trust instrument was executed, or the law of the jurisdiction in which, at the time of creation, any of the following was satisfied:

(1) The settlor was domiciled, had a place of abode, or was a national.

(2) A trustee was domiciled or had a place of business.

(3) Any trust property was located.

SECTION 78. 701.0404 of the statutes is created to read:

701.0404 Trust purposes. A trust may be created only to the extent its purposes are lawful and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries or for a noncharitable, but otherwise valid, purpose as described in s. 701.0409.

SECTION 79. 701.0405 of the statutes is created to read:

701.0405 Charitable purposes; enforcement. (1) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health or governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(2) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, or designate persons or procedures for selecting charitable purposes or beneficiaries, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(3) The settlor of a charitable trust or his or her designees, whether identified within or without the terms of the trust, or a charitable entity named in the trust instrument, or the attorney general, or a cotrustee, or such other person the court determines to have sufficient interest may maintain a proceeding to enforce the trust.

SECTION 80. 701.0406 of the statutes is created to read:

701.0406 Creation of trust induced by fraud, duress, or undue influence. A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

SECTION 81. 701.0407 of the statutes is created to read:

701.0407 Evidence of oral trust. Except as required by a statute other than this chapter, a trust does not need to be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

SECTION 82. 701.0408 of the statutes is created to read:

701.0408 Trust for care of animal. **(1)** A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed under this subsection.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

SECTION 83. 701.0409 of the statutes is created to read:

701.0409 Noncharitable trust without ascertainable beneficiary. Except as otherwise provided in s. 701.0408 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee.

(2) A trust may be created for maintaining, keeping in repair, and preserving any grave, tomb, monument, gravestone, or any cemetery. Any cemetery authority under s. 157.061 (2) may receive property in trust for any of the purposes specified in this subsection and apply the income from the trust to the purpose stated in the trust instrument.

(3) A trust authorized by this section may be enforced by a trust protector with the power to enforce the trust. If there is not a trust protector with the power to enforce the trust, a court may appoint a trust protector with the power to enforce the trust under s. 701.0818.

(4) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

SECTION 84. 701.0410 of the statutes is created to read:

701.0410 Modification or termination of trust; proceedings for approval or disapproval. (1) In addition to the methods of termination prescribed by ss. 701.0411 to 701.0414, a trust terminates to the extent the trust is revoked or

expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful or impossible to achieve.

(2) A proceeding to approve or disapprove a proposed modification or termination under ss. 701.0411 to 701.0416, or a proposed trust combination or division under s. 701.0417, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under s. 701.0411 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under s. 701.0413. A trustee does not have standing to oppose a proposed modification or termination commenced under s. 701.0411 (1).

(3) A trustee may not be compelled by a modification or termination under this section or under ss. 701.0411 to 701.0416 to make distributions to or for any beneficiary of a trust for an individual with a disability or to terminate the trust, during the lifetime of the individual with a disability. A court may modify the terms of a trust for an individual with a disability with retroactive effect or reform the terms of such trust to achieve the settlor's objective or, if because of circumstances not anticipated by the settlor, to otherwise further the purposes of the trust so that it does not result in trust property being countable as resources or income of the individual with a disability for purposes of public assistance.

SECTION 85. 701.0411 of the statutes is created to read:

701.0411 Modification or termination of noncharitable irrevocable trust by consent. **(1)** A noncharitable irrevocable trust may be modified or terminated, with or without court approval, upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or

termination may be exercised by a representative under s. 701.0303 only if the representative is specifically authorized to consent to a trust's modification or termination under a power of attorney, the terms of the trust, or by a court under a guardianship or conservatorship.

(2) (a) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.

(b) A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(3) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

(4) A court may not compel a beneficiary to consent to a modification or termination to satisfy a creditor of the beneficiary.

(5) Upon termination of a trust under sub. (1) or (2), the trustee shall distribute the trust property as agreed by the beneficiaries.

(6) If not all of the beneficiaries consent to a proposed modification or termination of the trust under sub. (1) or (2), the modification or termination may be approved by the court if the court is satisfied that all of the following apply:

(a) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section.

(b) The interests of a beneficiary who does not consent will be adequately protected.

(7) A party proposing to modify or terminate a trust under sub. (1) or (2) shall give notice of the proposed modification or termination to the settlor, if living, the

trustee, each trust protector, each directing party, and each beneficiary at least 30 days before the proposed effective date of the modification or termination.

SECTION 86. 701.0412 of the statutes is created to read:

701.0412 Modification or termination because of unanticipated circumstances or inability to administer trust effectively. **(1)** The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the court shall make the modification in accordance with the settlor's probable intention.

(2) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(4) A party petitioning the court for action under this section shall give notice of the proceeding to the settlor, if living, the trustee, each trust protector, each directing party, and the qualified beneficiaries.

SECTION 87. 701.0413 of the statutes is created to read:

701.0413 Cy pres. **(1)** The purpose of this section is to broaden the power of the courts to make charitable gifts more effective. The court shall liberally apply the cy pres doctrine.

(2) Except as provided in sub. (3), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful, all of the following apply:

(a) The trust does not fail, in whole or in part.

(b) The trust property does not revert to the settlor or the settlor's successors in interest.

(c) The court may apply the cy pres doctrine to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes. In determining the alternative plan for disposition of the property under this paragraph, the court shall take into account current and future community needs in the general field of charity within which the original charitable purpose falls, other charitable interests of the settlor, the amount of principal and income available under the trust, and other relevant factors. A person with standing to enforce the terms of a charitable trust under s. 701.0405 (3) has standing to commence a proceeding under this paragraph. The attorney general is a necessary party in all proceedings under this paragraph.

(3) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under sub. (2) to apply the cy pres doctrine to modify or terminate the trust only if, when the provision takes effect, the trust property is to revert to the settlor and the settlor is still living.

(4) A party petitioning the court for action under this section shall give notice to the settlor, if living, the trustee, each trust protector, each directing party, the qualified beneficiaries, and any person with standing to enforce the terms of a charitable trust under s. 701.0405 (3).

SECTION 88. 701.0414 of the statutes is created to read:

701.0414 Modification or termination of uneconomic trust. (1) In this section:

(a) "Adjustment reference number" means the consumer price index for all urban consumers, as published by the United States bureau of labor statistics, in effect on January 1 of the year in which an adjustment is to be made in accordance with sub. (3).

(b) "Base reference number" means the consumer price index for all urban consumers, as published by the United States bureau of labor statistics, in effect on January 1 of the base year.

(c) "Base year" means the year in which this paragraph takes effect .... [LRB inserts date].

