

**BILL**

1           **SECTION 114.** 854.08 (6) (a) 1. of the statutes is renumbered 854.08 (6) (ar) and  
2 amended to read:

3           854.08 (6) (ar) ~~The~~ If the person who executed the governing instrument, either  
4 expressly or as construed from extrinsic evidence, shows the had an intent that a  
5 contrary to any provision in this section, then that provision is inapplicable to the  
6 transfer fail under the particular circumstances. Extrinsic evidence may be used to  
7 construe the intent.

8           **SECTION 115.** 854.09 (3) of the statutes is amended to read:

9           854.09 (3) If the transferee fails to survive the person who executed the  
10 governing instrument, ~~the gift is treated as a full or partial satisfaction of the~~  
11 transfer and his or her issue take a substitute transfer under intestacy or under a  
12 governing instrument, the issue receive the same transfer that the named transferee  
13 would have received had the transferee survived, unless the transferor has declared  
14 otherwise in a document, either expressly or as construed from extrinsic evidence.

15           **SECTION 116.** 854.11 (4) of the statutes is amended to read:

16           854.11 (4) CONTRARY INTENT. ~~This section does not apply if there is a finding of~~  
17 contrary intent of If the person who executed the governing instrument had an intent  
18 contrary to any provision in this section, then that provision is inapplicable to the  
19 transfer. Extrinsic evidence may be used to construe that the intent.

20           **SECTION 117.** 854.12 of the statutes is created to read:

21           **854.12 Debt to transferor.** (1) HEIR UNDER INTESTACY. (a) If an heir owes a  
22 debt to the decedent, the amount of the indebtedness shall be offset against the  
23 intestate share of the debtor heir.

24           (b) In contesting an offset under par. (a), the debtor heir shall have the benefit  
25 of any defense that would be available to the debtor heir in a direct proceeding by the

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1 personal representative for the recovery of the debt, except that the debtor heir may  
2 not defend on the basis that the debt was discharged in bankruptcy or on the basis  
3 that the relevant statute of limitations has expired. If the debtor fails to survive the  
4 decedent, the court may not include the debt in computing any intestate shares of the  
5 debtor's issue.

6 (2) TRANSFEREE UNDER REVOCABLE GOVERNING INSTRUMENT. (a) Subject to par.  
7 (c), if a transferee under a revocable governing instrument survives the transferor  
8 and is indebted to the transferor, the amount of the indebtedness shall be treated as  
9 an offset against the property to which the debtor transferee is entitled. If multiple  
10 revocable governing instruments transfer property to the debtor, the debt shall be  
11 equitably allocated against the various instruments.

12 (b) Subject to par. (c), in contesting an offset under par. (a), the debtor shall have  
13 the benefit of any defense that would be available to the transferee in a direct  
14 proceeding for the recovery of the debt, except that the transferee may not defend on  
15 the basis that the debt was discharged in bankruptcy, unless that discharge occurred  
16 before the execution of the governing instrument, or on the basis that the relevant  
17 statute of limitations has expired. If the transferee fails to survive the decedent, the  
18 debt may not be included in computing the entitlement of alternate beneficiaries.

19 (c) If the person who executed the governing instrument had an intent contrary  
20 to any provision in this subsection, then that provision is not applicable to the  
21 transfer. Extrinsic evidence may be used to construe the intent.

22 (3) PROPERTY NOT DISTRIBUTED BECAUSE OF OFFSET. The property not distributed  
23 to the debtor becomes part of the residue of the entity that holds the debt. If the debt  
24 is not held by an entity, then the property not distributed to the debtor becomes part  
25 of the residue of the decedent's probate estate.

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1           **SECTION 118.** 854.13 (title) of the statutes is amended to read:

2           **854.13** (title) **Disclaimer of transfers at death.**

3           **SECTION 119.** 854.13 (2) (a) of the statutes is renumbered 854.13 (2) (a) 2.

4           **SECTION 120.** 854.13 (2) (a) 1. of the statutes is created to read:

5           854.13 (2) (a) 1. In this paragraph, “person” includes a person who is unborn  
6 or whose identity is unascertained.

7           **SECTION 121.** 854.13 (2) (gm) of the statutes is created to read:

8           854.13 (2) (gm) *Disclaimer by trustee.* The trustee of a trust named as a  
9 recipient of property under a governing instrument may disclaim that property on  
10 behalf of the trust if the trust authorizes disclaimer by the trustee. If the trust does  
11 not authorize disclaimer by the trustee, the trustee’s power to disclaim is subject to  
12 the approval of the court.

13           **SECTION 122.** 854.13 (2) (h) of the statutes is amended to read:

14           854.13 (2) (h) *After death.* A person’s right to disclaim survives the person’s  
15 death and may be exercised by the person’s personal representative or special  
16 administrator upon receiving approval from the court having jurisdiction of the  
17 person’s estate after hearing upon notice to all persons interested in the disclaimed  
18 property, if the personal representative or special administrator has not taken any  
19 action which that would bar the right to disclaim under sub. ~~(11)~~ (11g).

20           **SECTION 123.** 854.13 (2) (i) of the statutes is created to read:

21           854.13 (2) (i) *Disclaimer of inter vivos transfers.* A person who is a recipient  
22 of property under an inter vivos governing instrument, as defined in s. 700.27 (1) (c),  
23 may disclaim the property as provided in s. 700.27.

24           **SECTION 124.** 854.13 (4) (c) of the statutes is amended to read:

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1           854.13 (4) (c) *Future right to income or profits principal.* Notwithstanding  
2       pars. (a) and (b), an instrument disclaiming the future right to receive discretionary  
3       or mandatory distributions of income or profits principal from any source may be  
4       executed and delivered at any time.

5           **SECTION 125.** 854.13 (7) (title) of the statutes is amended to read:

6           854.13 (7) (title) ~~DEVOLUTION IN GENERAL.~~

7           **SECTION 126.** 854.13 (7) (a) of the statutes is amended to read:

8           854.13 (7) (a) *In general.* ~~Unless the transferor of the property or donee of the~~  
9       ~~power has otherwise provided~~ Subject to pars. (bm) and (c) and subs. (8), (9), and (10),  
10       unless the governing instrument provides otherwise, either expressly or as  
11       construed from extrinsic evidence, the disclaimed property devolves as if the  
12       ~~disclaimant had died before the decedent or before the effective date of the transfer~~  
13       ~~under the governing instrument.~~ If the disclaimed interest is a remainder  
14       contingent on surviving to the time of distribution, the disclaimed interest passes as  
15       if the disclaimant had died immediately before the time for distribution. If the  
16       disclaimant is an appointee under a power exercised by a governing instrument, the  
17       disclaimed property devolves as if the disclaimant had died before the effective date  
18       of the exercise of the power. If the disclaimant is a taker in default under a power  
19       created by a governing instrument, the disclaimed property devolves as if the  
20       disclaimant had predeceased the donee of the power. ~~This paragraph is subject to~~  
21       ~~subs. (8), (9) and (10).~~

22           **SECTION 127.** 854.13 (7) (b) of the statutes is repealed.

23           **SECTION 128.** 854.13 (7) (bm) and (c) of the statutes are created to read:

24           854.13 (7) (bm) *Devolution to issue of the disclaimants.* Unless the governing  
25       instrument provides otherwise, either expressly or as construed from extrinsic

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1 evidence, if, by law or under the governing instrument, the issue of the disclaimant  
2 would share in the disclaimed interest by any method of representation had the  
3 disclaimant died before the time the disclaimed interest would have taken effect in  
4 possession or enjoyment, the disclaimed interest passes only to the issue of the  
5 disclaimant who survive when the disclaimed interest takes effect in possession or  
6 enjoyment.

7 (c) *Disclaimer of a devisable future interest.* 1. In this paragraph, “devisable  
8 future interest” is a future interest that can be passed under the will of the person  
9 who holds the future interest.

10 2. If the disclaimed interest is a devisable future interest under the law  
11 governing the transfer, then the disclaimed interest devolves as if it were a  
12 nondevisable future interest.

13 **SECTION 129.** 854.13 (8) of the statutes is amended to read:

14 854.13 (8) DEVOLUTION OF DISCLAIMED INTEREST IN JOINT TENANCY. ~~A~~ Unless the  
15 decedent provided otherwise in a governing instrument, either expressly or as  
16 construed from extrinsic evidence, a disclaimed interest in a joint tenancy passes to  
17 the decedent’s probate estate.

