

Subd. 6. SALE, HOW AND BY WHOM MADE. Except as provided in this section, the sale shall be made in the same manner as in a foreclosure by advertisement as provided in chapter 580. The certificate of sale must be filed or recorded within five days after the sale.

Subd. 7. EFFECT OF FAILURE TO MAIL NOTICE. If a person foreclosing a mortgage under this section fails to mail a notice in accordance with subdivision 5 to a person with a properly recorded request for notice, the failure does not invalidate the foreclosure.

Subd. 8. REMEDIES. If notice of the sale is not mailed in accordance with subdivision 5 to a person with a properly recorded request for notice, the junior lien holder requesting notice has a cause of action against the person foreclosing the mortgage for money damages for the lessor of: (1) the equity in the mortgaged premises that would have been available to the person if the person had redeemed; or (2) the value of the junior lien. The value of a junior lien is the amount due on and secured by the lien. A junior lien holder has the burden of proving that the junior lien was valid and the junior lien holder had measurable damages and had the financial ability to redeem. An action for damages resulting from failure to mail notice must be brought within two years after the date of sale.

Subd. 9. CREDITOR REDEMPTION. A subsequent creditor having a junior lien upon the real estate or some part of the real estate may redeem in the order and manner specified in sections 580.24 and 580.25, but only if before the end of the redemption period the creditor files with the county recorder or registrar of titles of each county where the mortgaged real estate is located, a notice of intention to redeem. If a junior creditor fails to redeem as provided in this subdivision, its lien is extinguished on the real estate.

## Sec. 2. EFFECTIVE DATE.

This act is effective August 1, 1993, and applies to mortgages entered into on or after August 1, 1993.

Presented to the governor April 17, 1992

Signed by the governor April 27, 1992, 2:02 p.m.

## CHAPTER 548—H.F.No. 2000

*An act relating to probate; changing provisions relating to merger of trusts, certificates of trust, affidavits of trustees, and powers of attorney; amending Minnesota Statutes 1990, sections 508.62; 508A.62; 523.02; 523.03; 523.07; 523.08; 523.09; 523.11, subdivisions 1 and 2; 523.17; 523.18; 523.19; 523.21; 523.22; 523.23, subdivisions 1, 2, 3, and by adding subdivisions; 523.24, subdivisions 1, 7, 8, and 9; Minnesota Statutes 1991 Supplement, section*

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518.58, subdivision 1a; proposing coding for new law in Minnesota Statutes, chapters 501B; and 523; repealing Minnesota Statutes 1990, section 523.25.

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

Section 1. **[501B.13] NONMERGER OF TRUSTS.**

Subdivision 1. SAME TRUSTEE AND BENEFICIARY. No trust is invalid or terminated, and title to trust assets is not merged, because the trustee or trustees are the same person or persons as the beneficiaries of the trust.

Subd. 2. APPLICABILITY. Subdivision 1 applies to all trusts whenever executed or created.

Sec. 2. **[501B.56] CERTIFICATE OF TRUST.**

Subdivision 1. CONTENTS OF CERTIFICATE. The grantor or a trustee of a trust, at any time after execution or creation of a trust, may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used for purposes of selling, conveying, pledging, mortgaging, leasing, or transferring title to any interest in real or personal property. The certificate of trust must include:

- (1) the name of the trust, if one is given;
- (2) the date of the trust instrument;
- (3) the name of each grantor;
- (4) the name of each original trustee;
- (5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;
- (6) the following statement: "The trustees are authorized by the instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property, except as limited by the following: (if none, so indicate)";
- (7) any other trust provisions the grantors or trustees include; and
- (8) a statement as to whether the trust instrument has terminated or been revoked.

The certificate of trust must be upon the representation of the grantors or trustees that the statements contained in the certificate of trust are true and correct and that there are no other provisions in the trust instrument or amendments to it that limit the powers of the trustees to sell, convey, pledge, mortgage, lease, or transfer title to interests in real or personal property. The signature of the grantors or trustees must be under oath before a notary public or other official authorized to administer oaths.

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 2. EFFECT. A certificate of trust executed under subdivision 1 may be recorded in the office of the county recorder for any county or filed with the office of the registrar of titles with respect to registered land described in the certificate of trust or any attachment to it. When it is recorded or filed in a county where real property is situated, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustees, the powers of the trustees and any limitations on those powers, and other matters the certificate of trust sets out, as though the full trust instrument had been recorded, filed, or presented. Until amended or revoked under subdivision 3, or until the full trust instrument is recorded, filed, or presented, a certificate of trust is prima facie proof as to the matters contained in it and any party may rely upon the continued effectiveness of the certificate.

Subd. 3. AMENDMENT OR REVOCATION. Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the grantor or a trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation.

For purposes of this subdivision, "actual notice" means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation containing the legal description of the real property has been recorded in the office of the county recorder or filed in the office of the registrar of titles where the real property is situated.

Subd. 4. APPLICATION. Subdivisions 1 to 3 are effective August 1, 1992, but apply to trust instruments whenever created or executed.

**Sec. 3. [501B.57] AFFIDAVIT OF TRUSTEE IN REAL PROPERTY TRANSACTIONS:**

Subdivision 1. FORM OF AFFIDAVIT. An affidavit of a trustee or of trustees in support of a real property transaction may be substantially in the following form:

STATE OF MINNESOTA     )  
  ) ss.                                     AFFIDAVIT OF TRUSTEE  
COUNTY OF                             )

....., being first duly sworn on oath says that:

1. Affiant is the trustee (one of the trustees) named in that certain Certificate of Trust (or Trust Instrument) dated ....., 19..., and filed for record ....., 19..., as Document No. .... (or in Book .... of ....., Page .....) in the Office of the County Recorder (Registrar of Titles) of ....., County, Minnesota, executed by Affiant or another trustee or the grantor of the Trust described in the Certificate of Trust (or set forth in the Trust Instrument), and which relates to real property in ....., County, Minnesota legally described as follows:

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.....  
.....  
.....  
.....

