

Presented to the governor April 18, 1994

Signed by the governor April 20, 1994, 1:50 p.m.

**CHAPTER 472—H.F.No. 1659**

*An act relating to probate; updating article 2 on intestacy, wills, and donative transfers; correcting a reference; recodifying the Minnesota multiparty accounts act; amending Minnesota Statutes 1992, sections 524.1-201; 524.2-101; 524.2-102; 524.2-103; 524.2-104; 524.2-105; 524.2-106; 524.2-108; 524.2-109; 524.2-110; 524.2-111; 524.2-113; 524.2-114; 524.2-301; 524.2-302; 524.2-502; 524.2-504; 524.2-505; 524.2-507; 524.2-508; 524.2-509; 524.2-512; 524.2-602; 524.2-603; 524.2-604; 524.2-605; 524.2-606; 524.2-607; 524.2-608; 524.2-609; and 524.2-701; proposing coding for new law in Minnesota Statutes, chapter 524; repealing Minnesota Statutes 1992, sections 524.2-112; 524.2-201; 524.2-202; 524.2-203; 524.2-204; 524.2-205; 524.2-206; 524.2-207; 524.2-503; 524.2-610; 524.2-612; 524.3-905; 525.15; 525.151; 525.22; 525.221; and 525.223.*

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

Section 1. Minnesota Statutes 1992, section 524.1-201, is amended to read:

**524.1-201 GENERAL DEFINITIONS.**

Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in chapters 524 and 525:

(1) (2) "Application" means a written request to the registrar for an order of informal probate or appointment under article III, part 3.

(2) (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(3) (5) "Child" includes any individual entitled to take as a child under law by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(4) (6) "Claims" includes liabilities of the decedent whether arising in contract or otherwise and liabilities of the estate which arise after the death of the decedent including funeral expenses and expenses of administration. The term does not include taxes, demands or disputes regarding title of a decedent to specific assets alleged to be included in the estate, tort claims, foreclosure of mechanic's liens, or to actions pursuant to section 573.02.

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~~(5)~~ (7) "Court" means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the probate court or county court.

~~(6)~~ (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

~~(7)~~ (10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

~~(8)~~ (11) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

~~(9)~~ (12) "Disability" means cause for a protective order as described by section 525.54.

~~(10)~~ (13) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

~~(11)~~ (14) "Estate" includes all of the property of the decedent, trust, or other person whose affairs are subject to this chapter as originally constituted and as it exists from time to time during administration.

~~(12)~~ (16) "Fiduciary" includes personal representative, guardian, conservator and trustee.

~~(13)~~ (17) "Foreign personal representative" means a personal representative of another jurisdiction.

~~(14)~~ (18) "Formal proceedings" means those conducted before a judge with notice to interested persons.

~~(15)~~ (20) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

~~(16)~~ (21) "Heirs" means those persons, including the surviving spouse, who

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are entitled under the statutes of intestate succession to the property of a decedent.

~~(17)~~ (22) "Incapacitated person" is as described in section 525.54, other than a minor.

~~(18)~~ (23) "Informal proceedings" means those conducted by the judge, the registrar, or the person or persons designated by the judge for probate of a will or appointment of a personal representative in accordance with sections 524.3-301 to 524.3-311.

~~(19)~~ (24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

~~(20)~~ (27) "Lease" includes an oil, gas, or other mineral lease.

~~(21)~~ (28) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

~~(22)~~ (30) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

~~(23)~~ (31) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

~~(24)~~ (32) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.

~~(25)~~ (35) "Person" means an individual, a corporation, an organization, or other legal entity.

~~(26)~~ (36) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

~~(27)~~ (37) "Petition" means a written request to the court for an order after notice.

~~(28)~~ (38) "Proceeding" includes action at law and suit in equity.

~~(29)~~ (39) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

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~~(30)~~ (40) "Protected person" is as described in section 525.54, subdivision 2 1.

~~(31)~~ (42) "Registrar" refers to the judge of the court or the person designated by the court to perform the functions of registrar as provided in section 524.1-307.

~~(32)~~ (43) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

~~(33)~~ (44) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

~~(34)~~ (45) "Special administrator" means a personal representative as described by sections 524.3-614 to 524.3-618.

~~(35)~~ (46) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

~~(36)~~ (47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~(37)~~ (48) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under the decedent's will, this chapter or chapter 525. "Successors" also means a funeral director or county government that provides the funeral and burial of the decedent.

~~(38)~~ (49) "Supervised administration" refers to the proceedings described in sections 524.3-501 to 524.3-505.

~~(39)~~ (51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~(40)~~ (53) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in chapter 528, custodial arrangements pursuant to sections 149.11 to 149.14, 318.01 to 318.06, 527.01 to 527.44, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of

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paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(41) (54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(42) (55) "Ward" is as described in section 525.54, subdivision 1.

(43) (56) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

Sec. 2. Minnesota Statutes 1992, section 524.2-101, is amended to read:

#### 524.2-101 INTESTATE ESTATE.

Except as provided in sections 525.14 and 525.145, and subject to the allowances provided in section 525.15, and the payment of the expenses of administration, funeral expenses, expenses of last illness, taxes, and debts, any part of the estate of a decedent not effectively disposed of by the decedent's will passes to the decedent's heirs as prescribed in sections 524.2-102 to 524.2-114.

(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this chapter, except as modified by the decedent's will.

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

Sec. 3. Minnesota Statutes 1992, section 524.2-102, is amended to read:

#### 524.2-102 SHARE OF THE SPOUSE.

The intestate share of the a decedent's surviving spouse is:

- (1) if there is no surviving issue of the decedent, the entire intestate estate;
- (2) if there are surviving issue all of whom are issue of the surviving spouse also, the first \$70,000, plus one-half of the balance of the intestate estate;
- (3) if there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate estate. the entire intestate estate if:
  - (i) no descendant of the decedent survives the decedent; or
  - (ii) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

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(2) the first \$150,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent, or if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

Sec. 4. Minnesota Statutes 1992, section 524.2-103, is amended to read:

**524.2-103 SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.**

The Any part of the intestate estate not passing to the decedent's surviving spouse under section 524.2-102, or the entire intestate estate if there is no surviving spouse, passes as follows in the following order to the individuals designated below who survive the decedent:

(1) to the issue of the decedent; any who are children of the decedent take equally and others decedent's descendants by representation;

(2) if there is no surviving issue descendant, to the parent or decedent's parents equally if both survive, or to the surviving parent;

(3) if there is no surviving issue descendant or parent, to the issue descendants of the decedent's parents or either of them by representation;

(4) if there is no surviving issue descendant, parent, or issue descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half;

(5) if there is no surviving descendant, parent, descendant of a parent, grandparent, or descendant of a grandparent, to the next of kin in equal degree, except that when there are two or more collateral kindred in equal degree claiming through different ancestors, those who claim through the nearest ancestor shall take to the exclusion of those claiming through an ancestor more remote.

