

2005 ASSEMBLY BILL 1038

1 **AN ACT** *to repeal* 854.03 (7), 854.06 (1) (b), 854.13 (7) (b), 854.13 (11) (title),
2 854.14 (1), 854.21 (1) (a) 1., 2. and 3., 861.04 (2), 861.21 (3), 861.31 (1c), 861.33
3 (1) (c) and 861.35 (1c); *to renumber* 701.06 (6), 701.115 (1), 766.62 (4), 853.32
4 (1), 854.13 (2) (a), 854.15 (5) (intro.) and 854.15 (5) (a), (b), (c), (d) and (e); *to*
5 *renumber and amend* 701.26, 705.04 (2), 705.28 (3), 766.31 (3), 766.31 (6),
6 852.01 (1) (a) 2., 853.03 (2), 853.11 (2), 853.18 (1), 853.25 (2), 853.32 (2) (b),
7 854.01, 854.03 (5), 854.05 (5), 854.06 (4) (a), 854.06 (4) (b), 854.08 (5), 854.08 (6)
8 (a) 1., 854.13 (10), 854.13 (11) (a), 854.13 (11) (b), 854.15 (1) (e), 854.15 (5) (f),
9 854.20 (1), 854.20 (2) (intro.), 854.20 (2) (a), 854.20 (2) (b), 854.20 (3), 854.20 (4),
10 854.21 (1) (a) (intro.), 857.03 (2) and 861.01 (3); *to consolidate, renumber*
11 *and amend* 854.08 (6) (a) (intro.) and 2.; *to amend* 30.541 (3) (d) 2. d., 71.05
12 (6) (a) 16., 71.05 (6) (b) 12., 71.05 (12) (d), 101.9211 (4) (b) 4., 342.17 (4) (b) 4.,
13 700.11 (1), 700.13 (2), 701.06 (7), 701.06 (8), 701.115 (2), 701.115 (3), 701.20 (5)
14 (c), 701.24 (title) and (1), 701.26 (title), 702.03 (1), 702.08, 705.06 (1) (c), 705.06

ASSEMBLY BILL 1038

1 (2), 705.27, 766.61 (7), 766.62 (2), 766.62 (5) (intro.), 767.266 (1) (b), 851.21 (1)
2 (b), 851.31, 851.50, 852.01 (1) (b), 852.05 (title), 852.05 (1) (intro.), 852.05 (2),
3 852.05 (3), 852.12, 853.11 (3), 853.11 (6) (c), 853.11 (6) (d), 853.32 (2) (a), 854.03
4 (2) (b), 854.04 (1) (a), 854.04 (3) (a), 854.04 (4), 854.04 (5) (intro.), 854.04 (5) (b),
5 854.04 (6), 854.07 (3), 854.07 (4), 854.09 (3), 854.11 (4), 854.13 (title), 854.13 (2)
6 (h), 854.13 (4) (c), 854.13 (7) (title), 854.13 (7) (a), 854.13 (8), 854.13 (9), 854.13
7 (12) (b), 854.14 (5) (a), 854.14 (5) (b), 854.14 (5) (c), 854.17, 854.18 (1) (a) (intro.),
8 854.18 (3), 854.20 (5), 854.21 (1) (b), 854.21 (7), 854.22 (4), 854.23 (1), 856.05 (5),
9 856.15 (1), 856.17, 859.01, subchapter II (title) of chapter 861 [precedes
10 861.018], 861.02 (title), 861.02 (2) (b) (intro.), 861.02 (4), 861.02 (6), 861.02 (7)
11 (b), 861.05 (1) (c), 861.05 (2) (title), 861.06 (title), 861.06 (2) (title), 861.06 (2) (b)
12 (intro.), 861.06 (2) (b) 4. a., 861.07 (2) (intro.), 861.10 (1), 861.10 (2), 861.11 (2)
13 (a) (intro.), 861.11 (2) (b), 861.11 (5) (b), 861.17 (3), 861.20 (2), 861.21 (1) (a),
14 861.21 (2), 861.21 (4), 861.21 (5), 861.31 (1m), 861.31 (2), 861.31 (4) (intro.),
15 861.31 (4) (a), 861.33 (title), 861.33 (1) (a) (intro.), 861.33 (1) (b), 861.33 (2),
16 861.33 (3), 861.33 (4), 861.35 (title), 861.35 (1m) (intro.), 861.35 (1m) (a), 861.35
17 (1m) (b), 861.35 (1m) (c), 861.35 (2), 861.35 (3) (a), 861.35 (4) (intro.), 861.35 (4)
18 (a), 863.08, 863.15, 865.07 (1) (d), 867.01 (3) (am) 2., 867.02 (2) (am) 3., 867.03
19 (1g) (intro.), 867.03 (1g) (b), 867.03 (1m) (a), 867.03 (1m) (b), 867.03 (2), 867.035
20 (1) (a) 4., 867.045 (1) (intro.), 867.045 (2), 867.045 (4), 867.046 (1m), 867.046 (2)
21 (intro.) and 879.09; **to repeal and recreate** 701.19 (10), 853.04 (3), 854.08 (5)
22 (title), 854.13 (10) (title), 856.16 and 861.02 (8); **to create** 700.27, 701.06 (6) (b),
23 (c) and (d), 701.115 (1) (a), 701.24 (3), 701.26 (1) (d), 701.26 (2), 705.04 (2) (a),
24 705.04 (2) (d), 705.04 (2) (e), 705.04 (2) (f) and (g), 705.20 (4), 705.28 (2m), 766.31
25 (1) (title), 766.31 (2) (title), 766.31 (3) (b), 766.31 (4) (title), 766.31 (5) (title),

ASSEMBLY BILL 1038

1 766.31 (6) (title), 766.31 (6) (b), 766.31 (7) (title), 766.31 (7p) (title), 766.31 (8)
2 (title), 766.31 (9) (title), 766.31 (10) (title), 766.62 (4) (b), 766.62 (4) (c), 851.055
3 (1m), 852.01 (1) (a) 2. b., 853.03 (2) (bm), 853.11 (2m), 853.18 (1) (a), (b) and (c),
4 853.25 (2) (a) 1. and 2., 853.32 (1) (bm), 853.32 (2) (am), 854.01 (1), 854.03 (5)
5 (am) 7., 854.03 (5) (am) 8., 854.03 (5) (bm), 854.06 (4) (a) 1., 854.08 (5) (a), 854.08
6 (5) (d), 854.12, 854.13 (2) (a) 1., 854.13 (2) (gm), 854.13 (2) (i), 854.13 (7) (bm)
7 and (c), 854.13 (10) (b), 854.14 (3m), 854.20 (2) (am) 2. b. and c., 857.03 (2m),
8 859.02 (2m), 861.01 (3m), 861.01 (4), 861.01 (5), 861.04 (2m), 861.05 (1) (e),
9 861.05 (2m), 861.06 (6), 867.03 (2g), 867.046 (2) (k), 880.61 (11m) and 880.675
10 (1m) of the statutes; and *to affect* 1997 Wisconsin Act 188, section 233 (1);
11 **relating to:** miscellaneous remedial modifications to the Wisconsin Probate
12 Code.

Analysis by the Legislative Reference Bureau

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

13 **SECTION 1.** 30.541 (3) (d) 2. d. of the statutes is amended to read:
14 30.541 **(3)** (d) 2. d. The limit in subd. 2. c. does not apply if the surviving spouse
15 proceeds under s. 867.03 (1g) and the total value of the decedent's ~~solely owned~~
16 property subject to administration in the state, including boats transferred under
17 this subdivision, does not exceed \$20,000 \$50,000.
18 **SECTION 2.** 71.05 (6) (a) 16. of the statutes is amended to read:
19 71.05 **(6)** (a) 16. Any amount recognized as a loss under section 1001 (c) of the
20 ~~internal revenue code~~ Internal Revenue Code if a surviving spouse and a distributee
21 exchange their interests in marital property under s. ~~857.03 (2)~~ 766.31 (3) (b).

ASSEMBLY BILL 1038**SECTION 3**

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

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

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

6 71.05 **(12)** (d) Property exchanged under s. ~~857.03 (2)~~ 766.31 (3) (b) shall be
7 treated as if acquired by gift for the determination of basis.

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

9 101.9211 **(4)** (b) 4. The limit in subd. 3. does not apply if the surviving spouse
10 is proceeding under s. 867.03 (1g) and the total value of the decedent's ~~solely owned~~
11 property subject to administration in the state, including the manufactured homes
12 transferred under this paragraph, does not exceed \$10,000 \$50,000.

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

14 342.17 **(4)** (b) 4. The limit in subd. 3. does not apply if the surviving spouse is
15 proceeding under s. 867.03 (1g) and the total value of the decedent's ~~solely owned~~
16 property subject to administration in the state, including the vehicles transferred
17 under this paragraph, does not exceed \$20,000 \$50,000.

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

19 700.11 **(1)** If a statute, inter vivos governing instrument, as defined in s. 700.27
20 (1) (c), or governing instrument, as defined in s. 854.01 (2), specifies that property
21 is to be distributed to, or a future interest is to be created in, a designated individual's
22 "heirs", "heirs at law", "next of kin", "relatives" or "family," or a term that has
23 a similar meaning, or if a class gift in favor of "descendants", "issue," or "heirs of the
24 body" does not specify the manner in which the property is to be distributed among
25 the class members, the property is distributed according to s. 854.22.

ASSEMBLY BILL 1038

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

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

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

6 **700.27 Disclaimer of transfers during life. (1)** DEFINITIONS. In this section:

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

10 (b) “Extrinsic evidence” has the meaning given in s. 854.01 (1).

11 (c) “Inter vivos governing instrument”:

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

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

17 (d) “Power” has the meaning given in s. 702.01 (4).

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

20 2. A person who is a recipient of property or beneficiary under an inter vivos
21 governing instrument, donee of a power created by an inter vivos governing
22 instrument, appointee under a power exercised by an inter vivos governing
23 instrument, taker in default under a power created by an inter vivos governing
24 instrument, or person succeeding to disclaimed property created by an inter vivos
25 governing instrument may disclaim any property, including contingent or future

ASSEMBLY BILL 1038**SECTION 9**

1 interests or the right to receive discretionary distributions, by delivering a written
2 instrument of disclaimer under this section.

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

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

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

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

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

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

20 (f) *Disclaimer by trustee.* The trustee of a trust named as a recipient of property
21 under an inter vivos governing instrument may disclaim that property on behalf of
22 the trust if the trust authorizes disclaimer by the trustee. If the trust does not
23 authorize disclaimer by the trustee, the trustee's power to disclaim is subject to the
24 approval of the court.

ASSEMBLY BILL 1038

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

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

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

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

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

24 (c) *Future right to income or principal.* Notwithstanding pars. (a) and (b), an
25 instrument disclaiming the future right to receive discretionary or mandatory

ASSEMBLY BILL 1038**SECTION 9**

1 distributions of income or principal from any source may be executed and delivered
2 at any time.

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

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

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

- 15 1. The transferor of the property disclaimed.
- 16 2. The transferor's legal representative.
- 17 3. The holder of legal title to the property.

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

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

ASSEMBLY BILL 1038

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

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

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

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

ASSEMBLY BILL 1038**SECTION 9**

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

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

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

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

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

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

ASSEMBLY BILL 1038

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

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

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

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

9 701.06 **(6)** (b) A beneficiary of a trust may not be considered a settlor solely
10 because of a lapse, waiver, or release of any of the following:

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

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

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

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

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

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

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

ASSEMBLY BILL 1038**SECTION 11**

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

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

6 3. A testamentary power of appointment.

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

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

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

11 701.06 (7) SUBSEQUENT MODIFICATION OF COURT'S ORDER. Any order entered by
12 a court under sub. (4), (5) or (6) (a) is subject to modification upon application of an
13 interested person.

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

15 701.06 (8) EXEMPT ASSETS. Assets of a trust, to the extent they are exempt from
16 claims of creditors under other statutes, shall not be subject to sub. (4), (5), or (6) (a).

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

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

19 701.115 (1) (a) In par. (b), "revocable trust" means a trust that the grantor, at
20 the time of death, was alone empowered to change or revoke, by law or under the
21 instrument creating the trust, regardless of whether the grantor then had the
22 capacity to exercise the power.

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

24 701.115 (2) Survivorship under sub. (1) (b) is governed by s. 854.03.

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

ASSEMBLY BILL 1038

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

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

4 701.19 (10) RESTRICTION ON EXERCISE OF POWERS. (a) Except as provided in par.
5 (c), a person may not exercise any of the following powers conferred upon him or her
6 in his or her capacity as trustee:

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

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

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

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

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

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

ASSEMBLY BILL 1038**SECTION 18**

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

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

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

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

9 701.20 (5) (c) A fiduciary shall distribute to a beneficiary, including a trustee,
10 who receives a pecuniary amount not determined by a pecuniary formula interest at
11 the legal rate set forth in s. 138.04 on any unpaid portion of the pecuniary amount
12 for the period commencing one year after the decedent's death or after the income
13 interest in the trust ends. The interest under this paragraph shall be distributed
14 from net income determined under par. (b) or from principal to the extent that net
15 income is insufficient. For purposes of this paragraph, the deferred marital property
16 elective share amount elected by a surviving spouse under s. 861.02 (1) is a bequest
17 of a specific amount of money not determined by a pecuniary formula.

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

20 **701.24 (title) Applicability of ss. 701.01 to 701.23. (1)** Except as otherwise
21 provided in sub. (3) and s. 701.19 (9) (a) and (10), ss. 701.01 to 701.19, 701.21, 701.22,
22 and 701.23 are applicable to a trust existing on July 1, 1971, as well as a trust created
23 after such date, and shall govern trustees acting under such trusts. If application
24 of any provision of ss. 701.01 to 701.19, 701.21, 701.22 , and 701.23 to a trust in

ASSEMBLY BILL 1038

1 existence on August 1, 1971, is unconstitutional, it shall not affect application of the
2 provision to a trust created after that date.

