



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 01/05/2009 (Per: PJK)



 Appendix A ... Pt. 02 of 06

 The 2007 drafting file for LRB-3960

has been transferred to the drafting file for

2009 LRB-1308

 This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3960/?ins
PJH:.....

✓
INSERT 11-15 PJH:

SECTION 1. 301.046 (4) (a) 1. of the statutes is amended to read:

301.046 (4) (a) 1. "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, sibling, parent or legal guardian.

History: 1989 a. 31 ss. 961m, 961mb; Stats. 1989 s. 301.046; 1989 a. 251; 1991 a. 39; 1993 a. 97, 227, 479; 1997 a. 181, 283; 2005 a. 277.

SECTION 2. 301.048 (4m) (a) 1. of the statutes is amended to read:

301.048 (4m) (a) 1. "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, sibling, parent or legal guardian.

History: 1991 a. 39; 1993 a. 79, 97, 227, 437, 479; 1995 a. 27; 1997 a. 27, 133, 181, 283; 1999 a. 9; 2001 a. 109; 2005 a. 277.

SECTION 3. 301.38 (1) (a) of the statutes is amended to read:

301.38 (1) (a) "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, sibling, parent or legal guardian.

History: 1995 a. 74; 1997 a. 181, 283.

SECTION 4. 301.46 (3) (a) 1. of the statutes is amended to read:

301.46 (3) (a) 1. "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, parent, sibling or legal guardian.

History: 1995 a. 440; 1997 a. 6, 27, 130, 181, 237, 283; 1999 a. 89; 2001 a. 16; 2003 a. 188; 2005 a. 5, 431; 2007 a. 20 ss. 3132r, 3133, 9121 (6) (a).

SECTION 5. 302.105 (1) (a) of the statutes is amended to read:

302.105 (1) (a) "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, sibling, parent or legal guardian.

History: 1993 a. 479; 1997 a. 181; 2001 a. 16 s. 3385g; Stats. 2001 s. 302.105; 2005 a. 277.

SECTION 6. 304.06 (1) (a) 1. of the statutes is amended to read:

304.06 (1) (a) 1. "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, sibling, parent or legal guardian.

History: 1971 c. 125, 219; 1973 c. 90, 198, 333; 1975 c. 156, 199; 1977 c. 29, 353, 418, 449; 1979 c. 356; 1981 c. 266; 1983 a. 27, 64, 197, 528, 538; 1985 a. 262 s. 8; 1987 a. 244 ss. 1 to 3, 7; 1987 a. 412; 1989 a. 31 ss. 1699 to 1700p; Stats. 1989 s. 304.06; 1989 a. 107, 122; 1991 a. 39; 1993 a. 79, 89, 97, 178, 194, 227, 289, 377, 479, 491; 1995 a. 27, 77, 352, 387, 444, 448; 1997 a. 133, 181, 237, 275, 283, 284, 326; 1999 a. 32; 2001 a. 109; 2003 a. 33; 2005 a. 42.

SECTION 7. 304.09 (1) (a) of the statutes is amended to read:

304.09 (1) (a) "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, sibling, parent or legal guardian.

History: 1983 a. 364; 1989 a. 31 s. 1708; Stats. 1989 s. 304.09; 1997 a. 181.

✓ INSERT 16-13 PJH:

SECTION 8. 949.01 (2) of the statutes is amended to read:

949.01 (2) "Dependent" means any spouse, state-registered domestic partner under s. 770.05, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or parent of spouse or of state-registered domestic partner under s. 770.05, of a deceased victim who was wholly or partially dependent upon the victim's income at the time of the victim's death and includes any child of the victim born after the victim's death.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 189; 1981 c. 20; 1983 a. 467; 1985 a. 135 s. 83 (3); 1989 a. 140; 1995 a. 153; 2007 a. 20.

SECTION 9. 949.06 (1m) (a) of the statutes is amended to read:

949.06 (1m) (a) In this subsection, "family member" means any spouse, state-registered domestic partner under s. 770.05, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, foster child, treatment foster child, brother, sister, half brother, half sister, aunt, uncle, nephew, niece, or parent or sibling of spouse.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20.

SECTION 10. 971.17 (4m) (a) 2. of the statutes is amended to read:

971.17 (4m) (a) 2. "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, sibling, parent or legal guardian.

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275; 1999 a. 89; 2001 a. 95, 109; 2003 a. 50; 2005 a. 277, 431; 2007 a. 20 ss. 3875, 9121 (6) (a).

SECTION 11. 971.17 (6m) (a) 2. of the statutes is amended to read:

971.17 (6m) (a) 2. "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, sibling, parent or legal guardian.

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275; 1999 a. 89; 2001 a. 95, 109; 2003 a. 50; 2005 a. 277, 431; 2007 a. 20 ss. 3875, 9121 (6) (a).

SECTION 12. 980.11 (1) (b) of the statutes is amended to read:

980.11 (1) (b) "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, sibling, parent or legal guardian.

History: 1993 a. 479; 1995 a. 27 s. 9126 (19); 1995 a. 440; 1997 a. 181; 1999 a. 9; 2005 a. 434; 2007 a. 20 s. 9121 (6) (a).

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3960/?instex
BAB/RPN.....

1 ✓ Insert 10-3 - BAB

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3 ✓ **SECTION 1.** 243.10 (1) (form) of the statutes is amended to read:

4 ✓ (SEE INSERT RPN-A FROM 07-2669/P4)

5 ✓ **SECTION 2.** 243.10 (7) (b) of the statutes is amended to read:

6 243.10 (7) (b) A principal may revoke a Wisconsin basic power of attorney for
7 finances and property and invalidate it at any time by destroying it, by directing
8 another person to destroy it in the principal's presence or by signing a written and
9 dated statement expressing the principal's intent to revoke. If the agent under the
10 Wisconsin basic power of attorney for finances and property is the principal's spouse
11 and the marriage is annulled, or the agent and principal are divorced, or the agent
12 is the principal's state-registered domestic partner under s. 770.05 and the domestic
13 partnership is terminated under s. 770.10, after signing the document, the
14 Wisconsin basic power of attorney for finances and property is invalid.

15 **History:** 1991 a. 297; 1993 a. 148, 213, 299, 484; 1995 a. 27 s. 9126 (19); 1997 a. 35, 233; 1999 a. 162, 185; 2001 a. 38; 2005 a. 387; 2007 a. 20 s. 9121 (6) (a).

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18 ✓ Insert 11-15 - BAB

19

20 **SECTION 3.** 342.14 (3m) of the statutes, as affected by 2007 Wisconsin Act 33,
is amended to read:

21 **342.14 (3m)** Upon filing an application under sub. (1) or (3), a supplemental
22 title fee of \$7.50 by the owner of the vehicle, except that this fee shall be waived with
23 respect to an application under sub. (3) for transfer of a decedent's interest in a

1 vehicle to his or her surviving spouse or state-registered domestic partner under s.
2 770.05. The fee specified under this subsection is in addition to any other fee
3 specified in this section. This subsection does not apply to an application for a
4 certificate of title for a neighborhood electric vehicle.

History: 1975 c. 39, 297, 422; 1977 c. 29 ss. 1452, 1654 (7) (a); 1977 c. 418; 1979 c. 221; 1981 c. 20; 1983 a. 27; 1987 a. 110; 1989 a. 31, 137, 359; 1991 a. 309; 1993 a. 159; 1995 a. 27; 1997 a. 27; 1999 a. 9, 80; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20, 33; s. 13.92 (2) (i).

5 **SECTION 4.** 342.17 (4) (b) 1. (intro.), and c. and 4. of the statutes are amended

6 to read:

7 342.17 (4) (b) 1. (intro.) The department shall transfer the decedent's interest
8 in any vehicle to his or her surviving spouse or state-registered domestic partner
9 under s. 770.05 upon receipt of the title executed by the surviving spouse or domestic
10 partner and a statement by the spouse or domestic partner which shall state:

History: 1971 c. 164 s. 82; 1973 c. 40, 243; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1985 a. 141; 1991 a. 125, 239; 1995 a. 338, 421; 1997 a. 27; 1999 a. 94; 2001 a. 102; 2005 a. 216.

11 c. That the spouse or domestic partner is personally liable for the decedent's
12 debts and charges to the extent of the value of the vehicle, subject to s. 859.25.

History: 1971 c. 164 s. 82; 1973 c. 40, 243; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1985 a. 141; 1991 a. 125, 239; 1995 a. 338, 421; 1997 a. 27; 1999 a. 94; 2001 a. 102; 2005 a. 216.

13 4. The limit in subd. 3. does not apply if the surviving spouse or domestic
14 partner is proceeding under s. 867.03 (1g) and the total value of the decedent's
15 property subject to administration in the state, including the vehicles transferred
16 under this paragraph, does not exceed \$50,000.

History: 1971 c. 164 s. 82; 1973 c. 40, 243; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1985 a. 141; 1991 a. 125, 239; 1995 a. 338, 421; 1997 a. 27; 1999 a. 94; 2001 a. 102; 2005 a. 216.

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18
19 ✓ Insert 16-13 BAB(rpn)

20 **SECTION 5.** 851.08 of the statutes is created to read:

21 **851.08 Domestic partner.** "Domestic partner" means a state-registered
22 domestic partner under s. 770.05.

1 **SECTION 6.** 851.295 of the statutes is created to read:

2 **851.295 Surviving domestic partner.** (1) Subject to sub. (2), “surviving
3 domestic partner” means a person who was in a domestic partnership registered with
4 the secretary of state under s. 770.05 with the decedent, at the time of the decedent’s
5 death.

6 (2) “Surviving domestic partner” does not include any of the following:

7 (a) An individual who obtains or consents to a termination of domestic
8 partnership from the decedent if the secretary of state fails to issue a valid certificate
9 of termination of domestic partnership under s. 770.10 (3), unless the individual and
10 the decedent subsequently register as domestic partners under s. 770.05 with the
11 secretary of state or they subsequently hold themselves out as domestic partners.

12 (b) An individual whose domestic partnership with the decedent has not been
13 terminated by the secretary of state issuing a valid certificate of termination under
14 s. 770.10 (3) and who subsequently registers a domestic partnership with a 3rd
15 individual with the secretary of state under s. 770.05 or who participates in a
16 marriage ceremony with a 3rd individual.

17 (c) An individual who was party to a valid proceeding concluded by an order
18 purporting to terminate all property rights based on the domestic partnership.

19 **SECTION 7.** 852.01 (1) (a) (intro.), 1., 2. (intro.) and b., (b), (c), (d), and (f) (intro.)
20 of the statutes are amended to read:

21 852.01 (1) (a) (intro.) To the spouse or domestic partner:

1 1. If there are no surviving issue of the decedent, or if the surviving issue are
2 all issue of the surviving spouse or surviving domestic partner and the decedent, the
3 entire estate.

4 History: 1977 c. 214, 449; 1981 c. 228; 1983 a. 186; 1985 a. 37; 1987 a. 222; 1987 a. 393 s. 53; 1991 a. 224; 1993 a. 486; 1997 a. 188; 2005 a. 216.

4 2. (intro.) If there are surviving issue one or more of whom are not issue of the
5 surviving spouse or surviving domestic partner, one-half of decedent's property
6 other than the following property:

7 b. The decedent's interest in property held equally and exclusively with the
8 surviving spouse or surviving domestic partner as tenants in common.

9 History: 1977 c. 214, 449; 1981 c. 228; 1983 a. 186; 1985 a. 37; 1987 a. 222; 1987 a. 393 s. 53; 1991 a. 224; 1993 a. 486; 1997 a. 188; 2005 a. 216.

9 (b) To the issue, per stirpes, the share of the estate not passing to the spouse
10 or surviving domestic partner, under par. (a), or the entire estate if there is no
11 surviving spouse or surviving domestic partner.

12 History: 1977 c. 214, 449; 1981 c. 228; 1983 a. 186; 1985 a. 37; 1987 a. 222; 1987 a. 393 s. 53; 1991 a. 224; 1993 a. 486; 1997 a. 188; 2005 a. 216.

12 (c) If there is no surviving spouse, surviving domestic partner, or issue, to the
13 parents.