Sec. 5. Minnesota Statutes 1992, section 524.2-104, is amended to read:

**524.2-104 REQUIREMENT THAT HEIR SURVIVE DECEDENT FOR 120 HOURS.**

A person An individual who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of descent of the homestead, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person

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who would otherwise be an heir, or the times of death of both, cannot be determined; and it cannot be ~~is not~~ established that the person an individual who would otherwise be an heir ~~has~~ survived the decedent by 120 hours, it is deemed that the person individual failed to survive for the required period. This section is not to be applied ~~where~~ if its application would result in a taking of intestate estate by the state under section 524.2-105.

Sec. 6. Minnesota Statutes 1992, section 524.2-105, is amended to read:

**524.2-105 NO TAKER.**

If there is no taker under the provisions of ~~sections 524.2-102 to 524.2-114~~ this article, the intestate estate passes to the state.

Sec. 7. Minnesota Statutes 1992, section 524.2-106, is amended to read:

**524.2-106 REPRESENTATION.**

(a) **APPLICATION.** If representation is called for by ~~sections 524.2-102 to 524.2-114; this article, paragraphs (b) and (c) apply.~~

(1) **(b) DECEDENT'S DESCENDANTS.** In the case of ~~issue~~ descendants of the decedent, the estate is divided into as many shares as there are surviving children of the decedent and deceased children who left ~~issue~~ descendants who survive the decedent, each surviving child receiving one share and the share of each deceased child being divided among its ~~issue~~ descendants in the same manner.

(2) **(c) DESCENDANTS OF PARENTS OR GRANDPARENTS.** ~~In the case of issue of the parents of the decedent (other than issue of the decedent) the If, under section 524.2-103, clause (3) or (4), a decedent's intestate estate or a part thereof passes by "representation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided in the following manner:~~

(1) In the case of descendants of the decedent's deceased parents or either of them, the estate or part thereof is divided into as many equal shares as there are (i) surviving heirs descendants in the generation nearest degree of kinship and the deceased persons in the same degree parents or either of them, and (ii) deceased descendants in the same generation who left issue who survived the decedent surviving descendants, if any. Each surviving heir descendant in the nearest degree receiving generation is allocated one share, and the share of each deceased person in the same degree being divided among the surviving descendants of each deceased person's children, and the descendants of deceased children of that deceased person descendant in the same generation are allocated one share, to be divided in the same manner as specified in clause (1) paragraph (b).

(2) In the case of descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are surviving descendants in the generation nearest

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the deceased grandparents or either of them that contains one or more surviving descendants. Each surviving descendant in the nearest generation is allocated one share.

Sec. 8. Minnesota Statutes 1992, section 524.2-108, is amended to read:

524.2-108 ~~AFTERBORN~~ AFTER-BORN HEIRS.

Relatives of the decedent conceived before death but born thereafter inherit as if they had been born in the lifetime of the decedent. An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

Sec. 9. Minnesota Statutes 1992, section 524.2-109, is amended to read:

524.2-109 MEANING OF CHILD AND RELATED TERMS ADVANCEMENTS.

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent. If a parent dies and a child is subsequently adopted by a stepparent who is the spouse of a surviving parent, any rights of inheritance of the child or the child's issue from or through the deceased parent of the child which exist at the time of the death of that parent shall not be affected by the adoption.

(2) In cases not covered by clause (1), a person is the child of the person's parents regardless of the marital status of the parents and the parent and child relationship may be established under the parentage act, sections 257.51 to 257.74.

(a) If an individual dies intestate as to all or a portion of his or her estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if:

(i) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or

(ii) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(b) For purposes of paragraph (a), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

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(c) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

Sec. 10. Minnesota Statutes 1992, section 524.2-110, is amended to read:

**524.2-110 ADVANCEMENTS DEBTS TO DECEDENT.**

If a person dies intestate as to all the person's estate, property given while living to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise. A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

Sec. 11. Minnesota Statutes 1992, section 524.2-111, is amended to read:

**524.2-111 DEBTS TO DECEDENT ALIENAGE.**

A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue. No individual is disqualified to take as an heir because the individual or an individual through whom he or she claims is or has been an alien.

Sec. 12. Minnesota Statutes 1992, section 524.2-113, is amended to read:

**524.2-113 PERSONS INDIVIDUALS RELATED TO DECEDENT THROUGH TWO LINES.**

~~A person~~ An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship ~~which that~~ would entitle ~~such person~~ the individual to the larger share.

Sec. 13. Minnesota Statutes 1992, section 524.2-114, is amended to read:

**524.2-114 INSTRUMENTS REFERENCING INTESTACY LAWS MEANING OF CHILD AND RELATED TERMS.**

If a maker has executed a will or other instrument on or before December 31, 1986, which directs disposition of all or part of the estate pursuant to the intestacy laws of the state of Minnesota, the laws to be applied shall be in accor-

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dance with the laws of intestate succession in effect on or before December 31, 1986, unless the will or instrument directs otherwise. If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent. If a parent dies and a child is subsequently adopted by a stepparent who is the spouse of a surviving parent, any rights of inheritance of the child or the child's descendant from or through the deceased parent of the child which exist at the time of the death of that parent shall not be affected by the adoption.

(2) In cases not covered by clause (1), a person is the child of the person's parents regardless of the marital status of the parents and the parent and child relationship may be established under the parentage act, sections 257.51 and 257.74.

Sec. 14. [524.2-115] INSTRUMENTS REFERENCING INTESTACY LAWS.

If a maker has executed a will or other instrument before the effective date of this act which directs disposition of all or part of the estate pursuant to the intestacy laws of the state of Minnesota, the laws to be applied shall be in accordance with the laws of intestate succession in effect on the date of the will or other instrument, unless the will or instrument directs otherwise.

Part 2

ELECTIVE SHARE OF SURVIVING SPOUSE

Sec. 15. [524.2-201] DEFINITIONS.

