State of Wisconsin
2005 – 2006 LEGISLATURE

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LRB–0135/~~1~~
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TODAY

2005 BILL

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AN ACT ***to repeal*** 854.03 (7), 854.06 (1) (b), 854.13 (7) (b), 854.13 (11) (title), 854.14 (1), 854.21 (1) (a) 1., 2. and 3., 861.04 (2), 861.21 (3), 861.31 (1c), 861.33 (1) (c) and 861.35 (1c); ***to renumber*** 701.06 (6), 701.115 (1), 766.62 (4), 853.32 (1), 854.13 (2) (a), 854.15 (5) (intro.) and 854.15 (5) (a), (b), (c), (d) and (e); ***to renumber and amend*** 701.26, 705.04 (2), 705.28 (3), 766.31 (3), 766.31 (6), 852.01 (1) (a) 2., 853.03 (2), 853.11 (2), 853.18 (1), 853.25 (2), 853.32 (2) (b), 854.01, 854.03 (5), 854.05 (5), 854.06 (4) (a), 854.06 (4) (b), 854.08 (5), 854.08 (6) (a) 1., 854.13 (10), 854.13 (11) (a), 854.13 (11) (b), 854.15 (1) (e), 854.15 (5) (f), 854.20 (1), 854.20 (2) (intro.), 854.20 (2) (a), 854.20 (2) (b), 854.20 (3), 854.20 (4), 854.21 (1) (a) (intro.), 857.03 (2) and 861.01 (3); ***to consolidate, renumber and amend*** 854.08 (6) (a) (intro.) and 2.; ***to amend*** 30.541 (3) (d) 2. d., 71.05 (6) (a) 16., 71.05 (6) (b) 12., 71.05 (12) (d), 101.9211 (4) (b) 4., 342.17 (4) (b) 4., 700.11 (1), 700.13 (2), 701.06 (7), 701.06 (8), 701.115 (2), 701.115 (3), 701.20 (5) (c), 701.24 (title) and (1), 701.26 (title), 702.03 (1), 702.08, 705.06 (1) (c), 705.06

(2), 705.27, 766.61 (7), 766.62 (2), 766.62 (5) (intro.), 767.266 (1) (b), 851.21 (1) (b), 851.31, 851.50, 852.01 (1) (b), 852.05 (title), 852.05 (1) (intro.), 852.05 (2), 852.05 (3), 852.12, 853.11 (3), 853.11 (6) (c), 853.11 (6) (d), 853.32 (2) (a), 854.03 (2) (b), 854.04 (1) (a), 854.04 (3) (a), 854.04 (4), 854.04 (5) (intro.), 854.04 (5) (b), 854.04 (6), 854.07 (3), 854.07 (4), 854.09 (3), 854.11 (4), 854.13 (title), 854.13 (2) (h), 854.13 (7) (title), 854.13 (7) (a), 854.13 (8), 854.13 (9), 854.13 (12) (b), 854.14 (5) (a), 854.14 (5) (b), 854.14 (5) (c), 854.17, 854.18 (1) (a) (intro.), 854.18 (3), 854.20 (5), 854.21 (1) (b), 854.21 (7), 854.22 (4), 856.05 (5), 856.15 (1), 856.17, 859.01, subchapter II (title) of chapter 861 [precedes 861.018], 861.02 (title), 861.02 (2) (b) (intro.), 861.02 (4), 861.02 (6), 861.02 (7) (b), 861.05 (1) (c), 861.05 (2) (title), 861.06 (title), 861.06 (2) (title), 861.06 (2) (b) (intro.), 861.06 (2) (b) 4. a., 861.07 (2) (intro.), 861.10 (1), 861.10 (2), 861.11 (2) (a) (intro.), 861.11 (2) (b), 861.11 (5) (b), 861.17 (3), 861.20 (2), 861.21 (1) (a), 861.21 (2), 861.21 (4), 861.21 (5), 861.31 (1m), 861.31 (2), 861.31 (4) (intro.), 861.31 (4) (a), 861.33 (title), 861.33 (1) (a) (intro.), 861.33 (1) (b), 861.33 (2), 861.33 (3), 861.33 (4), 861.35 (title), 861.35 (1m) (intro.), 861.35 (1m) (a), 861.35 (1m) (b), 861.35 (1m) (c), 861.35 (2), 861.35 (3) (a), 861.35 (4) (intro.), 861.35 (4) (a), 863.08, 863.15, 865.07 (1) (d), 867.01 (3) (am) 2., 867.02 (2) (am) 3., 867.03 (1g) (intro.), 867.03 (1g) (b), 867.03 (1m) (a), 867.03 (1m) (b), 867.03 (2), 867.035 (1) (a) 4., 867.045 (1) (intro.), 867.045 (2), 867.045 (4) and 879.09; ***to repeal and recreate*** 701.19 (10), 853.04 (3), 854.08 (5) (title), 854.13 (10) (title), 856.16 and 861.02 (8); ***to create*** 700.27, 701.06 (6) (b), (c) and (d), 701.115 (1) (a), 701.24 (3), 701.26 (1) (d), 701.26 (2), 705.04 (2) (a), 705.04 (2) (d), 705.04 (2) (e), 705.04 (2) (f) and (g), 705.28 (2m), 766.31 (1) (title), 766.31 (2) (title), 766.31 (3) (b), 766.31 (4) (title), 766.31 (5) (title), 766.31 (6) (title), 766.31 (6) (b), 766.31 (7) (title), 766.31 (7p)

(title), 766.31 (8) (title), 766.31 (9) (title), 766.31 (10) (title), 766.62 (4) (b), 766.62 (4) (c), 851.055 (1m), 852.01 (1) (a) 2. b., 853.03 (2) (bm), 853.11 (2m), 853.18 (1) (a), (b) and (c), 853.25 (2) (a) 1. and 2., 853.32 (1) (bm), 853.32 (2) (am), 854.01 (1), 854.03 (5) (am) 7., 854.03 (5) (am) 8., 854.03 (5) (bm), 854.06 (4) (a) 1., 854.08 (5) (a), 854.08 (5) (d), 854.12, 854.13 (2) (a) 1., 854.13 (2) (gm), 854.13 (2) (i), 854.13 (7) (bm) and (c), 854.13 (10) (b), 854.14 (3m), 854.20 (2) (am) 2. b. and c., 857.03 (2m), 859.02 (2m), 861.01 (3m), 861.01 (4), 861.01 (5), 861.04 (2m), 861.05 (1) (e), 861.05 (2m), 861.06 (6), 867.03 (2g), 880.61 (11m) and 880.675 (1m) of the statutes; and ***to affect*** 1997 Wisconsin Act 188, section 233 (1); **relating to:** miscellaneous remedial modifications to the Wisconsin Probate Code.

