

ASSEMBLY BILL 1038 (LRB -4655)

An Act to repeal 854.03 (7), 854.06 (1) (b), 854.13 (7) (b), 854.13 (11) (title), 854.14 (1), 854.21 (1) (a) 1., 2. and 3., 861.04 (2), 861.21 (3), 861.31 (1c), 861.33 (1) (c) and 861.35 (1c); to renumber 701.06 (6), 701.115 (1), 766.62 (4), 853.32 (1), 854.13 (2) (a), 854.15 (5) (intro.) and 854.15 (5) (a), (b), (c), (d) and (e); to renumber and amend 701.26, 705.04 (2), 705.28 (3), 766.31 (3), 766.31 (6), 852.01 (1) (a) 2., 853.03 (2), 853.11 (2), 853.18 (1), 853.25 (2), 853.32 (2) (b), 854.01, 854.03 (5), 854.05 (5), 854.06 (4) (a), 854.06 (4) (b), 854.08 (5), 854.08 (6) (a) 1., 854.13 (10), 854.13 (11) (a), 854.13 (11) (b), 854.15 (1) (e), 854.15 (5) (f), 854.20 (1), 854.20 (2) (intro.), 854.20 (2) (a), 854.20 (2) (b), 854.20 (3), 854.20 (4), 854.21 (1) (a) (intro.), 857.03 (2) and 861.01 (3); to consolidate, renumber and amend 854.08 (6) (a) (intro.) and 2.; to amend 30.541 (3) (d) 2. d., 71.05 (6) (a) 16., 71.05 (6) (b) 12., 71.05 (12) (d), 101.9211 (4) (b) 4., 342.17 (4) (b) 4., 700.11 (1), 700.13 (2), 701.06 (7), 701.06 (8), 701.115 (2), 701.115 (3), 701.20 (5) (c), 701.24 (title) and (1), 701.26 (title), 702.03 (1), 702.08, 705.06 (1) (c), 705.06 (2), 705.27, 766.61 (7), 766.62 (2), 766.62 (5) (intro.), 767.266 (1) (b), 851.21 (1) (b), 851.31, 851.50, 852.01 (1) (b), 852.05 (title), 852.05 (1) (intro.), 852.05 (2), 852.05 (3), 852.12, 853.11 (3), 853.11 (6) (c), 853.11 (6) (d), 853.32 (2) (a), 854.03 (2) (b), 854.04 (1) (a), 854.04 (3) (a), 854.04 (4), 854.04 (5) (intro.), 854.04 (5) (b), 854.04 (6), 854.07 (3), 854.07 (4), 854.09 (3), 854.11 (4), 854.13 (title), 854.13 (2) (h), 854.13 (4) (c), 854.13 (7) (title), 854.13 (7) (a), 854.13 (8), 854.13 (9), 854.13 (12) (b), 854.14 (5) (a), 854.14 (5) (b), 854.14 (5) (c), 854.17, 854.18 (1) (a) (intro.), 854.18 (3), 854.20 (5), 854.21 (1) (b), 854.21 (7), 854.22 (4), 854.23 (1), 856.05 (5), 856.15 (1), 856.17, 859.01, subchapter II (title) of chapter 861 [precedes 861.018], 861.02 (title), 861.02 (2) (b) (intro.), 861.02 (4), 861.02 (6), 861.02 (7) (b), 861.05 (1) (c), 861.05 (2) (title), 861.06 (title), 861.06 (2) (title), 861.06 (2) (b) (intro.), 861.06 (2) (b) 4. a., 861.07 (2) (intro.), 861.10 (1), 861.10 (2), 861.11 (2) (a) (intro.), 861.11 (2) (b), 861.11 (5) (b), 861.17 (3), 861.20 (2), 861.21 (1) (a), 861.21 (2), 861.21 (4), 861.21 (5), 861.21 (5), 861.31 (1m), 861.31 (2), 861.31 (4) (intro.), 861.31 (4) (a), 861.33 (title), 861.33 (1) (a) (intro.), 861.33 (1) (b), 861.33 (2), 861.33 (3), 861.33 (4), 861.35 (title), 861.35 (1m) (intro.), 861.35 (1m) (a), 861.35 (1m) (b), 861.35 (1m) (c), 861.35 (2), 861.35 (3) (a), 861.35 (4) (intro.), 861.35 (4) (a), 863.08, 863.15, 865.07 (1) (d), 867.01 (3) (am) 2., 867.02 (2) (am) 3., 867.03 (1g) (intro.), 867.03 (1g) (b), 867.03 (1m) (a), 867.03 (1m) (b), 867.03 (2), 867.035 (1) (a) 4., 867.045 (1) (intro.), 867.045 (2), 867.045 (4), 867.046 (1m), 867.046 (2) (intro.) and 879.09; to repeal and recreate 701.19 (10), 853.04 (3), 854.08 (5) (title), 854.13 (10) (title), 856.16 and 861.02 (8); to create 700.27, 701.06 (6) (b), (c) and (d), 701.115 (1) (a), 701.24 (3), 701.26 (1) (d), 701.26 (2), 705.04 (2) (a), 705.04 (2) (d), 705.04 (2) (e), 705.04 (2) (f) and (g), 705.20 (4), 705.28 (2m), 766.31 (1) (title), 766.31 (2) (title), 766.31 (3) (b), 766.31 (4) (title), 766.31 (5) (title), 766.31 (6) (title), 766.31 (6) (b), 766.31 (7) (title), 766.31 (7p) (title), 766.31 (8) (title), 766.31 (9) (title), 766.31 (10) (title), 766.62 (4) (b), 766.62 (4) (c), 851.055 (1m), 852.01 (1) (a) 2. b., 853.03 (2) (bm), 853.11 (2m), 853.18 (1) (a), (b) and (c), 853.25 (2) (a) 1. and 2., 853.32 (1) (bm), 853.32 (2) (am), 854.01 (1), 854.03 (5) (am) 7., 854.03 (5) (am) 8., 854.03 (5) (bm), 854.06 (4) (a) 1., 854.08 (5) (a), 854.08 (5) (d), 854.12, 854.13 (2) (a) 1., 854.13 (2) (gm), 854.13 (2) (i), 854.13 (7) (bm) and (c), 854.13 (10) (b), 854.14 (3m), 854.20 (2) (am) 2. b. and c., 857.03 (2m), 859.02 (2m), 861.01 (3m), 861.01 (4), 861.01 (5), 861.04 (2m), 861.05 (1) (e), 861.05 (2m), 861.06 (6), 867.03 (2g), 867.046 (2) (k), 880.61 (11m) and 880.675 (1m) of the statutes; and to affect 1997 Wisconsin Act 188, section 233 (1); relating to: miscellaneous remedial modifications to the Wisconsin Probate Code.