(2) After notice to the settlor, if living, each trust protector, each directing party, and the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than $100,000 or a revised applicable figure, as determined under sub. (3), may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(3) The dollar amount specified in sub. (2) shall be adjusted to a revised applicable figure on the 5th anniversary of the effective date of this subsection .... [LRB inserts date], and every 5 years thereafter. The revised applicable figure shall be determined as follows:

(a) Calculate the percentage change between the base reference number and the adjustment reference number for the year in which the adjustment is being made.

(b) 1. If the percentage change determined in par. (a) is a positive number, determine the revised applicable figure as follows:

a. Multiply $100,000 by the percentage change determined in par. (a), expressed as a decimal.

b. Round the product under subd. 1. a. to the nearest $1,000.

c. Add the value determined under subd. 1. b. to $100,000.

2. If the percentage change determined in par. (a) is a negative number, determine the revised applicable figure as follows:

a. Multiply $100,000 by the absolute value of the percentage change determined in par. (a), expressed as a decimal.

b. Round the product under subd. 2. a. to the nearest $1,000.

c. Subtract the value determined under subd. 2. b. from $100,000.

(4) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration even if the trust property has a total value in excess of the amount described in sub. (2).

(5) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(6) This section does not apply to an easement for conservation or preservation.

(7) A party petitioning the court for action under this section shall give notice of the proceeding to the settlor, if living, the trustee, each trust protector, each directing party, and the qualified beneficiaries.

SECTION 89. 701.0415 of the statutes is created to read:

701.0415 Reformation to correct mistakes. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intent if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement. A party petitioning the court for action under this section shall give

notice of the proceeding to the settlor, if living, the trustee, each trust protector, each directing party, and the qualified beneficiaries.

SECTION 90. 701.0416 of the statutes is created to read:

701.0416 Modification to achieve settlor's tax objectives. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intent. The court may provide that the modification has retroactive effect. A party petitioning the court for action under this section shall give notice of the proceeding to the settlor, if living, the trustee, each trust protector, each directing party, and the qualified beneficiaries.

SECTION 91. 701.0417 of the statutes is created to read:

701.0417 Combination and division of trusts. (1) After notice to each trust protector, each directing party, and the qualified beneficiaries, a trustee may do any of the following if the result does not impair rights of any beneficiary or adversely affect achievement of any trust purposes:

(a) Combine 2 or more trusts into a single trust.

(b) Divide a trust into 2 or more separate trusts.

(2) Subject to the terms of the trust, the trustee may take into consideration differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections, and in making distributions. A separate trust created by severance under sub. (1) (b) is treated as a separate trust for all purposes from the date on which the severance is effective. The effective date of the severance may be retroactive to a date before the date on which the trustee exercises the power.

(3) If a trustee combines 2 or more trusts into a single trust, the trustee shall identify which trust is the surviving trust.

SECTION 92. 701.0418 of the statutes is created to read:

701.0418 Trustee's power to appoint assets to new trust. (1) DEFINITIONS. In this section:

(a) "Absolute power" means a power to invade trust assets for the benefit of a beneficiary that is not limited by a specific or ascertainable standard, whether or not the term "absolute" is used in the trust instrument. "Absolute power" includes a power to invade trust assets for the best interests, welfare, comfort, or happiness of a beneficiary.

(b) "First trust" means the trust from which assets are or may be appointed under sub. (2).

(c) "Second trust" means the trust or trusts to which assets are or may be appointed under sub. (2).

(2) POWER TO APPOINT. (a) Except as otherwise provided in this subsection and in subs. (3) and (5), a trustee who has the power to invade the principal of a first trust for the benefit of a beneficiary who is eligible to receive or entitled to the income of the first trust or entitled to an annuity or unitrust payment from the first trust may exercise the power by appointing part or all of the assets of the first trust in favor of a trustee of a 2nd trust if all of the following apply:

1. The appointment of assets does not reduce any fixed income, annuity, or unitrust interest of a beneficiary.

2. If the trustee's power to invade income or principal of the first trust is limited by a specific or ascertainable standard, the appointment of assets does not result in the trustee of the 2nd trust or any other person having a power to invade the income or principal of the 2nd trust that is broader than the trustee's power to invade income

or principal of the first trust. This subdivision does not apply if the 2nd trust is a trust for an individual with a disability.

3. One of the following applies:

a. The beneficiaries of the first trust are the same as the beneficiaries of the 2nd trust.

b. If the first trust grants the trustee the absolute power to invade principal, the 2nd trust includes only all or some of the beneficiaries of the first trust.

(b) Paragraph (a) applies to a trustee whether or not the trustee has an absolute power to invade principal and whether or not there is a current need to invade principal under the terms of the first trust.

(3) LIMITATIONS ON EXERCISE OF POWER. A trustee may not appoint assets to a 2nd trust under sub. (2) if any of the following applies:

(a) The trust instrument creating the first trust expressly prohibits the trustee from appointing assets of the first trust to a 2nd trust by reference to this section or by using the term "decanting."

(b) A contribution to the first trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code and one of the following applies:

1. The 2nd trust contains a provision that, if included in the first trust, would have prevented the first trust from qualifying for the deduction or would have reduced the amount of the deduction.

2. The 2nd trust does not contain a provision that was contained in the first trust that, if omitted from the first trust, would have prevented the first trust from qualifying for the deduction or would have reduced the amount of the deduction.

(c) The trustee has a beneficial interest in the first trust unless the 2nd trust is a trust for an individual with a disability, the trustee's only beneficial interest in the first trust is as a remainder beneficiary, and the trustee's beneficial interest in the 2nd trust is not greater than the trustee's beneficial interest in the first trust.

(d) The appointment of assets to a 2nd trust would impair currently exercisable withdrawal rights of a beneficiary of the first trust and one of the following applies:

1. The withdrawal rights were granted to the beneficiary in a manner designed to allow contributions subject to the withdrawal rights to qualify for the federal gift tax annual exclusion.

2. The terms of the 2nd trust would impair gifts previously made to the first trust from qualifying for the federal gift tax annual exclusion under section 2503 of the Internal Revenue Code.

(e) The appointment of assets to the 2nd trust would violate a rule against perpetuities applicable to the first trust or suspend a trustee's power of alienation over assets of the first trust in a manner that would cause all or a portion of the 2nd trust to be void.

(f) The appointment of assets to the 2nd trust under sub. (2) would impair the essential purpose of a trust for an individual with a disability.