Analysis by the Legislative Reference Bureau

This bill makes remedial modifications to current law and primarily corrects technical errors and clarifies various provisions in 1997 Wisconsin Act 188, which modernized the Wisconsin Probate Code. This bill continues the process of extending various interpretative rules from probate to nonprobate assets and of allowing extrinsic evidence to be used when interpreting the intent of the transferor, especially with respect to rules of construction. This bill also creates additional protections for a decedent spouse who is murdered by the surviving spouse.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 30.541 (3) (d) 2. d. of the statutes is amended to read:

30.541 **(3)** (d) 2. d. The limit in subd. 2. c. does not apply if the surviving spouse proceeds under s. 867.03 (1g) and the total value of the decedent's ~~solely owned~~ property subject to administration in the state, including boats transferred under this subdivision, does not exceed ~~$20,000~~ $50,000.

SECTION 2. 71.05 (6) (a) 16. of the statutes is amended to read:

71.05 **(6)** (a) 16. Any amount recognized as a loss under section 1001 (c) of the ~~internal revenue code~~ Internal Revenue Code if a surviving spouse and a distributee exchange their interests in marital property under s. ~~857.03 (2)~~ 766.31 (3) (b).

SECTION 3. 71.05 (6) (b) 12. of the statutes is amended to read:

71.05 **(6)** (b) 12. Any amount recognized as a gain under section 1001 (c) of the ~~internal revenue code~~ Internal Revenue Code if a surviving spouse and a distributee exchange their interests in marital property under s. ~~857.03 (2)~~ 766.31 (3) (b).

SECTION 4. 71.05 (12) (d) of the statutes is amended to read:

71.05 **(12)** (d) Property exchanged under s. ~~857.03 (2)~~ 766.31 (3) (b) shall be treated as if acquired by gift for the determination of basis.

SECTION 5. 101.9211 (4) (b) 4. of the statutes is amended to read:

101.9211 **(4)** (b) 4. The limit in subd. 3. does not apply if the surviving spouse is proceeding under s. 867.03 (1g) and the total value of the decedent's ~~solely owned~~ property subject to administration in the state, including the manufactured homes transferred under this paragraph, does not exceed ~~$10,000~~ $50,000.

SECTION 6. 342.17 (4) (b) 4. of the statutes is amended to read:

342.17 **(4)** (b) 4. The limit in subd. 3. does not apply if the surviving spouse is proceeding under s. 867.03 (1g) and the total value of the decedent's ~~solely owned~~ property subject to administration in the state, including the vehicles transferred under this paragraph, does not exceed ~~$20,000~~ $50,000.

SECTION 7. 700.11 (1) of the statutes is amended to read:

700.11 **(1)** If a statute, inter vivos governing instrument, as defined in s. 700.27 (1) (c), or governing instrument, as defined in s. 854.01 (2), specifies that property is to be distributed to, or a future interest is to be created in, a designated individual's "heirs~~,~~," "heirs at law~~,~~," "next of kin~~,~~," "relatives~~ or~~," "family," or a term that has

a similar meaning, or if a class gift in favor of "descendants~~",~~" "issue," or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed according to s. 854.22.

SECTION 8. 700.13 (2) of the statutes is amended to read:

700.13 **(2)** ~~Unless the instrument of transfer manifests a contrary intent,~~ The effect of a renunciation or release of an interest for life or years ~~accelerates succeeding interests~~ is as provided in ss. 700.27 (8) and 854.13 (10).

SECTION 9. 700.27 of the statutes is created to read:

700.27 Disclaimer of transfers during life. (1) DEFINITIONS. In this section:

(a) "Beneficiary under an inter vivos governing instrument" includes any person who receives or might receive property under the terms or legal effect of an inter vivos governing instrument.

(b) "Extrinsic evidence" has the meaning given in s. 854.01 (1).

(c) "Inter vivos governing instrument":

1. Means a gratuitous deed, inter vivos trust instrument, insurance policy, contract, inter vivos instrument that creates or exercises a power of appointment, or any other dispositive, appointive, or nominative instrument that transfers property other than a governing instrument as defined in s. 854.01 (2).

2. Includes an inter vivos gift that is not subject to a written instrument.

(d) "Power" has the meaning given in s. 702.01 (4).

(2) RIGHT TO DISCLAIM. (a) *In general.* 1. In this paragraph, "person" includes a person who is unborn or whose identity is unascertained.

2. A person who is a recipient of property or beneficiary under an inter vivos governing instrument, donee of a power created by an inter vivos governing instrument, appointee under a power exercised by an inter vivos governing

instrument, taker in default under a power created by an inter vivos governing instrument, or person succeeding to disclaimed property created by an inter vivos governing instrument may disclaim any property, including contingent or future interests or the right to receive discretionary distributions, by delivering a written instrument of disclaimer under this section.

(b) *Partial disclaimer.* Property transferred under an inter vivos governing instrument may be disclaimed in whole or in part, except that a partial disclaimer of property passing by an inter vivos governing instrument or by the exercise of a power may not be made if partial disclaimer is expressly prohibited by the inter vivos governing instrument or by the instrument exercising the power.

(c) *Spendthrift provision.* The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(d) *Disclaimer by a guardian or conservator.* A guardian of the estate or a conservator appointed under ch. 880 may disclaim on behalf of his or her ward, with court approval, if the ward is entitled to disclaim under this section.

(e) *Disclaimer by an agent under power of attorney.* An agent under a power of attorney may disclaim on behalf of the person who granted the power of attorney if all of the following apply:

1. The person who granted the power of attorney is entitled to disclaim under this section.

2. The power of attorney specifically grants the power to disclaim.

(f) *Disclaimer by trustee.* The trustee of a trust named as a recipient of property under an inter vivos governing instrument may disclaim that property on behalf of the trust if the trust authorizes disclaimer by the trustee. If the trust does not

authorize disclaimer by the trustee, the trustee's power to disclaim is subject to the approval of the court.

