



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment VII

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2011 LRB-2788 (For: Senator Risser)

has been transferred to the drafting file for

2013 LRB-0010 (For: Senator Risser)



RESEARCH APPENDIX - PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 10/09/2012 (Per: FFK)

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

1 **701.0816 Article VIII, Section 816 - Specific powers of trustee.** Without
2 limiting the authority conferred by s. 701.0815, a trustee may do all of the following:

3 (1) Collect trust property and accept or reject additions to the trust property
4 from a settlor or any other person.

5 (2) Acquire or sell property, for cash or on credit, at public or private sale.

6 (3) Exchange, partition, or otherwise change the character of trust property.

7 (4) Deposit trust money in an account in a regulated financial-service
8 institution.

 ****NOTE: What is a "regulated financial-service institution"? Should it be defined?

9 (5) Borrow money, with or without security, and mortgage or pledge trust
10 property for a period within or extending beyond the duration of the trust.

11 (6) With respect to an interest in a business or enterprise, including a
12 proprietorship, partnership, limited liability company, business trust, corporation,
13 or other form of business, continue the business or enterprise and take any action
14 that may be taken by shareholders, partners, members, or property owners,
15 including merging, dissolving, or otherwise changing the form of business
16 organization or contributing additional capital.

 ****NOTE: I modified this sentence a bit by making the different forms of business
illustrative of a "business or enterprise." Okay?

17 (7) With respect to a stock or other security, exercise the rights of an absolute
18 owner, including the right to do any of the following:

 ****NOTE: I made stocks or other securities singular, rather than plural, and
repeated the phrase throughout this subsection.

19 (a) Vote, or give proxies to vote, with or without power of substitution, or enter
20 into or continue a voting trust agreement.

1 (b) Hold a stock or other security in the name of a nominee or in other form
2 without disclosure of the trust so that title may pass by delivery.

3 (c) Pay calls, assessments, and other sums chargeable or accruing against the
4 stock or security, and sell or exercise stock subscription or conversion rights.

5 (d) Deposit the stock or other security with a depository or other regulated
6 financial-service institution.

*depository
depository*

****NOTE: Again, what is a "regulated financial-services institution."

7 (8) With respect to an interest in real property, construct, or make ordinary or
8 extraordinary repairs to, alterations to, or improvements in, buildings or other
9 structures, demolish improvements, raze existing or erect new party walls or
10 buildings, subdivide or develop land, dedicate land to public use or grant public or
11 private easements, and make or vacate plats and adjust boundaries.

****NOTE: What is a "party wall"?

12 (9) Enter into a lease for any purpose as lessor or lessee, including a lease or
13 other arrangement for exploration and removal of natural resources, with or without
14 the option to purchase or renew, for a period within or extending beyond the duration
15 of the trust.

16 (10) Grant an option involving a sale, lease, or other disposition of trust
17 property or acquire an option for the acquisition of property, including an option
18 exercisable beyond the duration of the trust, and exercise an option so acquired.

19 (11) Insure the property of the trust against damage or loss and insure the
20 trustee, the trustee's agents, and beneficiaries against liability arising from the
21 administration of the trust.

22 (12) Abandon or decline to administer property of no value or of insufficient
23 value to justify its collection or continued administration.

****NOTE: I wonder why the word "collection" is used here; it doesn't seem to follow "abandon or decline," but perhaps I am simply not familiar with what "collection" means in this context?

1 (13) With respect to possible liability for violation of environmental law, do any
2 of the following:

3 (a) Inspect or investigate property the trustee holds or has been asked to hold,
4 or property owned or operated by an organization in which the trustee holds or has
5 been asked to hold an interest, for the purpose of determining the application of
6 environmental law with respect to the property.

7 (b) Take action to prevent, abate, or remedy any actual or potential violation
8 of any environmental law affecting property held directly or indirectly by the trustee,
9 whether taken before or after the assertion of a claim or the initiation of
10 governmental enforcement.

****NOTE: I removed the word "otherwise" that preceded "remedy". Okay?

11 (c) Decline to accept property into trust or disclaim any power with respect to
12 property that is or may be burdened with liability for violation of environmental law.

13 (d) Compromise claims against the trust which may be asserted for an alleged
14 violation of environmental law.

Does

****NOTE: The phrase "compromise claims" is used only once in the Wisconsin Statutes; does it have a meaning that is common or clear enough that it doesn't need additional explanation?

15 (e) Pay the expense of any inspection, review, abatement, or remedial action to
16 comply with environmental law.

17 (14) Pay or contest any claim, settle a claim by or against the trust, and release,
18 in whole or in part, a claim belonging to the trust.

19 (15) Pay taxes, assessments, compensation of the trustee and of employees and
20 agents of the trust, and other expenses incurred in the administration of the trust.

21 (16) Exercise elections with respect to federal, state, and local taxes.

1 (17) Select a mode of payment under any employee benefit or retirement plan,
2 annuity, or life insurance payable to the trustee, exercise rights thereunder,
3 including exercise of the right to indemnification for expenses and against liabilities,
4 and take appropriate action to collect the proceeds.

5 (18) Make loans out of trust property, including loans to a beneficiary on terms
6 and conditions the trustee considers to be fair and reasonable under the
7 circumstances. The trustee has a lien on future distributions for repayment of any
8 loans made to a beneficiary under this subsection.

****NOTE: As proposed in the drafting instructions, this subsection ended with the phrase "and the trustee has a lien on future distributions for repayment of those loans." This phrase didn't really follow the introduction to the subsection and seemed to extend to loans made to persons other than a beneficiary, which didn't make sense. I modified the ending of this subsection by creating a new sentence that ties the lien to a loan made to a beneficiary. Okay?

9 (19) Pledge trust property to guarantee loans made by others to the beneficiary.

10 (20) Appoint a trustee to act in another jurisdiction with respect to trust
11 property located in the other jurisdiction, confer upon the appointed trustee all of the
12 powers and duties of the appointing trustee, require that the appointed trustee
13 furnish security, and remove any trustee so appointed.

14 (21) Pay an amount distributable to a beneficiary who is under a legal
15 disability or who the trustee reasonably believes is incapacitated, by paying it
16 directly to the beneficiary, applying it for the beneficiary's benefit, or by doing any
17 of the following:

18 (a) Paying the amount to the beneficiary's conservator or the guardian of the
19 beneficiary's estate.

20 (b) Paying the amount to the beneficiary's custodian under ^{the} uniform transfers
21 to minors act under ss. 54.854 to 54.898 or the uniform custodial trust act under ss.
22 54.950 to 54.988, and, for that purpose, creating a custodianship or custodial trust.