14 History: 1977 c. 214, 449; 1981 c. 228; 1983 a. 186; 1985 a. 37; 1987 a. 222; 1987 a. 393 s. 53; 1991 a. 224; 1993 a. 486; 1997 a. 188; 2005 a. 216.

14 (d) If there is no surviving spouse, surviving domestic partner, issue, or parent,
15 to the brothers and sisters and the issue of any deceased brother or sister per stirpes.

16 History: 1977 c. 214, 449; 1981 c. 228; 1983 a. 186; 1985 a. 37; 1987 a. 222; 1987 a. 393 s. 53; 1991 a. 224; 1993 a. 486; 1997 a. 188; 2005 a. 216.

16 (f) (intro.) If there is no surviving spouse, surviving domestic partner, issue,
17 parent, or issue of a parent, to the grandparents and their issue as follows:

18 History: 1977 c. 214, 449; 1981 c. 228; 1983 a. 186; 1985 a. 37; 1987 a. 222; 1987 a. 393 s. 53; 1991 a. 224; 1993 a. 486; 1997 a. 188; 2005 a. 216.

18 **SECTION 8.** 852.09 of the statutes is amended to read:

19 **852.09 Assignment of home to surviving spouse or surviving domestic**
20 **partner.** If the intestate estate includes an interest in a home, assignment of that
21 interest to the surviving spouse or surviving domestic partner is governed by s.
22 861.21.

23 History: 1993 a. 486; 1997 a. 188.

23 **SECTION 9.** 853.11 (2m) and (3) of the statutes are amended to read:

1 853.11 **(2m)** PREMARITAL OR PREDOMESTIC PARTNERSHIP WILL. Entitlements of a
 2 surviving spouse or surviving domestic partner under a decedent's will that was
 3 executed before marriage to the surviving spouse or registration of the domestic
 4 partnership under s. 770.05 to the surviving domestic partner are governed by s.
 5 853.12.

6 **(3)** TRANSFER TO FORMER SPOUSE OR FORMER DOMESTIC PARTNER. A transfer under
 7 a will to a former spouse or former domestic partner is governed by s. 854.15.

8 History: 1981 c. 228; 1983 a. 186; 1987 a. 222; 1993 a. 486; 1997 a. 188; 2005 a. 216 s. 75; 2005 a. 216.

8 **SECTION 10.** 853.12 (title) of the statutes is amended to read:

9 **853.12** (title) **Premarital will or predomestic partnership will.**

10 History: 2005 a. 216 s. 75.

10 **SECTION 11.** 853.12 (1), (2) (intro.) and (a), (3) (a) and (b), and (4) (a) of the
 11 statutes are amended to read:

12 **(1)** ENTITLEMENT OF SURVIVING SPOUSE OR SURVIVING DOMESTIC PARTNER. Subject
 13 to sub. (3), if the testator married the surviving spouse or registered a domestic
 14 partnership under s. 770.05 with the surviving domestic partner after the testator
 15 executed his or her will, the surviving spouse or surviving domestic partner is
 16 entitled to a share of the probate estate.

17 **(2)** VALUE OF SHARE. (intro.) The value of the share under sub. (1) is the value
 18 of the share that the surviving spouse or surviving domestic partner would have
 19 received had the testator died with an intestate estate equal to the value of the
 20 testator's net estate, but the value of the net estate shall first be reduced by the value
 21 of all of the following:

22 (a) All devises to or for the benefit of the testator's children who were born
 23 before the marriage to the surviving spouse or the domestic partnership with the

1 surviving domestic partner and who are not also the children of the surviving spouse
2 or surviving domestic partner.

3 (3) (a) It appears from the will or other evidence that the will was made in
4 contemplation of the testator's marriage to the surviving spouse or domestic
5 partnership with the surviving domestic partner.

6 (b) It appears from the will or other evidence that the will is intended to be
7 effective notwithstanding any subsequent marriage or domestic partnership, or
8 there is sufficient evidence that the testator considered revising the will after
9 marriage or domestic partnership but decided not to.

10 (4) (a) Amounts received by the surviving spouse under s. 861.02 and devises
11 made by will to the surviving spouse or surviving domestic partner are applied first.

History: 2005 a. 216 s. 75.

12 **SECTION 12.** 859.25 (1) (g) of the statutes is amended to read:

13 859.25 (1) (g) Property assigned to the surviving spouse or surviving domestic
14 partner under s. 861.41.

History: 1971 c. 63; 1983 a. 186; 1985 a. 37; 1993 a. 486.

15 **SECTION 13.** 861.21 (title) of the statutes is amended to read:

16 **861.21 (title) Assignment of home to surviving spouse or surviving**
17 **domestic partner.**

History: 1997 a. 188; 2005 a. 216; 2007 a. 11.

18 **SECTION 14.** 861.21 (1) (b) of the statutes, as affected by 2007 Wisconsin Act 11,
19 is amended to read:

20 861.21 (1) (b) "Home" means any dwelling in which the decedent had an
21 interest and that at the time of the decedent's death the surviving spouse occupies
22 or intends to occupy. If there are several such dwellings, any one may be designated
23 by the surviving spouse or surviving domestic partner. "Home" includes a house, a
24 mobile home, a manufactured home, a duplex or multiple apartment building one

1 unit of which is occupied by the surviving spouse or surviving domestic partner and
2 a building used in part for a dwelling and in part for commercial or business
3 purposes. "Home" includes all of the surrounding land, unless the court sets off part
4 of the land as severable from the remaining land under sub. (5).

History: 1997 a. 188; 2005 a. 216; 2007 a. 11.

5 **SECTION 15.** 861.21 (2), (4), and (5) of the statutes are amended to read:

6 861.21 (2) DECEDENT'S PROPERTY INTEREST IN HOME. Subject to subs. (4) and (5),
7 if a married or domestic partnership decedent has a property interest in a home, the
8 decedent's entire interest in the home shall be assigned to the surviving spouse or
9 surviving domestic partner if the surviving spouse or surviving domestic partner
10 petitions the court requesting such a distribution and if a governing instrument does
11 not provide a specific transfer of the decedent's interest in the home to someone other
12 than the surviving spouse or surviving domestic partner. The surviving spouse or
13 surviving domestic partner shall file the petition within 6 months after the
14 decedent's death, unless the court extends the time for filing.

15 (4) PAYMENT BY SURVIVING SPOUSE OR SURVIVING DOMESTIC PARTNER. The court
16 shall assign the interest in the home under sub. (2) to the surviving spouse or
17 surviving domestic partner upon payment of the value of the decedent's interest in
18 the home that does not pass to the surviving spouse or surviving domestic partner
19 under intestacy or under a governing instrument. Payment shall be made to the
20 fiduciary holding title to the interest. The surviving spouse or surviving domestic
21 partner may use assets due him or her from the fiduciary to satisfy all or part of the
22 payment in kind. Unless the court extends the time, the surviving spouse or
23 surviving domestic partner shall have one year from the decedent's death to pay the
24 value of the assigned interest.

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

8 History: 1997 a. 188; 2005 a. 216; 2007 a. 11.

8 **SECTION 16.** 861.31 (1m), (2), and (4) (intro.) and (b) of the statutes are amended
9 to read:

10 **861.31 (1m)** The court may, without notice or on such notice as the court
11 directs, order payment by the personal representative or special administrator of an
12 allowance as the court determines necessary or appropriate for the support of the
13 surviving spouse or surviving domestic partner and any minor children of the
14 decedent during the administration of the estate. The court shall consider the size
15 of the probate estate, other resources available for support, the existing standard of
16 living, and any other factors it considers relevant.

17 **(2)** The court may order that an allowance be made to the spouse or surviving
18 domestic partner for support of the spouse or surviving domestic partner and any
19 minor children of the decedent, or that separate allowances be made to the spouse
20 or surviving domestic partner and to the minor children of the decedent or their
21 guardian, if any, if the court finds separate allowances advisable. If there is no
22 surviving spouse or surviving domestic partner, the court may order that an
23 allowance be made to the minor children of the decedent or to their guardian, if any.

1 (4) (intro.) The court may order that the allowance be charged against income
 2 or principal, either as an advance or otherwise, but the court may not order that an
 3 allowance for support of minor children of the decedent be charged against the
 4 income or principal interest of the surviving spouse or surviving domestic partner.
 5 The court may order that the allowance for support of the surviving spouse, spouse
 6 or surviving domestic partner, not including any allowance for support of minor
 7 children of the decedent, be applied in satisfaction of any of the following:

8 (b) Any right of the surviving spouse or surviving domestic partner to elect
 9 under s. 861.02.

History: 1971 c. 40; 1991 a. 301; 1997 a. 188; 2005 a. 216.

10 **SECTION 17.** 861.33 (title) of the statutes is amended to read:

11 **861.33 (title) Selection of personalty by surviving spouse or surviving**
 12 **domestic partner.**

History: 1973 c. 233; 1983 a. 192; 1991 a. 301; 1997 a. 188; 2005 a. 216.

13 **SECTION 18.** 861.33 (1) (a) (intro.) and 1. and (b) of the statutes are amended
 14 to read:

15 861.33 (1) (a) (intro.) Subject to this section, in addition to all allowances and
 16 distributions, the surviving spouse or surviving domestic partner may file with the
 17 court a written selection of the following personal property, which shall then be
 18 transferred to the spouse or domestic partner by the personal representative:

19 1. Wearing apparel and jewelry held for personal use by the decedent or the
 20 surviving spouse or surviving domestic partner;

21 (b) The selection in par. (a) may not include items specifically bequeathed
 22 except that the surviving spouse or surviving domestic partner may in every case
 23 select the normal household furniture, furnishings, and appliances necessary to
 24 maintain the home. For this purpose antiques, family heirlooms, and collections that

1 are specifically bequeathed are not classifiable as normal household furniture or
2 furnishings.

3 History: 1973 c. 233; 1983 a. 192; 1991 a. 301; 1997 a. 188; 2005 a. 216.

SECTION 19. 861.35 (title) of the statutes is amended to read:

4 **861.35 (title) Special allowance for support of spouse or domestic**
5 **partner and support and education of minor children.**

6 History: 1971 c. 213 s. 5; 1983 a. 186; 1991 a. 301; 1997 a. 188; 2005 a. 216.

SECTION 20. 861.35 (1m), (2), (3) (a), and (4) of the statutes are amended to read:

7 **861.35 (1m)** If the decedent is survived by a spouse, domestic partner, or by
8 minor children, the court may order an allowance for the support and education of
9 each minor child until he or she reaches a specified age, not to exceed 18, and for the
10 support of the spouse or domestic partner. This allowance may be made whether the
11 estate is testate or intestate. If the decedent is not survived by a spouse or domestic
12 partner, the court also may allot directly to the minor children household furniture,
13 furnishings, and appliances. The court may not order an allowance under this
14 section if any of the following applies:

15 (a) The decedent has amply provided for each minor child and for the spouse
16 or domestic partner by the transfer of probate or nonprobate assets, or support and
17 education have been provided for by any other means.

18 (b) In the case of minor children, the surviving spouse or surviving domestic
19 partner is legally responsible for support and education and has ample means to
20 provide them in addition to his or her own support.

21 (c) In the case of the surviving spouse or surviving domestic partner, he or she
22 has ample means to provide for his or her support.

23 **(2)** The court may set aside property to provide an allowance and may appoint
24 a trustee to administer the property, subject to the continuing jurisdiction of the

1 court. If a child dies or reaches the age of 18, or if at any time the property held by
2 the trustee is no longer required for the support of the spouse or domestic partner or
3 the support and education of the minor child, any remaining property is to be
4 distributed by the trustee as the court orders in accordance with the terms of the
5 decedent's will or to the heirs of the decedent in intestacy or to satisfy unpaid claims
6 of the decedent's estate.

7 (3) (a) The effect on claims under s. 859.25. The court shall balance the needs
8 of the spouse, domestic partner, or minor children against the nature of the creditors'
9 claims in setting the amount allowed under this section.

10 (4) The court may order that the allowance to the surviving spouse or surviving
11 domestic partner, not including any allowance for the support and education of minor
12 children, be applied in satisfaction of any of the following:

13 (a) Any entitlement of the surviving spouse or surviving domestic partner
14 under s. 853.12.

