

Sec. 2. This act is effective upon approval by the city council of the city of Detroit Lakes and upon compliance with the provisions of Minnesota Statutes, Section 645.021.

Approved April 10, 1974.

CHAPTER 447—H.F.No.3105

[Coded in Part]

An act relating to status of disappeared persons; providing for receivers and the possession, management, and disposition of property; providing for proceedings to establish the date of death of a person who has disappeared and the eligibility for life insurance payments prior to determination of death; amending Minnesota Statutes 1971, Sections 487.14; 487.27, Subdivision 3, as amended; 518.01; 525.71; 576.01; 576.04; 576.10; 576.12, by adding a subdivision; 576.14; 576.15; 576.16; and Chapter 576, by adding sections.

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

Section 1. Minnesota Statutes 1971, Section 487.14, is amended to read:

487.14 DISAPPEARED PERSONS; DATE OF DEATH; EXCLUSIVE JURISDICTION. The county court shall have exclusive original jurisdiction in the following cases:

(a) In law and equity for the administration of estates of deceased persons and all guardianship and incompetency proceedings;

(b) The jurisdiction of a juvenile court as provided in chapter 260;

(c) Proceedings for the management of the property of persons who have disappeared, and actions relating thereto, as provided by chapter 576.

Sec. 2. Minnesota Statutes 1971, Section 487.27, Subdivision 3, as amended by Laws 1973, Chapter 679, Section 27, is amended to read:

Subd. 3. The probate division shall include all cases and proceedings relating to the administration of estates of deceased persons, of persons under guardianship, and proceedings for the administration of trust estates or actions relating thereto. It shall also include all cases and proceedings relating to the management of the property of persons who have disappeared.

Sec. 3. Minnesota Statutes 1971, Section 518.01, is amended to read:

Changes or additions indicated by underline deletions by ~~strikeout~~

518.01 VOID OR VOIDABLE MARRIAGES. All marriages which are prohibited by law on account of consanguinity, or on account of either or both parties being under the age established for marriage by Minnesota Statutes, Section 517.03, or on account of either party having a former husband or wife then living, if solemnized within this state, shall be absolutely void, without any decree of divorce or other legal proceedings; provided, that if any person whose husband or wife has been absent for ~~five~~four successive years, without being known to such person to be living during that time, marries during the lifetime of such absent husband or wife, the marriage shall be void only from the time that its nullity is duly adjudged. If the absentee is declared dead in accordance with section 12, the subsequent marriage shall not be void.

Sec. 4. Minnesota Statutes 1971, Section 525.71 is amended to read:

525.71 APPEALABLE ORDERS. An appeal to the district court may be taken from any of the following orders, judgments, and decrees of the probate court:

- (1) An order admitting, or refusing to admit, a will to probate;
- (2) An order appointing, or refusing to appoint, or removing, or refusing to remove, a representative other than a special administrator or special guardian;
- (3) An order authorizing, or refusing to authorize, the sale, mortgage, or lease of real estate, or confirming, or refusing to confirm, the sale or lease of real estate;
- (4) An order directing, or refusing to direct, a conveyance or lease of real estate under contract;
- (5) An order permitting, or refusing to permit, the filing of a claim, or allowing or disallowing a claim or counterclaim, in whole or in part, when the amount in controversy exceeds \$100;
- (6) An order setting apart, or refusing to set apart, property, or making, or refusing to make, an allowance for the spouse or children;
- (7) An order determining, or refusing to determine, venue; an order transferring, or refusing to transfer, venue;
- (8) An order directing, or refusing to direct, the payment of a bequest or distributive share when the amount in controversy exceeds \$100;
- (9) An order allowing, or refusing to allow, an account of a representative or any part thereof when the amount in controversy exceeds \$100;

Changes or additions indicated by underline deletions by ~~strikeout~~

(10) An order adjudging a person in contempt;

(11) An order vacating a previous appealable order, judgment, or decree; an order refusing to vacate a previous appealable order, judgment, or decree alleged to have been procured by fraud or misrepresentation, or through surprise or excusable inadvertence or neglect;