2006

- 02-22. A. Introduced by Representatives **Hundertmark, Richards, J. Fitzgerald** and **Cullen**; cosponsored by Senators **Kanavas** and **Risser**.
- 02-20. A. Read first time and referred to committee on Financial Institutions 817
- 02-22. A. Public hearing held.
- 02-22. A. Executive action taken.
- 02-27. A. Report passage recommended by committee on Financial Institutions, Ayes 15, Noes 0 849
- 02-27. A. Referred to committee on Rules 849
- 02-28. A. Made a special order of business at 10:15 A.M. on 3-2-2006 pursuant to Assembly Resolution 49 862
- 03-07. A. Read a second time 931
- 03-07. A. Ordered to a third reading 931
- 03-07. A. Rules suspended 931
- 03-07. A. Read a third time and **passed** 931
- 03-07. A. Ordered immediately messaged 931
- 03-07. S. Received from Assembly.
- 03-07. S. Read first time and referred to committee on Housing and Financial Institutions.
- 03-08. S. Public hearing held.
- 03-08. S. Executive action taken.
- 03-08. S. Report concurrence recommended by committee on Housing and Financial Institutions, Ayes 7, Noes 0.
- 03-08. S. Available for scheduling.
- 03-08. S. Placed on calendar 3-9-2006 by committee on Senate Organization.
- 03-09. S. Read a second time.
- 03-09. S. Ordered to a third reading.
- 03-09. S. Rules suspended.
- 03-09. S. Read a third time and **concurred in**.
- 03-09. S. Ordered immediately messaged.
- 03-14. A. Received from Senate concurred in.

