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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE NO. 1494

March 9, 2009
Authored by Simon, Kelliher, Hortman, Slawik and Hansen
The bill was read for the first time and referred to the Committee on Civil Justice

A bill for an act

relating to civil actions; providing for wrongful death actions by domestic partners; amending Minnesota Statutes 2008, sections 3.736, subdivision 6; 466.05, subdivision 2; 573.02, subdivisions 1, 3.

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

Section 1. Minnesota Statutes 2008, section 3.736, subdivision 6, is amended to read:

Subd. 6. **Claims for wrongful death; notice.** (a) When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse or surviving domestic partner, or next of kin, or the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in the death. If the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without additional notice.

(b) For purposes of this subdivision, "domestic partner" has the meaning given in section 573.02, subdivision 1, paragraph (c).

Sec. 2. Minnesota Statutes 2008, section 466.05, subdivision 2, is amended to read:

Subd. 2. **Claims for wrongful death; notice.** (a) When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse or surviving domestic partner, or next of kin, or the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death; if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived an action for wrongful death may be brought without any additional notice.

(b) For purposes of this subdivision, "domestic partner" has the meaning given in section 573.02, subdivision 1, paragraph (c).

Sec. 3. Minnesota Statutes 2008, section 573.02, subdivision 1, is amended to read:

Subdivision 1. **Death action.** (a) When death is caused by the wrongful act or omission of any person or corporation, the trustee appointed as provided in subdivision 3 may maintain an action therefor if the decedent might have maintained an action, had the decedent lived, for an injury caused by the wrongful act or omission. An action to recover damages for a death caused by the alleged professional negligence of a physician, surgeon, dentist, hospital or sanitarium, or an employee of a physician, surgeon, dentist, hospital or sanitarium shall be commenced within three years of the date of death, but in no event shall be commenced beyond the time set forth in section 541.076. An action to recover damages for a death caused by an intentional act constituting murder may be commenced at any time after the death of the decedent. Any other action under this section may be commenced within three years after the date of death provided that the action must be commenced within six years after the act or omission. The recovery in the action is the amount the jury deems fair and just in reference to the pecuniary loss resulting from the death, and shall be for the exclusive benefit of the surviving spouse or surviving domestic partner and next of kin, proportionate to the pecuniary loss severally suffered by the death. The court then determines the proportionate pecuniary loss of the persons entitled to the recovery and orders distribution accordingly. Funeral expenses and any demand for the support of the decedent allowed by the court having jurisdiction of the action, are first deducted and paid. Punitive damages may be awarded as provided in section 549.20.

(b) If an action for the injury was commenced by the decedent and not finally determined while living, it may be continued by the trustee for recovery of damages for the exclusive benefit of the surviving spouse or surviving domestic partner and next of kin, proportionate to the pecuniary loss severally suffered by the death. The court on motion shall make an order allowing the continuance and directing pleadings to be made and issues framed as in actions begun under this section.

(c) For purposes of this section, "domestic partners" means persons who:

(1) are the same sex;

(2) are adults and mentally competent to enter into legally binding contracts;

(3) have assumed responsibility for each other's basic common welfare, financial obligations, and well being;

(4) share a common domicile and primary residence with each other on a permanent basis;

(5) have a committed interdependent relationship with each other, intend to continue that relationship indefinitely, and do not have this type of relationship with any other person;

(6) are not married to another person and have not entered into a domestic partnership arrangement that is currently in effect; and

(7) are not related by blood or adoption so that a marriage between them would be prohibited under section 517.03, subdivision 1, paragraph (a), clause (2) or (3).

Sec. 4. Minnesota Statutes 2008, section 573.02, subdivision 3, is amended to read:

Subd. 3. **Trustee for action.** Upon written petition by the surviving spouse or surviving domestic partner or one of the next of kin, the court having jurisdiction of an action falling within the provisions of subdivisions 1 or 2, shall appoint a suitable and competent person as trustee to commence or continue such action and obtain recovery of damages therein. The trustee, before commencing duties shall file a consent and oath. Before receiving any money, the trustee shall file a bond as security therefor in such form and with such sureties as the court may require.