(12) A judgment or decree of partial or final distribution;

(13) An interlocutory decree entered pursuant to section 525.481;

(14) An order granting or denying restoration to capacity;

(15) An order made pursuant to section 525.49 directing, or refusing to direct, the payment of representative's fees or attorneys' fees, and in such case the representative and the attorney shall each be deemed an aggrieved party and entitled to take such appeal;

(16) An order, judgment, or decree relating to or affecting inheritance taxes or refusing to amend, modify, or vacate such an order, judgment, or decree; but nothing herein contained shall abridge the right of direct review by the supreme court;

(17) An order extending the time for the settlement of the estate beyond five years from the date of the appointment of the representative;

(18) An order entered pursuant to section 12.

Sec. 5. Minnesota Statutes 1971, Section 576.01, is amended to read:

576.01 RECEIVERS, WHEN AUTHORIZED. A receiver may be appointed in the following cases:

(1) Before judgment, on the application of any party to the action who shall show an apparent right to property which is the subject of such action and is in the possession of an adverse party, and the property, or its rents and profits, are in danger of loss or material impairment, except in cases wherein judgment upon failure to answer may be had without application to the district court;

(2) By the judgment, or after judgment, to carry the same into effect, or to preserve the property pending an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment;

(3) In the cases provided by law, when a corporation is dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights; and, in like cases, of the property within this state of foreign corporations;

Changes or additions indicated by underline deletions by ~~strickout~~

(4) In such other cases as are now provided by law, or are in accordance with the existing practice, except as otherwise prescribed in this section.

Sec. 6. Minnesota Statutes 1971, Chapter 576, is amended by adding a section to read:

[576.011] DEFINITIONS. Subdivision 1. For the purpose of sections 6 to 16 the terms defined in this section have the meanings given them.

Subd. 2. "Court" means the probate or county court having jurisdiction for the county where an absentee last resided.

Subd. 3. "Person in interest" means the absentee, heirs, any person who would have an interest in the absentee's estate had the absentee died intestate at any time between the commencement of his absence and the date set for any proceeding prescribed by section 12, any person who would have an interest under the absentee's will or purported will, an insurer or surety of the absentee, an owner of any reversionary, remainder, joint or contractual interest which might be affected by the death of the absentee, creditor of the absentee, and any other person whom the court finds is properly in interest.

Sec. 7. Minnesota Statutes 1971, Section 576.04, is amended to read:

576.04 ABSENTEES; POSSESSION, MANAGEMENT, AND DISPOSITION OF PROPERTY. If a person entitled to or having an interest in property within or without the jurisdiction of the state has disappeared or absconded from the place within or without the state where he was last known to be, and has no agent in the state, and it is not known where he is, or if such person, having a spouse or minor child or children dependent to any extent upon him for support, has thus disappeared, or absconded without making sufficient provision for such support, and it is not known where he is, or, if it is known that he is without the state, any one who would under the law of the state be entitled to administer upon the estate of such absentee if he were deceased, or if no one is known to be so entitled, some person deemed suitable by the court, or such spouse, or some one in such spouse's or minors' behalf, may file a petition, under oath, in the ~~district probate~~ or county court for the county where any such property is situated or found, stating the name, age, occupation, and last known residence or address of such absentee, the date and circumstances of the disappearance or absconding, and the names and residences of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, whether or not such absentee is a citizen of the United States, and if not, of what country he is a citizen or native, and containing a schedule of the property, real and personal, so far as known, and its location within or without the state, and a schedule of contractual or property rights contingent upon the absentee's death.

Changes or additions indicated by underline deletions by ~~strikeout~~

and praying that ~~such real and personal~~ property may be taken possession of and a receiver thereof appointed under this chapter. No proceedings shall be commenced under the provisions of sections 576.04 to 576.16, except upon good cause shown until at least three months after the date on which it is alleged in such petition that such person so disappeared or absconded.