18 **SECTION 130.** 854.13 (9) of the statutes is amended to read:

19 854.13 (9) DEVOLUTION OF DISCLAIMED INTEREST IN SURVIVORSHIP MARITAL  
20 PROPERTY. ~~A~~ Unless the decedent provided otherwise in a governing instrument,  
21 either expressly or as construed from extrinsic evidence, a disclaimed interest in  
22 survivorship marital property passes to the decedent’s probate estate.

23 **SECTION 131.** 854.13 (10) (title) of the statutes is repealed and recreated to  
24 read:

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1           854.13 (10) (title) ACCELERATION OF SUBSEQUENT INTERESTS WHEN PRECEDING  
2 INTEREST IS DISCLAIMED.

3           **SECTION 132.** 854.13 (10) of the statutes is renumbered 854.13 (10) (a) and  
4 amended to read:

5           854.13 (10) (a) *Subsequent interest not held by disclaimant.* Unless the  
6 ~~governing instrument creating the future interest manifests a contrary intent~~  
7 ~~provides otherwise~~, either expressly or as construed from extrinsic evidence, ~~a future~~  
8 ~~upon the disclaimer of a preceding interest, a subsequent interest not held by the~~  
9 ~~disclaimant and~~ limited to take effect in possession or enjoyment after the  
10 termination of the interest ~~which that is disclaimed takes~~ accelerates to take effect  
11 as if the disclaimant had died immediately before the ~~effective date of the governing~~  
12 ~~instrument~~ time when the disclaimed interest would have taken effect in possession  
13 or enjoyment or, if the disclaimant is an appointee under a power exercised by a  
14 ~~governing instrument~~ power of appointment, as if the disclaimant had died before  
15 the effective date of the exercise of the power.

16           **SECTION 133.** 854.13 (10) (b) of the statutes is created to read:

17           854.13 (10) (b) *Subsequent interest held by the disclaimant.* Unless the  
18 governing instrument provides otherwise, either expressly or as construed from  
19 extrinsic evidence, upon the disclaimer of a preceding interest, a subsequent interest  
20 held by the disclaimant does not accelerate.

21           **SECTION 134.** 854.13 (11) (title) of the statutes is repealed.

22           **SECTION 135.** 854.13 (11) (a) of the statutes is renumbered 854.13 (11g), and  
23 854.13 (11g) (intro.) and (a), as renumbered, are amended to read:

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1           854.13 (11g) ~~ACTIONS THAT BAR DISCLAIMER BAR.~~ (intro.) ~~A~~ Bars to a person's  
2 right to disclaim property is ~~barred by~~ include, but are not limited to, any of the  
3 following:

4           (a) The person's assignment, conveyance, encumbrance, pledge, or transfer of  
5 the property or a contract ~~therefor~~ for the assignment, conveyance, encumbrance,  
6 pledge, or transfer of the property.

7           **SECTION 136.** 854.13 (11) (b) of the statutes is renumbered 854.13 (11p), and  
8 854.13 (11p) (title), as renumbered, is amended to read:

9           854.13 (11p) (title) ~~EFFECT UPON SUCCESSORS IN INTEREST OF DISCLAIMER OR~~  
10 WAIVER.

11           **SECTION 137.** 854.13 (12) (b) of the statutes is amended to read:

12           854.13 (12) (b) Any disclaimer that meets the requirements of section 2518 of  
13 the Internal Revenue Code, or the requirements of any other federal law relating to  
14 disclaimers, constitutes an effective disclaimer under this section or s. 700.27.

15           **SECTION 138.** 854.14 (1) of the statutes is repealed.

16           **SECTION 139.** 854.14 (3m) of the statutes is created to read:

17           854.14 (3m) **ADDITIONAL EFFECTS IF DEATH CAUSED BY SPOUSE.** (a) *Definitions.*

18           In this subsection:

19           1. "Owner" means a person appearing on the records of the policy issuer as the  
20 person having the ownership interest, or means the insured if no person other than  
21 the insured appears on those records as a person having that interest. In the case  
22 of group insurance, the "owner" means the holder of each individual certificate of  
23 coverage under the group plan and does not include the person who contracted with  
24 the policy issuer on behalf of the group, regardless of whether that person is listed  
25 as the owner on the contract.

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1           2. “Ownership interest” means the rights of an owner under a policy.

2           3. “Policy” means an insurance policy insuring the life of a spouse and providing  
3 for payment of death benefits at the spouse’s death.

4           4. “Proceeds” means the death benefit from a policy and all other economic  
5 benefits from it, whether they accrue or become payable as a result of the death of  
6 an insured person or upon the occurrence or nonoccurrence of another event.

7           (b) *Life insurance.* 1. Except as provided in sub. (6), if a noninsured spouse  
8 unlawfully and intentionally kills an insured spouse, the surviving spouse’s  
9 ownership interest in a policy that designates the decedent spouse as the owner and  
10 insured, or in the proceeds of such a policy, is limited to a dollar amount equal to  
11 one-half of the marital property interest in the interpolated terminal reserve and in  
12 the unused portion of the term premium of the policy on the date of death of the  
13 decedent spouse. All other rights of the surviving spouse in the ownership interest  
14 or proceeds of the policy, other than the marital property interest described in this  
15 subsection, terminate at the decedent spouse’s death.

16           2. Notwithstanding s. 766.61 (7) and except as provided in sub. (6), if an insured  
17 spouse unlawfully and intentionally kills a noninsured spouse, the ownership  
18 interest at death of the decedent spouse in any policy with a marital property  
19 component that designates the surviving spouse as the owner and insured is a  
20 fractional interest equal to one-half of the portion of the policy that was marital  
21 property immediately before the death of the decedent spouse.

22           (c) *Deferred employment benefits.* Notwithstanding s. 766.62 (5) and except as  
23 provided in sub. (6), if the employee spouse unlawfully and intentionally kills the  
24 nonemployee spouse, the ownership interest at death of the decedent spouse in any  
25 deferred employment benefit, or in assets in an individual retirement account that

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1 are traceable to the rollover of a deferred employment benefit plan, that has a marital  
2 property component and that is attributable to the employment of the surviving  
3 spouse is equal to one-half of the portion of the benefit or assets that was marital  
4 property immediately before the death of the decedent spouse.

5 (d) *Deferred marital property.* Except as provided in sub. (6), if the surviving  
6 spouse unlawfully and intentionally kills the decedent spouse, the estate of the  
7 decedent shall have the right to elect no more than 50 percent of the augmented  
8 deferred marital property estate, as determined under s. 861.02 (2), as though the  
9 decedent spouse were the survivor and the surviving spouse were the decedent. The  
10 court shall construe the provisions of ss. 861.03 to 861.11 as necessary to achieve the  
11 intent of this paragraph.

12 **SECTION 140.** 854.14 (5) (a) of the statutes is amended to read:

13 854.14 (5) (a) A final judgment establishing criminal accountability for the  
14 unlawful and intentional killing of the decedent conclusively establishes the  
15 convicted individual as the decedent's killer for purposes of this section and s. 861.02  
16 (8).

17 **SECTION 141.** 854.14 (5) (b) of the statutes is amended to read:

18 854.14 (5) (b) A final adjudication of delinquency on the basis of an unlawful  
19 and intentional killing of the decedent conclusively establishes the adjudicated  
20 individual as the decedent's killer for purposes of this section and s. 861.02 (8).

21 **SECTION 142.** 854.14 (5) (c) of the statutes is amended to read:

22 854.14 (5) (c) In the absence of a judgment establishing criminal accountability  
23 under par. (a) or an adjudication of delinquency under par. (b), the court, upon the  
24 petition of an interested person, shall determine whether, ~~under~~ based on the

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1 preponderance of the evidence standard, the killing of the decedent was unlawful  
2 and intentional for purposes of this section and ~~s. 861.02 (8)~~.

