

made from at least 75 percent Minnesota-grown grapes, grape juice, other fruit bases, other juices, and honey.

Sec. 7. WADE MUNICIPAL STADIUM; LIQUOR LICENSE.

Notwithstanding any other law to the contrary, the city of Duluth may issue an on-sale wine and malt liquor license in addition to the number authorized by law for the premises known as Wade Municipal Stadium for use during baseball games and other events sponsored by the Duluth Huskies. The license may authorize the sale and consumption of wine and malt liquor in the grandstand and dining areas of the stadium. The license authorizes sales on all days of the week.

Sec. 8. CITY OF MINNEAPOLIS; LIQUOR LICENSE.

Notwithstanding any law, ordinance, or charter provision to the contrary, the city of Minneapolis may issue an intoxicating liquor license to an establishment located at 2200 Como Avenue Southeast, which currently holds an on-sale wine license.

Sec. 9. STATE CAPITOL CENTENNIAL EVENTS.

Notwithstanding any other law to the contrary, the city of St. Paul may issue an on-sale wine and malt liquor license to the Capitol 2005 Commission or Friends of the Minnesota State Capitol for special events held in the State Capitol and on the Capitol grounds relating to the centennial anniversary of the Capitol building. The license authorized by this section is valid until January 2, 2006. All provisions of Minnesota Statutes, chapter 340A, not inconsistent with this section apply to the license authorized by this section.

Sec. 10. EFFECTIVE DATE.

Section 1 is effective July 1, 2005. Sections 2 to 4, 6, 7, 8, and 9 are effective the day following final enactment. Section 5 is effective on approval by the Elko City Council and compliance with Minnesota Statutes, section 645.021.

Presented to the governor April 19, 2005

Signed by the governor April 22, 2005, 6:05 a.m.

CHAPTER 26—S.F.No. 392

An act relating to probate; changing and clarifying certain venue, trustee powers, and omitted beneficiary provisions; amending Minnesota Statutes 2004, sections 501B.17; 501B.705, subdivisions 2, 3, 4, 5; 524.2-302.

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

Section 1. Minnesota Statutes 2004, section 501B.17, is amended to read:
501B.17 **VENUE.**

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

Subdivision 1. FILING OF PETITION. A petition under section 501B.16 or 501B.22 may be filed:

(1) in the case of a trust created by will, in the district court for (i) the county where the will was probated, or in the district court for (ii) the county where a trustee having custody of part or all of the trust assets resides or has a main place of business trust office, or (iii) the county in which the trust is administered;

(2) in the case of a nontestamentary trust, in the district court for (i) the county where a trustee having custody of part or all of the trust assets resides or has a main place of business trust office or (ii) the county in which the trust is administered; or

(3) in the case of a trust holding real property, in the district court for any county in which the real estate is situated.

Subd. 2. PRIOR COURT PROCEEDINGS. In the case of a trust with respect to which there have been prior court proceedings in this state, a petition under section 501B.16 or 501B.22 must be filed in the court in which the prior proceedings were held.

Sec. 2. Minnesota Statutes 2004, section 501B.705, subdivision 2, is amended to read:

Subd. 2. FACTORS TO CONSIDER. In deciding whether and to what extent to exercise the power conferred by subdivision 1, a trustee shall consider all factors relevant to the trust and its beneficiaries, including, but not limited to, the following factors:

(1) the nature, purpose, and expected duration of the trust;

(2) the intent of the settlor;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) the net amount allocated to income under the other provisions of sections 501B.59 to 501B.76 and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

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(8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

(9) the anticipated tax consequences of an adjustment; and

(10) the income investment return ~~(determined without regard to adjustments under this section) during the accounting period from other trusts with similar purposes~~ current economic conditions from other portfolios meeting fiduciary requirements.

Sec. 3. Minnesota Statutes 2004, section 501B.705, subdivision 3, is amended to read:

Subd. 3. **LIMITATION ON TRUSTEE'S POWER.** A trustee may not make an adjustment:

(1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed or allowable, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

~~(3)~~ (2) that changes the amount payable to a beneficiary as fixed annuity or a fixed fraction of the value of the trust assets;

(4) ~~(3)~~ from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside; provided, however, that this limitation does not apply to any trust created prior to August 1, 2001, to the extent the trustee receives amounts during the accounting period which would, under the provisions of Minnesota Statutes 2000, section 501B.70, in effect prior to August 1, 2001, have been allocated to income;

~~(5)~~ (4) if possessing or exercising the power to make an adjustment causes an individual to be treated as owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make adjustment;

~~(6)~~ (5) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove or appoint the trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

~~(7)~~ (6) if the trustee is a beneficiary of the trust; or

~~(8)~~ (7) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

Sec. 4. Minnesota Statutes 2004, section 501B.705, subdivision 4, is amended to read:

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Subd. 4. **COTRUSTEE MAY EXERCISE POWER.** If the provisions of subdivision 3, clause (4), (5), (6), or (7), ~~or (8)~~, apply to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

Sec. 5. Minnesota Statutes 2004, section 501B.705, subdivision 5, is amended to read:

Subd. 5. **RELEASE OF POWER.** A trustee may release the entire power conferred by subdivision 1 or may release only the power to adjust from income to principal or to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivision 3, clause (1), (2), (3), (4), (5), ~~(6)~~, or (8) (7), or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subdivision 3. The release may be permanent or for a specified period, including a period measured by the life of an individual.

Sec. 6. Minnesota Statutes 2004, section 524.2-302, is amended to read:

524.2-302 OMITTED CHILDREN.

(a) Except as provided in paragraph (b), if a testator's will fails to provide for any of the testator's 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 the will was executed, 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 the will was executed, 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.

(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.

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(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 the will for a living child solely because the testator 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, unless the will devised all or substantially all of the estate to the other parent of the child the testator believes to be dead and the other parent survives the testator and is entitled to take under the will.

(d) If a deceased omitted child would have been entitled to a share under this section if the omitted child had not predeceased the testator and the deceased omitted child leaves issue who survive the testator, the issue who represent the deceased omitted child are entitled to take the deceased omitted child's share.

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

Presented to the governor April 19, 2005

Signed by the governor April 22, 2005, 5:45 a.m.

CHAPTER 27—H.F.No. 1650

An act relating to cosmetology; providing for the transfer of regulatory oversight; modifying regulatory provisions; providing conforming changes; amending Minnesota Statutes 2004, sections 154.18; 154.22; 155A.03, subdivision 4a; 155A.04; 155A.045, subdivision 1; 155A.08, subdivision 1; 155A.135; repealing Minnesota Statutes 2004, sections 155A.03, subdivision 13; 155A.06; Minnesota Rules, part 2100.9300, subpart 1.

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

Section 1. Minnesota Statutes 2004, section 154.18, is amended to read:

154.18 FEES.

(a) The fees collected, as required in this chapter, chapter 214, and the rules of the board, shall be paid in advance by ~~September 1~~ of the year in which they are due to

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