



2013 SENATE BILL 384

1 **AN ACT to repeal** 46.27 (7g) (a) 5. b., 49.45 (4m) (a) 3. b., 49.45 (4m) (a) 3. d., 49.45
2 (4m) (a) 3. e., 49.453 (4c) (c), 49.496 (1) (cm) 2., 49.4962, 49.682 (1) (e) 2., 49.848,
3 49.849 (1) (d) 2., 59.43 (1) (w), 701.01, 701.02, 701.03, 701.04, 701.05, 701.06
4 (title), (1), (2), (3) and (6) (title) and (a), 701.065 (5), 701.07, 701.09 (3), (4) and
5 (5), 701.10, 701.105 (4), 701.11, 701.115, 701.12, 701.13, 701.14 (title) and (1),
6 701.14 (4), 701.15, 701.16 (title), (1), (2), (3), (4) (title) and (a) to (c), (5) and (6),
7 701.17, 701.18, 701.19, 701.20 (title), 701.20 (2) (intro.), 701.20 (2) (i), 701.20
8 (2) (L), (m) and (n), 701.20 (4c) (b) 3. a., b. and c., 701.20 (4g) (a) 1. c., 701.20 (18)
9 (a), 701.20 (21) (title), 701.20 (29) (c) 2. b., 701.20 (29) (d), 701.20 (31), 701.22
10 (title), 701.23, 701.24 (3), 701.26, 702.01 (6) and 881.05; **to renumber** 445.125
11 (4), 701.06 (6) (d), 701.09 (title), (1) and (2), 701.20 (2) (a), 701.20 (2) (c), 701.20
12 (2) (e), 701.20 (2) (f), 701.20 (2) (g), 701.20 (2) (j), 701.20 (4c) (title), 701.20 (4c)
13 (b) 1., 701.20 (4c) (b) 2., 701.20 (4g) (title), 701.20 (4g) (a) 1. a., 701.20 (4g) (a)
14 1. e., 701.20 (4g) (a) 2. b., 701.20 (4m) (title), 701.20 (4m) (b), 701.20 (4m) (d),

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1 701.20 (18) (title), 701.20 (29) (title), 701.20 (29) (a), 701.20 (29) (b), 701.24
2 (title), 701.25 and 702.01 (intro.); **to renumber and amend** 46.27 (7g) (a) 5.
3 a., 49.496 (1) (cm) 1., 49.682 (1) (e) 1., 49.849 (1) (d) 1., 49.849 (4) (c) 2., 701.06
4 (4), 701.06 (5) (intro.) and (a), 701.06 (5) (b), 701.06 (5) (c), 701.06 (5m), 701.06
5 (6) (b), 701.06 (6) (c), 701.06 (7), 701.06 (8), 701.065 (title), (1), (2), (3) and (4),
6 701.08, 701.105 (title), (1), (2) and (3), 701.14 (2), 701.14 (3), 701.16 (4) (d),
7 701.20 (2) (b), 701.20 (2) (d), 701.20 (2) (h), 701.20 (2) (k), 701.20 (3), 701.20 (4),
8 701.20 (4c) (b) (intro.), 701.20 (4c) (b) 3. (intro.), 701.20 (4c) (b) 4., 701.20 (4c)
9 (c), 701.20 (4c) (d), 701.20 (4c) (e), 701.20 (4c) (f), 701.20 (4c) (g), 701.20 (4g) (a)
10 (intro.), 701.20 (4g) (a) 1. (intro.), 701.20 (4g) (a) 1. b., 701.20 (4g) (a) 1. d., 701.20
11 (4g) (a) 2. (intro.), 701.20 (4g) (a) 2. a., 701.20 (4g) (b), (c), (d) and (e), 701.20 (4j),
12 701.20 (4k), 701.20 (4m) (a), 701.20 (4m) (am), 701.20 (4m) (c), 701.20 (5), 701.20
13 (6), 701.20 (7), 701.20 (8), 701.20 (9) (a), 701.20 (10), 701.20 (11), 701.20 (12),
14 701.20 (13), 701.20 (14), 701.20 (15), 701.20 (16), 701.20 (17), 701.20 (18) (b),
15 701.20 (18) (c) 1., 701.20 (18) (c) 2., 701.20 (18) (d), 701.20 (18) (e), 701.20 (19),
16 701.20 (20), 701.20 (21), 701.20 (22), 701.20 (23), 701.20 (24), 701.20 (25),
17 701.20 (26), 701.20 (27), 701.20 (28), 701.20 (29) (c) (intro.), 701.20 (29) (c) 1.,
18 701.20 (30), 701.21, 701.22, 701.24 (1), 701.24 (2), 702.01 (1), 702.01 (2), 702.01
19 (3), 702.01 (4), 702.01 (5), 702.15 (3), 702.17 (3), 879.47, 881.01 (1) (a) and 881.01
20 (4); **to consolidate, renumber and amend** 701.20 (29) (c) 2. (intro.) and a.;
21 **to amend** 20.435 (4) (im), 20.435 (4) (in), 20.435 (7) (im), 23.0918 (2), 25.70,
22 46.27 (7g) (c) 2m. b., 46.27 (7g) (c) 6m. b., 46.27 (7g) (g), 46.286 (7), 49.453 (2)
23 (a) (intro.), 49.453 (2) (b) (intro.), 49.496 (3) (aj) 2., 49.496 (3) (dm) 2., 49.496
24 (6m), 49.682 (2) (bm) 2., 49.682 (2) (fm) 2., 49.682 (5), 49.849 (2) (c), 49.849 (7),
25 223.07 (3), 223.105 (1) (c), 445.125 (1) (a) 1., 445.125 (1) (a) 2., 700.16 (1) (c),

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1 700.27 (1) (d), (2) (a) 2. and (b), (4) (e), (5) (b), (7) (a) and (8) (a), 702.03, 702.05,
2 702.07, 702.08, 702.09 (title), (1) and (3) (a), (b) and (c), 702.11, 702.13 (title),
3 (1) (intro.), (a), (b) and (c) and (2), 702.15 (intro.), (1) and (2), 702.17 (1), (2) and
4 (5), 702.21, 766.55 (2) (bm), 766.575 (1) (e), 840.01 (1), 853.17 (2), 853.32 (3),
5 853.61 (2) (a), 854.13 (1) (c), (2) (a) 2. and (d), (4) (e), (5) (b), (7) (a) and (10) (a)
6 , 854.23 (5) (b), 859.18 (5) (a), 859.18 (5) (b), 861.015 (2), 861.11 (5) (b), 865.08
7 (6), 867.03 (2g) (a), 879.03 (2) (c), 881.01 (1) (b) and 893.33 (4r); **to repeal and**
8 **recreate** 881.01 (1) (title); and **to create** 49.849 (4) (c) 2. a., 49.849 (4) (c) 2. b.,
9 49.849 (4) (c) 2. c., 445.125 (4) (bn), subchapter I (title) of chapter 701 [precedes
10 701.0101], 701.0101, 701.0102, 701.0103, 701.0104, 701.0105, 701.0106,
11 701.0107, 701.0108, 701.0109, 701.0110, 701.0111, subchapter II (title) of
12 chapter 701 [precedes 701.0201], 701.0201, 701.0202, 701.0203, 701.0204,
13 subchapter III (title) of chapter 701 [precedes 701.0301], 701.0301, 701.0302,
14 701.0303, 701.0304, 701.0305, subchapter IV (title) of chapter 701 [precedes
15 701.0401], 701.0401, 701.0402, 701.0403, 701.0404, 701.0405, 701.0406,
16 701.0407, 701.0408, 701.0409, 701.0410, 701.0411, 701.0412, 701.0413,
17 701.0414, 701.0415, 701.0416, 701.0417, 701.0418, subchapter V (title) of
18 chapter 701 [precedes 701.0501], 701.0501, 701.0502, 701.0503 (title),
19 701.0504, 701.0505, 701.0506, 701.0507, subchapter VI (title) of chapter 701
20 [precedes 701.0601], 701.0601, 701.0602, 701.0603, 701.0604, subchapter VII
21 (title) of chapter 701 [precedes 701.0701], 701.0701, 701.0702, 701.0703,
22 701.0704, 701.0705, 701.0706, 701.0707, 701.0708, 701.0709, 701.0710,
23 subchapter VIII (title) of chapter 701 [precedes 701.0801], 701.0801, 701.0802,
24 701.0803, 701.0804, 701.0805, 701.0806, 701.0807, 701.0808, 701.0809,
25 701.0810, 701.0811, 701.0812, 701.0813, 701.0814, 701.0815, 701.0816,

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1 701.0817, 701.0818, 701.0819, subchapter IX (title) of chapter 701 [precedes
2 701.0901], 701.0901, 701.0902, 701.0903, subchapter X (title) of chapter 701
3 [precedes 701.1001], 701.1001, 701.1002, 701.1003, 701.1004, 701.1005,
4 701.1006, 701.1007, 701.1008, 701.1009, 701.1010, 701.1011, 701.1012,
5 701.1013, subchapter XI (title) of chapter 701 [precedes 701.1101], 701.1101,
6 701.1102 (intro.), 701.1102 (1g), 701.1106 (6), 701.1123 (1), 701.1123 (4),
7 701.1126 (title), 701.1134 (3) (c) and (d) and (4), subchapter XII (title) of chapter
8 701 [precedes 701.1201], 701.1202, 701.1203, 701.1205 (3), 702.02 (1), 702.02
9 (3), 702.05 (5), 702.17 (3) (b), 702.17 (6), 853.34 (3), 881.01 (1) (a) 1. and 2. and
10 881.01 (4) (b) of the statutes; **relating to:** the laws of trusts, the Uniform Trust
11 Code, the Uniform Principal and Income Act, powers of appointment, and
12 changes to estate recovery and divestment provisions relating to public
13 assistance programs.

Analysis by the Legislative Reference Bureau

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

14 **SECTION 1.** 20.435 (4) (im) of the statutes, as affected by 2013 Wisconsin Act
15 20, is amended to read:

16 20.435 (4) (im) *Medical assistance; correct payment recovery; collections; other*
17 *recoveries.* All moneys received from the recovery of correct medical assistance
18 payments under ss. 49.496, ~~49.848~~, and 49.849, all moneys received as collections
19 and other recoveries from providers, drug manufacturers, and other 3rd parties
20 under medical assistance performance-based contracts, and all moneys credited to
21 this appropriation account under s. 49.89 (7) (f), for payments to counties and tribal

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1 governing bodies under s. 49.496 (4) (a), for payment of claims under s. 49.849 (5),
2 for payments to the federal government for its share of medical assistance benefits
3 recovered, for the state share of medical assistance benefits provided under subch.
4 IV of ch. 49, and for costs related to collections and other recoveries.

5 **SECTION 2.** 20.435 (4) (in) of the statutes, as affected by 2013 Wisconsin Act 20,
6 is amended to read:

7 20.435 (4) (in) *Community options program; family care; recovery of costs*
8 *administration.* From the moneys received from the recovery of costs of care under
9 ss. 46.27 (7g), ~~49.848~~, and 49.849 for enrollees who are ineligible for medical
10 assistance, the amounts in the schedule for administration of the recovery of costs
11 of the care.

12 **SECTION 3.** 20.435 (7) (im) of the statutes, as affected by 2013 Wisconsin Act
13 20, is amended to read:

14 20.435 (7) (im) *Community options program; family care benefit; recovery of*
15 *costs; birth to 3 waiver administration.* From the moneys received from the recovery
16 of costs of care under ss. 46.27 (7g), ~~49.848~~, and 49.849 for enrollees who are ineligible
17 for medical assistance, all moneys not appropriated under sub. (4) (in), and all
18 moneys transferred to this appropriation account from the appropriation account
19 under sub. (4) (o), for payments to county departments and aging units under s. 46.27
20 (7g) (d), payments to care management organizations for provision of the family care
21 benefit under s. 46.284 (5), payment of claims under s. 49.849 (5), payments for
22 long-term community support services funded under s. 46.27 (7) as provided in ss.
23 46.27 (7g) (e) and 49.849 (6) (b), and for administration of the waiver program under
24 s. 46.99.

25 **SECTION 4.** 23.0918 (2) of the statutes is amended to read:

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1 23.0918 (2) Unless the natural resources board determines otherwise in a
2 specific case, only the income from the gifts, grants, or bequests in the fund is
3 available for expenditure. The natural resources board may authorize expenditures
4 only for preserving, developing, managing, or maintaining land under the
5 jurisdiction of the department that is used for any of the purposes specified in s. 23.09
6 (2) (d). In this subsection, unless otherwise provided in a gift, grant, or bequest,
7 principal and income are determined as provided under s. ~~701.20~~ subch. XI of ch. 701.

8 **SECTION 5.** 25.70 of the statutes is amended to read:

9 **25.70 Historical society trust fund.** There is established a separate
10 nonlapsible trust fund designated as the historical society trust fund, consisting of
11 all endowment principal and income and all cash balances of the historical society.
12 Unless the board of curators of the historical society determines otherwise in each
13 case, only the income from the assets in the historical society trust fund is available
14 for expenditure. In this section, unless otherwise provided in the gift, grant, or
15 bequest, principal and income are determined as provided under s. ~~701.20~~ subch. XI
16 of ch. 701.

17 **SECTION 6c.** 46.27 (7g) (a) 5. a. of the statutes, as created by 2013 Wisconsin
18 Act 20, is renumbered 46.27 (7g) (a) 5. and amended to read:

19 46.27 (7g) (a) 5. “Property of a decedent” means all real and personal property
20 to which the client held any legal title or in which the client had any legal interest
21 immediately before death, to the extent of that title or interest, including assets
22 transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common,
23 survivorship, life estate, living revocable trust, or any other arrangement, excluding
24 an irrevocable trust.

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1 **SECTION 7.** 46.27 (7g) (a) 5. b. of the statutes, as created by 2013 Wisconsin Act
2 20, is repealed.

3 **SECTION 8.** 46.27 (7g) (c) 2m. b. of the statutes, as created by 2013 Wisconsin
4 Act 20, is amended to read:

5 46.27 (7g) (c) 2m. b. There is a presumption, ~~which may be rebutted by clear~~
6 ~~and convincing evidence consistent with s. 766.31, which may be rebutted,~~ that all
7 property in the estate of the nonclient surviving spouse was marital property held
8 with the client and that 100 percent of the property in the estate of the nonclient
9 surviving spouse is subject to the department's claim under subd. 1.

10 **SECTION 9.** 46.27 (7g) (c) 6m. b. of the statutes, as created by 2013 Wisconsin
11 Act 20, is amended to read:

12 46.27 (7g) (c) 6m. b. The department shall release the lien in the circumstances
13 described in s. ~~49.848 (5) (f)~~ 49.849 (4) (c) 2.

14 **SECTION 10.** 46.27 (7g) (g) of the statutes, as affected by 2013 Wisconsin Act 20,
15 is amended to read:

16 46.27 (7g) (g) The department shall promulgate rules establishing standards
17 for determining whether the application of this subsection would work an undue
18 hardship in individual cases. If the department determines that the application of
19 this subsection would work an undue hardship in a particular case, the department
20 shall waive application of this subsection in that case. ~~This paragraph does not apply~~
21 ~~with respect to claims against the estates of nonclient surviving spouses.~~

22 **SECTION 11.** 46.286 (7) of the statutes, as affected by 2013 Wisconsin Act 20,
23 is amended to read:

24 46.286 (7) **RECOVERY OF FAMILY CARE BENEFIT PAYMENTS.** The department shall
25 apply to the recovery from persons who receive the family care benefit, including by

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1 liens and affidavits and from estates, of correctly paid family care benefits, the
2 applicable provisions under ss. 49.496, ~~49.848~~, and 49.849.

3 **SECTION 12.** 49.45 (4m) (a) 3. b. of the statutes, as created by 2013 Wisconsin
4 Act 20, is repealed.

5 **SECTION 13.** 49.45 (4m) (a) 3. d. of the statutes, as created by 2013 Wisconsin
6 Act 20, is repealed.

7 **SECTION 14.** 49.45 (4m) (a) 3. e. of the statutes, as created by 2013 Wisconsin
8 Act 20, is repealed.

9 **SECTION 15.** 49.453 (2) (a) (intro.) of the statutes, as affected by 2013 Wisconsin
10 Act 20, is amended to read:

11 49.453 (2) (a) *Institutionalized individuals.* (intro.) Except as provided in sub.
12 (8), if an institutionalized individual or his or her spouse, or another person acting
13 on behalf of the institutionalized individual or his or her spouse, transfers assets;
14 ~~regardless of whether those assets, if retained, are excluded under 42 USC 1396p;~~
15 for less than fair market value on or after the institutionalized individual's look-back
16 date, the institutionalized individual is ineligible for medical assistance for the
17 following services for the period specified under sub. (3):

18 **SECTION 16.** 49.453 (2) (b) (intro.) of the statutes, as affected by 2013 Wisconsin
19 Act 20, is amended to read:

20 49.453 (2) (b) *Noninstitutionalized individuals.* (intro.) Except as provided in
21 sub. (8), if a noninstitutionalized individual or his or her spouse, or another person
22 acting on behalf of the noninstitutionalized individual or his or her spouse, transfers
23 assets; ~~regardless of whether those assets, if retained, are excluded under 42 USC~~
24 ~~1396p;~~ for less than fair market value on or after the noninstitutionalized

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1 individual's look-back date, the noninstitutionalized individual is ineligible for
2 medical assistance for the following services for the period specified under sub. (3):

3 **SECTION 17.** 49.453 (4c) (c) of the statutes, as created by 2013 Wisconsin Act
4 20, is repealed.

5 **SECTION 18c.** 49.496 (1) (cm) 1. of the statutes, as created by 2013 Wisconsin
6 Act 20, is renumbered 49.496 (1) (cm) and amended to read:

7 49.496 (1) (cm) "Property of a decedent" means all real and personal property
8 to which the recipient held any legal title or in which the recipient had any legal
9 interest immediately before death, to the extent of that title or interest, including
10 assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in
11 common, survivorship, life estate, living revocable trust, or any other arrangement,
12 excluding an irrevocable trust.

13 **SECTION 19.** 49.496 (1) (cm) 2. of the statutes, as created by 2013 Wisconsin Act
14 20, is repealed.

15 **SECTION 20.** 49.496 (3) (aj) 2. of the statutes, as created by 2013 Wisconsin Act
16 20, is amended to read:

17 49.496 (3) (aj) 2. There is a presumption, ~~which may be rebutted by clear and~~
18 ~~convincing evidence~~ consistent with s. 766.31, which may be rebutted, that all
19 property in the estate of a nonrecipient surviving spouse was marital property held
20 with the recipient and that 100 percent of the property in the estate of the
21 nonrecipient surviving spouse is subject to the department's claim under par. (a).

22 **SECTION 21.** 49.496 (3) (dm) 2. of the statutes, as created by 2013 Wisconsin Act
23 20, is amended to read:

24 49.496 (3) (dm) 2. The department shall release the lien in the circumstances
25 described in s. ~~49.848 (5) (f)~~ 49.849 (4) (c) 2.

SENATE BILL 384**SECTION 22**

1 **SECTION 22.** 49.496 (6m) of the statutes, as affected by 2013 Wisconsin Act 20,
2 is amended to read:

3 49.496 **(6m)** WAIVER DUE TO HARDSHIP. The department shall promulgate rules
4 establishing standards for determining whether the application of this section would
5 work an undue hardship in individual cases. If the department determines that the
6 application of this section would work an undue hardship in a particular case, the
7 department shall waive application of this section in that case. ~~This subsection does
8 not apply with respect to claims against the estates of nonrecipient surviving
9 spouses.~~

10 **SECTION 23.** 49.4962 of the statutes, as created by 2013 Wisconsin Act 20, is
11 repealed.

12 **SECTION 24c.** 49.682 (1) (e) 1. of the statutes, as created by 2013 Wisconsin Act
13 20, is renumbered 49.682 (1) (e) and amended to read:

14 49.682 (1) (e) “Property of a decedent” means all real and personal property to
15 which the client held any legal title or in which the client had any legal interest
16 immediately before death, to the extent of that title or interest, including assets
17 transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common,
18 survivorship, life estate, living revocable trust, or any other arrangement, excluding
19 an irrevocable trust.

20 **SECTION 25.** 49.682 (1) (e) 2. of the statutes, as created by 2013 Wisconsin Act
21 20, is repealed.

22 **SECTION 26.** 49.682 (2) (bm) 2. of the statutes, as created by 2013 Wisconsin Act
23 20, is amended to read:

24 49.682 (2) (bm) 2. There is a presumption, ~~which may be rebutted by clear and~~
25 ~~convincing evidence~~ consistent with s. 766.31, which may be rebutted, that all

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1 property in the estate of the nonclient surviving spouse was marital property held
2 with the client and that 100 percent of the property in the estate of the nonclient
3 surviving spouse is subject to the department's claim under par. (a).

4 **SECTION 27.** 49.682 (2) (fm) 2. of the statutes, as created by 2013 Wisconsin Act
5 20, is amended to read:

6 49.682 (2) (fm) 2. The department shall release the lien in the circumstances
7 described in s. ~~49.848 (5) (f)~~ 49.849 (4) (c) 2.

8 **SECTION 28.** 49.682 (5) of the statutes, as affected by 2013 Wisconsin Act 20,
9 is amended to read:

10 49.682 (5) The department shall promulgate rules establishing standards for
11 determining whether the application of this section would work an undue hardship
12 in individual cases. If the department determines that the application of this section
13 would work an undue hardship in a particular case, the department shall waive
14 application of this section in that case. ~~This subsection does not apply with respect~~
15 ~~to claims against the estates of nonclient surviving spouses.~~

16 **SECTION 29.** 49.848 of the statutes, as created by 2013 Wisconsin Act 20, is
17 repealed.

18 **SECTION 30c.** 49.849 (1) (d) 1. of the statutes, as created by 2013 Wisconsin Act
19 20, is renumbered 49.849 (1) (d) and amended to read:

20 49.849 (1) (d) "Property of a decedent" means all real and personal property to
21 which the recipient held any legal title or in which the recipient had any legal
22 interest immediately before death, to the extent of that title or interest, including
23 assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in
24 common, survivorship, life estate, living revocable trust, or any other arrangement,
25 excluding an irrevocable trust.