In this part:

(1) As used in sections other than section 524.2-205, "decedent's nonprobate transfers to others" means the amounts that are included in the augmented estate under section 524.2-205.

(2) "Interest in property held with right of survivorship" means the severable interest owned by the person or persons whose interest is being determined in property held in joint tenancy or in other form of common ownership with a right of survivorship. The interest shall be identified and valued as of the time immediately prior to the death of the decedent or the date of the transfer which causes the property to be included in the augmented estate, as the case may be. In the case of an account described in article VI, part 2, the severable interest owned by the person is the amount which belonged to the person determined under section 524.6-203. In the case of property described in article VI, part 3, the severable interest owned by the person is the amount consistent with section 524.6-306.

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(3) "Marriage," as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(4) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that he or she possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

(5) "Power" or "power of appointment" includes a power to designate the beneficiary of an insurance policy or other contractual arrangement.

(6) "Presently exercisable general power of appointment" means a power possessed by a person at the time in question to create a present or future interest in the person, in the person's creditors, in the person's estate, or in the creditor of the person's estate, whether or not the person then had the capacity to exercise the power. "General power of appointment" means a power, whether or not presently exercisable, possessed by a person to create a present or future interest in the person, in the person's creditors, in the person's estate, or in creditors of the person's estate.

(7) "Probate estate" means property that would pass by intestate succession if the decedent dies without a valid will.

(8) "Property" includes values subject to a beneficiary designation.

(9) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(10) "Transfer" includes: (i) the exercise, release, or lapse of a general power of appointment created by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party; and (ii) the exercise or release by the decedent of a presently exercisable general power of appointment created by someone other than the decedent. "Transfer" does not include the lapse, other than a lapse at death, of a power described in clause (ii).

(11) "Bona fide purchaser" means a purchaser for value in good faith and without notice or actual knowledge of an adverse claim, or a person who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation in good faith without notice of an adverse claim. In the case of real property located in Minnesota purchased from a successor or successors in interest of a decedent, the purchaser is without notice of an adverse claim arising under this part or, if the decedent was not domiciled in Minnesota at the time of death, arising under similar provisions of the law of the decedent's domicile, unless the decedent's surviving spouse has filed a notice in the office of the county recorder of the county in which the real property is located or, if the property is registered land, in the office of the registrar of titles of the county in which the real property is located, containing the legal description of the property, a brief statement of the nature and extent of the interest claimed, and the venue, title, and file number of the proceeding for an elective

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share, if any has been commenced. The registrar of titles is authorized to accept for registration without production of the owner's duplicate of the certificate of title any such notice which relates to registered land.

Sec. 16. [524.2-202] ELECTIVE SHARE.

(a) ELECTIVE SHARE AMOUNT. The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

<u>If the decedent and the spouse were married to each other:</u>	<u>The elective-share percentage is:</u>
<u>Less than one year</u>	<u>Supplemental amount only</u>
<u>One year but less than two years</u>	<u>Three percent of the augmented estate</u>
<u>Two years but less than three years</u>	<u>Six percent of the augmented estate</u>
<u>Three years but less than four years</u>	<u>Nine percent of the augmented estate</u>
<u>Four years but less than five years</u>	<u>12 percent of the augmented estate</u>
<u>Five years but less than six years</u>	<u>15 percent of the augmented estate</u>
<u>Six years but less than seven years</u>	<u>18 percent of the augmented estate</u>
<u>Seven years but less than eight years</u>	<u>21 percent of the augmented estate</u>
<u>Eight years but less than nine years</u>	<u>24 percent of the augmented estate</u>
<u>Nine years but less than ten years</u>	<u>27 percent of the augmented estate</u>
<u>Ten years but less than 11 years</u>	<u>30 percent of the augmented estate</u>
<u>11 years but less than 12 years</u>	<u>34 percent of the augmented estate</u>
<u>12 years but less than 13 years</u>	<u>38 percent of the augmented estate</u>
<u>13 years but less than 14 years</u>	<u>42 percent of the augmented estate</u>
<u>14 years but less than 15 years</u>	<u>46 percent of the augmented estate</u>
<u>15 years or more</u>	<u>50 percent of the augmented estate</u>

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**(b) SUPPLEMENTAL ELECTIVE-SHARE AMOUNT.** If the sum of the amounts described in sections 524.2-207, 524.2-209, paragraph (a), clause (1), and that part of the elective-share amount payable from the decedent's probate estate and nonprobate transfers to others under section 524.2-209, paragraphs (b) and (c), is less than \$50,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$50,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in section 524.2-209, paragraphs (b) and (c).

**(c) EFFECT OF ELECTION ON STATUTORY BENEFITS.** If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead rights and other allowances under sections 524.2-402, 524.2-403 and 524.2-404, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

**(d) NONDOMICILIARY.** The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

#### Sec. 17. [524.2-203] COMPOSITION OF THE AUGMENTED ESTATE.

Subject to section 524.2-208, the value of the augmented estate, to the extent provided in sections 524.2-204, 524.2-205, 524.2-206, and 524.2-207, consists of the sum of the values of all property, whether real or personal, movable or immovable, tangible or intangible, wherever situated, that constitute the decedent's net probate estate, the decedent's nonprobate transfers to others, the decedent's nonprobate transfers to the surviving spouse, and the surviving spouse's property and nonprobate transfers to others.

#### Sec. 18. [524.2-204] DECEDENT'S NET PROBATE ESTATE.

The value of the augmented estate includes the value of the decedent's probate estate, reduced by funeral and administration expenses, the homestead, family allowances and exemptions, liens, mortgages, and enforceable claims.

#### Sec. 19. [524.2-205] DECEDENT'S NONPROBATE TRANSFERS TO OTHERS.

The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, other than the homestead, of any of the following types, in the amount provided respectively for each type of transfer.

(1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property included under this category consists of:

(i) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is

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the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

(ii) The decedent's interest in property held with the right of survivorship. The amount included is the value of the decedent's interest, to the extent the interest passed by right of survivorship at the decedent's death to someone other than the decedent's surviving spouse.

(iii) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds. The amount included is the value of the proceeds, to the extent they were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(iv) The value payable after the decedent's death to or for the benefit of any person other than the decedent's surviving spouse of the proceeds of annuity contracts under which the decedent was the primary annuitant. The amount included is any amount over which the person has an immediate right of withdrawal after the decedent's death plus the commuted value of other amounts payable in the future.