(4) PERMISSIBLE TERMS OF 2ND TRUST. (a) Subject to pars. (b) to (d) and subs. (2), (3), and (5), the trustee of the first trust may create a 2nd trust instrument that includes terms that are intended to achieve any purpose, including terms that are intended to do any of the following:

1. Correct a drafting error in the first trust.

2. Clarify potentially ambiguous terms contained in the first trust.

3. Change the age of distribution to a beneficiary of the first trust.

4. Extend the duration of the first trust.

5. Protect a beneficiary of the first trust, including protecting the beneficiary from self–destructive behavior.

6. Allow the trustee of the 2nd trust to transfer trust assets to a community trust. In this subdivision, "community trust" means a master trust that is established and managed by a nonprofit organization that maintains sub–accounts for individual beneficiaries that each satisfy the definition of a trust for an individual with a disability.

7. Add or remove a spendthrift trust provision to the first trust.

8. Modify investment provisions contained in the first trust, including those relating to permissible investments, use of investment advisors, or self–dealing transactions.

9. Change a present or future trustee of the first trust, including by defining the method by which a trustee or cotrustee may be appointed or removed and replaced.

10. Appoint a trust protector of the 2nd trust and define the powers of the trust protector.

11. Appoint a directing party of the 2nd trust and define the powers of the directing party.

12. Change the principal place of administration of the first trust.

13. Change the governing law of the first trust.

14. Allow for the division of the first trust into 2 or more trusts.

15. Allow for the merger of the first trust with one or more trusts.

16. Add or modify an exculpatory provision for a trustee, trust protector, or directing party.

17. Obtain desirable tax treatment, as determined by the trustee of the first trust, or to avoid adverse tax consequences, as determined by the trustee of the first trust, including provisions relating to grantor trust status under sections 671 to 679 of the Internal Revenue Code.

18. Modify a power in the first trust to invade income and principal.

19. Modify or eliminate a general or special power of appointment in the first trust.

(b) The trust instrument of the 2nd trust may include terms granting a beneficiary a general or special power of appointment only if the trustee of the first trust has the absolute power to invade income and principal.

(c) 1. The trust instrument of the 2nd trust may include terms that are intended to change terms of the first trust that are applicable to a beneficiary who is an individual with a disability only if the purpose of the change is to allow the beneficiary to qualify or continue to be qualified to receive public assistance.

2. Subdivision 1. applies regardless of whether the first trust includes specific or ascertainable standards for distribution.

(d) The trust instrument of the 2nd trust may include a term that adopts or expands an exculpatory provision relating to the trustee only if one of the following applies:

1. Any trustee of the first trust who would benefit from the adoption of the term in the 2nd trust abstains from the consideration and adoption of the term and the trustees of the first trust who would not benefit from the adoption of the term adopt the trust instrument of the 2nd trust.

2. A court approves the trust instrument of the 2nd trust.

(5) PROCEDURAL MATTERS. (a) A trustee shall appoint assets to a 2nd trust under sub. (2) by an instrument in writing that is signed and acknowledged by the trustee and shall include the written instrument with the records of the first and 2nd trusts. A trustee may appoint assets to a 2nd trust under sub. (2) upon notice, without court approval, under the procedure described in par. (b), or with court approval, under the procedure described in par. (c).

(b) 1. If a trustee chooses to proceed without a court order, the trustee shall give notice of the manner in which the trustee intends to appoint assets to a 2nd trust under sub. (2) to all of the following:

a. The qualified beneficiaries of the first trust.

b. Each trust protector appointed under the terms of the first trust.

c. Each directing party appointed under the terms of the first trust.

d. The settlor of the first trust, if living.

2. To satisfy the trustee's notice obligation under this paragraph, a trustee shall provide each person entitled to receive notice under subd. 1. all of the following:

a. A copy of the proposed written instrument under which the trustee will appoint assets to a 2nd trust.

b. The proposed effective date of the appointment.

c. A copy of the trust instrument of the first trust.

d. A copy of the trust instrument of the 2nd trust.

3. A trustee may not appoint assets to the 2nd trust until 30 days after the trustee provides notice as required under this paragraph unless every person who is entitled to receive notice under subd. 1. waives the 30–day notice period by delivering a signed written instrument to the trustee. A person's waiver of the

30–day notice period does not constitute that person's consent to the trustee's appointment of assets to a 2nd trust.

4. If a person entitled to receive notice under subd. 1. delivers a written objection to the trustee before the effective date of the appointment of assets to a 2nd trust, the trustee may not appoint the assets to a 2nd trust, as specified in the trustee's notice, without obtaining court approval under par. (c) unless the written objection is withdrawn.

5. If the trustee does not receive a written objection from any person entitled to receive notice under subd. 1. before the effective date of the appointment of assets to the 2nd trust or all written objections to the proposed appointment of assets to the 2nd trust are withdrawn, the trustee may appoint the assets to a 2nd trust, as specified in the notice.

(c) 1. If a trustee chooses to proceed with court approval, including after receiving a written objection to a proposed appointment of assets, the trustee shall petition a court to approve a proposed appointment of assets to a 2nd trust under sub. (2). The trustee shall provide notice of the petition to all qualified beneficiaries of the first trust, each trust protector appointed under the first trust, each directing party appointed under the first trust, and to the settlor of the first trust, if living. The trustee shall include in the notice of the petition the proposed effective date of the appointment of assets to a 2nd trust. The trustee shall also provide to each person who is entitled to receive notice under this paragraph a copy of the proposed instrument under which the trustee will appoint assets to a 2nd trust, the proposed effective date of the appointment, a copy of the trust instrument of the first trust, and a copy of the trust instrument of the 2nd trust.

2. If a person who is entitled to receive notice under subd. 1. files an objection with the court, in determining whether to grant or deny a petition under subd. 1., the court shall consider all of the following:

a. The purpose of the proposed appointment of assets under sub. (2).

b. The reasons for any objection made by a person entitled to receive notice under subd. 1.

c. Changes in circumstances that have occurred since the creation of the first trust.

d. Whether the appointment of assets under sub. (2) complies with the requirements of this section.

3. If no person who is entitled to receive notice under subd. 1. files an objection with the court or any objection that has been filed with the court is withdrawn, the court shall enter an order approving the appointment of assets under sub. (2) as set forth in the trustee's notice unless the court determines that the appointment of assets does not comply with the requirements of this section.

(6) SUBSEQUENTLY DISCOVERED ASSETS. (a) The appointment of all of the assets of the first trust in favor of the trustee of the 2nd trust includes subsequently discovered assets otherwise belonging to the first trust and assets paid to or acquired by the first trust subsequent to the appointment in favor of the 2nd trust.

(b) Except as otherwise provided by the trustee of the first trust, the appointment of part but not all of the assets of the first trust in favor of the 2nd trust does not include subsequently discovered assets belonging to the first trust or assets paid to or acquired by the first trust subsequent to the appointment in favor of the 2nd trust, which remain the assets of the first trust.