3 **SECTION 143.** 854.15 (1) (e) of the statutes is renumbered 854.01 (3) and  
4 amended to read:

5 854.01 (3) “Revocable~~,”~~” with respect to a disposition, provision, or  
6 nomination, means one under which the decedent, at the time of ~~the divorce,~~  
7 ~~annulment or similar event referred to~~, was alone empowered, by law or under the  
8 governing instrument, to ~~cancel the designation in favor of the former spouse or~~  
9 ~~former spouse’s relative~~, change or revoke, regardless of whether or not the decedent  
10 was then empowered to designate himself or herself in place of ~~the a former spouse~~  
11 ~~or the former spouse’s relative designee~~, and regardless of whether or not the  
12 decedent then had the capacity to exercise the power.

13 **SECTION 144.** 854.15 (5) (intro.) of the statutes is renumbered 854.15 (5) (am)  
14 (intro.).

15 **SECTION 145.** 854.15 (5) (a), (b), (c), (d) and (e) of the statutes are renumbered  
16 854.15 (5) (am) 1., 2., 3., 4. and 5.

17 **SECTION 146.** 854.15 (5) (f) of the statutes is renumbered 854.15 (5) (bm) and  
18 amended to read:

19 854.15 (5) (bm) ~~There is a finding of the decedent’s contrary~~ If the transfer is  
20 made under a governing instrument and the person who executed the governing  
21 instrument had an intent contrary to any provision in this section, then that  
22 provision is inapplicable to the transfer. Extrinsic evidence may be used to construe  
23 that the intent.

24 **SECTION 147.** 854.17 of the statutes is amended to read:

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1           **854.17 Classification; ~~how determined~~ Marital property classification;**  
2           **ownership and division of marital property at death.** In ~~chs. 851 to 882,~~  
3           ~~classification~~ Classification of the property of a decedent spouse and surviving  
4           spouse is, and ownership and division of that property at the death of a spouse, are  
5           determined under ch. 766 and s. 861.01.

6           **SECTION 148.** 854.18 (1) (a) (intro.) of the statutes is amended to read:

7           854.18 (1) (a) (intro.) Except as provided in sub. (3) or in connection with the  
8           ~~share of the surviving spouse who elects to take an elective share in deferred marital~~  
9           ~~property~~ deferred marital property elective share amount of a surviving spouse who  
10           elects under s. 861.02, ~~a~~ the share of a surviving spouse who takes under s. 853.11  
11           ~~(2) 853.12, or a~~ the share of a surviving child who takes under s. 853.25, shares of  
12           distributees abate, without any preference or priority as between real and personal  
13           property, in the following order:

14           **SECTION 149.** 854.18 (3) of the statutes is amended to read:

15           854.18 (3) If the governing instrument expresses an order of abatement, or if  
16           the ~~decedent's~~ transferor's estate plan or the ~~express or implied~~ purpose of the  
17           transfer, as expressed, implied, or construed through extrinsic evidence, would be  
18           defeated by the order of abatement under sub. (1), the shares of the distributees  
19           abate as necessary to give effect to the intention of the transferor.

20           **SECTION 150.** 854.20 (1) of the statutes is renumbered 854.20 (1) (a) and  
21           amended to read:

22           854.20 (1) (a) Subject to par. (b) and sub. (4) (5), a legally adopted person is  
23           treated as a birth child of the person's adoptive parents and the adoptive parents are  
24           treated as the birth parents of the adopted person for purposes of ~~intestate succession~~  
25           by transfers at death to, through, and from the adopted person and for purposes of

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1 any statute or other rule conferring rights upon children, issue, or relatives in  
2 connection with the law of intestate succession or governing instruments.

3 **SECTION 151.** 854.20 (2) (intro.) of the statutes is renumbered 854.20 (2) (am)  
4 (intro.) and amended to read:

5 854.20 (2) (am) (intro.) Subject to sub. (4) (5), a legally adopted person ceases  
6 to be treated as a child of the person's birth parents and the birth parents cease to  
7 be treated as the parents of the child for the same purposes as ~~under~~ specified in sub.  
8 (1) (a), except:

9 **SECTION 152.** 854.20 (2) (a) of the statutes is renumbered 854.20 (2) (am) 1. and  
10 amended to read:

11 854.20 (2) (am) 1. ~~If a birth parent marries or remarries and the parent-child~~  
12 relationship between the child is adopted by the stepparent, and one birth parent is  
13 replaced by adoption, but the relationship to the other birth parent is not replaced,  
14 then for all purposes the child is continues to be treated as the child of the birth  
15 parent whose spouse adopted the child relationship was not replaced.

16 **SECTION 153.** 854.20 (2) (am) 2. b. and c. of the statutes are created to read:

17 854.20 (2) (am) 2. b. Subd. 2. a. applies only if the adopted person was a minor  
18 at the time of adoption or if the adoptive parent raised the adopted person in a  
19 parent-like relationship beginning on or before the child's 15th birthday and lasting  
20 for a substantial period or until adulthood.

21 c. Subdivision 2. a. does not apply if the parental rights of the deceased birth  
22 parent had been terminated.

23 **SECTION 154.** 854.20 (2) (b) of the statutes is renumbered 854.20 (2) (am) 2. a.  
24 and amended to read:

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1           854.20 (2) (am) 2. a. If Subject to subd. 2. b. and c., if a birth parent of a marital  
2 child born to married parents dies and the other birth parent subsequently remarries  
3 and the child is adopted by the stepparent, the child is continues to be treated as the  
4 child of the deceased birth parent for purposes of inheritance transfers at death  
5 through that parent and for purposes of any statute or other rule conferring rights  
6 upon children, issue or relatives of that parent under the law of intestate succession  
7 or governing instruments.

8           **SECTION 155.** 854.20 (3) of the statutes is renumbered 854.20 (2) (bm) and  
9 amended to read:

10           854.20 (2) (bm) ~~Sequential adoption.~~ Subject to sub. (4) (5), if an adoptive  
11 ~~parent dies or his or her parental rights are terminated in a legal proceeding and the~~  
12 ~~adopted child is subsequently adopted by another person, the former adoptive parent~~  
13 ~~is considered to be a birth parent for purposes of this section subsection.~~

14           **SECTION 156.** 854.20 (4) of the statutes is renumbered 854.20 (1) (b), and 854.20  
15 (1) (b) (intro.) and 3., as renumbered, are amended to read:

16           854.20 (1) (b) ~~Applicability.~~ (intro.) Subsections (1), (2) and (3) apply Subject  
17 to sub. (5), par. (a) applies only if at least one of the following applies:

18           3. The adoptive parent raised the adopted person was raised as a member of  
19 the household by the adoptive parent from in a parent-like relationship beginning  
20 on or before the child's 15th birthday or before and lasting for a substantial period  
21 or until adulthood.

22           **SECTION 157.** 854.20 (5) of the statutes is amended to read:

23           854.20 (5) ~~CONTRARY INTENT. This section does not apply if~~ If the transfer is  
24 made under a governing instrument and there is a finding of contrary intent of the  
25 person who executed the governing instrument had an intent contrary to any

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1 provision in this section, then that provision is not applicable to the transfer.

2 Extrinsic evidence may be used to construe that the intent.

3 **SECTION 158.** 854.21 (1) (a) (intro.) of the statutes is renumbered 854.21 (1) (a)  
4 and amended to read:

5 854.21 (1) (a) Except as provided in ~~par. (b) or~~ sub. (7), a gift of property by a  
6 governing instrument to a class of persons described as “issue,” “lawful issue,”  
7 “children,” “grandchildren,” “descendants,” “heirs,” “heirs of the body,” “next of kin,”  
8 “distributees,” or the like includes a person adopted by a person whose birth child  
9 would be a member of the class, and issue of the adopted person, if the conditions for  
10 membership in the class are otherwise satisfied and ~~any of the following applies:~~ at  
11 least one of the criteria under s. 854.20 (1) (b) 1., 2., and 3. is satisfied.

12 **SECTION 159.** 854.21 (1) (a) 1., 2. and 3. of the statutes are repealed.

13 **SECTION 160.** 854.21 (1) (b) of the statutes is amended to read:

14 854.21 (1) (b) Except as provided in sub. (7), a gift ~~under par. (a) of property by~~  
15 a governing instrument to a class of persons described as “issue,” “lawful issue,”  
16 “children,” “grandchildren,” “descendants,” “heirs,” “heirs of the body,” “next of kin,”  
17 “distributees,” or the like excludes a birth child and his or her issue otherwise within  
18 the class if the birth child has been adopted and would cease to be treated as a child  
19 of the birth parent under s. 854.20 (2).