(v) The value payable after the decedent's death to or for the benefit of any person other than the decedent's surviving spouse of amounts under any public or private pension, disability compensation, benefit, or retirement plan or account, excluding the federal Social Security system. The amount included is any amount over which the person has an immediate right of withdrawal after the decedent's death plus the commuted value of other amounts payable in the future.

(2) Property transferred in any of the following forms by the decedent during marriage, to the extent not included under paragraph (1):

(i) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond the decedent's death. The amount included is the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse.

(ii) Any transfer in which the decedent created a general power of appointment over income or property exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent

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in either case that the property passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount.

(3) Property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(i) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under paragraph (1), clause (i), (ii), (iv), or (v), or under paragraph (2), if the right, interest, or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those paragraphs if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse. As used in this paragraph, "termination," with respect to a right or interest in property, occurs when the power is terminated by exercise, release, default, or otherwise, but with respect to a power described in paragraph (1), clause (i), "termination" occurs when the power is terminated by exercise or release, but not otherwise.

(ii) Any transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under paragraph (1), clause (iii), had the transfer not occurred. The amount included is the value of the insurance proceeds to the extent the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(iii) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the transferred property to the extent the aggregate transfers to any one donee in either of the two years exceeded \$10,000.

#### **Sec. 20. [524.2-206] DECEDENT'S NONPROBATE TRANSFERS TO THE SURVIVING SPOUSE.**

Excluding the homestead and property passing to the surviving spouse under the federal Social Security system, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's spouse, which consists of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death that would have been included in the augmented estate under section 524.2-205, paragraph (1) or (2), had the property passed to or for the benefit of a person other than the decedent's spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

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**Sec. 21. [524.2-207] SURVIVING SPOUSE'S PROPERTY AND NON-PROBATE TRANSFERS TO OTHERS.**

(a) INCLUDED PROPERTY. Except to the extent included in the augmented estate under section 524.2-204 or 524.2-206, the value of the augmented estate includes the value of:

(1) property, other than the homestead, that was owned by the surviving spouse at the decedent's death, including the surviving spouse's interest in property held with right of survivorship; and

(2) property that would have been included in the surviving spouse's non-probate transfers to others, other than the spouse's interest in property held with right of survivorship included under clause (1), had the spouse been the decedent.

(b) TIME OF VALUATION. Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of the surviving spouse's interest in property held with right of survivorship included under paragraph (a), clause (1), the value of the spouse's interest is determined immediately before the decedent's death if the decedent was then a joint tenant or a coowner of the property or accounts. For purposes of paragraph (a), clause (2), proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under section 524.2-205, paragraph (1), clause (iii), are not valued as if the spouse were deceased.

(c) REDUCTION FOR ENFORCEABLE CLAIMS. The value of property included under this section is reduced by mortgages, liens, and enforceable claims against the property or against the surviving spouse.

**Sec. 22. [524.2-208] EXCLUSIONS, VALUATION, AND OVERLAPPING APPLICATION.**

(a) EXCLUSIONS. The value of any property is excluded from the decedent's nonprobate transfers to others (i) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property, or (ii) if the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse.

(b) PROTECTION OF BONA FIDE PURCHASERS. A bona fide purchaser who purchases property from a successor or successors in interest of the decedent or from a transferee of the decedent is neither obligated under this part to return the payment, item of property, or benefit nor is liable under this part for the amount of the payment or the value of the item of property or benefit.

(c) VALUATION. The value of property:

(1) included in the augmented estate under section 524.2-205, 524.2-206, or 524.2-207 is reduced in each category by mortgages, liens, and enforceable claims against the included property; and

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(2) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal Social Security system. The commuted value of the surviving spouse's interest in a life estate or in any trust shall be calculated as if worth one-half of the total value of the property subject to the life estate, or of the trust estate, unless higher or lower values for these interests are established by proof.

(d) OVERLAPPING APPLICATION; NO DOUBLE INCLUSION. In case of overlapping application to the same property of portions of section 524.2-205, 524.2-206, or 524.2-207, the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

**Sec. 23. [524.2-209] SOURCES FROM WHICH ELECTIVE SHARE PAYABLE.**

(a) ELECTIVE-SHARE AMOUNT ONLY. In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

(1) amounts included in the augmented estate under section 524.2-204 which pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under section 524.2-206;

(2) amounts included in the augmented estate which would have passed to the spouse but were disclaimed; and

(3) amounts included in the augmented estate under section 524.2-207 up to the applicable percentage thereof. For the purposes of this paragraph, the "applicable percentage" is twice the elective-share percentage set forth in the schedule in section 524.2-202, paragraph (a), appropriate to the length of time the spouse and the decedent were married to each other.

(b) UNSATISFIED BALANCE OF ELECTIVE-SHARE AMOUNT; SUPPLEMENTAL ELECTIVE-SHARE AMOUNT. If, after the application of paragraph (a), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and in the decedent's nonprobate transfers to others, other than amounts included under section 524.2-205, paragraph (3), clause (i) or (iii), are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

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(c) **UNSATISFIED BALANCE OF ELECTIVE-SHARE AND SUPPLEMENTAL ELECTIVE-SHARE AMOUNTS.** If, after the application of paragraphs (a) and (b), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

**Sec. 24. [524.2-210] PERSONAL LIABILITY OF RECIPIENTS.**

(a) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to him or her or to pay the value the amount for which he or she is liable.

(b) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who is not a bona fide purchaser and who receives the payment, item of property, or any other benefit is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of that item of property or benefit, as provided in section 524.2-209, to the person who would have been entitled to it were that section or part of that section not preempted.

**Sec. 25. [524.2-211] PROCEEDING FOR ELECTIVE SHARE; TIME LIMIT.**

(a) Except as provided in paragraph (b), the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse must give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in paragraph (b), the decedent's nonprobate transfers to others are not included within the augmented estate for the purpose of computing the elective share, if the petition is filed more than nine months after the decedent's death.

(b) Within nine months after a decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's nonprobate transfers to others are not excluded from the augmented estate for the purpose

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of computing the elective-share and supplemental elective-share amounts, if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(c) The surviving spouse may withdraw his or her demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under sections 524.2-209 and 524.2-210. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he or she would have been under sections 524.2-209 and 524.2-210 had relief been secured against all persons subject to contribution.