(If more space is needed, continue on back or on attachment.)

2. The name(s) and address(es) of the trustee(s) empowered by the Trust Instrument to act at the time of the execution of this Affidavit are as follows:

.....  
.....  
.....

3. The trustee(s) who have executed that certain instrument relating to the real property described above between ....., as trustee(s) and ....., dated ....., 19..:

(a) are empowered by the provisions of the trust to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property held in trust; and

(b) are the requisite number of trustees required by the provisions of the trust to execute and deliver such an instrument.

4. The Trust has not terminated and has not been revoked.

- OR -

4. The Trust has terminated (or has been revoked). The execution and delivery of the instrument described in paragraph 3 has been made pursuant to the provisions of the Trust.

5. There has been no amendment to the Trust which limits the power of trustee(s) to execute and deliver the instrument described in paragraph 3.

6. The Trust is not supervised by any court.

- OR -

6. The Trust is supervised by the ..... Court of ..... County, ..... All necessary approval has been obtained from the court for the trustee(s) to execute and deliver the instrument described in paragraph 3.

7. Affiant does not have actual knowledge of any facts indicating that the Trust is invalid.

.....  
....., Affiant

New language is indicated by underline, deletions by strikeout.

Subscribed and sworn to before me  
this .... day of ....., 19..

Notary Stamp or Seal

.....  
Signature of Notary Public or  
Other Official

This instrument was drafted by:  
.....  
.....  
.....

Subd. 2, EFFECT. An affidavit by the trustee or trustees under subdivision 1 is proof that:

(i) the trust described in the affidavit is a valid trust;

(ii) either the trust has not terminated or been revoked or, if the trust has terminated or been revoked, the conveyance described in the affidavit is made pursuant to the provisions of the trust;

(iii) the powers granted the trustee or trustees extend to the real property described in the affidavit or attachment to the affidavit;

(iv) no amendment to the trust has been made limiting the power of the trustee or trustees to sell, convey, pledge, mortgage, lease, or transfer title to the real property described in the affidavit or attachment to the affidavit, if any;

(v) the requisite number of trustees have executed and delivered the instrument of conveyance described in the affidavit; and

(vi) any necessary court approval of the transaction has been obtained.

The proof is conclusive as to any party relying on the affidavit, except a party dealing directly with the trustee or trustees who has actual knowledge of facts to the contrary.

Sec. 4. Minnesota Statutes 1990, section 508.62, is amended to read:

**508.62 TRUSTEE'S CONVEYANCE.**

No instrument executed by an owner whose fee title to registered land is held in trust which transfers or plats the land, shall be registered except upon the written certification of the examiner of titles that the instrument is executed in accordance with a power conferred in the instrument of trust, or evidenced in a certificate of trust authorized by section 2, or is authorized by law, or upon the order of the district court directing its registration. The examiner shall not certify any such instrument unless:

(1) the trust is ~~administered~~ supervised by the court; or unless

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(2) an affidavit of trustee authorized by section 3 and the document creating the trust, or a certified copy of it, or a certificate of trust authorized by section 2 is registered as a memorial upon the certificate of title. The certified copy of the certificate setting forth the adoption of the resolution for voluntary dissolution of a corporate registered owner together with the certificate of the secretary of state that said certificate of dissolution has been filed for record in the secretary's office shall be deemed the document creating the trust.

Sec. 5. Minnesota Statutes 1990, section 508A.62, is amended to read:

**508A.62 TRUSTEE'S CONVEYANCE.**

No instrument executed by an owner, whose fee title to land is registered under sections 508A.01 to 508A.85 and is held in trust, which transfers or plats the land, shall be registered except upon the written certification of the examiner of titles that the instrument is executed in accordance with a power conferred in the instrument of trust, or evidenced in a certificate of trust authorized by section 2, or is authorized by law, or upon the order of the district court directing the registration of it. The examiner shall not certify any instrument unless:

(1) the trust is administered supervised by the court; or unless

(2) an affidavit of trustee authorized by section 3 and the document creating the trust, or a certified copy thereof of it, or a certificate of trust authorized by section 2 is registered as a memorial upon the CPT. The certified copy of the certificate setting forth the adoption of the resolution for voluntary dissolution of a corporate registered owner together with the certificate of the secretary of state that the certificate of dissolution has been filed for record in the secretary's office shall be deemed the document creating the trust.

Sec. 6. Minnesota Statutes 1991 Supplement, section 518.58, subdivision 1a, is amended to read:

Subd. 1a. **TRANSFER, ENCUMBRANCE, CONCEALMENT, OR DISPOSITION OF MARITAL ASSETS.** During the pendency of a marriage dissolution, separation, or annulment proceeding, or in contemplation of commencing a marriage dissolution, separation, or annulment proceeding, each party owes a fiduciary duty to the other for any profit or loss derived by the party, without the consent of the other, from a transaction or from any use by the party of the marital assets. If the court finds that a party to a marriage, without consent of the other party, has in contemplation of commencing, or during the pendency of, the current dissolution, separation, or annulment proceeding, transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life, the court shall compensate the other party by placing both parties in the same position that they would have been in had the transfer, encumbrance, concealment, or disposal not occurred. The burden of proof under this subdivision is on the party claiming that the other party transferred, encumbered, concealed, or disposed of marital assets in contemplation of commencing or during the pendency of the current

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dissolution, separation, or annulment proceeding, without consent of the claiming party, and that the transfer, encumbrance, concealment, or disposal was not in the usual course of business or for the necessities of life. In compensating a party under this section, the court, in dividing the marital property, may impute the entire value of an asset and a fair return on the asset to the party who transferred, encumbered, concealed, or disposed of it. Use of a power of attorney, or the absence of a restraining order against the transfer, encumbrance, concealment, or disposal of marital property is not available as a defense under this subdivision.