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

4 701.24 (3) Sections 701.06 (6) (b), (c), and (d) and 701.19 (10) are applicable to
5 a trust existing on the effective date of this subsection [revisor inserts date], as
6 well as a trust created after that date, and shall govern trustees acting under such
7 trusts. If application of any provision of s. 701.06 (6) (b), (c), or (d) or 701.19 (10) to
8 a trust in existence on the effective date of this subsection [revisor inserts date],
9 is unconstitutional, it shall not affect application of the provision to a trust created
10 after that date.

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

12 **701.26 (title) Disclaimers of nonprobate transfers at death.**

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

15 701.26 (1) A person recipient may disclaim, under s. 854.13, any of the
16 following:

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

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

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

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

24 701.26 (1) (d) All or part of any other interest transferred under a governing
25 instrument, as defined in s. 854.01 (2).

ASSEMBLY BILL 1038**SECTION 25**

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

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

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

5 702.03 **(1)** Unless the person who executed it had a contrary intention is found,
6 if a governing instrument, as defined in s. 854.01, ~~creating (2), or an inter vivos~~
7 governing instrument, as defined in s. 700.27 (1) (c), creates a power of appointment
8 that expressly requires that the power be exercised by any type of reference to the
9 power or its source, it is presumed that the donor's intention in requiring the
10 reference was is presumed to be to prevent an inadvertent exercise of the power.
11 Extrinsic evidence, as defined in s. 854.01 (1), may be used to show contrary construe
12 the intent.

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

14 **702.08 Disclaimer of powers.** The donee of any power may disclaim all or
15 part of the power as provided under s. 700.27 or 854.13.

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

18 705.04 **(2)** (intro.) If the account is a P.O.D. account, on the death of the original
19 payee or the survivor of 2 or more original payees, ~~any sums remaining on deposit~~
20 ~~belong to the P.O.D. beneficiaries if surviving, or to the survivor of them if one or more~~
21 ~~die before the original payee. Payment may be made to a minor P.O.D. beneficiary,~~
22 ~~however, only in accordance with a procedure approved in ch. 880. all of the following~~
23 apply:

24 **(b)** If there are 2 or more P.O.D. beneficiaries and they all survive, they shall
25 be are entitled to payment of the sums on deposit in accordance with such any written

ASSEMBLY BILL 1038

1 instructions ~~as may have been~~ that the owner filed with the financial institution, ~~and~~
2 or, if none the owner left no written instructions, to payment in equal shares. There

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

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

8 705.04 (2) (a) If there is one P.O.D. beneficiary and he or she survives, he or she
9 is entitled to payment of all sums remaining on deposit.

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

11 705.04 (2) (d) Subject to the rights of financial institutions under s. 705.06 (1)
12 (c), if any P.O.D. beneficiary predeceases the original payee or the survivor of 2 or
13 more original payees, the amount to which the predeceased P.O.D. beneficiary would
14 have been entitled passes to any of his or her issue who would take under s. 854.06
15 (3).

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

17 705.04 (2) (e) If no P.O.D. beneficiary or predeceased P.O.D. beneficiary's issue
18 who would take under s. 854.06 (3) survives the death of all owners, the account
19 belongs to the estate of the deceased sole owner or the estate of the last to die of
20 multiple owners.

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

22 705.04 (2) (f) Payment may be made to a minor P.O.D. beneficiary only in
23 accordance with a procedure approved under ch. 880.

ASSEMBLY BILL 1038**SECTION 32**

1 (g) If the P.O.D. account is a marital account, this section applies only to the
2 50 percent of the account not owned by the surviving spouse named as a party on the
3 account.

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

5 705.06 (1) (c) Any sums in a P.O.D. account may be paid, on request, to the
6 P.O.D. beneficiary upon presentation to the financial institution of proof of death
7 showing that the P.O.D. beneficiary survived all persons named as original payees
8 of the account. If more than one P.O.D. beneficiary is named and at least one of them
9 is predeceased, sums in the account may be paid to the surviving P.O.D. beneficiary
10 or beneficiaries upon presentation of proof of death of the other beneficiary, without
11 regard to claims by the issue of a predeceased beneficiary under s. 705.04 (2) (d). If
12 none of the named beneficiaries survive, the sums in the account may be paid to the
13 estate of the deceased sole owner or the estate of the owner who was the last to die
14 of multiple owners, without regard to claims by the issue of a predeceased beneficiary
15 under s. 705.04 (2) (d). If the P.O.D. account is a marital account, this paragraph
16 applies only to the 50 percent of the account not owned by the surviving spouse
17 named as a party on the account.

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

19 705.06 (2) Payment made under this subchapter discharges the financial
20 institution from all claims for amounts so withdrawn. If the institution has reason
21 to believe that a dispute exists as to the rights of the parties to an account or their
22 successors it may, but shall not be required to, refuse to pay funds in the account to
23 any persons pending instructions from a court, or it may pay the proceeds to a court.
24 An institution may but need not recognize the authority of an agent, other than one
25 with continuing authority under s. 705.05 (3), until it knows of the fact of death or

ASSEMBLY BILL 1038

1 adjudication of incompetence of all parties appointing such agent and has reasonable
2 opportunity to act.

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

6 **SECTION 35.** 705.20 (4) of the statutes is created to read:

7 705.20 (4) A transfer under this section does not require confirmation in any
8 procedure under s. 867.01, 867.02, or 867.03 or ch. 856 or 865. A transfer under this
9 section may be confirmed under s. 867.046 (1m) or (2).

10 **SECTION 36.** 705.27 of the statutes is amended to read:

11 **705.27 Ownership on death of owner.** ~~On~~ Subject to the rights of the
12 registering entity under s. 705.28 (2m), on the death of a sole owner or the last to die
13 of multiple owners, ownership of securities registered in beneficiary form passes to
14 the beneficiary or beneficiaries who survive all owners and to any predeceased
15 beneficiary's issue who would take under s. 854.06 (3). On proof of death of all owners
16 and compliance with any applicable requirements of the registering entity, a security
17 registered in beneficiary form may be reregistered in the name of the ~~beneficiary or~~
18 ~~beneficiaries who survive the death of all owners~~ successors to the ownership
19 interest. Until division of the security after the death of all owners, multiple
20 ~~beneficiaries surviving the death of all owners~~ successors to the ownership interest
21 hold their interests as tenants in common. If no beneficiary or predeceased
22 beneficiary's issue who would take under s. 854.06 (3) survives the death of all
23 owners, the security belongs to the estate of the deceased sole owner or the estate of
24 the last to die of multiple owners.

25 **SECTION 37.** 705.28 (2m) of the statutes is created to read:

ASSEMBLY BILL 1038**SECTION 37**

1 705.28 (2m) If more than one beneficiary is named and at least one beneficiary
2 is predeceased, a security registered in beneficiary form may be reregistered in the
3 name of the surviving beneficiary with a proof of death of the other beneficiary,
4 without regard to claims by the issue of a predeceased beneficiary under s. 705.27
5 unless the registering entity receives written notice of a claim under sub. (3) (b). If
6 none of the beneficiaries survive, a security registered in beneficiary form may be
7 reregistered in the name of the estate of the deceased sole owner or the estate of the
8 owner who was last to die of multiple owners, without regard to claims by the issue
9 of a predeceased beneficiary under s. 705.27 unless the registering entity receives
10 written notice of a claim under sub. (3) (b).

11 **SECTION 38.** 705.28 (3) of the statutes is renumbered 705.28 (3) (a) and
12 amended to read:

13 705.28 (3) (a) ~~A~~ Subject to par. (b), a registering entity is discharged from all
14 claims to a security by the estate, creditors, heirs or devisees of the deceased owner
15 if it registers a transfer of a security in accordance with s. 705.27 and does so in good
16 faith reliance on the registration, on ss. 705.21 to 705.30, and on information
17 provided to it by affidavit of the personal representative of the deceased owner, or by
18 the surviving beneficiary or by the surviving beneficiary's representatives, or other
19 information available to the registering entity.

20 (b) The protections of ss. 705.21 to 705.30 provided in this subchapter do not
21 extend to a reregistration or payment made after a registering entity has received
22 written notice from a claimant to an interest in the security objecting to
23 implementation of a registration in beneficiary form. No other notice or other
24 information available to the registering entity affects its right to protection under ss.
25 705.21 to 705.30 this subchapter. If the registering entity has reason to believe that

ASSEMBLY BILL 1038

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

4 **SECTION 39.** 766.31 (1) (title) of the statutes is created to read:

5 766.31 (1) (title) GENERAL.

6 **SECTION 40.** 766.31 (2) (title) of the statutes is created to read:

7 766.31 (2) (title) PRESUMPTION.

8 **SECTION 41.** 766.31 (3) of the statutes is renumbered 766.31 (3) (intro.) and
9 amended to read:

10 766.31 (3) SPOUSE'S INTEREST IN MARITAL PROPERTY. (intro.) Each spouse has a
11 present undivided one-half interest in each item of marital property, but the subject
12 to all of the following:

13 (a) *Terminable interest in deferred employment benefit plan.* As provided in s.
14 766.62 (5), the marital property interest of the nonemployee spouse in a deferred
15 employment benefit plan or in assets in an individual retirement account that are
16 traceable to the rollover of a deferred employment benefit plan terminates at the
17 death of the nonemployee spouse if he or she predeceases the employee spouse.

18 **SECTION 42.** 766.31 (3) (b) of the statutes is created to read:

19 766.31 (3) (b) *Division based on aggregate value at death.* 1. Spouses may
20 provide in a marital property agreement that at the death of a spouse some or all of
21 their marital property will be divided based on aggregate value rather than divided
22 item by item. However, at the death of a spouse, a marital property agreement is not
23 necessary for a division of marital property that is not item by item.

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

ASSEMBLY BILL 1038**SECTION 42**

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

3 **SECTION 43.** 766.31 (4) (title) of the statutes is created to read:

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

5 **SECTION 44.** 766.31 (5) (title) of the statutes is created to read:

6 766.31 (5) (title) TRANSFER TO A TRUST.

7 **SECTION 45.** 766.31 (6) (title) of the statutes is created to read:

8 766.31 (6) (title) PROPERTY OWNED AT DETERMINATION DATE.

9 **SECTION 46.** 766.31 (6) of the statutes is renumbered 766.31 (6) (a) and
10 amended to read:

11 766.31 (6) (a) *Date of marriage same as determination date.* Property owned
12 at a If the date of marriage which occurs after 12:01 a.m. on January 1, 1986, is the
13 same as the determination date, the property owned at the determination date is
14 individual property of the owning spouse ~~if, at the marriage, both spouses are~~
15 ~~domiciled in this state.~~

16 **SECTION 47.** 766.31 (6) (b) of the statutes is created to read:

17 766.31 (6) (b) *Date of marriage prior to determination date.* If the date of
18 marriage precedes the determination date, the property owned at the determination
19 date is not classified by this chapter but is subject to all of the following:

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

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

ASSEMBLY BILL 1038

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

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

5 766.31 (7) (title) INDIVIDUAL PROPERTY AFTER DETERMINATION DATE.

6 **SECTION 49.** 766.31 (7p) (title) of the statutes is created to read:

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

8 **SECTION 50.** 766.31 (8) (title) of the statutes is created to read:

9 766.31 (8) (title) RIGHTS IN PROPERTY ACQUIRED BEFORE DETERMINATION DATE.

10 **SECTION 51.** 766.31 (9) (title) of the statutes is created to read:

11 766.31 (9) (title) TREATMENT OF PROPERTY ACQUIRED BEFORE THE DETERMINATION
12 DATE.

13 **SECTION 52.** 766.31 (10) (title) of the statutes is created to read:

14 766.31 (10) (title) RECLASSIFICATION.

15 **SECTION 53.** 766.61 (7) of the statutes is amended to read:

16 766.61 (7) If Except as provided in s. 854.14 (3m) (b) 2., if a noninsured spouse
17 predeceases an insured spouse, the decedent spouse's marital property interest ~~of the~~
18 ~~decedent spouse~~ in a policy which that designates the surviving spouse as the owner
19 and insured is limited to a dollar amount equal to one-half of the marital property
20 interest in the interpolated terminal reserve and in the unused portion of the term
21 premium of the policy on the decedent spouse's date of death ~~of the deceased spouse~~.
22 All other rights of the decedent spouse in the ownership interest or proceeds of the
23 policy, other than the marital property interest described in this subsection,
24 terminate at the decedent spouse's death.

25 **SECTION 54.** 766.62 (2) of the statutes is amended to read:

ASSEMBLY BILL 1038**SECTION 54**

1 766.62 (2) A deferred employment benefit attributable to employment of a
2 spouse occurring while the spouse is married and partly before and partly after the
3 determination date is mixed property. The marital property component of that mixed
4 property is the amount which results from multiplying the entire benefit by a
5 fraction, the numerator of which is the period of employment giving rise to the benefit
6 that occurred after the determination date and during marriage and the
7 denominator of which is the total period of employment giving rise to the benefit.

8 **SECTION 55.** 766.62 (4) of the statutes is renumbered 766.62 (4) (a).

9 **SECTION 56.** 766.62 (4) (b) of the statutes is created to read:

10 766.62 (4) (b) If a deferred employment benefit plan administrator has reason
11 to believe that a dispute exists as to the rights of parties, or their successors, to a
12 deferred employment benefit, the deferred employment benefit plan administrator
13 may do any of the following:

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

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

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

23 **SECTION 57.** 766.62 (4) (c) of the statutes is created to read:

24 766.62 (4) (c) The protection afforded a deferred employment benefit plan
25 administrator under this subsection does not affect the rights of parties or their

ASSEMBLY BILL 1038

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

3 **SECTION 58.** 766.62 (5) (intro.) of the statutes is amended to read:

4 766.62 (5) (intro.) If Except as provided in s. 854.14 (3m) (c), if the nonemployee
5 spouse predeceases the employee spouse, the marital property interest of the
6 nonemployee spouse in all of the following terminates at the death of the
7 nonemployee spouse:

8 **SECTION 59.** 767.266 (1) (b) of the statutes is amended to read:

9 767.266 (1) (b) That one or both spouses will make a particular disposition in
10 a will or other governing instrument, as defined in s. 854.01 (2).

11 **SECTION 60.** 851.055 (1m) of the statutes is created to read:

12 851.055 (1m) Is not classified as individual property or marital property under
13 a valid marital property agreement, unless the marital property agreement provides
14 otherwise.