SENATE BILL 384**SECTION 31**

1 **SECTION 31.** 49.849 (1) (d) 2. of the statutes, as created by 2013 Wisconsin Act
2 20, is repealed.

3 **SECTION 32.** 49.849 (2) (c) of the statutes, as created by 2013 Wisconsin Act 20,
4 is amended to read:

5 49.849 (2) (c) There is a presumption, ~~which may be rebutted by clear and~~
6 ~~convincing evidence~~ consistent with s. 766.31, which may be rebutted, that all
7 property of the deceased nonrecipient surviving spouse was marital property held
8 with the recipient and that 100 percent of the property of the deceased nonrecipient
9 surviving spouse is subject to the department's claim under par. (a).

10 **SECTION 33.** 49.849 (4) (c) 2. of the statutes, as created by 2013 Wisconsin Act
11 20, is renumbered 49.849 (4) (c) 2. (intro.) and amended to read:

12 49.849 (4) (c) 2. (intro.) The department shall release the lien ~~in the~~
13 ~~circumstances described in s. 49.848 (5) (f).~~ if any of the following applies:

14 **SECTION 34.** 49.849 (4) (c) 2. a. of the statutes is created to read:

15 49.849 (4) (c) 2. a. The recipient's surviving spouse or child who is under age
16 21 or disabled sells the property for fair market value, as described in sub. (5c) (d),
17 during the spouse's or child's lifetime.

18 **SECTION 35.** 49.849 (4) (c) 2. b. of the statutes is created to read:

19 49.849 (4) (c) 2. b. The recipient's surviving spouse or child who is under age
20 21 or disabled transfers the property for less than fair market value, as described in
21 sub. (5c) (d), during the spouse's or child's lifetime, the transferee sells the property
22 during the spouse's or child's lifetime and places proceeds equal to the lesser of the
23 department's lien or the sale proceeds due to the seller in a trust or bond, and the
24 department is paid the secured amount upon the death of the recipient's spouse or
25 disabled child or when the recipient's child who is not disabled reaches age 21.

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1 **SECTION 36.** 49.849 (4) (c) 2. c. of the statutes is created to read:

2 49.849 (4) (c) 2. c. The surviving owner or transferee of the property, who is not
3 the recipient's surviving spouse or child who is under age 21 or disabled, sells the
4 property during the lifetime of the recipient's surviving spouse or child who is under
5 age 21 or disabled and places proceeds equal to the lesser of the department's lien or
6 the sale proceeds due to the seller in a trust or bond, and the department is paid the
7 secured amount upon the death of the recipient's spouse or disabled child or when
8 the recipient's child who is not disabled reaches age 21.

9 **SECTION 37.** 49.849 (7) of the statutes, as affected by 2013 Wisconsin Act 20,
10 is amended to read:

11 49.849 (7) **RULES FOR HARDSHIP WAIVER.** The department shall promulgate rules
12 establishing standards to determine whether the application of this section would
13 work an undue hardship in individual cases. If the department determines that the
14 application of this section would work an undue hardship in a particular case, the
15 department shall waive the application of this section in that case. This subsection
16 ~~does not apply with respect to collecting from the property of a decedent if the~~
17 ~~decedent is a deceased nonrecipient surviving spouse.~~

18 **SECTION 38.** 59.43 (1) (w) of the statutes, as created by 2013 Wisconsin Act 20,
19 is repealed.

20 **SECTION 39.** 223.07 (3) of the statutes is amended to read:

21 223.07 (3) If the depository institution at which a trust service office is to be
22 established has exercised trust powers, the trust company bank and the depository
23 institution shall enter into an agreement respecting those fiduciary powers to which
24 the trust company bank shall succeed and shall file the agreement with the division.
25 The trust company bank shall cause a notice of the filing, in a form prescribed by the

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1 division, to be published as a class 1 notice, under ch. 985, in the city, village or town
2 where the depository institution is located. After filing and publication, the trust
3 company bank establishing the office shall, as of the date the office first opens for
4 business, without further authorization of any kind, succeed to and be substituted
5 for the depository institution as to all fiduciary powers, rights, duties, privileges, and
6 liabilities of the depository institution in its capacity as fiduciary for all estates,
7 trusts, guardianships, and other fiduciary relationships of which the depository
8 institution is then serving as fiduciary, except as may be otherwise specified in the
9 agreement between the trust company bank and the depository institution. The
10 trust company bank shall also be deemed named as fiduciary in all writings,
11 including, ~~but not limited to,~~ wills, trusts, court orders, and similar documents and
12 instruments naming the depository institution as fiduciary, signed before the date
13 the trust office first opens for business, unless expressly negated by the writing or
14 otherwise specified in the agreement between the trust company bank and the
15 depository institution. On the effective date of the substitution, the depository
16 institution shall be released and absolved from all fiduciary duties and obligations
17 under such writings and shall discontinue its exercise of trust powers on all matters
18 not specifically retained by the agreement. This subsection does not effect a
19 discharge ~~in the manner of s. 701.16 (6) if required by a court under s. 701.0201 (1)~~
20 or other applicable statutes and does not absolve a depository institution exercising
21 trust powers from liabilities arising out of any breach of fiduciary duty or obligation
22 occurring prior to the date the trust service office first opens for business at the
23 depository institution. This subsection does not affect the authority, duties, or
24 obligations of a depository institution with respect to relationships which may be

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1 established without trust powers, including escrow arrangements, whether the
2 relationships arise before or after the establishment of the trust service office.

3 **SECTION 40.** 223.105 (1) (c) of the statutes is amended to read:

4 223.105 (1) (c) “Trustee” has the meaning designated in s. ~~701.01(8)~~ 701.0103
5 (28).

6 **SECTION 41.** 445.125 (1) (a) 1. of the statutes is amended to read:

7 445.125 (1) (a) 1. Except as provided in sub. (3m), whenever a person, referred
8 to in this subsection as the depositor, makes an agreement with another person
9 selling or offering for sale funeral or burial merchandise or services, referred to in
10 this subsection as the beneficiary, for the purchase of a casket, outer burial container
11 not preplaced into the burial excavation of a grave, combination casket–outer burial
12 container or other receptacle not described in sub. (4) (b) (a) 2. for the burial or other
13 disposition of human remains or for the furnishing of funeral or burial services,
14 either of which is intended to be provided for the final disposition of the body of a
15 person, referred to in this subsection as the potential decedent, wherein the use of
16 such personal property or the furnishing of such services is not immediately
17 required, all payments made under the agreement shall be and remain trust funds,
18 including interest and dividends if any, until occurrence of the death of the potential
19 decedent, unless the funds are sooner released upon demand to the depositor, after
20 written notice to the beneficiary.

21 **SECTION 42.** 445.125 (1) (a) 2. of the statutes is amended to read:

22 445.125 (1) (a) 2. ~~Notwithstanding s. 701.12(1), such~~ Such agreements may be
23 made irrevocable as to the first \$3,000 of the funds paid under the agreement by each
24 depositor.

25 **SECTION 43.** 445.125 (4) of the statutes is renumbered 445.125 (4) (a).

SENATE BILL 384**SECTION 44**

1 **SECTION 44.** 445.125 (4) (bn) of the statutes is created to read:

2 445.125 (4) (bn) Sections 701.0410 to 701.0418 do not apply to an agreement,
3 interest, or dividend that is made irrevocable under sub. (1) (a) 2. to 4.

4 **SECTION 45.** 700.16 (1) (c) of the statutes is amended to read:

5 700.16 (1) (c) If a future interest or trust is created by exercise of a power of
6 appointment, the permissible period is computed from the time the power of of
7 appointment is exercised if the power of appointment is a general power of
8 appointment as defined in s. ~~702.01 (3)~~ 702.02 (5) even if the general power of
9 appointment is exercisable only by will; ~~in.~~ In the case of other powers of
10 appointment the permissible period is computed from the time the power of
11 appointment is created but facts at the time the power of appointment is exercised
12 are considered in determining whether the power of alienation is suspended beyond
13 a life or lives in being at the time of creation of the power of appointment plus 30
14 years.

15 **SECTION 46.** 700.27 (1) (d), (2) (a) 2. and (b), (4) (e), (5) (b), (7) (a) and (8) (a) of
16 the statutes are amended to read:

17 700.27 (1) (d) “Power of appointment” has the meaning given in s. ~~702.01 (4)~~
18 702.02 (6).

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

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1 including contingent or future interests or the right to receive discretionary
2 distributions, by delivering a written 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 of appointment may not be made if partial disclaimer is expressly prohibited
7 by the inter vivos governing instrument or by the instrument exercising the power
8 of appointment.

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

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

19 (7) (a) *In general.* Subject to sub. (8), unless the inter vivos governing
20 instrument provides otherwise, either expressly or as construed from extrinsic
21 evidence, the disclaimed property devolves as if the disclaimant had died before the
22 effective date of the transfer under the inter vivos governing instrument. If the
23 disclaimed interest is a remainder contingent on surviving to the time of
24 distribution, the disclaimed interest passes as if the disclaimant had died
25 immediately before the time for distribution. If the disclaimant is an appointee

SENATE BILL 384**SECTION 46**

1 under a power of appointment exercised by an inter vivos governing instrument, the
2 disclaimed property devolves as if the disclaimant had died before the effective date
3 of the exercise of the power of appointment. If the disclaimant is a taker in default
4 under a power of appointment created by an inter vivos governing instrument, the
5 disclaimed property devolves as if the disclaimant had predeceased the donee of the
6 power of appointment.

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

17 **SECTION 47.** 701.01 of the statutes is repealed.

18 **SECTION 48.** Subchapter I (title) of chapter 701 [precedes 701.0101] of the
19 statutes is created to read:

20 **CHAPTER 701**

21 **SUBCHAPTER I**

22 **GENERAL PROVISIONS AND**

23 **DEFINITIONS**

24 **SECTION 49.** 701.0101 of the statutes is created to read:

25 **701.0101 Short title.** This chapter may be cited as the Wisconsin Trust Code.

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1 **SECTION 50.** 701.0102 of the statutes is created to read:

2 **701.0102 Scope.** This chapter applies to express, charitable or noncharitable,
3 and testamentary or living trusts, and any trust created pursuant to a statute,
4 judgment, or decree that requires the trust to be administered in the manner of an
5 express trust. This chapter does not apply to any of the following:

6 (1) A constructive or resulting trust.

7 (2) A guardianship.

8 (3) A conservatorship.

9 (4) A custodial arrangement made pursuant to the Uniform Transfers to
10 Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust Act under ss.
11 54.950 to 54.988.

12 (5) A common trust or a collective investment fund.

13 (6) A trust created by a depository agreement with a financial institution.

14 (7) A trust made in connection with a business transaction, including a trust
15 created under a bond indenture or collateral trust agreement or in connection with
16 a structured finance transaction, a common law trust under s. 226.14, or a business
17 trust.

18 (8) A voting trust.

19 (9) A fund maintained pursuant to court order in conjunction with a
20 bankruptcy proceeding, business liquidation, or class action lawsuit.

21 (10) A trust that is part of an employee benefit arrangement or an individual
22 retirement account.

23 (11) A trust established under a qualified tuition savings program or
24 education savings account.

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1 (12) A trust account maintained on behalf of a client or customer by a licensed
2 service professional, including a trust account maintained by an attorney or by a real
3 estate broker.

4 (13) Any other arrangement under which a person is a nominee or escrowee
5 for another.

6 **SECTION 51.** 701.0103 of the statutes is created to read:

7 **701.0103 Definitions.** In this chapter:

8 (1) “Action,” with respect to an act of a trustee, directing party, or trust
9 protector, includes a failure to act.

10 (2) “Ascertainable standard” means a standard relating to an individual’s
11 health, education, support, or maintenance within the meaning of section 2041 (b)
12 (1) (A) or 2514 (c) (1) of the Internal Revenue Code.

13 (3) “Beneficiary” means a person that satisfies any of the following:

14 (a) Has a present or future beneficial interest in a trust, vested or contingent.

15 (b) In a capacity other than that of trustee, trust protector, or a directing party,
16 holds a power of appointment over trust property.

17 (4) “Charitable trust” means a trust, or portion of a trust, created for a
18 charitable purpose described in s. 701.0405 (1). This subsection does not apply in s.
19 701.1201.

20 (5) “Conservator” means a person appointed by a court pursuant to s. 54.76.

21 (6) “Directed trust property” means all or any portion of the property of a trust
22 that is invested or managed by a directing party or is invested or managed at the
23 direction of a directing party and for which the trustee has no investment or
24 management responsibility.

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1 (7) “Directing party” means a person who, in a trust instrument or court order,
2 is granted a power to direct a trustee’s investment or distribution decisions or a
3 power to make investment or distribution decisions regarding trust property and the
4 power is granted to the person in a capacity other than as a trustee or a trust
5 protector. For purposes of this subsection, a power of appointment is not a power to
6 direct a trustee’s investment or distribution decisions or a power to make investment
7 or distribution decisions regarding trust property.

8 (8) “Environmental law” means a federal, state, or local law, rule, regulation,
9 or ordinance relating to protection or remediation of the environment.

10 (9) “General power of appointment” has the meaning given in s. 702.02 (5).

11 (10) “Guardian of the estate” means a person appointed by a court under s.
12 54.10 as a guardian of the estate of a minor or adult individual.

13 (11) “Guardian of the person” means a person appointed by a court under s.
14 54.10 as a guardian of the person of a minor or adult individual.

15 (12) “Incapacitated” means unable to receive and evaluate information
16 effectively or to communicate decisions to such an extent that the individual lacks
17 the capacity to manage his or her decisions.

18 (13) “Individual with a disability” means an individual who meets one of the
19 following tests:

20 (a) The individual receives social security, supplemental security income, or
21 medical assistance benefits on the basis of being an individual who is disabled, as
22 defined by the applicable program.

23 (b) The individual has a mental or physical impairment of a type and severity
24 that would cause the individual to be considered an individual who is disabled for
25 purposes of participating in the social security, supplemental security income, or

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1 medical assistance program, if the individual applied to be eligible for one of those
2 programs based on disability, and if the individual's education, work record, and
3 engagement in substantial gainful activity were disregarded. The fact that the
4 individual is age 65 or older does not bar the individual from being considered an
5 individual with a disability.

6 (14) "Interests of the beneficiaries" means the beneficial interests provided in
7 the terms of a trust.

8 (15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as
9 amended, or such subsequent federal revenue law as may be in effect from time to
10 time.

11 (16) "Jurisdiction," with respect to a geographic area, includes a state or
12 country.

13 (17) "Person" means an individual, corporation, business trust, estate, trust,
14 partnership, limited liability company, association, joint venture, government;
15 governmental subdivision, agency, or instrumentality; public corporation; or any
16 other legal or commercial entity.

17 (18) "Power of appointment" has the meaning given in s. 702.02 (6).

18 (19) "Power of withdrawal" means a presently exercisable general power of
19 appointment but does not include any of the following:

20 (a) A power exercisable by a trustee and limited by an ascertainable standard.

21 (b) A power exercisable by another person only upon consent of a trustee or of
22 a person holding an adverse interest.

23 (20) "Property" means anything that may be the subject of ownership, whether
24 real or personal or legal or equitable, or any interest therein.

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1 **(21)** “Qualified beneficiary” means a beneficiary who, on the date on which the
2 beneficiary’s qualification is determined, satisfies any of the following:

3 (a) Is a distributee or permissible distributee of trust income or principal.

4 (b) Without considering the existence or exercise of a power of appointment,
5 other than a power of appointment that has been irrevocably exercised and notice of
6 the exercise has been given to the trustee, would be any of the following:

7 1. A distributee or permissible distributee of trust income or principal if the
8 interests of the distributees described in par. (a) terminated on that date without
9 causing the trust to terminate.

10 2. A distributee or permissible distributee of trust income or principal if the
11 trust terminated on that date.

12 **(22)** “Revocable,” as applied to a trust, means that the trust can be revoked by
13 the settlor without the consent of the trustee or a person holding an adverse interest,
14 regardless of whether the settlor is incapacitated.

15 **(23)** “Settlor” means a person, including a testator, who creates or contributes
16 property to a trust. If more than one person creates or contributes property to a trust,
17 each person is a settlor of the portion of the trust property attributable to that
18 person’s contribution except to the extent another person has the power to revoke the
19 trust or withdraw that portion.

20 **(24)** “Special power of appointment” has the meaning given in s. 702.02 (7).

21 **(25)** “Spendthrift provision” means a term of a trust that restrains either or
22 both of a voluntary or involuntary transfer of a beneficiary’s interest.

23 **(26)** “State” means a state of the United States, the District of Columbia,
24 Puerto Rico, the United States Virgin Islands, any territory or insular possession

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1 subject to the jurisdiction of the United States, and an Indian tribe, band, or nation
2 recognized by federal law or formally acknowledged by a state.

3 (27) “Terms of a trust” means the manifestation of the settlor’s intent regarding
4 a trust’s provisions as expressed in the trust instrument or as may be established by
5 other evidence that would be admissible in a judicial proceeding.

6 (28) “Trustee” includes an original, additional, and successor trustee, and a
7 cotrustee.

8 (29) “Trust for an individual with a disability” means a trust that is established
9 for the benefit of an individual with a disability of any age, if the assets of the trust
10 would not be counted as resources of the individual with a disability for purposes of
11 eligibility for medical assistance under subch. IV of ch. 49, if he or she applied for
12 medical assistance and was otherwise eligible.

13 (30) “Trust instrument” means an instrument, including any amendments or
14 modifications to the instrument under s. 701.0111 or subch. IV, that is executed by
15 the settlor that contains terms of a trust or is created under a statute, judgment, or
16 decree that orders property to be transferred to a trustee to be administered for the
17 benefit of a beneficiary.

18 (31) “Trust protector” means a person who, in a trust instrument or court order,
19 is granted a power, other than a power of appointment, in a capacity other than as
20 a trustee or a directing party.

21 **SECTION 52.** 701.0104 of the statutes is created to read:

22 **701.0104 Knowledge.** (1) Subject to sub. (2), a person has knowledge of a fact
23 if any of the following applies:

24 (a) The person has actual knowledge of the fact.

25 (b) The person has received a notice or notification of the fact.

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1 (c) The person has reason to know the fact from all the facts and circumstances
2 known to the person at the time in question.

3 **(2)** An organization that conducts activities through employees has notice or
4 knowledge of a fact involving a trust only from the time the information was received
5 by an employee having responsibility to act for the trust, or would have been received
6 by the employee if the organization had exercised reasonable diligence. An
7 organization exercises reasonable diligence if it maintains reasonable routines for
8 communicating significant information to the employee having responsibility to act
9 for the trust and there is reasonable compliance with the routines. Reasonable
10 diligence does not require an employee of the organization to communicate
11 information unless the communication is part of the individual's regular duties or the
12 individual knows a matter involving the trust would be materially affected by the
13 information.

14 **SECTION 53.** 701.0105 of the statutes is created to read:

15 **701.0105 Default and mandatory rules.** (1) Except as otherwise provided
16 in the terms of the trust, this chapter governs the duties and powers of trustees,
17 directing parties, and trust protectors; relations among trustees, directing parties,
18 and trust protectors; and the rights and interests of beneficiaries.

19 **(2)** The terms of a trust prevail over any provision of this chapter except for the
20 following:

21 (a) The requirements for creating a trust.

22 (b) The duty of a trustee or a directing party to act in good faith and in
23 accordance with the terms and purposes of a trust instrument and the interests of
24 the beneficiaries.

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1 (c) The requirement that a trust and its terms be for the benefit of its
2 beneficiaries, and that the trust have a purpose that is lawful.

3 (d) The power of a court to modify or terminate a trust under ss. 701.0410 to
4 701.0416.

5 (e) The effect of a spendthrift provision and the rights of certain creditors and
6 assignees to reach a trust as provided in ss. 701.0501 to 701.0508.

7 (f) The power of the court under s. 701.0702.

8 (g) The power of the court under s. 701.0708 (2) to adjust a trustee's, directing
9 party's or trust protector's compensation specified in the terms of the trust.

10 (h) The effect of an exculpatory term under s. 701.1008.

11 (i) The rights under ss. 701.1010 to 701.1013 of a person other than a trustee
12 or beneficiary.

13 (j) Periods of limitation for commencing a judicial proceeding.

14 (k) The power of the court to take such action and exercise such jurisdiction as
15 may be necessary in the interests of justice.

16 (L) The jurisdiction of the court and venue for commencing a proceeding as
17 provided in ss. 701.0202, 701.0203, and 701.0204.

18 (m) The jurisdiction of the court under ss. 701.0807 (4), 701.0808 (9), and
19 701.0818 (12).

20 (n) The legal capacity under s. 701.0818 (2) (c) in which a trust protector who
21 is also serving as a trustee or a directing party must exercise any power granted to
22 the trust protector.

23 **SECTION 54.** 701.0106 of the statutes is created to read:

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1 **701.0106 Common law of trusts; principles of equity.** The common law
2 of trusts and principles of equity supplement this chapter, except to the extent
3 modified by this chapter or another statute of this state.

4 **SECTION 55.** 701.0107 of the statutes is created to read:

5 **701.0107 Governing law.** The meaning and effect of the terms of a trust are
6 determined by one of the following:

7 (1) The law of the jurisdiction designated in the trust instrument.

8 (2) In the absence of a controlling designation in the terms of a trust, the law
9 of the jurisdiction having the most significant relationship to the matter at issue.

10 **SECTION 56.** 701.0108 of the statutes is created to read:

11 **701.0108 Principal place of administration.** (1) The principal place of
12 administration of a trust is determined by any of the following:

13 (a) The designation in the trust instrument if any of the following applies:

14 1. A trustee's usual place of business is located in the jurisdiction designated
15 in the trust instrument.

16 2. A trustee is a resident of the jurisdiction designated in the trust instrument.

17 3. All or part of the administration of the trust occurs in the jurisdiction
18 designated in the trust instrument.

19 4. The trust instrument designates the jurisdiction where the settlor is
20 domiciled at the time the trust instrument is executed.

21 (b) If the principal place of administration is not validly designated in the trust
22 instrument under par. (a), the jurisdiction where the trustee's usual place of business
23 is located or, if the trustee has no place of business, the jurisdiction where the
24 trustee's residence is located.

25 (c) The jurisdiction selected by the trustee under sub. (3).