Sec. 7. Minnesota Statutes 1990, section 523.02, is amended to read:

**523.02 COMMON LAW, PREEXISTING AND FOREIGN POWERS OF ATTORNEY.**

A written power of attorney is a validly executed power of attorney for the purposes of sections 523.01 to ~~523.25~~ 523.24, and is subject to the provisions of sections 523.01 to ~~523.25~~ 523.24, if it is validly created pursuant to: (1) the law of Minnesota as it existed prior to the enactment of sections 523.01 to ~~523.25~~ 523.24 if it was executed prior to August 1, 1984; (2) the common law; or (3) the law of another state or country. A power of attorney executed before August 1, 1992, in conformity with section 523.23 as that statute existed before that date is a statutory short form power of attorney. A power of attorney executed on or after August 1, 1992, in conformity with section 523.23 as it exists on or after that date is a statutory short form power of attorney. A provision in a power of attorney that would make it a durable power of attorney under section 523.07 but for its use of the term "disability" in place of "incapacity or incompetence" is nonetheless a durable power of attorney.

Sec. 8. Minnesota Statutes 1990, section 523.03, is amended to read:

**523.03 INTERPRETATION.**

Unless the context requires otherwise, all references in sections 523.01 to 523.25 to the "principal" include any guardian or conservator of the estate appointed for the principal at any time and all references to a "power of attorney" mean a validly executed power of attorney. As used in this chapter:

(1) "incapacity" means cause for appointment of a guardian or conservator of the person or estate of an adult under section 525.54;

(2) "incompetence" has the meaning given in section 525.54;

(3) "principal" includes a guardian or conservator of the estate appointed for the principal at any time; and

(4) "power of attorney" means a validly executed power of attorney.

Sec. 9. Minnesota Statutes 1990, section 523.07, is amended to read:

**New language is indicated by underline, deletions by ~~strikeout~~.**

**523.07 DURABLE POWER OF ATTORNEY.**

A power of attorney is durable if it contains language such as "This power of attorney shall not be affected by ~~disability~~ incapacity or incompetence of the principal" or "This power of attorney shall become effective upon the ~~disability~~ incapacity or incompetence of the principal," or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding the principal's later ~~disability or~~ incapacity or incompetence.

**Sec. 10. [523.075] EXPIRATION DATE IN A POWER OF ATTORNEY.**

In a power of attorney, an expiration date, if any, must be stated in terms of a specific month, day, and year. An expiration date stated in any other way has no effect.

Sec. 11. Minnesota Statutes 1990, section 523.08, is amended to read:

**523.08 TERMINATION OF A DURABLE POWER.**

A durable power of attorney terminates on the earliest to occur of the death of the principal or upon, the expiration of a period of time date of termination specified in the power of attorney if the period ends prior to the death of the principal, or, in the case of a power of attorney to the spouse of the principal, upon the commencement of proceedings for dissolution, separation, or annulment of the principal's marriage.

Sec. 12. Minnesota Statutes 1990, section 523.09, is amended to read:

**523.09 TERMINATION OF A NONDURABLE POWER OF ATTORNEY.**

A nondurable power of attorney terminates on the death of the principal, ~~on the incompetency~~ incapacity or incompetence of the principal, ~~or upon~~ the expiration of a period of time date of termination specified in the power of attorney if the period ends prior to the death or incompetency of the principal, or, in the case of a power of attorney to the spouse of the principal, upon the commencement of proceedings for dissolution, separation, or annulment of the principal's marriage.

Sec. 13. Minnesota Statutes 1990, section 523.11, subdivision 1, is amended to read:

Subdivision 1. **MANNER.** An executed power of attorney may be revoked only by a written instrument of revocation signed by the principal and, in the case of a signature on behalf of the principal by another or a signature by a mark, acknowledged by before a notary public. The conservator or guardian of the principal has the same power the principal would have if the principal were not ~~disabled~~ incapacitated or incompetent to revoke, suspend, or terminate all or any part of the power of attorney.

New language is indicated by underline, deletions by ~~strikeout~~.



Sec. 14. Minnesota Statutes 1990, section 523.11, subdivision 2, is amended to read:

Subd. 2. **EFFECT; DEFINITION OF ACTUAL NOTICE OF REVOCATION.** Revocation of an executed power of attorney is not effective as to any party unless that party has actual notice of the revocation.

As used in this chapter, "actual notice of revocation" means that a written instrument of revocation has been received by the party ~~or,~~ In a real property ~~transaction;~~ transactions only, "actual notice of revocation" means that a written instrument of revocation has been received by the party, or that a written instrument of revocation containing the legal description of the real property has been recorded in the office of the county recorder or filed in the office of the registrar of titles. Recorded or filed revocation is actual notice of revocation of a power of attorney only as to any interest in real property described in the revocation and located in the county where it is recorded.

Sec. 15. **[523.131] QUALIFICATION OF SUCCESSOR ATTORNEY-IN-FACT IN STATUTORY SHORT FORM POWER OF ATTORNEY.**

If two or more attorneys-in-fact are originally appointed and one dies, resigns, or is unable to serve, a successor attorney-in-fact named in a power of attorney executed in conformity with section 523.23 replaces the attorney-in-fact who dies, resigns, or is unable to serve. If the original attorneys-in-fact were required to act jointly, the attorneys-in-fact acting at any time must act jointly. If the original attorneys-in-fact were allowed to act individually, the attorneys-in-fact acting at any time may act individually. If attorneys-in-fact acting at any time are required to act jointly, and there is only one remaining attorney-in-fact because of the death, resignation, or inability to serve of all other original and successor attorneys-in-fact, the remaining attorney-in-fact may act alone.