(7) LIABILITY. (a) This section does not create or imply a duty on a trustee to appoint assets to a 2nd trust under sub. (2). A trustee that does not appoint assets to a 2nd trust under sub. (2) is not liable for the failure to do so.

(b) A trustee who appoints assets to a 2nd trust under sub. (2) is not liable to any beneficiary for any loss related to the appointment unless the trustee did not appoint the assets in good faith.

(8) MISCELLANEOUS PROVISIONS. (a) The appointment of assets to a 2nd trust under sub. (2) is not an exercise of a general power of appointment.

(b) A trustee may appoint assets to a 2nd trust under sub. (2) even if the first trust includes a spendthrift clause or a provision that prohibits amendment or revocation of the trust.

(c) This section does not limit a trustee who has a power to invade principal to appoint property in further trust to the extent the power arises under the terms of the first trust or under any other section of this chapter or under another provision of law or under common law.

(d) The restriction relating to a trustee under sub. (3) (c) does not preclude a cotrustee who does not have a beneficial interest in the first trust from appointing assets to a 2nd trust under sub. (2) even if the terms of the first trust, applicable law, or other circumstances would otherwise require the majority or unanimous action of the trustees of the first trust.

(e) For purposes of this section, if beneficiaries of a first trust are defined as a class of persons, the class shall include any person who falls within the class of persons after the trustee appoints assets to the 2nd trust.

(f) Notwithstanding s. 701.0103 (23), a trustee of a first trust who appoints assets to a 2nd trust under sub. (2) or creates a 2nd trust instrument under sub. (4) is not the settlor of the 2nd trust.

(g) To the extent a directing party or trust protector has the power to invade the principal of a first trust, as described in sub. (2), this section applies to the directing party or trust protector as if the directing party or trust protector is a trustee.

SECTION 93. 701.05 of the statutes is repealed.

SECTION 94. Subchapter V (title) of chapter 701 [precedes 701.0501] of the statutes is created to read:

CHAPTER 701

SUBCHAPTER V

CREDITOR'S CLAIMS; SPENDTHRIFT

AND DISCRETIONARY TRUSTS

SECTION 95. 701.0501 of the statutes is created to read:

701.0501 Rights of beneficiary's creditor or assignee. (1) (a) To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a judgment creditor or an assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

(b) This subsection does not apply to a trust for an individual with a disability.

(2) A trustee is not liable to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary if any of the following applies:

(a) The beneficiary's interest is protected by a spendthrift provision.

(b) The trust is a trust for an individual with a disability.

SECTION 96. 701.0502 of the statutes is created to read:

701.0502 Spendthrift provision. (1) A spendthrift provision is valid only if any of the following applies:

(a) The beneficiary is a person other than the settlor and is not treated as the settlor under s. 701.0505 (2).

(b) The trust is a trust for an individual with a disability.

(2) Subject to sub. (1), a term of a trust providing that the interest of a beneficiary is held subject to a spendthrift trust, or words of similar import, restrains both a voluntary and involuntary transfer of the beneficiary's interest.

(3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this subchapter, a creditor or assignee of the beneficiary may not attach, garnish, execute on, or otherwise reach the interest or a distribution by the trustee before its receipt by the beneficiary.

(4) Real property or tangible personal property that is owned by the trust but that is made available for a beneficiary's occupancy or use in accordance with the trustee's authority under the trust instrument may not be considered to have been distributed by the trustee or received by the beneficiary for purposes of allowing a creditor or assignee of the beneficiary to reach the property.

SECTION 97. 701.0503 (title) of the statutes is created to read:

701.0503 (title) **Exceptions to spendthrift provision.**

SECTION 98. 701.0504 of the statutes is created to read:

701.0504 Discretionary trusts; effect of standard. (1) For purposes of this subchapter, and except as provided in sub. (3), a beneficiary's interest in a trust that is subject to the trustee's discretion does not constitute an interest in property or an

enforceable right even if the discretion is expressed in the form of a standard of distribution or the beneficiary is then serving as sole trustee or cotrustee.

(2) Except as provided in this subchapter, a creditor or other claimant may not attach present or future distributions from a beneficiary's interest in property or an enforceable right, obtain an order from a court forcing the judicial sale of the interest or compelling the trustee to make distributions, or reach the interest or right by any other means, even if the trustee has abused the trustee's discretion.

(3) Subsections (1) and (2) do not apply if a beneficiary is acting as sole trustee of a trust for his or her benefit and his or her discretion to make distributions to himself or herself is not limited by an ascertainable standard or the consent of a party holding an adverse interest to the beneficiary.

(4) (a) Except as provided in par. (b), this section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(b) The right of a beneficiary described in par. (a) may not be exercised by a creditor.

SECTION 99. 701.0505 of the statutes is created to read:

701.0505 Creditor's claim against settlor. **(1)** (a) Whether or not the terms of a trust include a spendthrift provision and except as provided in par. (b), the following rules apply to claims of a settlor's creditors:

1. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

2. With respect to an irrevocable trust that is not a trust for an individual with a disability, upon application of a judgment creditor of the settlor, the court may, if the trust instrument requires or authorizes the trustee to make payments of income

or principal to or for the settlor, order the trustee to satisfy part or all of the judgment out of part or all of the payments of income or principal as they are due, presently or in the future, or which are payable in the trustee's discretion. If a trust has more than one settlor, the amount the judgment creditor of a particular settlor may reach may not exceed the settlor's interest in the trust.

3. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(b) Assets of a trust that are exempt from claims of creditors under other statutes are not subject to par. (a).

(2) For purposes of this subchapter, all of the following apply:

(a) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power.

(e) 1. Contributions to the following trusts are not considered to have been contributed by the settlor:

a. An irrevocable marital trust that is treated as qualified terminable interest property under section 2523 (f) of the Internal Revenue Code if after the death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that receives property from the trust.

b. An irrevocable marital trust that is treated as a general power of appointment trust under section 2523 (e) of the Internal Revenue Code if after the death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that receives property from the trust.

c. An irrevocable trust for the settlor's spouse if after the death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that receives property from the trust.

d. An irrevocable trust for the benefit of a person, the settlor of which is the person's spouse, regardless of whether or when the person was the settlor of an irrevocable trust for the benefit of that spouse.

e. An irrevocable trust for the benefit of a person to the extent that the property of the trust was subject to a general power of appointment in another person.

2. A person who would otherwise be treated as a settlor of a trust described in subd. 1. a. to e. is not treated as a settlor of the trust.

3. For purposes of this paragraph, notwithstanding s. 701.0103 (3), "beneficiary" means a person who satisfies s. 701.0103 (3) (a) or (b) and who is designated in a trust instrument or through the exercise of a special or general power of appointment.