20 **SECTION 161.** 854.21 (7) of the statutes is amended to read:

21 854.21 (7) CONTRARY INTENT. ~~This section does not apply if~~ If the transfer is  
22 made under a governing instrument and ~~there is a finding of contrary intent of the~~  
23 person who executed the governing instrument had an intent contrary to any  
24 provision in this section, then that provision is inapplicable to the transfer. Extrinsic  
25 evidence may be used to construe that the intent.

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1           **SECTION 162.** 854.22 (4) of the statutes is amended to read:

2           854.22 (4) CONTRARY INTENT. ~~This section does not apply if~~ If the transfer is  
3           made under a governing instrument and ~~there is a finding of contrary intent of the~~  
4           person who executed the governing instrument had an intent contrary to any  
5           provision in this section, then that provision is inapplicable to the transfer. Extrinsic  
6           evidence may be used to construe ~~that~~ the intent.

7           **SECTION 163.** 856.05 (5) of the statutes is amended to read:

8           856.05 (5) APPLICABILITY OF SECTION. This section applies to wills, ~~codicils,~~  
9           ~~documents incorporated by reference under s. 853.32 (1) or (2)~~ and information  
10          needed for proof of a ~~lost~~ missing will under s. 856.17.

11          **SECTION 164.** 856.15 (1) of the statutes is amended to read:

12          856.15 (1) GENERALLY. The court may grant probate of an uncontested will on  
13          the execution in open court by one of the subscribing witnesses of a sworn statement  
14          that the will was executed as required by the statutes and that the testator was of  
15          sound mind, of full age, and not acting under any restraint at the time of the  
16          execution thereof. If an uncontested will contains an attestation clause showing  
17          compliance with the requirements for execution under s. 853.03 or 853.05 or includes  
18          an affidavit in substantially the form under s. 853.04 (1) or (2), the court may grant  
19          probate without any testimony or other evidence.

20          **SECTION 165.** 856.16 of the statutes is repealed and recreated to read:

21          **856.16 Self-proved will.** (1) Unless there is proof of fraud or forgery in  
22          connection with the affidavit, if a will includes an affidavit in substantially the form  
23          under s. 853.04 (1) or (2), all of the following apply:

24               (a) The will is conclusively presumed to have been executed in compliance with  
25               s. 853.03.

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**BILL****SECTION 165**

1 (b) Other requirements related to the valid execution of the will are rebuttably  
2 presumed.

3 (c) A signature affixed to the affidavit is considered a signature affixed to the  
4 will, if necessary to prove the due execution of the will.

5 (2) Admission of a will under s. 856.13 or 856.15 is not dependent on the  
6 existence of a valid affidavit under s. 853.04.

7 **SECTION 166.** 856.17 of the statutes is amended to read:

8 **856.17 Lost Missing will, how proved.** If any will is lost, destroyed by  
9 accident ~~or~~, destroyed without the testator's consent, unavailable but revived under  
10 s. 853.11 (6), or otherwise missing, the court has power to take proof of the execution  
11 and validity of the will and to establish the same. The petition for the probate of the  
12 will shall set forth the provisions ~~thereof~~ of the will.

13 **SECTION 167.** 857.03 (2) of the statutes is renumbered 766.31 (3) (b) 3., and  
14 766.31 (3) (b) 3. (intro.) and a., as renumbered, are amended to read:

15 766.31 (3) (b) 3. (intro.) The surviving spouse and a distributee who is a  
16 successor in interest to all or part of the decedent's one-half interest in marital  
17 property may petition the court to approve an exchange of interests in the marital  
18 property authorized under subd. 1. or 2., but court approval of the exchange is not  
19 required for the agreement under subd. 1. or 2. to be effective. If the court approves  
20 the exchange, the ~~personal representative~~ surviving spouse and the distributee shall  
21 exchange their respective interests in 2 or more items of marital property and  
22 distribute the items in a manner to conform with the exchange. The exchange shall:

23 a. Occur before the final distribution of the estate assets under the governing  
24 instrument;

25 **SECTION 168.** 857.03 (2m) of the statutes is created to read:

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1           857.03 (2m) The surviving spouse and the personal representative may  
2 petition the court to approve an exchange of interests in marital property as provided  
3 in s. 766.31 (3) (b) 3.

4           **SECTION 169.** 859.01 of the statutes is amended to read:

5           **859.01 Time for filing claims.** When an application for administration is  
6 filed, the court, or the probate registrar under informal administration proceedings,  
7 shall by order set a date as the deadline for filing a claim against the decedent's  
8 estate. The date shall be not less than 3 nor more than 4 months from the date of the  
9 order. If a claim is not filed by the deadline, the consequences provided in s. 859.02  
10 apply.

11           **SECTION 170.** 859.02 (2m) of the statutes is created to read:

12           859.02 (2m) (a) A claim based on a tort is subject to s. 859.45.

13           (b) A claim of a creditor without notice is subject to s. 859.48.

14           **SECTION 171.** 861.01 (3) of the statutes is renumbered 766.31 (7m) and  
15 amended to read:

16           **766.31 (7m) PERSONAL INJURY DAMAGES; LOST EARNINGS.** To the extent that  
17 marital property includes damages for loss of future income arising from a personal  
18 injury claim of the a surviving spouse, the surviving spouse is entitled to receive as  
19 individual property that portion of the award that represents an income substitute  
20 after the death of the other spouse.

21           **SECTION 172.** 861.01 (3m) of the statutes is created to read:

22           **861.01 (3m) PERSONAL INJURY DAMAGES; LOST EARNINGS.** Section 766.31 (7m)  
23 determines the rights of a surviving spouse to that part of a personal injury claim  
24 that represents future lost earnings of the surviving spouse.

25           **SECTION 173.** 861.01 (4) of the statutes is created to read:



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1 irrespective of where the property was acquired, where the property was located at  
2 the time of a relevant transfer, or where the property is currently located, including  
3 real property located in another jurisdiction.

4 **SECTION 179.** 861.02 (6) of the statutes is amended to read:

5 861.02 (6) WAIVER. Waiver of the deferred marital property elective share  
6 amount is governed by s. 861.10.

7 **SECTION 180.** 861.02 (7) (b) of the statutes is amended to read:

8 861.02 (7) (b) If a decedent who is not domiciled in this state owns real property  
9 in this state, the ~~right rights~~ of the surviving spouse ~~to take an elective share~~ in that  
10 property is are governed by s. 861.20.

11 **SECTION 181.** 861.02 (8) of the statutes is repealed and recreated to read:

12 861.02 (8) EFFECT IF DEATH CAUSED BY SPOUSE. Section 854.14 (2) (c) and (3m)  
13 (d) applies to election of deferred marital property if the decedent's surviving spouse  
14 unlawfully and intentionally killed the decedent.

15 **SECTION 182.** 861.04 (2) of the statutes is repealed.

16 **SECTION 183.** 861.04 (2m) of the statutes is created to read:

17 861.04 (2m) When the surviving spouse is treated as the decedent under sub.  
18 (1), the decedent is not treated as the surviving spouse for the purposes of s. 861.05  
19 (1) (e) or (2m).

20 **SECTION 184.** 861.05 (1) (c) of the statutes is amended to read:

21 861.05 (1) (c) Transfers of deferred marital property to persons other than the  
22 surviving spouse who did not make the transfer, with the written joinder or written  
23 consent of the surviving that spouse.

24 **SECTION 185.** 861.05 (1) (e) of the statutes is created to read:

**BILL****SECTION 185**

1           861.05 (1) (e) The deferred marital property component of any deferred  
2 employment benefit plan, or of assets in an individual retirement account that are  
3 traceable to the rollover of a deferred employment benefit plan, held by the surviving  
4 spouse that would have terminated under s. 766.62 (5) had it been marital property.

5           **SECTION 186.** 861.05 (2) (title) of the statutes is amended to read:

6           861.05 (2) (title) VALUATION OF DECEDENT'S PROPERTY AND TRANSFERS.