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1 **(2)** (a) If a corporate trustee is designated as the trustee of a trust and the
2 corporate trustee has offices in multiple states and performs administrative
3 functions for the trust in multiple states, the corporate trustee may designate the
4 corporate trustee's usual place of business by providing notice to the qualified
5 beneficiaries, trust protectors, and directing parties. The notice is valid and
6 controlling if the corporate trustee has a connection to the jurisdiction designated in
7 the notice, including an office where trustee services are performed and the actual
8 performance of some administrative functions for that particular trust in that
9 particular jurisdiction. The subsequent transfer of some of the administrative
10 functions of the corporate trustee to another state or states does not transfer the
11 usual place of business as long as the corporate trustee continues to maintain an
12 office and perform some administrative functions in the jurisdiction designated in
13 the notice and the corporate trustee does not transfer the principal place of
14 administration pursuant to sub. (4).

15 (b) If there are cotrustees, the trustee's usual place of business is determined
16 by any of the following:

17 1. If there is only one corporate trustee, the jurisdiction where the usual place
18 of business of the corporate trustee is located.

19 2. The jurisdiction where the usual place of business or the residence of any of
20 the cotrustees is located as agreed to by all of the cotrustees with notice to the
21 qualified beneficiaries, trust protectors, and directing parties.

22 3. If the cotrustees cannot agree on a jurisdiction under subd. 2., and subd. 1.
23 does not apply, by a court.

24 **(3)** Without precluding the right of the court to approve or disapprove a transfer
25 and subject to sub. (5), a trustee may, but has no affirmative duty to, transfer a trust's

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1 principal place of administration to another state or to a jurisdiction outside of the
2 United States.

3 (4) A trustee shall notify the qualified beneficiaries, trust protectors, and
4 directing parties of a proposed transfer of a trust's principal place of administration
5 not less than 30 days before initiating the transfer. The trustee shall include in the
6 notice of proposed transfer all of the following:

7 (a) The name of the jurisdiction to which the principal place of administration
8 is to be transferred.

9 (b) The mailing address, electronic mail address, if available, and telephone
10 number at the new location at which the trustee can be contacted.

11 (c) An explanation of the reasons for the proposed transfer.

12 (d) The date on which the proposed transfer is anticipated to occur.

13 (e) The date, not less than 30 days after the giving of the notice, by which a
14 qualified beneficiary, trust protector, or directing party must notify the trustee of an
15 objection to the proposed transfer.

16 (5) If a qualified beneficiary, trust protector, or directing party commences a
17 judicial proceeding objecting to the proposed transfer on or before the date specified
18 in the notice, a trustee may not act under sub. (3) without court approval to transfer
19 a trust's principal place of administration until the judicial proceeding is resolved or
20 withdrawn.

21 (6) In connection with a transfer of a trust's principal place of administration,
22 the trustee may transfer some or all of the trust property to a successor trustee
23 designated in the terms of the trust or appointed pursuant to s. 701.0704.

24 (7) The law of the trust's principal place of administration governs
25 administrative matters related to the trust.

SENATE BILL 384**SECTION 57**

1 **SECTION 57.** 701.0109 of the statutes is created to read:

2 **701.0109 Methods and waiver of notice.** (1) Notice to a person under this
3 chapter or the sending of a document to a person under this chapter shall be
4 accomplished in a manner reasonably suitable under the circumstances and likely
5 to result in receipt of the notice or document. Permissible methods of notice or for
6 sending a document include 1st class mail, personal delivery, delivery to the person's
7 last known place of residence or place of business, or a properly directed electronic
8 message.

9 (2) Notice otherwise required under this chapter or a document otherwise
10 required to be sent under this chapter does not need to be provided to a person whose
11 identity or location is unknown to and not reasonably ascertainable by a trustee.

12 (3) Notice under this chapter or the sending of a document under this chapter
13 may be waived by the person to be notified or sent the document.

14 (4) Notice of a judicial proceeding shall be given as provided in s. 701.0205.

15 **SECTION 58.** 701.0110 of the statutes is created to read:

16 **701.0110 Others treated as qualified beneficiaries.** (1) A charitable
17 organization that is expressly designated to receive distributions under the terms of
18 a charitable trust and that is not subject to a right of substitution by the settlor or
19 by any other party prior to the charitable organization becoming a distributee or
20 permissible distributee of trust income or principal has the rights of a qualified
21 beneficiary under this chapter if the charitable organization, on the date on which
22 the charitable organization's qualification is being determined, satisfies one of the
23 following:

24 (a) The charitable organization is a distributee or permissible distributee of
25 trust income or principal.

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1 (b) The charitable organization would be a distributee or permissible
2 distributee of trust income or principal upon the termination of the interests of other
3 distributees or permissible distributees then receiving or eligible to receive
4 distributions.

5 (c) The charitable organization would be a distributee or permissible
6 distributee of trust income or principal if the trust terminated on that date.

7 (2) A person appointed to enforce a trust created for the care of an animal or
8 another noncharitable purpose as provided in s. 701.0408 or 701.0409 has the rights
9 of a qualified beneficiary under this chapter.

10 (3) The attorney general of this state has the rights of a qualified beneficiary
11 with respect to a charitable trust having its principal place of administration in this
12 state only when the charitable interest to be represented would qualify under sub.
13 (1) but no charitable organization has been expressly designated to receive
14 distribution under the terms of a charitable trust.

15 **SECTION 59.** 701.0111 of the statutes is created to read:

16 **701.0111 Nonjudicial settlement agreements.** (1) In this section,
17 “interested person” means a person whose consent would be required in order to
18 achieve a binding settlement were the settlement to be approved by the court.

19 (2) An interested person may be represented under this section as provided in
20 subch. III.

21 (3) Except as provided in sub. (4), an interested person may enter into a binding
22 nonjudicial settlement agreement with respect to any matter involving a trust. A
23 binding nonjudicial settlement agreement is considered part of the trust instrument.

SENATE BILL 384**SECTION 59**

1 (4) A nonjudicial settlement agreement is valid only to the extent it includes
2 terms and conditions that could be properly approved by a court under this chapter
3 or other applicable law.

4 (5) Except as provided in sub. (4), matters that may be addressed by a
5 nonjudicial settlement agreement include any of the following:

6 (a) The interpretation or construction of the terms of the trust.

7 (b) The approval of a trustee's report or accounting or waiver of the preparation
8 of a trustee's report or accounting.

9 (c) Direction to a trustee to perform or refrain from performing a particular act
10 or the grant to a trustee of any necessary power.

11 (d) The resignation or appointment of a trustee.

12 (e) The determination of a trustee's compensation.

13 (f) The transfer of a trust's principal place of administration.

14 (g) The liability or release from liability of a trustee for an action relating to the
15 trust.

16 (h) The criteria for distribution to a beneficiary where the trustee is given
17 discretion.

18 (i) The resolution of disputes arising out of the administration or distribution
19 of the trust.

20 (j) An investment action.

21 (k) The appointment of and powers granted to a directing party or a trust
22 protector.

23 (L) Direction to a directing party or to a trust protector to perform or refrain
24 from performing a particular act or the grant of a power to a directing party or trust
25 protector.

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1 (d) Reviewing and approving a fee of a trustee, directing party, or trust
2 protector.

3 (e) Approving interim or final accounts.

4 (f) Ascertaining trust beneficiaries.

5 (g) Determining the existence or nonexistence of any immunity, power,
6 privilege, duty, or right.

7 (h) Requesting trustee instructions.

8 (i) Obtaining a declaratory judgment.

9 (j) Seeking reformation or other equitable relief with respect to a trust.

10 (k) Resolving a question arising in the administration of a trust, including a
11 question of construction of a trust instrument.

12 (L) Determining any other matter involving a trustee, directing party, trust
13 protector, or beneficiary.

14 **SECTION 63.** 701.0202 of the statutes is created to read:

15 **701.0202 Personal jurisdiction.** (1) A trustee, trust protector, or directing
16 party submits personally to the jurisdiction of the courts of this state regarding any
17 matter involving the trust by accepting an appointment as a trustee, trust protector,
18 or directing party of a trust having its principal place of administration in this state
19 or by continuing to serve as the trustee, trust protector, or directing party of a trust
20 after the principal place of administration of the trust is moved to this state.

21 (2) With respect to a beneficiary's interest in a trust, the beneficiary of a trust
22 having its principal place of administration in this state is subject to the jurisdiction
23 of the courts of this state regarding any matter involving the trust. By accepting a
24 distribution from a trust having its principal place of administration in this state,

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1 a recipient submits personally to the jurisdiction of the courts of this state regarding
2 any matter involving the trust.

3 (3) Notwithstanding any contractual provision or other agreement between
4 the trustee and the agent to the contrary, by accepting the delegation of a trust
5 function pursuant to s. 701.0807 or 881.01 (10), or otherwise, from the trustee of a
6 trust having a principal place of administration in this state, the agent submits
7 personally to the jurisdiction of the courts of this state regarding any matter
8 involving the trust.

9 (4) This section does not preclude other methods of obtaining jurisdiction over
10 a trustee, directing party, trust protector, beneficiary, or other person receiving
11 property from the trust.

12 **SECTION 64.** 701.0203 of the statutes is created to read:

13 **701.0203 Subject matter jurisdiction.** (1) The circuit court assigned to
14 exercise probate jurisdiction has exclusive jurisdiction of proceedings in this state
15 brought by a trustee, trust protector, directing party, or beneficiary concerning the
16 administration of a trust. Except as otherwise provided in this chapter, and as
17 applicable, the probate procedure described in ch. 879 applies to a proceeding
18 brought by a trustee, trust protector, directing party, or beneficiary concerning the
19 administration of a trust.

20 (2) This section does not preclude judicial or nonjudicial alternative dispute
21 resolution, including nonjudicial settlement agreements described in s. 701.0111.

22 **SECTION 65.** 701.0204 of the statutes is created to read:

23 **701.0204 Venue.** (1) Except as provided in sub. (2), venue for a judicial
24 proceeding involving a trust may be in the county of this state in which the trust's
25 principal place of administration is or will be located or, if the trust is a testamentary

SENATE BILL 384**SECTION 65**

1 trust and the decedent's estate is not yet closed, in the county of this state in which
2 the decedent's estate is being administered.

3 (2) If a trust has no trustee, venue for a judicial proceeding for the appointment
4 of a trustee is in any of the following:

5 (a) A county of this state in which a beneficiary resides.

6 (b) A county of this state in which any trust property is located.

7 (c) A county of this state in which the holder of trust property maintains an
8 office.

9 (d) If the trust is a testamentary trust and the decedent's estate is not yet
10 closed, in the county of this state in which the decedent's estate is being
11 administered.

12 (3) Venue for a judicial proceeding involving a trust is also governed by ss.
13 801.50 to 801.62, as applicable, and the proceeding is regarded as a civil action for
14 that purpose.

15 **SECTION 66.** 701.03 of the statutes is repealed.

16 **SECTION 67.** Subchapter III (title) of chapter 701 [precedes 701.0301] of the
17 statutes is created to read:

18 **CHAPTER 701**

19 **SUBCHAPTER III**

20 **REPRESENTATION**

21 **SECTION 68.** 701.0301 of the statutes is created to read:

22 **701.0301 Representation: basic effect.** (1) Notice, information, an
23 accounting, or a report given to a person who may represent and bind another person
24 under this subchapter is a substitute for and has the same effect as notice,
25 information, an accounting, or a report given directly to the other person.

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1 (2) The consent of a person who may represent and bind another person under
2 this subchapter is binding on the person represented unless the person represented
3 objects to the representation by notifying the trustee or the representative in writing
4 before the consent would otherwise have become effective.

5 (3) Except as provided in ss. 701.0411 and 701.0602, a person who under this
6 subchapter may represent a settlor who lacks capacity may receive notice and may
7 give a binding consent on the settlor's behalf.

8 (4) A settlor may not represent and bind a beneficiary under this subchapter
9 with respect to the termination or modification of a trust under s. 701.0411 (1).

10 (5) A trustee is not liable for giving notice, information, an accounting, or a
11 report to a beneficiary who is represented by another person under this subchapter
12 and nothing in this subchapter prohibits the trustee from giving notice, information,
13 an accounting, or a report to the person represented.

14 **SECTION 69.** 701.0302 of the statutes is created to read:

15 **701.0302 Representation by holder of general power of appointment.**

16 To the extent there is no conflict of interest between a holder of a general power of
17 appointment and a person represented with respect to the particular question or
18 dispute, the holder may represent and bind the person whose interests, as a
19 permissible appointee, a taker in default, or otherwise, are subject to the power.

20 **SECTION 70.** 701.0303 of the statutes is created to read:

21 **701.0303 Representation by fiduciaries, parents, or a person**

22 **appointed by a trustee.** Except as provided in s. 701.0411, to the extent there is
23 no conflict of interest between a representative and the person represented or among
24 those being represented with respect to a particular question or dispute, all of the
25 following apply:

SENATE BILL 384**SECTION 70**

1 (1) A conservator may represent and bind the estate that the conservator
2 controls.

3 (2) Notwithstanding ss. 54.20 (2) and 54.25 (2), a guardian of the estate may
4 represent and bind the ward and a guardian of the person may represent and bind
5 the ward if a guardian of the estate of the ward has not been appointed.

6 (3) An agent having authority to act with respect to the particular question or
7 dispute may represent and bind the principal.

8 (4) A trustee may represent and bind the beneficiaries of the trust, except as
9 to matters relating to the administration or distribution of the trust.

10 (5) A personal representative of a decedent's estate may represent and bind a
11 person interested in the estate, except as to matters relating to the administration
12 or distribution of the estate.

13 (6) A parent may represent and bind the parent's minor or unborn child. If a
14 disagreement arises between parents seeking to represent the same minor child or
15 unborn child, representation is determined as follows:

16 (a) If only one parent is a beneficiary of the trust that is the subject of the
17 representation, that parent may represent the minor child or unborn child.

18 (b) If both parents are beneficiaries of the trust that is the subject of the
19 representation, the parent who is related to the settlor, other than by reason of being
20 married to the other parent, may represent the minor child or unborn child.

21 (c) Subject to s. 701.0301 (4), if neither parent is a beneficiary of the trust that
22 is the subject of the representation, the parent who is the settlor of the trust that is
23 the subject of the representation may represent the minor child or unborn child.

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1 (d) If neither parent is a beneficiary or settlor of the trust that is the subject
2 of the representation, the parent who is related to the settlor, other than by reason
3 of being married to the other parent, may represent the minor child or unborn child.

4 (7) The order in which the representatives are listed in subs. (1) to (6) sets forth
5 the priority that each such representative has relative to the others.

6 (8) If there is no representation by a person having a substantially identical
7 interest under s. 710.0304, the trustee may appoint a representative to act if any of
8 the following applies:

9 (a) There is no one permitted to act under subs. (1) to (6).

10 (b) All of the people entitled to act under subs. (1) to (6) have declined to act.

11 (c) The trustee determines that the otherwise available representation under
12 subs. (1) to (6) might be inadequate.

13 **SECTION 71.** 701.0304 of the statutes is created to read:

14 **701.0304 Representation by person having substantially identical**
15 **interest.** Unless otherwise represented with respect to a particular question or
16 dispute, a minor, incapacitated, or unborn individual or a person whose identity or
17 location is unknown and not reasonably ascertainable may be represented by and
18 bound by another person having a substantially identical interest with respect to the
19 particular question or dispute, but only to the extent there is no conflict of interest
20 between the representative and the person represented with respect to the
21 particular question or dispute.

22 **SECTION 72.** 701.0305 of the statutes is created to read:

23 **701.0305 Appointment of representative by a court.** (1) If the court
24 determines that an interest is not represented under this subchapter, or that the
25 otherwise available representation might be inadequate, the court may appoint a

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1 representative or guardian ad litem to receive notice, give consent, and otherwise
2 represent, bind, and act on behalf of the person who is not represented or whose
3 representation might be inadequate. A representative or guardian ad litem may be
4 appointed to represent several persons or interests.

5 (2) A representative or guardian ad litem may act on behalf of the individual
6 represented with respect to any matter arising under this chapter, whether or not
7 a judicial proceeding concerning the trust is pending.

8 (3) In making decisions, a representative or guardian ad litem may consider
9 any general benefit accruing to the living members of the individual's family.

10 **SECTION 73.** 701.04 of the statutes is repealed.

11 **SECTION 74.** Subchapter IV (title) of chapter 701 [precedes 701.0401] of the
12 statutes is created to read:

13 **CHAPTER 701**

14 **SUBCHAPTER IV**

15 **CREATION, VALIDITY,**

16 **MODIFICATION, AND TERMINATION**

17 **OF TRUST**

18 **SECTION 75.** 701.0401 of the statutes is created to read:

19 **701.0401 Methods of creating a trust.** A trust may be created by any of the
20 following:

21 (1) A transfer of property to another person as trustee during the settlor's
22 lifetime, by will, or by other disposition taking effect upon the settlor's death.

23 (2) A declaration by an owner of property that the owner holds identifiable
24 property as trustee or declaration by any person who intends to create a trust with
25 the expectation that property of the person or others will be transferred to the trust.

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1 **(3)** An exercise of a power of appointment in favor of a trustee.

2 **(4)** A court pursuant to its statutory or equitable powers.

3 **(5)** A guardian of the estate or conservator acting with authority of the court,
4 a representative payee, or an agent under a power of attorney that expressly grants
5 authority to create the trust.

6 **(6)** Any other manner authorized by statute, regulation, common law, or other
7 provision having the effect of law.

8 **SECTION 76.** 701.0402 of the statutes is created to read:

9 **701.0402 Requirements for creation.** **(1)** A trust is created only if all of the
10 following are satisfied:

11 (a) The settlor of the trust has capacity, as defined in sub. (4), to create the trust,
12 unless the trust is created by court order or by an agent, guardian of the estate,
13 conservator, or representative payee with authority to act.

14 (b) The settlor indicates an intention to create the trust; or a statute,
15 regulation, common law, other provision having the effect of law, judgment, or decree
16 creates or authorizes the creation of a trust.

17 (c) The trust has a definite beneficiary or is one of the following:

18 1. A charitable trust.

19 2. A trust for the care of an animal, as provided in s. 701.0408.

20 3. A trust for a noncharitable purpose, as provided in s. 701.0409.

21 (d) The trustee has duties to perform.

22 (e) The same person is not the sole trustee and sole beneficiary.

23 **(2)** A beneficiary is definite if the beneficiary can be ascertained at the time the
24 trust is created or in the future.

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1 (3) A power in a trustee or trust protector to select a beneficiary from an
2 indefinite class is valid. If the power is not exercised within a reasonable time, the
3 power fails and the property subject to the power passes to the persons who would
4 have taken the property had the power not been conferred.

5 (4) The capacity required to create a trust is the same as the capacity to make
6 a will.

7 **SECTION 77.** 701.0403 of the statutes is created to read:

8 **701.0403 Trusts created in other jurisdictions.** A trust not created by will
9 is validly created if its creation complies with the law of the jurisdiction in which the
10 trust instrument was executed, or the law of the jurisdiction in which, at the time of
11 creation, any of the following was satisfied:

12 (1) The settlor was domiciled, had a place of abode, or was a national.

13 (2) A trustee was domiciled or had a place of business.

14 (3) Any trust property was located.

15 **SECTION 78.** 701.0404 of the statutes is created to read:

16 **701.0404 Trust purposes.** A trust may be created only to the extent its
17 purposes are lawful and possible to achieve. A trust and its terms must be for the
18 benefit of its beneficiaries or for a noncharitable, but otherwise valid, purpose as
19 described in s. 701.0409.

20 **SECTION 79.** 701.0405 of the statutes is created to read:

21 **701.0405 Charitable purposes; enforcement.** (1) A charitable trust may
22 be created for the relief of poverty, the advancement of education or religion, the
23 promotion of health or governmental or municipal purposes, or other purposes the
24 achievement of which is beneficial to the community.

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1 (2) If the terms of a charitable trust do not indicate a particular charitable
2 purpose or beneficiary, or designate persons or procedures for selecting charitable
3 purposes or beneficiaries, the court may select one or more charitable purposes or
4 beneficiaries. The selection must be consistent with the settlor's intention to the
5 extent it can be ascertained.

6 (3) The settlor of a charitable trust or his or her designees, whether identified
7 within or without the terms of the trust, or a charitable entity named in the trust
8 instrument, or the attorney general, or a cotrustee, or such other person the court
9 determines to have sufficient interest may maintain a proceeding to enforce the
10 trust.

11 **SECTION 80.** 701.0406 of the statutes is created to read:

12 **701.0406 Creation of trust induced by fraud, duress, or undue**
13 **influence.** A trust is void to the extent its creation was induced by fraud, duress,
14 or undue influence.

15 **SECTION 81.** 701.0407 of the statutes is created to read:

16 **701.0407 Evidence of oral trust.** Except as required by a statute other than
17 this chapter, a trust does not need to be evidenced by a trust instrument, but the
18 creation of an oral trust and its terms may be established only by clear and
19 convincing evidence.

20 **SECTION 82.** 701.0408 of the statutes is created to read:

21 **701.0408 Trust for care of animal.** (1) A trust may be created to provide
22 for the care of an animal alive during the settlor's lifetime. The trust terminates
23 upon the death of the animal or, if the trust was created to provide for the care of more
24 than one animal alive during the settlor's lifetime, upon the death of the last
25 surviving animal.

SENATE BILL 384**SECTION 82**

1 (2) A trust authorized by this section may be enforced by a person appointed
2 in the terms of the trust or, if no person is so appointed, by a person appointed by the
3 court. A person having an interest in the welfare of the animal may request the court
4 to appoint a person to enforce the trust or to remove a person appointed under this
5 subsection.

6 (3) Property of a trust authorized by this section may be applied only to its
7 intended use, except to the extent the court determines that the value of the trust
8 property exceeds the amount required for the intended use. Property not required
9 for the intended use must be distributed to the settlor, if then living, otherwise to the
10 settlor's successors in interest.

11 **SECTION 83.** 701.0409 of the statutes is created to read:

12 **701.0409 Noncharitable trust without ascertainable beneficiary.**
13 Except as otherwise provided in s. 701.0408 or by another statute, the following rules
14 apply:

15 (1) A trust may be created for a noncharitable purpose without a definite or
16 definitely ascertainable beneficiary or for a noncharitable but otherwise valid
17 purpose to be selected by the trustee.

