.9 personal representative is appointed, the representative's bond shall be sufficient for such
4.10 purpose unless an additional bond is ordered, and the sureties on the bond shall have the
4.11 same obligations and liabilities as provided for sureties on a distribution bond.

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

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