7           **SECTION 187.** 861.05 (2m) of the statutes is created to read:

8           861.05 (2m) VALUATION OF SURVIVING SPOUSE'S PROPERTY AND TRANSFERS. The  
9 surviving spouse's property included in the augmented deferred marital property  
10 estate under s. 861.04 (1) is valued in the same manner as the decedent spouse's  
11 property included in the augmented deferred marital property estate is valued under  
12 sub. (2), subject to the following:

13           (a) The surviving spouse shall be treated as having died after the decedent on  
14 the date of the decedent's death notwithstanding the 120-hour survival requirement  
15 under s. 854.03 (1).

16           (b) Life insurance on the surviving spouse's life shall have the value of the  
17 deferred marital property component of the interpolated terminal reserve and the  
18 unused portion of the term premium of the policy as of the date of the decedent's  
19 death.

20           **SECTION 188.** 861.06 (title) of the statutes is amended to read:

21           **861.06 (title) Satisfaction of deferred marital property elective share**  
22 **amount.**

23           **SECTION 189.** 861.06 (2) (title) of the statutes is amended to read:

24           861.06 (2) (title) INITIAL SATISFACTION OF DEFERRED MARITAL PROPERTY ELECTIVE  
25 SHARE AMOUNT.

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1           **SECTION 190.** 861.06 (2) (b) (intro.) of the statutes is amended to read:

2           861.06 (2) (b) (intro.) All marital, individual, deferred marital, or deferred  
3 individual property, transferred to the surviving spouse, including any beneficial  
4 interest in property transferred in trust:

5           **SECTION 191.** 861.06 (2) (b) 4. a. of the statutes is amended to read:

6           861.06 (2) (b) 4. a. The first \$5,000 of the value of the gifts from the decedent  
7 to the surviving spouse each year. Each gift shall be valued as of the date of the gift.

8           **SECTION 192.** 861.06 (6) of the statutes is created to read:

9           861.06 (6) VALUATION. The value of property used to satisfy the deferred marital  
10 property elective share includes the value of any property transferred outright to the  
11 surviving spouse, the commuted value of any present or future interest in property  
12 transferred to the surviving spouse, and the commuted value of property payable to  
13 the surviving spouse under any trust, life insurance settlement option, annuity  
14 contract, public or private pension, disability compensation, death benefit or  
15 retirement plan, or any similar arrangement.

16           **SECTION 193.** 861.07 (2) (intro.) of the statutes is amended to read:

17           861.07 (2) PERSONS LIABLE. (intro.) The following persons are liable to make  
18 a prorated contribution toward satisfaction of the surviving spouse's deferred  
19 marital property elective share amount:

20           **SECTION 194.** 861.10 (1) of the statutes is amended to read:

21           861.10 (1) RIGHT TO ELECT MAY BE WAIVED. The right to elect a deferred marital  
22 property elective share amount may be waived by the surviving spouse in whole or  
23 in part. The waiver may take place before or after marriage. The waiver shall must  
24 be contained in a marital property agreement that is enforceable under s. 766.58 or

**BILL****SECTION 194**

1 in a signed document filed with a court described in s. 861.08 (1) (a) after the  
2 decedent's death.

3 **SECTION 195.** 861.10 (2) of the statutes is amended to read:

4 861.10 (2) WAIVER OF "ALL RIGHTS"<sub>2</sub> Unless the waiver provides otherwise, a  
5 waiver of "all rights"<sub>2</sub> or equivalent language, in the property or estate of a present  
6 or prospective spouse, or in a complete property settlement entered into because of  
7 separation or divorce, is a waiver of all rights in the deferred marital property  
8 elective share amount.

9 **SECTION 196.** 861.11 (2) (a) (intro.) of the statutes is amended to read:

10 861.11 (2) (a) (intro.) Upon a beneficiary's request for payment, a payer or other  
11 3rd party who has received satisfactory proof of the decedent's death and who has not  
12 received written notice that the surviving spouse or his or her representative intends  
13 to file a petition for the deferred marital property elective share amount or that a  
14 petition for the election has been filed is not liable for any of the following:

15 **SECTION 197.** 861.11 (2) (b) of the statutes is amended to read:

16 861.11 (2) (b) A payer or other 3rd party is liable for payments made or other  
17 actions taken after receipt of written notice of the intent to file a petition for the  
18 elective share amount or written notice that a petition for the elective share amount  
19 has been filed.

20 **SECTION 198.** 861.11 (5) (b) of the statutes is amended to read:

21 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded  
22 a financial institution under ss. 701.19 (11) and 710.05 and chs. 112 and 705 a  
23 financial institution is not liable for having transferred an account included in the  
24 augmented deferred marital property estate under s. 861.03 to a beneficiary  
25 designated in a governing instrument, or for having taken any other action in

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1 reliance on the beneficiary's apparent entitlement under the terms of a governing  
2 instrument, regardless of whether the financial institution received written notice  
3 of an intent to file, or the filing of, a petition for the deferred marital property elective  
4 share amount.

5 **SECTION 199.** 861.17 (3) of the statutes is amended to read:

6 861.17 (3) If the spouse is successful in an action to reach fraudulent property  
7 arrangements, recovery is limited to the share amount the spouse would receive  
8 under ch. 852 and this chapter. Other rules of this chapter apply so far as possible.  
9 ~~Recovery~~ A spouse who recovers under this subsection forfeits any power of  
10 appointment ~~which~~ that the surviving spouse possesses over the remaining portion  
11 of the fraudulently arranged property, except a special power.

12 **SECTION 200.** 861.20 (2) of the statutes is amended to read:

13 861.20 (2) If a married person who does not have a domicile in this state dies  
14 and has an interest in real property in this state that is subject to administration but  
15 not disposed of by will, the surviving spouse has the same right to the property under  
16 intestate succession as if the property were located in the decedent's domicile at  
17 decedent's death.

18 **SECTION 201.** 861.21 (1) (a) of the statutes is amended to read:

19 861.21 (1) (a) "Governing instrument" has the meaning given in s. 854.01 (2).

20 **SECTION 202.** 861.21 (2) of the statutes is amended to read:

21 861.21 (2) ~~IF MARITAL DECEDENT'S~~ PROPERTY INTEREST IN HOME. Subject to subs.  
22 (4) and (5), if a married decedent has a marital property interest in a home, the  
23 decedent's entire interest in the home shall be assigned to the surviving spouse if the  
24 surviving spouse petitions the court requesting such a distribution and if a governing  
25 instrument does not provide a specific transfer of the decedent's interest in the home

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1 to someone other than the surviving spouse. The surviving spouse shall file the  
2 petition within 6 months after the decedent's death, unless the court extends the  
3 time for filing.

4 **SECTION 203.** 861.21 (3) of the statutes is repealed.

5 **SECTION 204.** 861.21 (4) of the statutes is amended to read:

6 861.21 (4) PAYMENT BY SURVIVING SPOUSE. The court shall assign the interest in  
7 the home under sub. (2) to the surviving spouse upon payment of the value of the  
8 decedent's interest in the home that does not pass to the surviving spouse under  
9 intestacy or under ~~the~~ a governing instrument. Payment shall be made to the  
10 fiduciary holding title to the interest. The surviving spouse may use assets due him  
11 or her from the fiduciary to satisfy all or part of the payment in kind. Unless the court  
12 extends the time, the surviving spouse shall have one year from the decedent's death  
13 to pay the value of the assigned interest.

14 **SECTION 205.** 861.21 (5) of the statutes is amended to read:

15 861.21 (5) SEVERANCE OF HOME FROM SURROUNDING LAND. On petition of the  
16 surviving spouse or of any interested person that part of the land is not necessary for  
17 dwelling purposes and that it would be inappropriate to assign all of the surrounding  
18 land as the home under sub. (2), the court may set off for the home as much of the  
19 land as is necessary for a dwelling. In determining how much land should be set off,  
20 the court shall take into account the use and marketability of the parcels set off as  
21 the home and the remaining land.

22 **SECTION 206.** 861.31 (1c) of the statutes is repealed.