(e) An order of judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

(f) Whether or not an election has been made under paragraph (a), the surviving spouse may elect statutory rights in the homestead by filing in the manner provided in this section a petition in which the spouse asserts the rights provided in section 524.2-402, provided that:

(1) when the homestead is subject to a testamentary disposition, the filing must be within nine months after the date of death, or within six months after the probate of the decedent's will, whichever limitation last expires; or

(2) where the homestead is subject to other disposition, the filing must be within nine months after the date of death.

The court may extend the time for election in the manner provided in paragraph (b).

**Sec. 26. [524.2-212] RIGHT OF ELECTION PERSONAL TO SURVIVING SPOUSE.**

The right of election of the surviving spouse may be exercised only during the surviving spouse's lifetime. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to the protected person's property are pending, after finding (1) that exercise is necessary to provide adequate support for the protected person during the protected person's probable life expectancy and (2) that the election will be consistent with the best interests of the natural bounty of the protected person's affection.

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**Sec. 27. [524.2-213] WAIVER OF RIGHT TO ELECT AND OF OTHER RIGHTS.**

The right of election of a surviving spouse and the rights of the surviving spouse to the homestead, exempt property, and family allowance, or any of them, may be waived, wholly or partially, after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a spouse is a waiver only of the right to the elective share. Any waiver prior to marriage must be made pursuant to section 519.11.

**Sec. 28. [524.2-214] PROTECTION OF PAYORS AND OTHER THIRD PARTIES.**

(a) Although under section 524.2-205 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

(b) A written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under section 524.2-211, paragraph (d), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under section 524.2-211, paragraph (a), or, if filed, the demand for an elective share is withdrawn under section 524.2-211, paragraph (c), the court shall order disbursement to the designated beneficiary. Payments or transfers to the court or deposits made into court discharge the payor or other third party from all claims for amounts so paid or the value of property so transferred or deposited.

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(c) Upon petition to the court described in paragraph (b) by the beneficiary designated in the governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this part.

Sec. 29. Minnesota Statutes 1992, section 524.2-301, is amended to read:

**524.2-301 ~~OMITTED~~ ENTITLEMENT OF SPOUSE; PREMARITAL WILL.**

(a) ~~If a testator fails to provide by will for a surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate as if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.~~

~~(b) In satisfying a share provided by this section, the devise made by the will abate as provided in section 524.3-902.~~

(a) If a testator's surviving spouse married the testator after the testator executed his or her will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate he or she would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes under section 524.2-603 or 524.2-604 to such a child or to a descendant of such a child, unless:

(1) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(2) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(3) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

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

Sec. 30. Minnesota Statutes 1992, section 524.2-302, is amended to read:

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524.2-302 ~~PRETERMITTED~~ OMITTED CHILDREN.

(a) If a testator fails to provide for any child born or adopted after the execution of the testator's will, the omitted child receives a share in the estate equal in value to that which that child would have received if the testator had died intestate unless:

(1) it appears from the will that the omission was intentional;

(2) when the will was executed the testator had one or more children and devised substantially all the estate to the other parent of the omitted child; or

(3) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If at the time of execution of the will the testator fails to provide for a living child solely because of a belief that the child is dead, the child receives a share in the estate equal in value to that which that child would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in section 524.3-902.

(a) Except as provided in paragraph (b), if a testator fails to provide in his or her will for any of his or her children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(1) If the testator had no child living when he or she executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(2) If the testator had one or more children living when he or she executed the will, and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subclause (i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

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(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this paragraph, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(b) Neither paragraph (a), clause (1) or (2), nor paragraph (c), applies if:

(1) it appears from the will that the omission was intentional; or

(2) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(c) If at the time of execution of the will the testator fails to provide in his or her will for a living child solely because he or she believes the child to be dead, the child receives a share in the estate equal in value to that which the child would have received had the testator died intestate.

(d) In satisfying a share provided by paragraph (a), clause (1), or (c), devises made by the will abate under section 524.3-902.

#### Part 4

### EXEMPT PROPERTY AND ALLOWANCES

#### Sec. 31. [524.2-401] APPLICABLE LAW.

This part applies to the estate of a decedent who dies domiciled in this state. Rights to homestead, exempt property, and family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

#### Sec. 32. [524.2-402] DESCENT OF HOMESTEAD.

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

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

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

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

(c) If the homestead passes by descent or will to the spouse or decedent's descendants, it is exempt from all debts which were not valid charges on it at the time of decedent's death except that the homestead is subject to a claim filed pursuant to section 246.53 for state hospital care or 256B.15 for medical assistance benefits. If the homestead passes to a person other than a spouse or decedent's descendants, it is subject to the payment of the items mentioned in section 524.2-101. No lien or other charge against a homestead so exempted is enforceable in the probate court, but the claimant may enforce the lien or charge by an appropriate action in the district court.

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

### Sec. 33. [524.2-403] EXEMPT PROPERTY.

(a) If there is a surviving spouse, then, in addition to the homestead and family allowance, the surviving spouse is entitled from the estate to:

(1) property not exceeding \$10,000 in value in excess of any security interests therein, in household furniture, furnishings, appliances, and personal effects, subject to an award of sentimental value property under section 525.152; and

(2) one automobile, if any, without regard to value.

(b) If there is no surviving spouse, the decedent's children are entitled jointly to the same property as provided in paragraph (a).

(c) If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than \$10,000, or if there is not \$10,000 worth of exempt property in the estate, the surviving spouse or children are entitled to other personal property of the estate, if any, to the extent necessary to make up the \$10,000 value.

(d) Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of the family allowance.

(e) The rights granted by this section are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided by intestate succession or by way of elective share.

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Sec. 34. [524.2-404] FAMILY ALLOWANCE.

(a) In addition to the right to the homestead and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support, and children who were in fact being supported by the decedent, shall be allowed a reasonable family allowance in money out of the estate for their maintenance as follows:

(1) for one year if the estate is inadequate to discharge allowed claims; or

(2) for 18 months if the estate is adequate to discharge allowed claims.

(b) The amount of the family allowance may be determined by the personal representative in an amount not to exceed \$1,500 per month.

(c) The family allowance is payable to the surviving spouse, if living; otherwise to the children, their guardian or conservator, or persons having their care and custody.

(d) The family allowance is exempt from and has priority over all claims.

(e) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share. The death of any person entitled to family allowance does not terminate the right of that person to the allowance.