**2005
ENROLLED BILL**

05en A B-1038

ADOPTED DOCUMENTS:

Orig Engr SubAmdt

05 - 4655 / 1

Amendments to above (if none, write "NONE"): None

Corrections - show date (if none, write "NONE"): None

Topic Rel

3-15-06

Date

JR Miller

Enrolling Drafter

ELECTRONIC PROCEDURE:

Follow automatic or manual enrolling procedures in *TEXT2000 Reference Guide*, Document Specific Procedures, Ch. 20, Engrossing and Enrolling

DISTRIBUTION:

HOUSE OF ORIGIN:

- 11 copies plus bill jacket
- Secretary of State's envelope containing 4 copies plus newspaper notice

REVISOR OF STATUTES:

- 5 copies

DEPARTMENT OF ADMINISTRATION:

- 2 copies

LRB:

- Drafting file original
- Drafting attorney 1 copy
- Legislative editors 1 copy each
- Reference section 1 copy
- Bill index librarian 1 copy

2005 ASSEMBLY BILL 1038

February 20, 2006 – Introduced by Representatives HUNDERTMARK, RICHARDS, J. FITZGERALD and CULLEN, cosponsored by Senators KANAVAS and RISSER. Referred to Committee on Financial Institutions.

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

This bill makes remedial modifications to current law and primarily corrects technical errors and clarifies various provisions in 1997 Wisconsin Act 188, which modernized the Wisconsin Probate Code. This bill continues the process of extending various interpretative rules from probate to nonprobate assets and of allowing extrinsic evidence to be used when interpreting the intent of the transferor, especially with respect to rules of construction. This bill also creates additional protections for a decedent spouse who is murdered by the surviving spouse.

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.

ASSEMBLY BILL 1038**SECTION 2**

1 **SECTION 2.** 71.05 (6) (a) 16. of the statutes is amended to read:

2 71.05 (6) (a) 16. Any amount recognized as a loss 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 3.** 71.05 (6) (b) 12. of the statutes is amended to read:

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

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

10 71.05 (12) (d) Property exchanged under s. ~~857.03 (2)~~ 766.31 (3) (b) shall be
11 treated as if acquired by gift for the determination of basis.

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

13 101.9211 (4) (b) 4. The limit in subd. 3. does not apply if the surviving spouse
14 is proceeding under s. 867.03 (1g) and the total value of the decedent's solely owned
15 property subject to administration in the state, including the manufactured homes
16 transferred under this paragraph, does not exceed ~~\$10,000~~ \$50,000.

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

18 342.17 (4) (b) 4. The limit in subd. 3. does not apply if the surviving spouse is
19 proceeding under s. 867.03 (1g) and the total value of the decedent's solely owned
20 property subject to administration in the state, including the vehicles transferred
21 under this paragraph, does not exceed ~~\$20,000~~ \$50,000.

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

23 700.11 (1) If a statute, inter vivos governing instrument, as defined in s. 700.27
24 (1) (c), or governing instrument, as defined in s. 854.01 (2), specifies that property
25 is to be distributed to, or a future interest is to be created in, a designated individual's

ASSEMBLY BILL 1038

1 “heirs”^{3,2} “heirs at law”^{3,2} “next of kin”^{3,2} “relatives”^{3,2} “family” or a term that has
2 a similar meaning, or if a class gift in favor of “descendants”^{3,2} “issue” or “heirs of the
3 body” does not specify the manner in which the property is to be distributed among
4 the class members, the property is distributed according to s. 854.22.

