A bill for an act

relating to property held in trust; clarifying status of certain distributions; changing certain relationship and inheritance provisions; providing for emergency and temporary conservators; amending Minnesota Statutes 2008, sections 501B.64, subdivision 3; 524.1-201; 524.2-114; Minnesota Statutes 2009 Supplement, section 524.5-409; proposing coding for new law in Minnesota Statutes, chapter 524.

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

Section 1. Minnesota Statutes 2008, section 501B.64, subdivision 3, is amended to read:

Subd. 3. **Regulated investment company; real estate investment trust.** Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from short-term or long-term capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

Sec. 2. Minnesota Statutes 2008, 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) "Adoptee" means an individual who is adopted.

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

(3) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.

(4) "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.

(5) "Birth mother" means a woman who gives birth to a child of assisted reproduction, including a woman who is the child's genetic mother. It does not include a woman who gives birth pursuant to a gestational agreement.

(6) "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.

~~(6)~~ (7) "Child of assisted reproduction" means a child conceived by means of assisted reproduction by a woman other than a child conceived pursuant to a gestational agreement.

(8) "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.

~~(7)~~ (9) "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 district court.

~~(8)~~ (10) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

~~(9)~~ (11) "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.

~~(10)~~ (12) "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.

~~(11)~~ (13) "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.

~~(12)~~ (14) "Disability" means cause for appointment of a conservator as described in section 524.5-401, or a protective order as described in section 524.5-412.

~~(13)~~ (15) "Distributee" means any person who has received or who will receive property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee with respect to property which the trustee has received from a personal representative only to the extent of distributed assets or their increment 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.

~~(14)~~ (16) "Divorce" includes an annulment, dissolution, and declaration of invalidity of marriage.

(17) "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.

~~(16)~~ (18) "Fiduciary" includes personal representative, guardian, conservator and trustee.

~~(17)~~ (19) "Foreign personal representative" means a personal representative of another jurisdiction.

~~(18)~~ (20) "Formal proceedings" means those conducted before a judge with notice to interested persons.

~~(20)~~ (21) "Functioned as a parent of the child" means behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household.

(22) "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under chapter 257, "genetic father" means only the man for whom that relationship is established.

(23) "Genetic mother" means the woman whose egg was fertilized by the sperm of a child's genetic father.

(24) "Genetic parent" means a child's genetic father or genetic mother.

(25) "Gestational agreement" means an agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent or intended parents.

(26) "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.

~~(21)~~ (27) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

~~(22)~~ (28) "Incapacitated person" is as described in section 524.5-102, subdivision 6, other than a minor.

~~(23)~~ (29) "Incapacity" when used in sections 524.2-114 to 524.2-120 means the inability of an individual to function as a parent of a child because of the individual's physical or mental condition.

(30) "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.

~~(24)~~ (31) "Intended parent" means an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a woman by means of assisted reproduction, including an individual who has a genetic relationship with the child.

(32) "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.

~~(27)~~ (33) "Lease" includes an oil, gas, or other mineral lease.

~~(28)~~ (34) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

~~(30)~~ (35) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

~~(31)~~ (36) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

~~(32)~~ (37) "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.

~~(35)~~ (38) "Person" means an individual, a corporation, an organization, or other legal entity.

~~(36)~~ (39) "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.

~~(37)~~ (40) "Petition" means a written request to the court for an order after notice.

~~(38)~~ (41) "Proceeding" includes action at law and suit in equity.

~~(39)~~ (42) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

~~(40)~~ (43) "Protected person" is as described in section 524.5-102, subdivision 14.

~~(42)~~ (44) "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.

~~(43)~~ (45) "Relative" means a grandparent or a descendant of a grandparent.

(46) "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.

~~(44)~~ (47) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

~~(45)~~ (48) "Special administrator" means a personal representative as described by sections 524.3-614 to 524.3-618.

~~(46)~~ (49) "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.

~~(47)~~ (50) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~(48)~~ (51) "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, or a state or county agency with a claim authorized under section 256B.15.

~~(49)~~ (52) "Supervised administration" refers to the proceedings described in sections 524.3-501 to 524.3-505.

~~(51)~~ (53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~(53)~~ (54) "Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:

(i) a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction by the wife;

(ii) the birth mother of a child of assisted reproduction; or

(iii) a man who has been determined under section 524.2-120, subdivision 6 or 7, to have a parent-child relationship with a child of assisted reproduction.

(55) "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 149A.97, 318.01 to 318.06, 527.21 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 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.

~~(54)~~ (56) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

~~(55)~~ (57) "Ward" is as described in section 524.5-102, subdivision 17.

~~(56)~~ (58) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

Sec. 3. Minnesota Statutes 2008, section 524.2-114, is amended to read:

524.2-114 ~~MEANING OF CHILD AND RELATED TERMS~~ PARENT BARRED FROM INHERITING IN CERTAIN CIRCUMSTANCES.