15 **SECTION 61.** 851.21 (1) (b) of the statutes is amended to read:

16 851.21 (1) (b) ~~A~~ Except as provided in s. 853.32 (2) (e), a beneficiary named
17 in any document offered for probate as the will of the decedent and includes a person
18 named or acting as a trustee of any trust, inter vivos or testamentary, named as a
19 beneficiary.

20 **SECTION 62.** 851.31 of the statutes is amended to read:

21 **851.31 Will.** “Will” Unless the context or subject matter indicates otherwise,
22 “will” includes a codicil and any document incorporated by reference in a
23 testamentary document under s. 853.32 (1) or (2). “Will” does not include a copy,
24 unless the copy has been proven as a will under s. 856.17, but “will” does include a
25 properly executed duplicate original.

ASSEMBLY BILL 1038**SECTION 63**

1 **SECTION 63.** 851.50 of the statutes is amended to read:

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

5 **SECTION 64.** 852.01 (1) (a) 2. of the statutes is renumbered 852.01 (1) (a) 2.
6 (intro.) and amended to read:

7 852.01 **(1)** (a) 2. (intro.) If there are surviving issue one or more of whom are
8 not issue of the surviving spouse, one-half of decedent's property other than the
9 following property:

10 a. The decedent's interest in marital property.

11 **SECTION 65.** 852.01 (1) (a) 2. b. of the statutes is created to read:

12 852.01 **(1)** (a) 2. b. The decedent's interest in property held equally and
13 exclusively with the surviving spouse as tenants in common.

14 **SECTION 66.** 852.01 (1) (b) of the statutes is amended to read:

15 852.01 **(1)** (b) To the issue, per stirpes, the share of the estate not passing to the
16 spouse under par. (a), or the entire estate if there is no surviving spouse. ~~If there are~~
17 ~~issue other than children, those of more remote degrees take per stirpes.~~

18 **SECTION 67.** 852.05 (title) of the statutes is amended to read:

19 **852.05 (title) Status of ~~nonmarital~~ child born to unmarried parents for**
20 **purposes of intestate succession.**

21 **SECTION 68.** 852.05 (1) (intro.) of the statutes is amended to read:

22 852.05 **(1)** (intro.) A ~~nonmarital~~ child born to unmarried parents, or the child's
23 ~~issue is entitled to take, is treated~~ in the same manner as a ~~marital~~ child by, or the
24 issue of a child, born to married parents with respect to intestate succession from and

ASSEMBLY BILL 1038

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

3 **SECTION 69.** 852.05 (2) of the statutes is amended to read:

4 852.05 (2) Property of a ~~nonmarital~~ child born to unmarried parents passes in
5 accordance with s. 852.01 except that the father or the father's kindred can inherit
6 only if the father has been adjudicated to be the father in a paternity proceeding
7 under ch. 767 or by final order or judgment of a court of competent jurisdiction in
8 another state or has been determined to be the father under s. 767.62 (1) or a
9 substantially similar law of another state.

10 **SECTION 70.** 852.05 (3) of the statutes is amended to read:

11 852.05 (3) (a) This section does not apply to a child who becomes a marital child
12 by the subsequent marriage of the child's parents under s. 767.60.

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

15 **SECTION 71.** 852.12 of the statutes is amended to read:

16 **852.12 Debts to decedent.** If an heir owes a debt to the decedent, s. 854.12
17 governs the treatment of that debt shall be charged against the intestate share of the
18 debtor, regardless of whether the debt has been discharged in bankruptcy. If the
19 debtor fails to survive the decedent, the debt shall not be taken into account in
20 computing the intestate shares of the debtor's issue.

21 **SECTION 72.** 853.03 (2) of the statutes is renumbered 853.03 (2) (am) and
22 amended to read:

23 853.03 (2) (am) It must be signed by ~~2 or more witnesses, each of whom at least~~
24 2 witnesses who signed within a reasonable time after witnessing any of the
25 following:

ASSEMBLY BILL 1038**SECTION 72**

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

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

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

8 **SECTION 73.** 853.03 (2) (bm) of the statutes is created to read:

9 853.03 (2) (bm) The 2 witnesses required under par. (am) may observe the
10 signing or acknowledgement under par. (am) 1. to 3. at different times.

11 **SECTION 74.** 853.04 (3) of the statutes is repealed and recreated to read:

12 853.04 (3) EFFECT OF AFFIDAVIT. The effect of an affidavit in substantially the
13 form under sub. (1) or (2) is as provided in s. 856.16.

14 **SECTION 75.** 853.11 (2) of the statutes is renumbered 853.12, and 853.12 (1), (2)
15 (intro.), (b) and (c), (3) (intro.) and (4) (intro.) and (b), as renumbered, are amended
16 to read:

17 853.12 (1) ENTITLEMENT OF SURVIVING SPOUSE. Subject to ~~par. (c)~~ sub. (3), if the
18 testator married the surviving spouse after the testator executed his or her will, the
19 surviving spouse is entitled to a share of the probate estate.

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

ASSEMBLY BILL 1038

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

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

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

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

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

11 **SECTION 76.** 853.11 (2m) of the statutes is created to read:

12 853.11 **(2m)** PREMARITAL WILL. Entitlements of a surviving spouse under a
13 decedent's will that was executed before marriage to the surviving spouse are
14 governed by s. 853.12.

15 **SECTION 77.** 853.11 (3) of the statutes is amended to read:

16 853.11 **(3)** ~~FORMER~~ TRANSFER TO FORMER SPOUSE. ~~The effect of a~~ A transfer under
17 a will to a former spouse is governed by s. 854.15.

18 **SECTION 78.** 853.11 (6) (c) of the statutes is amended to read:

19 853.11 **(6)** (c) If a subsequent will that wholly or partly revoked a previous will
20 is itself revoked by another, later will, the previous will or its revoked part remains
21 revoked, unless it or its revoked part is revived. The previous will or its revoked part
22 is revived to the extent that it appears from the terms of the later will, or from the
23 testator's contemporary or subsequent declarations, that the testator intended the
24 previous will or its revoked part to take effect.

25 **SECTION 79.** 853.11 (6) (d) of the statutes is amended to read:

ASSEMBLY BILL 1038**SECTION 79**

1 853.11 **(6)** (d) In the absence of an original valid will, establishment of the
2 execution and validity of the revived will or part is ~~governed by~~ may be established
3 as provided in s. 856.17.

4 **SECTION 80.** 853.18 (1) of the statutes is renumbered 853.18 (1) (intro.) and
5 amended to read:

6 853.18 **(1)** (intro.) Except as otherwise provided in s. 853.15 or 853.17 (1) or ch.
7 766, no written designation in accordance with the terms of any insurance, annuity
8 or endowment contract, or in any agreement issued or entered into by an insurance
9 company in connection therewith, supplemental thereto or in settlement thereof,
10 and no written designation made under a contract, plan, system or trust providing
11 for pension, retirement, deferred compensation, stock bonus, profit-sharing or death
12 benefits, or an employment or commission contract, of any person to be a beneficiary,
13 payee or owner of any right, title or interest thereunder upon the death of another,
14 or any assignment of rights under any of the foregoing, none of the following is
15 subject to or defeated or impaired by any statute or rule of law governing the transfer
16 of property by will, gift, or intestacy, even though that the designation or assignment
17 is revocable or the rights of that the beneficiary, payee, owner, or assignee are
18 otherwise subject to defeasance.;

19 **SECTION 81.** 853.18 (1) (a), (b) and (c) of the statutes are created to read:

20 853.18 **(1)** (a) A written designation in accordance with the terms of any
21 insurance, annuity, or endowment contract.

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

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

ASSEMBLY BILL 1038

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

4 **SECTION 82.** 853.25 (2) of the statutes is renumbered 853.25 (2) (a) (intro.) and
5 amended to read:

6 853.25 (2) (a) (intro.) Except as provided in sub. (5), if clear and convincing
7 evidence proves that the testator failed to provide in the testator's will for a child
8 living at the time of making of the will, or for the issue of any then deceased child,
9 by mistake or accident, including the mistaken belief that the child or issue of a
10 deceased child was dead at the time the will was executed, the child or issue is
11 entitled to receive a share in the estate of the testator, ~~as provided under sub. (1),~~ as
12 if the child or issue was born or adopted after the execution of the will, as follows:

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

15 **SECTION 83.** 853.25 (2) (a) 1. and 2. of the statutes are created to read:

16 853.25 (2) (a) 1. If no children were included in the will but some or all of those
17 children were omitted by mistake, then sub. (1) (b) provides for the share of any child
18 or issue omitted by mistake.

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

22 **SECTION 84.** 853.32 (1) of the statutes is renumbered 853.32 (1) (am).

23 **SECTION 85.** 853.32 (1) (bm) of the statutes is created to read:

ASSEMBLY BILL 1038**SECTION 85**

1 853.32 (1) (bm) A writing or document is incorporated into a will under par.
2 (am) even if the writing or document is not executed in compliance with s. 853.03 or
3 853.05.

4 **SECTION 86.** 853.32 (2) (a) of the statutes is amended to read:

5 853.32 (2) (a) A reference in a will ~~executed on or after May 3, 1996,~~ to another
6 document that lists tangible personal property not otherwise specifically disposed of
7 in the will disposes of that property if the other document describes the property and
8 the distributees with reasonable certainty and is signed and dated by the decedent.
9 The court may enforce a document that is not dated but that fulfills all of the other
10 requirements under this paragraph.

11 **SECTION 87.** 853.32 (2) (am) of the statutes is created to read:

12 853.32 (2) (am) Another document under par. (a) is valid if it was signed in
13 compliance with s. 853.03 (1) or with the law of the place where the document was
14 signed, or where the testator resided, was domiciled, or was a national at the time
15 the document was signed or at the time of death, even if it was not otherwise executed
16 in compliance with s. 853.03 (2) or 853.05.

17 **SECTION 88.** 853.32 (2) (b) of the statutes is renumbered 853.32 (2) (b) (intro.)
18 and amended to read:

19 853.32 (2) (b) (intro.) Another document under par. (a) is valid even if it any of
20 the following applies:

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

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

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

ASSEMBLY BILL 1038

1 **SECTION 89.** 854.01 of the statutes is renumbered 854.01 (intro.) and amended
2 to read:

3 **854.01 Definition Definitions.** (intro.) In this chapter, ~~“governing:~~

4 **(2)** “Governing instrument” means a will; a deed; a trust instrument; an
5 insurance or annuity policy; a contract; a pension, profit-sharing, retirement, or
6 similar benefit plan; a marital property agreement under s. 766.58 (3) (f); a
7 beneficiary designation under s. 40.02 (8) (a); an instrument under ch. 705; an
8 instrument that creates or exercises a power of appointment; or any other
9 dispositive, appointive, or nominative instrument that transfers property at death.

10 **SECTION 90.** 854.01 (1) of the statutes is created to read:

11 854.01 **(1)** “Extrinsic evidence” means evidence that would be inadmissible
12 under the common law parole evidence rule or a similar doctrine because the
13 evidence is not contained in the governing instrument to which it relates.

14 **SECTION 91.** 854.03 (2) (b) of the statutes is amended to read:

15 854.03 **(2)** (b) Except as provided in sub. (5), if property is transferred under
16 a governing instrument that establishes 2 or more co-owners with right of
17 survivorship, and if it is ~~not established that~~ at least one of the co-owners ~~survived~~
18 did not survive the others by at least 120 hours, the property is transferred to the
19 co-owners in proportion to their ownership interests.

20 **SECTION 92.** 854.03 (5) of the statutes is renumbered 854.03 (5) (am), and
21 854.03 (5) (am) 4., as renumbered, is amended to read:

22 854.03 **(5)** (am) 4. The imposition of a 120-hour survival requirement would
23 cause a nonvested property interest or a power of appointment to fail to be valid, or
24 to be invalidated, under s. 700.16 or under the rule against perpetuities of the
25 applicable jurisdiction.

ASSEMBLY BILL 1038**SECTION 93**

1 **SECTION 93.** 854.03 (5) (am) 7. of the statutes is created to read:

2 854.03 (5) (am) 7. The statute or governing instrument specifies that this
3 statute, or one similar to it, does not apply.

4 **SECTION 94.** 854.03 (5) (am) 8. of the statutes is created to read:

5 854.03 (5) (am) 8. The imposition of a 120-hour survival requirement would
6 be administratively cumbersome and would not change the identity of the ultimate
7 beneficiaries of the property or the property that each beneficiary would receive.

8 **SECTION 95.** 854.03 (5) (bm) of the statutes is created to read:

9 854.03 (5) (bm) If the transfer is made under a governing instrument and the
10 person who executed the governing instrument had an intent contrary to any
11 provision in this section, then that provision is not applicable to the transfer.
12 Extrinsic evidence may be used to construe the intent.

13 **SECTION 96.** 854.03 (7) of the statutes is repealed.

14 **SECTION 97.** 854.04 (1) (a) of the statutes is amended to read:

15 854.04 (1) (a) Except as provided in subs. (5) and (6), if a statute or a governing
16 instrument calls for property to be distributed to the issue or descendants of a
17 designated person “by representation”¹,₁ “by right of representation,₁” or “per
18 stirpes”¹,₁ the property is divided into equal shares for the designated person’s
19 surviving children of the designated person and for the designated person’s deceased
20 children who left surviving issue. Each surviving child and each deceased child who
21 left surviving issue are allocated one share.

22 **SECTION 98.** 854.04 (3) (a) of the statutes is amended to read:

23 854.04 (3) (a) Except as provided in subs. (5) and (6), if a statute or a governing
24 instrument calls for property to be distributed to the issue or descendants of a
25 designated person “per capita at each generation”¹,₁ the property is divided into

ASSEMBLY BILL 1038

1 equal shares at the generation nearest to the designated person that contains one or
2 more surviving issue. Each survivor in that generation is and each deceased person
3 in that generation who left surviving issue are allocated one share, and the. The
4 shares of the deceased persons in that same generation who left surviving issue are
5 combined for distribution allocation under par. (b).

6 **SECTION 99.** 854.04 (4) of the statutes is amended to read:

7 854.04 (4) PER CAPITA. Except as provided in sub. (6), if a statute or governing
8 instrument calls for property to be distributed to a group or class “per capita”, the
9 property is divided into as many shares as there are surviving members of the group
10 or class, and each member receives is allocated one share.

11 **SECTION 100.** 854.04 (5) (intro.) of the statutes is amended to read:

12 854.04 (5) CERTAIN INDIVIDUALS DISREGARDED. (intro.) For the purposes of ~~this~~
13 ~~section~~ subs. (1) to (3), all of the following apply:

14 **SECTION 101.** 854.04 (5) (b) of the statutes is amended to read:

15 854.04 (5) (b) An individual who has a surviving ancestor who is an issue of the
16 designated person is not ~~entitled to~~ allocated a share.

17 **SECTION 102.** 854.04 (6) of the statutes is amended to read:

18 854.04 (6) CONTRARY INTENT. ~~This section does not apply if~~ If the transfer is
19 made under a governing instrument and ~~there is a finding of contrary intent of the~~
20 person who executed the governing instrument had an intent contrary to any
21 provision in this section, then that provision is not applicable to the transfer.

22 Extrinsic evidence may be used to construe that the intent.

23 **SECTION 103.** 854.05 (5) of the statutes is renumbered 854.05 (5) (a) and
24 amended to read:

ASSEMBLY BILL 1038**SECTION 103**

1 854.05 (5) (a) ~~This section does not apply to the extent that a~~ If the person who
2 executed the governing instrument, either expressly or as construed from extrinsic
3 had an intent contrary to any provision in this section, then that provision is not
4 applicable to the transfer. Extrinsic evidence, provides otherwise may be used to
5 construe the intent.

6 (b) A general directive to pay debts does not give rise to a presumption of
7 exoneration.

8 **SECTION 104.** 854.06 (1) (b) of the statutes is repealed.

9 **SECTION 105.** 854.06 (4) (a) of the statutes is renumbered 854.06 (4) (a) (intro.)
10 and amended to read:

11 854.06 (4) (a) (intro.) ~~This section~~ Subsection (3) does not apply if there is a
12 finding of contrary intent of the decedent any of the following applies:

13 (bm) If the person who executed the governing instrument had an intent
14 contrary to any provision in this section, then that provision is not applicable to the
15 transfer. Extrinsic evidence may be used to construe that the intent.

16 **SECTION 106.** 854.06 (4) (a) 1. of the statutes is created to read:

17 854.06 (4) (a) 1. The governing instrument provides that a transfer to a
18 predeceased beneficiary lapses.

19 **SECTION 107.** 854.06 (4) (b) of the statutes is renumbered 854.06 (4) (a) 2. and
20 amended to read:

21 854.06 (4) (a) 2. ~~If the~~ The governing instrument designates one or more
22 persons, classes, or groups of people as contingent transferees, in which case those
23 transferees take in preference to those under sub. (3). But if none of the contingent
24 transferees survives, sub. (3) applies to the first group in the sequence of contingent

ASSEMBLY BILL 1038

1 transferees that has one or more transferees specified in sub. (2) who left surviving
2 issue.

3 **SECTION 108.** 854.07 (3) of the statutes is amended to read:

4 854.07 (3) If a governing instrument other than a will does not effectively
5 dispose of an asset that is governed by the instrument, that asset shall be paid or
6 distributed to the decedent's transferor's probate estate.

7 **SECTION 109.** 854.07 (4) of the statutes is amended to read:

8 854.07 (4) ~~This section does not apply if there is a finding of contrary intent of~~
9 If the person who executed the governing instrument had an intent contrary to any
10 provision in this section, then that provision is inapplicable to the transfer. Extrinsic
11 evidence may be used to construe that the intent.

12 **SECTION 110.** 854.08 (5) (title) of the statutes is repealed and recreated to read:

13 854.08 (5) (title) PROPERTY UNDER GUARDIANSHIP, CONSERVATORSHIP, OR POWER OF
14 ATTORNEY.

15 **SECTION 111.** 854.08 (5) of the statutes is renumbered 854.08 (5) (b) and
16 amended to read:

17 854.08 (5) (b) Subject to pars. (c) and (d) and sub. (6), if property that is the
18 subject of a specific gift is sold or mortgaged by a guardian ~~or~~, conservator, or agent
19 of the person who executed the governing instrument, or if a condemnation award
20 or insurance proceeds are paid to a guardian ~~or~~, conservator, or agent, the specific
21 beneficiary has the right to a general pecuniary transfer equivalent to the proceeds
22 of the sale ~~or the~~, mortgage, condemnation award, or ~~the~~ insurance proceeds, reduced
23 by any amount expended or incurred to restore or repair the property or to reduce
24 the indebtedness on the mortgage, if the funds are available under the governing
25 instrument. ~~This provision~~

ASSEMBLY BILL 1038**SECTION 111**

1 ~~(c) Paragraph (b) does not apply if the person who executed the governing~~
2 ~~instrument with respect to a guardian or conservator if, subsequent to the sale or,~~
3 ~~mortgage, award, or receipt of insurance proceeds, the person who executed the~~
4 ~~governing instrument~~ is adjudicated competent and survives such adjudication for
5 a period of one year; but in such event ~~a sale by a guardian or conservator within 2~~
6 ~~years of that person's death is a sale by that person for purposes of sub. (2)~~ the rights
7 of the specific beneficiary shall be determined as though the proceeds were paid to
8 the owner under sub. (2), (3), or (4).

9 **SECTION 112.** 854.08 (5) (a) of the statutes is created to read:

10 854.08 (5) (a) In this subsection, “agent” means an agent under a durable power
11 of attorney, as defined in s. 243.07 (1) (a).

12 **SECTION 113.** 854.08 (5) (d) of the statutes is created to read:

13 854.08 (5) (d) Paragraph (b) does not apply with respect to an agent if the
14 person who executed the governing instrument is competent at the time of the sale,
15 mortgage, award, or receipt of insurance proceeds but in such event the rights of the
16 specific beneficiary shall be determined as though the proceeds were paid to the
17 owner under sub. (2), (3), or (4).

18 **SECTION 114.** 854.08 (6) (a) (intro.) and 2. of the statutes are consolidated,
19 renumbered 854.08 (6) (ag) and amended to read:

20 854.08 (6) (ag) This section is inapplicable if ~~any of the following applies: 2.~~
21 ~~The~~ the person who executed the governing instrument gives property during the
22 person's lifetime to the specific beneficiary with the intent of satisfying the specific
23 gift. Extrinsic evidence may be used to construe that intent and the requirement
24 under s. 854.09 (1) is satisfied.

ASSEMBLY BILL 1038

1 **SECTION 115.** 854.08 (6) (a) 1. of the statutes is renumbered 854.08 (6) (ar) and
2 amended to read:

3 854.08 **(6)** (ar) ~~The~~ If the person who executed the governing instrument, either
4 expressly or as construed from extrinsic evidence, shows the had an intent that a
5 contrary to any provision in this section, then that provision is inapplicable to the
6 transfer fail under the particular circumstances. Extrinsic evidence may be used to
7 construe the intent.

8 **SECTION 116.** 854.09 (3) of the statutes is amended to read:

9 854.09 **(3)** If the transferee fails to survive the person who executed the
10 governing instrument, ~~the gift is treated as a full or partial satisfaction of the~~
11 transfer and his or her issue take a substitute transfer under intestacy or under a
12 governing instrument, the issue receive the same transfer that the named transferee
13 would have received had the transferee survived, unless the transferor has declared
14 otherwise in a document, either expressly or as construed from extrinsic evidence.

15 **SECTION 117.** 854.11 (4) of the statutes is amended to read:

16 854.11 **(4)** CONTRARY INTENT. ~~This section does not apply if there is a finding of~~
17 contrary intent of If the person who executed the governing instrument had an intent
18 contrary to any provision in this section, then that provision is inapplicable to the
19 transfer. Extrinsic evidence may be used to construe that the intent.

20 **SECTION 118.** 854.12 of the statutes is created to read:

21 **854.12 Debt to transferor. (1) HEIR UNDER INTESTACY.** (a) If an heir owes a
22 debt to the decedent, the amount of the indebtedness shall be offset against the
23 intestate share of the debtor heir.

24 (b) In contesting an offset under par. (a), the debtor heir shall have the benefit
25 of any defense that would be available to the debtor heir in a direct proceeding by the

ASSEMBLY BILL 1038**SECTION 118**

1 personal representative for the recovery of the debt, except that the debtor heir may
2 not defend on the basis that the debt was discharged in bankruptcy or on the basis
3 that the relevant statute of limitations has expired. If the debtor fails to survive the
4 decedent, the court may not include the debt in computing any intestate shares of the
5 debtor's issue.

6 **(2) TRANSFEREE UNDER REVOCABLE GOVERNING INSTRUMENT.** (a) Subject to par.
7 (c), if a transferee under a revocable governing instrument survives the transferor
8 and is indebted to the transferor, the amount of the indebtedness shall be treated as
9 an offset against the property to which the debtor transferee is entitled. If multiple
10 revocable governing instruments transfer property to the debtor, the debt shall be
11 equitably allocated against the various instruments.

12 (b) Subject to par. (c), in contesting an offset under par. (a), the debtor shall have
13 the benefit of any defense that would be available to the transferee in a direct
14 proceeding for the recovery of the debt, except that the transferee may not defend on
15 the basis that the debt was discharged in bankruptcy, unless that discharge occurred
16 before the execution of the governing instrument, or on the basis that the relevant
17 statute of limitations has expired. If the transferee fails to survive the decedent, the
18 debt may not be included in computing the entitlement of alternate beneficiaries.

19 (c) If the person who executed the governing instrument had an intent contrary
20 to any provision in this subsection, then that provision is not applicable to the
21 transfer. Extrinsic evidence may be used to construe the intent.

22 **(3) PROPERTY NOT DISTRIBUTED BECAUSE OF OFFSET.** The property not distributed
23 to the debtor becomes part of the residue of the entity that holds the debt. If the debt
24 is not held by an entity, then the property not distributed to the debtor becomes part
25 of the residue of the decedent's probate estate.

ASSEMBLY BILL 1038

1 **SECTION 119.** 854.13 (title) of the statutes is amended to read:

2 **854.13** (title) **Disclaimer of transfers at death.**

3 **SECTION 120.** 854.13 (2) (a) of the statutes is renumbered 854.13 (2) (a) 2.

4 **SECTION 121.** 854.13 (2) (a) 1. of the statutes is created to read:

5 854.13 **(2)** (a) 1. In this paragraph, “person” includes a person who is unborn
6 or whose identity is unascertained.

7 **SECTION 122.** 854.13 (2) (gm) of the statutes is created to read:

8 854.13 **(2)** (gm) *Disclaimer by trustee.* The trustee of a trust named as a
9 recipient of property under a governing instrument may disclaim that property on
10 behalf of the trust if the trust authorizes disclaimer by the trustee. If the trust does
11 not authorize disclaimer by the trustee, the trustee’s power to disclaim is subject to
12 the approval of the court.

13 **SECTION 123.** 854.13 (2) (h) of the statutes is amended to read:

14 854.13 **(2)** (h) *After death.* A person’s right to disclaim survives the person’s
15 death and may be exercised by the person’s personal representative or special
16 administrator upon receiving approval from the court having jurisdiction of the
17 person’s estate after hearing upon notice to all persons interested in the disclaimed
18 property, if the personal representative or special administrator has not taken any
19 action ~~which~~ that would bar the right to disclaim under sub. ~~(11)~~ (11g).

20 **SECTION 124.** 854.13 (2) (i) of the statutes is created to read:

21 854.13 **(2)** (i) *Disclaimer of inter vivos transfers.* A person who is a recipient
22 of property under an inter vivos governing instrument, as defined in s. 700.27 (1) (c),
23 may disclaim the property as provided in s. 700.27.

24 **SECTION 125.** 854.13 (4) (c) of the statutes is amended to read:

ASSEMBLY BILL 1038**SECTION 125**

1 854.13 (4) (c) *Future right to income or profits principal*. Notwithstanding
2 pars. (a) and (b), an instrument disclaiming the future right to receive discretionary
3 or mandatory distributions of income or profits principal from any source may be
4 executed and delivered at any time.

5 **SECTION 126.** 854.13 (7) (title) of the statutes is amended to read:

6 854.13 (7) (title) ~~DEVOLUTION IN GENERAL.~~

7 **SECTION 127.** 854.13 (7) (a) of the statutes is amended to read:

8 854.13 (7) (a) *In general*. ~~Unless the transferor of the property or donee of the~~
9 ~~power has otherwise provided~~ Subject to pars. (bm) and (c) and subs. (8), (9), and (10),
10 unless the governing instrument provides otherwise, either expressly or as
11 construed from extrinsic evidence, the disclaimed property devolves as if the
12 disclaimant had died before the decedent ~~or before the effective date of the transfer~~
13 ~~under the governing instrument.~~ If the disclaimed interest is a remainder
14 contingent on surviving to the time of distribution, the disclaimed interest passes as
15 if the disclaimant had died immediately before the time for distribution. If the
16 disclaimant is an appointee under a power exercised by a governing instrument, the
17 disclaimed property devolves as if the disclaimant had died before the effective date
18 of the exercise of the power. If the disclaimant is a taker in default under a power
19 created by a governing instrument, the disclaimed property devolves as if the
20 disclaimant had predeceased the donee of the power. ~~This paragraph is subject to~~
21 ~~subs. (8), (9) and (10).~~

22 **SECTION 128.** 854.13 (7) (b) of the statutes is repealed.

23 **SECTION 129.** 854.13 (7) (bm) and (c) of the statutes are created to read:

24 854.13 (7) (bm) *Devolution to issue of the disclaimants*. Unless the governing
25 instrument provides otherwise, either expressly or as construed from extrinsic

ASSEMBLY BILL 1038

1 evidence, if, by law or under the governing instrument, the issue of the disclaimant
2 would share in the disclaimed interest by any method of representation had the
3 disclaimant died before the time the disclaimed interest would have taken effect in
4 possession or enjoyment, the disclaimed interest passes only to the issue of the
5 disclaimant who survive when the disclaimed interest takes effect in possession or
6 enjoyment.