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

6 700.13 (2) ~~Unless the instrument of transfer manifests a contrary intent, The~~
7 effect of a renunciation or release of an interest for life or years accelerates
8 succeeding interests is as provided in ss. 700.27 (8) and 854.13 (10).

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

10 **700.27 Disclaimer of transfers during life. (1) DEFINITIONS.** In this section:

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

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

15 (c) “Inter vivos governing instrument”:

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

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

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

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

24 2. A person who is a recipient of property or beneficiary under an inter vivos
25 governing instrument, donee of a power created by an inter vivos governing

ASSEMBLY BILL 1038**SECTION 9**

1 instrument, appointee under a power exercised by an inter vivos governing
2 instrument, taker in default under a power created by an inter vivos governing
3 instrument, or person succeeding to disclaimed property created by an inter vivos
4 governing instrument may disclaim any property, including contingent or future
5 interests or the right to receive discretionary distributions, by delivering a written
6 instrument of disclaimer under this section.

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

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

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

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

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

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

24 (f) *Disclaimer by trustee.* The trustee of a trust named as a recipient of property
25 under an inter vivos governing instrument may disclaim that property on behalf of

ASSEMBLY BILL 1038

1 the trust if the trust authorizes disclaimer by the trustee. If the trust does not
2 authorize disclaimer by the trustee, the trustee's power to disclaim is subject to the
3 approval of the court.

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

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

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

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

21 (b) *Future interest.* An instrument disclaiming a future interest shall be
22 executed and delivered not later than 9 months after the event that determines that
23 the taker of the property is finally ascertained and his or her interest indefeasibly
24 fixed. For cause shown, the period may be extended by a court of competent

ASSEMBLY BILL 1038

1 jurisdiction, either within or after the 9-month period, for such additional time as
2 the court considers just.

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

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

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

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

- 19 1. The transferor of the property disclaimed.
- 20 2. The transferor's legal representative.
- 21 3. The holder of legal title to the property.

22 (b) *Delivery to trustee.* If the trustee of any trust to which the interest or power
23 relates does not receive the instrument of disclaimer under par. (a), a copy shall also
24 be delivered to the trustee. Failure to deliver a copy of the instrument of disclaimer

ASSEMBLY BILL 1038

1 to the trustee within the time specified under sub. (4) does not affect the validity of
2 any disclaimer.

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

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

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

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

ASSEMBLY BILL 1038**SECTION 9**

1 the disclaimant who survive when the disclaimed interest takes effect in possession
2 or enjoyment.

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

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

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

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

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

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

ASSEMBLY BILL 1038

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

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

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

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

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

12 **701.06 (6) (b)** A beneficiary of a trust may not be considered a settlor solely
13 because of a lapse, waiver, or release of any of the following:

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

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

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

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

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

ASSEMBLY BILL 1038**SECTION 11**

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

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

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

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

10 3. A testamentary power of appointment.

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

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

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

15 701.06 (7) SUBSEQUENT MODIFICATION OF COURT'S ORDER. Any order entered by
16 a court under sub. (4), (5) or (6) (a) is subject to modification upon application of an
17 interested person.

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

19 701.06 (8) EXEMPT ASSETS. Assets of a trust, to the extent they are exempt from
20 claims of creditors under other statutes, shall not be subject to sub. (4), (5), or (6) (a).

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

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

23 701.115 (1) (a) In par. (b), "revocable trust" means a trust that the grantor, at
24 the time of death, was alone empowered to change or revoke, by law or under the

ASSEMBLY BILL 1038

1 instrument creating the trust, regardless of whether the grantor then had the
2 capacity to exercise the power.