~~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 child is the child of an adopting parent and not of the birth parents except that adoption of a child by the spouse of a birth parent has no effect on the relationship between the child and that birth 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 to 257.74.~~

(a) A parent is barred from inheriting from or through a child of the parent if:

(1) the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or

(2) the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under law of this state other than this chapter on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

Sec. 4. **[524.2-116] EFFECT OF PARENT-CHILD RELATIONSHIP.**

Except as otherwise provided in section 524.2-119, subdivisions 2 to 5, if a parent-child relationship exists or is established under this part, the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession.

Sec. 5. **[524.2-117] PARENT-CHILD RELATIONSHIP WITH GENETIC PARENTS.**

Except as otherwise provided in section 524.2-114, 524.2-119, or 524.2-120, a parent-child relationship exists between a child and the child's genetic parents, regardless of the parents' marital status.

Sec. 6. **[524.2-118] ADOPTEE AND ADOPTEE'S ADOPTIVE PARENT OR PARENTS.**

Subdivision 1. **Parent-child relationship between adoptee and adoptive parent or parents.** A parent-child relationship exists between an adoptee and the adoptee's adoptive parent or parents.

Subd. 2. **Individual in process of being adopted by married couple; stepchild in process of being adopted by stepparent.** For purposes of subdivision 1:

(1) an individual who is in the process of being adopted by a married couple when one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's surviving spouse; and

(2) a child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by 120 hours.

Subd. 3. **Child of assisted reproduction in process of being adopted.** If, after a parent-child relationship is established between a child of assisted reproduction and a parent under section 524.2-120, the child is in the process of being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the deceased spouse for the purpose of subdivision 2, clause (2).

Subd. 4. **In the process of adoption.** An individual is "in the process of being adopted" if there exists clear and convincing evidence of the intention of the deceased spouse to adopt that individual.

Sec. 7. **[524.2-119] ADOPTEE AND ADOPTEE'S GENETIC PARENTS.**

Subdivision 1. **Parent-child relationship between adoptee and genetic parents.** Except as otherwise provided in subdivisions 2 to 5, a parent-child relationship does not exist between an adoptee and the adoptee's genetic parents.

Subd. 2. **Stepchild adopted by stepparent.** A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and the genetic parents whose spouse adopted the individual. No parent-child relationship exists between an individual and the other genetic parent unless the other genetic parent was deceased at the time of the child's adoption and then only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through that other genetic parent.

Subd. 3. **Individual adopted by relative of genetic parent.** A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.

Subd. 4. **Individual adopted after death of both genetic parents.** A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.

Subd. 5. **Child of assisted reproduction who is subsequently adopted.** If, after a parent-child relationship is established between a child of assisted reproduction and a

parent or parents under section 524.2-120, the child is adopted by another or others, the child's parent or parents under this section are treated as the child's genetic parent or parents for the purpose of this section.

Sec. 8. **[524.2-120] CHILD CONCEIVED BY ASSISTED REPRODUCTION.**

Subdivision 1. **Third-party donor.** A parent-child relationship does not exist between a child of assisted reproduction and a third-party donor.

Subd. 2. **Parent-child relationship with birth mother.** A parent-child relationship exists between a child of assisted reproduction and the child's birth mother.

Subd. 3. **Parent-child relationship with husband whose sperm were used during his lifetime by his wife for assisted reproduction.** Except as otherwise provided in subdivision 9, a parent-child relationship exists between a child of assisted reproduction and the husband of the child's birth mother if the husband provided the sperm that the birth mother used during his lifetime for assisted reproduction.

Subd. 4. **Official birth record; presumptive effect.** An official birth record identifying a man as the other parent of a child of assisted reproduction presumptively establishes a parent-child relationship between the child and that man.

Subd. 5. **Parent-child relationship with another.** Except as otherwise provided in subdivisions 6, 8, and 9, and unless a parent-child relationship is established under subdivision 4, a parent-child relationship is presumed to exist between a child of assisted reproduction and a man who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the man:

(1) before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the man's consent; or

(2) in the absence of a signed record under clause (1):

(i) functioned as the other parent of the child no later than two years after the child's birth; or

(ii) intended to function as the other parent of the child no later than two years after the child's birth but was prevented from carrying out that intent by death, incapacity, or other circumstances, if that intent is established by clear and convincing evidence.

Subd. 6. **Record signed more than two years after the birth of the child: effect.** For the purpose of subdivision 5, clause (1), neither a man who signed a record more than two years after the birth of the child, nor a relative of that man who is not also a relative of

the birth mother, inherits from or through the child unless the man functioned as a parent of the child before the child reached 18 years of age.

Subd. 7. **Presumption; birth mother is married or surviving spouse.** (a) Paragraphs (b) and (c) apply to subdivision 5, clause (2).