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

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

13 **SECTION 130.** 854.13 (8) of the statutes is amended to read:

14 **854.13 (8)** DEVOLUTION OF DISCLAIMED INTEREST IN JOINT TENANCY. ~~A~~ Unless the
15 decedent provided otherwise in a governing instrument, either expressly or as
16 construed from extrinsic evidence, a disclaimed interest in a joint tenancy passes to
17 the decedent’s probate estate.

18 **SECTION 131.** 854.13 (9) of the statutes is amended to read:

19 **854.13 (9)** DEVOLUTION OF DISCLAIMED INTEREST IN SURVIVORSHIP MARITAL
20 PROPERTY. ~~A~~ Unless the decedent provided otherwise in a governing instrument,
21 either expressly or as construed from extrinsic evidence, a disclaimed interest in
22 survivorship marital property passes to the decedent’s probate estate.

23 **SECTION 132.** 854.13 (10) (title) of the statutes is repealed and recreated to
24 read:

ASSEMBLY BILL 1038**SECTION 132**

1 854.13 (10) (title) ACCELERATION OF SUBSEQUENT INTERESTS WHEN PRECEDING
2 INTEREST IS DISCLAIMED.

3 **SECTION 133.** 854.13 (10) of the statutes is renumbered 854.13 (10) (a) and
4 amended to read:

5 854.13 (10) (a) *Subsequent interest not held by disclaimant.* Unless the
6 governing instrument ~~creating the future interest manifests a contrary intent~~
7 provides otherwise, either expressly or as construed from extrinsic evidence, ~~a future~~
8 upon the disclaimer of a preceding interest, a subsequent interest not held by the
9 disclaimant and limited to take effect in possession or enjoyment after the
10 termination of the interest ~~which that~~ is disclaimed ~~takes~~ accelerates to take effect
11 as if the disclaimant had died immediately before the ~~effective date of the governing~~
12 instrument time when the disclaimed interest would have taken effect in possession
13 or enjoyment or, if the disclaimant is an appointee under a power exercised by a
14 ~~governing instrument~~ power of appointment, as if the disclaimant had died before
15 the effective date of the exercise of the power.

16 **SECTION 134.** 854.13 (10) (b) of the statutes is created to read:

17 854.13 (10) (b) *Subsequent interest held by the disclaimant.* Unless the
18 governing instrument provides otherwise, either expressly or as construed from
19 extrinsic evidence, upon the disclaimer of a preceding interest, a subsequent interest
20 held by the disclaimant does not accelerate.

21 **SECTION 135.** 854.13 (11) (title) of the statutes is repealed.

22 **SECTION 136.** 854.13 (11) (a) of the statutes is renumbered 854.13 (11g), and
23 854.13 (11g) (intro.) and (a), as renumbered, are amended to read:

ASSEMBLY BILL 1038**SECTION 136**

1 **854.13 (11g)** ~~ACTIONS THAT BAR DISCLAIMER~~ BAR. (intro.) ~~A~~ Bars to a person's
2 right to disclaim property ~~is barred by~~ include, but are not limited to, any of the
3 following:

4 (a) The person's assignment, conveyance, encumbrance, pledge, or transfer of
5 the property or a contract ~~therefor~~ for the assignment, conveyance, encumbrance,
6 pledge, or transfer of the property.

7 **SECTION 137.** 854.13 (11) (b) of the statutes is renumbered 854.13 (11p), and
8 854.13 (11p) (title), as renumbered, is amended to read:

9 **854.13 (11p)** (title) ~~EFFECT UPON SUCCESSORS IN INTEREST OF DISCLAIMER OR~~
10 WAIVER.

11 **SECTION 138.** 854.13 (12) (b) of the statutes is amended to read:

12 **854.13 (12)** (b) Any disclaimer that meets the requirements of section 2518 of
13 the Internal Revenue Code, or the requirements of any other federal law relating to
14 disclaimers, constitutes an effective disclaimer under this section or s. 700.27.

15 **SECTION 139.** 854.14 (1) of the statutes is repealed.

16 **SECTION 140.** 854.14 (3m) of the statutes is created to read:

17 **854.14 (3m)** ~~ADDITIONAL EFFECTS IF DEATH CAUSED BY SPOUSE.~~ (a) *Definitions.*

18 In this subsection:

19 1. "Owner" means a person appearing on the records of the policy issuer as the
20 person having the ownership interest, or means the insured if no person other than
21 the insured appears on those records as a person having that interest. In the case
22 of group insurance, the "owner" means the holder of each individual certificate of
23 coverage under the group plan and does not include the person who contracted with
24 the policy issuer on behalf of the group, regardless of whether that person is listed
25 as the owner on the contract.

ASSEMBLY BILL 1038**SECTION 140**

1 2. “Ownership interest” means the rights of an owner under a policy.

2 3. “Policy” means an insurance policy insuring the life of a spouse and providing
3 for payment of death benefits at the spouse’s death.

4 4. “Proceeds” means the death benefit from a policy and all other economic
5 benefits from it, whether they accrue or become payable as a result of the death of
6 an insured person or upon the occurrence or nonoccurrence of another event.

7 (b) *Life insurance.* 1. Except as provided in sub. (6), if a noninsured spouse
8 unlawfully and intentionally kills an insured spouse, the surviving spouse’s
9 ownership interest in a policy that designates the decedent spouse as the owner and
10 insured, or in the proceeds of such a policy, is limited to a dollar amount equal to
11 one-half of the marital property interest in the interpolated terminal reserve and in
12 the unused portion of the term premium of the policy on the date of death of the
13 decedent spouse. All other rights of the surviving spouse in the ownership interest
14 or proceeds of the policy, other than the marital property interest described in this
15 subsection, terminate at the decedent spouse’s death.

16 2. Notwithstanding s. 766.61 (7) and except as provided in sub. (6), if an insured
17 spouse unlawfully and intentionally kills a noninsured spouse, the ownership
18 interest at death of the decedent spouse in any policy with a marital property
19 component that designates the surviving spouse as the owner and insured is a
20 fractional interest equal to one-half of the portion of the policy that was marital
21 property immediately before the death of the decedent spouse.

22 (c) *Deferred employment benefits.* Notwithstanding s. 766.62 (5) and except as
23 provided in sub. (6), if the employee spouse unlawfully and intentionally kills the
24 nonemployee spouse, the ownership interest at death of the decedent spouse in any
25 deferred employment benefit, or in assets in an individual retirement account that

ASSEMBLY BILL 1038

1 are traceable to the rollover of a deferred employment benefit plan, that has a marital
2 property component and that is attributable to the employment of the surviving
3 spouse is equal to one-half of the portion of the benefit or assets that was marital
4 property immediately before the death of the decedent spouse.

5 (d) *Deferred marital property.* Except as provided in sub. (6), if the surviving
6 spouse unlawfully and intentionally kills the decedent spouse, the estate of the
7 decedent shall have the right to elect no more than 50 percent of the augmented
8 deferred marital property estate, as determined under s. 861.02 (2), as though the
9 decedent spouse were the survivor and the surviving spouse were the decedent. The
10 court shall construe the provisions of ss. 861.03 to 861.11 as necessary to achieve the
11 intent of this paragraph.

12 **SECTION 141.** 854.14 (5) (a) of the statutes is amended to read:

13 854.14 (5) (a) A final judgment establishing criminal accountability for the
14 unlawful and intentional killing of the decedent conclusively establishes the
15 convicted individual as the decedent's killer for purposes of this section and s. 861.02
16 (8).

17 **SECTION 142.** 854.14 (5) (b) of the statutes is amended to read:

18 854.14 (5) (b) A final adjudication of delinquency on the basis of an unlawful
19 and intentional killing of the decedent conclusively establishes the adjudicated
20 individual as the decedent's killer for purposes of this section and s. 861.02 (8).

21 **SECTION 143.** 854.14 (5) (c) of the statutes is amended to read:

22 854.14 (5) (c) In the absence of a judgment establishing criminal accountability
23 under par. (a) or an adjudication of delinquency under par. (b), the court, upon the
24 petition of an interested person, shall determine whether, ~~under~~ based on the

ASSEMBLY BILL 1038**SECTION 143**

1 preponderance of the evidence standard, the killing of the decedent was unlawful
2 and intentional for purposes of this section ~~and s. 861.02 (8)~~.

3 **SECTION 144.** 854.15 (1) (e) of the statutes is renumbered 854.01 (3) and
4 amended to read:

5 854.01 (3) “Revocable”,~~,”~~ with respect to a disposition, provision, or
6 nomination, means one under which the decedent, at the time of ~~the divorce,~~
7 ~~annulment or similar event~~ referred to, was alone empowered, by law or under the
8 governing instrument, to ~~cancel the designation in favor of the former spouse or~~
9 ~~former spouse’s relative,~~ change or revoke, regardless of whether ~~or not~~ the decedent
10 was then empowered to designate himself or herself in place of ~~the a former spouse~~
11 ~~or the former spouse’s relative~~ designee, and regardless of whether ~~or not~~ the
12 decedent then had the capacity to exercise the power.

13 **SECTION 145.** 854.15 (5) (intro.) of the statutes is renumbered 854.15 (5) (am)
14 (intro.).

15 **SECTION 146.** 854.15 (5) (a), (b), (c), (d) and (e) of the statutes are renumbered
16 854.15 (5) (am) 1., 2., 3., 4. and 5.

17 **SECTION 147.** 854.15 (5) (f) of the statutes is renumbered 854.15 (5) (bm) and
18 amended to read:

19 854.15 (5) (bm) ~~There is a finding of the decedent’s contrary~~ If the transfer is
20 made under a governing instrument and the person who executed the governing
21 instrument had an intent contrary to any provision in this section, then that
22 provision is inapplicable to the transfer. Extrinsic evidence may be used to construe
23 ~~that~~ the intent.

24 **SECTION 148.** 854.17 of the statutes is amended to read:

ASSEMBLY BILL 1038

1 **854.17 Classification; how determined Marital property classification;**
2 **ownership and division of marital property at death.** In chs. 851 to 882,
3 classification Classification of the property of a decedent spouse and surviving
4 spouse is, and ownership and division of that property at the death of a spouse, are
5 determined under ch. 766 and s. 861.01.

6 **SECTION 149.** 854.18 (1) (a) (intro.) of the statutes is amended to read:

7 854.18 (1) (a) (intro.) Except as provided in sub. (3) or in connection with the
8 share of the surviving spouse who elects to take an elective share in deferred marital
9 property deferred marital property elective share amount of a surviving spouse who
10 elects under s. 861.02, ~~a~~ the share of a surviving spouse who takes under s. 853.11
11 ~~(2) 853.12, or a~~ the share of a surviving child who takes under s. 853.25, shares of
12 distributees abate, without any preference or priority as between real and personal
13 property, in the following order:

14 **SECTION 150.** 854.18 (3) of the statutes is amended to read:

15 854.18 (3) If the governing instrument expresses an order of abatement, or if
16 the decedent's transferor's estate plan or the ~~express or implied~~ purpose of the
17 transfer, as expressed, implied, or construed through extrinsic evidence, would be
18 defeated by the order of abatement under sub. (1), the shares of the distributees
19 abate as necessary to give effect to the intention of the transferor.

20 **SECTION 151.** 854.20 (1) of the statutes is renumbered 854.20 (1) (a) and
21 amended to read:

22 854.20 (1) (a) Subject to par. (b) and sub. ~~(4) (5)~~, a legally adopted person is
23 treated as a birth child of the person's adoptive parents and the adoptive parents are
24 treated as the birth parents of the adopted person for purposes of ~~intestate succession~~
25 by transfers at death to, through, and from the adopted person and for purposes of

ASSEMBLY BILL 1038**SECTION 151**

1 any statute or other rule conferring rights upon children, issue, or relatives in
2 connection with the law of intestate succession or governing instruments.

3 **SECTION 152.** 854.20 (2) (intro.) of the statutes is renumbered 854.20 (2) (am)
4 (intro.) and amended to read:

5 854.20 (2) (am) (intro.) Subject to sub. (4) (5), a legally adopted person ceases
6 to be treated as a child of the person's birth parents and the birth parents cease to
7 be treated as the parents of the child for the same purposes as under specified in sub.
8 (1) (a), except:

9 **SECTION 153.** 854.20 (2) (a) of the statutes is renumbered 854.20 (2) (am) 1. and
10 amended to read:

11 854.20 (2) (am) 1. ~~If a birth parent marries or remarries and the parent-child~~
12 relationship between the child is adopted by the stepparent, and one birth parent is
13 replaced by adoption, but the relationship to the other birth parent is not replaced,
14 then for all purposes the child is continues to be treated as the child of the birth
15 parent whose ~~spouse adopted the child~~ relationship was not replaced.

16 **SECTION 154.** 854.20 (2) (am) 2. b. and c. of the statutes are created to read:

17 854.20 (2) (am) 2. b. Subd. 2. a. applies only if the adopted person was a minor
18 at the time of adoption or if the adoptive parent raised the adopted person in a
19 parent-like relationship beginning on or before the child's 15th birthday and lasting
20 for a substantial period or until adulthood.

21 c. Subdivision 2. a. does not apply if the parental rights of the deceased birth
22 parent had been terminated.

23 **SECTION 155.** 854.20 (2) (b) of the statutes is renumbered 854.20 (2) (am) 2. a.
24 and amended to read:

ASSEMBLY BILL 1038

1 854.20 (2) (am) 2. a. ~~If Subject to subd. 2. b. and c., if a birth parent of a marital~~
2 child born to married parents dies and the other birth parent subsequently remarries
3 and the child is adopted by the stepparent, the child ~~is~~ continues to be treated as the
4 child of the deceased birth parent for purposes of ~~inheritance~~ transfers at death
5 through that parent and for purposes of any statute or other rule conferring rights
6 upon children, issue or relatives of that parent under the law of intestate succession
7 or governing instruments.