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

4 701.115 (2) Survivorship under sub. (1) (b) is governed by s. 854.03.

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

6 701.115 (3) The rights of the issue of a predeceasing beneficiary under sub. (1)
7 (b) are governed by s. 854.06.

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

9 701.19 (10) RESTRICTION ON EXERCISE OF POWERS. (a) Except as provided in par.
10 (c), a person may not exercise any of the following powers conferred upon him or her
11 in his or her capacity as trustee:

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

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

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

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

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

ASSEMBLY BILL 1038**SECTION 18**

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

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

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

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

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

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

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

ASSEMBLY BILL 1038

1 **701.24** (title) **Applicability of ss. ~~701.01 to 701.23~~**. (1) Except as otherwise
2 provided in sub. (3) and s. 701.19 (9) (a) ~~and (10)~~, ss. 701.01 to 701.19, 701.21, 701.22,
3 and 701.23 are applicable to a trust existing on July 1, 1971, as well as a trust created
4 after such date, and shall govern trustees acting under such trusts. If application
5 of any provision of ss. 701.01 to 701.19, 701.21, 701.22 , and 701.23 to a trust in
6 existence on August 1, 1971, is unconstitutional, it shall not affect application of the
7 provision to a trust created after that date.

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

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

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

17 **701.26** (title) **Disclaimers of nonprobate transfers at death.**

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

20 **701.26 (1)** A ~~person~~ recipient may disclaim, under s. 854.13, any of the
21 following:

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

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

ASSEMBLY BILL 1038

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

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

4 701.26 (1) (d) All or part of any other interest transferred under a governing
5 instrument, as defined in s. 854.01 (2).

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

7 701.26 (2) A recipient may disclaim, under s. 700.27, all or part of any interest
8 transferred under an inter vivos governing instrument, as defined in s. 700.27 (1) (c).

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

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

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

19 **702.08 Disclaimer of powers.** The donee of any power may disclaim all or
20 part of the power as provided under s. 700.27 or 854.13.

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

23 705.04 (2) (intro.) If the account is a P.O.D. account, on the death of the original
24 payee or the survivor of 2 or more original payees, ~~any sums remaining on deposit~~
25 ~~belong to the P.O.D. beneficiaries if surviving, or to the survivor of them if one or more~~

ASSEMBLY BILL 1038

1 ~~die before the original payee. Payment may be made to a minor P.O.D. beneficiary,~~
2 ~~however, only in accordance with a procedure approved in ch. 880. all of the following~~
3 ~~apply:~~

4 (b) If there are 2 or more P.O.D. beneficiaries and they all survive, they shall
5 be are entitled to payment of the sums on deposit in accordance with ~~such~~ any written
6 instructions ~~as may have been that the owner~~ filed with the financial institution, ~~and~~
7 ~~or, if none the owner left no written instructions,~~ to payment in equal shares. ~~There~~

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

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

13 705.04 (2) (a) If there is one P.O.D. beneficiary and he or she survives, he or she
14 is entitled to payment of all sums remaining on deposit.

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

16 705.04 (2) (d) Subject to the rights of financial institutions under s. 705.06 (1)
17 (c), if any P.O.D. beneficiary predeceases the original payee or the survivor of 2 or
18 more original payees, the amount to which the predeceased P.O.D. beneficiary would
19 have been entitled passes to any of his or her issue who would take under s. 854.06
20 (3).

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

22 705.04 (2) (e) If no P.O.D. beneficiary or predeceased P.O.D. beneficiary's issue
23 who would take under s. 854.06 (3) survives the death of all owners, the account
24 belongs to the estate of the deceased sole owner or the estate of the last to die of
25 multiple owners.

ASSEMBLY BILL 1038**SECTION 32**

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

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

4 (g) If the P.O.D. account is a marital account, this section applies only to the
5 50 percent of the account not owned by the surviving spouse named as a party on the
6 account.

