

HOUSE RESEARCH

Bill Summary

FILE NUMBER: H.F. 2515
Version: First engrossment

DATE: March 15, 2016

Authors: Smith

Subject: Updates to the probate code

Analyst: Mary Mullen

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd/.

Overview

This bill updates some of the monetary thresholds used throughout the probate code which have not been changed in recent years so that the amounts reflect changes that are consistent with inflation. The bill also makes other changes to make the probate code consistent with the new trust code passed in 2015, adds definitions, and changes the rights and duties of guardians and conservators.

Section

- 1 Exclusions.** Removes guardianship and conservatorship matters from the list of cases that cannot be required by the court to attempt nonbinding arbitration. This would allow judges to refer a guardianship or conservatorship case to nonbinding arbitration before the matter goes to trial when the district has set up a mandatory arbitration program. Both Hennepin and Ramsey County has an arbitration program consistent with this statute.
- 2 General definitions.** Adds a definition for the probate code for the term “governing instrument,” which is used throughout chapter 524 and 525. The definition would now clarify that a governing instrument includes many different legal forms for transferring assets, such as an account that is payable on death or a transfer on death deed.
- 3 Share of the spouse.** Amends the financial value of the intestate share of the estate that goes to the surviving spouse, changing the financial value of the surviving spouse’s share from \$150,000 to \$225,000. This section was last updated in 1994.
- 4 Elective share amount.** Updates the supplemental elective-share amount a surviving spouse can take from \$50,000 to \$75,000 and also the threshold for when that supplemental elective-

Section

share amount can be used from \$50,000 to \$75,000. This law was passed in 1994 and has not been amended or updated since then.

- 5 **Entitlement of spouse; premarital will.** Expands and clarifies when a surviving spouse will not receive a surviving spouse share when the decedent has a will made before the marriage. The new provisions allow other written evidence, trusts created for the surviving spouse, and other nonprobate transfers to be used to show that the surviving spouse is not eligible for the surviving spouse share under intestacy law.
- 6 **Exempt property.** Updates the value of the exempt property the surviving spouse can take from the estate for household goods and furnishings and encumbered assets from \$10,000 to \$15,000. This amount has not been changed since the law was passed in 1994.
- 7 **Family allowance.** Changes the monthly family allowance the surviving spouse and minor child may be granted for maintenance from \$1,500 a month to \$2,300 a month. This amount has not been changed since the law was passed in 1994.
- 8 **Nonademption of specific devices; unpaid proceeds of sale.** Allows a devisee to make a claim for the value of property that was specifically devised by the decedent when the property has been sold or mortgaged by a trustee. The law already allows this when the property was sold or mortgaged by a conservator, guardian, or attorney-in-fact.
- 9 **Reformation to correct mistakes.** Creates a new provision that allows the court to alter the terms of will or other probate transfer if it is proven by clear and convincing evidence that the intent of the transfer was different than the terms provided in the governing instrument.
- 10 **Modification to achieve transferor's tax objectives.** Allows the court to modify the terms of a governing instrument, such as a will or other nonprobate transfer, to achieve the transferor's tax objectives.
- 11 **Formal testacy proceedings; contested cases; testimony of attesting witnesses.** Adds a provision to the law allowing witnesses to a will to provide proof of the execution of the will to the court by affidavit and adds a rebuttable presumption in cases where the will is contested that attestation clause that the will was signed at the attestation clause indicates.
- 12 **Collection of personal property by affidavit.** Allows an affidavit of survivorship to be used to claim property and distribute assets in estates that are valued under \$75,000. The current law allows the affidavit of survivorship to be used when the estate is valued at under \$50,000. The law was changed to \$50,000 in 2009.
- 13 **Exhaustion of estate.** Current law allows the court to close an estate and property to be distributed when it appears that the estate will be sufficient to pay all claims and the property is valued at or below \$100,000, not including the value of homestead property. This amendment to the law would increase the amount to \$150,000. This amount has not been increased since 2000.
- 14 **Powers and duties of guardian.** Provides that guardians may initiate and pursue civil actions on behalf of a ward when no conservator has been appointed.
- 15 **General powers and duties of conservator.** Amends the duties of a conservator to specify the types of cases a conservator can initiate or represent a ward in to include all civil court

Section

proceedings, specifically listing examples including expungement and harassment proceedings.

- 16** **Restraining order; court jurisdiction.** Adds the guardian or conservator of an incapacitated person to the list of people able to seek a restraining order on behalf of another person. This clarifies that a harassment restraining order may be sought by the guardian or conservator of a ward.