(g) *After death.* A person's right to disclaim survives the person's death and may be exercised by the person's personal representative or special administrator upon receiving approval from the court having jurisdiction of the person's estate after hearing upon notice to all persons interested in the disclaimed property, if the personal representative or special administrator has not taken any action that would bar the right to disclaim under sub. (9).

(h) *Disclaimers of transfers at death.* A person who is a recipient of property under a governing instrument, as defined in s. 854.01 (2), may disclaim the property as provided in s. 854.13.

(3) INSTRUMENT OF DISCLAIMER. The instrument of disclaimer must meet the provisions of subs. (4) and (5) and s. 854.13 (3) (a) to (c).

(4) TIME FOR EFFECTIVE DISCLAIMER. (a) *Present interest.* An instrument disclaiming a present interest shall be executed and delivered not later than 9 months after the effective date of the transfer under the inter vivos governing instrument. For cause shown, the period may be extended by a court of competent jurisdiction, either within or after the 9–month period, for such additional time as the court considers just.

(b) *Future interest.* An instrument disclaiming a future interest shall be executed and delivered not later than 9 months after the event that determines that the taker of the property is finally ascertained and his or her interest indefeasibly fixed. For cause shown, the period may be extended by a court of competent jurisdiction, either within or after the 9–month period, for such additional time as the court considers just.

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

(d) *Persons under 21.* Notwithstanding pars. (a) and (b), a person under 21 years of age may disclaim at any time not later than 9 months after the date on which the person attains 21 years of age.

(e) *Interests arising by disclaimer.* Notwithstanding pars. (a) and (b), a person whose interest in property arises by disclaimer or by default of exercise of a power created by an inter vivos governing instrument may disclaim at any time not later than 9 months after the day on which the prior instrument of disclaimer is delivered, or the date on which the donee's power lapses.

(5) DELIVERY AND FILING OF DISCLAIMER. (a) *Delivery.* In addition to any requirements imposed by the inter vivos governing instrument, the instrument of disclaimer is effective only if, within the time specified under sub. (4), it is delivered to and received by any of the following:

1. The transferor of the property disclaimed.

2. The transferor's legal representative.

3. The holder of legal title to the property.

(b) *Delivery to trustee.* If the trustee of any trust to which the interest or power relates does not receive the instrument of disclaimer under par. (a), a copy shall also be delivered to the trustee. Failure to deliver a copy of the instrument of disclaimer to the trustee within the time specified under sub. (4) does not affect the validity of any disclaimer.

(c) *Recording.* If real property or an interest in real property is disclaimed, a copy of the instrument of disclaimer may be recorded in the office of the register of deeds of the county in which the real estate is situated.

(6) PROPERTY NOT VESTED. The property disclaimed under this section shall be considered not to have been vested in, created in, or transferred to the disclaimant.

(7) DEVOLUTION. (a) *In general.* Subject to sub. (8), unless the inter vivos governing instrument provides otherwise, either expressly or as construed from extrinsic evidence, the disclaimed property devolves as if the disclaimant had died before the effective date of the transfer under the inter vivos governing instrument. If the disclaimed interest is a remainder contingent on surviving to the time of distribution, the disclaimed interest passes as if the disclaimant had died immediately before the time for distribution. If the disclaimant is an appointee under a power exercised by an inter vivos governing instrument, the disclaimed property devolves as if the disclaimant had died before the effective date of the exercise of the power. If the disclaimant is a taker in default under a power created by an inter vivos governing instrument, the disclaimed property devolves as if the disclaimant had predeceased the donee of the power.

(b) *Devolution to issue of the disclaimants.* Unless the inter vivos governing instrument provides otherwise, either expressly or as construed from extrinsic evidence, if, by law or under the inter vivos governing instrument, the issue of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time the disclaimed interest would have taken effect in possession or enjoyment, the disclaimed interest passes only to the issue of the disclaimant who survive when the disclaimed interest takes effect in possession or enjoyment.

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

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

(8) ACCELERATION OF SUBSEQUENT INTERESTS WHEN PRECEDING INTEREST IS DISCLAIMED. (a) *Subsequent interest not held by disclaimant.* Unless the inter vivos governing instrument provides otherwise, either expressly or as construed from extrinsic evidence, upon the disclaimer of a preceding interest, a subsequent interest not held by the disclaimant and limited to take effect in possession or enjoyment after the termination of the interest that is disclaimed accelerates to take effect as if the disclaimant had died immediately before the time when the disclaimed interest would have taken effect in possession or enjoyment or, if the disclaimant is an appointee under a power exercised by a power of appointment, as if the disclaimant had died before the effective date of the exercise of the power.

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

(9) BAR. Actions that bar disclaimer are as provided in s. 854.13 (11g).

(10) EFFECT OF DISCLAIMER OR WAIVER. The effect of the disclaimer on the disclaimant and any successors in interest is as provided in s. 854.13 (11p).

(11) NONEXCLUSIVENESS OF REMEDY. (a) This section does not affect the right of a person to waive, release, disclaim, or renounce property under any other statute or the common law, or as provided in the creating instrument.

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

(12) CONSTRUCTION OF EFFECTIVE DATE. In this section, the effective date of a transfer under an inter vivos governing instrument is the date on which the transfer is a completed gift for federal gift tax purposes.

SECTION 10. 701.06 (6) of the statutes is renumbered 701.06 (6) (a).

SECTION 11. 701.06 (6) (b), (c) and (d) of the statutes are created to read:

701.06 **(6)** (b) A beneficiary of a trust may not be considered a settlor solely because of a lapse, waiver, or release of any of the following:

1. A power described under par. (c).

2. The beneficiary's right to withdraw part of the trust property, to the extent that the value of the property affected by the lapse, waiver, or release in any year does not exceed the greater of the amount in:

a. Section 2041 (b) (2) or 2514 (e), Internal Revenue Code of 1986.

b. Section 2503 (b), Internal Revenue Code of 1986.

(c) A beneficiary of a trust is not a settlor, has not made a voluntary or involuntary transfer of the beneficiary's interest in the trust, or does not have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust solely because the beneficiary holds or exercises, in any capacity, any of the following:

1. A presently exercisable power to consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary if the power is any of the following:

a. Exercisable only on consent of another person holding an interest adverse to the beneficiary's interest.

b. Limited by an ascertainable standard, such as health, education, support, or maintenance of the beneficiary.

