

1.1 A bill for an act

1.2 relating to health; modifying provisions for disposition of a deceased person;  
1.3 amending Minnesota Statutes 2008, sections 3.736, subdivision 6; 149A.80,  
1.4 subdivision 2; 466.05, subdivision 2; 573.02, subdivisions 1, 3.

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

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

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

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

1.16 Sec. 2. Minnesota Statutes 2008, section 149A.80, subdivision 2, is amended to read:

1.17 Subd. 2. **Determination of right to control and duty of disposition.** (a) The right  
1.18 to control the disposition of the remains of a deceased person, including the location and  
1.19 conditions of final disposition, unless other directions have been given by the decedent  
1.20 pursuant to subdivision 1, vests in, and the duty of final disposition of the body devolves  
1.21 upon, the following in the order of priority listed:

1.22 (1) the person or persons appointed in a dated written instrument signed by the  
1.23 decedent. Written instrument includes, but is not limited to, a health care directive

2.1 executed under chapter 145C. Written instrument does not include a durable or nondurable  
2.2 power of attorney which terminates on the death of the principal pursuant to sections  
2.3 523.08 and 523.09;

2.4 (2) the spouse of the decedent;

2.5 (3) the domestic partner of the decedent;

2.6 (4) the adult child or the majority of the adult children of the decedent, provided  
2.7 that, in the absence of actual knowledge to the contrary, a funeral director or mortician  
2.8 may rely on instructions given by the child or children who represent that they are the sole  
2.9 surviving child, or that they constitute a majority of the surviving children;

2.10 ~~(4)~~ (5) the surviving parent or parents of the decedent, each having equal authority;

2.11 ~~(5)~~ (6) the adult sibling or the majority of the adult siblings of the decedent, provided  
2.12 that, in the absence of actual knowledge to the contrary, a funeral director or mortician  
2.13 may rely on instructions given by the sibling or siblings who represent that they are the  
2.14 sole surviving sibling, or that they constitute a majority of the surviving siblings;

2.15 ~~(6)~~ (7) the person or persons respectively in the next degree of kinship in the order  
2.16 named by law to inherit the estate of the decedent; and

2.17 ~~(7)~~ (8) the appropriate public or court authority, as required by law.

2.18 (b) For purposes of this subdivision, the appropriate public or court authority  
2.19 includes the county board of the county in which the death occurred if the person dies  
2.20 without apparent financial means to provide for final disposition or the district court in  
2.21 the county in which the death occurred.

2.22 (c) For purposes of this subdivision, "domestic partners" are two persons who:

2.23 (1) are the same sex;

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

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

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

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

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

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

3.1 Sec. 3. Minnesota Statutes 2008, section 466.05, subdivision 2, is amended to read:

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

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

3.11 Sec. 4. Minnesota Statutes 2008, section 573.02, subdivision 1, is amended to read:

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

3.31 (b) If an action for the injury was commenced by the decedent and not finally  
3.32 determined while living, it may be continued by the trustee for recovery of damages for  
3.33 the exclusive benefit of the surviving spouse or surviving domestic partner and next of  
3.34 kin, proportionate to the pecuniary loss severally suffered by the death. The court on

4.1 motion shall make an order allowing the continuance and directing pleadings to be made  
4.2 and issues framed as in actions begun under this section.

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

4.4 (1) are the same sex;

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

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

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

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

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

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

4.17 Sec. 5. Minnesota Statutes 2008, section 573.02, subdivision 3, is amended to read:

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