18 (2) A trust may be created for maintaining, keeping in repair, and preserving
19 any grave, tomb, monument, gravestone, or any cemetery. Any cemetery authority
20 under s. 157.061 (2) may receive property in trust for any of the purposes specified
21 in this subsection and apply the income from the trust to the purpose stated in the
22 trust instrument.

23 (3) A trust authorized by this section may be enforced by a trust protector with
24 the power to enforce the trust. If there is not a trust protector with the power to

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1 enforce the trust, a court may appoint a trust protector with the power to enforce the
2 trust under s. 701.0818.

3 (4) Property of a trust authorized by this section may be applied only to its
4 intended use, except to the extent the court determines that the value of the trust
5 property exceeds the amount required for the intended use. Property not required
6 for the intended use must be distributed to the settlor, if then living, otherwise to the
7 settlor's successors in interest.

8 **SECTION 84.** 701.0410 of the statutes is created to read:

9 **701.0410 Modification or termination of trust; proceedings for**
10 **approval or disapproval. (1)** In addition to the methods of termination prescribed
11 by ss. 701.0411 to 701.0414, a trust terminates to the extent the trust is revoked or
12 expires pursuant to its terms, no purpose of the trust remains to be achieved, or the
13 purposes of the trust have become unlawful or impossible to achieve.

14 (2) A proceeding to approve or disapprove a proposed modification or
15 termination under ss. 701.0411 to 701.0416, or a proposed trust combination or
16 division under s. 701.0417, may be commenced by a trustee or beneficiary, and a
17 proceeding to approve or disapprove a proposed modification or termination under
18 s. 701.0411 may be commenced by the settlor. The settlor of a charitable trust may
19 maintain a proceeding to modify the trust under s. 701.0413. A trustee does not have
20 standing to oppose a proposed modification or termination commenced under s.
21 701.0411 (1).

22 (3) A trustee may not be compelled by a modification or termination under this
23 section or under ss. 701.0411 to 701.0416 to make distributions to or for any
24 beneficiary of a trust for an individual with a disability or to terminate the trust,
25 during the lifetime of the individual with a disability. A court may modify the terms

SENATE BILL 384**SECTION 84**

1 of a trust for an individual with a disability with retroactive effect or reform the
2 terms of such trust to achieve the settlor's objective or, if because of circumstances
3 not anticipated by the settlor, to otherwise further the purposes of the trust so that
4 it does not result in trust property being countable as resources or income of the
5 individual with a disability for purposes of public assistance.

6 **SECTION 85.** 701.0411 of the statutes is created to read:

7 **701.0411 Modification or termination of noncharitable irrevocable**
8 **trust by consent.** (1) A noncharitable irrevocable trust may be modified or
9 terminated, with or without court approval, upon consent of the settlor and all
10 beneficiaries, even if the modification or termination is inconsistent with a material
11 purpose of the trust. A settlor's power to consent to a trust's modification or
12 termination may be exercised by a representative under s. 701.0303 only if the
13 representative is specifically authorized to consent to a trust's modification or
14 termination under a power of attorney, the terms of the trust, or by a court under a
15 guardianship or conservatorship.

16 (2) (a) A noncharitable irrevocable trust may be terminated upon consent of all
17 of the beneficiaries if the court concludes that continuance of the trust is not
18 necessary to achieve any material purpose of the trust.

19 (b) A noncharitable irrevocable trust may be modified upon consent of all of the
20 beneficiaries if the court concludes that modification is not inconsistent with a
21 material purpose of the trust.

22 (3) A spendthrift provision in the terms of the trust is not presumed to
23 constitute a material purpose of the trust.

24 (4) A court may not compel a beneficiary to consent to a modification or
25 termination to satisfy a creditor of the beneficiary.

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1 (5) Upon termination of a trust under sub. (1) or (2), the trustee shall distribute
2 the trust property as agreed by the beneficiaries.

3 (6) If not all of the beneficiaries consent to a proposed modification or
4 termination of the trust under sub. (1) or (2), the modification or termination may
5 be approved by the court if the court is satisfied that all of the following apply:

6 (a) If all of the beneficiaries had consented, the trust could have been modified
7 or terminated under this section.

8 (b) The interests of a beneficiary who does not consent will be adequately
9 protected.

10 (7) A party proposing to modify or terminate a trust under sub. (1) or (2) shall
11 give notice of the proposed modification or termination to the settlor, if living, the
12 trustee, each trust protector, each directing party, and each beneficiary at least 30
13 days before the proposed effective date of the modification or termination.

14 **SECTION 86.** 701.0412 of the statutes is created to read:

15 **701.0412 Modification or termination because of unanticipated**
16 **circumstances or inability to administer trust effectively.** (1) The court may
17 modify the administrative or dispositive terms of a trust or terminate the trust if,
18 because of circumstances not anticipated by the settlor, modification or termination
19 will further the purposes of the trust. To the extent practicable, the court shall make
20 the modification in accordance with the settlor's probable intention.

21 (2) The court may modify the administrative terms of a trust if continuation
22 of the trust on its existing terms would be impracticable or wasteful or impair the
23 trust's administration.

24 (3) Upon termination of a trust under this section, the trustee shall distribute
25 the trust property in a manner consistent with the purposes of the trust.

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1 (4) A party petitioning the court for action under this section shall give notice
2 of the proceeding to the settlor, if living, the trustee, each trust protector, each
3 directing party, and the qualified beneficiaries.

4 **SECTION 87.** 701.0413 of the statutes is created to read:

5 **701.0413 Cy pres.** (1) The purpose of this section is to broaden the power of
6 the courts to make charitable gifts more effective. The court shall liberally apply the
7 cy pres doctrine.

8 (2) Except as provided in sub. (3), if a particular charitable purpose becomes
9 unlawful, impracticable, impossible to achieve, or wasteful, all of the following apply:

10 (a) The trust does not fail, in whole or in part.

11 (b) The trust property does not revert to the settlor or the settlor's successors
12 in interest.

13 (c) The court may apply the cy pres doctrine to modify or terminate the trust
14 by directing that the trust property be applied or distributed, in whole or in part, in
15 a manner consistent with the settlor's charitable purposes. In determining the
16 alternative plan for disposition of the property under this paragraph, the court shall
17 take into account current and future community needs in the general field of charity
18 within which the original charitable purpose falls, other charitable interests of the
19 settlor, the amount of principal and income available under the trust, and other
20 relevant factors. A person with standing to enforce the terms of a charitable trust
21 under s. 701.0405 (3) has standing to commence a proceeding under this paragraph.
22 The attorney general is a necessary party in all proceedings under this paragraph.

23 (3) A provision in the terms of a charitable trust that would result in
24 distribution of the trust property to a noncharitable beneficiary prevails over the
25 power of the court under sub. (2) to apply the cy pres doctrine to modify or terminate

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1 the trust only if, when the provision takes effect, the trust property is to revert to the
2 settlor and the settlor is still living.

3 (4) A party petitioning the court for action under this section shall give notice
4 to the settlor, if living, the trustee, each trust protector, each directing party, the
5 qualified beneficiaries, and any person with standing to enforce the terms of a
6 charitable trust under s. 701.0405 (3).

7 **SECTION 88.** 701.0414 of the statutes is created to read:

8 **701.0414 Modification or termination of uneconomic trust.** (1) In this
9 section:

10 (a) “Adjustment reference number” means the consumer price index for all
11 urban consumers, as published by the United States bureau of labor statistics, in
12 effect on January 1 of the year in which an adjustment is to be made in accordance
13 with sub. (3).

14 (b) “Base reference number” means the consumer price index for all urban
15 consumers, as published by the United States bureau of labor statistics, in effect on
16 January 1 of the base year.

17 (c) “Base year” means the year in which this paragraph takes effect [LRB
18 inserts date].

19 (2) After notice to the settlor, if living, each trust protector, each directing party,
20 and the qualified beneficiaries, the trustee of a trust consisting of trust property
21 having a total value less than \$100,000 or a revised applicable figure, as determined
22 under sub. (3), may terminate the trust if the trustee concludes that the value of the
23 trust property is insufficient to justify the cost of administration.

24 (3) The dollar amount specified in sub. (2) shall be adjusted to a revised
25 applicable figure on the 5th anniversary of the effective date of this subsection

SENATE BILL 384**SECTION 88**

1 [LRB inserts date], and every 5 years thereafter. The revised applicable figure shall
2 be determined as follows:

3 (a) Calculate the percentage change between the base reference number and
4 the adjustment reference number for the year in which the adjustment is being
5 made.

6 (b) 1. If the percentage change determined in par. (a) is a positive number,
7 determine the revised applicable figure as follows:

8 a. Multiply \$100,000 by the percentage change determined in par. (a),
9 expressed as a decimal.

10 b. Round the product under subd. 1. a. to the nearest \$1,000.

11 c. Add the value determined under subd. 1. b. to \$100,000.

12 2. If the percentage change determined in par. (a) is a negative number,
13 determine the revised applicable figure as follows:

14 a. Multiply \$100,000 by the absolute value of the percentage change
15 determined in par. (a), expressed as a decimal.

16 b. Round the product under subd. 2. a. to the nearest \$1,000.

17 c. Subtract the value determined under subd. 2. b. from \$100,000.

18 (4) The court may modify or terminate a trust or remove the trustee and
19 appoint a different trustee if it determines that the value of the trust property is
20 insufficient to justify the cost of administration even if the trust property has a total
21 value in excess of the amount described in sub. (2).

22 (5) Upon termination of a trust under this section, the trustee shall distribute
23 the trust property in a manner consistent with the purposes of the trust.

24 (6) This section does not apply to an easement for conservation or preservation.

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1 (7) A party petitioning the court for action under this section shall give notice
2 of the proceeding to the settlor, if living, the trustee, each trust protector, each
3 directing party, and the qualified beneficiaries.

4 **SECTION 89.** 701.0415 of the statutes is created to read:

5 **701.0415 Reformation to correct mistakes.** The court may reform the
6 terms of a trust, even if unambiguous, to conform the terms to the settlor's intent if
7 it is proved by clear and convincing evidence that both the settlor's intent and the
8 terms of the trust were affected by a mistake of fact or law, whether in expression or
9 inducement. A party petitioning the court for action under this section shall give
10 notice of the proceeding to the settlor, if living, the trustee, each trust protector, each
11 directing party, and the qualified beneficiaries.

12 **SECTION 90.** 701.0416 of the statutes is created to read:

13 **701.0416 Modification to achieve settlor's tax objectives.** To achieve the
14 settlor's tax objectives, the court may modify the terms of a trust in a manner that
15 is not contrary to the settlor's probable intent. The court may provide that the
16 modification has retroactive effect. A party petitioning the court for action under this
17 section shall give notice of the proceeding to the settlor, if living, the trustee, each
18 trust protector, each directing party, and the qualified beneficiaries.

19 **SECTION 91.** 701.0417 of the statutes is created to read:

20 **701.0417 Combination and division of trusts.** (1) After notice to each trust
21 protector, each directing party, and the qualified beneficiaries, a trustee may do any
22 of the following if the result does not impair rights of any beneficiary or adversely
23 affect achievement of any trust purposes:

24 (a) Combine 2 or more trusts into a single trust.

25 (b) Divide a trust into 2 or more separate trusts.

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1 (2) Subject to the terms of the trust, the trustee may take into consideration
2 differences in federal tax attributes and other pertinent factors in administering the
3 trust property of any separate account or trust, in making applicable tax elections,
4 and in making distributions. A separate trust created by severance under sub. (1)
5 (b) is treated as a separate trust for all purposes from the date on which the severance
6 is effective. The effective date of the severance may be retroactive to a date before
7 the date on which the trustee exercises the power.

8 (3) If a trustee combines 2 or more trusts into a single trust, the trustee shall
9 identify which trust is the surviving trust.

10 **SECTION 92.** 701.0418 of the statutes is created to read:

11 **701.0418 Trustee’s power to appoint assets to new trust. (1) DEFINITIONS.**

12 In this section:

13 (a) “Absolute power” means a power to invade trust assets for the benefit of a
14 beneficiary that is not limited by a specific or ascertainable standard, whether or not
15 the term “absolute” is used in the trust instrument. “Absolute power” includes a
16 power to invade trust assets for the best interests, welfare, comfort, or happiness of
17 a beneficiary.

18 (b) “First trust” means the trust from which assets are or may be appointed
19 under sub. (2).

20 (c) “Second trust” means the trust or trusts to which assets are or may be
21 appointed under sub. (2).

22 (2) **POWER TO APPOINT.** (a) Except as otherwise provided in this subsection and
23 in subs. (3) and (5), a trustee who has the power to invade the principal of a first trust
24 for the benefit of a beneficiary who is eligible to receive or entitled to the income of
25 the first trust or entitled to an annuity or unitrust payment from the first trust may

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1 exercise the power by appointing part or all of the assets of the first trust in favor of
2 a trustee of a 2nd trust if all of the following apply:

3 1. The appointment of assets does not reduce any fixed income, annuity, or
4 unitrust interest of a beneficiary.

5 2. If the trustee's power to invade income or principal of the first trust is limited
6 by a specific or ascertainable standard, the appointment of assets does not result in
7 the trustee of the 2nd trust or any other person having a power to invade the income
8 or principal of the 2nd trust that is broader than the trustee's power to invade income
9 or principal of the first trust. This subdivision does not apply if the 2nd trust is a trust
10 for an individual with a disability.

11 3. One of the following applies:

12 a. The beneficiaries of the first trust are the same as the beneficiaries of the 2nd
13 trust.

14 b. If the first trust grants the trustee the absolute power to invade principal,
15 the 2nd trust includes only all or some of the beneficiaries of the first trust.

16 (b) Paragraph (a) applies to a trustee whether or not the trustee has an absolute
17 power to invade principal and whether or not there is a current need to invade
18 principal under the terms of the first trust.

19 **(3) LIMITATIONS ON EXERCISE OF POWER.** A trustee may not appoint assets to a
20 2nd trust under sub. (2) if any of the following applies:

21 (a) The trust instrument creating the first trust expressly prohibits the trustee
22 from appointing assets of the first trust to a 2nd trust by reference to this section or
23 by using the term “decanting.”

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1 (b) A contribution to the first trust qualified for a marital or charitable
2 deduction for federal income, gift, or estate tax purposes under the Internal Revenue
3 Code and one of the following applies:

4 1. The 2nd trust contains a provision that, if included in the first trust, would
5 have prevented the first trust from qualifying for the deduction or would have
6 reduced the amount of the deduction.

7 2. The 2nd trust does not contain a provision that was contained in the first
8 trust that, if omitted from the first trust, would have prevented the first trust from
9 qualifying for the deduction or would have reduced the amount of the deduction.

10 (c) The trustee has a beneficial interest in the first trust unless the 2nd trust
11 is a trust for an individual with a disability, the trustee's only beneficial interest in
12 the first trust is as a remainder beneficiary, and the trustee's beneficial interest in
13 the 2nd trust is not greater than the trustee's beneficial interest in the first trust.

14 (d) The appointment of assets to a 2nd trust would impair currently exercisable
15 withdrawal rights of a beneficiary of the first trust and one of the following applies:

16 1. The withdrawal rights were granted to the beneficiary in a manner designed
17 to allow contributions subject to the withdrawal rights to qualify for the federal gift
18 tax annual exclusion.

19 2. The terms of the 2nd trust would impair gifts previously made to the first
20 trust from qualifying for the federal gift tax annual exclusion under section 2503 of
21 the Internal Revenue Code.

22 (e) The appointment of assets to the 2nd trust would violate a rule against
23 perpetuities applicable to the first trust or suspend a trustee's power of alienation
24 over assets of the first trust in a manner that would cause all or a portion of the 2nd
25 trust to be void.

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1 (f) The appointment of assets to the 2nd trust under sub. (2) would impair the
2 essential purpose of a trust for an individual with a disability.

3 (4) PERMISSIBLE TERMS OF 2ND TRUST. (a) Subject to pars. (b) to (d) and subs. (2),
4 (3), and (5), the trustee of the first trust may create a 2nd trust instrument that
5 includes terms that are intended to achieve any purpose, including terms that are
6 intended to do any of the following:

7 1. Correct a drafting error in the first trust.

8 2. Clarify potentially ambiguous terms contained in the first trust.

9 3. Change the age of distribution to a beneficiary of the first trust.

10 4. Extend the duration of the first trust.

11 5. Protect a beneficiary of the first trust, including protecting the beneficiary
12 from self-destructive behavior.

13 6. Allow the trustee of the 2nd trust to transfer trust assets to a community
14 trust. In this subdivision, “community trust” means a master trust that is
15 established and managed by a nonprofit organization that maintains sub-accounts
16 for individual beneficiaries that each satisfy the definition of a trust for an individual
17 with a disability.

18 7. Add or remove a spendthrift trust provision to the first trust.

19 8. Modify investment provisions contained in the first trust, including those
20 relating to permissible investments, use of investment advisors, or self-dealing
21 transactions.

22 9. Change a present or future trustee of the first trust, including by defining
23 the method by which a trustee or cotrustee may be appointed or removed and
24 replaced.

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1 10. Appoint a trust protector of the 2nd trust and define the powers of the trust
2 protector.

3 11. Appoint a directing party of the 2nd trust and define the powers of the
4 directing party.

5 12. Change the principal place of administration of the first trust.

6 13. Change the governing law of the first trust.

7 14. Allow for the division of the first trust into 2 or more trusts.

8 15. Allow for the merger of the first trust with one or more trusts.

9 16. Add or modify an exculpatory provision for a trustee, trust protector, or
10 directing party.

11 17. Obtain desirable tax treatment, as determined by the trustee of the first
12 trust, or to avoid adverse tax consequences, as determined by the trustee of the first
13 trust, including provisions relating to grantor trust status under sections 671 to 679
14 of the Internal Revenue Code.

15 18. Modify a power in the first trust to invade income and principal.

16 19. Modify or eliminate a general or special power of appointment in the first
17 trust.

18 (b) The trust instrument of the 2nd trust may include terms granting a
19 beneficiary a general or special power of appointment only if the trustee of the first
20 trust has the absolute power to invade income and principal.

21 (c) 1. The trust instrument of the 2nd trust may include terms that are intended
22 to change terms of the first trust that are applicable to a beneficiary who is an
23 individual with a disability only if the purpose of the change is to allow the
24 beneficiary to qualify or continue to be qualified to receive public assistance.

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1 2. Subdivision 1. applies regardless of whether the first trust includes specific
2 or ascertainable standards for distribution.

3 (d) The trust instrument of the 2nd trust may include a term that adopts or
4 expands an exculpatory provision relating to the trustee only if one of the following
5 applies:

6 1. Any trustee of the first trust who would benefit from the adoption of the term
7 in the 2nd trust abstains from the consideration and adoption of the term and the
8 trustees of the first trust who would not benefit from the adoption of the term adopt
9 the trust instrument of the 2nd trust.

10 2. A court approves the trust instrument of the 2nd trust.

11 **(5) PROCEDURAL MATTERS.** (a) A trustee shall appoint assets to a 2nd trust under
12 sub. (2) by an instrument in writing that is signed and acknowledged by the trustee
13 and shall include the written instrument with the records of the first and 2nd trusts.
14 A trustee may appoint assets to a 2nd trust under sub. (2) upon notice, without court
15 approval, under the procedure described in par. (b), or with court approval, under the
16 procedure described in par. (c).

17 (b) 1. If a trustee chooses to proceed without a court order, the trustee shall give
18 notice of the manner in which the trustee intends to appoint assets to a 2nd trust
19 under sub. (2) to all of the following:

20 a. The qualified beneficiaries of the first trust.

21 b. Each trust protector appointed under the terms of the first trust.

22 c. Each directing party appointed under the terms of the first trust.

23 d. The settlor of the first trust, if living.

24 2. To satisfy the trustee's notice obligation under this paragraph, a trustee shall
25 provide each person entitled to receive notice under subd. 1. all of the following:

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1 a. A copy of the proposed written instrument under which the trustee will
2 appoint assets to a 2nd trust.

3 b. The proposed effective date of the appointment.

4 c. A copy of the trust instrument of the first trust.

5 d. A copy of the trust instrument of the 2nd trust.

6 3. A trustee may not appoint assets to the 2nd trust until 30 days after the
7 trustee provides notice as required under this paragraph unless every person who
8 is entitled to receive notice under subd. 1. waives the 30-day notice period by
9 delivering a signed written instrument to the trustee. A person's waiver of the
10 30-day notice period does not constitute that person's consent to the trustee's
11 appointment of assets to a 2nd trust.

12 4. If a person entitled to receive notice under subd. 1. delivers a written
13 objection to the trustee before the effective date of the appointment of assets to a 2nd
14 trust, the trustee may not appoint the assets to a 2nd trust, as specified in the
15 trustee's notice, without obtaining court approval under par. (c) unless the written
16 objection is withdrawn.

17 5. If the trustee does not receive a written objection from any person entitled
18 to receive notice under subd. 1. before the effective date of the appointment of assets
19 to the 2nd trust or all written objections to the proposed appointment of assets to the
20 2nd trust are withdrawn, the trustee may appoint the assets to a 2nd trust, as
21 specified in the notice.

22 (c) 1. If a trustee chooses to proceed with court approval, including after
23 receiving a written objection to a proposed appointment of assets, the trustee shall
24 petition a court to approve a proposed appointment of assets to a 2nd trust under sub.
25 (2). The trustee shall provide notice of the petition to all qualified beneficiaries of the

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1 first trust, each trust protector appointed under the first trust, each directing party
2 appointed under the first trust, and to the settlor of the first trust, if living. The
3 trustee shall include in the notice of the petition the proposed effective date of the
4 appointment of assets to a 2nd trust. The trustee shall also provide to each person
5 who is entitled to receive notice under this paragraph a copy of the proposed
6 instrument under which the trustee will appoint assets to a 2nd trust, the proposed
7 effective date of the appointment, a copy of the trust instrument of the first trust, and
8 a copy of the trust instrument of the 2nd trust.

9 2. If a person who is entitled to receive notice under subd. 1. files an objection
10 with the court, in determining whether to grant or deny a petition under subd. 1., the
11 court shall consider all of the following:

12 a. The purpose of the proposed appointment of assets under sub. (2).

13 b. The reasons for any objection made by a person entitled to receive notice
14 under subd. 1.

15 c. Changes in circumstances that have occurred since the creation of the first
16 trust.

17 d. Whether the appointment of assets under sub. (2) complies with the
18 requirements of this section.

19 3. If no person who is entitled to receive notice under subd. 1. files an objection
20 with the court or any objection that has been filed with the court is withdrawn, the
21 court shall enter an order approving the appointment of assets under sub. (2) as set
22 forth in the trustee's notice unless the court determines that the appointment of
23 assets does not comply with the requirements of this section.

24 **(6) SUBSEQUENTLY DISCOVERED ASSETS.** (a) The appointment of all of the assets
25 of the first trust in favor of the trustee of the 2nd trust includes subsequently

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1 discovered assets otherwise belonging to the first trust and assets paid to or acquired
2 by the first trust subsequent to the appointment in favor of the 2nd trust.

3 (b) Except as otherwise provided by the trustee of the first trust, the
4 appointment of part but not all of the assets of the first trust in favor of the 2nd trust
5 does not include subsequently discovered assets belonging to the first trust or assets
6 paid to or acquired by the first trust subsequent to the appointment in favor of the
7 2nd trust, which remain the assets of the first trust.

8 (7) LIABILITY. (a) This section does not create or imply a duty on a trustee to
9 appoint assets to a 2nd trust under sub. (2). A trustee that does not appoint assets
10 to a 2nd trust under sub. (2) is not liable for the failure to do so.

11 (b) A trustee who appoints assets to a 2nd trust under sub. (2) is not liable to
12 any beneficiary for any loss related to the appointment unless the trustee did not
13 appoint the assets in good faith.

14 (8) MISCELLANEOUS PROVISIONS. (a) The appointment of assets to a 2nd trust
15 under sub. (2) is not an exercise of a general power of appointment.

16 (b) A trustee may appoint assets to a 2nd trust under sub. (2) even if the first
17 trust includes a spendthrift clause or a provision that prohibits amendment or
18 revocation of the trust.

19 (c) This section does not limit a trustee who has a power to invade principal to
20 appoint property in further trust to the extent the power arises under the terms of
21 the first trust or under any other section of this chapter or under another provision
22 of law or under common law.

23 (d) The restriction relating to a trustee under sub. (3) (c) does not preclude a
24 cotrustee who does not have a beneficial interest in the first trust from appointing
25 assets to a 2nd trust under sub. (2) even if the terms of the first trust, applicable law,

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1 or other circumstances would otherwise require the majority or unanimous action of
2 the trustees of the first trust.

3 (e) For purposes of this section, if beneficiaries of a first trust are defined as a
4 class of persons, the class shall include any person who falls within the class of
5 persons after the trustee appoints assets to the 2nd trust.

6 (f) Notwithstanding s. 701.0103 (23), a trustee of a first trust who appoints
7 assets to a 2nd trust under sub. (2) or creates a 2nd trust instrument under sub. (4)
8 is not the settlor of the 2nd trust.

9 (g) To the extent a directing party or trust protector has the power to invade
10 the principal of a first trust, as described in sub. (2), this section applies to the
11 directing party or trust protector as if the directing party or trust protector is a
12 trustee.

13 **SECTION 93.** 701.05 of the statutes is repealed.

14 **SECTION 94.** Subchapter V (title) of chapter 701 [precedes 701.0501] of the
15 statutes is created to read:

16 **CHAPTER 701**

17 **SUBCHAPTER V**

18 **CREDITOR'S CLAIMS; SPENDTHRIFT**

19 **AND DISCRETIONARY TRUSTS**

20 **SECTION 95.** 701.0501 of the statutes is created to read:

21 **701.0501 Rights of beneficiary's creditor or assignee.** (1) (a) To the
22 extent a beneficiary's interest is not protected by a spendthrift provision, the court
23 may authorize a judgment creditor or an assignee of the beneficiary to reach the
24 beneficiary's interest by attachment of present or future distributions to or for the

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1 benefit of the beneficiary or other means. The court may limit the award to such
2 relief as is appropriate under the circumstances.

3 (b) This subsection does not apply to a trust for an individual with a disability.

4 (2) A trustee is not liable to any creditor of a beneficiary for any distributions
5 made to or for the benefit of the beneficiary if any of the following applies:

6 (a) The beneficiary's interest is protected by a spendthrift provision.

7 (b) The trust is a trust for an individual with a disability.

8 **SECTION 96.** 701.0502 of the statutes is created to read:

9 **701.0502 Spendthrift provision.** (1) A spendthrift provision is valid only
10 if any of the following applies:

11 (a) The beneficiary is a person other than the settlor and is not treated as the
12 settlor under s. 701.0505 (2).

13 (b) The trust is a trust for an individual with a disability.

14 (2) Subject to sub. (1), a term of a trust providing that the interest of a
15 beneficiary is held subject to a spendthrift trust, or words of similar import, restrains
16 both a voluntary and involuntary transfer of the beneficiary's interest.

17 (3) A beneficiary may not transfer an interest in a trust in violation of a valid
18 spendthrift provision and, except as otherwise provided in this subchapter, a creditor
19 or assignee of the beneficiary may not attach, garnish, execute on, or otherwise reach
20 the interest or a distribution by the trustee before its receipt by the beneficiary.

21 (4) Real property or tangible personal property that is owned by the trust but
22 that is made available for a beneficiary's occupancy or use in accordance with the
23 trustee's authority under the trust instrument may not be considered to have been
24 distributed by the trustee or received by the beneficiary for purposes of allowing a
25 creditor or assignee of the beneficiary to reach the property.

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1 **SECTION 97.** 701.0503 (title) of the statutes is created to read:

2 **701.0503 (title) Exceptions to spendthrift provision.**

3 **SECTION 98.** 701.0504 of the statutes is created to read:

4 **701.0504 Discretionary trusts; effect of standard. (1)** For purposes of this
5 subchapter, and except as provided in sub. (3), a beneficiary's interest in a trust that
6 is subject to the trustee's discretion does not constitute an interest in property or an
7 enforceable right even if the discretion is expressed in the form of a standard of
8 distribution or the beneficiary is then serving as sole trustee or cotrustee.

9 **(2)** Except as provided in this subchapter, a creditor or other claimant may not
10 attach present or future distributions from a beneficiary's interest in property or an
11 enforceable right, obtain an order from a court forcing the judicial sale of the interest
12 or compelling the trustee to make distributions, or reach the interest or right by any
13 other means, even if the trustee has abused the trustee's discretion.

14 **(3)** Subsections (1) and (2) do not apply if a beneficiary is acting as sole trustee
15 of a trust for his or her benefit and his or her discretion to make distributions to
16 himself or herself is not limited by an ascertainable standard or the consent of a party
17 holding an adverse interest to the beneficiary.

18 **(4) (a)** Except as provided in par. (b), this section does not limit the right of a
19 beneficiary to maintain a judicial proceeding against a trustee for an abuse of
20 discretion or failure to comply with a standard for distribution.

21 **(b)** The right of a beneficiary described in par. (a) may not be exercised by a
22 creditor.

23 **SECTION 99.** 701.0505 of the statutes is created to read:

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1 **701.0505 Creditor’s claim against settlor.** (1) (a) Whether or not the terms
2 of a trust include a spendthrift provision and except as provided in par. (b), the
3 following rules apply to claims of a settlor’s creditors:

4 1. During the lifetime of the settlor, the property of a revocable trust is subject
5 to claims of the settlor’s creditors.

6 2. With respect to an irrevocable trust that is not a trust for an individual with
7 a disability, upon application of a judgment creditor of the settlor, the court may, if
8 the trust instrument requires or authorizes the trustee to make payments of income
9 or principal to or for the settlor, order the trustee to satisfy part or all of the judgment
10 out of part or all of the payments of income or principal as they are due, presently
11 or in the future, or which are payable in the trustee’s discretion. If a trust has more
12 than one settlor, the amount the judgment creditor of a particular settlor may reach
13 may not exceed the settlor’s interest in the trust.

14 3. After the death of a settlor, and subject to the settlor’s right to direct the
15 source from which liabilities will be paid, the property of a trust that was revocable
16 at the settlor’s death is subject to claims of the settlor’s creditors, costs of
17 administration of the settlor’s estate, the expenses of the settlor’s funeral and
18 disposal of remains, and statutory allowances to a surviving spouse and children to
19 the extent the settlor’s probate estate is inadequate to satisfy those claims, costs,
20 expenses, and allowances.

21 (b) Assets of a trust that are exempt from claims of creditors under other
22 statutes are not subject to par. (a).

23 **(2)** For purposes of this subchapter, all of the following apply:

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1 (a) During the period the power may be exercised, the holder of a power of
2 withdrawal is treated in the same manner as the settlor of a revocable trust to the
3 extent of the property subject to the power.

4 (e) 1. Contributions to the following trusts are not considered to have been
5 contributed by the settlor:

6 a. An irrevocable marital trust that is treated as qualified terminable interest
7 property under section 2523 (f) of the Internal Revenue Code if after the death of the
8 settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that
9 receives property from the trust.

10 b. An irrevocable marital trust that is treated as a general power of
11 appointment trust under section 2523 (e) of the Internal Revenue Code if after the
12 death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable
13 trust that receives property from the trust.

14 c. An irrevocable trust for the settlor's spouse if after the death of the settlor's
15 spouse the settlor is a beneficiary of the trust or an irrevocable trust that receives
16 property from the trust.

17 d. An irrevocable trust for the benefit of a person, the settlor of which is the
18 person's spouse, regardless of whether or when the person was the settlor of an
19 irrevocable trust for the benefit of that spouse.

20 e. An irrevocable trust for the benefit of a person to the extent that the property
21 of the trust was subject to a general power of appointment in another person.

22 2. A person who would otherwise be treated as a settlor of a trust described in
23 subd. 1. a. to e. is not treated as a settlor of the trust.

24 3. For purposes of this paragraph, notwithstanding s. 701.0103 (3),
25 "beneficiary" means a person who satisfies s. 701.0103 (3) (a) or (b) and who is

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1 designated in a trust instrument or through the exercise of a special or general power
2 of appointment.

3 (3) Any order entered by a court under this section is subject to modification
4 upon application of an interested person.

5 **SECTION 100.** 701.0506 of the statutes is created to read:

6 **701.0506 Overdue distribution.** (1) In this section, “mandatory
7 distribution” means a distribution of income or principal that the trustee is required
8 to make to a beneficiary under the terms of the trust, including a distribution upon
9 termination of the trust. “Mandatory distribution” does not include a distribution
10 subject to the exercise of the trustee’s discretion even if any of the following applies:

11 (a) The discretion is expressed in the form of a standard of distribution.

12 (b) The terms of the trust authorizing a distribution couple language of
13 discretion with language of direction.

14 (2) Whether or not a trust contains a spendthrift provision, a creditor or
15 assignee of a beneficiary may reach a mandatory distribution of income or principal,
16 including a distribution upon termination of the trust, if the trustee has not made
17 the distribution to the beneficiary within a reasonable time after the designated
18 distribution date.

19 **SECTION 101.** 701.0507 of the statutes is created to read:

20 **701.0507 Personal obligations of trustee.** Trust property is not subject to
21 personal obligations of the trustee, even if the trustee becomes insolvent or
22 bankrupt.

23 **SECTION 102.** 701.06 (title), (1), (2), (3) and (6) (title) and (a) of the statutes are
24 repealed.

SENATE BILL 384**SECTION 103**

1 **SECTION 103.** 701.06 (4) of the statutes is renumbered 701.0503 (1), and
2 701.0503 (1) (intro.) and (b), as renumbered, are amended to read:

3 701.0503 (1) CLAIMS FOR CHILD SUPPORT. (intro.) Notwithstanding any provision
4 ~~in the creating instrument or subs. (1) and (2) s. 701.0502~~, upon application of a
5 person having a valid order directing a beneficiary to make payment for support of
6 the beneficiary's child, the court may do any of the following:

7 (b) ~~In If the case of a beneficiary under a discretionary~~ may receive income or
8 principal at the trustee's discretion under the trust, order the trustee to satisfy part
9 or all of the claim out of part or all of future payments of income or principal ~~which~~
10 ~~that~~ are to be made pursuant to the exercise of the trustee's discretion in favor of such
11 beneficiary.

12 **SECTION 104.** 701.06 (5) (intro.) and (a) of the statutes are renumbered
13 701.0503 (2) (intro.) and (a) and amended to read:

14 701.0503 (2) CLAIMS FOR PUBLIC SUPPORT. (intro.) Notwithstanding any
15 ~~provision in the creating instrument or subs. (1) and (2) s. 701.0502 and except as~~
16 provided in sub. (3), if the settlor is legally obligated to pay for the public support of
17 a beneficiary under s. 46.10, 49.345, or 301.12 or the beneficiary is legally obligated
18 to pay for the beneficiary's public support or ~~that~~ for support furnished to the
19 beneficiary's spouse or minor child under s. 46.10, 49.345, or 301.12, upon
20 application by the appropriate state department or county official, the court may do
21 any of the following:

22 (a) If such ~~the~~ the beneficiary is entitled to receive income or principal under the
23 trust, order the trustee to satisfy part or all of the liability out of part or all of
24 payments of income or principal as they are due, presently or in the future;

SENATE BILL 384**SECTION 105**

1 **SECTION 105.** 701.06 (5) (b) of the statutes is renumbered 701.0503 (2) (b) 1. and
2 amended to read:

3 701.0503 (2) (b) 1. Except as otherwise provided in par. (e), in the case of a
4 beneficiary under a discretionary trust subd. 2., if the beneficiary may receive income
5 or principal at the trustee's discretion under the trust, order the trustee to satisfy
6 part or all of the liability out of part or all of future payments of income or principal
7 which are to be made pursuant to the exercise of the trustee's discretion in favor of
8 such the beneficiary;.

9 **SECTION 106.** 701.06 (5) (c) of the statutes is renumbered 701.0503 (2) (b) 2. and
10 amended to read:

11 701.0503 (2) (b) 2. In the case of a beneficiary under a discretionary trust who
12 may receive income or principal of the trust at the trustee's discretion and who is a
13 settlor or a spouse or minor child of the settlor, order the trustee to satisfy part or all
14 of the liability without regard to whether the trustee has then exercised or may
15 thereafter exercise the trustee's discretion in favor of the beneficiary.

16 **SECTION 107.** 701.06 (5m) of the statutes is renumbered 701.0503 (3) and
17 amended to read:

18 701.0503 (3) ~~TRUST FOR DISABLED~~ AN INDIVIDUAL WITH A DISABILITY. Subsection
19 (5) (2) does not apply to any trust that is established for the benefit of an individual
20 who has with a disability which has continued or can be expected to continue
21 indefinitely, substantially impairs the individual from adequately providing for his
22 or her own care or custody, and constitutes a substantial handicap to the afflicted
23 individual if the trust does not result in ineligibility for public assistance under ch.
24 49. A trustee of a trust which is exempt from claims for public support under this

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1 subsection shall notify the county department under s. 46.215 or 46.22 in the county
2 where the disabled beneficiary resides of the existence of the trust.

3 **SECTION 108.** 701.06 (6) (b) of the statutes is renumbered 701.0505 (2) (b), and
4 701.0505 (2) (b) 2., as renumbered, is amended to read:

5 701.0505 (2) (b) 2. The beneficiary's right to withdraw part of the trust
6 property, to the extent that the value of the property affected by the lapse, waiver,
7 or release in any year does not exceed the greater of the amount in following:

8 a. ~~Section~~ The amount referenced in section 2041 (b) (2) or 2514 (e), of the
9 Internal Revenue Code of 1986.

10 b. ~~Section~~ The amount referenced in section 2503 (b), of the Internal Revenue
11 Code of 1986 for each individual other than the beneficiary who makes a transfer to
12 the trust or who is deemed to make a transfer to the trust pursuant to an election to
13 split gifts under section 2513 (a) of the Internal Revenue Code.

14 **SECTION 109.** 701.06 (6) (c) of the statutes is renumbered 701.0505 (2) (c), and
15 701.0505 (2) (c) (intro.), 1. a. and b. and 4., as renumbered, are amended to read:

16 701.0505 (2) (c) (intro.) A beneficiary of a trust is not a settlor, has not made a
17 voluntary or involuntary transfer of the beneficiary's interest in the trust, ~~or~~ and
18 does not have the power to make a voluntary or involuntary transfer of the
19 beneficiary's interest in the trust solely because the beneficiary holds ~~or~~, exercises,
20 or allows in any capacity, any of the following:

21 1. a. Exercisable only ~~on~~ with the consent of another person holding an interest
22 adverse to the beneficiary's interest.

23 b. Limited by an ascertainable standard, ~~such as health, education, support,~~
24 ~~or maintenance~~ of the beneficiary.

25 4. A presently exercisable right described in ~~par. (b) 2.~~ sub. (2) (b).

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1 instrument executed before the effective date of this subsection ... [LRB inserts
2 date].

3 (2) If a revocable trust is created or funded by more than one settlor, all of the
4 following apply:

5 (a) To the extent the trust consists of marital or community property, the trust
6 may be revoked by either spouse acting alone but may be amended only by joint
7 action of both spouses.

8 (b) To the extent the trust consists of property other than marital or community
9 property, each settlor may revoke or amend the trust with regard to the portion of
10 the trust property attributable to that settlor's contribution.

11 (c) Upon the revocation or amendment of the trust by fewer than all of the
12 settlors, the trustee shall promptly notify the other settlors of the revocation or
13 amendment.

14 (3) A settlor may revoke or amend a revocable trust by any of the following
15 means:

16 (a) By substantial compliance with a method provided in the terms of the trust.

17 (b) If the terms of the trust do not provide a method, by any of the following
18 means:

19 1. A later will or codicil that expressly refers to the trust or specifically devises
20 property that would otherwise have passed according to the terms of the trust.

21 2. Any other method manifesting clear and convincing evidence of the settlor's
22 intent.

23 (4) Upon revocation of a revocable trust, the trustee shall transfer the trust
24 property as the settlor directs. However, with respect to marital or community

SENATE BILL 384**SECTION 115**

1 property, the trustee shall transfer the property to both spouses as marital or
2 community property.

3 (5) A settlor's powers with respect to revocation, amendment, or distribution
4 of trust property may be exercised by an agent under a power of attorney only to the
5 extent expressly authorized by the terms of the power of attorney.

6 (6) A guardian of the estate or a conservator of the settlor may exercise a
7 settlor's powers with respect to revocation, amendment, or distribution of trust
8 property only with the approval of the court supervising the guardianship or
9 conservatorship.

10 (7) A trustee who does not know that a trust has been revoked or amended is
11 not liable for distributions made and other actions taken on the assumption that the
12 trust had not been amended or revoked, or for distributions made pursuant to sub.
13 (5).

14 **SECTION 116.** 701.0603 of the statutes is created to read:

15 **701.0603 Settlor's powers; powers of withdrawal.** (1) While a trust is
16 revocable, the rights of the beneficiaries are subject to the control of, and the duties
17 of the trustee, a directing party, and a trust protector are owed exclusively to, the
18 settlor.

19 (2) If a revocable trust has more than one settlor, the duties of the trustee, a
20 directing party, and a trust protector are owed to all of the settlors.

21 (3) During the period in which a power of withdrawal may be exercised, the
22 holder of the power has the rights of a settlor of a revocable trust under this section
23 to the extent of the property subject to the power.

24 **SECTION 117.** 701.0604 of the statutes is created to read:

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1 **701.0604 Limitation on action contesting validity of revocable trust;**
2 **distribution of trust property. (1)** A person must commence a judicial proceeding
3 to contest the validity of a trust that was revocable immediately before the settlor’s
4 death within the earlier of the following:

5 (a) One year after the settlor’s death.

6 (b) Four months after the trustee sent the person a copy of the trust instrument
7 and a notice informing the person of the trust’s existence, of the trustee’s name and
8 address, and of the time allowed for commencing a proceeding. Except as provided
9 in s. 701.0813 (2), a trustee is not liable to any person for not providing the
10 information described in this paragraph.

11 **(2)** Upon the death of the settlor of a trust that was revocable immediately
12 before the settlor’s death, the trustee may proceed to distribute the trust property
13 in accordance with the terms of the trust. The trustee is not subject to liability for
14 doing so unless one of the following applies:

15 (a) The trustee knows of a pending judicial proceeding contesting the validity
16 of the trust.

17 (b) A potential contestant has notified the trustee of a possible judicial
18 proceeding to contest the trust and a judicial proceeding is commenced within 60
19 days after the contestant sent the notification.

20 **(3)** A beneficiary of a trust that is determined to have been invalid is liable to
21 return any distribution received.

22 **SECTION 118.** 701.065 (title), (1), (2), (3) and (4) of the statutes are renumbered
23 701.0508 (title), (1), (2), (3) and (4), and 701.0508 (1) (a) 2., as renumbered, is
24 amended to read:

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1 (2) A person designated as trustee who has not yet accepted the trusteeship
2 may decline the trusteeship. A designated trustee who does not accept the
3 trusteeship within a reasonable time after knowing of the designation is considered
4 to have rejected the trusteeship.

5 (3) A person designated as trustee, without accepting the trusteeship, may do
6 any of the following:

7 (a) Act to preserve the trust property if, within a reasonable time after acting,
8 the person sends a declination of the trusteeship in writing to the settlor or, if the
9 settlor is dead or incapacitated, to the designated cotrustee, or, if none, to the
10 successor trustee, or, if none, to a distributee or a permissible distributee of the trust.

11 (b) Inspect or investigate trust property to determine potential liability under
12 environmental or other law or for any other purpose.

13 **SECTION 123.** 701.0702 of the statutes is created to read:

14 **701.0702 Trustee's bond.** (1) A trustee shall give bond to secure performance
15 of the trustee's duties only if the court finds that a bond is needed to protect the
16 interests of the beneficiaries or is required by the terms of the trust and the court has
17 not dispensed with the requirement.

18 (2) The court may specify the amount of a bond, its liabilities, and whether
19 sureties are necessary. The court may modify or terminate a bond at any time.

20 (3) A court may not require a bond from a trust company bank, state bank, or
21 national bank that is authorized to exercise trust powers and that has complied with
22 s. 220.09 or 223.02 nor shall a bond be required of a religious, charitable, or
23 educational corporation or society.

24 **SECTION 124.** 701.0703 of the statutes is created to read:

25 **701.0703 Cotrustees.** (1) Cotrustees may act only by majority decision.

SENATE BILL 384**SECTION 124**

1 (2) If a vacancy occurs in a cotrusteeship, as provided under s. 701.0704, a
2 majority of the remaining cotrustees may act for the trust.

3 (3) A cotrustee shall participate in the performance of a trustee's function
4 unless the cotrustee is unavailable to perform the function because of absence,
5 illness, disqualification under other law, or the cotrustee is otherwise temporarily
6 incapacitated or the cotrustee has properly delegated the performance of the
7 function to another trustee.

8 (4) If a cotrustee is unavailable to perform duties because of absence, illness,
9 disqualification under other law, or the cotrustee is otherwise temporarily
10 incapacitated, and prompt action is necessary to achieve the purposes of the trust or
11 to avoid injury to the trust property, the remaining cotrustee or a majority of the
12 remaining cotrustees may act for the trust.

13 (5) A trustee may delegate to a cotrustee a function unless the delegation is
14 expressly prohibited by the terms of the trust. Unless a delegation is irrevocable, a
15 trustee may revoke a delegation previously made.

16 (6) Except as provided in sub. (7), a trustee who does not join in an action of
17 another trustee is not liable for the action.

18 (7) Each trustee shall exercise reasonable care to do all of the following:

19 (a) Prevent a cotrustee from committing a material breach of trust.

20 (b) Compel a cotrustee to redress a material breach of trust.

21 (8) A dissenting trustee who joins in an action at the direction of the majority
22 of the trustees and who notified all cotrustees of the dissent at or before the time of
23 the action is not liable for the action unless the action is a material breach of trust.

24 **SECTION 125.** 701.0704 of the statutes is created to read:

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1 **701.0704 Vacancy in trusteeship; appointment of successor.** (1) A
2 vacancy in a trusteeship exists if any of the following occurs:

- 3 (a) A person designated as trustee declines the trusteeship.
4 (b) A person designated as trustee cannot be identified or does not exist.
5 (c) A trustee resigns.
6 (d) A trustee is disqualified or removed.
7 (e) A trustee dies.
8 (f) A guardian or conservator is appointed for an individual serving as trustee.

9 **(2)** If one or more cotrustees remain in office, a vacancy in a trusteeship does
10 not need to be filled. A vacancy in a trusteeship shall be filled if the trust has no
11 remaining trustee.

12 **(3)** A vacancy in a trusteeship that is required to be filled shall be filled in the
13 following order of priority:

- 14 (a) By a person designated in the terms of the trust to act as successor trustee.
15 (b) By a person appointed by unanimous agreement of the qualified
16 beneficiaries, except that, if the trust is a trust for an individual with a disability, the
17 person appointed under this paragraph may not be the individual with a disability,
18 his or her spouse, or a relative of the individual with a disability who is legally
19 responsible for his or her support.
20 (c) By a person appointed by the court.

21 **(4)** Whether or not a vacancy in a trusteeship exists or is required to be filled,
22 the court may appoint an additional trustee, directing party, or trust protector
23 whenever the court considers the appointment necessary for the administration of
24 the trust.

25 **SECTION 126.** 701.0705 of the statutes is created to read:

SENATE BILL 384**SECTION 126**

1 **701.0705 Resignation of trustee.** (1) A trustee may resign in any of the
2 following manners:

3 (a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if
4 living, each cotrustee, each trust protector, and each directing party.

5 (b) With the approval of the court.

6 **(2)** In approving a resignation, the court may issue orders and impose
7 conditions reasonably necessary for the protection of the trust property.

8 **(3)** Any liability of a resigning trustee or of any sureties on the trustee's bond
9 for acts or omissions of the trustee is not discharged or affected by the trustee's
10 resignation.

11 **SECTION 127.** 701.0706 of the statutes is created to read:

12 **701.0706 Removal of trustee.** (1) The settlor, a cotrustee, or a qualified
13 beneficiary may request the court to remove a trustee, or a trustee may be removed
14 by the court on its own initiative.

15 **(2)** The court may remove a trustee if any of the following applies:

16 (a) The trustee has committed a material breach of trust.

17 (b) A lack of cooperation among cotrustees substantially impairs the
18 administration of the trust.

19 (c) The court determines that removal of the trustee best serves the interests
20 of the beneficiaries because of unfitness, unwillingness, or persistent failure of the
21 trustee to administer the trust effectively.

22 (d) There has been a substantial change of circumstances or removal is
23 requested by all of the qualified beneficiaries, the court finds that removal of the
24 trustee best serves the interests of all of the beneficiaries and is not inconsistent with

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1 a material purpose of the trust, and a suitable cotrustee or successor trustee is
2 available.

3 (3) Pending a final decision on a request to remove a trustee, or in lieu of or in
4 addition to removing a trustee, the court may order such appropriate relief under s.
5 701.1001 (2) as may be necessary to protect the trust property or the interests of the
6 beneficiaries.

7 **SECTION 128.** 701.0707 of the statutes is created to read:

8 **701.0707 Delivery of property by former trustee.** (1) Unless a cotrustee
9 remains in office or the court otherwise orders, and until the trust property is
10 delivered to a successor trustee or other person entitled to it, a trustee who has
11 resigned or been removed has the duties of a trustee and the powers necessary to
12 protect the trust property.

13 (2) A trustee who has resigned or been removed shall proceed expeditiously to
14 deliver the trust property within the trustee's possession to the cotrustee, successor
15 trustee, or other person entitled to it.

16 **SECTION 129.** 701.0708 of the statutes is created to read:

17 **701.0708 Compensation of trustee.** (1) If the terms of a trust do not specify
18 the trustee's compensation, a trustee is entitled to compensation that is reasonable
19 under the circumstances.

20 (2) If the terms of a trust specify the trustee's compensation or refer to another
21 ascertainable source for determining that compensation, the trustee is entitled to be
22 compensated as specified, but the court may allow more or less compensation if any
23 of the following applies:

24 (a) The duties of the trustee are substantially different from those
25 contemplated when the trust was created.

SENATE BILL 384**SECTION 129**

1 (b) The compensation specified by the terms of the trust would be unreasonably
2 low or high.

3 (3) If the trustee has rendered other services in connection with the
4 administration of the trust, the trustee may receive reasonable compensation for the
5 other services rendered, in addition to reasonable compensation as trustee.

6 **SECTION 130.** 701.0709 of the statutes is created to read:

7 **701.0709 Reimbursement of expenses.** (1) A trustee is entitled to be
8 reimbursed out of the trust property, with interest as appropriate, for all of the
9 following:

10 (a) Expenses that were properly incurred in the administration of the trust.

11 (b) To the extent necessary to prevent unjust enrichment of the trust, expenses
12 that were not properly incurred in the administration of the trust.

13 (2) An advance by the trustee of money for the protection of the trust gives rise
14 to a lien against trust property to secure reimbursement with reasonable interest.

15 **SECTION 131.** 701.0710 of the statutes is created to read:

16 **701.0710 Title of trust property.** A settlor or transferor may effectively
17 transfer property to a trust by placing legal title of the property in the name of the
18 trustee, which shall include any successor trustee regardless of whether a successor
19 trustee is referenced in the transfer document. A transfer that places legal title in
20 the name of the trust itself places legal title in the name of the trustee.

21 **SECTION 132.** 701.08 of the statutes is renumbered 701.0419 and amended to
22 read:

23 **701.0419 Transfers to living trusts.** (1) **VALIDITY AND EFFECT.** The order of
24 execution of a living trust instrument and a will or other instrument purporting to
25 transfer or appoint property to the trust evidenced by the trust instrument shall be

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1 disregarded in determining the validity of the transfer or appointment. No reference
2 in any will to a living trust shall cause assets in such trust to be included in property
3 administered as part of the testator's estate; ~~nor shall it cause the trust or any~~
4 ~~portion thereof to be treated as a testamentary trust.~~

5 (2) GOVERNING TERMS. Property transferred or appointed by a will or by a
6 beneficiary designation under an employee benefit plan, life insurance policy, or
7 other instrument permitting designation of a beneficiary to a living trust, ~~the terms~~
8 ~~of which the testator or designator was the sole holder of a power to modify, shall be~~
9 administered in accordance with the terms of the trust as they the terms of the trust
10 may have been modified prior to the testator's or designator's death, even though the
11 will ~~or, beneficiary designation, or other instrument~~ was not reexecuted or
12 republished after exercise of the power to modify, unless the will ~~or, beneficiary~~
13 ~~designation, or other instrument~~ expressly provides otherwise. ~~Such property~~
14 ~~transferred or appointed to a living trust, which is subject to a power of modification~~
15 ~~requiring action or consent of a person other than the testator or designator, shall be~~
16 ~~administered in accordance with the terms of the trust instrument as they exist at~~
17 ~~the execution of the will or beneficiary designation, unless expressly otherwise~~
18 ~~provided. If the will or beneficiary designation expressly provides that the property~~
19 ~~shall be administered in accordance with the terms of the trust instrument as they~~
20 ~~may be modified thereafter, the will or beneficiary designation need not be~~
21 ~~reexecuted or republished after exercise of the power to modify.~~

22 (3) DISPOSITION WHEN NO EXISTING LIVING TRUST. If at the death of a testator a
23 living trust has been completely revoked, or otherwise terminated, a provision in the
24 testator's will purporting to transfer or appoint property to such the trust shall have
25 the following effect, unless the will provides otherwise:

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1 (a) If the testator was a necessary party to the revocation or other termination
2 of such the trust, the provision in the testator's will shall be invalid;

3 (b) If the testator was not a necessary party to the revocation or other
4 termination of such trust, the provision in the testator's will shall be deemed to
5 create a ~~testamentary~~ trust upon the terms of the ~~living~~ trust instrument at the time
6 the will was executed or as otherwise provided where sub. (2) is applicable.

7 **SECTION 133.** Subchapter VIII (title) of chapter 701 [precedes 701.0801] of the
8 statutes is created to read:

9 **CHAPTER 701**

10 **SUBCHAPTER VIII**

11 **DUTIES AND POWERS OF TRUSTEES,**

12 **DIRECTING PARTIES, AND**

13 **TRUST PROTECTORS**

14 **SECTION 134.** 701.0801 of the statutes is created to read:

15 **701.0801 Duty to administer trust.** Upon acceptance of a trusteeship, the
16 trustee shall administer the trust in good faith, in accordance with its terms and
17 purposes and the interests of the beneficiaries, and in accordance with this chapter.

18 **SECTION 135.** 701.0802 of the statutes is created to read:

19 **701.0802 Duty of loyalty. (1)** A trustee shall administer the trust solely in
20 the interests of the beneficiaries.

21 **(2)** Subject to the rights of persons dealing with or assisting the trustee as
22 provided in s. 701.1012, a sale, encumbrance, or other transaction that involves the
23 investment or management of trust property and is entered into by the trustee for
24 the trustee's own personal account or that is otherwise affected by a conflict between

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1 the trustee's fiduciary and personal interests is voidable by a beneficiary affected by
2 the transaction unless any of the following applies:

3 (a) The transaction was authorized by the terms of the trust.

4 (b) The transaction was approved by the court.

5 (c) The beneficiary did not commence a judicial proceeding within the time
6 allowed by s. 701.1005.

7 (d) The beneficiary consented to the trustee's conduct, ratified the transaction,
8 or released the trustee in compliance with s. 701.1009.

9 (e) The transaction involves a contract entered into or claim acquired by the
10 trustee before the person became trustee.

11 **(3)** A sale, encumbrance, or other transaction involving the investment or
12 management of trust property is presumed to be affected by a conflict between
13 personal and fiduciary interests if it is entered into by the trustee with any of the
14 following:

15 (a) The trustee's spouse.

16 (b) The trustee's descendants, siblings, parents, or their spouses.

17 (c) An agent or attorney of the trustee.

18 (d) A corporation or other person or enterprise in which the trustee, or a person
19 that owns a significant interest in the trustee, has an interest that might affect the
20 trustee's best judgment.

21 **(4)** A transaction not concerning trust property in which the trustee engages
22 in the trustee's individual capacity involves a conflict between personal and fiduciary
23 interests if the transaction concerns an opportunity properly belonging to the trust.

24 **(5)** An investment by a trustee in securities of an investment company or
25 investment trust to which the trustee, or its affiliate, provides services in a capacity

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1 other than as trustee is not presumed to be affected by a conflict between personal
2 and fiduciary interests if the investment otherwise complies with the prudent
3 investor rule in s. 881.01. In addition to receiving compensation for acting as trustee,
4 the trustee may be compensated by the investment company or investment trust for
5 providing those services out of fees charged to the trust. If the trustee receives
6 compensation from the investment company or investment trust for providing
7 investment advisory or investment management services, the trustee shall at least
8 annually notify the persons entitled to receive a copy of the trustee's report under s.
9 701.0813 (3) of the rate and method by which that compensation was determined.

10 (6) In voting shares of stock or in exercising powers of control over similar
11 interests in other forms of enterprise, the trustee shall act in the best interests of the
12 beneficiaries. If the trust is the sole owner of a corporation or other form of
13 enterprise, the trustee shall elect or appoint directors or other managers who will
14 manage the corporation or enterprise in the best interests of the beneficiaries.

15 (7) This section does not preclude the following transactions, if fair to the
16 beneficiaries:

17 (a) An agreement between a trustee and a beneficiary relating to the
18 appointment or compensation of the trustee.

19 (b) Payment of reasonable compensation to the trustee.

20 (c) A transaction between a trust and another trust, a decedent's estate, a
21 guardianship of the estate, a conservatorship, or a custodianship of which the trustee
22 is a fiduciary or in which a beneficiary has an interest.

23 (d) A deposit of trust money in a regulated financial-service institution
24 operated by the trustee.

25 (e) An advance by the trustee of money for the protection of the trust.

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1 (8) The court may appoint a trustee, trust protector, or directing party to make
2 a decision with respect to any proposed transaction that might violate this section
3 if entered into by the trustee.

4 **SECTION 136.** 701.0803 of the statutes is created to read:

5 **701.0803 Impartiality.** If a trust has 2 or more beneficiaries, the trustee shall
6 act impartially in investing, managing, and distributing the trust property, giving
7 due regard to the beneficiaries' respective interests and the purposes and terms of
8 the trust.

9 **SECTION 137.** 701.0804 of the statutes is created to read:

10 **701.0804 Prudent administration.** A trustee shall administer the trust as
11 a prudent person would, by considering the purposes, terms, distributional
12 requirements, and other circumstances of the trust. In satisfying this standard, the
13 trustee shall exercise reasonable care, skill, and caution.

14 **SECTION 138.** 701.0805 of the statutes is created to read:

15 **701.0805 Costs of administration.** In administering a trust, the trustee may
16 incur only costs that are reasonable in relation to the trust property, the purposes of
17 the trust, the skills of the trustee, and the complexity of the trust administration.

18 **SECTION 139.** 701.0806 of the statutes is created to read:

19 **701.0806 Trustee's skills.** A trustee who has special skills or expertise, or is
20 named trustee in reliance upon the trustee's representation that the trustee has
21 special skills or expertise, shall use those special skills or expertise.

22 **SECTION 140.** 701.0807 of the statutes is created to read:

23 **701.0807 Delegation by trustee.** (1) A trustee may delegate duties and
24 powers that a prudent trustee of comparable skills could properly delegate under the

SENATE BILL 384**SECTION 140**

1 circumstances. The trustee shall exercise reasonable care, skill, and caution in each
2 of the following:

3 (a) Selecting an agent.

4 (b) Establishing the scope and terms of the delegation, consistent with the
5 purposes and terms of the trust.

6 (c) Periodically reviewing the agent's actions in order to monitor the agent's
7 performance and compliance with the terms of the delegation.

8 (2) In performing a delegated function, an agent owes a duty to the trust to
9 exercise reasonable care to comply with the terms of the delegation.

10 (3) A trustee who complies with sub. (1) is not liable to the beneficiaries or to
11 the trust for an action of the agent to whom the function was delegated.

12 (4) By accepting a delegation of powers or duties from the trustee of a trust that
13 is subject to the law of this state, an agent submits to the jurisdiction of the courts
14 of this state even if the terms of the delegation provide for a different jurisdiction or
15 venue.

16 (5) This section does not apply to a trustee's delegation of investment and
17 management functions. A trustee's delegation of investment and management
18 functions is governed by s. 881.01 (10).

19 **SECTION 141.** 701.0808 of the statutes is created to read:

20 **701.0808 Powers to direct; directing parties.** (1) While a trust is
21 revocable, the trustee may follow a direction of the settlor that is contrary to the
22 terms of the trust.

23 (2) A settlor in a trust instrument, a court in a trust instrument or court order,
24 or interested persons in a nonjudicial settlement agreement may appoint a directing
25 party to direct the trustee on investment or distribution decisions or to make

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1 investment or distribution decisions regarding directed trust property. If a trustee
2 acts in accordance with the direction of a directing party or fails to act due to lack of
3 direction from a directing party, the trustee is not liable for any loss resulting directly
4 or indirectly from any action taken or omitted with respect to the direction or lack
5 of direction except for acts or omissions that are a result of the trustee's willful
6 misconduct.

7 (3) A trustee does not have a duty to do any of the following:

8 (a) Provide advice to, consult with, monitor, or evaluate a directing party's
9 conduct.

10 (b) Inform or warn a beneficiary, a 3rd party, or a directing party that the
11 trustee disagrees with any of the directing party's actions or directions.

12 (c) Prevent a directing party from giving a direction or taking any action.

13 (d) Compel a directing party to redress the directing party's actions or
14 directions.

15 (4) The administrative actions of a trustee related to matters within the scope
16 of a directing party's power, including confirming that the directing party's directions
17 have been carried out and recording and reporting actions taken pursuant to the
18 directing party's direction, do not constitute either monitoring the directing party's
19 actions or participating in the actions of the directing party.

20 (5) A directing party is a fiduciary and is required to act in good faith with
21 regard to the terms of the trust and the interests of the beneficiaries. A directing
22 party is liable for any loss that results from a breach of any of the directing party's
23 fiduciary duties.

24 (6) (a) A directing party may request information about the trust from the
25 trustee and, if the requested information is related to a power granted to the

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1 directing party, the trustee shall provide the requested information to the directing
2 party. If a trustee is bound by any confidentiality restrictions with respect to
3 information requested by a directing party, the trustee may require that the
4 directing party agree to be bound by the confidentiality restrictions before delivering
5 such information to the directing party. A trustee is not liable to any beneficiary for
6 any loss or damages resulting from the trustee providing information to the directing
7 party that is related to the power granted to the directing party.

8 (b) Except as otherwise provided in this chapter, a trustee does not have a duty
9 to provide any information to the directing party that the directing party does not
10 request.

11 (7) PAYMENT OR REIMBURSEMENT OF ATTORNEY FEES AND COSTS. A trustee shall,
12 in accordance with s. 701.1004, pay or reimburse a directing party for attorney fees
13 and costs to defend any claim made against the directing party.

14 (8) Sections 701.0701, 701.0708, 701.0709, 701.1001 to 701.1003, and 701.1005
15 to 701.1010 apply to a directing party as if the directing party was a trustee.

16 (9) A person who accepts an appointment as a directing party of a trust submits
17 to the jurisdiction of the courts of this state, as provided in s. 701.0202 (1).

18 **SECTION 142.** 701.0809 of the statutes is created to read:

19 **701.0809 Control and protection of trust property.** A trustee shall take
20 reasonable steps to take control of and protect the trust property.

21 **SECTION 143.** 701.0810 of the statutes is created to read:

22 **701.0810 Record keeping and identification of trust property.** (1) A
23 trustee shall keep adequate records of the administration of the trust.

24 (2) A trustee shall keep trust property separate from the trustee's own
25 property.

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1 **(3)** Except as otherwise provided in sub. (4), a trustee shall cause the trust
2 property to be designated so that the interest of the trust, to the extent feasible,
3 appears in records maintained by a party other than a trustee or beneficiary.

4 **(4)** If the trustee maintains records clearly indicating the respective interests,
5 a trustee may invest as a whole the property of 2 or more separate trusts.

6 **SECTION 144.** 701.0811 of the statutes is created to read:

7 **701.0811 Enforcement and defense of claims.** A trustee shall take
8 reasonable steps to enforce claims of the trust known to the trustee and to defend
9 claims against the trust known to the trustee.

10 **SECTION 145.** 701.0812 of the statutes is created to read:

11 **701.0812 Collecting trust property; duties of successor trustees.** **(1)** A
12 trustee shall take reasonable steps to compel a former trustee or other person to
13 deliver trust property to the trustee, and to redress a breach of trust known to the
14 trustee to have been committed by a trustee or former trustee, or a trust protector
15 or former trust protector.

16 **(2)** A successor trustee does not have a duty to examine the accounts of a former
17 trustee.

18 **SECTION 146.** 701.0813 of the statutes is created to read:

19 **701.0813 Duty to inform and report.** **(1)** A trustee shall keep the
20 distributees or permissible distributees of trust income or principal, and other
21 qualified beneficiaries who so request, reasonably informed about the
22 administration of the trust. Unless unreasonable under the circumstances, a trustee
23 shall promptly respond to a qualified beneficiary's request for information related to
24 the administration of the trust.

25 **(2)** A trustee shall do all of the following:

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1 (a) Upon the request of a qualified beneficiary for a copy of the trust
2 instrument, promptly furnish to the qualified beneficiary either a copy of the
3 portions of the trust instrument relating to the interest of the qualified beneficiary
4 or a copy of the trust instrument.

5 (b) Within a reasonable period of time after accepting a trusteeship, notify the
6 qualified beneficiaries of the acceptance and of the trustee's name, address, and
7 telephone number.

8 (c) Within a reasonable period of time after the date on which the trustee
9 acquires knowledge of the creation of an irrevocable trust, or the date on which the
10 trustee acquires knowledge that a formerly revocable trust has become irrevocable,
11 whether by the death of the settlor or otherwise, notify the qualified beneficiaries of
12 all of the following:

13 1. The trust's existence.

14 2. The identity of the settlor or settlors.

15 3. The name, address, and telephone number of each directing party and trust
16 protector.

17 4. The right to request a copy of the documentation referred to in par. (a).

18 5. The right to request information under sub. (1).

19 6. The right to a trustee's report as provided in sub. (3).

20 (d) Notify the distributees or permissible distributees of trust income or
21 principal, and other qualified beneficiaries who so request, of any change in the
22 method or rate of the trustee's compensation.

23 (e) Upon receiving a petition to the court for action under ss. 701.0411 to
24 701.0416 that does not identify each trust protector and each directing party of the
25 trust, notify the petitioning party of the identity of each trust protector and directing

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1 party, including the name, address, and telephone number of each trust protector
2 and directing party, who is serving at the time the petition is filed.

