

- 3 **Minnesota QTIP election.** Allows a Minnesota Qualified Terminable Interest Property (QTIP) election for calendar year 2010, if the estate is not required to file a federal estate tax return. The QTIP election must not reduce the taxable Minnesota estate below \$3.5 million (the federal estate tax exemption amount for calendar year 2009).

Background. Present law does not allow a QTIP election for Minnesota estate tax purposes unless the election is also made for federal estate tax purposes. During a period when no federal estate tax applies, estates would not be able to make a QTIP election for Minnesota estate tax purposes because they would be unable to make a federal election. This section restores the authority to make a QTIP election during such a period. But the election cannot reduce the taxable estate below the old federal exemption amount. This will prevent the use of the Minnesota QTIP election to reduce Minnesota tax on the value of the estate between \$1 million (the Minnesota exemption amount) and \$3.5 million (the old federal exemption amount).

A QTIP election allows the trustee or personal representative to treat a portion of the trust or the estate as qualifying for the marital deduction, even though the surviving spouse only has an income interest in the property and does not have a power of appointment over the property. QTIPs are typically used in situations where the decedent wants to provide income and support to a surviving spouse during the surviving spouse's life, but also wants to ensure that the corpus or principal goes to the heirs the decedent designated (usually children from an earlier marriage). In other words, the decedent does not want to allow the surviving spouse to change who receives the property, for example, by disinheriting the decedent's children. The QTIP election allows deferral of the estate tax on the QTIP amount until the death of the surviving spouse.

- 4 **Regulated investment company.** Specifies that certain capital gains distributions may be short-term or long-term.

- 5 **Definitions.** Provides a number of new definitions used throughout the bill.

- 6 **Parent barred from inheriting in certain circumstances.** Provides that a parent may not inherit from a child if the parental rights were terminated, or if the child died before reaching age 18, there was clear and convincing evidence that immediately prior to the child's death that the parent's rights could have been terminated under law on the basis of nonsupport, abandonment, abuse, neglect, or other action or inaction of the parent toward the child.

This section replaces existing language related to determination of a parent-child relationship for purposes of intestate succession.

- 7 **Effect of parent-child relationship.** Except where special provisions related to adoption exist, provides that a parent is entitled to inherit from a child, or a child from a parent as permitted by law.

- 8 **Genetic parents.** Provides that the genetic parents' marital status does not affect the parent-child relationship for purposes of succession.

- 9 **Adoption.** Provides that a parent-child relationship exists between an adopted child and the adopting parents for purposes of intestate succession. Standards are provided if an adoption was in process at the time of an adoptive parent's death.

- 10 Adoption; genetic parents.** Provides that there is no parent-child relationship for purposes of intestate succession between the genetic parents of a child who has been adopted, except in cases of step-parent adoption, adoption by the relative of a genetic parent, adoption after both genetic parents have died, or if a child is subsequently adopted by new parents after having established a parent-child relationship in an assisted reproduction process.
- 11 Assisted reproduction.** Provides that a parent-child relationship does not exist for purposes of intestate succession between the child of assisted reproduction and a third-party donor. However, a parent-child relationship does exist between a child of assisted reproduction and a birth mother, and the husband of a birth mother if the husband provided sperm.
This section also provides certain presumptions related to the contents of an official birth record, and presumptions related to the marital status of the child's birth mother. Provisions are also included related when a divorce occurs prior to placement of eggs, sperm, or embryo, and in the event consent is withdrawn.
A parent-child relationship would not exist if the child was not in gestation at the time of death of a person party to the assisted reproduction process.
- 12 Gestational agreements.** Provides that the provisions of chapter 524 do not affect existing laws related to gestational agreements.
- 13 Equitable adoption.** Provides that the provisions of chapter 524 do not affect the doctrine of equitable adoption.
- 14 Construction of formula clauses in estate planning documents.** Provides a default rule of construction for formula clauses and related provisions of various estate planning documents that refer to provisions or terms of the federal estate tax. This rule of construction applies only to documents if the:
- Decedent died during calendar year 2010; and
 - Federal estate tax was not in effect (e.g., the rule would not apply to a period if Congress reenacts the federal estate tax for all or part of calendar year 2010).

This rule of construction provides that – unless the document indicates a contrary intent – the references to the federal estate tax or estate tax terms refer to the federal tax in effect on December 31, 2009. The section authorizes the personal representative, trustee, or other interested person to bring a proceeding to determine the intent. These proceedings must be brought by December 31, 2011.

Background. This provision is intended to address situations where decedents and their estate planners did not update formula clauses of wills and trusts to reflect the temporary sunset of the federal estate tax during calendar year 2010. (Most observers did not expect Congress to allow the estate tax to temporarily lapse and, thus, many of these documents were not redrafted to address that situation.) Because planners often structure estate plans to fully utilize the federal exemption amount on the death of the first spouse, this can or will cause unintended results. In particular, it could cause under a literal reading of these clauses all of the estate to pass into a “by-pass trust” or “credit shelter trust” with the result that no assets will pass to the marital trust for the surviving spouse. This would occur if the clause, for example, provides that the maximum amount that avoids federal tax is to be put into one of these trusts. This provision effectively assumes that most decedents intended to put the

amount of the 2009 federal exemption amount (\$3.5 million) in one of these trusts, rather than the entire estate.

The provision would not apply to documents that anticipated the sunset of the federal tax or that otherwise indicate a contrary intent. In addition, interested parties could bring court proceedings to show that the decedent intended a different result in executing the relevant documents.

- 15** **Emergency and temporary conservator.** Provides standards for the appointment of an emergency and temporary conservator.
A court would only be permitted to appoint a temporary conservator on petition of an interested person, and the conservatorship would only last 60 days. An emergency and temporary conservator could be appointed without notice to the respondent in certain circumstances. The court would be permitted to appoint a temporary substitute conservator, if necessary.
- 16** **Revisor's instruction.** Provides a technical instruction to the revisor related to coding in the Minnesota statutes.
- 17** **Effective date.** The provisions relating to regulated investment companies (section 4) and the emergency and temporary conservator provisions (section 15) are effective the day following final enactment. The rest of the provisions (sections 5 to 13) related to intestate succession are effective August 1, 2010.