15 (b) Any right of the surviving spouse or surviving domestic partner to elect
16 under s. 861.02 (1).

17 History: 1971 c. 213 s. 5; 1983 a. 186; 1991 a. 301; 1997 a. 188; 2005 a. 216.

SECTION 21. 861.41 of the statutes is amended to read:

18 **861.41 Exemption of property to be assigned to surviving spouse or**
19 **surviving domestic partner.** (1) After the amount of claims against the estate
20 has been ascertained, the surviving spouse or surviving domestic partner may
21 petition the court to set aside as exempt from the claims of creditors under s. 859.25
22 (1) (h) an amount of property reasonably necessary for the support of the spouse or
23 domestic partner, not to exceed \$10,000 in value, if it appears that the assets are
24 insufficient to pay all claims and allowances and still leave the surviving spouse or

1 surviving domestic partner such an amount of property in addition to selection and
2 allowances.

3 (2) The court shall grant the petition if it determines that an assignment ahead
4 of creditors is reasonably necessary for the support of the spouse or domestic partner.
5 In determining the necessity and the amount of property to be assigned, the court
6 must take into consideration the availability of a home to the surviving spouse or
7 surviving domestic partner and all other assets and resources available for support.

8 History: 1983 a. 186; 1985 a. 37; 1987 a. 393 s. 53; 1997 a. 188.

9 **SECTION 22.** 867.01 (1) (b) and (3) (f) of the statutes are amended to read:

10 867.01 (1) (b) Whenever the estate, less the amount of the debts for which any
11 property in the estate is security, does not exceed \$50,000 in value and the decedent
12 is survived by a spouse or domestic partner, or one or more minor children or both.

13 (3) (f) *Order.* If the court is satisfied that the estate may be settled under this
14 section, after 30 days have elapsed since notice to the department of health services
15 under par. (d), if that notice is required, the court shall assign the property to the
16 persons entitled to it. If the estate may be settled under sub. (1) (b), any property not
17 otherwise assigned shall be assigned to the surviving spouse or surviving domestic
18 partner, or minor children or both as an allowance under s. 861.31. The court shall
19 order any person indebted to or holding money or other property of the decedent to
20 pay the indebtedness or deliver the property to the persons found to be entitled to
21 receive it. The court shall order the transfer of interests in real estate, stocks or
22 bonds registered in the name of the decedent, the title of a licensed motor vehicle, or
23 any other form of property. If the decedent immediately prior to death had an estate
24 for life or an interest as a joint tenant in any property in regard to which a certificate
of termination in accordance with s. 867.04 has not been issued, the order shall set

1 forth the termination of that life estate or the right of survivorship of any joint
2 tenant. Every tract of real property in which an interest is assigned or terminated
3 or which is security for a debt in which an interest is assigned or terminated shall
4 be specifically described.

NOTE:NOTE: Par. (f) is shown as amended eff. 7-1-08 by 2007 Wis. Act 20, section 9121 (6) (a). Prior to 7-1-08 it reads:NOTE:

5 (f) *Order.* If the court is satisfied that the estate may be settled under this section, after 30 days have elapsed since notice to the
6 department of health and family services under par. (d), if that notice is required, the court shall assign the property to the persons
7 entitled to it. If the estate may be settled under sub. (1) (b), any property not otherwise assigned shall be assigned to the surviving
8 spouse or minor children or both as an allowance under s. 861.31. The court shall order any person indebted to or holding money
9 or other property of the decedent to pay the indebtedness or deliver the property to the persons found to be entitled to receive it.
10 The court shall order the transfer of interests in real estate, stocks or bonds registered in the name of the decedent, the title of a
11 licensed motor vehicle, or any other form of property. If the decedent immediately prior to death had an estate for life or an interest
12 as a joint tenant in any property in regard to which a certificate of termination in accordance with s. 867.04 has not been issued,
13 the order shall set forth the termination of that life estate or the right of survivorship of any joint tenant. Every tract of real
14 property in which an interest is assigned or terminated or which is security for a debt in which an interest is assigned or terminated
15 shall be specifically described.

History: 1971 c. 40 s. 93; 1973 c. 42, 90; 1975 c. 331, 421; 1977 c. 449; 1985 a. 278; 1987 a. 27; 1989 a. 234; 1991 a. 220; 1993 a. 16, 437, 486; 1995 a. 27 ss. 7193b to 7194c, 9126 (19); 1999 a. 9, 94; 2005 a. 216; 2007 a. 20 s. 9121 (6) (a).

16 **SECTION 23.** 895.04 (2) and (6) of the statutes are amended to read:

17 895.04 (2) If the deceased leaves surviving a spouse or state-registered
18 domestic partner under s. 770.05, and minor children under 18 years of age with
19 whose support the deceased was legally charged, the court before whom the action
20 is pending, or if no action is pending, any court of record, in recognition of the duty
21 and responsibility of a parent to support minor children, shall determine the amount,
22 if any, to be set aside for the protection of such children after considering the age of
23 such children, the amount involved, the capacity and integrity of the surviving
24 spouse, spouse or surviving domestic partner, and any other facts or information it
25 may have or receive, and such amount may be impressed by creation of an
26 appropriate lien in favor of such children or otherwise protected as circumstances
27 may warrant, but such amount shall not be in excess of 50% of the net amount
28 received after deduction of costs of collection. If there are no such surviving minor
29 children, the amount recovered shall belong and be paid to the spouse or domestic
30 partner of the deceased; if no spouse or domestic partner survives, to the deceased's

1 lineal heirs as determined by s. 852.01; if no lineal heirs survive, to the deceased's
 2 brothers and sisters. If any such relative dies before judgment in the action, the
 3 relative next in order shall be entitled to recover for the wrongful death. A surviving
 4 nonresident alien spouse or a nonresident alien domestic partner state-registered
 5 under s. 770.05 and minor children shall be entitled to the benefits of this section.
 6 In cases subject to s. 102.29 this subsection shall apply only to the surviving spouse's
 7 or surviving domestic partner's interest in the amount recovered. If the amount
 8 allocated to any child under this subsection is less than \$10,000, s. 807.10 may be
 9 applied. Every settlement in wrongful death cases in which the deceased leaves
 10 minor children under 18 years of age shall be void unless approved by a court of
 11 record authorized to act hereunder.

12 (6) Where the wrongful death of a person creates a cause of action in favor of
 13 the decedent's estate and also a cause of action in favor of a spouse, state-registered
 14 domestic partner under s. 770.05, or relatives as provided in this section, such
 15 spouse, domestic partner, or relatives may waive and satisfy the estate's cause of
 16 action in connection with or as part of a settlement and discharge of the cause of
 17 action of the spouse, domestic partner, or relatives.

History: 1971 c. 59; Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1975 c. 94 s. 91 (3); 1975 c. 166, 199, 287, 421, 422; 1979 c. 166; 1983 a. 315; 1985 a. 130; 1989 a. 307; 1991 a. 308; 1997 a. 89, 290.

18 **SECTION 24.** 905.05 (title) of the statutes is amended to read:

19 **905.05 (title) Husband-wife and domestic partner privilege.**

History: Sup. Ct. Order, 59 Wis. 2d R1, R130 (1973); 1991 a. 32.

20 **SECTION 25.** 905.05 (1), (2), and (3) (a), (b), (c), and (d) of the statutes are
 21 amended to read:

22 905.05 (1) GENERAL RULE OF PRIVILEGE. A person has a privilege to prevent the
 23 person's spouse or former spouse or domestic partner or former domestic partner
 24 from testifying against the person as to any private communication by one to the

1 other made during their marriage or domestic partnership. As used in this section,
2 “domestic partner” means a state-registered domestic partner under s. 770.05

3 (2) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the person
4 or by the spouse or domestic partner on the person’s behalf. The authority of the
5 spouse or domestic partner to do so is presumed in the absence of evidence to the
6 contrary.

7 (3) (a) If both spouses or former spouses or domestic partners or former
8 domestic partners are parties to the action.

9 (b) In proceedings in which one spouse or former spouse or domestic partner
10 or former domestic partner is charged with a crime against the person or property
11 of the other or of a child of either, or with a crime against the person or property of
12 a 3rd person committed in the course of committing a crime against the other.

13 (c) In proceedings in which a spouse or former spouse or domestic partner or
14 former domestic partner is charged with a crime of pandering or prostitution.

15 (d) If one spouse or former spouse or domestic partner or former domestic
16 partner has acted as the agent of the other and the private communication relates
17 to matters within the scope of the agency.

18 **History:** Sup. Ct. Order, 59 Wis. 2d R1, R130 (1973); 1991 a. 32.

Insert RPN-A

1 conducted. If the entire body is given for transplantation or therapeutic purposes or
2 if the gift is of a part of a body, the donee, upon the death of the donor and before
3 embalming, shall cause the part to be removed without unnecessary mutilation.
4 After removal of the part of the body, custody of the remainder of the body vests in
5 the person under obligation to dispose of the body.

6 SECTION 22. 157.061 (7) of the statutes is amended to read:

7 157.061 (7) "Family member" means a spouse or a state-registered domestic
8 partner under s. 770.05 or an individual related by blood, marriage, or adoption
9 within the 3rd degree of kinship as computed under s. 990.001 (16).

10 SECTION 23. 157.10 of the statutes is amended to read:

11 **157.10 Alienation and use of cemetery lots.** While any person is buried in
12 a cemetery lot, the cemetery lot shall be inalienable, without the consent of the
13 cemetery authority, and on the death of the owner, ownership of the cemetery lot
14 shall descend to the owner's heirs; but any one or more of such heirs may convey to
15 any other heir his or her interest in the cemetery lot. No human remains may be
16 buried in a cemetery lot except the human remains of one having an interest in the
17 cemetery lot, or a relative, or the husband or wife of such person, or the person's
18 state-registered domestic partner under s. 770.05, or his or her relative, except by
19 the consent of all persons having an interest in the cemetery lot.

20 SECTION 24. 157.112 (3) (b) 1. of the statutes is amended to read:

21 157.112 (3) (b) 1. The decedent's spouse or state-registered domestic partner
22 under s. 770.05.

23 SECTION 25. 243.10 (1) (form) of the statutes is amended to read:

24 ✓ 243.10 (1) (form)

Insert RPN-A



1 **WISCONSIN BASIC POWER OF ATTORNEY**
2 **FOR FINANCES AND PROPERTY**

3 NOTICE: THIS IS AN IMPORTANT DOCUMENT. BEFORE SIGNING THIS
4 DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS. BY SIGNING
5 THIS DOCUMENT, YOU ARE NOT GIVING UP ANY POWERS OR RIGHTS TO
6 CONTROL YOUR FINANCES AND PROPERTY YOURSELF. IN ADDITION TO
7 YOUR OWN POWERS AND RIGHTS, YOU ARE GIVING ANOTHER PERSON,
8 YOUR AGENT, BROAD POWERS TO HANDLE YOUR FINANCES AND
9 PROPERTY. THIS BASIC POWER OF ATTORNEY FOR FINANCES AND
10 PROPERTY MAY GIVE THE PERSON WHOM YOU DESIGNATE (YOUR
11 "AGENT") BROAD POWERS TO HANDLE YOUR FINANCES AND PROPERTY,
12 WHICH MAY INCLUDE POWERS TO ENCUMBER, SELL OR OTHERWISE
13 DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE
14 NOTICE TO YOU OR APPROVAL BY YOU. THE POWERS WILL EXIST AFTER
15 YOU BECOME DISABLED, OR INCAPACITATED, IF YOU CHOOSE THAT
16 PROVISION. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE
17 MEDICAL OR OTHER HEALTH CARE DECISIONS FOR YOU. IF YOU OWN
18 COMPLEX OR SPECIAL ASSETS SUCH AS A BUSINESS, OR IF THERE IS
19 ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU
20 SHOULD ASK A LAWYER TO EXPLAIN THIS FORM TO YOU BEFORE YOU
21 SIGN IT.