2. A presently exercisable power to appoint any property of the trust to or for the benefit of a person other than the beneficiary, a creditor of the beneficiary, the beneficiary's estate, or a creditor of the beneficiary's estate.

3. A testamentary power of appointment.

4. A presently exercisable right described in par. (b) 2.

(d) A beneficiary of a trust is not a settlor solely because the beneficiary is entitled to nondiscretionary distributions from the trust.

SECTION 12. 701.06 (7) of the statutes is amended to read:

701.06 **(7)** SUBSEQUENT MODIFICATION OF COURT'S ORDER. Any order entered by a court under sub. (4), (5) or (6) (a) is subject to modification upon application of an interested person.

SECTION 13. 701.06 (8) of the statutes is amended to read:

701.06 **(8)** EXEMPT ASSETS. Assets of a trust, to the extent they are exempt from claims of creditors under other statutes, shall not be subject to sub. (4), (5), or (6) (a).

SECTION 14. 701.115 (1) of the statutes is renumbered 701.115 (1) (b).

SECTION 15. 701.115 (1) (a) of the statutes is created to read:

701.115 **(1)** (a) In par. (b), "revocable trust" means a trust that the grantor, at the time of death, was alone empowered to change or revoke, by law or under the

instrument creating the trust, regardless of whether the grantor then had the capacity to exercise the power.

SECTION 16. 701.115 (2) of the statutes is amended to read:

701.115 **(2)** Survivorship under sub. (1) (b) is governed by s. 854.03.

SECTION 17. 701.115 (3) of the statutes is amended to read:

701.115 **(3)** The rights of the issue of a predeceasing beneficiary under sub. (1) (b) are governed by s. 854.06.

SECTION 18. 701.19 (10) of the statutes is repealed and recreated to read:

701.19 **(10)** RESTRICTION ON EXERCISE OF POWERS. (a) Except as provided in par. (c), a person may not exercise any of the following powers conferred upon him or her in his or her capacity as trustee:

1. The power to make discretionary distributions of trust principal or income if the distributions are to himself or herself or for the discharge of his or her legal obligations.

2. The power to make discretionary allocations of receipts or expenses as between principal and income if the allocations are in his or her favor.

(b) If a power under par. (a) is conferred upon more than one person as trustee, a person who is not disqualified to act under par. (a) may exercise the power for the benefit of the person who is disqualified to act, unless the creating instrument expressly provides otherwise. A special trustee appointed by a court may exercise a power under par. (a) for the benefit of the disqualified person if no other trustee is qualified to exercise the power.

(c) Paragraph (a) does not apply if any of the following applies:

1. The person is also the settlor of the trust, and the trust may be revoked or amended by the settlor.

2. The terms of the creating instrument specifically limit the scope of the power to expenditures and distributions of income or principal on the basis of an ascertainable standard relating to the person's health, maintenance, support, or education such that the person would not be subject to tax under section 2041 or 2514 of the Internal Revenue Code as a result of having or exercising the power.

3. The person is the spouse, widow, or widower of the settlor of the trust, and a marital deduction has been allowed for federal gift or estate tax purposes with respect to the trust property that is subject to the power.

4. The creating instrument negates the application of par. (a) with respect to the power or indicates that provisions that are similar to par. (a) do not apply.

(d) Section 701.24 (3) governs the applicability of this statute.

SECTION 19. 701.20 (5) (c) of the statutes, as affected by 2005 Wisconsin Act 10, is amended to read:

701.20 **(5)** (c) A fiduciary shall distribute to a beneficiary, including a trustee, who receives a pecuniary amount not determined by a pecuniary formula interest at the legal rate set forth in s. 138.04 on any unpaid portion of the pecuniary amount for the period commencing one year after the decedent's death or after the income interest in the trust ends. The interest under this paragraph shall be distributed from net income determined under par. (b) or from principal to the extent that net income is insufficient. For purposes of this paragraph, the deferred marital property elective share amount elected by a surviving spouse under s. 861.02 (1) is a bequest of a specific amount of money not determined by a pecuniary formula.

SECTION 20. 701.24 (title) and (1) of the statutes, as affected by 2005 Wisconsin Act 10, are amended to read:

701.24 (title) **Applicability ~~of ss. 701.01 to 701.23.~~** **(1)** Except as otherwise provided in sub. (3) and s. 701.19 (9) (a) ~~and (10)~~, ss. 701.01 to 701.19, 701.21, 701.22, and 701.23 are applicable to a trust existing on July 1, 1971, as well as a trust created after such date, and shall govern trustees acting under such trusts. If application of any provision of ss. 701.01 to 701.19, 701.21, 701.22 , and 701.23 to a trust in existence on August 1, 1971, is unconstitutional, it shall not affect application of the provision to a trust created after that date.

SECTION 21. 701.24 (3) of the statutes is created to read:

701.24 **(3)** Sections 701.06 (6) (b), (c), and (d) and 701.19 (10) are applicable to a trust existing on the effective date of this subsection .... [revisor inserts date], as well as a trust created after that date, and shall govern trustees acting under such trusts. If application of any provision of s. 701.06 (6) (b), (c), or (d) or 701.19 (10) to a trust in existence on the effective date of this subsection .... [revisor inserts date], is unconstitutional, it shall not affect application of the provision to a trust created after that date.

SECTION 22. 701.26 (title) of the statutes is amended to read:

701.26 (title) **Disclaimers of nonprobate transfers ~~at death.~~**

SECTION 23. 701.26 of the statutes is renumbered 701.26 (1) and amended to read:

701.26 **(1)** A ~~person~~ recipient may disclaim, under s. 854.13, any of the following:

(a) ~~An~~ All or part of an interest in a joint tenancy, upon the death of another joint tenant.

(b) ~~An~~ All or part of an interest in survivorship marital property, upon the death of the other spouse.

(c) ~~An~~ All or part of an interest that is created by a nontestamentary instrument and transferred at death, upon the death that causes the transfer.

SECTION 24. 701.26 (1) (d) of the statutes is created to read:

701.26 **(1)** (d) All or part of any other interest transferred under a governing instrument, as defined in s. 854.01 (2).

SECTION 25. 701.26 (2) of the statutes is created to read:

701.26 **(2)** A recipient may disclaim, under s. 700.27, all or part of any interest transferred under an inter vivos governing instrument, as defined in s. 700.27 (1) (c).