(f) The personal representative or an interested person aggrieved by any determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

Sec. 35. [524.2-405] SOURCE, DETERMINATION, AND DOCUMENTATION.

(a) If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, guardians or conservators of minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child.

(b) The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property.

(c) The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a

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selection or determination under this section other than that which the surviving spouse, guardians or conservators of minor children, children who are adults, or the personal representative selected, could have selected, determined, or could have determined.

Sec. 36. Minnesota Statutes 1992, section 524.2-502, is amended to read:

**524.2-502 EXECUTION; WITNESSED WILLS.**

Except as provided for writings within section 524.2-513 and wills within section 524.2-506, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by the testator's direction, and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will. Except as provided in sections 524.2-506 and 524.2-513, a will must be:

- (1) in writing;
- (2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and
- (3) signed by at least two individuals, each of whom signed within a reasonable time after he or she witnessed either the signing of the will as described in clause (2) or the testator's acknowledgment of that signature or acknowledgment of the will.

Sec. 37. Minnesota Statutes 1992, section 524.2-504, is amended to read:

**524.2-504 SELF-PROVED WILL.**

An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state, or under the laws of the state where execution occurs, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF .....

COUNTY OF .....

We, ....., ....., and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's last will, that the testator signed it willingly or directed another to sign it for the testator, that it was executed as a free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witnesses, and that to the best of their knowledge the testator was at the time 18 or more years of age, of sound mind and under no constraint or undue influence.

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

.....  
Testator

.....  
Witness

.....  
Witness

Subscribed, sworn to and acknowledged before me by ....., the testator, and subscribed and sworn to before me by ..... and ....., witnesses, this ..... day of ....., .....

(SEAL)

(Signed) .....  
(Official capacity of officer)

(a) A will may be contemporaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, ....., the testator, sign my name to this instrument this ... day of ....., and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

.....  
Testator

We, ....., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as the testator's will and that the testator signs it willingly (or willingly directs another to sign for the testator), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

.....  
Witness

.....  
Witness

State of .....

County of .....

Subscribed, sworn to, and acknowledged before me by ....., the testator,

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

and subscribed and sworn to before me by ....., and ....., witnesses, this ... day of ....., ... .

(Seal)

(Signed) .....  
.....  
(Official capacity of officer)

(b) An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

State of .....

County of .....

We, ....., ....., and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that the testator had signed willingly (or willingly directed another to sign for the testator), and that the testator executed it as the testator's free and voluntary act for the purposes therein expressed, and each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of the witness' knowledge the testator was at the time 18 years of age or older, of sound mind, and under no constraint or undue influence.

.....  
Testator  
.....  
Witness  
.....  
Witness

Subscribed, sworn to, and acknowledged before me by ....., the testator, and subscribed and sworn to before me by ....., and ....., witnesses, this ... day of ....., ... .

(Seal)

(Signed) .....  
.....  
(Official capacity of officer)

(c) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

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

Sec. 38. Minnesota Statutes 1992, section 524.2-505, is amended to read:

524.2-505 **WHO MAY WITNESS.**

(a) ~~Any person~~ An individual generally competent to be a witness may act as a witness to a will.

(b) ~~A will is not invalid because the will is signed~~ The signing of a will by an interested witness does not invalidate the will or any provision of it.

Sec. 39. Minnesota Statutes 1992, section 524.2-507, is amended to read:

524.2-507 **REVOCACTION BY WRITING OR BY ACT.**

(a) A will or any part thereof is revoked:

(1) ~~by a subsequent will which revokes the prior will or part expressly or by inconsistency; or~~

(2) ~~by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in the testator's presence and by the testator's direction; by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or~~

(2) by performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this clause, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling may be a "revocatory act on the will," whether or not the burn, tear, or cancellation touched any of the words on the will.

(b) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(c) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.

(d) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

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

Sec. 40. Minnesota Statutes 1992, section 524.2-508, is amended to read:

**524.2-508 REVOCATION BY DISSOLUTION OF MARRIAGE; NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.**

If after executing a will the testator's marriage is dissolved or annulled; the dissolution or annulment revokes any disposition or appointment of property made by the will to the former spouse; any provision conferring a general or special power of appointment on the former spouse; and any nomination of the former spouse as executor, trustee, conservator, or guardian; unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by dissolution of marriage or annulment passes as if the former spouse failed to survive the decedent; and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this chapter and chapter 525, dissolution of marriage includes divorce. A decree of separation which does not terminate the status of husband and wife is not a dissolution of marriage for purposes of this section. No change of circumstances other than as described in this section revokes a will.

Except as provided in sections 524.2-802 and 524.2-803, a change of circumstances does not revoke a will or any part of it.

Sec. 41. Minnesota Statutes 1992, section 524.2-509, is amended to read:

**524.2-509 REVIVAL OF REVOKED WILL.**

(a) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 524.2-507, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that the testator intended the first will to take effect as executed.

(b) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

(a) If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under section 524.2-507, paragraph (a), clause (2), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

(b) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under section 524.2-507, paragraph (a), clause (2), a

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

revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(c) If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

**Sec. 42. [524.2-511] TESTAMENTARY ADDITIONS TO TRUSTS.**

(a) A will may validly devise property to the trustee of a trust established or to be established (i) during the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts, or (ii) at the testator's death by the testator's devise to the trustee, if, in either case, the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.

(b) Unless the testator's will provides otherwise, property devised to a trust described in paragraph (a) is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

(d) This section does not invalidate a devise made by a will executed before February 21, 1963.

Sec. 43. Minnesota Statutes 1992, section 524.2-512, is amended to read:

**524.2-512 EVENTS OF INDEPENDENT SIGNIFICANCE.**

A will may dispose of property by reference to acts and events which that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a another individual's will of another person is such an event.

**Sec. 44. [524.2-514] CONTRACTS CONCERNING SUCCESSION.**

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

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after January 1, 1976, may be established only by (i) provisions of a will stating material provisions of the contract, (ii) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract, or (iii) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

**Sec. 45. [524.2-515] DEPOSIT OF WILL WITH COURT IN TESTATOR'S LIFETIME.**

A will may be deposited by the testator or the testator's agent with any court for safekeeping, under rules of the court. The will must be sealed and kept confidential. During the testator's lifetime, a deposited will must be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator or guardian may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator's death, the court may deliver the will to the appropriate court.