8 **SECTION 156.** 854.20 (3) of the statutes is renumbered 854.20 (2) (bm) and
9 amended to read:

10 854.20 (2) (bm) *Sequential adoption.* Subject to sub. (4) (5), if an adoptive
11 parent ~~dies or his or her parental rights are terminated in a legal proceeding and the~~
12 adopted child is subsequently adopted by another person, the former adoptive parent
13 is considered to be a birth parent for purposes of this section subsection.

14 **SECTION 157.** 854.20 (4) of the statutes is renumbered 854.20 (1) (b), and 854.20
15 (1) (b) (intro.) and 3., as renumbered, are amended to read:

16 854.20 (1) (b) *Applicability.* (intro.) ~~Subsections (1), (2) and (3) apply~~ Subject
17 to sub. (5), par. (a) applies only if at least one of the following applies:

18 3. The adoptive parent raised the adopted person was raised as a member of
19 ~~the household by the adoptive parent from~~ in a parent-like relationship beginning
20 on or before the child's 15th birthday or before and lasting for a substantial period
21 or until adulthood.

22 **SECTION 158.** 854.20 (5) of the statutes is amended to read:

23 854.20 (5) **CONTRARY INTENT.** ~~This section does not apply if~~ If the transfer is
24 made under a governing instrument and ~~there is a finding of contrary intent of the~~
25 person who executed the governing instrument had an intent contrary to any

ASSEMBLY BILL 1038**SECTION 158**

1 provision in this section, then that provision is not applicable to the transfer.

2 Extrinsic evidence may be used to construe that the intent.

3 **SECTION 159.** 854.21 (1) (a) (intro.) of the statutes is renumbered 854.21 (1) (a)
4 and amended to read:

5 854.21 (1) (a) Except as provided in ~~par. (b) or~~ sub. (7), a gift of property by a
6 governing instrument to a class of persons described as “issue,” “lawful issue,”
7 “children,” “grandchildren,” “descendants,” “heirs,” “heirs of the body,” “next of kin,”
8 “distributees,” or the like includes a person adopted by a person whose birth child
9 would be a member of the class, and issue of the adopted person, if the conditions for
10 membership in the class are otherwise satisfied and ~~any of the following applies:~~ at
11 least one of the criteria under s. 854.20 (1) (b) 1., 2., and 3. is satisfied.

12 **SECTION 160.** 854.21 (1) (a) 1., 2. and 3. of the statutes are repealed.

13 **SECTION 161.** 854.21 (1) (b) of the statutes is amended to read:

14 854.21 (1) (b) Except as provided in sub. (7), a gift ~~under par. (a) of property by~~
15 a governing instrument to a class of persons described as “issue,” “lawful issue,”
16 “children,” “grandchildren,” “descendants,” “heirs,” “heirs of the body,” “next of kin,”
17 “distributees,” or the like excludes a birth child and his or her issue otherwise within
18 the class if the birth child has been adopted and would cease to be treated as a child
19 of the birth parent under s. 854.20 (2).

20 **SECTION 162.** 854.21 (7) of the statutes is amended to read:

21 854.21 (7) CONTRARY INTENT. ~~This section does not apply if~~ If the transfer is
22 made under a governing instrument and ~~there is a finding of contrary intent of the~~
23 person who executed the governing instrument had an intent contrary to any
24 provision in this section, then that provision is inapplicable to the transfer. Extrinsic
25 evidence may be used to construe that the intent.

ASSEMBLY BILL 1038

1 **SECTION 163.** 854.22 (4) of the statutes is amended to read:

2 854.22 **(4)** ~~CONTRARY INTENT. This section does not apply if~~ If the transfer is
3 made under a governing instrument and ~~there is a finding of contrary intent of the~~
4 person who executed the governing instrument had an intent contrary to any
5 provision in this section, then that provision is inapplicable to the transfer. Extrinsic
6 evidence may be used to construe that the intent.

7 **SECTION 164.** 854.23 (1) of the statutes is amended to read:

8 854.23 **(1)** DEFINITION. In this section, “governing instrument” includes an
9 instrument described in s. 854.01, a filed verified statement under s. 865.201, a
10 certificate under s. 867.046 (1m), a confirmation under s. 867.046 (2), or a recorded
11 application under s. 867.046 (5).

12 **SECTION 165.** 856.05 (5) of the statutes is amended to read:

13 856.05 **(5)** APPLICABILITY OF SECTION. This section applies to wills, ~~codicils,~~
14 ~~documents incorporated by reference under s. 853.32 (1) or (2)~~ and information
15 needed for proof of a lost missing will under s. 856.17.

16 **SECTION 166.** 856.15 (1) of the statutes is amended to read:

17 856.15 **(1)** GENERALLY. The court may grant probate of an uncontested will on
18 the execution in open court by one of the subscribing witnesses of a sworn statement
19 that the will was executed as required by the statutes and that the testator was of
20 sound mind, of full age, and not acting under any restraint at the time of the
21 execution thereof. If an uncontested will contains an attestation clause showing
22 compliance with the requirements for execution under s. 853.03 or 853.05 or includes
23 an affidavit in substantially the form under s. 853.04 (1) or (2), the court may grant
24 probate without any testimony or other evidence.

25 **SECTION 167.** 856.16 of the statutes is repealed and recreated to read:

ASSEMBLY BILL 1038**SECTION 167**

1 **856.16 Self-proved will. (1)** Unless there is proof of fraud or forgery in
2 connection with the affidavit, if a will includes an affidavit in substantially the form
3 under s. 853.04 (1) or (2), all of the following apply:

4 (a) The will is conclusively presumed to have been executed in compliance with
5 s. 853.03.

6 (b) Other requirements related to the valid execution of the will are rebuttably
7 presumed.

8 (c) A signature affixed to the affidavit is considered a signature affixed to the
9 will, if necessary to prove the due execution of the will.

10 **(2)** Admission of a will under s. 856.13 or 856.15 is not dependent on the
11 existence of a valid affidavit under s. 853.04.

12 **SECTION 168.** 856.17 of the statutes is amended to read:

13 **856.17 Lost Missing will, how proved.** If any will is lost, destroyed by
14 accident ~~or~~ destroyed without the testator's consent, unavailable but revived under
15 s. 853.11 (6), or otherwise missing, the court has power to take proof of the execution
16 and validity of the will and to establish the same. The petition for the probate of the
17 will shall set forth the provisions ~~thereof~~ of the will.

18 **SECTION 169.** 857.03 (2) of the statutes is renumbered 766.31 (3) (b) 3., and
19 766.31 (3) (b) 3. (intro.) and a., as renumbered, are amended to read:

20 766.31 **(3) (b) 3. (intro.)** The surviving spouse and a distributee who is a
21 successor in interest to all or part of the decedent's one-half interest in marital
22 property may petition the court to approve an exchange of interests in the marital
23 property authorized under subd. 1. or 2., but court approval of the exchange is not
24 required for the agreement under subd. 1. or 2. to be effective. If the court approves
25 the exchange, the ~~personal representative~~ surviving spouse and the distributee shall

ASSEMBLY BILL 1038

1 exchange their respective interests in 2 or more items of marital property and
2 distribute the items in a manner to conform with the exchange. The exchange shall:

3 a. Occur before the final distribution of the estate assets under the governing
4 instrument;

5 **SECTION 170.** 857.03 (2m) of the statutes is created to read:

6 857.03 **(2m)** The surviving spouse and the personal representative may
7 petition the court to approve an exchange of interests in marital property as provided
8 in s. 766.31 (3) (b) 3.

9 **SECTION 171.** 859.01 of the statutes is amended to read:

10 **859.01 Time for filing claims.** When an application for administration is
11 filed, the court, or the probate registrar under informal administration proceedings,
12 shall by order set a date as the deadline for filing a claim against the decedent's
13 estate. The date shall be not less than 3 nor more than 4 months from the date of the
14 order. If a claim is not filed by the deadline, the consequences provided in s. 859.02
15 apply.

16 **SECTION 172.** 859.02 (2m) of the statutes is created to read:

17 859.02 **(2m)** (a) A claim based on a tort is subject to s. 859.45.

18 (b) A claim of a creditor without notice is subject to s. 859.48.

19 **SECTION 173.** 861.01 (3) of the statutes is renumbered 766.31 (7m) and
20 amended to read:

21 766.31 **(7m)** PERSONAL INJURY DAMAGES; LOST EARNINGS. To the extent that
22 marital property includes damages for loss of future income arising from a personal
23 injury claim of the a surviving spouse, the surviving spouse is entitled to receive as
24 individual property that portion of the award that represents an income substitute
25 after the death of the other spouse.

ASSEMBLY BILL 1038**SECTION 174**

1 **SECTION 174.** 861.01 (3m) of the statutes is created to read:

2 **861.01 (3m)** PERSONAL INJURY DAMAGES; LOST EARNINGS. Section 766.31 (7m)
3 determines the rights of a surviving spouse to that part of a personal injury claim
4 that represents future lost earnings of the surviving spouse.

5 **SECTION 175.** 861.01 (4) of the statutes is created to read:

6 **861.01 (4)** ENFORCEMENT OF SURVIVING SPOUSE'S MARITAL PROPERTY RIGHTS IN
7 NONPROBATE ASSETS. Section 766.70 applies to enforcement of a surviving spouse's
8 marital property rights in nonprobate assets.

9 **SECTION 176.** 861.01 (5) of the statutes is created to read:

10 **861.01 (5)** DIVISION OF MARITAL PROPERTY ON AGGREGATE BASIS. Section 766.31
11 (3) (b) determines how marital property may be divided upon the death of a spouse.

12 **SECTION 177.** Subchapter II (title) of chapter 861 [precedes 861.018] of the
13 statutes is amended to read:

14 **CHAPTER 861**

15 SUBCHAPTER II

16 ELECTIVE SHARE IN

17 DEFERRED MARITAL PROPERTY

18 ELECTIVE SHARE AMOUNT

19 **SECTION 178.** 861.02 (title) of the statutes is amended to read:

20 **861.02** (title) **Deferred marital property elective share amount.**

21 **SECTION 179.** 861.02 (2) (b) (intro.) of the statutes is amended to read:

22 **861.02 (2) (b) (intro.)** The augmented deferred marital property estate is the
23 total value of the deferred marital property of the spouses, irrespective of where the
24 property was acquired, where the property was located at the time of a relevant
25 transfer, or where the property is currently located, including real property located

ASSEMBLY BILL 1038

1 in another jurisdiction. It includes all types of property that fall within any of the
2 following categories:

3 **SECTION 180.** 861.02 (4) of the statutes is amended to read:

4 861.02 (4) SATISFACTION. Satisfaction of the augmented deferred marital
5 property elective share amount is governed by ss. 861.06, 861.07, and 861.11,
6 irrespective of where the property was acquired, where the property was located at
7 the time of a relevant transfer, or where the property is currently located, including
8 real property located in another jurisdiction.

9 **SECTION 181.** 861.02 (6) of the statutes is amended to read:

10 861.02 (6) WAIVER. Waiver of the deferred marital property elective share
11 amount is governed by s. 861.10.

12 **SECTION 182.** 861.02 (7) (b) of the statutes is amended to read:

13 861.02 (7) (b) If a decedent who is not domiciled in this state owns real property
14 in this state, the ~~right~~ rights of the surviving spouse ~~to take an elective share in that~~
15 ~~property is~~ are governed by s. 861.20.

16 **SECTION 183.** 861.02 (8) of the statutes is repealed and recreated to read:

17 861.02 (8) EFFECT IF DEATH CAUSED BY SPOUSE. Section 854.14 (2) (c) and (3m)
18 (d) applies to election of deferred marital property if the decedent's surviving spouse
19 unlawfully and intentionally killed the decedent.

20 **SECTION 184.** 861.04 (2) of the statutes is repealed.

21 **SECTION 185.** 861.04 (2m) of the statutes is created to read:

22 861.04 (2m) When the surviving spouse is treated as the decedent under sub.
23 (1), the decedent is not treated as the surviving spouse for the purposes of s. 861.05
24 (1) (e) or (2m).

25 **SECTION 186.** 861.05 (1) (c) of the statutes is amended to read:

ASSEMBLY BILL 1038**SECTION 186**

1 861.05 (1) (c) Transfers of deferred marital property to persons other than the
2 surviving spouse who did not make the transfer, with the written joinder or written
3 consent of ~~the surviving~~ that spouse.

4 **SECTION 187.** 861.05 (1) (e) of the statutes is created to read:

5 861.05 (1) (e) The deferred marital property component of any deferred
6 employment benefit plan, or of assets in an individual retirement account that are
7 traceable to the rollover of a deferred employment benefit plan, held by the surviving
8 spouse that would have terminated under s. 766.62 (5) had it been marital property.

9 **SECTION 188.** 861.05 (2) (title) of the statutes is amended to read:

10 861.05 (2) (title) VALUATION OF DECEDENT'S PROPERTY AND TRANSFERS.

11 **SECTION 189.** 861.05 (2m) of the statutes is created to read:

12 861.05 (2m) VALUATION OF SURVIVING SPOUSE'S PROPERTY AND TRANSFERS. The
13 surviving spouse's property included in the augmented deferred marital property
14 estate under s. 861.04 (1) is valued in the same manner as the decedent spouse's
15 property included in the augmented deferred marital property estate is valued under
16 sub. (2), subject to the following:

17 (a) The surviving spouse shall be treated as having died after the decedent on
18 the date of the decedent's death notwithstanding the 120-hour survival requirement
19 under s. 854.03 (1).

20 (b) Life insurance on the surviving spouse's life shall have the value of the
21 deferred marital property component of the interpolated terminal reserve and the
22 unused portion of the term premium of the policy as of the date of the decedent's
23 death.

24 **SECTION 190.** 861.06 (title) of the statutes is amended to read:

ASSEMBLY BILL 1038

1 **861.06** (title) **Satisfaction of deferred marital property elective share**
2 **amount.**

3 **SECTION 191.** 861.06 (2) (title) of the statutes is amended to read:

4 **861.06 (2)** (title) INITIAL SATISFACTION OF DEFERRED MARITAL PROPERTY ELECTIVE
5 SHARE AMOUNT.