(b) If the birth mother is married and no divorce proceeding is pending, in the absence of clear and convincing evidence to the contrary, her spouse satisfies subdivision 5, clause (2), item (i) or (ii).

(c) If the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceeding was pending, in the absence of clear and convincing evidence to the contrary, her deceased spouse satisfies subdivision 5, clause (2), item (ii).

Subd. 8. **Divorce before placement of eggs, sperm, or embryos.** If a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record or such consent is established by clear and convincing evidence that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.

Subd. 9. **Withdrawal of consent before placement of eggs, sperm, or embryos.** If, in a record or through clear and convincing evidence, a man withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that man, unless the man subsequently satisfies subdivision 4 or 5.

Subd. 10. **Exclusion of posthumously conceived children.** Notwithstanding any other provision of this section and subject to section 524.2-108, a parent-child relationship does not exist between a child of assisted reproduction and another person unless the child of assisted reproduction is in gestation prior to the death of such person.

Sec. 9. **[524.2-121] NO EFFECT ON GESTATIONAL AGREEMENTS.**

This chapter does not affect law of this state regarding gestational agreements.

Sec. 10. **[524.2-122] NO EFFECT ON EQUITABLE ADOPTION.**

This chapter does not affect the doctrine of equitable adoption.

Sec. 11. Minnesota Statutes 2009 Supplement, section 524.5-409, is amended to read:

524.5-409 FINDINGS; ORDER OF APPOINTMENT.

Subdivision 1. **Limited or unlimited conservatory.** (a) The court may appoint a limited or unlimited conservator for a respondent only if it finds that:

(1) by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance, or because the individual is missing, detained, or unable to return to the United States;

(2) by a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money; and

(3) the respondent's identified needs cannot be met by less restrictive means, including use of appropriate technological assistance.

(b) Alternatively, the court, with appropriate findings, may enter any other appropriate order, or dismiss the proceeding.

(c) The court, whenever feasible, shall grant to a conservator only those powers necessitated by the protected person's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the protected person's maximum self-reliance and independence.

(d) Within 14 days after an appointment, the conservator shall send or deliver to the protected person, if the protected person has attained 14 years of age and is not missing, detained, or unable to return to the United States, and counsel if represented at the hearing, a copy of the order of appointment accompanied by a notice which advises the protected person of the right to appeal the conservatorship appointment in the time and manner provided by the Rules of Appellate Procedure.

(e) Each year, within 30 days after the anniversary date of an appointment, a conservator shall send or deliver to the protected person and to interested persons of record with the court a notice of the right to request termination or modification of the conservatorship or for any order that is in the best interests of the protected person or for other appropriate relief.

(f) The appointment of a conservator or the entry of another protective order is not a determination of incapacity of the protected person.

Subd. 2. **Emergency and temporary conservator.** (a) If the court finds that compliance with the procedures of this article will likely result in the immediate loss, waste, or dissipation of the individual's assets or income unless management is provided, or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money, and that no other person appears to have authority

and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency conservator whose authority may not exceed 60 days and who may exercise only the powers specified in the order. A county that is acting under section 626.557, subdivision 10, by petitioning for appointment of an emergency conservator on behalf of a vulnerable adult may be granted authority to act for a period not to exceed 90 days. Immediately upon receipt of the petition for an emergency conservatorship, the court shall appoint a lawyer to represent the respondent in the proceeding. Except as otherwise provided in paragraph (b), reasonable notice of the time and place of a hearing on the petition must be given to the respondent and any other persons as the court directs.

(b) An emergency conservator may be appointed without notice to the respondent and the respondent's lawyer only if the court finds from affidavit or other sworn testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency conservator without notice to the respondent, the respondent must be given notice of the appointment within 48 hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within five days after the appointment.

(c) Appointment of an emergency conservator, with or without notice, is not a determination of the respondent's incapacity.

(d) The court may remove an emergency conservator at any time. An emergency conservator shall make any report the court requires. In other respects, the provisions of this article concerning conservators apply to an emergency conservator.

(e) If the court finds that a conservator is not effectively performing the conservator's duties and that the security and preservation of the protected person's assets requires immediate action, the court may appoint a temporary substitute conservator for the protected person for a specified period not exceeding six months. Except as otherwise ordered by the court, a temporary substitute conservator so appointed has the powers set forth in the previous order of appointment. The authority of any unlimited or limited conservator previously appointed by the court is suspended as long as a temporary substitute conservator has authority. If an appointment is made without previous notice to the protected person or the affected conservator within five days after the appointment, the court shall inform the protected person or conservator of the appointment.

(f) The court may remove a temporary substitute conservator at any time. A temporary substitute conservator shall make any report the court requires. In other respects, the provisions of this article concerning conservators apply to a temporary substitute conservator.

Sec. 12. **[RENUMBERING INSTRUCTION.]**

The revisor of statutes shall renumber section 524.2-115 as 524.2-123 in the next and subsequent editions of Minnesota Statutes.