22 IF YOU WISH TO CHANGE YOUR BASIC POWER OF ATTORNEY FOR
23 FINANCES AND PROPERTY, YOU MUST COMPLETE A NEW DOCUMENT
24 AND REVOKE THIS ONE. YOU MAY REVOKE THIS DOCUMENT AT ANY TIME
25 BY DESTROYING IT, BY DIRECTING ANOTHER PERSON TO DESTROY IT IN

1 YOUR PRESENCE OR BY SIGNING A WRITTEN AND DATED STATEMENT
2 EXPRESSING YOUR INTENT TO REVOKE THIS DOCUMENT. IF YOU
3 REVOKE THIS DOCUMENT, YOU SHOULD NOTIFY YOUR AGENT AND ANY
4 OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY OF THE FORM. YOU
5 ALSO SHOULD NOTIFY ALL PARTIES HAVING CUSTODY OF YOUR ASSETS.
6 THESE PARTIES HAVE NO RESPONSIBILITY TO YOU UNLESS YOU
7 ACTUALLY NOTIFY THEM OF THE REVOCATION. IF YOUR AGENT IS YOUR
8 SPOUSE OR STATE-REGISTERED DOMESTIC PARTNER AND YOUR
9 MARRIAGE IS ANNULLED, OR YOU ARE DIVORCED, OR THE
10 STATE-REGISTERED DOMESTIC PARTNERSHIP IS TERMINATED AFTER
11 SIGNING THIS DOCUMENT, THIS DOCUMENT IS INVALID.

12 SINCE SOME 3RD PARTIES OR SOME TRANSACTIONS MAY NOT
13 PERMIT USE OF THIS DOCUMENT, IT IS ADVISABLE TO CHECK IN
14 ADVANCE, IF POSSIBLE, FOR ANY SPECIAL REQUIREMENTS THAT MAY BE
15 IMPOSED.

16 YOU SHOULD SIGN THIS FORM ONLY IF THE AGENT YOU NAME IS
17 RELIABLE, TRUSTWORTHY AND COMPETENT TO MANAGE YOUR AFFAIRS.

18 I (insert your name and address) appoint (insert the name and address
19 of the person appointed) as my agent to act for me in any lawful way with respect to
20 the powers initialed below. If the person appointed is unable or unwilling to act as
21 my agent, I appoint (insert name and address of alternate person appointed) to
22 act for me in any lawful way with respect to the powers initialed below.

23 TO GRANT ONE OR MORE OF THE FOLLOWING POWERS, INITIAL THE
24 LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

1 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT.
2 YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

3 **HANDLING MY MONEY AND PROPERTY**

4 *Initials*

5 _____ 1. *PAYMENTS OF BILLS*: My agent may make payments that are
6 necessary or appropriate in connection with the administration of my affairs.

7 _____ 2. *BANKING*: My agent may conduct business with financial
8 institutions, including endorsing all checks and drafts made payable to my order and
9 collecting the proceeds; signing in my name checks or orders on all accounts in my
10 name or for my benefit; withdrawing funds from accounts in my name; opening
11 accounts in my name; and entering into and removing articles from my safe deposit
12 box.

13 _____ 3. *INSURANCE*: My agent may obtain insurance of all types, as
14 considered necessary or appropriate, settle and adjust insurance claims and borrow
15 from insurers and 3rd parties using insurance policies as collateral.

16 _____ 4. *ACCOUNTS*: My agent may ask for, collect and receive money,
17 dividends, interest, legacies and property due or that may become due and owing to
18 me and give receipt for those payments.

19 _____ 5. *REAL ESTATE*: My agent may manage real property; sell, convey and
20 mortgage realty for prices and on terms as considered advisable; foreclose mortgages
21 and take title to property in my name; and execute deeds, mortgages, releases,
22 satisfactions and other instruments relating to realty.

23 _____ 6. *BORROWING*: My agent may borrow money and encumber my assets
24 for loans as considered necessary.

1 ___ 7. *SECURITIES*: My agent may buy, sell, pledge and exchange securities
2 of all kinds in my name; sign and deliver in my name transfers and assignments of
3 securities; and consent in my name to reorganizations, mergers or exchange of
4 securities for new securities.

5 ___ 8. *INCOME TAXES*: My agent may make and sign tax returns; represent
6 me in all income tax matters before any federal, state, or local tax collecting agency;
7 and receive confidential information and perform any acts that I may perform,
8 including receiving refund checks and the signing of returns.

9 ___ 9. *TRUSTS*: My agent may transfer at any time any of my property to
10 a living trust that has been established by me before the execution of this document.

11 **PROFESSIONAL AND TECHNICAL ASSISTANCE**

12 *Initials*

13 ___ 10. *LEGAL ACTIONS*: My agent may retain attorneys on my behalf;
14 appear for me in all actions and proceedings to which I may be a party; commence
15 actions and proceedings in my name; and sign in my name all documents or pleadings
16 of every description.

17 ___ 11. *PROFESSIONAL ASSISTANCE*: My agent may hire accountants,
18 attorneys, clerks, workers and others for the management, preservation and
19 protection of my property and estate.

20 **GENERAL AUTHORITY**

21 *Initials*

22 ___ 12. *GENERAL*: My agent may do any act or thing that I could do in my
23 own proper person if personally present, including managing or selling tangible
24 assets, disclaiming a probate or nonprobate inheritance and providing support for
25 a minor child or dependent adult. The specifically enumerated powers of the basic

1 power of attorney for finances and property are not a limitation of this intended
2 broad general power except that my agent may not take any action prohibited by law
3 and my agent under this document may not:

4 a. Make medical or health care decisions for me.

5 b. Make, modify or revoke a will for me.

6 c. Other than a burial trust agreement under section 445.125, Wisconsin
7 Statutes, enter into a trust agreement on my behalf or amend or revoke a trust
8 agreement, entered into by me.

9 d. Change any beneficiary designation of any life insurance policy, qualified
10 retirement plan, individual retirement account or payable on death account or the
11 like whether directly or by canceling and replacing the policy or rollover to another
12 plan or account.

13 e. Forgive debts owed to me or disclaim or waive benefits payable to me, except
14 a probate or nonprobate inheritance.

15 f. Appoint a substitute or successor agent for me.

16 g. Make gifts.

17 **COMPENSATION TO AGENT FROM**

18 **PRINCIPAL'S FUNDS**

19 *Initials*

20 _____ 13. *COMPENSATION*. My agent may receive compensation only in an
21 amount not greater than that usual for the services to be performed if expressly
22 authorized in the special instructions portion of this document.

23 **ACCOUNTING**

24 *Initials*

1 INITIAL ONLY ONE OF THE FOLLOWING 3 OPTIONS. IF YOU DO NOT
2 INITIAL ONE, OR IF YOU INITIAL MORE THAN ONE, THIS BASIC POWER OF
3 ATTORNEY FOR FINANCES AND PROPERTY WILL NOT TAKE EFFECT.

4 *Initials*

5 _____ This basic power of attorney for finances and property becomes effective
6 when I sign it and will continue in effect as a durable power of attorney under section
7 243.07, Wisconsin Statutes, if I become disabled or incapacitated.

8 _____ This basic power of attorney for finances and property becomes effective
9 only when both of the following apply:

- 10 a. I have signed it; and
- 11 b. I become disabled or incapacitated.

12 _____ This basic power of attorney for finances and property becomes effective
13 when I sign it BUT WILL CEASE TO BE EFFECTIVE IF I BECOME DISABLED
14 OR INCAPACITATED.

15 I agree that any 3rd party who receives a copy of this document may act under
16 it. Revocation of this basic power of attorney is not effective as to a 3rd party until
17 the 3rd party learns of the revocation. I agree to reimburse the 3rd party for any loss
18 resulting from claims that arise against the 3rd party because of reliance on this
19 basic power of attorney.

20 Signed this day of, (year)

21

22 (Your Signature)

23

24
25 (Your Social Security Number)

1 By signing as a witness, I am acknowledging the signature of the principal who
 2 signed in my presence and the presence of the other witness, and the fact that he or
 3 she has stated that this power of attorney reflects his or her wishes and is being
 4 executed voluntarily. I believe him or her to be of sound mind and capable of creating
 5 this power of attorney. I am not related to him or her by blood, marriage or adoption,
 6 and, to the best of my knowledge, I am not entitled to any portion of his or her estate
 7 under his or her will.

8 **Witness**
 9 Dated:
 10 Signature:
 11 Print Name:
 12 Address:
 13 State of
 14 County of

Witness
 Dated:
 Signature:
 Print Name:
 Address:

15 This document was acknowledged before me on (date) by (name of
 16 principal).

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.....
(Signature of Notarial Officer)

(Seal, if any)

(Title)

[My commission is permanent or expires:]

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT
 ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES AND
 LIABILITIES OF AN AGENT.

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....
(Name of Agent)
....
(Signature of Agent)

This document was drafted by (signature of person preparing the document).

End of Insert RPN-A ✓

Insert 21-17

SECTION 26. 243.10 (7) (b) of the statutes is amended to read:

243.10 (7) (b) A principal may revoke a Wisconsin basic power of attorney for finances and property and invalidate it at any time by destroying it, by directing another person to destroy it in the principal's presence or by signing a written and dated statement expressing the principal's intent to revoke. If the agent under the Wisconsin basic power of attorney for finances and property is the principal's spouse or state-registered domestic partner under s. 770.05 and the marriage is annulled, or the agent and principal are divorced, or the state-registered domestic partnership is terminated, after signing the document, the Wisconsin basic power of attorney for finances and property is invalid.

SECTION 27. Chapter 770 of the statutes is created to read:

CHAPTER 770

DOMESTIC PARTNERSHIP REGISTRY

770.01 Definitions. In this chapter:

- (1) "Clerk" means county clerk.
- (2) "Department" means the department of health and family services.
- (3) "Domestic partner" means a state-registered domestic partner.

✓
INSERT DAK ANALYSIS

Health and mental health care and after-death decision making

Currently, all patient health care records are confidential and, with numerous exceptions, may be released only to persons with the written, informed consent of the patient or of a person authorized by the patient. A "person authorized by the patient" is, for an adult, the patient's guardian, a person authorized in writing by the patient, or the agent under the patient's power of attorney for health care. For a deceased patient, the patient's personal representative or spouse is the person authorized by the patient. If no spouse survives a decedent, an adult member of the deceased patient's immediate family is the person authorized by the patient. The authorization permits inspection and receipt of copies of the patient's health care records. The bill authorizes a state-registered domestic partner of a deceased patient to be the person authorized by the patient for purposes of release of the patient's health care records.

Under current law, an individual's treatment records (records of services for mental illness, developmental disability, alcoholism, or drug dependence) generally are confidential and privileged to the individual, but may be released without informed written consent under numerous circumstances. Under one of the circumstances, a spouse, parent, adult child, or sibling who is directly involved in providing care to or monitoring the treatment of an individual may, upon request, receive certain limited information from the individual's mental illness or developmental disability treatment records. Under another circumstance, the parent, child, sibling, or spouse of an individual who is a patient at a public or private treatment hospital, a law enforcement officer, or a mental health professional may receive certain information about the location of the individual, unless the individual has requested that the information be withheld or there is reasonable cause to believe that the information would result in danger to the individual. The bill authorizes the state-registered domestic partner of an individual who is receiving treatment for mental illness or developmental disability to receive information from the treated individual's treatment records and about the individual's location.

Currently, certain persons, in a specified order of priority, may consent to admission directly to a hospice or directly from a hospital to a nursing home or community-based residential facility (C-BRF) of an incapacitated individual who does not have a valid power of attorney for health care and has not been adjudicated incompetent. The priority for these persons in relationship to the incapacitated individual is spouse; adult child; parent; adult sibling; grandparent or adult grandchild (for admission to a nursing home or C-BRF); and adult close friend. Consent for admission may not be made if the individual, or certain persons within the order of priority, objects. The bill classifies an incapacitated individual's state-registered domestic partner in the same priority as a spouse for the purpose of admitting the individual to a nursing home, C-BRF, or hospice.

Under current law, if both spouses are residents of the same nursing home or C-BRF, they may be permitted to share a room, unless medically contraindicated.

The bill permits the sharing of a room by both state-registered domestic partners if both are residents of the same nursing home or C-BRF.

The bill requires a hospital, nursing home, community-based residential facility, certified or licensed adult family home, residential care apartment complex, or hospice that has a policy on visiting patients to extend the same right of visitation to a patient's state-registered domestic partner as is accorded the spouse of a patient under the policy.