Sec. 16. Minnesota Statutes 1990, section 523.17, is amended to read:

**523.17 AFFIDAVIT OF ATTORNEY-IN-FACT AS CONCLUSIVE PROOF OF NONTERMINATION AND NONREVOCATION IN REAL PROPERTY TRANSACTIONS.**

If the exercise of a power granted by a power of attorney relating to real property requires execution or delivery of any instrument which is recordable, an affidavit, signed by the attorney-in-fact, stating that the attorney-in-fact did not have, at the time of exercising a power pursuant to the power of attorney, actual knowledge of the termination of the power of attorney by the death of the principal; or, if the power of attorney is one which terminates upon the incompetence of the principal, actual knowledge of the principal's incompetence, or actual notice of the revocation of the power of attorney, is conclusive proof that the power of attorney had not terminated or been revoked at the time of the exercise of the power as to any party relying on the affidavit except any party dealing directly with the attorney-in-fact who has actual knowledge that the power of attorney had terminated prior to the exercise of the power or actual

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notice of the revocation of the power of attorney. Subdivision 1. FORM OF AFFIDAVIT. An affidavit of nontermination or nonrevocation in support of a real property transaction may be substantially in the following form:

AFFIDAVIT BY ATTORNEY IN FACT

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF )

..... being first duly sworn on oath says that:

1. Affiant is the Attorney-in-Fact (or agent) named in that certain Power of Attorney dated ....., 19.., and filed for record ....., 19.., as Document No..... (or in Book ..... of ..... Page.....), in the Office of the (County Recorder) (Registrar of Titles) of..... County, Minnesota, executed by ....., as Grantor and Principal, relating to real property in ....., County, Minnesota, legally described as follows:

.....  
.....  
.....

(If more space is needed, continue on back or on an attachment.)

2. Affiant does not have actual knowledge and has not received actual notice of the revocation or termination of the Power of Attorney by Grantor's death, incapacity, incompetence, or otherwise, or notice of any facts indicating the same.

3. Affiant has examined the legal description(s) if any, attached to said Power of Attorney, and certifies that the description(s) has (have) not been changed, replaced, or amended subsequent to the signing of said Power of Attorney by the Principal.

.....  
....., Affiant

Subscribed and sworn to before me  
this .... day of ....., 19..

Notary Stamp or Seal

.....  
Signature of Notary Public or  
Other Official

This instrument was drafted by:  
.....  
.....  
.....

Subd. 2. EFFECT. An affidavit by the attorney-in-fact under subdivision 1 is conclusive proof that the power of attorney has not terminated or been

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revoked, and that the powers granted extended to the property described in the power of attorney or any attachment to it, as of the time of the exercise of the power, as to any party relying on the affidavit except any party dealing directly with the attorney-in-fact who has actual knowledge that the power of attorney had terminated prior to the exercise of the power or actual notice of the revocation of the power of attorney or actual knowledge that the powers do not extend to the real property legally described in the power of attorney, including any attachment.

Sec. 17. Minnesota Statutes 1990, section 523.18, is amended to read:

**523.18 SIGNATURE OF ATTORNEY-IN-FACT AS CONCLUSIVE PROOF OF NONTERMINATION.**

In the exercise of a power granted by a power of attorney, other than in a transaction relating to real property described in section 523.17, a signature by a person as "attorney-in-fact for (Name of the principal)" or "(Name of the principal) by (Name of the attorney-in-fact) the principal's attorney-in-fact" or any similar written disclosure of the principal and attorney-in-fact relationship constitutes an attestation by the attorney-in-fact that the attorney-in-fact did not have, at the time of signing, actual knowledge of the termination of the power of attorney by the death of the principal or, in the case of a power of attorney to the spouse of the principal, by the commencement of proceedings for dissolution, separation, or annulment of the principal's marriage, or, if the power is one which terminates upon incapacity or incompetence of the principal, actual knowledge of the principal's incapacity or incompetence, or actual notice of the revocation of the power of attorney, and is conclusive proof as to any party relying on the attestation that the power of attorney had not terminated or been revoked at the time of the signature by the attorney-in-fact on behalf of the principal except as to any party who has actual knowledge that the power of attorney had terminated prior to the signature or actual notice of the revocation of the power of attorney.

Sec. 18. Minnesota Statutes 1990, section 523.19, is amended to read:

**523.19 THIRD PARTIES HELD HARMLESS.**

Any party accepting the authority of an attorney-in-fact to exercise a power granted by a power of attorney is not liable to the principal, to the heirs and assigns of the principal, or to any representative of the estate of the principal if: (1) the applicable provisions of sections 523.17 and 523.18 have been satisfied; (2) the provisions of section 523.16 have been satisfied, if applicable; (3) the party has no actual notice of the revocation of the power of attorney prior to the transaction; (4) the party has no actual knowledge of the death of the principal and, if the power of attorney is not a durable power of attorney, has not received actual notice of a judicial determination that the principal is legally incapacitated or incompetent; and (5) the duration of the power of attorney specified in the power of attorney itself, if any, has not expired. A good faith purchaser from any party who has obtained an interest in property from an attorney-in-fact is

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not liable to the principal, the heirs or assigns of the principal, or the representative of the estate of the principal.