Insert 83-18

1 (c) If the trustee does not know of a conservator, guardian of the estate,
2 custodian, or custodial trustee, paying the amount to an adult relative or other
3 person having legal or physical care or custody of the beneficiary or to the guardian
4 of the person of the beneficiary, to be expended on the beneficiary's behalf.

5 (d) Managing the amount as a separate fund on the beneficiary's behalf, subject
6 to the beneficiary's continuing right to withdraw the distribution.

7 (22) On distribution of trust property or the division or termination of a trust,
8 make distributions in divided or undivided interests, allocate particular assets in
9 proportionate or disproportionate shares, value the trust property for those
10 purposes, and adjust for resulting differences in valuation.

11 (23) Resolve a dispute concerning the interpretation of the trust or its
12 administration by mediation, arbitration, or other procedure for alternative dispute
13 resolution.

14 (24) Prosecute or defend an action, claim, or judicial proceeding in any
15 jurisdiction to protect trust property and the trustee in the performance of the
16 trustee's duties.

17 (25) Sign and deliver contracts and other instruments that are useful to
18 achieve or facilitate the exercise of the trustee's powers.

19 (26) On termination of the trust, exercise the powers appropriate to wind up
20 the administration of the trust and distribute the trust property to the persons
21 entitled to it.

22 (27) Create or fund a plan under section 529 of the Internal Revenue Code of
23 1986, or other college savings vehicle, for the beneficiary's benefit.

24 SECTION 83. 701.0817 of the statutes is created to read:

***NOTE: ^(c) Does ~~the~~ Is a "right to withdraw" distinguishable from
the defined term "power to withdraw"? If not, I suggest using the
definal term. If so, should the distinction be made more clear?

701.0817 Article VIII, Section 817 - Distribution upon termination. (1)

Upon termination or partial termination of a trust, the trustee may send to any beneficiary a proposal for distribution. The right of any beneficiary to whom the proposal is sent to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed within a reasonable time to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent any of the following applies:

(a) The release was induced by improper conduct of the trustee.

(b) The beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

SECTION 84. Subchapter IX of chapter 701 [precedes 701.0901] of the statutes is created to read:

CHAPTER 701
ARTICLE IX

INVESTMENT MANAGEMENT OF TRUSTS

SECTION 85. 701.0901 of the statutes is created to read:

701.0901 Application of the Wisconsin Prudent Investor Act. Except as provided in this subchapter, the investment management of the property of a trust shall be governed by ch. 881.

SECTION 86. 701.0902 of the statutes is created to read:

SUBCHAPTER

hyphen

(title)

text: title: Chapter

Article IX, Section 901, 902

B Article IX, Section 902 *Δ Δ*

1 **701.0902 Directed trust property. (1)** Unless the trust instrument provides
2 otherwise, a directing party with respect to directed trust property has the power and
3 duty to do all of the following:

****NOTE: What does "with respect to directed trust property" mean in this subsection? Would it be acceptable to replace this phrase with "having responsibility over" or "having power over" or "having control of" or something similar?

4 (a) Direct the excluded trustee on the retention, purchase, sale, exchange,
5 tender, encumbrance, or any other investment transaction of the directed trust
6 property and the investment and reinvestment of principal and income.

7 (b) Direct the excluded trustee with respect to the management, control, and
8 voting powers, including voting proxies.

****NOTE: The subject seems to be missing from this paragraph: the management, control, and voting powers of what. I assume the directed trust property?

9 (c) Select and determine reasonable compensation of one or more outside
10 investment advisors, managers, consultants, or counselors, which may include the
11 excluded trustee, and delegate investment authority to them pursuant to the
12 investment delegation provisions under s. 881.01 (10).

13 (d) Determine the frequency of and methodology for valuing directed trust
14 property and provide the value of property for which there is no readily available
15 daily market value.

16 **(2)** Unless the trust instrument provides otherwise, an excluded trustee with
17 respect to directed trust property has no duty to do any of the following:

18 (a) Prepare or review investment policy statements.

19 (b) Perform investment or suitability reviews, inquiries, or investigations.

20 (c) Determine or verify the value of directed trust property for which there is
21 no readily available daily market value.

22 (d) Monitor the conduct or investment performance of the directing party.

hyphen

SECTION 87. 701.0903 of the statutes is created to read:

701.0903 *Article IX ↑ Section 903* **Life insurance contracts owned by trusts. (1) NONAPPLICATION**

OF PRUDENT INVESTOR RULE. (a) In this subsection, a “qualified person” is a person who is insured or a proposed insured, or the spouse of that person, who has provided the trustee with the funds used to acquire or pay premiums with respect to a policy of insurance on the life of that person or the spouse of that person, or on the lives of that person and the spouse of that person.

****NOTE: Under LRB drafting conventions, generally, a definition precedes the material in which the term is used. For that reason, I moved the definition for “qualified person” to the beginning of the statutory component (subsection (1)), and applied it only to the component within which the term appears. Please confirm that qualified person is only defined for purposes of this subsection (1).

****NOTE: I have a number of questions about the cross-references used in this s. 701.0903, and in the components within this section. Please review the components and my notes to ensure that I accurately applied the appropriate cross-references.

****NOTE: In some instances in this subsection, the phrase “contract of life insurance” is used and in other instances the phrase “contract for life insurance” is used. Are both acceptable? Should only one be used for consistency?

(b) Notwithstanding the provisions of s. 881.01, with respect to any contract for life insurance acquired or retained on the life of a qualified person, a trustee has no duty to do any of the following:

****NOTE: It is implied but not explicit that the life insurance contract described here is owned by a trust. I believe it should be explicit. Please advise.

1. Determine whether the contract of life insurance is, or remains, a proper investment.
2. Investigate the financial strength of the life insurance company.
3. Determine whether to exercise any policy option available under the contract for life insurance.
4. Diversify the contract for life insurance or the assets of the trust with respect to the contract for life insurance.
5. Inquire about or investigate the health or financial condition of any insureds.

1 (c) A trustee is not liable to a beneficiary of the trust or any other person for any
2 loss sustained with respect to a contract for life insurance to which this section
3 applies.

Subject to par (e) 40 ↑

****NOTE: Can "with respect to" be replaced by "as a result of"?

****NOTE: This subdivision uses the phrase "this section," under LRB drafting conventions, "section" refers to the statutory section, not the component. So, as used in this par. (c), section refers to s. 701.0903. Is that your intent?