Currently, a health care power of attorney and a durable power of attorney for finances under which the principal's agent is his or her spouse is terminated if the marriage is annulled or ends in divorce. This bill terminates a health care power of attorney and a durable power of attorney for finances under which the principal's agent is his or her state-registered domestic partner if the state-registered domestic partnership is terminated.

Currently, certain reasonably available persons may, under a specified order of priority, make a donation of all or part of another's body near or upon the donor's death (anatomical gift) for use in transplantation or other purposes. The priority in authority for these persons in relationship to the donor is agent under a health care power of attorney, spouse, adult child, parent, adult sibling, adult grandchild, grandparent, adult who has exhibited special care and concern for the donor, guardian, and any other person who has authority to dispose of the individual's body. An anatomical gift may not be made by any of these persons if the decedent has made an unrevoked refusal or objections to donate or if a majority of members in the same class in priority objects. The bill classifies the decedent's state-registered domestic partner in the same priority as a spouse for the purpose of making an anatomical gift of the decedent's body or part of the decedent's body.

✓ **INSERT 3-1 DAK**

1 **SECTION 1.** 50.032 (2) of the statutes is amended to read:

2 50.032 (2) REGULATION. Standards Except as provided in sub. (2d), standards
3 for operation of certified adult family homes and procedures for application for
4 certification, monitoring, inspection, decertification and appeal of decertification
5 under this section shall be under rules promulgated by the department under s.
6 50.02 (2) (am) 1. An adult family home certification is valid until decertified under
7 this section. Certification is not transferable.

8 History: 1987 a. 161, 403; 1993 a. 327; 1997 a. 27.

8 **SECTION 2.** 50.032 (2d) of the statutes is created to read:

9 50.032 (2d) ACCOMPANIMENT OR VISITATION. If an adult family home has a policy
10 on who may accompany or visit a patient, the adult family home shall extend the

1 same right of accompaniment or visitation to a patient's state-registered domestic
2 partner under s. 770.05 as is accorded the spouse of a patient under the policy.

3 **SECTION 3.** 50.033 (2) of the statutes is amended to read:

4 **50.033 (2) REGULATION.** Standards Except as provided in sub. (2d), standards
5 for operation of licensed adult family homes and procedures for application for
6 licensure, monitoring, inspection, revocation and appeal of revocation under this
7 section shall be under rules promulgated by the department under s. 50.02 (2) (am)
8 2. An adult family home licensure is valid until revoked under this section.
9 Licensure is not transferable. The biennial licensure fee for a licensed adult family
10 home is \$135. The fee is payable to the county department under s. 46.215, 46.22,
11 46.23, 51.42 or 51.437, if the county department licenses the adult family home under
12 sub. (1m) (b), and is payable to the department, on a schedule determined by the
13 department if the department licenses the adult family home under sub. (1m) (b).

History: 1993 a. 327; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2007 a. 20.

14 **SECTION 4.** 50.033 (2d) of the statutes is created to read:

15 **50.033 (2d) ACCOMPANIMENT OR VISITATION.** If an adult family home has a policy
16 on who may accompany or visit a patient, the adult family home shall extend the
17 same right of accompaniment or visitation to a patient's state-registered domestic
18 partner under s. 770.05 as is accorded the spouse of a patient under the policy.

19 **SECTION 5.** 50.034 (3) (e) of the statutes is created to read:

20 **50.034 (3) (e)** If a residential care apartment complex has a policy on who may
21 accompany or visit a patient, the residential care apartment complex shall extend
22 the same right of accompaniment or visitation to a patient's state-registered
23 domestic partner under s. 770.05 as is accorded the spouse of a patient under the
24 policy.

1 **SECTION 6.** 50.035 (2d) of the statutes is created to read:

2 **50.035 (2d) ACCOMPANIMENT OR VISITATION.** If a community-based residential
3 facility has a policy on who may accompany or visit a patient, the community-based
4 residential facility shall extend the same right of accompaniment or visitation to a
5 patient's state-registered domestic partner under s. 770.05 as is accorded the spouse
6 of a patient under the policy.

7 **SECTION 7.** 50.04 (2d) of the statutes is created to read:

8 **50.04 (2d) ACCOMPANIMENT OR VISITATION.** If a nursing home has a policy on who
9 may accompany or visit a patient, the nursing home shall extend the same right of
10 accompaniment or visitation to a patient's state-registered domestic partner under
11 s. 770.05 as is accorded the spouse of a patient under the policy.

12 **SECTION 8.** 50.06 (2) (am) 2. b. of the statutes is amended to read:

13 **50.06 (2) (am) 2. b.** The individual who is consenting to the proposed admission
14 is the spouse or state-registered domestic partner under s. 770.05 of the
15 incapacitated person.

History: 1993 a. 187; 1999 a. 9; 2005 a. 264, 387; 2007 a. 20, 45.

16 **SECTION 9.** 50.06 (3) (a) of the statutes is amended to read:

17 **50.06 (3) (a)** The spouse or state-registered domestic partner under s. 770.05
18 of the incapacitated individual.

History: 1993 a. 187; 1999 a. 9; 2005 a. 264, 387; 2007 a. 20, 45.

19 **SECTION 10.** 50.09 (1) (f) 1. of the statutes, as affected by 2007 Wisconsin Act
20 97, is amended to read:

21 **50.09 (1) (f) 1.** 'Privacy for visits by spouse or state-registered domestic
22 partner.' If both spouses or both state-registered domestic partners under s. 770.05
23 are residents of the same facility, they the spouses or partners shall be permitted to

1 share a room unless medically contraindicated as documented by the resident's
2 physician or advanced practice nurse prescriber in the resident's medical record.

History: 1975 c. 119, 199; 1977 c. 170 s. 33; Stats. 1977 s. 50.09; 1979 c. 175, 221; 1987 a. 27; 1989 a. 31; 1991 a. 39; 1997 a. 27, 114, 175; 2005 a. 187, 387.
NOTE: The single quote marks were inserted without being underscored. No change was intended.

History: 2007 a. 97.

3 **SECTION 11.** 50.36 (3j) of the statutes is created to read:

4 **50.36 (3j)** If a hospital has a policy on who may accompany or visit a patient,
5 the hospital shall extend the same right of accompaniment or visitation to a patient's
6 state-registered domestic partner under s. 770.05 as is accorded the spouse of a
7 patient under the policy.

8 **SECTION 12.** 50.94 (3) (a) of the statutes is amended to read:

9 **50.94 (3) (a)** The spouse or state-registered domestic partner under s. 770.05
10 of the person who is incapacitated.

History: 1999 a. 9; 2005 a. 387.

11 **SECTION 13.** 50.942 of the statutes is created to read:

12 **50.942 Accompaniment or visitation.** If a hospice has a policy on who may
13 accompany or visit a patient, the hospice shall extend the same right of
14 accompaniment or visitation to a patient's state-registered domestic partner under
15 s. 770.05 as is accorded the spouse of a patient under the policy.

16 **SECTION 14.** 50.95 (1) of the statutes is amended to read:

17 **50.95 (1) Standards** Except as provided in s. 50.942, standards for the care,
18 treatment, health, safety, rights, welfare and comfort of individuals with terminal
19 illness, their families and other individuals who receive palliative care or supportive
20 care from a hospice and the maintenance, general hygiene and operation of a hospice,
21 which will permit the use of advancing knowledge to promote safe and adequate care
22 and treatment for these individuals. These standards shall permit provision of
23 services directly, as required under 42 CFR 418.56, or by contract under which

1 overall coordination of hospice services is maintained by hospice staff members and
2 the hospice retains the responsibility for planning and coordination of hospice
3 services and care on behalf of a hospice client and his or her family, if any.

History: 1989 a. 199; 1997 a. 27.

4 **SECTION 15.** 51.30 (4) (b) 20. (intro.) of the statutes is amended to read:

5 51.30 (4) (b) 20. (intro.) Except with respect to the treatment records of a
6 subject individual who is receiving or has received services for alcoholism or drug
7 dependence, to the spouse, state-registered domestic partner under s. 770.05,
8 parent, adult child or sibling of a subject individual, if the spouse, partner, parent,
9 adult child or sibling is directly involved in providing care to or monitoring the
10 treatment of the subject individual and if the involvement is verified by the subject
11 individual's physician, psychologist or by a person other than the spouse, partner,
12 parent, adult child or sibling who is responsible for providing treatment to the
13 subject individual, in order to assist in the provision of care or monitoring of
14 treatment. Except in an emergency as determined by the person verifying the
15 involvement of the spouse, partner, parent, adult child or sibling, the request for
16 treatment records under this subdivision shall be in writing, by the requester.
17 Unless the subject individual has been adjudicated incompetent in this state, the
18 person verifying the involvement of the spouse, partner, parent, adult child or sibling
19 shall notify the subject individual about the release of his or her treatment records
20 under this subdivision. Treatment records released under this subdivision are
21 limited to the following:

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1);
1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109;
2001 a. 16, 38; 2005 a. 25, 344, 387, 388, 406, 434; 2005 a. 443 s. 265; 2005 a. 444, 449, 485; 2007 a. 20 ss. 1817, 9121 (6) (a); 2007 a. 45.

22 **SECTION 16.** 51.30 (4) (cm) (intro.) of the statutes is amended to read:

1 51.30 (4) (cm) *Required access to certain information.* (intro.) Notwithstanding
 2 par. (a), treatment records of an individual shall, upon request, be released without
 3 informed written consent, except as restricted under par. (c), to the parent, child,
 4 sibling, ~~or spouse, or state-registered domestic partner~~ under s. 770.05 of an
 5 individual who is or was a patient at an inpatient facility; to a law enforcement officer
 6 who is seeking to determine whether an individual is on unauthorized absence from
 7 the facility; and to mental health professionals who are providing treatment to the
 8 individual at the time that the information is released to others. Information
 9 released under this paragraph is limited to notice as to whether or not an individual
 10 is a patient at the inpatient facility and, if the individual is no longer a patient at the
 11 inpatient facility, the facility or other place, if known, at which the individual is
 12 located. This paragraph does not apply under any of the following circumstances:

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25, 344, 387, 388, 406, 434; 2005 a. 443 s. 265; 2005 a. 444, 449, 485; 2007 a. 20 ss. 1817, 9121 (6) (a); 2007 a. 45.

13 **SECTION 17.** 51.30 (4) (cm) 1. of the statutes is amended to read:

14 51.30 (4) (cm) 1. To the individual's parent, child, sibling, ~~or spouse, or~~
 15 state-registered domestic partner under s. 770.05 who is requesting information, if
 16 the individual has specifically requested that the information be withheld from the
 17 parent, child, sibling, or spouse.

✓ INSERT 10-3 DAK

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25, 344, 387, 388, 406, 434; 2005 a. 443 s. 265; 2005 a. 444, 449, 485; 2007 a. 20 ss. 1817, 9121 (6) (a); 2007 a. 45.

18 **SECTION 18.** 146.81 (5) of the statutes is amended to read:

19 146.81 (5) "Person authorized by the patient" means the parent, guardian, or
 20 legal custodian of a minor patient, as defined in s. 48.02 (8) and (11), the person
 21 vested with supervision of the child under s. 938.183 or 938.34 (4d), (4h), (4m), or
 22 (4n), the guardian of a patient adjudicated incompetent in this state, the personal
 23 representative ~~or spouse, or state-registered domestic partner~~ under s. 770.05 of a

1 deceased patient, any person authorized in writing by the patient or a health care
 2 agent designated by the patient as a principal under ch. 155 if the patient has been
 3 found to be incapacitated under s. 155.05 (2), except as limited by the power of
 4 attorney for health care instrument. If no spouse or state-registered domestic
 5 partner survives a deceased patient, "person authorized by the patient" also means
 6 an adult member of the deceased patient's immediate family, as defined in s. 632.895
 7 (1) (d). A court may appoint a temporary guardian for a patient believed incompetent
 8 to consent to the release of records under this section as the person authorized by the
 9 patient to decide upon the release of records, if no guardian has been appointed for
 10 the patient.