Sec. 8. Minnesota Statutes 1971, Section 576.10, is amended to read:

576.10 ADDITIONAL PROPERTY; RECEIVER TO TAKE POSSESSION. The receiver, upon petition filed by him, may be authorized and directed to take possession of any additional property, including a business concern, within or without the state which belongs to such absentee and to demand and collect all debts due the absentee from any person within or without the state and hold the same as if it had been transferred and delivered to him by the officer. The receiver, upon petition filed by him, may also be authorized and directed to exercise any rights under a life insurance policy or an annuity contract which the absentee could have exercised, including, but not limited to, the right to borrow against it, surrender it for its cash surrender value, or continue it in force by payment of premiums.

Sec. 9. Minnesota Statutes 1971, Section 576.12, is amended to read:

576.12 CARE OF PROPERTY; LEASE; SALE; CONTROL OF BUSINESS. Subdivision 1. The court may make orders for the care, custody, leasing, and investing of all property and its proceeds in the possession of the receiver. If any of the property consists of assets subject to likely rapid decline in value or live animals or is perishable or cannot be kept without a great or disproportionate expense, the court may, after the return of the warrant, order such property to be sold at public or private sale. After the appointment of a receiver, upon his petition and after notice, the court may order all or part of the property, including the rights of the absentee in land, to be sold at public or private sale to supply money for payments authorized by sections 576.04 to 576.16, to preserve value, or for reinvestment approved by the court.

Subd. 2. The court may make orders for the management of an absentee's business in possession of the receiver. The court may authorize the receiver or person designated by the receiver to operate the business in conformance with sound business practice. Upon the receiver's petition and after notice, the court may authorize the sale of the business to supply money for payments authorized by sections 576.04 to 576.16, to preserve value, or for reinvestment approved by the court.

Sec. 10. Minnesota Statutes 1971, Section 576.14, is amended to read:

Changes or additions indicated by underline deletions by ~~strikeout~~

576.14 CLAIMS; ADJUSTMENT BY RECEIVER. The court may authorize the receiver to adjust by arbitration or compromise any demand in favor of or against the estate of the absentee. The court may authorize the receiver to pay all taxes for which the absentee is liable and all taxes assessed on his property.

Sec. 11. Minnesota Statutes 1971, Chapter 576, is amended by adding a section to read:

[576.141] PRESUMPTION OF DEATH FROM ABSENCE. An absentee who is missing for a continuous period of four years, during which, after diligent search, he has not been seen or heard of or from, and whose absence is not satisfactorily explained, shall be presumed, in any action or proceeding involving the property of the person, contractual or property rights contingent upon his death or the administration of his estate, to have died four years after the date the unexplained absence commenced. If the person was exposed to a specific peril of death, that fact may be a sufficient basis for determining that he died less than four years after the date his absence commenced.

Sec. 12. Minnesota Statutes 1971, Chapter 576, is amended by adding a section to read:

[576.142] HEARING BY COURT; DETERMINATION OF DEATH OF AN ABSENTEE. Subdivision 1. A person in interest may request a hearing in the following circumstances:

(a) If an absentee is absent from his domicile without being in communication after being exposed to a specific peril and a diligent search has been made; or

(b) If an absentee has been absent from his domicile for a period of four consecutive years or more without being in communication and a diligent search has been made; or

(c) If unforeseeable or changing circumstances necessitate court authorization for action in respect to the management or disposition of the absentee's business or property.

Subd. 2. The person requesting the hearing shall file a petition stating his name, address, relationship to the absentee, and the specific grounds for the hearing requested.

Subd. 3. Upon the filing of the petition, the court shall notify all proper persons in interest of the date, time and place of the hearing.

Subd. 4. The notice shall in all cases be served as follows:

(a) By publication in the county in which the petition is filed once in each of three successive weeks, in a newspaper designated by the court; and

Changes or additions indicated by underline deletions by ~~strikeout~~

(b) Upon all persons in interest by ordinary mail.

Subd. 5. The court, if satisfied by the evidence adduced at a hearing in support of a petition alleging the absentee is missing after being exposed to a specific peril or that an absentee has been absent for four or more consecutive years, shall enter an order establishing as a matter of law the death of the absentee and the date thereof. The court shall order the distribution of the absentee's property to the persons and in the manner prescribed in section 16.