SECTION 26. 702.03 (1) of the statutes is amended to read:

702.03 **(1)** Unless the person who executed it had a contrary intention ~~is found~~, if a governing instrument, as defined in s. 854.01~~, creating~~ (2), or an inter vivos governing instrument, as defined in s. 700.27 (1) (c), creates a power of appointment that expressly requires that the power be exercised by any type of reference to the power or its source, ~~it is presumed that~~ the donor's intention in requiring the reference ~~was~~ is presumed to be to prevent an inadvertent exercise of the power. Extrinsic evidence, as defined in s. 854.01 (1), may be used to ~~show contrary~~ construe the intent.

SECTION 27. 702.08 of the statutes is amended to read:

702.08 Disclaimer of powers. The donee of any power may disclaim all or part of the power as provided under s. 700.27 or 854.13.

SECTION 28. 705.04 (2) of the statutes is renumbered 705.04 (2) (intro.) and amended to read:

705.04 **(2)** (intro.) If the account is a P.O.D. account, on the death of the original payee or the survivor of 2 or more original payees, ~~any sums remaining on deposit belong to the P.O.D. beneficiaries if surviving, or to the survivor of them if one or more~~

~~die before the original payee. Payment may be made to a minor P.O.D. beneficiary, however, only in accordance with a procedure approved in ch. 880.~~ all of the following apply:

(b) If there are 2 or more P.O.D. beneficiaries and they all survive, they ~~shall be~~ are entitled to payment of the sums on deposit in accordance with ~~such~~ any written instructions ~~as may have been~~ that the owner filed with the financial institution, ~~and~~ or, if ~~none~~ the owner left no written instructions, to payment in equal shares. ~~There~~

(c) If 2 or more persons succeed to ownership of the account, there is no further right of survivorship ~~in the event of the death of one of 2 or more P.O.D. beneficiaries after their entitlement to payment has matured~~ unless the terms of the account expressly provide for survivorship or for the account's continuance as a joint account.

SECTION 29. 705.04 (2) (a) of the statutes is created to read:

705.04 **(2)** (a) If there is one P.O.D. beneficiary and he or she survives, he or she is entitled to payment of all sums remaining on deposit.

SECTION 30. 705.04 (2) (d) of the statutes is created to read:

705.04 **(2)** (d) Subject to the rights of financial institutions under s. 705.06 (1) (c), if any P.O.D. beneficiary predeceases the original payee or the survivor of 2 or more original payees, the amount to which the predeceased P.O.D. beneficiary would have been entitled passes to any of his or her issue who would take under s. 854.06 (3).

SECTION 31. 705.04 (2) (e) of the statutes is created to read:

705.04 **(2)** (e) If no P.O.D. beneficiary or predeceased P.O.D. beneficiary's issue who would take under s. 854.06 (3) survives the death of all owners, the account belongs to the estate of the deceased sole owner or the estate of the last to die of multiple owners.

SECTION 32. 705.04 (2) (f) and (g) of the statutes are created to read:

705.04 **(2)** (f) Payment may be made to a minor P.O.D. beneficiary only in accordance with a procedure approved under ch. 880.

(g) If the P.O.D. account is a marital account, this section applies only to the 50 percent of the account not owned by the surviving spouse named as a party on the account.

SECTION 33. 705.06 (1) (c) of the statutes is amended to read:

705.06 **(1)** (c) Any sums in a P.O.D. account may be paid, on request, to the P.O.D. beneficiary upon presentation to the financial institution of proof of death showing that the P.O.D. beneficiary survived all persons named as original payees of the account. If more than one P.O.D. beneficiary is named and at least one of them is predeceased, sums in the account may be paid to the surviving P.O.D. beneficiary or beneficiaries upon presentation of proof of death of the other beneficiary, without regard to claims by the issue of a predeceased beneficiary under s. 705.04 (2) (d). If none of the named beneficiaries survive, the sums in the account may be paid to the estate of the deceased sole owner or the estate of the owner who was the last to die of multiple owners, without regard to claims by the issue of a predeceased beneficiary under s. 705.04 (2) (d). If the P.O.D. account is a marital account, this paragraph applies only to the 50 percent of the account not owned by the surviving spouse named as a party on the account.

SECTION 34. 705.06 (2) of the statutes is amended to read:

705.06 **(2)** Payment made under this subchapter discharges the financial institution from all claims for amounts so withdrawn. If the institution has reason to believe that a dispute exists as to the rights of the parties to an account or their successors it may, but shall not be required to, refuse to pay funds in the account to

any persons pending instructions from a court, or it may pay the proceeds to a court. An institution may but need not recognize the authority of an agent, other than one with continuing authority under s. 705.05 (3), until it knows of the fact of death or adjudication of incompetence of all parties appointing such agent and has reasonable opportunity to act.

(3) The protection provided by this section shall have no bearing on the rights of parties or their successors in disputes concerning the beneficial ownership of funds in or withdrawn from an account.

SECTION 35. 705.27 of the statutes is amended to read:

705.27 Ownership on death of owner. ~~On~~ Subject to the rights of the registering entity under s. 705.28 (2m), on the death of a sole owner or the last to die of multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners and to any predeceased beneficiary's issue who would take under s. 854.06 (3). On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the ~~beneficiary or beneficiaries who survive the death of all owners~~ successors to the ownership interest. Until division of the security after the death of all owners, multiple ~~beneficiaries surviving the death of all owners~~ successors to the ownership interest hold their interests as tenants in common. If no beneficiary or predeceased beneficiary's issue who would take under s. 854.06 (3) survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of multiple owners.

SECTION 36. 705.28 (2m) of the statutes is created to read:

705.28 **(2m)** If more than one beneficiary is named and at least one beneficiary is predeceased, a security registered in beneficiary form may be reregistered in the name of the surviving beneficiary with a proof of death of the other beneficiary, without regard to claims by the issue of a predeceased beneficiary under s. 705.27 unless the registering entity receives written notice of a claim under sub. (3) (b). If none of the beneficiaries survive, a security registered in beneficiary form may be reregistered in the name of the estate of the deceased sole owner or the estate of the owner who was last to die of multiple owners, without regard to claims by the issue of a predeceased beneficiary under s. 705.27 unless the registering entity receives written notice of a claim under sub. (3) (b).