****NOTE: What does "this section" refer to in this paragraph?

Insert 88-6

4 (d) Unless otherwise provided in the trust instrument, par. (b) applies to a
5 contract for life insurance if any of the following apply:

****NOTE: Please confirm that par. (b) is the appropriate cross-reference here.

6 1. The trust instrument, by reference to this section, makes this section
7 applicable to contracts for life insurance held by the trust.

****NOTE: This subdivision uses the phrase "this section;" under LRB drafting conventions, "section" refers to the statutory section, not the component. So, as used here, each occurrence of section refers to s. 701.0903. Is that your intent?

8 2. The trustee gives notice as provided under par. (e) that this section applies
9 to a contract for life insurance held by the trust.

****NOTE: I created a new paragraph (e) to incorporate the notice requirements and limitations. Please review and confirm that I accurately captured your intent.

****NOTE: This subdivision uses the phrase "this section;" under LRB drafting conventions, "section" refers to the statutory section, not the component. So, as used here, section refers to s. 701.0903. Is that your intent?

10 (e) 1. Notice shall be given to each qualified beneficiary and must include a copy
11 or restatement of this section.

****NOTE: What does "this section" refer to in this subdivision?

12 2. Notice shall be given in the manner provided in s. 701.0109.

13 3. Notice given under subch. III to a person who represents the interests of any
14 qualified beneficiary shall be treated as notice to the person so represented.

15 4. If any person notified pursuant to the paragraph objects to the application
16 of this section by delivering a written objection to the trustee within 30 days after the

NOTE: Notice of what?

~~***~~ Note: Should the sender be required to provide evidence that the sender deposited the notice in the mail by some documentation or receipt?

1 date on which the objector received such notice, par. (b) shall not apply until the
2 objection is withdrawn.

****NOTE: This subdivision uses the phrase "this section" under LRB drafting conventions, "section" refers to the statutory section, not the component. So, as used here, "application of this section" means "application of [s. 701.0903]." Is that your intent?

****NOTE: What does the phrase "notified pursuant to the paragraph" refer to?

****NOTE: I assumed that the objection must be delivered to the trustee, and restructured this paragraph to clarify that point. Okay?

****NOTE: Please confirm that "par. (b)," as it appears at the end of this subdivision, is the appropriate cross-reference.

3 5) Any notice sent by United States mail is presumed to have been received 3
4 days after depositing the notice in the United States mail system with proper postage
5 prepaid, unless any party can prove otherwise.

****NOTE: I wonder whether this is an adequate time period, given the proposed closure of regional postal offices in this state and the possibility that Saturday service may be discontinued. I raise this after reading an article published on Tuesday, December 6, 2011, by the Wisconsin State Journal entitled "Big Changes Coming for Postal Service": http://host.madison.com/wsj/news/local/big-changes-coming-for-postal-service/article_c6bd35d2-a40f-5782-8592-153a84438223.html

****NOTE: Does this need to specify the standard of review of evidence submitted to "prove otherwise"?

6 (f) 1. In this paragraph, an "affiliate" is any person who controls, is controlled
7 by, or is under common control with the trustee.

****NOTE: Under LRB drafting conventions, generally, a definition precedes the material in which the term is used. For that reason, I moved the definition for "affiliate" to the beginning of the statutory component (paragraph (f)), and applied it only to the component within which the term appears. Okay?

8 2. This section does not apply to any contract for life insurance purchased from
9 any affiliate of the trustee, or with respect to which the trustee or any affiliate of the
10 trustee receives any commission, unless the duty to purchase the life insurance
11 contract has been directed by a directing party or the duty has been delegated to
12 another person in accordance with sub. (2).

****NOTE: This paragraph uses the phrase "this section" under LRB drafting conventions, "section" refers to the statutory section, not the component. So, as used here, "This section does not apply" means "Section 701.0903 does not apply. . . ." Is that your intent?

Insert 89 - End (before note)

~~***~~ Note: Should the sender be required to provide evidence that the sender deposited the notice in the mail by some documentation or receipt?

1 (g) If par. (b) applies, a trustee may not be compensated for performing any of
2 the applicable services described in par. (b).

****NOTE: What are "applicable services"? Is the purpose of this paragraph to provide that a person who performs these services, even though that person is not required to perform the services, can't be paid for providing them? If so, I'm not sure the word "applicable" is necessary.

3 (2) DELEGATION OF INVESTMENT MANAGEMENT RESPONSIBILITY. (a) A trustee that
4 administers an insurance contract on the life of one or more individuals may
5 delegate, without any continuing obligation to review the agent's actions, investment
6 functions as provided in this subsection to any of the following investment agents:

****NOTE: It is implied but not explicit that the life insurance contract described here is owned by a trust. I believe it should be explicit. Please advise. *Also do the individuals affected by the life insurance contract need to be beneficiaries or otherwise related to the trust?*

****NOTE: The drafting instructions directed me to draft the introduction to this paragraph as follows: "A trustee that administers an insurance contract on the life or lives of one or more persons..." I eliminated "or lives" and substituted individuals for persons. Okay?

****NOTE: I eliminated the word, certain, which preceded investment functions and added the clause "as provided in this subsection" following investment functions. I also eliminated the clause "with respect to any such contract" (which followed investment functions) as I believe it is clear from the list of delegated functions that the functions relate to the insurance contract. Okay?

****NOTE: The drafting instructions used the phrase "the following persons as investment agents." I simplified the phrase by eliminating "persons as". Okay?

- 7 1. The trust's settlor.
- 8 2. A beneficiary of the trust, regardless of the beneficiary's interest, whether
- 9 qualified or not.
- 10 3. The spouse, ancestor, or descendant of any person described in subds. 1. or
- 11 2.
- 12 4. Any person nominated by a majority of the qualified beneficiaries.

****NOTE: As proposed, this subdivision read "Any person or entity nominated. . ." Person is defined under s: 990.01 (26) to "... include[] all partnerships, associations and bodies politic or corporate." For that reason, I eliminated "or entity" from this subdivision. Okay?

1 5. An investment agent if the trustee exercises reasonable care, judgment, and
2 caution in selecting the investment agent and in establishing the scope and terms
3 of any delegation.

4 (b) Delegable investment functions under this subsection include all of the
5 following:

6 1. A determination of whether any insurance contract is or remains a proper
7 investment.

 ****NOTE: The language of this subdivision is not clear: does "any insurance contract" as used in this subdivision include insurance contracts other than the life insurance contracts described in par. (a)?

8 2. The investigation of the financial strength of the life insurance company.

 ****NOTE: I believe this subdivision needs to make a more explicit connection between the life insurance company identified in the subdivision and the insurance policy; I assume it is the insurance policy described in par. (a)?

9 3. A determination of whether or not to exercise a policy option available under
10 any insurance contract.

 ****NOTE: The language of this subdivision is not clear: does "any insurance contract" as used in this subdivision include insurance contracts other than the life insurance contracts described in par. (a)?

11 4. A determination of whether to diversify such contracts relative to one
12 another or to other assets, if any, administered by the fiduciary.

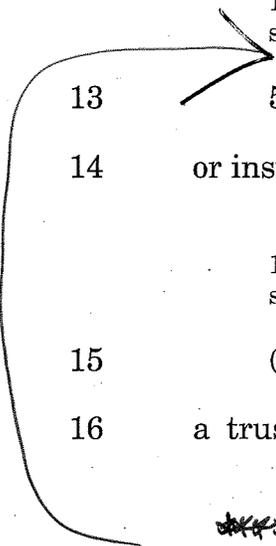
 ****NOTE: Which contracts are being referred to here? The contracts under subd. 1. or 3. or both or others? Please let me know whether any subdivision in this paragraph should be cross-referenced in any other subdivision.

13 5. An inquiry about changes in the health or financial condition of the insured
14 or insureds relative to any such contract.

 ****NOTE: Which contracts are being referred to here? The contracts under subd. 1. or 3. or both or others? Please let me know whether any subdivision in this paragraph should be cross-referenced in any other subdivision.

15 (c) Until a life insurance contract matures and the policy proceeds are received,
16 a trustee that administers an insurance contract under this subsection is not

NOTE: Who is "the fiduciary"?



1 obligated to diversify the other trust assets, if any, relative to such insurance
2 contract.

****NOTE: It is implied but not explicit in this paragraph that a life insurance contract is an asset of a trust. I believe we need to include language in at least one place in this paragraph to make that more explicit. The first place would be in the portion of the sentence that describes "an insurance contract administered under this subsection ...". A second could be in describing "the other trust assets." Could I incorporate a phrase such as "held by the trust" or "owned by the trust" or something else? Please advise.

third

(title) and elsewhere in sub. (2)

could be sub. (2)(a) (intro.); another

****NOTE: I'm not sure the phrase "relative to such insurance contract" works as it is used in connection to the "other trust assets."

3

SECTION 88. Subchapter X of chapter 701 [precedes 701.1001] of the statutes

4 is created to read:

CHAPTER 701

ARTICLE X

SUBCHAPTER

(all caps)

use text: title: chapter

****NOTE: No title was provided for this subchapter X. If other subchapters have titles, each subchapter must have a title.

6

SECTION 89. 701.1001 of the statutes is created to read:

7

701.1001 Remedies for breach of trust. (1) A violation by a trustee of a duty

8 the trustee owes to a beneficiary is a breach of trust.

(Article X; Section 1001) (hyphen)

9

(2) To remedy a breach of trust that has occurred or may occur, a court may do

10

any of the following:

11

(a) Compel the trustee to perform the trustee's duties.

12

(b) Enjoin the trustee from committing a breach of trust.

13

(c) Compel the trustee to redress a breach of trust by paying money, restoring

14

property, or other means.

15

(d) Order a trustee to account.

16

(e) Appoint a special fiduciary to take possession of the trust property and

17

administer the trust.

****NOTE: The term "special fiduciary" is used in several places in the bill, and in each place the powers seem to be a bit different. Is this a term of art? Or should this term or the fiduciary's powers or limitations be defined?

to give an accounting of something?

18

(f) Suspend the trustee.

NOTE: How does s. 701.1012 limit this provision?

- 1 (g) Remove the trustee as provided in s. 701.0706.
- 2 (h) Reduce the compensation of or deny compensation to the trustee.
- 3 (i) Subject to s. 701.1012, void an act of the trustee, impose a lien or a
- 4 constructive trust on trust property, or trace trust property wrongfully disposed of
- 5 and recover the property or its proceeds.

- 6 (j) Order any other appropriate relief, whether ^{hyphen} provided elsewhere in this
- 7 chapter, available at common law, or under equity principles.

SECTION 90. 701.1002 of the statutes is created to read:

Article X \rightarrow Section 1002 \rightarrow Δ

701.1002 Damages for breach of trust. (1) A trustee who commits a breach of trust is liable to an affected beneficiary for the greater of the following:

- (a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred.
- (b) The profit the trustee made by reason of the breach.

(2) Except as otherwise provided in this subsection, if more than one trustee is liable to a beneficiary for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiary. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

SECTION 91. 701.1003 of the statutes is created to read:

701.1003 Damages in absence of breach. Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

Article X \rightarrow Section 1003 \rightarrow Δ \uparrow Δ

hyphen

lyphen
B Article X, Section 1004 Δ Δ

1 SECTION 92. 701.1004 of the statutes is created to read:

2 **701.1004 Attorney's fees and costs.** (1) In a judicial proceeding involving
3 the administration of a trust, the court, as justice and equity may require, may award
4 costs and expenses, including reasonable attorney's fees, to any party, to be paid by
5 another party or from the trust that is the subject of the controversy.

6 (2) Subject to sub. (3), if a trustee defends or prosecutes any proceeding in good
7 faith, whether successful or not, the trustee is entitled to receive the necessary
8 expenses and disbursements, including reasonable attorney's fees, incurred. This
9 subsection may not preclude a court from ordering reimbursement of the trust for
10 such expenses and disbursements from another party as provided in sub. (1).

11 (3) (a) Payment of costs or attorney's fees incurred in any proceeding from the
12 assets of the trust may be made by the trustee without the approval of any person
13 and without court authorization, unless the court orders otherwise as provided in
14 par. (c).

15 (b) If a claim or defense based upon a breach of trust is made against a trustee
16 in a proceeding, the trustee shall provide notice to each qualified beneficiary of the
17 trust whose share of the trust may be affected by the payment of attorney's fees and
18 costs of the intention to pay costs or attorney's fees incurred in the proceeding from
19 the trust prior to making payment. The notice shall inform each such qualified
20 beneficiary of the right to apply to the court for an order prohibiting the trustee from
21 paying attorney's fees or costs from trust assets. If a trustee is served with a motion
22 for an order prohibiting the trustee from paying attorney's fees or costs in the
23 proceeding and the trustee pays attorney's fees or costs before an order is entered on
24 the motion, the trustee and the trustee's attorneys who have been paid attorney's fees

from the trust

from the trust

from the trust

22
23

1 or costs from trust assets (to defend against the claim or defense) are subject to the
2 remedies in pars. (c) and (d).