3 (3) (a) At least annually and upon the termination of a trust, a trustee shall
4 send to the distributees or permissible distributees of trust income or principal, and
5 to other qualified beneficiaries who request it, all of the following:

6 1. A report of the trust property, liabilities, receipts, and disbursements,
7 including the source and amount of the trustee's compensation.

8 2. A listing of the trust assets and, if feasible, their respective market values.

9 (b) Upon a vacancy in a trusteeship, unless a cotrustee remains in office, the
10 former trustee shall send a report containing the information described under par.

11 (a) 1. to the qualified beneficiaries. A personal representative or guardian may send
12 the qualified beneficiaries a report containing the information described in par. (a)

13 1. on behalf of a deceased or incapacitated trustee.

14 (4) A qualified beneficiary may waive the right to a trustee's report or other
15 information otherwise required to be furnished under this section. A qualified
16 beneficiary, with respect to future reports and other information, may withdraw a
17 waiver previously given.

18 (5) Subsections (2) (b) and (c) and (3) do not apply to a trustee who accepts a
19 trusteeship before the effective date of this subsection [LRB inserts date], to an
20 irrevocable trust created before the effective date of this subsection [LRB inserts
21 date], or to a revocable trust that becomes irrevocable before the effective date of this
22 subsection [LRB inserts date].

23 **SECTION 147.** 701.0814 of the statutes is created to read:

24 **701.0814 Discretionary powers; tax savings.** (1) Notwithstanding the
25 breadth of discretion granted to a trustee in the terms of the trust, including the use

SENATE BILL 384**SECTION 147**

1 of such terms as “absolute,” “sole,” or “uncontrolled,” the trustee shall exercise a
2 discretionary power in good faith and in accordance with the terms and purposes of
3 the trust and the interests of the beneficiaries. A court may not determine that a
4 trustee abused its discretion merely because the court would have exercised the
5 discretion in a different manner or would not have exercised the discretion.

6 (2) Subject to sub. (4), and unless the terms of the trust expressly indicate that
7 a provision of this subsection does not apply, all of the following apply:

8 (a) A person other than a settlor who is a beneficiary and a trustee, directing
9 party, or trust protector of a trust that confers on the trustee, directing party, or trust
10 protector a power to make discretionary distributions to or for the trustee’s, directing
11 party’s, or trust protector’s personal benefit may exercise the power only in
12 accordance with an ascertainable standard.

13 (b) A trustee, directing party, or trust protector may not exercise a power to
14 make discretionary distributions to satisfy a legal obligation of support that the
15 trustee, directing party, or trust protector personally owes another person.

16 (3) A power whose exercise is limited or prohibited by sub. (2) may be exercised
17 by a majority of the remaining trustees, directing parties, or trust protectors whose
18 exercise of the power is not so limited or prohibited. If the power of all trustees,
19 directing parties, or trust protectors is so limited or prohibited, the court may appoint
20 a trustee, directing party, or trust protector with authority to exercise the power.

21 (4) Subsection (2) does not apply to any of the following:

22 (a) A power held by the settlor’s spouse who is the trustee, directing party, or
23 trust protector of a trust for which a marital deduction, as defined in section 2056 (b)
24 (5) or 2523 (e) of the Internal Revenue Code, was previously allowed.

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1 (b) A trust during a period when the trust may be revoked or amended by its
2 settlor.

3 (c) A trust if contributions to the trust qualify for the annual exclusion under
4 section 2503 (c) of the Internal Revenue Code.

5 **SECTION 148.** 701.0815 of the statutes is created to read:

6 **701.0815 General powers of trustee.** (1) A trustee, without authorization
7 by the court, may exercise the following powers:

8 (a) Powers conferred by the terms of the trust.

9 (b) Except as limited by the terms of the trust, all of the following powers:

10 1. All powers over the trust property that an unmarried, competent owner has
11 over individually owned property.

12 2. Any other powers appropriate to achieve the proper investment,
13 management, and distribution of the trust property.

14 3. Any other powers conferred by this chapter.

15 (2) The exercise of a power is subject to the fiduciary duties prescribed by this
16 chapter.

17 **SECTION 149.** 701.0816 of the statutes is created to read:

18 **701.0816 Specific powers of trustee.** Without limiting the authority
19 conferred by s. 701.0815, a trustee may do all of the following:

20 (1) Collect trust property and accept or reject additions to the trust property
21 from a settlor or any other person.

22 (2) Acquire or sell property, for cash or on credit, at public or private sale.

23 (3) Exchange, partition, or otherwise change the character of trust property.

24 (4) Deposit trust money in an account in a regulated financial-service
25 institution.

SENATE BILL 384**SECTION 149**

1 **(5)** Borrow money, with or without security, and mortgage or pledge trust
2 property for a period within or extending beyond the duration of the trust.

3 **(6)** With respect to an interest in a proprietorship, partnership, limited liability
4 company, business trust, corporation, or other form of business or enterprise,
5 continue the business or other enterprise and take any action that may be taken by
6 shareholders, members, or property owners, including merging, dissolving, or
7 otherwise changing the form of business organization or contributing additional
8 capital.

9 **(7)** With respect to a stock or other security, exercise the rights of an absolute
10 owner, including the right to do any of the following:

11 (a) Vote, or give proxies to vote, with or without power of substitution, or enter
12 into or continue a voting trust agreement.

13 (b) Hold a stock or other security in the name of a nominee or in other form
14 without disclosure of the trust so that title may pass by delivery.

15 (c) Pay calls, assessments, and other sums chargeable or accruing against the
16 stock or other security, and sell or exercise stock subscription or conversion rights.

17 (d) Deposit the stock or other security with a depository or other regulated
18 financial-service institution.

19 **(8)** With respect to an interest in real property, construct, or make ordinary or
20 extraordinary repairs to, alterations to, or improvements in, buildings or other
21 structures, demolish improvements, raze existing or erect new party walls or
22 buildings, subdivide or develop land, dedicate land to public use or grant public or
23 private easements, and make or vacate plats and adjust boundaries.

24 **(9)** Enter into a lease for any purpose as lessor or lessee, including a lease or
25 other arrangement for exploration and removal of natural resources, with or without

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1 the option to purchase or renew, for a period within or extending beyond the duration
2 of the trust.

3 (10) Grant an option involving a sale, lease, or other disposition of trust
4 property or acquire an option for the acquisition of property, including an option
5 exercisable beyond the duration of the trust, and exercise an option so acquired.

6 (11) Insure the property of the trust against damage or loss and insure the
7 trustee, the trustee's agents, any directing party, any trust protector, and the
8 beneficiaries against liability arising from the administration of the trust.

9 (12) Abandon or decline to administer property of no value or of insufficient
10 value to justify its collection or continued administration.

11 (13) With respect to possible liability for violation of environmental law, do any
12 of the following:

13 (a) Inspect or investigate property the trustee holds or has been asked to hold,
14 or property owned or operated by an organization in which the trustee holds or has
15 been asked to hold an interest, for the purpose of determining the application of
16 environmental law with respect to the property.

17 (b) Take action to prevent, abate, or otherwise remedy any actual or potential
18 violation of any environmental law affecting property held directly or indirectly by
19 the trustee, whether taken before or after the assertion of a claim or the initiation
20 of governmental enforcement.

21 (c) Decline to accept property into trust or disclaim any power with respect to
22 property that is or may be burdened with liability for violation of environmental law.

23 (d) Compromise claims against the trust that may be asserted for an alleged
24 violation of environmental law.

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1 (e) Pay the expense of any inspection, review, abatement, or remedial action to
2 comply with environmental law.

3 (14) Pay or contest any claim, settle a claim by or against the trust, and release,
4 in whole or in part, a claim belonging to the trust.

5 (15) Pay taxes; assessments; compensation of the trustee, a directing party, a
6 trust protector, and employees and agents of the trust; and other expenses incurred
7 in the administration of the trust.

8 (16) Exercise elections with respect to federal, state, and local taxes.

9 (17) Select a mode of payment under any employee benefit or retirement plan,
10 annuity, or life insurance payable to the trustee, exercise rights thereunder,
11 including exercise of the right to indemnification for expenses and against liabilities,
12 and take appropriate action to collect the proceeds.

13 (18) Make loans out of trust property, including loans to a beneficiary on terms
14 and conditions the trustee considers to be fair and reasonable under the
15 circumstances. The trustee has a lien on future distributions for repayment of loans
16 under this subsection.

17 (19) Pledge trust property to guarantee loans made by others to the beneficiary.

18 (20) Appoint a trustee to act in another jurisdiction with respect to trust
19 property located in the other jurisdiction, confer upon the appointed trustee all of the
20 powers and duties of the appointing trustee, require that the appointed trustee
21 furnish security, and remove any trustee so appointed.

22 (21) Pay an amount distributable to a beneficiary who is under a legal
23 disability or who the trustee reasonably believes is incapacitated, by paying it
24 directly to the beneficiary, applying it for the beneficiary's benefit, or by doing any
25 of the following:

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1 (a) Paying the amount to the beneficiary’s conservator or the beneficiary’s
2 guardian of the estate.

3 (b) Paying the amount to the beneficiary’s custodian under the Uniform
4 Transfers to Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust
5 Act under ss. 54.950 to 54.988, and, for that purpose, creating a custodianship or
6 custodial trust.

7 (c) If the trustee does not know of a conservator, guardian of the estate,
8 custodian, or custodial trustee, paying the amount to an adult relative or other
9 person having legal or physical care or custody of the beneficiary or to the guardian
10 of the person of the beneficiary, to be expended on the beneficiary’s behalf.

11 (d) Managing the amount as a separate fund on the beneficiary’s behalf, subject
12 to the beneficiary’s continuing right to withdraw the distribution.

13 **(22)** On distribution of trust property or the division or termination of a trust,
14 make distributions in divided or undivided interests, allocate particular assets in
15 proportionate or disproportionate shares, value the trust property for those
16 purposes, and adjust for resulting differences in valuation.

17 **(23)** Resolve a dispute concerning the interpretation of the trust or its
18 administration by mediation, arbitration, or other procedure for alternative dispute
19 resolution.

20 **(24)** Prosecute or defend an action, claim, or judicial proceeding in any
21 jurisdiction to protect trust property or the trustee, a directing party, or a trust
22 protector in the performance of the trustee’s, directing party’s or trust protector’s
23 duties.

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1 (25) Sign and deliver contracts and other instruments that are useful to
2 achieve or facilitate the exercise of the trustee's, directing party's or trust protector's
3 powers.

4 (26) On termination of the trust, exercise the powers appropriate to wind up
5 the administration of the trust and distribute the trust property to the persons
6 entitled to it.

7 (27) Create or fund a plan under section 529 of the Internal Revenue Code, or
8 other college savings vehicle, for a beneficiary's benefit.

9 **SECTION 150.** 701.0817 of the statutes is created to read:

10 **701.0817 Distribution upon termination.** (1) Upon termination or partial
11 termination of a trust, the trustee may send a proposal for distribution to the
12 beneficiaries of the trust. The right of any beneficiary to whom the proposal is sent
13 to object to the proposed distribution terminates if the beneficiary does not notify the
14 trustee of an objection within 30 days after the proposal was sent but only if the
15 proposal informed the beneficiary of the right to object and of the time allowed for
16 objection.

17 (2) Upon the occurrence of an event terminating or partially terminating a
18 trust, the trustee shall proceed within a reasonable time to distribute the trust
19 property to the persons entitled to it, subject to the right of the trustee to retain a
20 reasonable reserve for the payment of debts, expenses, and taxes.

21 (3) A release by a beneficiary of a trustee from liability for breach of trust is
22 invalid to the extent any of the following applies:

23 (a) The release was induced by improper conduct of the trustee.

24 (b) The beneficiary, at the time of the release, did not know of the beneficiary's
25 rights or of the material facts relating to the breach.

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1 **SECTION 151.** 701.0818 of the statutes is created to read:

2 **701.0818 Trust protectors. (1) APPOINTMENT.** A settlor in a trust instrument,
3 a court in a trust instrument or court order, or interested persons in a nonjudicial
4 settlement agreement may provide for the appointment of a trust protector, whether
5 referred to as a trust protector, another title, or no title. A trust protector has only
6 the powers granted to the trust protector in the trust instrument, court order, or
7 nonjudicial settlement agreement.

8 **(2) TRUST PROTECTOR POWERS; LEGAL CAPACITY.** (a) A settlor in a trust instrument,
9 a court in a trust instrument or court order, or interested persons in a nonjudicial
10 settlement agreement may specify the legal capacity in which a particular power is
11 exercisable by a trust protector and whether a power granted to the trust protector
12 in a capacity other than a fiduciary capacity must be exercised in good faith.

13 (b) If the settlor, court, or interested persons do not specify the legal capacity
14 in which a particular power is exercisable by the trust protector, all of the following
15 apply:

16 1. The power is exercisable in a fiduciary capacity if it is a power to do any of
17 the following:

- 18 a. Interpret or enforce the terms of the trust at the request of the trustee.
19 b. Review and approve the trustee's reports or accounting.
20 c. Resolve disputes between the trustee or a directing party and a beneficiary.
21 d. Consent to or veto distributions to a beneficiary.
22 e. Consent to or veto investment actions.

23 2. If it is not a power described in subd. 1. a. to e., the power is exercisable in
24 a nonfiduciary capacity, including a power to do any of the following:

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1 a. Modify or amend the trust instrument to respond to opportunities related
2 to, or changes in, restraints on alienation or other state laws restricting the terms
3 of a trust, the distribution of trust property, or the administration of the trust.

4 b. Modify or amend the trust instrument to achieve a different tax status or to
5 respond to changes in federal or state law.

6 c. Change the principal place of administration, the tax situs of the trust, or the
7 governing law of the trust.

8 d. Eliminate or modify the interests of a beneficiary, add a new beneficiary or
9 class of beneficiaries, or select a beneficiary from an indefinite class.

10 e. Modify the terms of a power of appointment granted under the trust.

11 f. Remove, replace, or appoint a trustee, trust protector, or directing party or
12 a successor trustee, trust protector, or directing party.

13 g. Terminate the trust.

14 h. Appoint assets to a new trust under s. 701.0418.

15 i. Advise the trustee on matters concerning a beneficiary, including whether to
16 provide information to a beneficiary under s. 701.0813.

17 j. Correct errors or ambiguities in the terms of the trust that might otherwise
18 require court construction or defeat the settlor's intent.

19 3. Notwithstanding subds. 1. and 2., a trust protector who is also the settlor
20 may exercise any power granted to the trust protector in the trust protector's
21 personal interests.

22 4. Notwithstanding subd. 2., a trust protector who is also a qualified beneficiary
23 may exercise any power granted to the trust protector that is exercisable in a
24 nonfiduciary capacity in the trust protector's personal interests.

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1 (c) Notwithstanding pars. (a) and (b) and any provision in the trust instrument
2 to the contrary, a trust protector who is also serving as the trustee or a directing party
3 shall exercise any power granted to the trust protector in a fiduciary capacity.

4 **(3) TRUST PROTECTOR DUTIES.** (a) If a power is exercisable in a fiduciary capacity,
5 the trust protector shall act in good faith and shall exercise the power in a manner
6 that is consistent with the terms and purposes of the trust instrument, court order,
7 or nonjudicial settlement agreement and the interests of the beneficiaries.

8 (b) If a power is exercisable in a nonfiduciary capacity, the trust protector shall
9 act in good faith unless the trust instrument, court order, or nonjudicial settlement
10 agreement provides otherwise.

11 (c) A trust protector does not have a duty to exercise its powers, to monitor the
12 conduct of the trustee or a directing party, or to monitor changes in the law or
13 circumstances of the beneficiaries.

14 **(4) LIABILITY.** A trust protector is liable for any loss that results from a breach
15 of the trust protector's duties, except as follows:

16 (a) If the trust protector is also the settlor, the trust protector is not liable for
17 any loss that results from a breach of the trust protector's duties.

18 (b) If the trust protector is also a qualified beneficiary, the trust protector is not
19 liable for any loss that results from a breach of the trust protector's duties for a power
20 that is exercised in a nonfiduciary capacity.

21 **(5) RESIGNATION AND RELEASE OF POWERS.** A trust protector may resign or
22 release a power granted to the trust protector by giving written notice to the trustee
23 and to any successor trust protector.

24 **(6) PROHIBITED ACTIONS.** A trust protector may not exercise a power granted to
25 the trust protector to do any of the following:

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1 (a) Except as provided in sub. (2) (b) 3. and 4., create or expand any beneficial
2 interest, power of appointment, right of withdrawal, or right to receive trust property
3 as a result of the exercise of a power of appointment if the creation or expansion
4 would benefit the trust protector, the trust protector's estate, the trust protector's
5 creditors, or creditors of the trust protector's estate.

6 (b) Modify or amend a trust to do any of the following:

7 1. Remove a requirement pursuant to 42 USC 1396p (d) (4) to pay back a
8 governmental entity for benefits provided to the permissible beneficiary at the death
9 of that beneficiary.

10 2. Reduce or eliminate an income interest of an income beneficiary of any of the
11 following trusts:

12 a. A trust for which a marital deduction has been taken for federal or state
13 estate tax purposes under section 2056, 2056A, or 2523 of the Internal Revenue Code
14 or any comparable provision of applicable state law, during the life of the settlor's
15 spouse.

16 b. A charitable remainder trust under section 664 of the Internal Revenue
17 Code, during the life of the noncharitable beneficiary.

18 c. A trust in which the settlor has a qualified interest under section 2702 (b)
19 of the Internal Revenue Code, during any period in which the settlor is a beneficiary.

20 d. A trust for which an election as a qualified Subchapter S Trust under section
21 1361(d) of the Internal Revenue Code is in place.

22 (c) Modify any beneficial interest in a trust that qualified for a marital
23 deduction or charitable deduction from federal or state estate tax in a manner that
24 would have caused the trust not to qualify for the deduction.

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1 **(7) SETTLOR RIGHTS.** A trust protector is not subject to the direction of the settlor
2 and the settlor may not bring a cause of action against the trust protector. A trust
3 protector may consider a settlor’s goals, objectives, and philosophies in establishing
4 the trust and the trust’s structure when exercising the powers granted to the trust
5 protector and may do so regardless of whether the settlor is deceased.

6 **(8) DUTIES OF A TRUSTEE AND A DIRECTING PARTY.** (a) A trustee and a directing
7 party shall act in accordance with a trust protector’s exercise of a power granted to
8 the trust protector. A trustee and a directing party are not liable for acting in
9 accordance with the trust protector’s exercise of a power granted to the trust
10 protector unless the attempted exercise is manifestly contrary to the power granted
11 to the trust protector or the trustee or the directing party knows that the attempted
12 exercise would constitute a serious breach of a duty that the trust protector owes to
13 the beneficiaries of the trust.

14 (b) A trustee and a directing party do not have a duty to monitor the conduct
15 of the trust protector, provide advice to or consult with the trust protector, or
16 communicate with, warn, or apprise any beneficiary concerning instances in which
17 the trustee or the directing party would or might have exercised the trustee’s or the
18 directing party’s discretion in a manner different from the manner in which the trust
19 protector exercised its discretion.

20 **(9) RIGHT TO INFORMATION.** (a) A trust protector may request information about
21 the trust from the trustee and, if the requested information is related to a power
22 granted to the trust protector, the trustee shall provide the requested information to
23 the trust protector. If a trustee is bound by any confidentiality restrictions with
24 respect to information requested by a trust protector, the trustee may require that
25 the trust protector agree to be bound by the confidentiality restrictions before

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1 delivering such information to the trust protector. A trustee is not liable to any
2 beneficiary for any loss or damages resulting from the trustee providing information
3 to the trust protector that is related to the power granted to the trust protector.

4 (b) Except as otherwise provided in this chapter, a trustee does not have to
5 provide any information to the trust protector that the trust protector does not
6 request.

7 (10) PAYMENT OR REIMBURSEMENT OF ATTORNEY FEES AND COSTS. A trustee shall,
8 in accordance with s. 701.1004, pay or reimburse a trust protector for attorney fees
9 and costs to defend any claim made against the trust protector.

10 (11) APPLICATION OF OTHER SECTIONS TO TRUST PROTECTORS. Sections 701.0701,
11 701.0708, 701.0709, 701.1001 to 701.1003, and 701.1005 to 701.1010 apply to a trust
12 protector as if the trust protector is the trustee.

13 (12) JURISDICTION. A person who accepts an appointment as a trust protector
14 of a trust submits to the jurisdiction of the courts of this state, as provided in s.
15 701.0202 (1).

16 **SECTION 152.** 701.0819 of the statutes is created to read:

17 **701.0819 Marital deduction transfers.** (1) For purposes of this section,
18 “marital deduction transfer” means a lifetime or testamentary transfer of property
19 that is intended to qualify for the marital deduction as indicated by the terms of the
20 trust.

21 (2) In interpreting, construing, or administering a trust instrument, absent a
22 clear expression of intent by the settlor to the contrary, a trustee shall apply the
23 following presumptions that may only be rebutted by clear and convincing evidence:

24 (a) The settlor intended to take advantage of tax deductions, exemptions,
25 exclusions, and credits.

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1 (b) The settlor intended that any transfer made to a spouse outright and free
2 of trust qualify for the gift or estate tax marital deduction and is a marital deduction
3 transfer.

4 (c) If the trust instrument refers to a trust as a marital trust, qualified
5 terminable interest property trust, or spousal trust, or refers to qualified terminable
6 interest property, section 2044, 2056, 2056A, or 2523 of the Internal Revenue Code,
7 or a similar provision of applicable state law, the settlor intended that the trust and
8 property passing to the trust qualify for the applicable gift or estate tax marital
9 deduction and that the transfer qualifies for the marital deduction for federal and
10 state gift or estate tax purposes.

11 (3) If a trust receives a marital deduction transfer, the trust instrument shall
12 be construed to comply with the marital deduction provisions of the Internal
13 Revenue Code.

14 (4) If a trust receives a marital deduction transfer, the trustee has all the
15 powers, duties, and discretionary authority necessary to comply with the marital
16 deduction provisions of the Internal Revenue Code. The trustee may not take any
17 action or have any power that may impair the availability of the marital deduction,
18 but this does not require the trustee to make the election under either section 2056
19 (b) (7), 2056A (a) (3), or 2523 (f) of the Internal Revenue Code.