SECTION 37. 705.28 (3) of the statutes is renumbered 705.28 (3) (a) and amended to read:

705.28 **(3)** (a) ~~A~~ Subject to par. (b), a registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisees of the deceased owner if it registers a transfer of a security in accordance with s. 705.27 and does so in good faith reliance on the registration, on ss. 705.21 to 705.30, and on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity.

(b) The protections ~~of ss. 705.21 to 705.30~~ provided in this subchapter do not extend to a reregistration or payment made after a registering entity has received written notice from a claimant to an interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under ~~ss. 705.21 to 705.30~~ this subchapter. If the registering entity has reason to believe that

a dispute exists as to the rights of the parties to a security registered in beneficiary form or their successors, the registering entity may refuse to reregister the security pending instructions from a court.

SECTION 38. 766.31 (1) (title) of the statutes is created to read:

766.31 **(1)** (title) GENERAL.

SECTION 39. 766.31 (2) (title) of the statutes is created to read:

766.31 **(2)** (title) PRESUMPTION.

SECTION 40. 766.31 (3) of the statutes is renumbered 766.31 (3) (intro.) and amended to read:

766.31 **(3)** SPOUSE'S INTEREST IN MARITAL PROPERTY. (intro.) Each spouse has a present undivided one–half interest in each item of marital property, ~~but the~~ subject to all of the following:

(a) *Terminable interest in deferred employment benefit plan.* As provided in s. 766.62 (5), the marital property interest of the nonemployee spouse in a deferred employment benefit plan or in assets in an individual retirement account that are traceable to the rollover of a deferred employment benefit plan terminates at the death of the nonemployee spouse if he or she predeceases the employee spouse.

SECTION 41. 766.31 (3) (b) of the statutes is created to read:

766.31 **(3)** (b) *Division based on aggregate value at death.* 1. Spouses may provide in a marital property agreement that at the death of a spouse some or all of their marital property will be divided based on aggregate value rather than divided item by item. However, at the death of a spouse, a marital property agreement is not necessary for a division of marital property that is not item by item.

2. The surviving spouse and the successor in interest to the decedent's share of marital property may enter into an agreement providing that some or all of the

marital property in which each has an interest will be divided based on aggregate value rather than divided item by item.

SECTION 42. 766.31 (4) (title) of the statutes is created to read:

766.31 **(4)** (title) CLASSIFICATION OF INCOME.

SECTION 43. 766.31 (5) (title) of the statutes is created to read:

766.31 **(5)** (title) TRANSFER TO A TRUST.

SECTION 44. 766.31 (6) (title) of the statutes is created to read:

766.31 **(6)** (title) PROPERTY OWNED AT DETERMINATION DATE.

SECTION 45. 766.31 (6) of the statutes is renumbered 766.31 (6) (a) and amended to read:

766.31 **(6)** (a) *Date of marriage same as determination date.* ~~Property owned at a~~ If the date of marriage ~~which occurs after 12:01 a.m. on January 1, 1986,~~ is the same as the determination date, the property owned at the determination date is individual property of the owning spouse ~~if, at the marriage, both spouses are domiciled in this state~~.

SECTION 46. 766.31 (6) (b) of the statutes is created to read:

766.31 **(6)** (b) *Date of marriage prior to determination date.* If the date of marriage precedes the determination date, the property owned at the determination date is not classified by this chapter but is subject to all of the following:

1. Subsections (8) and (9) govern property owned at the time of marriage.

2. Subsections (8) and (9) govern property acquired while the spouses were married but before the determination date if the property would have been individual property had it been acquired after the determination date.

3. Subsections (8) and (9) and s. 861.02 govern property acquired while the spouses were married but before the determination date if the property would have been marital property had it been acquired after the determination date.

SECTION 47. 766.31 (7) (title) of the statutes is created to read:

766.31 **(7)** (title) INDIVIDUAL PROPERTY AFTER DETERMINATION DATE.

SECTION 48. 766.31 (7p) (title) of the statutes is created to read:

766.31 **(7p)** (title) UNILATERAL STATEMENT.

SECTION 49. 766.31 (8) (title) of the statutes is created to read:

766.31 **(8)** (title) RIGHTS IN PROPERTY ACQUIRED BEFORE DETERMINATION DATE.

SECTION 50. 766.31 (9) (title) of the statutes is created to read:

766.31 **(9)** (title) TREATMENT OF PROPERTY ACQUIRED BEFORE THE DETERMINATION DATE.

SECTION 51. 766.31 (10) (title) of the statutes is created to read:

766.31 **(10)** (title) RECLASSIFICATION.

SECTION 52. 766.61 (7) of the statutes is amended to read:

766.61 **(7)** ~~If~~ Except as provided in s. 854.14 (3m) (b) 2., if a noninsured spouse predeceases an insured spouse, the decedent spouse's marital property interest ~~of the decedent spouse~~ in a policy ~~which~~ that designates the surviving spouse as the owner and insured is limited to a dollar amount equal to one–half of the marital property interest in the interpolated terminal reserve and in the unused portion of the term premium of the policy on the decedent spouse's date of death ~~of the deceased spouse~~. All other rights of the decedent spouse in the ownership interest or proceeds of the policy, other than the marital property interest described in this subsection, terminate at the decedent spouse's death.

SECTION 53. 766.62 (2) of the statutes is amended to read:

766.62 **(2)** A deferred employment benefit attributable to employment of a spouse occurring ~~while the spouse is married and~~ partly before and partly after the determination date is mixed property. The marital property component of that mixed property is the amount which results from multiplying the entire benefit by a fraction, the numerator of which is the period of employment giving rise to the benefit that occurred after the determination date and during marriage and the denominator of which is the total period of employment giving rise to the benefit.

SECTION 54. 766.62 (4) of the statutes is renumbered 766.62 (4) (a).

SECTION 55. 766.62 (4) (b) of the statutes is created to read:

766.62 **(4)** (b) If a deferred employment benefit plan administrator has reason to believe that a dispute exists as to the rights of parties, or their successors, to a deferred employment benefit, the deferred employment benefit plan administrator may do any of the following:

1. Deposit the benefit funds with a court having jurisdiction of the proceedings. The court shall hold the funds and, upon determination of the owner, shall order disbursement in accordance with the determination. Property deposited with the court discharges the deferred employment benefit plan administrator from all claims for the benefit funds.