Sec. 19. Minnesota Statutes 1990, section 523.21, is amended to read:

**523.21 DUTIES OF AN ATTORNEY-IN-FACT.**

The attorney-in-fact shall keep complete records of all transactions entered into by the attorney-in-fact on behalf of the principal. The attorney-in-fact has no duty to render an accounting of those transactions unless: (1) requested to do so at any time by the principal; ~~or~~ (2) the instrument conferring the power of attorney requires that the attorney-in-fact render accountings and specifies to whom the accounting must be delivered; or (3) the attorney-in-fact has reimbursed the attorney-in-fact for any expenditure the attorney-in-fact has made on behalf of the principal. A written statement that gives reasonable notice of all transactions entered into by the attorney-in-fact on behalf of the principal is an adequate accounting. The persons entitled to examine and copy the records of the attorney-in-fact are the principal, a person designated by the principal in the document creating the power of attorney as the recipient of accountings required by this section, and the guardian or conservator of the estate of the principal while the principal is living and the personal representative of the estate of the principal after the death of the principal. The attorney-in-fact has no affirmative duty to exercise any power conferred upon the attorney-in-fact under the power of attorney. In exercising any power conferred by the power of attorney, the attorney-in-fact shall exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person's own affairs and shall have the interests of the principal utmost in mind. The attorney-in-fact is personally liable to any person, including the principal, who is injured by an action taken by the attorney-in-fact in bad faith under the power of attorney or by the attorney-in-fact's failure to account when the attorney-in-fact has a duty to account under this section.

Sec. 20. Minnesota Statutes 1990, section 523.22, is amended to read:

**523.22 LIABILITY OF ATTORNEY-IN-FACT FOR IMPROPER EXECUTION OF AFFIDAVITS AND SIGNATURE.**

Nothing in sections 523.01 to ~~523.25~~ 523.24 limits any rights the principal may have against the attorney-in-fact for any fraudulent or negligent actions in executing affidavits or signing or acting on behalf of the principal as an attorney-in-fact. An attorney-in-fact who knowingly executes a false affidavit or, knowing that the conditions of section 523.18 are not satisfied, signs on behalf of the principal is liable for treble the amount of damages suffered by the principal.

Sec. 21. Minnesota Statutes 1990, section 523.23, subdivision 1, is amended to read:

Subdivision 1. **FORM.** ~~The use of the following form in the creation of may be used to create a power of attorney is lawful,~~ and, when used, it shall

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must be construed in accordance with the provisions of sections 523.23 and 523.24:

**NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN SECTION 523.24. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT ADVICE. THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES IS ALSO PERMITTED. THIS POWER OF ATTORNEY MAY BE REVOKED BY YOU IF YOU LATER WISH TO DO SO. THIS POWER OF ATTORNEY AUTHORIZES BUT DOES NOT REQUIRE THE ATTORNEY-IN-FACT TO ACT FOR YOU.**

Know All by These Presents, which are intended to constitute a STATUTORY SHORT FORM POWER OF ATTORNEY pursuant to Minnesota Statutes, section 523.23:

That I ..... (insert name and address of the principal) do hereby appoint ..... (insert name and address of the attorney-in-fact, or each attorney-in-fact, if more than one is designated) my attorney(s)-in-fact to act (jointly):

(NOTE: If more than one attorney-in-fact is designated and the principal wishes each attorney-in-fact alone to be able to exercise the power conferred, delete the word "jointly." Failure to delete the word "jointly" will require the attorneys-in-fact to act unanimously.)

First: in my name, place and stand in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in section 523.24:

(To grant to the attorney-in-fact any of the following powers, make a check or "x" in the line in front of each power being granted. To delete any of the following powers, do not make a check or "x" in the line in front of the power. You may, but need not, cross out each power being deleted with a line drawn through it (or in similar fashion). Failure to make a check or "x" in the line in front of the power will have the effect of deleting the power unless the line in front of the power of (e) is checked or x-ed.)

Check or "x"

- ..... (A) real property transactions;
- ..... (B) tangible personal property transactions;
- ..... (C) bond, share, and commodity transactions;
- ..... (D) banking transactions;
- ..... (E) business operating transactions;
- ..... (F) insurance transactions;
- ..... (G) beneficiary transactions;
- ..... (H) gift transactions;
- ..... (I) fiduciary transactions;

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- ~~..... (J) claims and litigation;~~
- ~~..... (K) family maintenance;~~
- ~~..... (L) benefits from military service;~~
- ~~..... (M) records, reports, and statements;~~
- ~~..... (N) all other matters;~~
- ~~..... (O) all of the powers listed in~~  
~~(A) through (N) above.~~

Second: (You must indicate below whether or not this power of attorney will be effective if you become incompetent. Make a check or "x" in the line in front of the statement that expresses your intent.)

- ~~..... This power of attorney shall continue to be effective if I become incompetent. It shall not be affected by my later disability or incompetency.~~
- ~~..... This power of attorney shall not be effective if I become incompetent.~~

Third: (You must indicate below whether or not this power of attorney authorizes the attorney-in-fact to transfer your property directly to the attorney-in-fact. Make a check or "x" in the line in front of the statement that expresses your intent.)

- ~~..... This power of attorney authorizes the attorney-in-fact to receive the transfer directly.~~
- ~~..... This power of attorney does not authorize the attorney-in-fact to receive the transfer directly.~~

In Witness Whereof I have hereunto signed my name this ..... day of ....., 19...

.....  
(Signature of Principal)

(Acknowledgment)

Specimen Signature of Attorney(s) in Fact

.....  
.....

STATUTORY SHORT FORM POWER OF ATTORNEY

MINNESOTA STATUTES, SECTION 523.23

IMPORTANT NOTICE: The powers granted by this document are broad and sweeping. They are defined in Minnesota Statutes, section 523.24. If you have any questions about these powers, obtain competent advice. This power of attorney may be revoked by you if you wish to do so. This power of attorney is

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automatically terminated if it is to your spouse and proceedings are commenced for dissolution, legal separation, or annulment of your marriage. This power of attorney authorizes, but does not require, the attorney-in-fact to act for you.

PRINCIPAL (Name and Address of Person Granting the Power)

.....  
.....  
.....

ATTORNEYS(S)-IN-FACT  
(Name and Address)

.....  
.....  
.....  
.....  
.....

SUCCESSOR ATTORNEY(S)-IN-FACT  
(Optional) To act if any named  
attorney-in-fact dies, resigns,  
or is otherwise unable to serve.  
(Name and Address)

First Successor.....  
.....  
Second Successor.....  
.....  
.....