6 **SECTION 192.** 861.06 (2) (b) (intro.) of the statutes is amended to read:

7 **861.06 (2)** (b) (intro.) All marital, individual, deferred marital, or deferred
8 individual property, transferred to the surviving spouse, including any beneficial
9 interest in property transferred in trust:

10 **SECTION 193.** 861.06 (2) (b) 4. a. of the statutes is amended to read:

11 **861.06 (2)** (b) 4. a. The first \$5,000 of the value of the gifts from the decedent
12 to the surviving spouse each year. Each gift shall be valued as of the date of the gift.

13 **SECTION 194.** 861.06 (6) of the statutes is created to read:

14 **861.06 (6)** VALUATION. The value of property used to satisfy the deferred marital
15 property elective share includes the value of any property transferred outright to the
16 surviving spouse, the commuted value of any present or future interest in property
17 transferred to the surviving spouse, and the commuted value of property payable to
18 the surviving spouse under any trust, life insurance settlement option, annuity
19 contract, public or private pension, disability compensation, death benefit or
20 retirement plan, or any similar arrangement.

21 **SECTION 195.** 861.07 (2) (intro.) of the statutes is amended to read:

22 **861.07 (2)** PERSONS LIABLE. (intro.) The following persons are liable to make
23 a prorated contribution toward satisfaction of the surviving spouse's deferred
24 marital property elective share amount:

25 **SECTION 196.** 861.10 (1) of the statutes is amended to read:

ASSEMBLY BILL 1038**SECTION 196**

1 **861.10 (1) RIGHT TO ELECT MAY BE WAIVED.** The right to elect a deferred marital
2 property elective share amount may be waived by the surviving spouse in whole or
3 in part. The waiver may take place before or after marriage. The waiver shall must
4 be contained in a marital property agreement that is enforceable under s. 766.58 or
5 in a signed document filed with a court described in s. 861.08 (1) (a) after the
6 decedent's death.

7 **SECTION 197.** 861.10 (2) of the statutes is amended to read:

8 **861.10 (2) WAIVER OF "ALL RIGHTS",** Unless the waiver provides otherwise, a
9 waiver of "all rights", or equivalent language, in the property or estate of a present
10 or prospective spouse, or in a complete property settlement entered into because of
11 separation or divorce, is a waiver of all rights in the deferred marital property
12 elective share amount.

13 **SECTION 198.** 861.11 (2) (a) (intro.) of the statutes is amended to read:

14 **861.11 (2) (a) (intro.)** Upon a beneficiary's request for payment, a payer or other
15 3rd party who has received satisfactory proof of the decedent's death and who has not
16 received written notice that the surviving spouse or his or her representative intends
17 to file a petition for the deferred marital property elective share amount or that a
18 petition for the election has been filed is not liable for any of the following:

19 **SECTION 199.** 861.11 (2) (b) of the statutes is amended to read:

20 **861.11 (2) (b)** A payer or other 3rd party is liable for payments made or other
21 actions taken after receipt of written notice of the intent to file a petition for the
22 elective share amount or written notice that a petition for the elective share amount
23 has been filed.

24 **SECTION 200.** 861.11 (5) (b) of the statutes is amended to read:

ASSEMBLY BILL 1038

1 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
2 a financial institution under ss. 701.19 (11) and 710.05 and chs. 112 and 705 a
3 financial institution is not liable for having transferred an account included in the
4 augmented deferred marital property estate under s. 861.03 to a beneficiary
5 designated in a governing instrument, or for having taken any other action in
6 reliance on the beneficiary's apparent entitlement under the terms of a governing
7 instrument, regardless of whether the financial institution received written notice
8 of an intent to file, or the filing of, a petition for the deferred marital property elective
9 share amount.

10 **SECTION 201.** 861.17 (3) of the statutes is amended to read:

11 861.17 (3) If the spouse is successful in an action to reach fraudulent property
12 arrangements, recovery is limited to the share amount the spouse would receive
13 under ch. 852 and this chapter. Other rules of this chapter apply so far as possible.
14 ~~Recovery~~ A spouse who recovers under this subsection forfeits any power of
15 appointment which that the surviving spouse possesses over the remaining portion
16 of the fraudulently arranged property, except a special power.

17 **SECTION 202.** 861.20 (2) of the statutes is amended to read:

18 861.20 (2) If a married person who does not have a domicile in this state dies
19 and has an interest in real property in this state that is subject to administration but
20 not disposed of by will, the surviving spouse has the same right to the property under
21 intestate succession as if the property were located in the decedent's domicile at
22 decedent's death.

23 **SECTION 203.** 861.21 (1) (a) of the statutes is amended to read:

24 861.21 (1) (a) "Governing instrument" has the meaning given in s. 854.01 (2).

25 **SECTION 204.** 861.21 (2) of the statutes is amended to read:

ASSEMBLY BILL 1038**SECTION 204**

1 **861.21 (2)** ~~IF-MARITAL~~ DECEDENT'S PROPERTY INTEREST IN HOME. Subject to subs.
2 (4) and (5), if a married decedent has a marital property interest in a home, the
3 decedent's entire interest in the home shall be assigned to the surviving spouse if the
4 surviving spouse petitions the court requesting such a distribution and if a governing
5 instrument does not provide a specific transfer of the decedent's interest in the home
6 to someone other than the surviving spouse. The surviving spouse shall file the
7 petition within 6 months after the decedent's death, unless the court extends the
8 time for filing.

9 **SECTION 205.** 861.21 (3) of the statutes is repealed.

10 **SECTION 206.** 861.21 (4) of the statutes is amended to read:

11 **861.21 (4)** PAYMENT BY SURVIVING SPOUSE. The court shall assign the interest in
12 the home under sub. (2) to the surviving spouse upon payment of the value of the
13 decedent's interest in the home that does not pass to the surviving spouse under
14 intestacy or under the a governing instrument. Payment shall be made to the
15 fiduciary holding title to the interest. The surviving spouse may use assets due him
16 or her from the fiduciary to satisfy all or part of the payment in kind. Unless the court
17 extends the time, the surviving spouse shall have one year from the decedent's death
18 to pay the value of the assigned interest.

19 **SECTION 207.** 861.21 (5) of the statutes is amended to read:

20 **861.21 (5)** SEVERANCE OF HOME FROM SURROUNDING LAND. On petition of the
21 surviving spouse or of any interested person that part of the land is not necessary for
22 dwelling purposes and that it would be inappropriate to assign all of the surrounding
23 land as the home under sub. (2), the court may set off for the home as much of the
24 land as is necessary for a dwelling. In determining how much land should be set off,

ASSEMBLY BILL 1038

1 the court shall take into account the use and marketability of the parcels set off as
2 the home and the remaining land.

3 **SECTION 208.** 861.31 (1c) of the statutes is repealed.

4 **SECTION 209.** 861.31 (1m) of the statutes is amended to read:

5 861.31 **(1m)** The court may, without notice or on such notice as the court
6 directs, order payment by the personal representative or special administrator of an
7 allowance as ~~it~~ the court determines necessary or appropriate for the support of the
8 surviving spouse and any dependent minor children of the decedent during the
9 administration of the estate. ~~In making or denying the order the~~ The court shall
10 consider the size of the probate estate, other resources available for support, the
11 existing standard of living, and any other factors it considers relevant.

12 **SECTION 210.** 861.31 (2) of the statutes is amended to read:

13 861.31 **(2)** The court may order that an allowance may be made to the spouse
14 for support of the spouse and any dependent minor children of the decedent, or that
15 separate allowances may be made to the spouse and to the dependent minor children
16 of the decedent or their guardian, if any, if the court finds separate allowances
17 advisable. If there is no surviving spouse, the court may order that an allowance may
18 be made to the dependent minor children of the decedent or to their guardian, if any.

19 **SECTION 211.** 861.31 (4) (intro.) of the statutes is amended to read:

20 861.31 **(4)** (intro.) The court may ~~direct~~ order that the allowance be charged
21 against income or principal, either as an advance or otherwise, but ~~in no event may~~
22 the court may not order that an allowance for support of dependent minor children
23 of the decedent be charged against the income or principal interest of the surviving
24 spouse. The court may ~~direct~~ order that the allowance for support of the surviving

ASSEMBLY BILL 1038**SECTION 211**

1 spouse, not including any allowance for support of ~~dependent~~ minor children of the
2 decedent, be applied in satisfaction of any of the following:

3 **SECTION 212.** 861.31 (4) (a) of the statutes is amended to read:

4 861.31 **(4)** (a) Any entitlement of the surviving spouse under s. ~~853.11~~ (2)
5 853.12.

6 **SECTION 213.** 861.33 (title) of the statutes is amended to read:

7 **861.33** (title) **Selection of personalty by surviving spouse ~~or children~~.**

8 **SECTION 214.** 861.33 (1) (a) (intro.) of the statutes is amended to read:

9 861.33 **(1)** (a) (intro.) Subject to this section, in addition to all allowances and
10 distributions, the surviving spouse, ~~or if there is no surviving spouse the decedent's~~
11 ~~children~~, may file with the court a written selection of the following personal
12 property, which shall ~~thereupon~~ then be transferred to the spouse ~~or children~~ by the
13 personal representative:

14 **SECTION 215.** 861.33 (1) (b) of the statutes is amended to read:

15 861.33 **(1)** (b) The selection in par. (a) may not include items specifically
16 bequeathed except that the surviving spouse ~~or children~~ may in every case select the
17 normal household furniture, furnishings, and appliances necessary to maintain the
18 home. For this purpose antiques, family heirlooms, and collections which that are
19 specifically bequeathed are not classifiable as normal household furniture or
20 furnishings.

21 **SECTION 216.** 861.33 (1) (c) of the statutes is repealed.

22 **SECTION 217.** 861.33 (2) of the statutes is amended to read:

23 861.33 **(2)** If it appears that claims may not be paid in full, the court may, upon
24 petition of any creditor, limit the transfer of personalty to the spouse ~~or children~~
25 under this section to items not exceeding \$5,000 in aggregate inventory value until

ASSEMBLY BILL 1038

1 ~~such time as~~ the claims are paid in full or the court otherwise orders; ~~or~~ the court
2 may require the spouse ~~or children~~ to retransfer property in excess of \$5,000 or, at
3 the option of the spouse ~~or children~~, pay the excess in value over this amount.

4 **SECTION 218.** 861.33 (3) of the statutes is amended to read:

5 861.33 (3) The surviving spouse ~~or children~~ may select items not specifically
6 bequeathed of the type specified under sub. (1) (a) 4. exceeding in value the \$3,000
7 limit or obtain the transfer of items exceeding the limit set by the court under sub.
8 (2), by paying to the personal representative the excess of inventory value over the
9 respective limit.

10 **SECTION 219.** 861.33 (4) of the statutes is amended to read:

11 861.33 (4) ~~Subject to sub. (1) (c), the~~ The personal representative has power,
12 without court order, to execute appropriate documents to effect transfer of title to any
13 personal property ~~selected by the spouse or children~~ selects under this section. A
14 person may not question the validity of the documents of transfer or refuse to
15 accomplish the transfer on the grounds that the personal representative is also the
16 surviving spouse ~~or the only child~~ of the decedent.

17 **SECTION 220.** 861.35 (title) of the statutes is amended to read:

18 **861.35 (title) Special allowance for support of spouse and support and**
19 **education of dependent minor children.**

20 **SECTION 221.** 861.35 (1c) of the statutes is repealed.

21 **SECTION 222.** 861.35 (1m) (intro.) of the statutes is amended to read:

22 861.35 (1m) (intro.) If the decedent is survived by a spouse or by minor
23 children, the court may order an allowance for the support and education of each
24 dependent minor child until he or she reaches a specified age, not to exceed 18, and
25 for the support of the spouse. This allowance may be made whether the estate is

ASSEMBLY BILL 1038**SECTION 222**

1 testate or intestate. If the decedent is not survived by a spouse, the court also may
2 allot directly to ~~any of the dependent~~ the minor children household furniture,
3 furnishings, and appliances. ~~No~~ The court may not order an allowance may be made
4 under this section if any of the following ~~apply~~ applies:

5 **SECTION 223.** 861.35 (1m) (a) of the statutes is amended to read:

6 861.35 **(1m)** (a) The decedent has amply provided for each minor child and for
7 the spouse by the ~~terms of his or her will and the estate is sufficient to carry out the~~
8 ~~terms after payment of all debts and expenses~~ transfer of probate or nonprobate
9 assets, or support and education have been provided for by any other means.

10 **SECTION 224.** 861.35 (1m) (b) of the statutes is amended to read:

11 861.35 **(1m)** (b) In the case of ~~dependent~~ minor children, if the surviving spouse
12 is legally responsible for support and education and has ample means to provide
13 them in addition to his or her own support.

14 **SECTION 225.** 861.35 (1m) (c) of the statutes is amended to read:

15 861.35 **(1m)** (c) In the case of the surviving spouse, if he or she has ample means
16 to provide for his or her support.

17 **SECTION 226.** 861.35 (2) of the statutes is amended to read:

18 861.35 **(2)** The court may set aside property to provide an allowance and may
19 appoint a trustee to administer the property, subject to the continuing jurisdiction
20 of the court. If a child dies or reaches the age of 18, or if at any time the property held
21 by the trustee is no longer required for the support of the spouse or the support and
22 education of any dependent the minor child, any remaining property is to be
23 distributed by the trustee as ~~directed by the court~~ orders in accordance with the
24 terms of the decedent's will or to the heirs of the decedent in intestacy or to satisfy
25 unpaid claims of the decedent's estate.

ASSEMBLY BILL 1038

1 **SECTION 227.** 861.35 (3) (a) of the statutes is amended to read:

2 861.35 **(3)** (a) The effect on claims under s. 859.25. The court shall balance the
3 needs of the spouse or ~~dependent~~ minor children against the nature of the creditors'
4 claims in setting the amount allowed under this section.

5 **SECTION 228.** 861.35 (4) (intro.) of the statutes is amended to read:

6 861.35 **(4)** (intro.) The court may ~~direct~~ order that the allowance to the
7 surviving spouse, not including any allowance for the support and education of
8 ~~dependent~~ minor children, be applied in satisfaction of any of the following:

9 **SECTION 229.** 861.35 (4) (a) of the statutes is amended to read:

10 861.35 **(4)** (a) Any entitlement of the surviving spouse under s. ~~853.11 (2)~~
11 853.12.