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

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

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

22 705.06 (2) Payment made under this subchapter discharges the financial
23 institution from all claims for amounts so withdrawn. If the institution has reason
24 to believe that a dispute exists as to the rights of the parties to an account or their
25 successors it may, but shall not be required to, refuse to pay funds in the account to

ASSEMBLY BILL 1038

1 any persons pending instructions from a court, or it may pay the proceeds to a court.

2 An institution may but need not recognize the authority of an agent, other than one
3 with continuing authority under s. 705.05 (3), until it knows of the fact of death or
4 adjudication of incompetence of all parties appointing such agent and has reasonable
5 opportunity to act.

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

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

10 705.20 (4) A transfer under this section does not require confirmation in any
11 procedure under s. 867.01, 867.02, or 867.03 or ch. 856 or 865. A transfer under this
12 section may be confirmed under s. 867.046 (1m) or (2).

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

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

ASSEMBLY BILL 1038**SECTION 36**

1 owners, the security belongs to the estate of the deceased sole owner or the estate of
2 the last to die of multiple owners.

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

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

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

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

23 (b) The protections of ~~ss. 705.21 to 705.30~~ provided in this subchapter do not
24 extend to a reregistration or payment made after a registering entity has received
25 written notice from a claimant to an interest in the security objecting to

ASSEMBLY BILL 1038

1 implementation of a registration in beneficiary form. No other notice or other
2 information available to the registering entity affects its right to protection under ss.
3 ~~705.21 to 705.30~~ this subchapter. If the registering entity has reason to believe that
4 a dispute exists as to the rights of the parties to a security registered in beneficiary
5 form or their successors, the registering entity may refuse to reregister the security
6 pending instructions from a court.

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

8 766.31 (1) (title) GENERAL.

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

10 766.31 (2) (title) PRESUMPTION.

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

13 766.31 (3) SPOUSE'S INTEREST IN MARITAL PROPERTY (intro.) Each spouse has a
14 present undivided one-half interest in each item of marital property, ~~but the~~ subject
15 to all of the following:

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

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

22 766.31 (3) (b) *Division based on aggregate value at death.* 1. Spouses may
23 provide in a marital property agreement that at the death of a spouse some or all of
24 their marital property will be divided based on aggregate value rather than divided

ASSEMBLY BILL 1038

1 item by item. However, at the death of a spouse, a marital property agreement is not
2 necessary for a division of marital property that is not item by item.

3 2. The surviving spouse and the successor in interest to the decedent's share
4 of marital property may enter into an agreement providing that some or all of the
5 marital property in which each has an interest will be divided based on aggregate
6 value rather than divided item by item.

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

8 766.31 (4) (title) CLASSIFICATION OF INCOME.

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

10 766.31 (5) (title) TRANSFER TO A TRUST.

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

12 766.31 (6) (title) PROPERTY OWNED AT DETERMINATION DATE.

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

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

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

21 766.31 (6) (b) *Date of marriage prior to determination date.* If the date of
22 marriage precedes the determination date, the property owned at the determination
23 date is not classified by this chapter but is subject to all of the following:

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

ASSEMBLY BILL 1038

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

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

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

8 766.31 (7) (title) INDIVIDUAL PROPERTY AFTER DETERMINATION DATE.

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

10 766.31 (7p) (title) UNILATERAL STATEMENT.

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

12 766.31 (8) (title) RIGHTS IN PROPERTY ACQUIRED BEFORE DETERMINATION DATE.

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

14 766.31 (9) (title) TREATMENT OF PROPERTY ACQUIRED BEFORE THE DETERMINATION
15 DATE.

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

17 766.31 (10) (title) RECLASSIFICATION.

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

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

ASSEMBLY BILL 1038**SECTION 53**

1 policy, other than the marital property interest described in this subsection,
2 terminate at the decedent spouse's death.

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

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

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

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

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

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

22 2. Refuse to transfer any funds from the plan to any person until the
23 administrator receives from a court written documentation that the dispute has been
24 resolved.