3 (c) If a claim or defense based upon breach of trust is made against a trustee
4 in a proceeding, a party must obtain a court order to prohibit the trustee from paying
5 costs or attorney's fees from trust assets. To obtain an order prohibiting payment of
6 costs or attorney's fees from trust assets, a party must make a reasonable showing
7 by evidence in the record or by proffering evidence that provides a reasonable basis
8 for a court to conclude that there has been a breach of trust. The trustee may proffer
9 evidence to rebut the evidence submitted by a party. The court in its discretion may
10 defer ruling on the motion, pending discovery to be taken by the parties. If the court
11 finds that there is a reasonable basis to conclude that there has been a breach of
12 trust, unless the court finds good cause, the court shall enter an order prohibiting the
13 payment of further attorney's fees and costs from the assets of the trust and shall
14 order attorney's fees or costs previously paid from assets of the trust in such
15 proceeding to be refunded. An order entered under this paragraph shall not limit a
16 trustee's right to seek an order permitting the payment of some or all of the attorney's
17 fees or costs incurred in the proceeding from trust assets, including any fees required
18 to be refunded, after the claim or defense is finally determined by the court. If a claim
19 or defense based upon a breach of trust is withdrawn, dismissed, or resolved without
20 a determination by the court that the trustee committed a breach of trust, after the
21 entry of an order prohibiting payment of attorney's fees and costs pursuant to this
22 paragraph, the trustee may pay costs or attorney's fees incurred in the proceeding
23 from the assets of the trust without further court authorization.

****NOTE: I'm not sure the phrase "unless the court finds good cause" works without additional explanation, but perhaps I am being hyper-critical. If I am reading it correctly,

I believe the phrase means good cause to allow attorneys fees and costs to be paid from the trust. Yes? Would it be a problem to state that explicitly?

1 (d) If the court orders a refund under par. (c), the court may enter such
2 sanctions as are appropriate if a refund is not made as directed by the court,
3 including striking defenses or pleadings filed by the trustee. Nothing in this
4 paragraph limits other remedies and sanctions the court may employ for the failure
5 to refund timely.

****NOTE: I'm not familiar with the phrase "to refund timely." Could the last sentence close with "failure to refund the trust in a timely manner?"

6 (e) Nothing in this subsection limits the power of the court to review fees and
7 costs or the right of any interested persons to challenge fees and costs after payment,
8 after an accounting, or after conclusion of the litigation.

9 (f) Notice under par. (b) is not required if the action or defense is later
10 withdrawn or dismissed by the party that is alleging a breach of trust or resolved
11 without a determination by the court that the trustee has committed a breach of
12 trust.

13 (4) A provision drafted or caused to be drafted by a trustee that modifies the
14 application of this section in a manner favorable to the trustee and potentially
15 detrimental to a beneficiary is invalid with respect to the trustee unless the trustee
16 proves that the provision was fair under the circumstances existing at the time the
17 trust instrument was signed and that the existence and contents of the provision
18 were adequately communicated to the settlor.

19 SECTION 93. 701.1005 of the statutes is created to read:

20 **701.1005 Limitation of action against trustee.** (1) A beneficiary may not
21 commence a proceeding against a trustee for breach of trust more than one year after

(B) Article X, Section 1005
Δ Δ
Myphen

NOTE: What must the report include in order to adequately disclose the existence of a potential claim? How much detail or evidence? How smart must the beneficiary be?

1 the date the beneficiary or a representative of the beneficiary was sent a report that
2 adequately disclosed the existence of a potential claim for breach of trust.

3 (2) A report adequately discloses the existence of a potential claim for breach
4 of trust if it provides sufficient information so that the beneficiary or representative
5 knows of the potential claim or should have inquired into its existence.

6 (3) If sub. (1) does not apply, a proceeding by a beneficiary against a trustee for
7 breach of trust must be commenced within five years after the first to occur of the
8 following:

- 9 (a) The removal, resignation, or death of the trustee.
- 10 (b) The termination of the beneficiary's interest in the trust.
- 11 (c) The termination of the trust.

④ ***Notes: What must the report include in order to adequately disclose the existence of a potential claim? How much detail or evidence? How smart must the beneficiary be?

5

12 (4) Subsections (1) and (3) shall not apply to a claim for fraud as to which the
13 period shall be governed by applicable law.

***NOTE: I'm not sure the word "period" is, by itself, sufficient.

14 SECTION 94. 701.1006 of the statutes is created to read:

15 **701.1006 Reliance on trust instrument.** A trustee who acts in reasonable
16 reliance on the express provisions of the trust is not liable to a beneficiary for a breach
17 of trust to the extent the breach resulted from the reliance

18 SECTION 95. 701.1007 of the statutes is created to read:

19 **701.1007 Event affecting administration or distribution.** If the
20 happening of an event, including marriage, divorce, performance of educational
21 requirements, or death, affects the administration or distribution of a trust, a trustee
22 who has exercised reasonable care to ascertain the happening of the event is not
23 liable for a loss resulting from the trustee's lack of knowledge.

24 SECTION 96. 701.1008 of the statutes is created to read:

④ AAAA Notes: How likely is this to happen? How does it happen?

hyphen
B Article X, Section 1003 $\Delta \rightarrow \Delta$

1

701.1008/Exculpation of trustee. (1) A term of a trust relieving a trustee

2 of liability for breach of trust is unenforceable to the extent that it does any of the
3 following:

4 (a) Relieves the trustee of liability for breach of trust committed in bad faith
5 or with reckless indifference to the purposes of the trust or the interests of a
6 beneficiary.

7 (b) Was inserted as the result of an abuse by the trustee of a fiduciary or
8 confidential relationship *to* the settlor. *e with*

9 (2) An exculpatory term drafted or caused to be drafted by the trustee is invalid
10 as an abuse of a fiduciary or confidential relationship unless the trustee proves that
11 the exculpatory term was fair under the circumstances existing at the time the trust
12 instrument was signed and that the existence and contents of the exculpatory term
13 were adequately communicated to the settlor.

14 SECTION 97. ~~701.1009 of the statutes is created to read:~~ *hyphen*

15

B Article X, Section 1009 $\Delta \rightarrow \Delta$
701.1009/Beneficiary's consent, release, or ratification. A trustee is not

16 liable to a beneficiary for breach of trust if the beneficiary consented to the conduct
17 constituting the breach, released the trustee from liability for the breach, or ratified
18 the transaction constituting the breach, unless one of the following applies:

19 (1) The consent, release, or ratification of the beneficiary was induced by
20 improper conduct of the trustee.