**Sec. 46. [524.2-516] DUTY OF CUSTODIAN OF WILL; LIABILITY.**

After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to an appropriate court. A person who willfully fails to deliver a will is liable to any person aggrieved for any damages that may be sustained by the failure. A person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

**Sec. 47. [524.2-517] PENALTY CLAUSE FOR CONTEST.**

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

**Part 6**

**RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS**

**Sec. 48. [524.2-601] SCOPE.**

In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

Sec. 49. Minnesota Statutes 1992, section 524.2-602, is amended to read:

**524.2-602 CHOICE OF LAW AS TO MEANING AND EFFECT OF WILLS WILL MAY PASS ALL PROPERTY AND AFTER-ACQUIRED PROPERTY.**

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

The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in the testator's instrument unless the application of that law is contrary to the public policy of this state otherwise applicable to the disposition. A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.

Sec. 50. Minnesota Statutes 1992, section 524.2-603, is amended to read:

**524.2-603 RULES OF CONSTRUCTION AND INTENTION ANTILAPSE; DECEASED DEVISEE; CLASS GIFTS.**

The intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will.

**(a) DEFINITIONS. In this section:**

**(1) "Alternative devise" means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause.**

**(2) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had he or she survived the testator.**

**(3) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.**

**(4) "Devisee" includes (i) a class member if the devise is in the form of a class gift, (ii) an individual or class member who was deceased at the time the testator executed his or her will as well as an individual or class member who was then living but who failed to survive the testator, and (iii) an appointee under a power of appointment exercised by the testator's will.**

**(5) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is deemed to have predeceased the testator under section 524.2-702.**

**(6) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.**

**(b) SUBSTITUTE GIFT. If a devisee fails to survive the testator and is a grandparent or a descendant of a grandparent of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:**

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

(1) Except as provided in paragraph (4), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(2) Except as provided in paragraph (4), if the devise is in the form of a class gift, other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which he or she would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this paragraph, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(3) For the purpose of section 524.2-601, words of survivorship, such as in a devise to an individual "if he survives me," or in a devise to "my children who survive me," are a sufficient indication of an intent contrary to the application of this section.

(4) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by clause (1) or (2), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

(c) MORE THAN ONE SUBSTITUTE GIFT; WHICH ONE TAKES. If, under paragraph (b), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) Except as provided in clause (2), the devised property passes under the primary substitute gift.

(2) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(3) In this paragraph:

(i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

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

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(iii) "Younger-generation devise" means a devise that (A) is to a descendant of a devisee of the primary devise, (B) is an alternative devise with respect to the primary devise, (C) is a devise for which a substitute gift is created, and (D) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

Sec. 51. Minnesota Statutes 1992, section 524.2-604, is amended to read:

**524.2-604 CONSTRUCTION THAT WILL PASSES ALL PROPERTY; AFTER ACQUIRED PROPERTY FAILURE OF TESTAMENTARY PROVISION.**

A will is construed to pass all property which the testator owns at death including property acquired after the execution of the will.

(a) Except as provided in section 524.2-603, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(b) Except as provided in section 524.2-603, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

Sec. 52. Minnesota Statutes 1992, section 524.2-605, is amended to read:

**524.2-605 ANTI-LAPSE; DECEASED DEVISEE; CLASS GIFTS INCREASE IN SECURITIES; ACCESSIONS.**

If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, or fails to survive the testator, the issue of the deceased devisee who survive the testator take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally; but if of unequal degree then those of more remote degree take by representation. One who is a grandparent or a lineal descendant of a grandparent of the testator and who would have been a devisee under a class gift on surviving the testator is treated as a devisee for purposes of this section whether death occurred before or after the execution of the will.

(a) If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

New language is indicated by underline, deletions by strikeout.

(1) securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options;

(2) securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization; or

(3) securities of the same organization acquired as a result of a plan of reinvestment.

(b) Distributions in cash before death with respect to a described security are not part of the devise.

Sec. 53. Minnesota Statutes 1992, section 524.2-606, is amended to read:

**524.2-606 FAILURE OF TESTAMENTARY PROVISION NONADEMPTION OF SPECIFIC DEVISES; UNPAID PROCEEDS OF SALE, CONDEMNATION, OR INSURANCE; SALE BY CONSERVATOR OR GUARDIAN.**

(a) Except as provided in section 524.2-605 if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(b) Except as provided in section 524.2-605 if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, that share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue. A specific devisee has a right to the specifically devised property in the testator's estate at death and:

(1) any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property; and

(4) property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.

(b) If specifically devised property is sold or mortgaged by a conservator or guardian, or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid to a conservator or guardian, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

New language is indicated by underline, deletions by strikeout.

(c) The right of a specific devisee under paragraph (b) is reduced by any right the devisee has under paragraph (a).

(d) For the purposes of the references in paragraph (b) to a conservator or guardian, paragraph (b) does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.

Sec. 54. Minnesota Statutes 1992, section 524.2-607, is amended to read:

**524.2-607 CHANGE IN SECURITIES; ACCESSIONS; NONADEMPTION NONEXONERATION.**

(a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(1) as much of the devised securities as is a part of the estate at time of the testator's death;

(2) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options;

(3) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity; and

(4) any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(b) Distributions prior to death with respect to a specifically devised security not provided for in subsection (a) are not part of the specific devise.

A specific devise passes subject to any mortgage or security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

Sec. 55. Minnesota Statutes 1992, section 524.2-608, is amended to read:

**524.2-608 NONADEMPTION OF SPECIFIC DEVISES IN CERTAIN CASES; SALE BY CONSERVATOR OR GUARDIAN; UNPAID PROCEEDS OF SALE, CONDEMNATION OR INSURANCE EXERCISE OF POWER OF APPOINTMENT.**

(a) If specifically devised property is sold by a conservator or guardian, or if a condemnation award or insurance proceeds are paid to a conservator or guardian as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The

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

right of the specific devisee under this subsection is reduced by any right possessed under subsection (b):

(b) Any specific devisee has the right to the remaining specifically devised property and:

(1) any balance of the purchase price together with any security interest owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on the property; and

(4) property owned by testator at death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless the testator's will manifests an intention to include property subject to the power.