(3) Any order entered by a court under this section is subject to modification upon application of an interested person.

SECTION 100. 701.0506 of the statutes is created to read:

701.0506 Overdue distribution. **(1)** In this section, "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon

termination of the trust. "Mandatory distribution" does not include a distribution subject to the exercise of the trustee's discretion even if any of the following applies:

(a) The discretion is expressed in the form of a standard of distribution.

(b) The terms of the trust authorizing a distribution couple language of discretion with language of direction.

(2) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

SECTION 101. 701.0507 of the statutes is created to read:

701.0507 Personal obligations of trustee. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

SECTION 102. 701.06 (title), (1), (2), (3) and (6) (title) and (a) of the statutes are repealed.

SECTION 103. 701.06 (4) of the statutes is renumbered 701.0503 (1), and 701.0503 (1) (intro.) and (b), as renumbered, is amended to read:

701.0503 **(1)** CLAIMS FOR CHILD SUPPORT. (intro.) Notwithstanding ~~any provision in the creating instrument or subs. (1) and (2)~~ s. 701.0502, upon application of a person having a valid order directing a beneficiary to make payment for support of the beneficiary's child, the court may do any of the following:

(b) ~~In~~ If ~~the case of~~ a beneficiary ~~under a discretionary~~ may receive income or principal at the trustee's discretion under the trust, order the trustee to satisfy part or all of the claim out of part or all of future payments of income or principal ~~which~~

that are ~~to be~~ made pursuant to the exercise of the trustee's discretion in favor of such beneficiary.

SECTION 104. 701.06 (5) (intro.) and (a) of the statutes are renumbered 701.0503 (2) (intro.) and (a) and amended to read:

701.0503 **(2)** CLAIMS FOR PUBLIC SUPPORT. (intro.) Notwithstanding ~~any provision in the creating instrument or subs. (1) and (2)~~ s. 701.0502 and except as provided in sub. (3), if the settlor is legally obligated to pay for the public support of a beneficiary under s. 46.10, 49.345, or 301.12 or the beneficiary is legally obligated to pay for the beneficiary's public support or ~~that~~ for support furnished to the beneficiary's spouse or minor child under s. 46.10, 49.345, or 301.12, upon application by the appropriate state department or county official, the court may do any of the following:

(a) If ~~such~~ the beneficiary is entitled to receive income or principal under the trust, order the trustee to satisfy part or all of the liability out of part or all of payments of income or principal as they are due, presently or in the future;

SECTION 105. 701.06 (5) (b) of the statutes is renumbered 701.0503 (2) (b) 1. and amended to read:

701.0503 **(2)** (b) 1. Except as ~~otherwise~~ provided in ~~par. (c), in the case of a beneficiary under a discretionary trust~~ subd. 2., if the beneficiary may receive income or principal at the trustee's discretion under the trust, order the trustee to satisfy part or all of the liability out of part or all of future payments of income or principal which are to be made pursuant to the exercise of the trustee's discretion in favor of ~~such~~ the beneficiary~~;~~.

SECTION 106. 701.06 (5) (c) of the statutes is renumbered 701.0503 (2) (b) 2. and amended to read:

701.0503 **(2)** (b) 2. In the case of a beneficiary ~~under a discretionary trust~~ who may receive income or principal of the trust at the trustee's discretion and who is a settlor or a spouse or minor child of the settlor, order the trustee to satisfy part or all of the liability without regard to whether the trustee has then exercised or may thereafter exercise the trustee's discretion in favor of the beneficiary.

SECTION 107. 701.06 (5m) of the statutes is renumbered 701.0503 (3) and amended to read:

701.0503 **(3)** TRUST FOR ~~DISABLED~~ AN INDIVIDUAL WITH A DISABILITY. Subsection ~~(5)~~ (2) does not apply to any trust ~~that is established~~ for ~~the benefit of~~ an individual ~~who has~~ with a disability ~~which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual if the trust does not result in ineligibility for public assistance under ch. 49. A trustee of a trust which is exempt from claims for public support under this subsection shall notify the county department under s. 46.215 or 46.22 in the county where the disabled beneficiary resides of the existence of the trust~~.

SECTION 108. 701.06 (6) (b) of the statutes is renumbered 701.0505 (2) (b), and 701.0505 (2) (b) 2., as renumbered, is amended to read:

701.0505 **(2)** (b) 2. The beneficiary's right to withdraw part of the trust property, to the extent that the value of the property affected by the lapse, waiver, or release in any year does not exceed the greater of the ~~amount in~~ following:

a. ~~Section~~ The amount referenced in section 2041 (b) (2) or 2514 (e)~~,~~ of the Internal Revenue Code ~~of 1986~~.

b. ~~Section~~ The amount referenced in section 2503 (b)~~,~~ of the Internal Revenue Code ~~of 1986~~ for each individual other than the beneficiary who makes a transfer to

the trust or who is deemed to make a transfer to the trust pursuant to an election to split gifts under section 2513 (a) of the Internal Revenue Code.

SECTION 109. 701.06 (6) (c) of the statutes is renumbered 701.0505 (2) (c), and 701.0505 (2) (c) (intro.), 1. a. and b. and 4., as renumbered, are amended to read:

701.0505 **(2)** (c) (intro.) A beneficiary of a trust is not a settlor, has not made a voluntary or involuntary transfer of the beneficiary's interest in the trust, ~~or~~ and does not have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust solely because the beneficiary holds ~~or~~, exercises, or allows in any capacity, any of the following:

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

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

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

SECTION 110. 701.06 (6) (d) of the statutes is renumbered 701.0505 (2) (d).

SECTION 111. 701.06 (7) of the statutes is renumbered 701.0503 (4) and amended to read:

701.0503 **(4)** SUBSEQUENT MODIFICATION OF COURT'S ORDER. Any order entered by a court under sub. ~~(4), (5)~~ (1) or ~~(6) (a) is subject to modification~~ (2) may be modified upon application of an interested person.

SECTION 112. 701.06 (8) of the statutes is renumbered 701.0503 (5) and amended to read:

701.0503 **(5)** EXEMPT ASSETS. Assets of a trust~~, to the extent they~~ that are exempt from claims of creditors under other statutes~~, shall~~ are not ~~be~~ subject to sub. ~~(4), (5),~~ (1) or ~~(6) (a)~~ (2).

SECTION 113. Subchapter VI (title) of chapter 701 [precedes 701.0601] of the statutes is created to read:

CHAPTER 701

SUBCHAPTER VI

REVOCABLE TRUSTS

SECTION 114. 701.0601 of the statutes is created to read:

701.0601 Capacity of settlor of revocable trust. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

SECTION 115. 701.0602 of the statutes is created to read:

701.0602 Revocation or amendment of revocable trust. **(1)** Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this subsection .... [LRB inserts date].