2. Refuse to transfer any funds from the plan to any person until the administrator receives from a court written documentation that the dispute has been resolved.

3. Make a payment under par. (a).

SECTION 56. 766.62 (4) (c) of the statutes is created to read:

766.62 **(4)** (c) The protection afforded a deferred employment benefit plan administrator under this subsection does not affect the rights of parties or their

successors in disputes concerning the beneficial ownership of deferred employment benefits.

SECTION 57. 766.62 (5) (intro.) of the statutes is amended to read:

766.62 **(5)** (intro.) ~~If~~ Except as provided in s. 854.14 (3m) (c), if the nonemployee spouse predeceases the employee spouse, the marital property interest of the nonemployee spouse in all of the following terminates at the death of the nonemployee spouse:

SECTION 58. 767.266 (1) (b) of the statutes is amended to read:

767.266 **(1)** (b) That one or both spouses will make a particular disposition in a will or other governing instrument, as defined in s. 854.01 (2).

SECTION 59. 851.055 (1m) of the statutes is created to read:

851.055 **(1m)** Is not classified as individual property or marital property under a valid marital property agreement, unless the marital property agreement provides otherwise.

SECTION 60. 851.21 (1) (b) of the statutes is amended to read:

851.21 **(1)** (b) ~~A~~ Except as provided in s. 853.32 (2) (e), a beneficiary named in any document offered for probate as the will of the decedent and includes a person named or acting as a trustee of any trust, inter vivos or testamentary, named as a beneficiary.

SECTION 61. 851.31 of the statutes is amended to read:

851.31 Will. ~~"Will"~~ Unless the context or subject matter indicates otherwise, "will" includes a codicil and any document incorporated by reference in a testamentary document under s. 853.32 (1) or (2). "Will" does not include a copy, unless the copy has been proven as a will under s. 856.17, but "will" does include a properly executed duplicate original.

SECTION 62. 851.50 of the statutes is amended to read:

851.50 Status of adopted persons. The status of adopted persons for purposes of inheritance and transfers under wills or other governing instruments, as defined in s. 854.01 (2), is governed by ss. 854.20 and 854.21.

SECTION 63. 852.01 (1) (a) 2. of the statutes is renumbered 852.01 (1) (a) 2. (intro.) and amended to read:

852.01 **(1)** (a) 2. (intro.) If there are surviving issue one or more of whom are not issue of the surviving spouse, one–half of decedent's property other than the following property:

a. The decedent's interest in marital property.

SECTION 64. 852.01 (1) (a) 2. b. of the statutes is created to read:

852.01 **(1)** (a) 2. b. The decedent's interest in property held equally and exclusively with the surviving spouse as tenants in common.

SECTION 65. 852.01 (1) (b) of the statutes is amended to read:

852.01 **(1)** (b) To the issue, per stirpes, the share of the estate not passing to the spouse under par. (a), or the entire estate if there is no surviving spouse. ~~If there are issue other than children, those of more remote degrees take per stirpes.~~

SECTION 66. 852.05 (title) of the statutes is amended to read:

852.05 (title) **Status of ~~nonmarital~~ child born to unmarried parents for purposes of intestate succession.**

SECTION 67. 852.05 (1) (intro.) of the statutes is amended to read:

852.05 **(1)** (intro.) A ~~nonmarital~~ child born to unmarried parents, or the child's issue ~~is entitled to take~~, is treated in the same manner as a ~~marital~~ child ~~by~~, or the issue of a child, born to married parents with respect to intestate succession from and

through ~~his or her~~ the child's mother, and from and through ~~his or her~~ the child's father if any of the following applies:

SECTION 68. 852.05 (2) of the statutes is amended to read:

852.05 **(2)** Property of a ~~nonmarital~~ child born to unmarried parents passes in accordance with s. 852.01 except that the father or the father's kindred can inherit only if the father has been adjudicated to be the father in a paternity proceeding under ch. 767 or by final order or judgment of a court of competent jurisdiction in another state or has been determined to be the father under s. 767.62 (1) or a substantially similar law of another state.

SECTION 69. 852.05 (3) of the statutes is amended to read:

852.05 **(3)** (a) This section does not apply to a child who becomes a marital child by the subsequent marriage of the child's parents under s. 767.60.

(b) The status of a ~~nonmarital~~ child born to unmarried parents who is legally adopted is governed by s. 854.20.

SECTION 70. 852.12 of the statutes is amended to read:

852.12 Debts to decedent. If an heir owes a debt to the decedent, s. 854.12 governs the treatment of that debt ~~shall be charged against the intestate share of the debtor, regardless of whether the debt has been discharged in bankruptcy. If the debtor fails to survive the decedent, the debt shall not be taken into account in computing the intestate shares of the debtor's issue~~.

SECTION 71. 853.03 (2) of the statutes is renumbered 853.03 (2) (am) and amended to read:

853.03 **(2)** (am) It must be signed by ~~2 or more witnesses, each of whom~~ at least 2 witnesses who signed within a reasonable time after ~~witnessing~~ any of the following:

1. The signing of the will as provided under sub. (1), in the conscious presence of the witness.

2. The testator's implicit or explicit acknowledgement of the testator's signature on the will, ~~within~~ in the conscious presence of ~~each of~~ the ~~witnesses~~ witness.

3. The testator's implicit or explicit acknowledgement of the will, ~~within~~ in the conscious presence of ~~each of~~ the ~~witnesses~~ witness.

SECTION 72. 853.03 (2) (bm) of the statutes is created to read:

853.03 **(2)** (bm) The 2 witnesses required under par. (am) may observe the signing or acknowledgement under par. (am) 1. to 3. at different times.

SECTION 73. 853.04 (3) of the statutes is repealed and recreated to read:

853.04 **(3)** EFFECT OF AFFIDAVIT. The effect of an affidavit in substantially the form under sub. (1) or (2) is as provided in s. 856.16.

SECTION 74. 853.11 (2) of the statutes is renumbered 853.12, and 853.12 (1), (2) (intro.), (b) and (c), (3) (intro.) and (4) (intro.) and (b), as renumbered, are amended to read:

853.12 **(1)** ENTITLEMENT OF SURVIVING SPOUSE. Subject to ~~par. (c)~~ sub. (3), if the testator married the surviving spouse after the testator executed his or her will, the surviving spouse is entitled to a share of the probate estate.