23 **SECTION 207.** 861.31 (1m) of the statutes is amended to read:

24 861.31 (1m) The court may, without notice or on such notice as the court  
25 directs, order payment by the personal representative or special administrator of an

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1 allowance as ~~it~~ the court determines necessary or appropriate for the support of the  
2 surviving spouse and any ~~dependent~~ minor children of the decedent during the  
3 administration of the estate. ~~In making or denying the order the~~ The court shall  
4 consider the size of the probate estate, other resources available for support, the  
5 existing standard of living, and any other factors it considers relevant.

6 **SECTION 208.** 861.31 (2) of the statutes is amended to read:

7 861.31 (2) The court may order that an allowance ~~may~~ be made to the spouse  
8 for support of the spouse and any ~~dependent~~ minor children of the decedent, or that  
9 separate allowances ~~may~~ be made to the spouse and to the ~~dependent~~ minor children  
10 of the decedent or their guardian, if any, if the court finds separate allowances  
11 advisable. If there is no surviving spouse, the court may order that an allowance ~~may~~  
12 be made to the ~~dependent~~ minor children of the decedent or to their guardian, if any.

13 **SECTION 209.** 861.31 (4) (intro.) of the statutes is amended to read:

14 861.31 (4) (intro.) The court may direct order that the allowance be charged  
15 against income or principal, either as an advance or otherwise, but ~~in no event may~~  
16 the court may not order that an allowance for support of ~~dependent~~ minor children  
17 of the decedent be charged against the income or principal interest of the surviving  
18 spouse. The court may direct order that the allowance for support of the surviving  
19 spouse, not including any allowance for support of ~~dependent~~ minor children of the  
20 decedent, be applied in satisfaction of any of the following:

21 **SECTION 210.** 861.31 (4) (a) of the statutes is amended to read:

22 861.31 (4) (a) Any entitlement of the surviving spouse under s. ~~853.11 (2)~~  
23 853.12.

24 **SECTION 211.** 861.33 (title) of the statutes is amended to read:

25 **861.33** (title) **Selection of personalty by surviving spouse ~~or children~~.**

**BILL****SECTION 212**

1           **SECTION 212.** 861.33 (1) (a) (intro.) of the statutes is amended to read:

2           861.33 (1) (a) (intro.) Subject to this section, in addition to all allowances and  
3 distributions, the surviving spouse, ~~or if there is no surviving spouse the decedent's~~  
4 ~~children,~~ may file with the court a written selection of the following personal  
5 property, which shall ~~thereupon~~ then be transferred to the spouse ~~or children~~ by the  
6 personal representative:

7           **SECTION 213.** 861.33 (1) (b) of the statutes is amended to read:

8           861.33 (1) (b) The selection in par. (a) may not include items specifically  
9 bequeathed except that the surviving spouse ~~or children~~ may in every case select the  
10 normal household furniture, furnishings, and appliances necessary to maintain the  
11 home. For this purpose antiques, family heirlooms, and collections ~~which~~ that are  
12 specifically bequeathed are not classifiable as normal household furniture or  
13 furnishings.

14           **SECTION 214.** 861.33 (1) (c) of the statutes is repealed.

15           **SECTION 215.** 861.33 (2) of the statutes is amended to read:

16           861.33 (2) If it appears that claims may not be paid in full, the court may, upon  
17 petition of any creditor, limit the transfer of personalty to the spouse ~~or children~~  
18 under this section to items not exceeding \$5,000 in aggregate inventory value until  
19 ~~such time as~~ the claims are paid in full or the court otherwise orders, or the court  
20 may require the spouse ~~or children~~ to retransfer property in excess of \$5,000 or, at  
21 the option of the spouse ~~or children~~, pay the excess in value over this amount.

22           **SECTION 216.** 861.33 (3) of the statutes is amended to read:

23           861.33 (3) The surviving spouse ~~or children~~ may select items not specifically  
24 bequeathed of the type specified under sub. (1) (a) 4. exceeding in value the \$3,000  
25 limit or obtain the transfer of items exceeding the limit set by the court under sub.

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1 (2), by paying to the personal representative the excess of inventory value over the  
2 respective limit.

3 **SECTION 217.** 861.33 (4) of the statutes is amended to read:

4 861.33 (4) ~~Subject to sub. (1)(c), the~~ The personal representative has power,  
5 without court order, to execute appropriate documents to effect transfer of title to any  
6 personal property ~~selected by the spouse or children~~ selects under this section. A  
7 person may not question the validity of the documents of transfer or refuse to  
8 accomplish the transfer on the grounds that the personal representative is also the  
9 surviving spouse ~~or the only child~~ of the decedent.

10 **SECTION 218.** 861.35 (title) of the statutes is amended to read:

11 **861.35 (title) Special allowance for support of spouse and support and**  
12 **education of dependent minor children.**

13 **SECTION 219.** 861.35 (1c) of the statutes is repealed.

14 **SECTION 220.** 861.35 (1m) (intro.) of the statutes is amended to read:

15 861.35 (1m) (intro.) If the decedent is survived by a spouse or by minor  
16 children, the court may order an allowance for the support and education of each  
17 dependent minor child until he or she reaches a specified age, not to exceed 18, and  
18 for the support of the spouse. This allowance may be made whether the estate is  
19 testate or intestate. If the decedent is not survived by a spouse, the court also may  
20 allot directly to ~~any of the dependent~~ the minor children household furniture,  
21 furnishings, and appliances. ~~No~~ The court may not order an allowance ~~may be made~~  
22 under this section if any of the following ~~apply~~ applies:

23 **SECTION 221.** 861.35 (1m) (a) of the statutes is amended to read:

24 861.35 (1m) (a) The decedent has amply provided for each minor child and for  
25 the spouse by the ~~terms of his or her will and the estate is sufficient to carry out the~~

**BILL****SECTION 221**

1 ~~terms after payment of all debts and expenses~~ transfer of probate or nonprobate  
2 assets, or support and education have been provided for by any other means.

3 **SECTION 222.** 861.35 (1m) (b) of the statutes is amended to read:

4 861.35 (1m) (b) In the case of dependent minor children, if the surviving spouse  
5 is legally responsible for support and education and has ample means to provide  
6 them in addition to his or her own support.

7 **SECTION 223.** 861.35 (1m) (c) of the statutes is amended to read:

8 861.35 (1m) (c) In the case of the surviving spouse, if he or she has ample means  
9 to provide for his or her support.

10 **SECTION 224.** 861.35 (2) of the statutes is amended to read:

11 861.35 (2) The court may set aside property to provide an allowance and may  
12 appoint a trustee to administer the property, subject to the continuing jurisdiction  
13 of the court. If a child dies or reaches the age of 18, or if at any time the property held  
14 by the trustee is no longer required for the support of the spouse or the support and  
15 education of any dependent the minor child, any remaining property is to be  
16 distributed by the trustee as ~~directed by the court~~ orders in accordance with the  
17 terms of the decedent's will or to the heirs of the decedent in intestacy or to satisfy  
18 unpaid claims of the decedent's estate.

19 **SECTION 225.** 861.35 (3) (a) of the statutes is amended to read:

20 861.35 (3) (a) The effect on claims under s. 859.25. The court shall balance the  
21 needs of the spouse or dependent minor children against the nature of the creditors'  
22 claims in setting the amount allowed under this section.

23 **SECTION 226.** 861.35 (4) (intro.) of the statutes is amended to read:

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1           861.35 (4) (intro.) The court may ~~direct~~ order that the allowance to the  
2 surviving spouse, not including any allowance for the support and education of  
3 dependent minor children, be applied in satisfaction of any of the following:

4           **SECTION 227.** 861.35 (4) (a) of the statutes is amended to read:

5           861.35 (4) (a) Any entitlement of the surviving spouse under s. ~~853.11 (2)~~  
6 853.12.

7           **SECTION 228.** 863.08 of the statutes is amended to read:

8           **863.08 Exchange by distributee and surviving spouse.** In its final  
9 judgment or other order, the court shall assign items to the surviving spouse and  
10 distributee to conform with the exchange under s. ~~857.03 (2)~~ 766.31 (3) (b) to the  
11 extent that the court approved the exchange.