12 **SECTION 230.** 863.08 of the statutes is amended to read:

13 **863.08 Exchange by distributee and surviving spouse.** In its final
14 judgment or other order, the court shall assign items to the surviving spouse and
15 distributee to conform with the exchange under s. ~~857.03 (2)~~ 766.31 (3) (b) to the
16 extent that the court approved the exchange.

17 **SECTION 231.** 863.15 of the statutes is amended to read:

18 **863.15 Right of retention Debts to estate.** ~~When If a distributee of an estate~~
19 ~~is indebted to the estate, the amount of the indebtedness if due, or the present worth~~
20 ~~of the indebtedness, if not due, shall be treated as an offset by the personal~~
21 ~~representative against property of the estate to which the distributee is entitled. In~~
22 ~~contesting the offset the distributee shall have the benefit of any defense which~~
23 ~~would be available to the distributee in a direct proceeding by the personal~~
24 ~~representative for the recovery treatment of the debt is governed by s. 854.12.~~

25 **SECTION 232.** 865.07 (1) (d) of the statutes is amended to read:

ASSEMBLY BILL 1038**SECTION 232**

1 865.07 (1) (d) The decedent died intestate or testate, and, if testate, whether
2 the original will is in the possession of the court or accompanies the application and,
3 contains an attestation clause showing compliance with the requirements of
4 execution under s. 853.03 or 853.05 or includes an affidavit in substantially the form
5 under s. 853.04 (1) or (2), and does not expressly prohibit informal administration;

6 **SECTION 233.** 867.01 (3) (am) 2. of the statutes is amended to read:

7 867.01 (3) (am) 2. A detailed statement of all property ~~in which the decedent~~
8 ~~had an interest, property over which the decedent had a power of appointment,~~
9 ~~benefits payable on the decedent's death under annuities or under a retirement plan,~~
10 ~~life insurance, joint and life tenancies, gifts made in contemplation of death or taking~~
11 ~~effect upon death or made within 2 years prior to death and any other property that~~
12 ~~may be subject to death taxes as a result of the decedent's death~~ subject to
13 administration, including any encumbrance, lien, or other charge upon each item.

14 **SECTION 234.** 867.02 (2) (am) 3. of the statutes is amended to read:

15 867.02 (2) (am) 3. A detailed statement of all property ~~in which the decedent~~
16 ~~had an interest, property over which the decedent had a power of appointment,~~
17 ~~benefits payable on decedent's death under annuities or under a retirement plan, life~~
18 ~~insurance, joint and life tenancies, gifts made in contemplation of death or taking~~
19 ~~effect upon death or made within 2 years prior to death and any other property which~~
20 ~~may be subject to death tax as a result of decedent's death~~ subject to administration,
21 including any encumbrance, lien, or other charge upon each item.

22 **SECTION 235.** 867.03 (1g) (intro.) of the statutes is amended to read:

23 867.03 (1g) GENERALLY. (intro.) When a decedent leaves solely owned property
24 subject to administration in this state which does not exceed \$20,000 \$50,000 in
25 value, any heir of the decedent, trustee of a revocable trust created by the decedent,

ASSEMBLY BILL 1038

1 or person who was guardian of the decedent at the time of the decedent's death may
2 collect any money due the decedent, receive the property of the decedent, and have
3 any evidence of interest, obligation to, or right of the decedent transferred to the
4 affiant if the heir, trustee, or guardian provides to the person owing the money,
5 having custody of the property, or acting as registrar or transfer agent of the
6 evidences of interest, obligation to, or right, or, if the property is an interest in or lien
7 on real property, provides to the register of deeds preliminary to the recording
8 required under sub. (2m), proof of prior mailed notice under sub. (1m) if applicable
9 and an affidavit in duplicate showing all of the following:

10 **SECTION 236.** 867.03 (1g) (b) of the statutes is amended to read:

11 867.03 (1g) (b) The total value of the decedent's property subject to
12 administration in this state at the date of decedent's death.

13 **SECTION 237.** 867.03 (1m) (a) of the statutes is amended to read:

14 867.03 (1m) (a) Whenever an heir, trustee, or person who was guardian of the
15 decedent at the time of the decedent's death intends to transfer a decedent's property
16 by affidavit under sub. (1g) and the decedent or the decedent's spouse ever received
17 the family care benefit under s. 46.286, medical assistance under subch. IV of ch. 49,
18 long-term community support services funded under s. 46.27 (7) or aid under s.
19 49.68, 49.683 or 49.685, the heir, trustee, or person who was guardian of the decedent
20 at the time of the decedent's death shall give notice to the department of health and
21 family services of his or her intent. The notice shall include the information in the
22 affidavit under sub. (1g) and the heir, trustee, or person who was guardian of the
23 decedent at the time of the decedent's death shall give the notice by certified mail,
24 return receipt requested.

25 **SECTION 238.** 867.03 (1m) (b) of the statutes is amended to read:

ASSEMBLY BILL 1038**SECTION 238**

1 867.03 (1m) (b) An heir, trustee, or person who was guardian of the decedent
2 at the time of the decedent's death who files an affidavit under sub. (1g) that states
3 that the decedent or the decedent's spouse received the family care benefit under s.
4 46.286, medical assistance under subch. IV of ch. 49, long-term community support
5 services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, or 49.685 shall attach
6 to the affidavit the proof of mail delivery of the notice required under par. (a) showing
7 a delivery date that is not less than 10 days before the day on which the heir, trustee,
8 or person who was guardian of the decedent at the time of the decedent's death files
9 the affidavit.

10 **SECTION 239.** 867.03 (2) of the statutes is amended to read:

11 867.03 (2) RELEASE OF LIABILITY OF TRANSFEROR. Upon the transfer to the heir,
12 trustee, or person who was guardian of the decedent at the time of the decedent's
13 death furnishing the affidavit with an attached proof of mail delivery if required
14 under sub. (1m) (b), the transferor is released to the same extent as if the transfer
15 had been made to the personal representative of the estate of the decedent.

16 **SECTION 240.** 867.03 (2g) of the statutes is created to read:

17 867.03 (2g) OBLIGATION OF AFFIANT. By accepting the decedent's property under
18 this section the heir, trustee, or guardian assumes a duty to apply the property
19 transferred for the payment of obligations according to priorities established under
20 s. 859.25 and to distribute any balance to those persons designated in the
21 appropriate governing instrument, as defined in s. 854.01, of the decedent or if there
22 is no governing instrument, according to the rules of intestate succession under ch.
23 852. An heir or guardian may publish a notice to creditors in the same manner and
24 with the same effect as a trustee under s. 701.065. This subsection does not prohibit

ASSEMBLY BILL 1038

1 any appropriate person from requesting administration of the decedent's estate
2 under s. 856.07 or ch. 865.

3 **SECTION 241.** 867.035 (1) (a) 4. of the statutes is amended to read:

4 867.035 (1) (a) 4. The value of the ~~solely-owned~~ property subject to
5 administration in this state left by the decedent, after payment of burial costs, does
6 not exceed the amount under s. 867.03 (1g) (intro.).

7 **SECTION 242.** 867.045 (1) (intro.) of the statutes is amended to read:

8 867.045 (1) (intro.) Upon the death of any person having an interest as a joint
9 tenant or life tenant in any real property or in the vendor's interest in a land contract
10 or a mortgagee's interest in a mortgage, ~~the surviving joint tenant or remainderman~~
11 any person interested in the property may obtain evidence of the termination of that
12 interest of the decedent by providing to the register of deeds of the county in which
13 such property is located a certified copy of the death certificate for the decedent and
14 by providing, on applications supplied by the register of deeds for that purpose, the
15 name and address of the decedent and of the surviving joint tenant or ~~remainderman~~
16 and remainder beneficiary, the date of the decedent's death, and the applicant's
17 interest in the property. ~~The surviving joint tenant or remainderman~~ applicant shall
18 provide to the register of deeds the following information:

19 **SECTION 243.** 867.045 (2) of the statutes is amended to read:

20 867.045 (2) The register of deeds or other person authorized under s. 706.06
21 or 706.07 shall complete a statement at the foot of the application, declaring that the
22 ~~surviving joint tenant or remainderman~~ applicant appeared before him or her and
23 verified, under oath, the correctness of the information required by sub. (1).

24 **SECTION 244.** 867.045 (4) of the statutes is amended to read:

ASSEMBLY BILL 1038**SECTION 244**

1 867.045 (4) Upon the recording, the application shall be presumed to be
2 evidence of the facts recited and shall terminate the joint tenancy or life estate, all
3 with the same force and effect as if issued by the court assigned to exercise probate
4 jurisdiction for the county of domicile of the decedent under s. 867.04. This
5 application shall not constitute evidence of payment of any death tax which may be
6 due, the payment for which shall remain an obligation of the surviving joint tenant
7 or remainderman remainder beneficiary.

8 **SECTION 245.** 867.046 (1m) of the statutes is amended to read:

9 867.046 (1m) UPON DEATH; GENERALLY. If a domiciliary of this state dies who
10 immediately prior to death had an interest in property in this state, including an
11 interest in survivorship marital property or an interest in property passing under s.
12 705.20 (1), or if a person not domiciled in this state dies having an interest in property
13 in this state, including an interest in survivorship marital property or an interest in
14 property passing under s. 705.20 (1), upon petition of the decedent's spouse ~~or upon~~
15 ~~petition of~~ a beneficiary of a marital property agreement, or a beneficiary of a
16 transfer under s. 705.20 (1) to the court of the county of domicile of the decedent or,
17 if the decedent was not domiciled in this state, of any county where the property is
18 situated, the court shall issue a certificate under the seal of the court. The certificate
19 shall set forth the fact of the death of the decedent, the termination or transfer of the
20 decedent's interest in the property, the interest of the petitioner in the property and
21 any other facts essential to a determination of the rights of persons interested. The
22 certificate is prima facie evidence of the facts recited, and if the certificate relates to
23 an interest in real property or to a debt secured by an interest in real property, the
24 petitioner shall record a certified copy or duplicate original of the certificate in the

ASSEMBLY BILL 1038

1 office of the register of deeds in each county in this state in which the real property
2 is located.

3 **SECTION 246.** 867.046 (2) (intro.) of the statutes is amended to read:

4 867.046 (2) UPON DEATH; INTEREST IN PROPERTY. (intro.) As an alternative to sub.
5 (1m), upon the death of any person having an interest in any real property, a vendor's
6 interest in a land contract, an interest in a savings or checking account, an interest
7 in a security ~~or~~, a mortgagee's interest in a mortgage, or an interest in property
8 passing under s. 705.20 (1), including an interest in survivorship marital property,
9 the decedent's spouse ~~or~~, a beneficiary of a marital property agreement, or a
10 beneficiary of a transfer under s. 705.20 (1) may obtain evidence of the termination
11 of that interest of the decedent and confirmation of the petitioner's interest in the
12 property by providing to the register of deeds of the county in which the property is
13 located the certified death certificate for the decedent and, on applications supplied
14 by the register of deeds for that purpose, all of the following information:

15 **SECTION 247.** 867.046 (2) (k) of the statutes is created to read:

16 867.046 (2) (k) In the case of a transfer under s. 705.20 (1), except as described
17 in par. (i) or (j), a copy of the document described in s. 705.20 (1).

18 **SECTION 248.** 879.09 of the statutes is amended to read:

19 **879.09 Notice requirement satisfied by waiver of notice.** Persons who
20 are not minors or incompetent, on behalf of themselves, and appointed guardians ad
21 litem and guardians of the estate on behalf of themselves and those whom they
22 represent, may in writing waive the service of notice upon them and consent to the
23 hearing of any matter without notice ~~except that guardians ad litem cannot waive~~
24 ~~the notice of a hearing to prove a will or for administration on behalf of those whom~~
25 ~~they represent.~~ An attorney, or attorney-in-fact, for a person in the military service

ASSEMBLY BILL 1038**SECTION 248**

1 may waive notice on behalf of himself or herself but cannot waive notice on behalf
2 of the person in the military service. Waiver of notice by any person is equivalent to
3 timely service of notice.

4 **SECTION 249.** 880.61 (11m) of the statutes is created to read:

5 880.61 (11m) “Qualified minor’s trust” means any trust, including a trust
6 created by the custodian, that satisfies the requirements of section 2503 (c) of the
7 Internal Revenue Code and the regulations implementing that section.

8 **SECTION 250.** 880.675 (1m) of the statutes is created to read:

9 880.675 (1m) At any time a custodian may transfer part or all of the custodial
10 property to a qualified minor’s trust without a court order. Such a transfer
11 terminates the custodianship to the extent of the transfer.

12 **SECTION 251.** 1997 Wisconsin Act 188, section 233 (1) is amended to read:

13 [1997 Wisconsin Act 188] Section 233 (1) This act first applies to transfers
14 relating to deaths occurring on January 1, 1999, except ~~with respect to irrevocable~~
15 ~~that this act does not apply to transfers under governing instruments executed that~~
16 were irrevocable before that date.

17 **SECTION 252. Initial applicability.**

18 (1) The treatment of sections 852.12, 854.12, 861.31 (1c), (1m), (2), and (4)
19 (intro.) and (a), 861.33 (1) (a) (intro.), (b), and (c), (2), (3), and (4), 861.35 (1c), (1m)
20 (intro.), (a), (b), and (c), (2), (3) (a), and (4) (intro.) and (a), and 863.15 of the statutes,
21 the renumbering and amendment of section 854.08 (5) of the statutes, and the
22 creation of sections 852.01 (1) (a) 2. b. and 854.08 (5) (a) and (d) of the statutes first
23 apply to transfers related to deaths occurring on the effective date of this subsection
24 but do not apply to transfers under governing instruments that were irrevocable
25 before that date.

ASSEMBLY BILL 1038

1 (2) The treatment of sections 705.06 (1) (c), 705.27, and 705.28 of the statutes,
2 the renumbering and amendment of section 705.04 (2) of the statutes, and the
3 creation of section 705.04 (2) (a), (d), (e), (f), and (g) of the statutes first apply to
4 contracts entered into on the first day of the 4th month beginning after the effective
5 date of this subsection.

6

(END)