(2) VALUE OF SHARE. (intro.) The value of the share under ~~par. (a)~~ sub. (1) is the value of the share that the surviving spouse would have received had the testator died with an intestate estate equal to the value of the testator's net estate ~~of the decedent less~~, but the value of the net estate shall first be reduced by the value of all of the following:

(b) All devises to or for the benefit of the issue of a child described in ~~subd. 1.~~ par. (a).

(c) All devises that pass under s. 854.06, 854.07, 854.21, or 854.22 to or for the benefit of children described in ~~subd. 1.~~ par. (a) or issue of those children.

(3) EXCEPTIONS. (intro.) ~~Paragraph (a)~~ Subsection (1) does not apply if any of the following applies:

(4) PRIORITY AND ABATEMENT. (intro.) In satisfying the share provided by this ~~subsection~~ section:

(b) Devises other than those described in ~~par. (b) 1. to 3.~~ sub. (2) (a) to (c) abate as provided under s. 854.18.

SECTION 75. 853.11 (2m) of the statutes is created to read:

853.11 **(2m)** PREMARITAL WILL. Entitlements of a surviving spouse under a decedent's will that was executed before marriage to the surviving spouse are governed by s. 853.12.

SECTION 76. 853.11 (3) of the statutes is amended to read:

853.11 **(3)** ~~FORMER~~ TRANSFER TO FORMER SPOUSE. ~~The effect of a~~ A transfer under a will to a former spouse is governed by s. 854.15.

SECTION 77. 853.11 (6) (c) of the statutes is amended to read:

853.11 **(6)** (c) If a subsequent will that wholly or partly revoked a previous will is itself revoked by another, later will, the previous will or its revoked part remains revoked, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent that it appears from the terms of the later will, or from the testator's contemporary or subsequent declarations, that the testator intended the previous will or its revoked part to take effect.

SECTION 78. 853.11 (6) (d) of the statutes is amended to read:

853.11 **(6)** (d) In the absence of an original valid will, ~~establishment of~~ the execution and validity of the revived will or part ~~is governed by~~ may be established as provided in s. 856.17.

SECTION 79. 853.18 (1) of the statutes is renumbered 853.18 (1) (intro.) and amended to read:

853.18 **(1)** (intro.) Except as otherwise provided in s. 853.15 or 853.17 (1) or ch. 766, ~~no written designation in accordance with the terms of any insurance, annuity or endowment contract, or in any agreement issued or entered into by an insurance company in connection therewith, supplemental thereto or in settlement thereof, and no written designation made under a contract, plan, system or trust providing for pension, retirement, deferred compensation, stock bonus, profit–sharing or death benefits, or an employment or commission contract, of any person to be a beneficiary, payee or owner of any right, title or interest thereunder upon the death of another, or any assignment of rights under any of the foregoing,~~ none of the following is subject to or defeated or impaired by any statute or rule of law governing the transfer of property by will, gift, or intestacy, even though ~~that~~ the designation or assignment is revocable or the rights of ~~that~~ the beneficiary, payee, owner, or assignee are otherwise subject to defeasance~~.~~:

SECTION 80. 853.18 (1) (a), (b) and (c) of the statutes are created to read:

853.18 **(1)** (a) A written designation in accordance with the terms of any insurance, annuity, or endowment contract.

(b) Any agreement issued or entered into by an insurance company supplemental to or in settlement of any insurance, annuity, or endowment contract.

(c) Any written designation made under a contract, plan, system, or trust providing for pension, retirement, deferred compensation, stock bonus,

profit–sharing, or death benefits, or an employment or commission contract, of any person to be a beneficiary, payee, or owner of any right, title, or interest thereunder upon the death of another, or any assignment of rights under any of the foregoing.

SECTION 81. 853.25 (2) of the statutes is renumbered 853.25 (2) (a) (intro.) and amended to read:

853.25 **(2)** (a) (intro.) Except as provided in sub. (5), if clear and convincing evidence proves that the testator failed to provide in the testator's will for a child living at the time of making of the will, or for the issue of any then deceased child, by mistake or accident, including the mistaken belief that the child or issue of a deceased child was dead at the time the will was executed, the child or issue is entitled to receive a share in the estate of the testator~~, as provided under sub. (1),~~ as if the child or issue was born or adopted after the execution of the will~~.~~, as follows:

(b) Failure to mention a child or issue in the will is not in itself evidence of mistake or accident.

SECTION 82. 853.25 (2) (a) 1. and 2. of the statutes are created to read:

853.25 **(2)** (a) 1. If no children were included in the will but some or all of those children were omitted by mistake, then sub. (1) (b) provides for the share of any child or issue omitted by mistake.

2. If some children were included in the will but other children were omitted by mistake, then sub. (1) (c) provides for the share of any child or issue omitted by mistake.

SECTION 83. 853.32 (1) of the statutes is renumbered 853.32 (1) (am).

SECTION 84. 853.32 (1) (bm) of the statutes is created to read:

853.32 **(1)** (bm) A writing or document is incorporated into a will under par. (am) even if the writing or document is not executed in compliance with s. 853.03 or 853.05.

SECTION 85. 853.32 (2) (a) of the statutes is amended to read:

853.32 **(2)** (a) A reference in a will ~~executed on or after May 3, 1996,~~ to another document that lists tangible personal property not otherwise specifically disposed of in the will disposes of that property if the other document describes the property and the distributees with reasonable certainty and is signed and dated by the decedent. The court may enforce a document that is not dated but that fulfills all of the other requirements under this paragraph.

SECTION 86. 853.32 (2) (am) of the statutes is created to read:

853.32 **(2)** (am) Another document under par. (a) is valid if it was signed in compliance with s. 853.03 (1) or with the law of the place where the document was signed, or where the testator resided, was domiciled, or was a national at the time the document was signed or at the time of death, even if it was not otherwise executed in compliance with s. 853.03 (2) or 853.05.

SECTION 87. 853.32 (2) (b) of the statutes is renumbered 853.32 (2) (b) (intro.) and amended to read:

853.32 **(2)** (b) (intro.) Another document under par. (a) is valid even if ~~it~~ any of the following applies:

1. The document does not exist when the will is executed~~, even if it~~.

2. The document is changed after the will is executed ~~and even if it~~.

3. The document has no significance except for its effect on the disposition of property by the will.