21 (2) At the time of the consent, release, or ratification, the beneficiary did not
22 have knowledge of the beneficiary's rights or of the material facts relating to the
23 breach.

24 SECTION 98. 701.1010 of the statutes is created to read:

Article X, Section 1010 *lyphen*

NOTE: As drafted, the trust is acquiring an interest as a general partner. Is that your intent? How or why would a trust do that?

Insert 99-16

Insert 17-19

Insert 17-19

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701.1010 Limitation on personal liability of trustee. (1) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(2) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

SECTION 99. 701.1011 of the statutes is created to read:

701.1011 Interest as general partner. (1) Unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to ch. 178 or ch. 179.

NOTE: *Is "holding an interest as a general partner" the same as being a general partner? If so, can we just say "is a general partner"?*
****NOTE: I substituted ch. 178 for the Uniform Partnership Act and ch. 179 for the Uniform Limited Partnership Act. That said, is there a particular section in those chapters, governing notice or disclosure, that should be cross-referenced here?

(2) A trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(3) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

SECTION 100. 701.1012 of the statutes is created to read:

NOTE: *As drafted, is the trust acquiring an interest as a general partner? Is that your intent? How or why would a trust do that?*

hyphen
Article X Section 1012

1

701.1012 Protection of person dealing with trustee. (1) A person other

2 than a beneficiary who in good faith assists a trustee, or who in good faith and for
3 value deals with a trustee, without knowledge that the trustee is exceeding or
4 improperly exercising the trustee's powers is protected from liability as if the trustee
5 properly exercised the power.

6 (2) A person other than a beneficiary who in good faith deals with a trustee is
7 not required to inquire into the extent of the trustee's powers or the propriety of their
8 exercise.

NOTE: This subsection apparently includes beneficiaries whereas subs. (1), (2) and (4) do not. Is that intentional?

9 (3) A person who in good faith delivers assets to a trustee need not ensure their
10 proper application.

11 (4) A person other than a beneficiary who in good faith assists a former trustee,
12 or who in good faith and for value deals with a former trustee, without knowledge
13 that the trusteeship has terminated is protected from liability as if the former trustee
14 were still a trustee.

15 (5) Comparable protective provisions of other laws relating to commercial
16 transactions or transfer of securities by fiduciaries prevail over the protection
17 provided by this section.

SECTION 101. 701.1013 of the statutes is created to read:

hyphen
Article X Section 1013

18 **701.1013 Certification of trust.** (1) Instead of furnishing a copy of the trust
19 instrument to a person other than a beneficiary, the trustee may furnish to the
20 person a certification of trust containing the following information:

- 21 (a) That the trust exists and the date the trust instrument was executed.
- 22 (b) The identity of the settlor.
- 23 (c) The identity and address of the currently acting trustee.
- 24 (d) The powers of the trustee.

NOTE: This subsection apparently includes beneficiaries, whereas subs. (1), (2) and (4) do not. Is that intentional?

1 (e) The revocability or irrevocability of the trust and the identity of any person
2 holding a power to revoke the trust.

3 (f) The authority of a cotrustee to sign or otherwise authenticate and whether
4 all cotrustees or less than all cotrustees are required to sign or otherwise
5 authenticate in order to exercise powers of the trustee.

****NOTE: What is being signed or otherwise authenticated in this paragraph?

6 (g) The manner in which title to trust property may be taken.

7 (2) A certification of trust may be signed or otherwise authenticated by any
8 trustee.

9 (3) A certification of trust must state that the trust has not been revoked,
10 modified, or amended in any manner that would cause the representations contained
11 in the certification of trust to be incorrect.

12 (4) A certification of trust need not contain the dispositive terms of a trust.

13 (5) A recipient of a certification of trust may require the trustee to furnish
14 copies of those excerpts from the original trust instrument and later amendments
15 which designate the trustee and confer upon the trustee the power to act in the
16 pending transaction.

17 (6) A person who acts in reliance upon a certification of trust without
18 knowledge that the representations contained therein are incorrect is not liable to
19 any person for so acting and may assume without inquiry the existence of the facts
20 contained in the certification. Knowledge of the terms of the trust may not be inferred
21 solely from the fact that a copy of all or part of the trust instrument is held by the
22 person relying upon the certification.

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2788/Plins
TKK:.....

1 **Insert 6-6**

✓ ****NOTE: This definition refers to a power of appointment, but the term "power of appointment" is, itself, not defined; I think the draft could be improved by providing a definition for power of appointment.

2 **Insert 6-15**

✓ ****NOTE: The phrase "Without considering the existence or exercise of a power of appointment" appears, below, in pars. (b) and (c), but not in par. (a). Does that mean that a power of appointment should be considered in determining whether a distributee or permissible distributee described in par. (a) is a qualified beneficiary?

3 **Insert 7-end**

✓ ****NOTE: That said, the definition is also problematic in that it defines a "state" to be both a place and a group of people (Indian tribe or band). It is not clear how a state as a group of people would work in practice; for example, what does it mean under proposed s. 701.0108 (2) (b), where a trustee is not required to transfer a trust's principal place of administration to an Indian tribe or band? Instead of Indian tribe or band, is there another term that would identify the place or territory over which an Indian tribe or band has jurisdiction?

4 **Insert 8-15**

✓ ****NOTE: This definition refers to the "powers defined in s. 701.0818" (in the drafting instructions, the language read "powers defined in section 818"). However, the drafting materials did not include any material for a section 818. Is this a numbering error? Or is the material for section 818 not yet completed?

5 **Insert 10-16**

✓ ****NOTE: What are the rights being referred to here? Sections 701.1010 to 701.1013 don't describe or refer to any rights.

6 **Insert 10-22**

✓ ****NOTE: The drafting instructions for this paragraph referenced "the jurisdiction of the court under . . . s. 701.0808 (8);" however, that section, before it was renumbered s. 701.0808 (7) by the elimination of s. 701.0808 (5), made no reference to jurisdiction. I changed the reference in this paragraph to s. 701.0808 (6). Please review.

 ****NOTE: This paragraph cross-references s. 701.0818 (7). However, the drafting materials did not include any material for a section 701.0818. Is this a numbering error? Or is the material for section 818 not yet completed?

7 **Insert 14-6**

✓ ****NOTE: May the trustee transfer some or all of the trust property to a successor trustee in the absence of a transfer of a trust's principal place of administration? If so, it seems confusing for this subsection to begin with "In connection with a transfer..."

8 **Insert 14-19**

✓ ****NOTE: What is a "trust office"?

1 **Insert 12-note**

✓ ****NOTE: This paragraph begins "A trustee shall not be required..." By whom or what may a trustee not be required?

2 **Insert 15-13**

✓ ****NOTE: The term "electronic message" is broad and vague; it could mean an e-mail, but could also include a text-message, instant message, "tweet", fax, digital voice message, cell phone conversation, etc. Is that your intent? Or do you want to be more specific about what is a "properly directed electronic message?"

move question mark to outside the quotation mark

3 **Insert 17-10**

✓ ****NOTE: The meaning of this sentence is not clear. Does this mean that someone must determine whether a person is an interested person according to the rules under subch. III? If so, who makes this determination? Also if so, might I suggest: "The rules of representation under subch. III shall be used [by . . .] to determine whether a person is an interested person under this section"? Or does this mean that an interested person will make a determination according to the rules under subch. III?

4 **Insert 18-15**

✓ ****NOTE: This section cross-references s. 701.0818. However, the drafting materials did not include any material for a section 701.0818. Is this a numbering error? Or is the material for section 818 not yet completed?

5 **Insert 20-2**

✓ ****NOTE: Rather than "distribution of a trust", should this read "distribution from a trust" or "distribution of trust income or principal" or "distribution under a trust"?

6 **Insert 20-4**

✓ ****NOTE: I am confused by the language in this paragraph (L) and in paragraph (k). Section 701.0201 governs the role of the court in the administration of a trust. But it would seem that "questions of construction of trust instruments" and "other matters involving trustees and beneficiaries" are not matters related to the trust's administration, but are more substantive matters related to the meaning and effect of the trust. If the authority granted to a court is more expansive than simply administering the trust, then the use of the words "administration of a trust" and "trust's administration" in subs. (1) and (3) (intro.), respectively, is misleading. Perhaps a better phrase would be "any matter involving the trust..."? Please advise.

than

7 **Insert 20-20**

✓ ****NOTE: This section refers to "a trust administered in this state;" elsewhere, the phrase used is "a trust having its principal place of administration in this state". Is there a difference in these two concepts? For example, a could "a trust administered in this state" be at the same time "a trust having its principal place of administration in another state"? If that is not your intent, I suggest using one phrase consistently.

8 **Insert 21-16**

✓ ****NOTE: "County" appears twice in this subsection; in the first instance, county is followed by "in this state," but in the second instance, there is no reference to "in this state." (See also s. 701.0204 (2) (a) through (d)). Is it your intent that, where county appears without the phrase "in this state," the county of venue could be a county that is not in this state? If not, I would recommend using a consistent phrase. That said, is it necessary to specify that the county be located "in this state"? Isn't that a given?

1 **Insert 22-22 end**

✓ ****NOTE: Subsection (1) and (2) refer to a person "who may represent and bind another person under this subchapter," and sub. (4) refers to a settlor who "may not represent and bind a beneficiary under this subchapter." In contrast, sub. (3) refers only to a person who "under this subchapter may represent a settlor." Is the word "bind" intentionally omitted from sub. (3)?

2 **Insert 23-3**

✓ ****NOTE: The drafting instructions for s. 701.0301 ((1), (2), (3), and (4) used the phrase "this article." Consistent with LRB drafting conventions, I replaced "this article" with "this subchapter". That said, is it your intent that these provisions governing representation do not apply outside of subchapter III? Or should they apply throughout ch. 701?

3 **Insert 25-10**

✓ ****NOTE: Section 701.0302 and several provisions in 701.0303 are not, by their terms, necessarily limited to trust-related matters. Is that okay? S.

4 **Insert 26-3**

✓ ****NOTE: What happens if a court determines that an interest of an estate is not represented or that the representation of the estate is not adequate? An estate is not a minor, incapacitated, or unborn, nor is an estate a person whose identity or location is unknown, but it is a person for whom representation can occur. See s. 701.0303 (1). The same question applies to an agent of a principal under s. 701.0303 (3). person

5 **Insert 29-8 before NOTE.**

✓ ****NOTE: This subsection uses the phrase "governing instrument" Is a governing instrument different from a "trust instrument"? If so, how? If no, can I substitute "trust instrument" for "governing instrument"? ? t

6 **Insert 30-9**

✓ ****NOTE: What does "a person having an interest in the welfare of the animal" mean? Must the person suffer a financial loss if the animal is not cared for? Or have some sort of demonstrated attachment to or history with the animal? Or may the person simply love animals? If the latter, how will the court distinguish between two persons who express a passionate interest in animals generally but may have no actual emotional attachment to or history with the specific animal?

7 **Insert 31-7**

✓ ****NOTE: Why does this subsection refer to a "person appointed" and not a "trustee appointed"?

8 **Insert 34-15**

✓ ****NOTE: What are "the dispositive terms of the trust"? Is this a term of art? Do dispositive terms govern distributions from the trust? If so, could the word "distribution" appear here instead? See also s. 701.1013 (4).

1

Insert 39-15

✓ ****NOTE: This definition for "first trust" uses the phrase "principal is appointed pursuant to the power granted under sub. (2)," but in sub. (2), there is no reference to appointing principal. Instead, in sub. (2) (intro.), there is a reference to invad[ing] principal and appointing assets, and in sub. (2) (b) (intro.) and (c) 2., there is a reference to invad[ing] principal. As a result, the definition for "first trust" is not clear.

2

Insert 44-6

✓ ****NOTE: What is the "trust situs"? Is it different than the "principal place of administration" or "designated jurisdiction"?

3

Insert 46-10

✓ ****NOTE: What does "extrinsic" mean in this subdivision? (How) are the factors under subd. 2. not extrinsic?

4

Insert 47-3

✓ ****NOTE: This subdivision is written in the passive tense; who provides notice to the settlor?

****NOTE: Also, as drafted, the "notice to settlor" provision in this subd. only applies to cases under par. (c), but not under par. (b). Is that intentional?

5

Insert 47-5

✓ ****NOTE: What is the "trust situs"? Is it different than the "principal place of administration" or "designated jurisdiction"?

****NOTE: Also, is this paragraph (a) necessary? Wouldn't it be a given that the laws of this state govern trusts administered by the laws of this state? Are there other sections of the chapter that do not apply to trusts governed by the laws of this state?

6

Insert 48-1

✓ ****NOTE: Is the antecedent of the relative clause "that arises" "power of invasion"? Or is it "further trust"? Or "property"? That is, does the "power of invasion . . . arise under the first trust . . ." or does the "property . . . arise under the terms of the first trust;" or does the "further trust . . . arise under the terms of the first trust . . ." Is there a way to modify this paragraph so that the meaning is clear?