12          **SECTION 229.** 863.15 of the statutes is amended to read:

13          **863.15 Right of retention Debts to estate.** ~~When If a distributee of an estate~~  
14 ~~is indebted to the estate, the amount of the indebtedness if due, or the present worth~~  
15 ~~of the indebtedness, if not due, shall be treated as an offset by the personal~~  
16 ~~representative against property of the estate to which the distributee is entitled. In~~  
17 ~~contesting the offset the distributee shall have the benefit of any defense which~~  
18 ~~would be available to the distributee in a direct proceeding by the personal~~  
19 ~~representative for the recovery treatment of the debt is governed by s. 854.12.~~

20          **SECTION 230.** 865.07 (1) (d) of the statutes is amended to read:

21          865.07 (1) (d) The decedent died intestate or testate, and, if testate, whether  
22 the original will is in the possession of the court or accompanies the application and,  
23 contains an attestation clause showing compliance with the requirements of  
24 execution under s. 853.03 or 853.05 or includes an affidavit in substantially the form  
25 under s. 853.04 (1) or (2), and does not expressly prohibit informal administration;

**BILL****SECTION 231**

1           **SECTION 231.** 867.01 (3) (am) 2. of the statutes is amended to read:

2           867.01 (3) (am) 2. A detailed statement of all property in which the decedent  
3 had an interest, ~~property over which the decedent had a power of appointment,~~  
4 ~~benefits payable on the decedent's death under annuities or under a retirement plan,~~  
5 ~~life insurance, joint and life tenancies, gifts made in contemplation of death or taking~~  
6 ~~effect upon death or made within 2 years prior to death and any other property that~~  
7 ~~may be subject to death taxes as a result of the decedent's death~~ subject to  
8 administration, including any encumbrance, lien, or other charge upon each item.

9           **SECTION 232.** 867.02 (2) (am) 3. of the statutes is amended to read:

10           867.02 (2) (am) 3. A detailed statement of all property in which the decedent  
11 had an interest, ~~property over which the decedent had a power of appointment,~~  
12 ~~benefits payable on decedent's death under annuities or under a retirement plan, life~~  
13 ~~insurance, joint and life tenancies, gifts made in contemplation of death or taking~~  
14 ~~effect upon death or made within 2 years prior to death and any other property which~~  
15 ~~may be subject to death tax as a result of decedent's death~~ subject to administration,  
16 including any encumbrance, lien, or other charge upon each item.

17           **SECTION 233.** 867.03 (1g) (intro.) of the statutes is amended to read:

18           867.03 (1g) GENERALLY. (intro.) When a decedent leaves solely-owned property  
19 subject to administration in this state which does not exceed \$20,000 \$50,000 in  
20 value, any heir of the decedent, trustee of a revocable trust created by the decedent,  
21 or person who was guardian of the decedent at the time of the decedent's death may  
22 collect any money due the decedent, receive the property of the decedent, and have  
23 any evidence of interest, obligation to, or right of the decedent transferred to the  
24 affiant if the heir, trustee, or guardian provides to the person owing the money,  
25 having custody of the property, or acting as registrar or transfer agent of the

**BILL**

1 evidences of interest, obligation to, or right, or, if the property is an interest in or lien  
2 on real property, provides to the register of deeds preliminary to the recording  
3 required under sub. (2m), proof of prior mailed notice under sub. (1m) if applicable  
4 and an affidavit in duplicate showing all of the following:

5 **SECTION 234.** 867.03 (1g) (b) of the statutes is amended to read:

6 867.03 (1g) (b) The total value of the decedent's property subject to  
7 administration in this state at the date of decedent's death.

8 **SECTION 235.** 867.03 (1m) (a) of the statutes is amended to read:

9 867.03 (1m) (a) Whenever an heir, trustee, or person who was guardian of the  
10 decedent at the time of the decedent's death intends to transfer a decedent's property  
11 by affidavit under sub. (1g) and the decedent or the decedent's spouse ever received  
12 the family care benefit under s. 46.286, medical assistance under subch. IV of ch. 49,  
13 long-term community support services funded under s. 46.27 (7) or aid under s.  
14 49.68, 49.683 or 49.685, the heir, trustee, or person who was guardian of the decedent  
15 at the time of the decedent's death shall give notice to the department of health and  
16 family services of his or her intent. The notice shall include the information in the  
17 affidavit under sub. (1g) and the heir, trustee, or person who was guardian of the  
18 decedent at the time of the decedent's death shall give the notice by certified mail,  
19 return receipt requested.

20 **SECTION 236.** 867.03 (1m) (b) of the statutes is amended to read:

21 867.03 (1m) (b) An heir, trustee, or person who was guardian of the decedent  
22 at the time of the decedent's death who files an affidavit under sub. (1g) that states  
23 that the decedent or the decedent's spouse received the family care benefit under s.  
24 46.286, medical assistance under subch. IV of ch. 49, long-term community support  
25 services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, or 49.685 shall attach

**BILL****SECTION 236**

1 to the affidavit the proof of mail delivery of the notice required under par. (a) showing  
2 a delivery date that is not less than 10 days before the day on which the heir, trustee,  
3 or person who was guardian of the decedent at the time of the decedent's death files  
4 the affidavit.

5 **SECTION 237.** 867.03 (2) of the statutes is amended to read:

6 867.03 (2) RELEASE OF LIABILITY OF TRANSFEROR. Upon the transfer to the heir,  
7 trustee, or person who was guardian of the decedent at the time of the decedent's  
8 death furnishing the affidavit with an attached proof of mail delivery if required  
9 under sub. (1m) (b), the transferor is released to the same extent as if the transfer  
10 had been made to the personal representative of the estate of the decedent.

11 **SECTION 238.** 867.03 (2g) of the statutes is created to read:

12 867.03 (2g) OBLIGATION OF AFFIANT. By accepting the decedent's property under  
13 this section the heir, trustee, or guardian assumes a duty to apply the property  
14 transferred for the payment of obligations according to priorities established under  
15 s. 859.25 and to distribute any balance to those persons designated in the  
16 appropriate governing instrument, as defined in s. 854.01, of the decedent or if there  
17 is no governing instrument, according to the rules of intestate succession under ch.  
18 852. An heir or guardian may publish a notice to creditors in the same manner and  
19 with the same effect as a trustee under s. 701.065. This subsection does not prohibit  
20 any appropriate person from requesting administration of the decedent's estate  
21 under s. 856.07 or ch. 865.

22 **SECTION 239.** 867.035 (1) (a) 4. of the statutes is amended to read:

23 867.035 (1) (a) 4. The value of the ~~solely-owned~~ property subject to  
24 administration in this state left by the decedent, after payment of burial costs, does  
25 not exceed the amount under s. 867.03 (1g) (intro.).

**BILL**

1           **SECTION 240.** 867.045 (1) (intro.) of the statutes is amended to read:

2           867.045 (1) (intro.) Upon the death of any person having an interest as a joint  
3           tenant or life tenant in any real property or in the vendor's interest in a land contract  
4           or a mortgagee's interest in a mortgage, ~~the surviving joint tenant or remainderman~~  
5           any person interested in the property may obtain evidence of the termination of that  
6           interest of the decedent by providing to the register of deeds of the county in which  
7           such property is located a certified copy of the death certificate for the decedent and  
8           by providing, on applications supplied by the register of deeds for that purpose, the  
9           name and address of the decedent and of the surviving joint tenant or ~~remainderman~~  
10          and remainder beneficiary, the date of the decedent's death, and the applicant's  
11          interest in the property. ~~The surviving joint tenant or remainderman~~ applicant shall  
12          provide to the register of deeds the following information:

13           **SECTION 241.** 867.045 (2) of the statutes is amended to read:

14           867.045 (2) The register of deeds or other person authorized under s. 706.06  
15           or 706.07 shall complete a statement at the foot of the application, declaring that the  
16           ~~surviving joint tenant or remainderman~~ applicant appeared before him or her and  
17           verified, under oath, the correctness of the information required by sub. (1).

18           **SECTION 242.** 867.045 (4) of the statutes is amended to read:

19           867.045 (4) Upon the recording, the application shall be presumed to be  
20           evidence of the facts recited and shall terminate the joint tenancy or life estate, all  
21           with the same force and effect as if issued by the court assigned to exercise probate  
22           jurisdiction for the county of domicile of the decedent under s. 867.04. This  
23           application shall not constitute evidence of payment of any death tax which may be  
24           due, the payment for which shall remain an obligation of the surviving joint tenant  
25           or ~~remainderman~~ remainder beneficiary.

