



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Senate Bill 384

Senate Amendments 1 and 2

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2013 Senate Bill 384 (“the bill”) contains changes to the estate recovery and divestment provisions of the state’s Medical Assistance program, including modification of the amount and types of assets that are subject to estate recovery by the Department of Health Services by allowing hardship waivers to apply to the estate of a surviving spouse and by altering the definition of “property of a decedent.”

Additionally, the bill specifies that the Wisconsin Prudent Investor Act governs the investment management of the property of a trust. The bill also creates an exception to the general applicability of the Prudent Investor Act to life insurance contracts owned by trusts.

Under the bill, if a principal purpose of a trust is to hold a life insurance contract or to purchase a life insurance contract from contributions made to the trust, a trustee does not have a duty to determine whether the life insurance contract is or remains a proper investment of the trust.

However, the bill also specifies that this exception does not apply to a life insurance contract purchased from an affiliate of a trustee or to a life insurance contract from which a trustee or an affiliate of a trustee receives a commission, unless the power to purchase the contract has been delegated to another person and that person made the decision to purchase the contract through a trustee or affiliate.

Senate Amendment 1

Senate Amendment 1 makes an additional modification to the definition of “property of a decedent.” Under the current definition, living trusts are included in the definition. The amendment deletes the reference to living trusts and instead refers to *revocable* trusts. The amendment also specifies that property in an *irrevocable* trust is not included in the definition of property of a decedent.

Senate Amendment 2

Senate Amendment 2 removes the limitation on the applicability of the exception described above for life insurance contracts purchased from an affiliate of a trustee and life insurance contracts from which a trustee or an affiliate receives a commission. Accordingly, as amended by Senate Amendment 2, the bill's exception to the applicability of the Prudent Investor Act for determining whether a life insurance contract is or remains a proper investment of a trust would apply to all trustees, regardless of any connection a trustee or affiliate of a trustee may have to the purchase of the life insurance contract.

Bill History

Senate Amendments 1 and 2 were offered by Senators Farrow and Risser. On November 8, 2013, the Senate Committee on Government Operations, Public Works, and Telecommunications adopted Senate Amendment 1, and recommended passage of Senate Bill 384, as amended, on successive votes of Ayes, 7; Noes, 0. On November 12, 2013, the Senate adopted Senate Amendments 1 and 2 on voice votes, and passed Senate Bill 384, on a vote of Ayes, 32; Noes, 1.

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