



2011 SENATE BILL 546

March 5, 2012 – Introduced by Senator KEDZIE. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 **AN ACT** *to renumber and amend* 54.20 (2) (b); and *to create* 49.454 (3m) of the
2 statutes; **relating to:** distribution of a trust under a guardianship.

Analysis by the Legislative Reference Bureau

Under current law, a court may appoint a guardian of the estate or a guardian of the person for an individual, who is known as a ward if a guardian has been appointed. For an adult individual who is found by the court to be a spendthrift, the court may appoint a guardian of the estate. For an individual who is found by the court to be incompetent, the court may appoint a guardian of the person, a guardian of the estate, or both. A court may appoint a guardian of the person, a guardian of the estate, or both, for a minor. Current law requires a guardian of the estate to perform certain duties generally related to the ward's finances and property, including taking possession of the ward's real and personal property and using the ward's income and property to maintain and support the ward and any dependents of the ward. The court may allow a guardian of the estate to exercise certain powers. A guardian of the estate exercising one of those powers must use the judgment and care that persons of prudence, discretion, and intelligence exercise in the management of their own affairs. Also, a guardian of the estate, when exercising a court-approved power, must consider the functional limitations of the ward, such as the ward's understanding of the harm he or she is likely to suffer as the result of the inability to manage property and financial affairs, the ward's personal preferences and desires with regard to managing his or her activities of daily living, and the least restrictive form of intervention for the ward. Some of the powers under current law that a court may grant approval for a guardian of the estate to exercise include

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making gifts under certain terms, purchasing an annuity or insurance contract, continuing the business of the ward under the court's terms, and releasing or disclaiming any interest of the ward that is received by will, intestate succession, or other transfer. In addition, under current law, a guardian of the estate, with the court's approval, may transfer assets of the ward to: 1) the trustee of any existing revocable living trust that the ward has created for himself or herself and any dependents; 2) if the ward is a minor, the trustee of any trust created for the exclusive benefit of the ward that distributes to the ward at age 18 or 21, or 3) if the ward is a minor, his or her estate, as the ward has appointed by a written instrument.

Under this bill, if a guardian of the estate exercises the power to transfer assets of a minor ward to a trust created for the exclusive benefit of the ward and the assets derive from an intestate estate, the court determines the age at which the trust distributes to the ward. The court must set the distribution at no earlier than the date the ward attains age 18 and no later than the date the ward attains age 25. The bill also requires the trustee of the trust, at the request of a beneficiary of the trust who has attained age 18, to make payments from the corpus of the trust for the health, welfare, maintenance, or education of the beneficiary. The bill specifies that, for purposes of determining eligibility for medical assistance for an adult who is the beneficiary of such a trust, the corpus of the trust is considered a resource available to the individual and payments made by the trustee from the corpus of the trust are considered income of the individual.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 49.454 (3m) of the statutes is created to read:

2 49.454 **(3m)** TRUST CREATED UNDER GUARDIANSHIP. For purposes of determining
3 eligibility of an individual who has attained the age of 18 but has not attained the
4 age of 25 for medical assistance, the corpus of a trust created for the benefit of that
5 individual under s. 54.20 (2) (b) 2. is considered a resource available to the individual
6 and payments made from the corpus of a trust under s. 54.20 (2) (b) 2. are considered
7 income of the individual.

8 **SECTION 2.** 54.20 (2) (b) of the statutes is renumbered 54.20 (2) (b) (intro.) and
9 amended to read:

10 54.20 **(2)** (b) (intro.) Transfer assets of the ward to the any of the following:

