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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH  
SESSION

HOUSE FILE No. **1494**

March 9, 2009

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

March 30, 2009

Committee Recommendation and Adoption of Report:  
To Pass as Amended  
Read Second Time

1.1 A bill for an act  
1.2 relating to civil actions; providing for wrongful death actions by domestic  
1.3 partners; amending Minnesota Statutes 2008, sections 3.736, subdivision 6;  
1.4 466.05, 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 466.05, subdivision 2, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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