(2) If a revocable trust is created or funded by more than one settlor, all of the following apply:

(a) To the extent the trust consists of marital or community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses.

(b) To the extent the trust consists of property other than marital or community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(c) Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(3) A settlor may revoke or amend a revocable trust by any of the following means:

(a) By substantial compliance with a method provided in the terms of the trust.

(b) If the terms of the trust do not provide a method, by any of the following means:

1. A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust.

2. Any other method manifesting clear and convincing evidence of the settlor's intent.

(4) Upon revocation of a revocable trust, the trustee shall transfer the trust property as the settlor directs. However, with respect to marital or community property, the trustee shall transfer the property to both spouses as marital or community property.

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the power of attorney.

(6) A guardian of the estate or a conservator of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship or conservatorship.

(7) A trustee who does not know that a trust has been revoked or amended is not liable for distributions made and other actions taken on the assumption that the

trust had not been amended or revoked, or for distributions made pursuant to sub. (5).

SECTION 116. 701.0603 of the statutes is created to read:

701.0603 Settlor's powers; powers of withdrawal. (1) While a trust is revocable, the rights of the beneficiaries are subject to the control of, and the duties of the trustee, a directing party, and a trust protector are owed exclusively to, the settlor.

(2) If a revocable trust has more than one settlor, the duties of the trustee, a directing party, and a trust protector are owed to all of the settlors.

(3) During the period in which a power of withdrawal may be exercised, the holder of the power has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

SECTION 117. 701.0604 of the statutes is created to read:

701.0604 Limitation on action contesting validity of revocable trust; distribution of trust property. (1) A person must commence a judicial proceeding to contest the validity of a trust that was revocable immediately before the settlor's death within the earlier of the following:

(a) One year after the settlor's death.

(b) Four months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding. Except as provided in s. 701.0813 (2), a trustee is not liable to any person for not providing the information described in this paragraph.

(2) Upon the death of the settlor of a trust that was revocable immediately before the settlor's death, the trustee may proceed to distribute the trust property

in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless one of the following applies:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust.

(b) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

SECTION 118. 701.065 (title), (1), (2), (3) and (4) of the statutes are renumbered 701.0508 (title), (1), (2), (3) and (4), and 701.0508 (1) (a) 2., as renumbered, is amended to read:

701.0508 **(1)** (a) 2. Except as provided in pars. (b) and (c), if the trustee satisfies the requirements for the publication of the notice under subd. 1., all claims, including claims of ~~the~~ any state and any ~~subdivision thereof~~ of its subdivisions, whether due or to become due, absolute or contingent, liquidated or unliquidated, are barred against the trustee, the trust property and any recipient of trust property unless filed with the trustee on or before the date specified in the notice under subd. 1.

SECTION 119. 701.065 (5) of the statutes, as created by 2013 Wisconsin Act 20, is repealed.

SECTION 120. 701.07 of the statutes is repealed.

SECTION 121. Subchapter VII (title) of chapter 701 [precedes 701.0701] of the statutes is created to read:

CHAPTER 701

SUBCHAPTER VII

OFFICE OF TRUSTEE

SECTION 122. 701.0701 of the statutes is created to read:

701.0701 Accepting or declining trusteeship. **(1)** Except as provided in sub. (3), a person designated as trustee accepts the trusteeship by doing any of the following:

(a) Substantially complying with a method of acceptance provided in the terms of the trust.

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may decline the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is considered to have rejected the trusteeship.

(3) A person designated as trustee, without accepting the trusteeship, may do any of the following:

(a) Act to preserve the trust property if, within a reasonable time after acting, the person sends a declination of the trusteeship in writing to the settlor or, if the settlor is dead or incapacitated, to the designated cotrustee, or, if none, to the successor trustee, or, if none, to a distributee or a permissible distributee of the trust.

(b) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

SECTION 123. 701.0702 of the statutes is created to read:

701.0702 Trustee's bond. (1) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(2) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(3) A court may not require a bond from a trust company bank, state bank, or national bank that is authorized to exercise trust powers and that has complied with s. 220.09 or 223.02 nor shall a bond be required of a religious, charitable, or educational corporation or society.

SECTION 124. 701.0703 of the statutes is created to read:

701.0703 Cotrustees. (1) Cotrustees may act only by majority decision.

(2) If a vacancy occurs in a cotrusteeship, as provided under s. 701.0704, a majority of the remaining cotrustees may act for the trust.

(3) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or the cotrustee is otherwise temporarily incapacitated or the cotrustee has properly delegated the performance of the function to another trustee.

(4) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or the cotrustee is otherwise temporarily incapacitated, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(5) A trustee may delegate to a cotrustee a function unless the delegation is expressly prohibited by the terms of the trust. Unless a delegation is irrevocable, a trustee may revoke a delegation previously made.

(6) Except as provided in sub. (7), a trustee who does not join in an action of another trustee is not liable for the action.

(7) Each trustee shall exercise reasonable care to do all of the following:

(a) Prevent a cotrustee from committing a material breach of trust.

(b) Compel a cotrustee to redress a material breach of trust.

(8) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified all cotrustees of the dissent at or before the time of the action is not liable for the action unless the action is a material breach of trust.

SECTION 125. 701.0704 of the statutes is created to read:

701.0704 Vacancy in trusteeship; appointment of successor. **(1)** A vacancy in a trusteeship exists if any of the following occurs:

(a) A person designated as trustee declines the trusteeship.

(b) A person designated as trustee cannot be identified or does not exist.

(c) A trustee resigns.

(d) A trustee is disqualified or removed.

(e) A trustee dies.

(f) A guardian or conservator is appointed for an individual serving as trustee.

(2) If one or more cotrustees remain in office, a vacancy in a trusteeship does not need to be filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustee.

(3) A vacancy in a trusteeship that is required to be filled shall be filled in the following order of priority:

(a) By a person designated in the terms of the trust to act as successor trustee.

(b) By a person appointed by unanimous agreement of the qualified beneficiaries, except that, if the trust is a trust for an individual with a disability, the person appointed under this paragraph may not be the individual with a disability, his or her spouse, or a relative of the individual with a disability who is legally responsible for his or her support.

(c) By a person appointed by the court.

(4) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee, directing party, or trust protector whenever the court considers the appointment necessary for the administration of the trust.

SECTION 126. 701.0705 of the statutes is created to read:

701.0705 Resignation of trustee. (1) A trustee may resign in any of the following manners:

(a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, each cotrustee, each trust protector, and each directing party.

(b) With the approval of the court.