History: 1979 c. 221; 1981 c. 39 s. 22; 1983 a. 27; 1983 a. 189 s. 329 (1); 1983 a. 535; 1985 a. 315; 1987 a. 27, 70, 264; 1987 a. 399 ss. 403br, 491r; 1987 a. 403; 1989 a. 31, 168, 199, 200, 229, 316, 359; 1991 a. 39, 160, 269; 1993 a. 27, 32, 105, 112, 183, 385, 443, 496; 1995 a. 27 s. 9145 (1); 1995 a. 77, 98, 352; 1997 a. 27, 67, 75, 156, 175; 1999 a. 9, 32, 151, 180, 188; 2001 a. 38, 70, 74, 80, 89; 2005 a. 262, 387.

11 **SECTION 19. 155.30 (1) of the statutes, as affected by 2007 Wisconsin Act 106,**
 12 is amended to read:

13 **155.30 (1) (form)**
 14 **"NOTICE TO PERSON**
 15 **MAKING THIS DOCUMENT**
 16 **YOU HAVE THE RIGHT TO MAKE DECISIONS ABOUT YOUR HEALTH**
 17 **CARE. NO HEALTH CARE MAY BE GIVEN TO YOU OVER YOUR OBJECTION,**
 18 **AND NECESSARY HEALTH CARE MAY NOT BE STOPPED OR WITHHELD IF**
 19 **YOU OBJECT.**

20 **BECAUSE YOUR HEALTH CARE PROVIDERS IN SOME CASES MAY NOT**
 21 **HAVE HAD THE OPPORTUNITY TO ESTABLISH A LONG-TERM**
 22 **RELATIONSHIP WITH YOU, THEY ARE OFTEN UNFAMILIAR WITH YOUR**
 23 **BELIEFS AND VALUES AND THE DETAILS OF YOUR FAMILY**

1 RELATIONSHIPS. THIS POSES A PROBLEM IF YOU BECOME PHYSICALLY
2 OR MENTALLY UNABLE TO MAKE DECISIONS ABOUT YOUR HEALTH CARE.

3 IN ORDER TO AVOID THIS PROBLEM, YOU MAY SIGN THIS LEGAL
4 DOCUMENT TO SPECIFY THE PERSON WHOM YOU WANT TO MAKE
5 HEALTH CARE DECISIONS FOR YOU IF YOU ARE UNABLE TO MAKE THOSE
6 DECISIONS PERSONALLY. THAT PERSON IS KNOWN AS YOUR HEALTH
7 CARE AGENT. YOU SHOULD TAKE SOME TIME TO DISCUSS YOUR
8 THOUGHTS AND BELIEFS ABOUT MEDICAL TREATMENT WITH THE
9 PERSON OR PERSONS WHOM YOU HAVE SPECIFIED. YOU MAY STATE IN
10 THIS DOCUMENT ANY TYPES OF HEALTH CARE THAT YOU DO OR DO NOT
11 DESIRE, AND YOU MAY LIMIT THE AUTHORITY OF YOUR HEALTH CARE
12 AGENT. IF YOUR HEALTH CARE AGENT IS UNAWARE OF YOUR DESIRES
13 WITH RESPECT TO A PARTICULAR HEALTH CARE DECISION, HE OR SHE IS
14 REQUIRED TO DETERMINE WHAT WOULD BE IN YOUR BEST INTERESTS IN
15 MAKING THE DECISION.

16 THIS IS AN IMPORTANT LEGAL DOCUMENT. IT GIVES YOUR AGENT
17 BROAD POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. IT
18 REVOKES ANY PRIOR POWER OF ATTORNEY FOR HEALTH CARE THAT YOU
19 MAY HAVE MADE. IF YOU WISH TO CHANGE YOUR POWER OF ATTORNEY
20 FOR HEALTH CARE, YOU MAY REVOKE THIS DOCUMENT AT ANY TIME BY
21 DESTROYING IT, BY DIRECTING ANOTHER PERSON TO DESTROY IT IN
22 YOUR PRESENCE, BY SIGNING A WRITTEN AND DATED STATEMENT OR BY
23 STATING THAT IT IS REVOKED IN THE PRESENCE OF TWO WITNESSES. IF
24 YOU REVOKE, YOU SHOULD NOTIFY YOUR AGENT, YOUR HEALTH CARE
25 PROVIDERS AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY.

1 IF YOUR AGENT IS YOUR SPOUSE OR STATE-REGISTERED DOMESTIC
2 PARTNER AND YOUR MARRIAGE IS ANNULLED OR YOU ARE DIVORCED OR
3 THE STATE-REGISTERED DOMESTIC PARTNERSHIP IS TERMINATED
4 AFTER SIGNING THIS DOCUMENT, THE DOCUMENT IS INVALID.

5 YOU MAY ALSO USE THIS DOCUMENT TO MAKE OR REFUSE TO MAKE
6 AN ANATOMICAL GIFT UPON YOUR DEATH. IF YOU USE THIS DOCUMENT
7 TO MAKE OR REFUSE TO MAKE AN ANATOMICAL GIFT, THIS DOCUMENT
8 REVOKES ANY PRIOR RECORD OF GIFT THAT YOU MAY HAVE MADE. YOU
9 MAY REVOKE OR CHANGE ANY ANATOMICAL GIFT THAT YOU MAKE BY
10 THIS DOCUMENT BY CROSSING OUT THE ANATOMICAL GIFTS PROVISION
11 IN THIS DOCUMENT.

12 DO NOT SIGN THIS DOCUMENT UNLESS YOU CLEARLY UNDERSTAND
13 IT.

14 IT IS SUGGESTED THAT YOU KEEP THE ORIGINAL OF THIS
15 DOCUMENT ON FILE WITH YOUR PHYSICIAN.”

History: 1989 a. 200; 1991 a. 281; 1993 a. 213, 491; 1997 a. 206.
History: 2007 a. 106.

16 **SECTION 20.** 155.40 (2) of the statutes is amended to read:

17 155.40 (2) If the health care agent is the principal's spouse or state-registered
18 domestic partner and, subsequent to the execution of a power of attorney for health
19 care instrument, the marriage is annulled or divorce from the spouse is obtained or
20 the state-registered domestic partnership under s. 770.05 is terminated, the power
21 of attorney for health care is revoked and the power of attorney for health care
22 instrument is invalid.

History: 1989 a. 200; 2005 a. 387.

23 **SECTION 21.** 157.05 of the statutes is amended to read:

1 **157.05 Autopsy.** Consent for a licensed physician to conduct an autopsy on
2 the body of a deceased person shall be deemed sufficient when given by whichever
3 one of the following assumes custody of the body for purposes of burial: Father,
4 mother, husband, wife, child, guardian, next of kin, state-registered domestic
5 partner under s. 770.05, or in the absence of any of the foregoing, a friend, or a person
6 charged by law with the responsibility for burial. If 2 or more such persons assume
7 custody of the body, the consent of one of them shall be deemed sufficient.

History: 1979 c. 110; 1985 a. 316 s. 14; Stats. 1985 s. 157.05.

8 **SECTION 22.** 157.06 (9) (a) 2. of the statutes, as affected by 2007 Wisconsin Act
9 106, is amended to read:

10 157.06 (9) (a) 2. The spouse or state-registered domestic partner under s.
11 770.05 of the individual.

History: 2007 a. 106.

insert 3-1 rpm

✓ Art. 321.62 (c) (a), as affected by 2007 Act 200.

SECTION 160. 21.75 (11) of the statutes is renumbered 321.62 (11), and 321.62 (11) (a) and (b), as renumbered, are amended to read:

321.62 (11) (a) No eviction may be made during the period of active state service active duty in respect to any premises for which the agreed rent does not exceed \$1,200 per month the amount specified in 50 USC App. 531, occupied chiefly for dwelling purposes by the spouse, children, or other dependents of a service member who is in active state service active duty, except upon order of a court in an action affecting the right of possession.

plaintiff - 531, occupied chiefly for dwelling purposes by the spouse, children, or other dependents of a service member who is in active state service active duty, except upon order of a court in an action affecting the right of possession. plaintiff

state-registered domestic partner under s. 770.05g

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3960/P1insRC
RAC:.....

✓ **Insert RAC Analysis:**

Public employee benefits. The bill provides that domestic partners must be treated in the same manner as spouses with respect to all pension benefits provided to public employees who are covered under the Wisconsin Retirement System and all other benefits provided to state employees.

✓ **Insert 3-1:**

SECTION 1. 40.02 (2m) of the statutes is amended to read:

40.02 (2m) "Alternate payee" means a former spouse or domestic partner of a participant who is named in a qualified domestic relations order as having a right to receive a portion of the benefits of the participant.

History: 1981 c. 96, 187, 250, 274, 386; 1983 a. 9, 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 106, 140; 1983 a. 141 ss. 1 to 3, 20; 1983 a. 191 ss. 1, 6; 1983 a. 192 s. 304; 1983 a. 255 s. 6; 1983 a. 275, 290, 368; 1983 a. 435 s. 7; 1985 a. 29, 225; 1985 a. 332 ss. 52, 251 (1); 1987 a. 27, 62, 83, 107, 309, 340, 356, 363, 372, 399; 1987 a. 403 ss. 43 to 45, 256; 1989 a. 13, 14, 31; 1989 a. 56 s. 259; 1989 a. 166, 182, 189, 218, 230, 240, 323, 327, 336, 355, 357, 359; 1991 a. 32, 39, 113, 152, 229, 269, 315; 1993 a. 16, 263, 383, 490, 491; 1995 a. 27, ss. 1946 to 1953, 9130 (4); 1995 a. 81, 88, 89, 216, 240, 302, 381, 417; 1997 a. 3, 27, 39, 69, 110, 162, 237, 238; 1999 a. 9, 11, 42, 63, 65, 83; 2001 a. 16, 38, 103, 104, 109; 2003 a. 33; 2005 a. 153, 335; 2007 a. 20.

SECTION 2. 40.02 (8) (a) 2. of the statutes is amended to read:

40.02 (8) (a) 2. In the absence of a written designation of beneficiary, or if all beneficiaries so designated die before filing with the department an application for any death benefit payable, the person determined in the following sequence: group 1, widow or widower or surviving domestic partner; group 2, children if at least one child survives the participant, employee or annuitant, in which event the share of any deceased child shall be payable to the surviving spouse of the child or to the surviving children of the child if there is no spouse, or otherwise to the other eligible children in this group; group 3, grandchild; group 4, parent; group 5, brother and sister. No payment may be made to a person included in any group if there is a living person in any preceding group.

History: 1981 c. 96, 187, 250, 274, 386; 1983 a. 9, 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 106, 140; 1983 a. 141 ss. 1 to 3, 20; 1983 a. 191 ss. 1, 6; 1983 a. 192 s. 304; 1983 a. 255 s. 6; 1983 a. 275, 290, 368; 1983 a. 435 s. 7; 1985 a. 29, 225; 1985 a. 332 ss. 52, 251 (1); 1987 a. 27, 62, 83, 107, 309, 340, 356, 363, 372, 399; 1987 a. 403 ss. 43 to 45, 256; 1989 a. 13, 14, 31; 1989 a. 56 s. 259; 1989 a. 166, 182, 189, 218, 230, 240, 323, 327, 336, 355, 357, 359; 1991 a. 32, 39, 113, 152, 229, 269, 315; 1993 a. 16, 263, 383, 490, 491; 1995 a. 27, ss. 1946 to 1953, 9130 (4); 1995 a. 81, 88, 89, 216, 240, 302, 381, 417; 1997 a. 3, 27, 39, 69, 110, 162, 237, 238; 1999 a. 9, 11, 42, 63, 65, 83; 2001 a. 16, 38, 103, 104, 109; 2003 a. 33; 2005 a. 153, 335; 2007 a. 20.

SECTION 3. 40.02 (20) of the statutes is amended to read:

40.02 (20) "Dependent" means the spouse, domestic partner, minor child, including stepchildren of the current marriage or domestic partnership dependent on the employee for support and maintenance, or child of any age, including stepchildren of the current marriage or domestic partnership, if handicapped to an extent requiring continued dependence. For group insurance purposes only, the department may promulgate rules with a different definition of "dependent" than the one otherwise provided in this subsection for each group insurance plan.