Sec. 56. Minnesota Statutes 1992, section 524.2-609, is amended to read:

524.2-609 **NONEXONERATION ADEMPION BY SATISFACTION.**

A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts:

(a) Property a testator gave in his or her lifetime to a person is treated as a satisfaction of a devise in whole or in part, only if (i) the will provides for deduction of the gift, (ii) the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise, or (iii) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(b) For purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

(c) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 524.2-603 and 524.2-604, unless the testator's contemporaneous writing provides otherwise.

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

## Part 7

**CONTRACTUAL ARRANGEMENTS RELATING TO DEATH****RULES OF CONSTRUCTION APPLICABLE TO WILLS****AND OTHER GOVERNING INSTRUMENTS**

Sec. 57. Minnesota Statutes 1992, section 524.2-701, is amended to read:

**524.2-701 CONTRACTS CONCERNING SUCCESSION SCOPE.**

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after January 1, 1976, can be established only by (1) provisions of a will stating material provisions of the contract; (2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a governing instrument. The rules of construction in this part apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

Sec. 58. [524.2-703] **CHOICE OF LAW AS TO MEANING AND EFFECT OF GOVERNING INSTRUMENT.**

The meaning and legal effect of a governing instrument is determined by the local law of the state selected in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in part 2, the provisions relating to exempt property and allowances described in part 4, or any other public policy of this state otherwise applicable to the disposition.

Sec. 59. [524.2-704] **POWER OF APPOINTMENT; MEANING OF SPECIFIC REFERENCE REQUIREMENT.**

If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference, to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power and an attempt to exercise the power by a donee who had knowledge of and intended to exercise the power is effective.

Sec. 60. [524.2-705] **CLASS GIFTS CONSTRUED TO ACCORD WITH INTESTATE SUCCESSION,**

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

Adopted individuals and individuals born out of wedlock, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles," "aunts," "nieces," or "nephews," are presumed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers," "sisters," "nieces," or "nephews," are presumed to include both types of relationships.

**Sec. 61. [524.2-708] CLASS GIFTS TO "DESCENDANTS," "ISSUE," OR "HEIRS OF THE BODY"; FORM OF DISTRIBUTION IF NONE SPECIFIED.**

If a class gift in favor of "descendants," "issue," or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment, in such shares as they would receive, under the applicable law of intestate succession, if the designated ancestor had then died intestate owning the subject matter of the class gift.

**Sec. 62. [524.2-709] REPRESENTATION; PER STIRPES; PER CAPITA AT EACH GENERATION.**

**(a) DEFINITIONS. In this section:**

(1) "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date under section 524.2-702.

(2) "Distribution date," with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

(3) "Surviving ancestor," "surviving child," or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 524.2-702.

(b) REPRESENTATION; PER STIRPES. If an applicable statute or governing instrument calls for property to be distributed by "representation" or "per stirpes," the property is divided into as many equal shares as there are (i) surviving children of the designated ancestor and (ii) deceased children who left surviving descendants. Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

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

(c) **PER CAPITA AT EACH GENERATION.** If a governing instrument calls for property to be distributed "per capita at each generation," the property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(d) **DECEASED DESCENDANT WITH NO SURVIVING DESCENDANT DISREGARDED.** For the purposes of paragraphs (b) and (c), an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

#### Sec. 63. INSTRUCTION TO REVISOR.

In the next and subsequent editions of Minnesota Statutes, the revisor shall renumber each section in column A with the corresponding number in column B and correct all cross-references to affected sections.

<u>Column A</u>	<u>Column B</u>
<u>525.90</u>	<u>524.2-702</u>
<u>528.01</u>	<u>524.6-214</u>
<u>528.02</u>	<u>524.6-201</u>
<u>528.03</u>	<u>524.6-202</u>
<u>528.04</u>	<u>524.6-203</u>
<u>528.05</u>	<u>524.6-204</u>
<u>528.06</u>	<u>524.6-205</u>
<u>528.07</u>	<u>524.6-206</u>
<u>528.08</u>	<u>524.6-207</u>
<u>528.09</u>	<u>524.6-208</u>
<u>528.10</u>	<u>524.6-209</u>
<u>528.11</u>	<u>524.6-210</u>
<u>528.13</u>	<u>524.6-211</u>
<u>528.14</u>	<u>524.6-212</u>
<u>528.15</u>	<u>524.6-213</u>

#### Sec. 64. REPEALER.

Minnesota Statutes 1992, sections 524.2-112; 524.2-201; 524.2-202; 524.2-203; 524.2-204; 524.2-205; 524.2-206; 524.2-207; 524.2-503; 524.2-610; 524.2-612; 524.3-905; 525.15; 525.151; 525.22; 525.221; and 525.223, are repealed.

#### Sec. 65. EFFECTIVE DATE; PROVISIONS FOR TRANSITION.

(a) This act takes effect on January 1, 1996.

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

(b) Except as provided elsewhere in this act:

(1) this act applies to the rights of successors of decedents dying on or after its effective date and to any wills of decedents dying on or after its effective date;

(2) if, before the effective date of this act, a right is either acquired, extinguished, waived, or barred upon the expiration of a prescribed period of time which commenced to run by the provisions of any statute before the effective date, the provisions of this act neither revoke, revive, restore, nor remove the bar of such right; and

(3) any rule of construction or presumption provided in this act applies to instruments executed and multiple party accounts opened before the effective date of this act unless there is a clear indication of contrary intent.

Presented to the governor April 18, 1994

Signed by the governor April 20, 1994, 1:40 p.m.

#### CHAPTER 473—H.F.No. 2666

*An act relating to local government; prohibiting the adoption of certain zoning ordinances by municipalities, counties, and towns; amending Minnesota Statutes 1992, sections 394.25, by adding a subdivision; and 462.357, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 366.*

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

Section 1. **[366.151] CERTAIN ORDINANCES; MANUFACTURED HOMES.**

A town board must not enact, amend, or enforce a zoning ordinance that has the effect of altering the existing density, lot-size requirements, or manufactured home setback requirements in any manufactured home park constructed before January 1, 1995, if the manufactured home park, when constructed, complied with the then existing density, lot-size and setback requirements.

Sec. 2. Minnesota Statutes 1992, section 394.25, is amended by adding a subdivision to read:

Subd. 3a. CERTAIN ZONING ORDINANCES. A county must not enact, amend, or enforce a zoning ordinance that has the effect of altering the existing density, lot-size requirements, or manufactured home setback requirements in any manufactured home park constructed before January 1, 1995, if the manufactured home park, when constructed, complied with the then existing density, lot-size and setback requirements.

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