



2009 SENATE BILL 670

1 AN ACT *to create* 854.30 of the statutes; **relating to:** disposal of decedent's
2 property.

Analysis by the Legislative Reference Bureau

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

3 SECTION 1. 854.30 of the statutes is created to read:
4 **854.30 Application of certain wills or trusts referring to repealed**
5 **federal transfer taxes. (1)** A will or trust of a decedent who dies after December
6 31, 2009, and before January 1, 2011, that contains a formula disposing of certain of
7 the decedent's property that is determined by reference to exemptions, exclusions,
8 deductions, or credits under the federal estate tax, 26 USC 2001–2801, the federal
9 generation–skipping transfer tax, 26 USC 2601–2664, or both, shall be administered
10 as follows:

SENATE BILL 670**SECTION 1**

1 (a) The formula disposing a decedent's property shall be administered as if the
2 provisions of the federal estate tax and federal generation-skipping transfer tax
3 were in force just as they were on December 31, 2009, except that the applicable
4 exclusion amount under 26 USC 2010 (c) for decedents' estates shall be considered
5 unlimited and the federal generation-skipping transfer tax exemption under 26
6 USC 2631 (c) shall also be considered unlimited, if all of the following apply:

7 1. The decedent is survived by a spouse.

8 2. If the decedent is survived by issue, all issue of the decedent are also issue
9 of the surviving spouse.

10 3. The surviving spouse is a current income beneficiary of each trust funded in
11 whole or in part by such formula, or the sole beneficiary of any other property subject
12 to disposition by such formula which does not pass in trust.

13 (b) If any of the circumstances described in par. (a) 1., 2., and 3. is not present,
14 the formula for disposing a decedent's property shall be administered as if the
15 provisions of the federal estate tax and federal generation-skipping transfer tax
16 were in force just as they were on December 31, 2009.

17 **(2)** A personal representative of a decedent's estate, a trustee of a decedent's
18 trust, a surviving spouse of a decedent or any beneficiary of a will or trust to whom
19 this section applies may petition the circuit court to apply a formula disposing of
20 property under a will or trust by reference to the federal estate tax, the federal
21 generation-skipping transfer tax, or both, or the exemptions, exclusions, deductions
22 or credits under those taxes, in a manner different than that provided under sub. (1).
23 The court may consider the overall dispositive plan of the decedent, the tax
24 implications of alternative dispositions, the decedent's intentions in establishing the
25 formula and such other matters as the court considers appropriate when

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1 determining how to respond to the petition. A proceeding under this subsection shall
2 be commenced within one year of the decedent's death or be barred.

3 **(3)** This section does not apply to wills or trusts that are executed or amended
4 after December 31, 2009, or that manifest an intent that a contrary rule apply if the
5 decedent dies on a date on which there is no applicable federal estate tax or federal
6 generation–skipping transfer tax.

7 **(4)** In the event that the federal estate tax, the federal generation–skipping
8 transfer tax, or both, are applicable to transfers of assets of a decedent who dies after
9 December 31, 2009, but before January 1, 2011, due to the establishment or
10 reinstatement of one or both of those taxes, the provisions of this section do not apply
11 to the decedent's will or trust and the formula shall be applied in a manner consistent
12 with the applicable tax or taxes.

13

(END)