(2) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

SECTION 127. 701.0706 of the statutes is created to read:

701.0706 Removal of trustee. **(1)** The settlor, a cotrustee, or a qualified beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(2) The court may remove a trustee if any of the following applies:

(a) The trustee has committed a material breach of trust.

(b) A lack of cooperation among cotrustees substantially impairs the administration of the trust.

(c) The court determines that removal of the trustee best serves the interests of the beneficiaries because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively.

(d) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under s. 701.1001 (2) as may be necessary to protect the trust property or the interests of the beneficiaries.

SECTION 128. 701.0707 of the statutes is created to read:

701.0707 Delivery of property by former trustee. **(1)** Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(2) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

SECTION 129. 701.0708 of the statutes is created to read:

701.0708 Compensation of trustee. (1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(2) If the terms of a trust specify the trustee's compensation or refer to another ascertainable source for determining that compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if any of the following applies:

(a) The duties of the trustee are substantially different from those contemplated when the trust was created.

(b) The compensation specified by the terms of the trust would be unreasonably low or high.

(3) If the trustee has rendered other services in connection with the administration of the trust, the trustee may receive reasonable compensation for the other services rendered, in addition to reasonable compensation as trustee.

SECTION 130. 701.0709 of the statutes is created to read:

701.0709 Reimbursement of expenses. (1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for all of the following:

(a) Expenses that were properly incurred in the administration of the trust.

(b) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

SECTION 131. 701.0710 of the statutes is created to read:

701.0710 Title of trust property. A settlor or transferor may effectively transfer property to a trust by placing legal title of the property in the name of the trustee, which shall include any successor trustee regardless of whether a successor trustee is referenced in the transfer document. A transfer that places legal title in the name of the trust itself places legal title in the name of the trustee.

SECTION 132. 701.08 of the statutes is renumbered 701.0419 and amended to read:

701.0419 Transfers to ~~living~~ trusts. (1) VALIDITY AND EFFECT. The order of execution of a ~~living~~ trust instrument and a will or other instrument purporting to transfer or appoint property to the trust evidenced by the trust instrument shall be disregarded in determining the validity of the transfer or appointment. No reference in any will to a ~~living~~ trust shall cause assets in such trust to be included in property administered as part of the testator's estate~~; nor shall it cause the trust or any portion thereof to be treated as a testamentary trust~~.

(2) GOVERNING TERMS. Property transferred or appointed by a will or by a beneficiary designation under an employee benefit plan, life insurance policy, or other instrument permitting designation of a beneficiary to a ~~living~~ trust, ~~the terms of which the testator or designator was the sole holder of a power to modify,~~ shall be administered in accordance with the terms of the trust as ~~they~~ the terms of the trust may have been modified prior to the testator's or designator's death, even though the will ~~or~~, beneficiary designation, or other instrument was not reexecuted or republished after exercise of the power to modify, unless the will ~~or~~, beneficiary

designation, or other instrument expressly provides otherwise. ~~Such property transferred or appointed to a living trust, which is subject to a power of modification requiring action or consent of a person other than the testator or designator, shall be administered in accordance with the terms of the trust instrument as they exist at the execution of the will or beneficiary designation, unless expressly otherwise provided. If the will or beneficiary designation expressly provides that the property shall be administered in accordance with the terms of the trust instrument as they may be modified thereafter, the will or beneficiary designation need not be reexecuted or republished after exercise of the power to modify.~~

(3) DISPOSITION WHEN NO EXISTING ~~LIVING~~ TRUST. If at the death of a testator a ~~living~~ trust has been completely revoked, or otherwise terminated, a provision in the testator's will purporting to transfer or appoint property to ~~such~~ the trust shall have the following effect, unless the will provides otherwise:

(a) If the testator was a necessary party to the revocation or other termination of ~~such~~ the trust, the provision in the testator's will shall be invalid~~;~~.

(b) If the testator was not a necessary party to the revocation or other termination of such trust, the provision in the testator's will shall be deemed to create a ~~testamentary~~ trust upon the terms of the ~~living~~ trust instrument at the time the will was executed or as otherwise provided where sub. (2) is applicable.

SECTION 133. Subchapter VIII (title) of chapter 701 [precedes 701.0801] of the statutes is created to read:

CHAPTER 701

SUBCHAPTER VIII

DUTIES AND POWERS OF TRUSTEES,

DIRECTING PARTIES, AND

TRUST PROTECTORS

SECTION 134. 701.0801 of the statutes is created to read:

701.0801 Duty to administer trust. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

SECTION 135. 701.0802 of the statutes is created to read:

701.0802 Duty of loyalty. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in s. 701.1012, a sale, encumbrance, or other transaction that involves the investment or management of trust property and is entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless any of the following applies:

(a) The transaction was authorized by the terms of the trust.

(b) The transaction was approved by the court.

(c) The beneficiary did not commence a judicial proceeding within the time allowed by s. 701.1005.

(d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with s. 701.1009.

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became trustee.

(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between

personal and fiduciary interests if it is entered into by the trustee with any of the following:

(a) The trustee's spouse.

(b) The trustee's descendants, siblings, parents, or their spouses.

(c) An agent or attorney of the trustee.

(d) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(4) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule in s. 881.01. In addition to receiving compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee shall at least annually notify the persons entitled to receive a copy of the trustee's report under s. 701.0813 (3) of the rate and method by which that compensation was determined.

(6) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of

enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(7) This section does not preclude the following transactions, if fair to the beneficiaries:

(a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee.

(b) Payment of reasonable compensation to the trustee.

(c) A transaction between a trust and another trust, a decedent's estate, a guardianship of the estate, a conservatorship, or a custodianship of which the trustee is a fiduciary or in which a beneficiary has an interest.

(d) A deposit of trust money in a regulated financial–service institution operated by the trustee.

(e) An advance by the trustee of money for the protection of the trust.

(8) The court may appoint a trustee, trust protector, or directing party to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

SECTION 136. 701.0803 of the statutes is created to read:

701.0803 Impartiality. If a trust has 2 or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests and the purposes and terms of the trust.

SECTION 137. 701.0804 of the statutes is created to read:

701.0804 Prudent administration. A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional

requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

SECTION 138. 701.0805 of the statutes is created to read:

701.0805 Costs of administration. In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, the skills of the trustee, and the complexity of the trust administration.

SECTION 139. 701.0806 of the statutes is created to read:

701.0806 Trustee's skills. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

SECTION 140. 701.0807 of the statutes is created to read:

701.0807 Delegation by trustee. **(1)** A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in each of the following:

(a) Selecting an agent.

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust.

(c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with sub. (1) is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(4) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state even if the terms of the delegation provide for a different jurisdiction or venue.