NOTICE: If more than one  
attorney-in-fact is designated,  
make a check or "x" on the  
line in front of one of the  
following statements:

- ... Each attorney-in-fact  
may independently exercise  
the powers granted.
- ... All attorneys-in-fact  
must jointly exercise the  
powers granted.

EXPIRATION DATE (Optional)

Use Specific Month Day Year Only

I, (the above-named Principal) hereby appoint the above named Attorney(s)-in-Fact to act as my attorney(s)-in-fact:

FIRST: To act for me in any way that I could act with respect to the following matters, as each of them is defined in Minnesota Statutes, section 523.24:

(To grant to the attorney-in-fact any of the following powers, make a check or "x" on the line in front of each power being granted. You may, but need not, cross out each power not granted. Failure to make a check or "x" on the line in front of the power will have the effect of deleting the power unless the line in front of the power of (N) is checked or x-ed.)

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Check or "x"

- ..... (A) real property transactions;  
I choose to limit this power to real property in  
..... County, Minnesota, described as follows:  
(Use legal description. Do not use street address.)  
(NOTE: A person may not grant powers relating to real  
property transactions in Minnesota to his  
or her spouse.)  
.....  
.....  
.....  
.....  
(If more space is needed, continue on the back or on an  
attachment.)
- ..... (B) tangible personal property transactions;
- ..... (C) bond, share, and commodity transactions;
- ..... (D) banking transactions;
- ..... (E) business operating transactions;
- ..... (F) insurance transactions;
- ..... (G) beneficiary transactions;
- ..... (H) gift transactions;
- ..... (I) fiduciary transactions;
- ..... (J) claims and litigation;
- ..... (K) family maintenance;
- ..... (L) benefits from military service;
- ..... (M) records, reports, and statements;
- ..... (N) all of the powers listed in (A) through (M) above  
and all other matters.

SECOND: (You must indicate below whether or not this power of attorney will be effective if you become incapacitated or incompetent. Make a check or "x" on the line in front of the statement that expresses your intent.)

- ... This power of attorney shall continue to be effective  
if I become incapacitated or incompetent.
- ... This power of attorney shall not be effective if I  
become incapacitated or incompetent.

THIRD: (You must indicate below whether or not this power of attorney authorizes the attorney-in-fact to transfer your property to the attorney-in-fact. Make a check or "x" on the line in front of the statement that expresses your intent.)

- ... This power of attorney authorizes the attorney-in-fact to  
transfer my property to the attorney-in-fact.
- ... This power of attorney does not authorize the  
attorney-in-fact to transfer my property to the  
attorney-in-fact.

New language is indicated by underline, deletions by ~~strikeout~~.





principal from the attorney-in-fact unless the power of ~~(O)~~ (N) of the form in subdivision 1 is checked or X-ed. ~~The withholding by the principal from the attorney-in-fact of any of the powers of (A) to (M), in addition to the withholding of the power of (O); of the form in subdivision 1 automatically constitutes withholding of the powers of (N).~~

Sec. 23. Minnesota Statutes 1990, section 523.23, subdivision 3, is amended to read:

Subd. 3. **REQUIREMENTS.** To constitute a "statutory short form power of attorney," as this phrase is used in this chapter the wording and content of the form in subdivision 1 must be duplicated exactly; ~~the NOTICES must appear in a conspicuous place and manner and with no modifications,~~ parts First, Second, and Third must be properly completed, and the signature of the principal must be acknowledged. Failure to name a successor attorney-in-fact, to provide an expiration date, or to complete part Fourth does not invalidate the power as a statutory short form power of attorney. A power of attorney that does not satisfy the requirements of this subdivision, but purports to be a statutory short form power of attorney, may constitute a common law power of attorney that incorporates by reference the definitions of powers contained in section 523.24; however, a party refusing to accept the authority of the common law attorney-in-fact is not liable under section 523.20.

Sec. 24. Minnesota Statutes 1990, section 523.23, is amended by adding a subdivision to read:

Subd. 3a. LEGAL DESCRIPTION. Use of a street address instead of a legal description under the power of (A) in part First of the statutory short form power of attorney invalidates the power of (A) for all real property transactions, but does not affect the powers of (B) to (M), nor does it affect the power of (N) except with respect to real property transactions.

Sec. 25. Minnesota Statutes 1990, section 523.23, is amended by adding a subdivision to read:

Subd. 5. REIMBURSEMENT OF ATTORNEY-IN-FACT. The attorney-in-fact acting under a statutory short form power of attorney is authorized to reimburse the attorney-in-fact for expenditures the attorney-in-fact has made on behalf of the principal even if the principal has not authorized the attorney-in-fact to receive transfers directly under part Third. In the event a reimbursement is made, the attorney-in-fact shall render an accounting in accordance with section 523.21.

Sec. 26. Minnesota Statutes 1990, section 523.24, subdivision 1, is amended to read:

Subdivision 1. **REAL PROPERTY TRANSACTIONS.** In a statutory short form power of attorney, the language conferring general authority with respect to real estate transactions, means that the principal authorizes the attorney-in-fact:

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(1) to accept as a gift, or as security for a loan, to reject, to demand, to buy, to lease, to receive, or otherwise to acquire either ownership or possession of any estate or interest in real property;

(2) to sell, exchange, convey either with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent the partitioning, plat or consent platting, grant options concerning, lease or sublet, or otherwise to dispose of, any estate or interest in real property;

(3) to release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce by action, proceeding or otherwise, any mortgage, encumbrance, lien, or other claim to real property which exists, or is claimed to exist, in favor of the principal;