History: 1981 c. 96, 187, 250, 274, 386; 1983 a. 9, 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 106, 140; 1983 a. 141 ss. 1 to 3, 20; 1983 a. 191 ss. 1, 6; 1983 a. 192 s. 304; 1983 a. 255 s. 6; 1983 a. 275, 290, 368; 1983 a. 435 s. 7; 1985 a. 29, 225; 1985 a. 332 ss. 52, 251 (1); 1987 a. 27, 62, 83, 107, 309, 340, 356, 363, 372, 399; 1987 a. 403 ss. 43 to 45, 256; 1989 a. 13, 14, 31; 1989 a. 56 s. 259; 1989 a. 166, 182, 189, 218, 230, 240, 323, 327, 336, 355, 357, 359; 1991 a. 32, 39, 113, 152, 229, 269, 315; 1993 a. 16, 263, 383, 490, 491; 1995 a. 27, ss. 1946 to 1953, 9130 (4); 1995 a. 81, 88, 89, 216, 240, 302, 381, 417; 1997 a. 3, 27, 39, 69, 110, 162, 237, 238; 1999 a. 9, 11, 42, 63, 65, 83; 2001 a. 16, 38, 103, 104, 109; 2003 a. 33; 2005 a. 153, 335; 2007 a. 20.

SECTION 4. 40.02 (21d) of the statutes is created to read:

40.02 (21d) "Domestic partner" means a state-registered domestic partner under s. 770.05.

SECTION 5. 40.02 (21r) of the statutes is created to read:

40.02 (21r) "Domestic partnership" means a state-registered domestic partnership under s. 770.05.

SECTION 6. 40.02 (25) (b) 3. of the statutes is amended to read:

40.02 (25) (b) 3. The surviving spouse or domestic partner of an employee, or of a retired employee, who is currently covered by health insurance at the time of death of the employee or retired employee. The spouse or domestic partner shall have the same right to health insurance coverage as the deceased employee or retired employee, but without state contribution, under rules promulgated by the secretary.

History: 1981 c. 96, 187, 250, 274, 386; 1983 a. 9, 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 106, 140; 1983 a. 141 ss. 1 to 3, 20; 1983 a. 191 ss. 1, 6; 1983 a. 192 s. 304; 1983 a. 255 s. 6; 1983 a. 275, 290, 368; 1983 a. 435 s. 7; 1985 a. 29, 225; 1985 a. 332 ss. 52, 251 (1); 1987 a. 27, 62, 83, 107, 309, 340, 356, 363, 372, 399; 1987 a. 403 ss. 43 to 45, 256; 1989 a. 13, 14, 31; 1989 a. 56 s. 259; 1989 a. 166, 182, 189, 218, 230, 240, 323, 327, 336, 355, 357, 359; 1991 a. 32, 39, 113, 152, 229, 269, 315; 1993 a. 16, 263, 383, 490, 491; 1995 a. 27, ss. 1946 to 1953, 9130 (4); 1995 a. 81, 88, 89, 216, 240, 302, 381, 417; 1997 a. 3, 27, 39, 69, 110, 162, 237, 238; 1999 a. 9, 11, 42, 63, 65, 83; 2001 a. 16, 38, 103, 104, 109; 2003 a. 33; 2005 a. 153, 335; 2007 a. 20.

SECTION 7. 40.08 (8) (a) 4. of the statutes is amended to read:

40.08 (8) (a) 4. The former spouse or domestic partner of a participant who is an alternate payee and whom the department cannot locate by reasonable efforts,

with such efforts beginning by the end of the month in which the participant attains, or would have attained, the age of 65, shall be considered to have abandoned all benefits under the Wisconsin retirement system on the date on which the participant attains, or would have attained, the age of 70. The department shall close the alternate payee's account and shall transfer the moneys in the account to the employer accumulation reserve. The department shall restore the alternate payee's account and shall debit the employer accumulation reserve accordingly if the alternate payee subsequently applies for retirement benefits under this chapter before the participant attains or would have attained the age of 80.

History: 1981 c. 96, 391; 1983 a. 290; 1985 a. 182 s. 57; 1987 a. 309; 1989 a. 31, 218; 1991 a. 141, 152; 1995 a. 302, 414; 1997 a. 35, 110, 125, 191, 237; 1999 a. 162; 2001 a. 61; 2003 a. 320; 2005 a. 153, 387; 2005 a. 443 s. 265.

SECTION 8. 40.08 (9) of the statutes is amended to read:

40.08 (9) PAYMENTS OF BENEFITS TO MINORS AND INDIVIDUALS FOUND INCOMPETENT.

In any case in which a benefit amount becomes payable to a minor or to an individual adjudicated incompetent, the department may waive guardianship proceedings, and pay the benefit to the person providing for or caring for the minor, or to the spouse or domestic partner, parent, or other relative by blood or adoption providing for or caring for the individual adjudicated incompetent.

History: 1981 c. 96, 391; 1983 a. 290; 1985 a. 182 s. 57; 1987 a. 309; 1989 a. 31, 218; 1991 a. 141, 152; 1995 a. 302, 414; 1997 a. 35, 110, 125, 191, 237; 1999 a. 162; 2001 a. 61; 2003 a. 320; 2005 a. 153, 387; 2005 a. 443 s. 265.

SECTION 9. 40.23 (4) (e) of the statutes is amended to read:

40.23 (4) (e) 1. Subject to subds. 2. to 4., if a participant dies before the distribution of benefits has commenced and the participant's beneficiary is the spouse or domestic partner, the department shall begin the distribution within 5 years after the date of the participant's death.

2. If the spouse or domestic partner files a subsequent beneficiary designation with the department, the payment of the distribution may be deferred until the

January 1 of the year in which the participant would have attained the age of 70.5 years.

3. If the spouse or domestic partner does not apply for a distribution, the distribution shall begin as an automatic distribution as provided under subd. 1. or under par. (c), whichever distribution date is earlier.

4. If the spouse or domestic partner dies, but has designated a new beneficiary, the birth date of the spouse or domestic partner shall be used for the purposes of determining the required beginning date.

5. The department shall specify by rule all procedures relating to an automatic distribution to the spouse or domestic partner. These rules shall comply with the internal revenue code.

History: 1981 c. 96, 386; 1983 a. 141, 267, 391; 1987 a. 309, 372; 1987 a. 403 s. 256; 1989 a. 13; 1989 a. 56 s. 259; 1991 a. 152; 1995 a. 225, 302, 414; 1997 a. 35, 69; 1999 a. 11; 2003 a. 33; 2005 a. 153, 154.

SECTION 10. 40.23 (4) (f) (intro.) of the statutes is amended to read:

40.23 (4) (f) (intro.) If a participant dies before the distribution of benefits has commenced and the participant's beneficiary is not the spouse or domestic partner, the beneficiary shall do one of the following:

History: 1981 c. 96, 386; 1983 a. 141, 267, 391; 1987 a. 309, 372; 1987 a. 403 s. 256; 1989 a. 13; 1989 a. 56 s. 259; 1991 a. 152; 1995 a. 225, 302, 414; 1997 a. 35, 69; 1999 a. 11; 2003 a. 33; 2005 a. 153, 154.

SECTION 11. 40.24 (7) (a) (intro.) of the statutes is amended to read:

40.24 (7) (a) (intro.) Any participant who has been married to the same spouse for at least one year, or in a domestic partnership with the same domestic partner, immediately preceding the participant's annuity effective date shall elect the annuity option under sub. (1) (d), the annuity option under sub. (1) (e), if the reduced annuity under sub. (1) (e) is payable in an optional life form provided under sub. (1) (d), or an annuity option in a form provided by rule, if the annuity is payable for life with monthly payments of at least 75% of the amount of the annuity to be continued

to the beneficiary, for life, upon the death of the participant, and the participant shall designate the spouse as the beneficiary, unless the participant's application for a retirement annuity in a different optional annuity form is signed by both the participant and the participant's spouse or domestic partner or unless the participant establishes to the satisfaction of the department that, by reason of absence or other inability, the spouse's or domestic partner's signature may not be obtained. This subsection does not apply to any of the following:

History: 1981 c. 96; 1983 a. 141 ss. 17, 20; 1983 a. 290, 368, 538; 1985 a. 151; 1989 a. 13, 166; 1991 a. 152; 1993 a. 426; 1995 a. 302; 1997 a. 110.

SECTION 12. 40.24 (7) (b) of the statutes is amended to read:

40.24 (7) (b) In administering this subsection, the secretary may require the participant to provide the department with a certification of the participant's marital status and of the validity of the spouse's or domestic partner's signature. If a participant is exempted from the requirements under par. (a) on the basis of a certification which the department or a court subsequently determines to be invalid, the liability of the fund and the department shall be limited to a conversion of annuity options at the time the certification is determined to be invalid. The conversion shall be from the present value of the annuity in the optional form originally elected by the participant to an annuity with the same present value but in the optional form under sub. (1) (d) and with monthly payments of 100% of the amount of the annuity paid to the annuitant to be continued to the spouse or domestic partner beneficiary.

History: 1981 c. 96; 1983 a. 141 ss. 17, 20; 1983 a. 290, 368, 538; 1985 a. 151; 1989 a. 13, 166; 1991 a. 152; 1993 a. 426; 1995 a. 302; 1997 a. 110.

SECTION 13. 40.25 (3m) of the statutes is amended to read:

40.25 (3m) A participant's application for a lump sum payment under sub. (1) (b) or (2), filed after May 7, 1994, shall be signed by both the participant and the participant's spouse or domestic partner, if the participant has been married to that

spouse, or in a domestic partnership with that domestic partner, for at least one year immediately preceding the date the application is filed. The department may promulgate rules that allow for the waiver of the requirements of this subsection for a situation in which, by reason of absence or incompetency, the spouse's or domestic partner's signature may not be obtained. This subsection does not apply to any benefits paid from accumulated additional contributions.

History: 1981 c. 96, 201; 1981 c. 386 ss. 14 to 16, 19; 1983 a. 290; 1989 a. 13, 166; 1991 a. 152, 269; 1993 a. 229, 360, 426; 1995 a. 302; 1997 a. 69, 173, 237; 1999 a. 32; 2003 a. 33.

SECTION 14. 40.52 (2) of the statutes is amended to read:

40.52 (2) Health insurance benefits under this subchapter shall be integrated, with exceptions determined appropriate by the group insurance board, with benefits under federal plans for hospital and health care for the aged and disabled. Exclusions and limitations with respect to benefits and different rates may be established for persons eligible under federal plans for hospital and health care for the aged and disabled in recognition of the utilization by persons within the age limits eligible under the federal program. The plan may include special provisions for spouses, domestic partners, and other dependents covered under a plan established under this subchapter where one spouse or domestic partner is eligible under federal plans for hospital and health care for the aged but the others are not eligible because of age or other reasons. As part of the integration, the department may, out of premiums collected under s. 40.05 (4), pay premiums for the federal health insurance.

History: 1981 c. 96, 381; 1983 a. 429; 1987 a. 107; 1987 a. 327, 356; 1987 a. 403 s. 256; 1989 a. 13; 1991 a. 45; 1995 a. 216; 2001 a. 82.

SECTION 15. 40.55 (1) of the statutes is amended to read:

40.55 (1) Except as provided in sub. (5), the state shall offer, through the group insurance board, to eligible employees under s. 40.02 (25) (bm) and to state annuitants long-term care insurance policies which have been approved for sale in

this state by the office of the commissioner of insurance and which have been approved for offering under contracts established by the group insurance board if the insurer requests that the policy be offered and the state shall also allow an eligible employee or a state annuitant to purchase those policies for his or her spouse, domestic partner, or parent.

History: 1987 a. 356; 1989 a. 31; 1991 a. 152.

SECTION 16. 40.65 (5) (b) 1. of the statutes is amended to read:

40.65 (5) (b) 1. Any OASDHI benefit payable to the participant or the participant's spouse, domestic partner, or a dependent because of the participant's work record.

History: 1981 c. 278; 1983 a. 9; 1983 a. 141 s. 20; 1983 a. 191 s. 6; 1983 a. 255; 1985 a. 332 s. 251 (1); 1987 a. 363; 1989 a. 240, 357; 1995 a. 27 s. 9130 (4); 1997 a. 3, 39, 173, 237.