Subd. 6. Upon a hearing brought pursuant to subdivision 1, clause (c), the court shall have full power to make orders appropriate to conserve the absentee's property or business or to protect the rights of the persons in interest.

Sec. 13. Minnesota Statutes 1971, Chapter 576, is amended by adding a section to read:

[576.143] DEGREE OF BURDEN OF PROOF. The burden of proof is on the party bringing the action to declare the absentee dead. If there is a showing that the absentee was exposed to a specific peril at the time of his disappearance the burden of proof shall be by a fair preponderance of the evidence. If the absentee was in no unusual danger or peril at the time of his disappearance, the burden of proof shall be by clear and convincing evidence.

Sec. 14. Minnesota Statutes 1971, Chapter 576, is amended by adding a section to read:

[576.144] DISSOLUTION OF MARRIAGE. If the court finds the absentee dead in accordance with section 12, the marriage between the absentee and his spouse is dissolved. The court shall enter the conclusion of law dissolving the marriage on the order which establishes the death of the absentee as a matter of law.

Sec. 15. Minnesota Statutes 1971, Section 576.15, is amended to read:

576.15 COMPENSATION OF RECEIVER; TITLE OF ABSENTEE LOST AFTER FOUR YEARS. The receiver shall be allowed such compensation and disbursements as the court orders, to be paid out of the property or proceeds. If, within ~~ten-four~~ years after the date of the disappearance or absconding, as found and recorded by the court, the absentee appears, and has not been declared dead under section 12, or an administrator, executor, assignee in insolvency, or trustee in bankruptcy of the absentee is appointed, the receiver shall account for, deliver, and pay over to him the remainder of the property. If the absentee does not appear and claim the property within ~~ten-four~~ years, all his right, title, and interest in the property, real or personal, or the proceeds thereof, shall cease, and no action shall be brought by him on account thereof.

Changes or additions indicated by underline deletions by ~~strikeout~~

If the absentee is declared dead pursuant to section 12 and appears before the expiration of four years, he shall have no right, title and interest in the property, real or personal, or the proceeds thereof.

Sec. 16. Minnesota Statutes 1971, Section 576.16, is amended to read:

576.16 DISTRIBUTION OF BALANCE OF PROPERTY. If, at the expiration of ~~ten-four~~ years, the property has not been accounted for, delivered or paid over under section 576.15 or under section 12 of this act, the court shall order the distribution of the remainder to the persons to whom, and in the shares and proportions in which, it would have been distributed if the absentee had died intestate within the state on the day ~~ten-four~~ years after the date of the disappearance or absconding, as found and recorded by the court.

If the receiver is not appointed within ~~nine-three~~ years after the date found by the court under section 576.08, the time limited for accounting for, or fixed for distributing, the property or its proceeds, or for barring actions relative thereto, shall be one year after the date of the appointment of the receiver instead of the ~~ten-four~~ years provided in sections 576.14 and 576.15.

The provisions of sections 576.04 to 576.16 shall not be construed as exclusive, but as providing additional and cumulative remedies.

Approved April 10, 1974.

CHAPTER 448—H.F.No.3143

An act relating to municipalities; authorizing the appropriation of money for advertising in certain cities; amending Minnesota Statutes, 1973 Supplement, Section 465.56, Subdivision 1.

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

Section 1. Minnesota Statutes, 1973 Supplement, Section 465.56, Subdivision 1, is amended to read:

465.56 MUNICIPALITIES; ADVERTISING APPROPRIATION. Subdivision 1. The governing body of any statutory city, or home rule charter city of the fourth class may ; ~~as hereinafter provided, annually levy a tax of not to exceed one mill on all the taxable property within such municipality but in no event shall more than \$2,000 be raised in any one year-annually appropriate money~~ for the purpose of advertising the municipality and its resources and advantages. ~~Such tax shall be levied in the same manner and at the same time as taxes for other municipal purposes are levied, and shall be collected in the same man-~~

Changes or additions indicated by underline deletions by ~~strikeout~~