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

ASSEMBLY BILL 1038

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

2 766.62 (4) (c) The protection afforded a deferred employment benefit plan
3 administrator under this subsection does not affect the rights of parties or their
4 successors in disputes concerning the beneficial ownership of deferred employment
5 benefits.

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

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

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

12 767.266 (1) (b) That one or both spouses will make a particular disposition in
13 a will or other governing instrument, as defined in s. 854.01 (2).

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

15 851.055 (1m) Is not classified as individual property or marital property under
16 a valid marital property agreement, unless the marital property agreement provides
17 otherwise.

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

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

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

24 **851.31 Will.** ~~“Will”~~ Unless the context or subject matter indicates otherwise,
25 “will” includes a codicil and any document incorporated by reference in a

ASSEMBLY BILL 1038

1 testamentary document under s. 853.32 (1) or (2). “Will” does not include a copy,
2 unless the copy has been proven as a will under s. 856.17, but “will” does include a
3 properly executed duplicate original.

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

5 **851.50 Status of adopted persons.** The status of adopted persons for
6 purposes of inheritance and transfers under wills or other governing instruments,
7 as defined in s. 854.01 (2), is governed by ss. 854.20 and 854.21.

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

10 852.01 (1) (a) 2. (intro.) If there are surviving issue one or more of whom are
11 not issue of the surviving spouse, one-half of decedent’s property other than the
12 following property:

13 a. The decedent’s interest in marital property.

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

15 852.01 (1) (a) 2. b. The decedent’s interest in property held equally and
16 exclusively with the surviving spouse as tenants in common.

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

18 852.01 (1) (b) To the issue, per stirpes, the share of the estate not passing to the
19 spouse under par. (a), or the entire estate if there is no surviving spouse. ~~If there are~~
20 ~~issue other than children, those of more remote degrees take per stirpes.~~

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

22 **852.05 (title) Status of nonmarital child born to unmarried parents for**
23 **purposes of intestate succession.**

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

ASSEMBLY BILL 1038

1 852.05 (1) (intro.) A ~~nonmarital~~ child born to unmarried parents, or the child's
2 issue is ~~entitled to take, is treated~~ in the same manner as a marital child by, or the
3 issue of a child, born to married parents with respect to intestate succession from and
4 through ~~his or her~~ the child's mother, and from and through ~~his or her~~ the child's
5 father if any of the following applies:

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

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

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

14 852.05 (3) (a) This section does not apply to a child who becomes a marital child
15 by the subsequent marriage of the child's parents under s. 767.60.

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

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

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

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

ASSEMBLY BILL 1038**SECTION 72**

1 853.03 (2) (am) It must be signed by ~~2 or more witnesses, each of whom at least~~
2 2 witnesses who signed within a reasonable time after ~~witnessing~~ any of the
3 following:

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

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

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

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

12 853.03 (2) (bm) The 2 witnesses required under par. (am) may observe the
13 signing or acknowledgement under par. (am) 1. to 3. at different times.

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

15 853.04 (3) EFFECT OF AFFIDAVIT. The effect of an affidavit in substantially the
16 form under sub. (1) or (2) is as provided in s. 856.16.

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

20 853.12 (1) ENTITLEMENT OF SURVIVING SPOUSE. Subject to ~~par. (e) sub. (3)~~, if the
21 testator married the surviving spouse after the testator executed his or her will, the
22 surviving spouse is entitled to a share of the probate estate.

23 (2) VALUE OF SHARE. (intro.) The value of the share under ~~par. (a) sub. (1)~~ is the
24 value of the share that the surviving spouse would have received had the testator
25 died with an intestate estate equal to the value of the testator's net estate ~~of the~~

ASSEMBLY BILL 1038

1 ~~decendent less, but the value of the net estate shall first be reduced by~~ the value of all
2 of the following:

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

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

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

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

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

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

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

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

18 853.11 **(3)** ~~FORMER TRANSFER TO FORMER SPOUSE. The effect of a~~ A transfer under
19 a will to a former spouse is governed by s. 854.15.