(4) to do any act of management or of conservation with respect to any estate or interest in real property owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to insure against any casualty, liability, or loss, to obtain or regain possession or protect such estate or interest by action, proceeding or otherwise, to pay, compromise or contest taxes or assessments, to apply for and receive refunds in connection therewith, to purchase supplies, hire assistance or labor, and make repairs or alterations in the structures or lands;

(5) to use in any way, develop, modify, alter, replace, remove, erect, or install structures or other improvements upon any real property in which the principal has, or claims to have, any estate or interest;

(6) to demand, receive, obtain by action, proceeding, or otherwise, any money, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of an interest in real property or of one or more of the transactions enumerated in this subdivision, to conserve, invest, disburse, or utilize anything so received for purposes enumerated in this subdivision, and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(7) to participate in any reorganization with respect to real property and receive and hold any shares of stock or instrument of similar character received in accordance with a plan of reorganization, and to act with respect to the shares, including, by way of illustration but not of restriction, power to sell or otherwise to dispose of the shares, or any of them, to exercise or sell any option, conversion or similar right with respect to the shares, and to vote on the shares in person or by the granting of a proxy;

(8) to agree and contract, in any manner, and with any person and on any terms, which the attorney-in-fact may select, for the accomplishment of any of the purposes enumerated in this subdivision, and to perform, rescind, reform, release, or modify such an agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

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(9) to execute, acknowledge, seal, and deliver any deed, revocation, mortgage, lease, notice, check, or other instrument which the attorney-in-fact deems useful for the accomplishment of any of the purposes enumerated in this subdivision;

(10) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any real estate transaction or to intervene in any action or proceeding relating to the claim;

(11) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant or assistants when the attorney-in-fact deems that action to be desirable for the proper execution of any of the powers described in this subdivision, and for the keeping of needed records; and

(12) in general, and in addition to all the specific acts in this subdivision, to do any other act with respect to any estate or interest in real property.

All powers described in this subdivision are exercisable equally with respect to any estate or interest in real property owned by the principal at the giving of the power of attorney or acquired after that time, and whether located in the state of Minnesota or elsewhere except when a legal description of certain real property is included in the statutory short form power of attorney, in which case the powers described in this subdivision are exercisable only with respect to the estate or interest owned by the principal in the property described in the form. In the case of real property located in the state of Minnesota, the powers described in this subdivision are limited by the provisions of section 519.06.

Sec. 27. Minnesota Statutes 1990, section 523.24, subdivision 7, is amended to read:

Subd. 7. **BENEFICIARY TRANSACTIONS.** In the statutory short form power of attorney, the language conferring general authority with respect to beneficiary transactions, means that the principal authorizes the attorney-in-fact:

(1) to represent and act for the principal in all ways and in all matters affecting any trust, probate estate, guardianship, conservatorship, escrow, custodianship, qualified benefit plan, nonqualified benefit plan, individual retirement asset, or other fund out of which the principal is entitled, or claims to be entitled, as a beneficiary or participant, to some share or payment, including, but not limited to the following:

(a) to accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of any share in or payment from the fund;

(b) to demand or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled by reason of the fund, to initiate, to participate in, and to oppose any

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proceeding, judicial, or otherwise, for the ascertainment of the meaning, validity, or effect of any deed, declaration of trust, or other transaction affecting in any way the interest of the principal, to initiate, participate in, and oppose any proceeding, judicial or otherwise, for the removal, substitution, or surcharge of a fiduciary, to conserve, invest, disburse, or use anything so received for purposes listed in this subdivision, and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(c) to prepare, sign, file, and deliver all reports, compilations of information, returns, or papers with respect to any interest had or claimed by or on behalf of the principal in the fund, to pay, compromise, or contest, and apply for and receive refunds in connection with, any tax or assessment, with respect to any interest had or claimed by or on behalf of the principal in the fund or with respect to any property in which an interest is had or claimed;

(d) to agree and contract in any manner, with any person, and on any terms the attorney-in-fact selects, for the accomplishment of the purposes listed in this subdivision, and to perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

(e) to execute, acknowledge, verify, seal, file, and deliver any deed, assignment, mortgage, lease, consent, designation, pleading, notice, demand, election, conveyance, release, assignment, check, pledge, waiver, admission of service, notice of appearance, or other instrument which the attorney-in-fact deems useful for the accomplishment of any of the purposes enumerated in this subdivision;

(f) to submit to arbitration or settle and propose or accept a compromise with respect to any controversy or claim which affects the administration of the fund, in any one of which the principal has, or claims to have, an interest, and to do any and all acts which the attorney-in-fact deems to be desirable or necessary in effectuating the compromise;

(g) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the attorney-in-fact deems that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this subdivision, and for the keeping of needed records;

(h) to transfer any part or all of any interest which the principal may have in any interests in real estate, stocks, bonds, bank accounts, insurance, and any other assets of any kind and nature, to the trustee of any revocable trust created by the principal as grantor.

For the purposes of clauses (a) to (h), "the fund" means any trust, probate estate, guardianship, conservatorship, escrow, custodianship, qualified benefit plan, nonqualified benefit plan, individual retirement asset, or any other fund in which the principal has or claims to have an interest.

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(2) in general, and in addition to all the specific acts listed in this subdivision, to do any other acts with respect to the administration of a trust, probate estate, guardianship, conservatorship, escrow, custodianship, qualified benefit plan, nonqualified benefit plan, individual retirement asset, or other fund, in which the principal has, or claims to have, an interest as a beneficiary or participant.

All powers described in this subdivision are exercisable equally with respect to the administration or disposition of any trust, probate estate, guardianship, conservatorship, escrow, custodianship, qualified benefit plan, nonqualified benefit plan, individual retirement asset, or other fund in which the principal is interested at the giving of the power of attorney or becomes interested after that time, as a beneficiary or participant, and whether located in the state of Minnesota or elsewhere.