✓  
INS  
71-25 →

**BILL****SECTION 243**

1           **SECTION 243.** 879.09 of the statutes is amended to read:

2           **879.09 Notice requirement satisfied by waiver of notice.** Persons who  
3 are not minors or incompetent, on behalf of themselves, and appointed guardians ad  
4 litem and guardians of the estate on behalf of themselves and those whom they  
5 represent, may in writing waive the service of notice upon them and consent to the  
6 hearing of any matter without notice ~~except that guardians ad litem cannot waive~~  
7 ~~the notice of a hearing to prove a will or for administration on behalf of those whom~~  
8 ~~they represent.~~ An attorney, or attorney-in-fact, for a person in the military service  
9 may waive notice on behalf of himself or herself but cannot waive notice on behalf  
10 of the person in the military service. Waiver of notice by any person is equivalent to  
11 timely service of notice.

12           **SECTION 244.** 880.61 (11m) of the statutes is created to read:

13           **880.61 (11m)** “Qualified minor’s trust” means any trust, including a trust  
14 created by the custodian, that satisfies the requirements of section 2503 (c) of the  
15 Internal Revenue Code and the regulations implementing that section.

16           **SECTION 245.** 880.675 (1m) of the statutes is created to read:

17           **880.675 (1m)** At any time a custodian may transfer part or all of the custodial  
18 property to a qualified minor’s trust without a court order. Such a transfer  
19 terminates the custodianship to the extent of the transfer.

20           **SECTION 246.** 1997 Wisconsin Act 188, section 233 (1) is amended to read:

21           [1997 Wisconsin Act 188] Section 233 (1) This act first applies to transfers  
22 relating to deaths occurring on January 1, 1999, except with respect to irrevocable  
23 that this act does not apply to transfers under governing instruments executed that  
24 were irrevocable before that date.

25           **SECTION 247. Initial applicability.**



2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0135/3ins  
CMH:jld:ch

SECTION # CR; 705.20 (4) X

1 Insert 19-9

2 (4) A transfer under this section does not require confirmation in any procedure  
3 under s. 867.01, 867.02, or 867.03 or ch. 856 or 865. A transfer under this section may  
4 be confirmed under s. 867.046 (1m) or (2).

5  
6 Insert 53-7

7 SECTION 1. 854.23 (1) of the statutes is amended to read:

8 854.23 (1) DEFINITION. In this section, "governing instrument" includes an  
9 instrument described in s. 854.01, a filed verified statement under s. 865.201, a  
10 certificate under s. 867.046 (1m), a confirmation under s. 867.046 (2), or a recorded  
11 application under s. 867.046 (5).

12 History: 1997 a. 188.

13  
14 Insert 71-25

15 SECTION 2. 867.046 (1m) of the statutes is amended to read:

16 867.046 (1m) UPON DEATH; GENERALLY. If a domiciliary of this state dies who  
17 immediately prior to death had an interest in property in this state, including an  
18 interest in survivorship marital property or an interest in property passing under s.  
19 705.20 (1), or if a person not domiciled in this state dies having an interest in property  
20 in this state, including an interest in survivorship marital property or an interest in  
21 property passing under s. 705.20 (1), upon petition of the decedent's spouse ~~or upon~~  
22 ~~petition of~~, a beneficiary of a marital property agreement, or a beneficiary of a  
23 transfer under s. 705.20 (1) to the court of the county of domicile of the decedent or,

INSERT LRB-0135/3ins  
71-25 CMH:jld:ch  
cont

1 if the decedent was not domiciled in this state, of any county where the property is  
2 situated, the court shall issue a certificate under the seal of the court. The certificate  
3 shall set forth the fact of the death of the decedent, the termination or transfer of the  
4 decedent's interest in the property, the interest of the petitioner in the property and  
5 any other facts essential to a determination of the rights of persons interested. The  
6 certificate is prima facie evidence of the facts recited, and if the certificate relates to  
7 an interest in real property or to a debt secured by an interest in real property, the  
8 petitioner shall record a certified copy or duplicate original of the certificate in the  
9 office of the register of deeds in each county in this state in which the real property  
10 is located.

History: 1983 a. 186; 1985 a. 37; 1991 a. 133, 301; 1995 a. 182, 355; 2005 a. 41.

11 **SECTION 3.** 867.046 (2) (intro.) of the statutes is amended to read:

12 867.046 (2) UPON DEATH; INTEREST IN PROPERTY. (intro.) As an alternative to sub.  
13 (1m), upon the death of any person having an interest in any real property, a vendor's  
14 interest in a land contract, an interest in a savings or checking account, an interest  
15 in a security ~~or~~, a mortgagee's interest in a mortgage, or an interest in property  
16 passing under s. 705.20 (1), including an interest in survivorship marital property,  
17 the decedent's spouse ~~or~~, a beneficiary of a marital property agreement, or a  
18 beneficiary of a transfer under s. 705.20 (1) may obtain evidence of the termination  
19 of that interest of the decedent and confirmation of the petitioner's interest in the  
20 property by providing to the register of deeds of the county in which the property is  
21 located the certified death certificate for the decedent and, on applications supplied  
22 by the register of deeds for that purpose, all of the following information:

History: 1983 a. 186; 1985 a. 37; 1991 a. 133, 301; 1995 a. 182, 355; 2005 a. 41.

23 **SECTION 4.** 867.046 (2) (k) of the statutes is created to read:



INS 71-25  
cont  
LRB-0135/3ins  
CMH:jld:ch

- 1 867.046 (2) (k) In the case of a transfer under s. 705.20 (1),<sup>✓</sup> except as described
- 2 in <sup>✓</sup>par. (i) or (j), a copy of the document described in s. 705.20 (1).

(end ins)

## **Barman, Mike**

---

**From:** Richards, Mike  
**Sent:** Tuesday, February 21, 2006 10:39 AM  
**To:** LRB.Legal  
**Subject:** RE: Probate Trailer Bill

Mike,

Grothman's office claims to have called and given permission to Ms. Hanaman.

---

**From:** LRB.Legal  
**Sent:** Tuesday, February 21, 2006 10:38 AM  
**To:** Richards, Mike  
**Cc:** Hanaman, Cathlene  
**Subject:** RE: Probate Trailer Bill

Mike -

Since technically this is still Grothman's bill ... instructions have to come directly from their office. If they are turning this bill over to your office, they should contact the drafting attorney and have the "requestor" information changed. Please let me know if you have any questions. Thanks

**Mike Barman** (Senior Program Assistant)

State of Wisconsin - Legislative Reference Bureau

Legal Section - Front Office

1 East Main Street, Suite 200, Madison, WI 53703

(608) 266-3561 / [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)

---

**From:** Richards, Mike  
**Sent:** Tuesday, February 21, 2006 10:26 AM  
**To:** LRB.Legal  
**Subject:** Probate Trailer Bill

Senator Grothman has authorized us to have LRB 0135/2. Can we get that drafted and jacketed ASAP.

Thanks

*Michael D. Richards*

**Michael D. Richards**  
**Office of State Senator Ted Kanavas**  
**State Capitol, Room 10 South**  
**Madison, WI 53707-7882**  
**608-266-9174**

02/21/2006

## Barman, Mike

---

**From:** Hanaman, Cathlene  
**Sent:** Tuesday, February 21, 2006 11:11 AM  
**To:** Barman, Mike  
**Subject:** RE: Probate Trailer Bill

It was a voicemail and I scribbled the note on a post-it.

---

**From:** Barman, Mike  
**Sent:** Tuesday, February 21, 2006 11:08 AM  
**To:** Hanaman, Cathlene  
**Subject:** RE: Probate Trailer Bill

If you still have the note ... we should add it to the end of the file.

---

**From:** Hanaman, Cathlene  
**Sent:** Tuesday, February 21, 2006 10:49 AM  
**To:** Barman, Mike  
**Subject:** FW: Probate Trailer Bill

Okay, I changed the requester. I do have a note saying that Kanavas's office would be calling.

---

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**Cc:** Hanaman, Cathlene  
**Subject:** RE: Probate Trailer Bill

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State of Wisconsin - Legislative Reference Bureau

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1 East Main Street, Suite 200, Madison, WI 53703

(608) 266-3561 / [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)

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02/21/2006

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