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

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

ASSEMBLY BILL 1038**SECTION 78**

1 testator's contemporary or subsequent declarations, that the testator intended the
2 previous will or its revoked part to take effect.

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

4 853.11 (6) (d) In the absence of an original valid will, establishment of the
5 execution and validity of the revived will or part is governed by may be established
6 as provided in s. 856.17.

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

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

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

23 853.18 (1) (a) A written designation in accordance with the terms of any
24 insurance, annuity, or endowment contract.

ASSEMBLY BILL 1038

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

3 (c) Any written designation made under a contract, plan, system, or trust
4 providing for pension, retirement, deferred compensation, stock bonus,
5 profit-sharing, or death benefits, or an employment or commission contract, of any
6 person to be a beneficiary, payee, or owner of any right, title, or interest thereunder
7 upon the death of another, or any assignment of rights under any of the foregoing.

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

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

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

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

20 853.25 (2) (a) 1. If no children were included in the will but some or all of those
21 children were omitted by mistake, then sub. (1) (b) provides for the share of any child
22 or issue omitted by mistake.

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

ASSEMBLY BILL 1038

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

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

3 853.32 (1) (bm) A writing or document is incorporated into a will under par.
4 (am) even if the writing or document is not executed in compliance with s. 853.03 or
5 853.05.

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

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

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

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

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

21 853.32 (2) (b) (intro.) Another document under par. (a) is valid even if it any of
22 the following applies:

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

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

ASSEMBLY BILL 1038

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

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

5 **854.01 Definition Definitions.** (intro.) In this chapter, “governing:

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

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

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

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

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

22 **SECTION 92.** 854.03 (5) of the statutes is renumbered 854.03 (5) (am), and
23 854.03 (5) (am) 4., as renumbered, is amended to read:

24 854.03 (5) (am) 4. The imposition of a 120-hour survival requirement would
25 cause a nonvested property interest or a power of appointment to fail to be valid, or

ASSEMBLY BILL 1038

1 to be invalidated, under s. 700.16 or under the rule against perpetuities of the
2 applicable jurisdiction.

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

4 854.03 (5) (am) 7. The statute or governing instrument specifies that this
5 statute, or one similar to it, does not apply.

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

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

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

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

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

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

17 854.04 (1) (a) Except as provided in subs. (5) and (6), if a statute or a governing
18 instrument calls for property to be distributed to the issue or descendants of a
19 designated person “by representation”², “by right of representation,” or “per
20 stirpes”², the property is divided into equal shares for the designated person’s
21 surviving children of the designated person and for the designated person’s deceased
22 children who left surviving issue. Each surviving child and each deceased child who
23 left surviving issue are allocated one share.

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

ASSEMBLY BILL 1038

1 854.04 (3) (a) Except as provided in subs. (5) and (6), if a statute or a governing
2 instrument calls for property to be distributed to the issue or descendants of a
3 designated person “per capita at each generation”,^{3,2} the property is divided into
4 equal shares at the generation nearest to the designated person that contains one or
5 more surviving issue. Each survivor in that generation is and each deceased person
6 in that generation who left surviving issue are allocated one share,~~and the.~~ The
7 shares of the deceased persons in that same generation who left surviving issue are
8 combined for ~~distribution~~ allocation under par. (b).

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

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

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

15 854.04 (5) CERTAIN INDIVIDUALS DISREGARDED. (intro.) For the purposes of ~~this~~
16 ~~section~~ subs. (1) to (3), all of the following apply:

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

18 854.04 (5) (b) An individual who has a surviving ancestor who is an issue of the
19 designated person is not entitled to allocated a share.

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

21 854.04 (6) 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 not applicable to the transfer.
25 Extrinsic evidence may be used to construe ~~that~~ the intent.