Sec. 28. Minnesota Statutes 1990, section 523.24, subdivision 8, is amended to read:

Subd. 8. **GIFT TRANSACTIONS.** In the statutory short form power of attorney, the language conferring general authority with respect to gift transactions, means that the principal authorizes the attorney-in-fact:

(1) to make gifts to organizations, whether charitable or otherwise, to which the principal has made gifts, and to satisfy pledges made to organizations by the principal;

(2) to make gifts on behalf of the principal to the principal's spouse, children, and other descendants or the spouse of any child or other descendant, and, if authorized by the principal in part Third, to the attorney-in-fact, either outright or in trust, for purposes which the attorney-in-fact deems to be in the best interest of the principal, specifically including minimization of income, estate, inheritance, or gift taxes, provided that, notwithstanding that the principal in part Third may have authorized the attorney-in-fact to transfer the principal's property to the attorney-in-fact, no attorney-in-fact nor anyone the attorney-in-fact has a legal obligation to support may be the recipient of any gifts in any one calendar year which, in the aggregate, exceed \$10,000 in value to each recipient;

(3) to prepare, execute, consent to on behalf of the principal, and file any return, report, declaration, or other document required by the laws of the United States, any state or subdivision of a state, or any foreign government, which the attorney-in-fact deems to be desirable or necessary with respect to any gift made under the authority of this subdivision;

(4) to execute, acknowledge, seal, and deliver any deed, assignment, agreement, authorization, check, or other instrument which the attorney-in-fact deems useful for the accomplishment of any of the purposes enumerated in this subdivision;

(5) to prosecute, defend, submit to arbitration, settle, and propose or accept

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a compromise with respect to any claim existing in favor of or against the principal based on or involving any gift transaction or to intervene in any related action or proceeding;

(6) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact deems that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this subdivision, and for the keeping of needed records; and

(7) in general, and in addition to but not in contravention of all the specific acts listed in this subdivision, to do any other acts which the attorney-in-fact deems desirable or necessary to complete any gift on behalf of the principal.

All powers described in this subdivision are exercisable equally with respect to a gift of any property in which the principal is interested at the giving of the power of attorney or becomes interested after that time, and whether located in the state of Minnesota or elsewhere.

Sec. 29. Minnesota Statutes 1990, section 523.24, subdivision 9, is amended to read:

Subd. 9. **FIDUCIARY TRANSACTIONS.** In a statutory short form power of attorney, the language conferring general authority with respect to fiduciary transactions, means that the principal authorizes the agent:

(1) ~~to apply for and procure, in the name of the principal, letters of administration, letters testamentary, letters of guardianship or conservatorship, or any other type of authority, either judicial or administrative, to act as a fiduciary of any sort;~~

(2) to represent and act for the principal in all ways and in all matters affecting any fund with respect to which the principal is a fiduciary;

(3) (2) to initiate, participate in, and oppose any proceeding, judicial or otherwise, for the removal, substitution, or surcharge of a fiduciary, to conserve, to invest or to disburse anything received for the purposes of the fund for which it is received, and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(4) (3) to agree and contract, in any manner, with any person, and on any terms which the attorney-in-fact selects for the accomplishment of the purposes enumerated in this subdivision, and to perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

(5) (4) to execute, acknowledge, verify, seal, file, and deliver any consent, designation, pleading, notice, demand, election, conveyance, release, assignment, check, pledge, waiver, admission of service, notice of appearance, or other instrument which the attorney-in-fact deems useful for the accomplishment of any of the purposes enumerated in this subdivision;

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(6) (5) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistants, when the attorney-in-fact deems that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this subdivision, and for the keeping of needed records; and

(7) (6) in general, and in addition to all the specific acts listed in this subdivision, to do any other acts with respect to a fund of which the principal is a fiduciary.

Nothing in this subdivision authorizes delegation of any power of a fiduciary unless the power is one the fiduciary is authorized to delegate under the terms of the instrument governing the exercise of the power or under local law.

For the purposes of clauses (1) to (7) (6), "fund" means any trust, probate estate, guardianship, conservatorship, escrow, custodianship, or any other fund in which the principal has, or claims to have, an interest as a fiduciary.

All powers described in this subdivision are exercisable equally with respect to any fund of which the principal is a fiduciary to the giving of the power of attorney or becomes a fiduciary after that time, and whether located in the state of Minnesota or elsewhere.

#### Sec. 30. REPEALER.

Minnesota Statutes 1990, section 523.25, is repealed.

Presented to the governor April 17, 1992

Signed by the governor April 27, 1992, 2:02 p.m.

### CHAPTER 549—H.F.No. 2800

*An act relating to health care; providing health coverage for low-income uninsured persons; establishing statewide and regional cost containment programs; reforming requirements for health insurance companies; establishing rural health system initiatives; creating quality of care and data collection programs; revising malpractice laws; creating a health care access fund; imposing taxes; providing penalties; appropriating money; amending Minnesota Statutes 1990, sections 16A.124, by adding a subdivision; 43A.17, subdivision 9; 60A.15, subdivision 1; 62A.02, subdivisions 1, 2, 3, and by adding subdivisions; 62C.01, subdivision 3; 62E.02, subdivision 23; 62E.10, subdivision 1; 62E.11, subdivision 9, and by adding a subdivision; 62H.01; 136A.1355, subdivisions 2 and 3; 144.147, subdivisions 1, 3, and 4; 144.581, subdivision 1; 144.8093; 145.682, subdivision 4; 256.936, subdivisions 1, 2, 3, 4, and by adding subdivisions; 256B.057, by adding a subdivision; 290.01, subdivision 19b; and 447.31, subdivisions 1 and 3; Minnesota Statutes 1991 Supplement, sections 62A.31, subdivision 1; 145.61, subdivision 5; 145.64, subdivision 2; 256.936, subdivision 5; 297.02, subdivision 1; and 297.03, subdivision 5; proposing coding for new law in Minnesota Statutes, chapter 16A;*

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