7

Insert 48-6 (before Note)

✓ ****NOTE: This paragraph refers to the appointment of assets "in favor of the second trust. . .," but sub. (2) (intro.) refers to the appointment of assets "in favor of a trustee of a second trust." Is a distinction intended? If not, I recommend using consistent language in both provisions.

8

Insert 48-13 (after Note)

✓ ****NOTE: This paragraph refers to a "distribution to the second trust." Is this different than an "appoint[ment of] property in further trust" under par. (e) or the "appointment in favor of the second trust" described under pars. (g) and (h)?

1 **Insert 49-13 (after Note)**

✓ ****NOTE: This section refers only to "attachment of present or future distributions," whereas s. 701.0502 (3) refers to reaching a distribution by attachment, garnishment, an execution on, or other means. Is the difference between these two provisions intentional? ✓

2 **Insert 50-5**

✓ ****NOTE: This par. (a) is unnecessary; it simply reiterates the definition for "spendthrift provision" provided at s. 701.0103 (22). I will remove it in the next draft.

3 **Insert 50-10**

✓ ****NOTE: This sub. (2) in effect nullifies sub. (1), by providing that a term of a trust that uses certain words is sufficient to restrain certain transfers - even if the criteria described in sub. (1) are not met. Is that your intent? ✓

4 **Insert 50-15**

✓ ****NOTE: How does a beneficiary receive an interest in a trust? ✓

5 **Insert 51-2**

✓ ****NOTE: What is a "creating instrument"? ✓

6 **Insert 51-10**

✓ ****NOTE: This paragraph refers to a "discretionary trust," but up to this point "discretionary trust" has not been defined. Would it be appropriate to reference s. 701.0504 (1)? Better yet, can we create a definition for "discretionary trust" in s. 701.0103? ✓

7 **Insert 51-17 (before Note)**

✓ ****NOTE: What is a "creating instrument"? ✓

8 **Insert 54-10**

✓ ****NOTE: This subdivision refers only to an application of a "judgment creditor of the settlor" (not any creditor). Is that your intent? ✓

9 **Insert 55-12**

✓ ****NOTE: I eliminated "of 1986," which had followed "Internal Revenue Code," from this s. 701.0505 (2) (b) 2. a., and also from subd. 2. b. and s. 701.0816 (27). "Internal Revenue Code" is defined under s. 701.0103 (14) to be the Internal Revenue Code of 1986, as amended. Elsewhere in the bill, Internal Revenue Code is used without reference to the year. If "Internal Revenue Code of 1986" and not "Internal Revenue Code" is the term used in this section, a reviewing court could determine that the legislature meant to refer specifically to that particular provision of the Internal Revenue Code as it appeared in 1986, and not as it appears after subsequent amendments. Let me know if you have any questions or if I have acted in error. ✓

10 **Insert 57-10**

✓ ****NOTE: What if the trustee is also the beneficiary (as under s. 701.0504 (3))?

1

Insert 58-3

✓ ****NOTE: Is the verb, fund, the best way to refer to placing assets in a trust?

2

Insert 59-4

✓ ****NOTE: What are a settlor's powers of distribution?

3

Insert 67-15

✓ ****NOTE: If the expenses were not properly incurred, why should they be reimbursed? Or ^{e was} is the reason that they were not properly incurred was to prevent unjust enrichment of the trust? If the latter, I would suggest restructuring the sentence so that that meaning is clear. *the prevention of*

4

Insert 72-19

✓ ****NOTE: This subsection could be read two different ways: 1) s. 701.0807 does not apply to any delegation of investment and management functions; that delegation is governed by s. 881.01 (10); 2) s. 701.0807 applies to the delegation of investment and management functions, but not those that are that are governed by s. 881.01 (10). I recommend this sentence be modified to clarify the proper meaning. *10*

5

Insert 74-10

✓ ****NOTE: This section cross-references s. 701.0818. However, the drafting materials did not include any material for a section 818. Is this a numbering error? Or is the material for section 818 not yet completed?

6

Insert 83-18

✓ ****NOTE: What is a "legal disability?" Is it different than a disability held by a "disabled individual" (a defined term)?

7

Insert 88-6

✓ ****NOTE: Can par. (b) apply to a contract for life insurance if any of the requirements under subd. 1. and 2. do not apply? If not, par. (d) should read "par. (b) does not apply unless one of the following apply." Also, does par. (b) need to say "Subject to par. (d) and notwithstanding s. 881.01..."? If par. (b) doesn't say that, it will apply to all life insurance contracts regardless of what par. (d) says. *applies*

8

Insert 89-End (before note)

✓ ****NOTE: Where does the duty to purchase life insurance come from? This is not clear.

9

Insert 99-16

✓ ****NOTE: This subsection refers to "the fiduciary capacity." Whose fiduciary capacity and with respect to what or whom?

10

Insert 99-19

✓ ****NOTE: Does the partnership at issue here have to have any relationship to the trust for which the person who holds an interest as a general partner serves as a trustee?

1

Insert 99-21

✓ ****NOTE: Does the partnership at issue here have to have any relationship to the trust for which the person who holds an interest as a general partner serves as a trustee? If so, that should be spelled out. If not, why would the settlor be liable for liabilities of the partnership?

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2788/?dn

TKK:.....

95

- date -

Senator Risser:

This is a preliminary draft of the re-write of the Wisconsin Trust Code. The draft incorporates all of the new language provided to me for Subchapters (Articles) I through X of Chapter 701 by Elizabeth Heiner, Victor Schultz, and Adam Wiensch on behalf of the Study Group working on the Uniform Trust Code. The draft does not, however, address any of the current law provisions of Chapter 701 that will be replaced and superseded by this new language. For that reason, no repeals or revisions to current law Chapter 701, nor any changes to cross-references to current law ch. 701, are included in this draft. These provisions will be incorporated into the next draft.

I have embedded a number of drafter's notes in the bill. In some cases, the notes explain LRB drafting conventions and the reasons for making substantive or formatting changes to the language provided by the Study Group. In other places, the drafting notes raise questions about the structure or meaning of the Study Group's proposed language. Please review these notes carefully and let me know if you have any questions or comments about the substance of the changes or the manner in which the changes were made.

Finally, please be aware that this draft does not include initial applicability or effective date provisions; it is my understanding that the Study Group is still working through these provisions.

I look forward to working with you on the next draft.

Tracy K. Kuczenski
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2788/P1dn
TKK:cjs:ph

January 20, 2012

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