SECTION 17. 40.65 (5) (c) of the statutes is amended to read:

40.65 (5) (c) The Wisconsin retirement board may not reduce a participant's benefit because of income or benefits that are attributable to the earnings or work record of the participant's spouse, domestic partner, or other member of the participant's family, or because of income or benefits attributable to an insurance contract, including income continuation programs.

History: 1981 c. 278; 1983 a. 9; 1983 a. 141 s. 20; 1983 a. 191 s. 6; 1983 a. 255; 1985 a. 332 s. 251 (1); 1987 a. 363; 1989 a. 240, 357; 1995 a. 27 s. 9130 (4); 1997 a. 3, 39, 173, 237.

SECTION 18. 40.65 (7) (am) (intro.) of the statutes is amended to read:

40.65 (7) (am) (intro.) This paragraph applies to benefits based on applications filed on or after May 3, 1988. If a protective occupation participant dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is survived by a spouse, domestic partner, or an unmarried child under the age of 18, a monthly benefit shall be paid as follows:

History: 1981 c. 278; 1983 a. 9; 1983 a. 141 s. 20; 1983 a. 191 s. 6; 1983 a. 255; 1985 a. 332 s. 251 (1); 1987 a. 363; 1989 a. 240, 357; 1995 a. 27 s. 9130 (4); 1997 a. 3, 39, 173, 237.

SECTION 19. 40.65 (7) (am) 1. of the statutes is amended to read:

40.65 (7) (am) 1. To the surviving spouse or domestic partner until the surviving spouse remarries or the surviving domestic partner enters into a new domestic partnership or marries, if the spouse was married to the participant on the date that the participant was disabled under sub. (4) or the domestic partner was in a domestic partnership with the participant on the date that the participant was disabled under sub. (4), 50% of the participant's monthly salary at the time of death, but reduced by any amount payable under sub. (5) (b) 1. to 6.

History: 1981 c. 278; 1983 a. 9; 1983 a. 141 s. 20; 1983 a. 191 s. 6; 1983 a. 255; 1985 a. 332 s. 251 (1); 1987 a. 363; 1989 a. 240, 357; 1995 a. 27 s. 9130 (4); 1997 a. 3, 39, 173, 237.

SECTION 20. 40.65 (7) (am) 2. of the statutes is amended to read:

40.65 (7) (am) 2. To a guardian for each of that guardian's wards who is an unmarried surviving child under the age of 18, 10% of the participant's monthly salary at the time of death, payable until the child marries, dies or reaches the age of 18, whichever occurs first. The marital or domestic partnership status of the surviving spouse or domestic partner shall have no effect on the payments under this subdivision.

History: 1981 c. 278; 1983 a. 9; 1983 a. 141 s. 20; 1983 a. 191 s. 6; 1983 a. 255; 1985 a. 332 s. 251 (1); 1987 a. 363; 1989 a. 240, 357; 1995 a. 27 s. 9130 (4); 1997 a. 3, 39, 173, 237.

SECTION 21. 40.65 (7) (ar) 1. of the statutes is amended to read:

40.65 (7) (ar) 1. This paragraph applies to benefits based on applications filed on or after May 12, 1998. If a protective occupation participant, who is covered by the presumption under s. 891.455, dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is survived by a spouse, domestic partner, or an unmarried child under the age of 18, a monthly benefit shall be paid as follows:

a. To the surviving spouse or domestic partner until the surviving spouse or domestic partner remarries or enters into a new domestic partnership, if the

surviving spouse was married to the participant on the date that the participant was disabled under sub. (4) or the domestic partner was in a domestic partnership with the participant on the date that the participant was disabled under sub. (4), 70% of the participant's monthly salary at the time of death, but reduced by any amount payable under sub. (5) (b) 1. to 6.

b. If there is no surviving spouse or domestic partner or the surviving spouse or domestic partner subsequently dies, to a guardian for each of that guardian's wards who is an unmarried surviving child under the age of 18, 10% of the participant's monthly salary at the time of death, payable until the child marries, dies or reaches the age of 18, whichever occurs first.

History: 1981 c. 278; 1983 a. 9; 1983 a. 141 s. 20; 1983 a. 191 s. 6; 1983 a. 255; 1985 a. 332 s. 251 (1); 1987 a. 363; 1989 a. 240, 357; 1995 a. 27 s. 9130 (4); 1997 a. 3, 39, 173, 237.

SECTION 22. 40.80 (2r) (a) 2. of the statutes is amended to read:

40.80 (2r) (a) 2. Assigns all or part of a participant's accumulated assets held in a deferred compensation plan under this subchapter to a spouse, former spouse, domestic partner, former domestic partner, child, or other dependent to satisfy a family support or marital property obligation.

History: 1981 c. 187; 1989 a. 13, 31, 336; 1991 a. 152; 1995 a. 27; 2003 a. 160; 2005 a. 150.

SECTION 23. 40.98 (1) (b) of the statutes is amended to read:

40.98 (1) (b) "Dependent" means a spouse or domestic partner, an unmarried child under the age of 19 years, an unmarried child who is a full-time student under the age of 21 years and who is financially dependent upon the parent, or an unmarried child of any age who is medically certified as disabled and who is dependent upon the parent.

History: 1999 a. 9; 2001 a. 16, 109; 2003 a. 33; 2007 a. 20 s. 9121 (6) (a).

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✓ INSERT ANL-MES

Under current law, a local governmental unit (which includes a city, village, town, county, school district, sewerage district, and drainage district) may provide health and life insurance for employees, officers, and their spouses and dependent children. Under this bill, such coverage may also be provided for an employee's and officer's state-registered domestic partner and dependent children.

✓ INSERT 3-1 MES

SECTION 1. 66.0137 (5) of the statutes is ^{renumbered 66.0137 (5)(b) and} amended to read: (b)

66.0137 (5) HOSPITAL, ACCIDENT AND LIFE INSURANCE. (The state or a local governmental unit may provide for the payment of premiums for hospital, surgical and other health and accident insurance and life insurance for employees and officers and, their spouses and dependent children, and their state-registered domestic partner under s. 770.05 and dependent children. A local governmental unit may also provide for the payment of premiums for hospital and surgical care for its retired employees. In addition, a local governmental unit may, by ordinance or resolution, elect to offer to all of its employees a health care coverage plan through a program offered by the group insurance board under ch. 40. A local governmental unit that elects to participate under s. 40.51 (7) is subject to the applicable sections of ch. 40 instead of this subsection.

History: 1999 a. 9, 115; 1999 a. 150 ss. 34, 303 to 306; Stats. 1999 s. 66.0137; 1999 a. 186 s. 63; 2001 a. 16, 30; 2005 a. 194; 2005 a. 443 s. 265; 2007 a. 20, 36.

✓ sec. CR; 66.0137 (5)(a)
66.0137(5)(a) In this subsection, "local governmental unit" includes the ~~board of school directors of the school~~ district operating under ch. 119.

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✓ **SECTION 1.** 101.9208 (4m) of the statutes is amended to read:

101.9208 (4m) Upon filing an application under sub. (1) or (4), a supplemental title fee to be paid by the owner of the manufactured home, except that this fee shall be waived with respect to an application under sub. (4) for transfer of a decedent's interest in a manufactured home to his or her surviving spouse or state-registered domestic partner under s. 770.05. The fee required under this subsection shall be paid in addition to any other fee specified in this section.

History: 1999 a. 9, 53, 185; 2001 a. 16; 2005 a. 45.

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✓ Under current law, the transfer of real property between spouses is exempt from the real estate transfer fee. Under the bill, the transfer of real property between an individual and his or her domestic partner is exempt from the real estate transfer fee.

✓ Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

Insert 3 - 1JK

1 ✓ **SECTION 1.** 77.25 (8n) of the statutes is created to read:

2 77.25 (8n) Between an individual and his or her state-registered domestic
3 partner under s. 770.05.

Insert 16 - 13 JK

4 ✓ **SECTION 2. Initial applicability.**

5 (1) REAL ESTATE TRANSFER FEE. The treatment of sections 77.25 (8n) of the
6 statutes first applies to conveyances recorded on the effective date of this subsection.

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Motor vehicle titles

Under current law, the Department of Transportation (DOT) collects a supplemental vehicle title fee in connection with applications for certificates of title for new vehicles and for vehicles the ownership of which has been transferred. However, this fee is waived for transfer of a decedent's interest in a vehicle to his or her surviving spouse. Also under current law, with an exception, DOT must transfer a decedent's interest in a vehicle to his or her surviving spouse upon receipt of the title executed by the surviving spouse and a statement by the spouse that includes specified information.

Under this bill, a state-registered domestic partner is provided the same privileges as a surviving spouse for purposes of these motor vehicle transfer provisions.

✓ Insert BAB Analysis 1

Court and evidentiary matters

Under current law, a court reviewing a settlement or monetary judgment for the plaintiff in a wrongful death action may set aside an amount of up to 50% of the net settlement or judgment, after deducting collection costs, for the support of the decedent's surviving spouse or minor children. Current law permits a surviving spouse or other relatives allowed to bring a wrongful death action to satisfy and discharge the claims of the estate in settling the wrongful death claims of the surviving spouse or other relative. This bill allows the decedent's surviving domestic partner to file an action for wrongful death, to petition the court to set aside amounts of up to 50% of the net settlement or judgment of the wrongful death claims for the support of the domestic partner and allows the domestic partner to discharge the claims of the estate in settling the domestic partner's wrongful death claims.

Under current law, a person has the right to evoke the spousal privilege and prevent the person's current or former spouse from testifying about private communications between the spouses or former spouses, subject to certain exclusions. This bill allows a person to prevent the person's current or former domestic partners from testifying about private communications between the domestic partners or former domestic partners, subject to the same exclusions.

✓ Insert BAB Analysis 2

Probate matters

This bill defines a "surviving domestic partner" as a person who was the domestic partner of the decedent at the time of the decedent's death, and mirrors the definition of "surviving spouse" by excluding persons who were the domestic partner of the decedent, a termination of the domestic partnership was sought but the Secretary of State failed to issue a valid certificate of termination for the domestic partnership, unless the person and the decedent subsequently registered as domestic partners or held themselves out as domestic partners. The bill further excludes from the definition of surviving domestic partner persons who were the domestic partner of the decedent but have subsequently married a third person or have registered a domestic partnership with a third person, or a person who was a party to a proceeding that concluded with an order terminating the person's property rights based on the domestic partnership.

This bill establishes that in probate cases, the following rights for the surviving domestic partner of a decedent are equivalent to the rights of a surviving spouse

1. The surviving domestic partner of a decedent who dies intestate is entitled to inherit all of the decedent's estate unless the decedent had children that were not also the children of the surviving domestic partner, in which case the surviving surviving domestic partner receives half of the intestate estate.

2. A surviving domestic partner may petition the court for the full property interest the decedent had in a home, subject to payment to the estate of the value of that interest the surviving domestic partner is not entitled to under a governing instrument or under intestacy, within one year from the decedent's death.

3. If a decedent executed his or her will before the registration of the domestic partnership, the surviving domestic partner is entitled to a share of the decedent's estate equivalent to what the share would be if the decedent died intestate, subject to certain reductions, unless the will was executed in contemplation of the domestic partnership or was intended to apply notwithstanding the decedent subsequently entering into a domestic partnership.

4. A surviving domestic partner may petition the probate court for an allowance for support, but the court may order that sum be charged against interest or principal from the estate to which the surviving domestic partner is entitled and the court may apply that allowance against amounts owed for assuming the decedent's full interest in a home. The court may distribute a special allowance for support of the surviving domestic partner even if the distribution of such an allowance would harm the interests of a creditor, after performing a balancing test of the needs of the surviving domestic partner versus the needs of the creditor.

5. A surviving domestic partner may select from the estate certain personal and household items and may be entitled to household items necessary for the maintenance of the home, notwithstanding that those items were bequeathed to another heir.

6. A surviving domestic partner may petition the court to set aside an amount for his or her support of up to \$10,000 in value that will be exempt from the claims of the estate's creditors.

7. If the value of the decedent's estate, less the amounts of debt secured by property of the estate, does not exceed \$50,000, a surviving domestic partner may settle the estate under summary procedures without the need to appoint a personal representative of the estate.