(5) This section does not apply to a trustee's delegation of investment and management functions. A trustee's delegation of investment and management functions is governed by s. 881.01 (10).

SECTION 141. 701.0808 of the statutes is created to read:

701.0808 Powers to direct; directing parties. (1) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(2) A settlor in a trust instrument, a court in a trust instrument or court order, or interested persons in a nonjudicial settlement agreement may appoint a directing party to direct the trustee on investment or distribution decisions or to make investment or distribution decisions regarding directed trust property. If a trustee acts in accordance with the direction of a directing party or fails to act due to lack of direction from a directing party, the trustee is not liable for any loss resulting directly or indirectly from any action taken or omitted with respect to the direction or lack of direction except for acts or omissions that are a result of the trustee's willful misconduct.

(3) A trustee does not have a duty to do any of the following:

(a) Provide advice to, consult with, monitor, or evaluate a directing party's conduct.

(b) Inform or warn a beneficiary, a 3rd party, or a directing party that the trustee disagrees with any of the directing party's actions or directions.

(c) Prevent a directing party from giving a direction or taking any action.

(d) Compel a directing party to redress the directing party's actions or directions.

(4) The administrative actions of a trustee related to matters within the scope of a directing party's power, including confirming that the directing party's directions have been carried out and recording and reporting actions taken pursuant to the directing party's direction, do not constitute either monitoring the directing party's actions or participating in the actions of the directing party.

(5) A directing party is a fiduciary and is required to act in good faith with regard to the terms of the trust and the interests of the beneficiaries. A directing party is liable for any loss that results from a breach of any of the directing party's fiduciary duties.

(6) (a) A directing party may request information about the trust from the trustee and, if the requested information is related to a power granted to the directing party, the trustee shall provide the requested information to the directing party. If a trustee is bound by any confidentiality restrictions with respect to information requested by a directing party, the trustee may require that the directing party agree to be bound by the confidentiality restrictions before delivering such information to the directing party. A trustee is not liable to any beneficiary for any loss or damages resulting from the trustee providing information to the directing party that is related to the power granted to the directing party.

(b) Except as otherwise provided in this chapter, a trustee does not have a duty to provide any information to the directing party that the directing party does not request.

(7) PAYMENT OR REIMBURSEMENT OF ATTORNEY FEES AND COSTS. A trustee shall, in accordance with s. 701.1004, pay or reimburse a directing party for attorney fees and costs to defend any claim made against the directing party.

(8) Sections 701.0701, 701.0708, 701.0709, 701.1001 to 701.1003, and 701.1005 to 701.1010 apply to a directing party as if the directing party was a trustee.

(9) A person who accepts an appointment as a directing party of a trust submits to the jurisdiction of the courts of this state, as provided in s. 701.0202 (1).

SECTION 142. 701.0809 of the statutes is created to read:

701.0809 Control and protection of trust property. A trustee shall take reasonable steps to take control of and protect the trust property.

SECTION 143. 701.0810 of the statutes is created to read:

701.0810 Record keeping and identification of trust property. (1) A trustee shall keep adequate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in sub. (4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(4) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of 2 or more separate trusts.

SECTION 144. 701.0811 of the statutes is created to read:

701.0811 Enforcement and defense of claims. A trustee shall take reasonable steps to enforce claims of the trust known to the trustee and to defend claims against the trust known to the trustee.

SECTION 145. 701.0812 of the statutes is created to read:

701.0812 Collecting trust property; duties of successor trustees. (1) A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a trustee or former trustee, or a trust protector or former trust protector.

(2) A successor trustee does not have a duty to examine the accounts of a former trustee.

SECTION 146. 701.0813 of the statutes is created to read:

701.0813 Duty to inform and report. (1) A trustee shall keep the distributees or permissible distributees of trust income or principal, and other qualified beneficiaries who so request, reasonably informed about the administration of the trust. Unless unreasonable under the circumstances, a trustee shall promptly respond to a qualified beneficiary's request for information related to the administration of the trust.

(2) A trustee shall do all of the following:

(a) Upon the request of a qualified beneficiary for a copy of the trust instrument, promptly furnish to the qualified beneficiary either a copy of the portions of the trust instrument relating to the interest of the qualified beneficiary or a copy of the trust instrument.

(b) Within a reasonable period of time after accepting a trusteeship, notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number.

(c) Within a reasonable period of time after the date on which the trustee acquires knowledge of the creation of an irrevocable trust, or the date on which the trustee acquires knowledge that a formerly revocable trust has become irrevocable,

whether by the death of the settlor or otherwise, notify the qualified beneficiaries of all of the following:

1. The trust's existence.

2. The identity of the settlor or settlors.

3. The name, address, and telephone number of each directing party and trust protector.

4. The right to request a copy of the documentation referred to in par. (a).

5. The right to request information under sub. (1).

6. The right to a trustee's report as provided in sub. (3).

(d) Notify the distributees or permissible distributees of trust income or principal, and other qualified beneficiaries who so request, of any change in the method or rate of the trustee's compensation.

(e) Upon receiving a petition to the court for action under ss. 701.0411 to 701.0416 that does not identify each trust protector and each directing party of the trust, notify the petitioning party of the identity of each trust protector and directing party, including the name, address, and telephone number of each trust protector and directing party, who is serving at the time the petition is filed.

(3) (a) At least annually and upon the termination of a trust, a trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified beneficiaries who request it, all of the following:

1. A report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation.

2. A listing of the trust assets and, if feasible, their respective market values.

(b) Upon a vacancy in a trusteeship, unless a cotrustee remains in office, the former trustee shall send a report containing the information described under par.

(a) 1. to the qualified beneficiaries. A personal representative or guardian may send the qualified beneficiaries a report containing the information described in par. (a) 1. on behalf of a deceased or incapacitated trustee.

(4) A qualified beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A qualified beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(5) Subsections (2) (b) and (c) and (3) do not apply to a trustee who accepts a trusteeship before the effective date of this subsection .... [LRB inserts date], to an irrevocable trust created before the effective date of this subsection .... [LRB inserts date], or to a revocable trust that becomes irrevocable before the effective date of this subsection .... [LRB inserts date].

SECTION 147. 701.0814 of the statutes is created to read:

701.0814 Discretionary powers; tax savings. (1) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. A court may not determine that a trustee abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(2) Subject to sub. (4), and unless the terms of the trust expressly indicate that a provision of this subsection does not apply, all of the following apply:

(a) A person other than a settlor who is a beneficiary and a trustee, directing party, or trust protector of a trust that confers on the trustee, directing party, or trust protector a power to make discretionary distributions to or for the trustee's, directing