20 **SECTION 153.** 701.09 (title), (1) and (2) of the statutes are renumbered 853.34
21 (title), (1) and (2).

22 **SECTION 154.** 701.09 (3), (4) and (5) of the statutes are repealed.

23 **SECTION 155.** Subchapter IX (title) of chapter 701 [precedes 701.0901] of the
24 statutes is created to read:

CHAPTER 701

SENATE BILL 384**SECTION 155**

SUBCHAPTER IX

INVESTMENT MANAGEMENT OF TRUSTS

SECTION 156. 701.0901 of the statutes is created to read:

701.0901 Application of the Wisconsin Prudent Investor Act. Except as provided in this subchapter, the investment management of the property of a trust is governed by ch. 881.

SECTION 157. 701.0902 of the statutes is created to read:

701.0902 Directed trust property. (1) A directing party who has power over directed trust property shall do all of the following:

(a) Direct the trustee on the retention, purchase, sale, exchange, tender, encumbrance, or any other investment transaction of the directed trust property and the investment and reinvestment of principal and income.

(b) Direct the trustee with respect to the management, control, and voting powers, including voting proxies, of the directed trust property.

(c) Select and determine reasonable compensation of one or more outside investment advisors, managers, consultants, or counselors, which may include the trustee, and delegate investment authority to them pursuant to the investment delegation provisions under s. 881.01 (10).

(d) Determine the frequency of and methodology for valuing directed trust property and provide the value of property for which there is no readily available daily market value.

(2) A trustee who has no power over directed trust property does not have a duty to do any of the following with respect to the directed trust property:

(a) Prepare or review investment policy statements.

(b) Perform investment or suitability reviews, inquiries, or investigations.

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1 (c) Determine or verify the value of directed trust property for which there is
2 no readily available daily market value.

3 (d) Monitor the conduct or investment performance of the directing party.

4 **SECTION 158.** 701.0903 of the statutes is created to read:

5 **701.0903 Nonapplication of prudent investor rule to life insurance**
6 **contracts owned by trusts.** (1) Notwithstanding s. 881.01, if a principal purpose
7 of a trust is to hold a life insurance contract or to purchase a life insurance contract
8 from contributions made to the trust, the trustee does not have a duty to determine
9 whether the life insurance contract is or remains a proper investment of the trust.
10 For purposes of this subsection, determining whether a life insurance contract is or
11 remains a proper investment includes all of the following:

12 (a) Investigating the financial strength or changes in the financial strength of
13 the life insurance company maintaining the life insurance contract.

14 (b) Determining whether to exercise any policy option, right, or privilege
15 available under the life insurance contract.

16 (c) Diversifying the life insurance contract relative to any other life insurance
17 contracts or any other assets of the trust.

18 (d) Inquiring about or investigating the health or financial condition of an
19 insured.

20 (e) Preventing the lapse of a life insurance contract if the trust does not receive
21 contributions or hold other readily marketable assets to pay the life insurance
22 contract premiums.

23 **(2)** A trustee is not liable for a loss that arises because the trustee did not take
24 an action specified in sub. (1).

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1 (e) Appoint an additional trustee, a directing party, or a trust protector having
2 the duties and authority ordered by the court, including, in the case of an additional
3 trustee, the authority to take possession of the trust property and administer the
4 trust.

5 (f) Suspend the trustee.

6 (g) Remove the trustee as provided in s. 701.0706.

7 (h) Reduce the compensation of or deny compensation to the trustee.

8 (i) Subject to s. 701.1012, void an act of the trustee, impose a lien or a
9 constructive trust on trust property, or trace trust property wrongfully disposed of
10 and order recovery of the property or its proceeds.

11 (j) Order any other appropriate relief, whether provided elsewhere in this
12 chapter, available at common law, or under equity principles.

13 **SECTION 162.** 701.1002 of the statutes is created to read:

14 **701.1002 Damages for breach of trust; liability of successor trustee. (1)**

15 A trustee who commits a breach of trust is liable to an affected beneficiary for the
16 greater of the following:

17 (a) The amount required to restore the value of the trust property and trust
18 distributions to what they would have been had the breach not occurred.

19 (b) The profit the trustee made by reason of the breach.

20 **(2)** Except as otherwise provided in this subsection, if more than one trustee
21 is liable to a beneficiary for a breach of trust, a trustee is entitled to contribution from
22 the other trustee or trustees. A trustee is not entitled to contribution if the trustee
23 was substantially more at fault than another trustee or if the trustee committed the
24 breach of trust in bad faith or with reckless indifference to the purposes of the trust
25 or the interests of the beneficiary. A trustee who received a benefit from the breach

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1 of trust is not entitled to contribution from another trustee to the extent of the benefit
2 received.

3 (3) A successor trustee is not liable for the acts and omissions of a former
4 trustee or for the acts or omissions of any directing party or trust protector that are
5 taken before the appointment of the successor trustee.

6 **SECTION 163.** 701.1003 of the statutes is created to read:

7 **701.1003 Damages in absence of breach.** Absent a breach of trust, a trustee
8 is not liable to a beneficiary for a loss or depreciation in the value of trust property
9 or for not having made a profit.

10 **SECTION 164.** 701.1004 of the statutes is created to read:

11 **701.1004 Attorney fees and costs. (1)** In a judicial proceeding involving the
12 administration of a trust, the court, as justice and equity may require, may award
13 costs and expenses, including reasonable attorney fees, to any party, to be paid by
14 another party or from the trust that is the subject of the controversy.

15 (2) Subject to sub. (3), if a trustee, directing party, or trust protector defends
16 or prosecutes any proceeding in good faith, whether successful or not, the trustee,
17 directing party, or trust protector is entitled to receive from the trust the necessary
18 expenses and disbursements, including reasonable attorney fees, incurred. This
19 subsection does not preclude a court from ordering another party to reimburse the
20 trust for these expenses and disbursements as provided in sub. (1).

21 (3) (a) A trustee may pay costs or attorney fees incurred in any proceeding from
22 the trust property without the approval of any person and without court
23 authorization, unless the court orders otherwise as provided in par. (c).

24 (b) If a claim or defense based upon a breach of trust is made against a trustee,
25 directing party, or trust protector in a proceeding, the trustee shall provide notice to

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1 each qualified beneficiary, directing party, and trust protector of the trustee's
2 intention to pay costs or attorney fees incurred in the proceeding from the trust prior
3 to making payment. The notice shall inform each qualified beneficiary, directing
4 party, and trust protector of the right to apply to the court for an order prohibiting
5 the trustee from paying attorney fees or costs from trust property. If a trustee is
6 served with a motion for an order prohibiting the trustee from paying from the trust
7 attorney fees or costs in the proceeding and the trustee pays attorney fees or costs
8 from the trust before an order is entered on the motion, the trustee, directing party,
9 or trust protector and their respective attorneys who have been paid attorney fees
10 or costs from trust property are subject to the remedies in pars. (c) and (d).

11 (c) 1. If a claim or defense based upon breach of trust is made against a trustee,
12 directing party, or trust protector in a proceeding, a party may move the court for an
13 order to prohibit the trustee from paying costs or attorney fees from trust property.

14 2. Except as provided in subd. 3., if the moving party demonstrates to the court
15 that there is a reasonable basis for the court to find that a breach of trust occurred,
16 the court shall enter an order prohibiting the payment of further attorney fees and
17 costs from trust property and shall order attorney fees or costs previously paid from
18 trust property in such proceeding to be refunded, unless the court finds good cause
19 to allow attorney fees and costs to be paid from the trust. A trustee, directing party,
20 or trust protector may offer evidence to rebut the evidence submitted to the court by
21 the moving party.

22 3. The court may defer ruling on a motion to prohibit a trustee from paying costs
23 or attorney fees from trust property until discovery is taken by the parties.

24 4. An order entered under this paragraph does not limit a trustee's, directing
25 party's, or trust protector's right to seek an order allowing the payment of some or

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1 all of the attorney fees or costs incurred in the proceeding from trust property,
2 including any fees required to be refunded, after the claim or defense is finally
3 determined by the court. If a claim or defense based upon a breach of trust is
4 withdrawn, dismissed, or resolved without a determination by the court that the
5 trustee committed a breach of trust, after the entry of an order prohibiting payment
6 of attorney fees and costs pursuant to this paragraph, the trustee may pay costs or
7 attorney fees incurred in the proceeding from the trust property without further
8 court authorization.

9 (d) If the court orders a refund under par. (c), the court may enter sanctions as
10 are appropriate if a refund is not made as directed by the court, including striking
11 defenses or pleadings filed by the trustee, directing party, or trust protector. Nothing
12 in this paragraph limits other remedies and sanctions the court may employ for the
13 failure to refund the trust in a timely manner.

14 (e) Subject to s. 701.1005, nothing in this subsection limits the power of the
15 court to review fees and costs or the right of any interested persons to challenge fees
16 and costs after payment, after an accounting, or after conclusion of the litigation.

17 (f) Notice under par. (b) is not required if the action or defense is later
18 withdrawn or dismissed by the party that is alleging a breach of trust or resolved
19 without a determination by the court that the trustee has not committed a breach
20 of trust.

21 (4) A provision of a trust instrument drafted or caused to be drafted by a
22 trustee, directing party, or trust protector that modifies the application of this section
23 in a manner favorable to the trustee, directing party, or trust protector and
24 potentially detrimental to a beneficiary is invalid with respect to the trustee,
25 directing party, or trust protector unless the trustee, directing party, or trust

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1 protector proves that the provision was fair under the circumstances existing at the
2 time the trust instrument was signed and that the existence and contents of the
3 provision were adequately communicated to the settlor.

4 **SECTION 165.** 701.1005 of the statutes is created to read:

5 **701.1005 Limitation of action against trustee.** (1) A beneficiary may not
6 commence a proceeding against a trustee for breach of trust more than one year after
7 the date on which the beneficiary or a representative of the beneficiary was sent a
8 report that adequately disclosed the existence of a potential claim for breach of trust.

9 (2) A report adequately discloses the existence of a potential claim for breach
10 of trust if it provides sufficient information so that the beneficiary or representative
11 knows of the potential claim or should have inquired into its existence.

12 (3) If sub. (1) does not apply, a proceeding by a beneficiary against a trustee for
13 breach of trust must be commenced within 5 years after the first to occur of the
14 following:

15 (a) The removal, resignation, or death of the trustee.

16 (b) The termination of the beneficiary's interest in the trust.

17 (c) The termination of the trust.

18 (4) Subsections (1) and (3) do not apply to a claim for fraud. The time for
19 asserting a claim for fraud is governed by applicable law.

20 **SECTION 166.** 701.1006 of the statutes is created to read:

21 **701.1006 Reliance on trust instrument.** A trustee who acts in reasonable
22 reliance on the terms of the trust as expressed in the trust instrument is not liable
23 to a beneficiary for a breach of trust to the extent the breach resulted from the
24 reliance.

25 **SECTION 167.** 701.1007 of the statutes is created to read:

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1 **701.1007 Event affecting administration or distribution.** If the
2 happening of an event, including marriage, divorce, performance of educational
3 requirements, or death, affects the administration or distribution of a trust, a trustee
4 who has exercised reasonable care to ascertain the happening of the event is not
5 liable for a loss resulting from the trustee's lack of knowledge.

6 **SECTION 168.** 701.1008 of the statutes is created to read:

7 **701.1008 Exculpation of trustee.** (1) A term of a trust relieving a trustee
8 of liability for breach of trust is unenforceable to the extent that it does any of the
9 following:

10 (a) Relieves the trustee of liability for breach of trust committed in bad faith
11 or with reckless indifference to the purposes of the trust or the interests of a
12 beneficiary.

13 (b) Was inserted as the result of an abuse by the trustee of a fiduciary or
14 confidential relationship with the settlor.

15 (2) An exculpatory term drafted or caused to be drafted by the trustee is invalid
16 as an abuse of a fiduciary or confidential relationship unless the trustee proves that
17 the exculpatory term was fair under the circumstances existing at the time the trust
18 instrument was signed and that the existence and contents of the exculpatory term
19 were adequately communicated to the settlor.

20 **SECTION 169.** 701.1009 of the statutes is created to read:

21 **701.1009 Beneficiary's consent, release, or ratification.** A trustee is not
22 liable to a beneficiary for breach of trust if the beneficiary consented to the conduct
23 constituting the breach, released the trustee from liability for the breach, or ratified
24 the transaction constituting the breach, unless any of the following applies:

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1 (1) The consent, release, or ratification of the beneficiary was induced by
2 improper conduct of the trustee.

3 (2) At the time of the consent, release, or ratification, the beneficiary did not
4 have knowledge of the beneficiary's rights or of the material facts relating to the
5 breach.

6 **SECTION 170.** 701.1010 of the statutes is created to read:

7 **701.1010 Limitation on personal liability of trustee.** (1) Except as
8 otherwise provided in the contract, a trustee is not personally liable on a contract
9 properly entered into in the trustee's fiduciary capacity in the course of
10 administering the trust if the trustee in the contract disclosed the fiduciary capacity.

11 (2) A trustee is personally liable for torts committed in the course of
12 administering a trust, or for obligations arising from ownership or control of trust
13 property, including liability for violation of environmental law, only if the trustee is
14 personally at fault.

15 **SECTION 171.** 701.1011 of the statutes is created to read:

16 **701.1011 Interest as general partner.** (1) Unless personal liability is
17 imposed in the contract, a trustee who holds an interest as a general partner in a
18 general or limited partnership is not personally liable on a contract entered into by
19 the partnership after the trust's acquisition of the interest if the fiduciary capacity
20 was disclosed in the contract.

21 (2) A trustee who holds an interest as a general partner is not personally liable
22 for torts committed by the partnership or for obligations arising from ownership or
23 control of the interest unless the trustee is personally at fault.

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1 (3) If the trustee of a revocable trust holds an interest as a general partner, the
2 settlor is personally liable for contracts and other obligations of the partnership as
3 if the settlor were a general partner.

4 **SECTION 172.** 701.1012 of the statutes is created to read:

5 **701.1012 Protection of person dealing with trustee.** (1) A person other
6 than a beneficiary who in good faith assists a trustee, or who in good faith and for
7 value deals with a trustee, without knowledge that the trustee is exceeding or
8 improperly exercising the trustee's powers is protected from liability as if the trustee
9 properly exercised the power.

10 (2) A person other than a beneficiary who in good faith deals with a trustee is
11 not required to inquire into the extent of the trustee's powers or the propriety of their
12 exercise.

13 (3) A person who in good faith delivers assets to a trustee does not need to
14 ensure their proper application.

15 (4) A person other than a beneficiary who in good faith assists a former trustee,
16 or who in good faith and for value deals with a former trustee, without knowledge
17 that the trusteeship has terminated is protected from liability as if the former trustee
18 were still a trustee.

19 (5) Comparable protective provisions of other laws relating to commercial
20 transactions or transfer of securities by fiduciaries prevail over the protection
21 provided by this section.

22 **SECTION 173.** 701.1013 of the statutes is created to read:

23 **701.1013 Certification of trust.** (1) Instead of furnishing a copy of the trust
24 instrument to a person other than a beneficiary, the trustee may furnish to the
25 person a certification of trust containing the following information:

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1 (a) That the trust exists and the date on which the trust instrument was
2 executed.

3 (b) The identity of the settlor.

4 (c) The identity and address of the currently acting trustee.

5 (d) The powers of the trustee.

6 (e) The revocability or irrevocability of the trust and the identity of any person
7 holding a power to revoke the trust.

8 (f) The authority of a cotrustee to sign or otherwise authenticate and whether
9 all cotrustees or less than all cotrustees are required to sign or otherwise
10 authenticate in order to exercise powers of the trustee.

11 (g) The manner in which title to trust property may be taken.

12 **(2)** A certification of trust may be signed or otherwise authenticated by any
13 trustee.

14 **(3)** A trustee shall include in a certification of trust that the trust has not been
15 revoked, modified, or amended in any manner that would cause the representations
16 contained in the certification of trust to be incorrect.

17 **(4)** A certification of trust does not need to contain the dispositive terms of a
18 trust.

19 **(5)** A recipient of a certification of trust may require the trustee to furnish
20 copies of those excerpts from the original trust instrument and later amendments
21 that designate the trustee and confer upon the trustee the power to act in the pending
22 transaction.

23 **(6)** A person who acts in reliance upon a certification of trust without
24 knowledge that the representations contained therein are incorrect is not liable to
25 any person for so acting and may assume without inquiry the existence of the facts

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1 contained in the certification. Knowledge of the terms of the trust may not be
2 inferred solely from the fact that a copy of all or part of the trust instrument is held
3 by the person relying upon the certification.

4 (7) A person who in good faith enters into a transaction in reliance upon a
5 certification of trust may enforce the transaction against the trust property as if the
6 representations contained in the certification were correct.

7 (8) A person making a demand for copies of the trust instrument or excerpts
8 from the trust instrument, other than those excerpts described in sub. (5), in addition
9 to a certification of trust is liable for costs, expenses, reasonable attorney fees and
10 damages if the court determines that the person did not act in good faith in
11 demanding the copies.

12 (9) This section does not limit the right of a person to obtain a copy of the trust
13 instrument in a judicial proceeding concerning the trust.

14 **SECTION 174.** 701.105 (title), (1), (2) and (3) of the statutes are renumbered
15 701.1201 (title), (1), (2) and (3), and 701.1201 (1), (2) and (3), as renumbered, are
16 amended to read:

17 701.1201 (1) (a) In the administration of any trust ~~which~~ that is a private
18 foundation, as defined in section 509 of the ~~internal revenue code~~ Internal Revenue
19 Code, a charitable trust, as ~~defined~~ described in section 4947 (a) (1) of the ~~internal~~
20 ~~revenue code~~ Internal Revenue Code, or a split-interest trust as ~~defined~~ described
21 in section 4947 (a) (2) of the ~~internal revenue code~~ Internal Revenue Code, all of the
22 following acts shall be prohibited:

23 1. Engaging in any act of self-dealing, as defined in section 4941 (d) of the
24 ~~internal revenue code, which~~ Internal Revenue Code, ~~that~~ would give rise to any

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1 liability for the tax imposed by section 4941 (a) of the ~~internal revenue code~~ Internal
2 Revenue Code.

3 2. Retaining any excess business holdings, as defined in section 4943 (c) of the
4 ~~internal revenue code, which~~ Internal Revenue Code, that would give rise to any
5 liability for the tax imposed by section 4943 (a) of the ~~internal revenue code~~ Internal
6 Revenue Code.

7 3. Making any investments ~~which~~ that would jeopardize the carrying out of any
8 of the exempt purposes of the trust, within the meaning of section 4944 of the ~~internal~~
9 ~~revenue code~~ Internal Revenue Code, so as to give rise to any liability for the tax
10 imposed by section 4944 (a) of the ~~internal revenue code~~ Internal Revenue Code.

11 4. Making any taxable expenditures, as defined in section 4945 (d) of the
12 ~~internal revenue code, which~~ Internal Revenue Code, that would give rise to any
13 liability for the tax imposed by section 4945 (a) of the ~~internal revenue code~~ Internal
14 Revenue Code.

15 (b) This subsection shall ~~shall~~ does not apply either to those split-interest trusts or
16 to amounts thereof ~~which~~ that are not subject to the prohibitions applicable to
17 private foundations by reason of the provisions of section 4947 of the ~~internal~~
18 ~~revenue code~~ Internal Revenue Code.

19 (2) In the administration of any trust ~~which~~ that is a private foundation, as
20 defined in section 509 of the ~~internal revenue code~~ Internal Revenue Code, or ~~which~~
21 ~~that~~ is a charitable trust, as defined ~~described~~ in section 4947 (a) (1) of the ~~internal~~
22 ~~revenue code~~ Internal Revenue Code, there shall be distributed, for the purposes
23 specified in the trust instrument, for each taxable year, amounts at least sufficient
24 to avoid liability for the tax imposed by section 4942 (a) of the ~~internal revenue code~~
25 Internal Revenue Code.

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1 701.1123 (1) In this section:

2 (a) “Marital deduction trust” means a trust for which an election to qualify for
3 a marital deduction under section 2056 (b) (7), 2056A (a) (3), or 2523 (f) of the Internal
4 Revenue Code has been made or a trust that qualified for the marital deduction
5 under other provisions of section 2056 or 2523 of the Internal Revenue Code.

6 (b) “Payment” means an amount of money or property received by a trustee that
7 is any of the following:

8 1. Part of a series, or eligible to be part of a series, of distributions payable over
9 a fixed number of years or during the life of one or more individuals because of
10 services rendered or property transferred to the payer in exchange for the future
11 distributions.

12 2. Distributed from a plan, regardless of the reason for the distribution.

13 (c) “Plan” means a contractual, custodial, trust, or other arrangement that
14 provides for distributions to a trust. “Plan” includes a private or commercial annuity,
15 an individual retirement account, a Roth individual retirement account, a qualified
16 retirement plan such as a pension, profit-sharing, stock-bonus, or stock-ownership
17 plan, or any nonqualified deferred compensation plan.

18 (e) “Separate account” means an account established or maintained under a
19 plan under which income, gains, and losses, whether or not realized, from assets
20 allocated to the account, are credited to or charged against the account without
21 regard to other income, gains, or losses of the plan.

22 **SECTION 183.** 701.1123 (4) of the statutes is created to read:

23 701.1123 (4) (a) Notwithstanding sub. (3), a trustee of a marital deduction trust
24 shall determine plan income for an accounting period as if the plan were a trust
25 subject to this subchapter. If the trustee of a marital deduction trust cannot

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1 determine the plan income, the plan income is 4 percent of the total present value
2 of the trust's income in the plan on the first day of the accounting period, based on
3 reasonable actuarial assumptions as determined by the trustee of the marital
4 deduction trust.

5 (b) Notwithstanding subs. (2) and (3), a trustee of a marital deduction trust
6 shall allocate a payment from a plan to income to the extent of the plan income and
7 distribute that amount to the surviving spouse. The trustee of the marital deduction
8 trust shall allocate the balance of the payment to principal. Upon the request of the
9 surviving spouse, the trustee of a marital deduction trust shall allocate principal to
10 income to the extent the plan income exceeds payments made from the plan to the
11 trust during the accounting period.

12 (c) Upon the request of the surviving spouse of the settlor, a trustee of a marital
13 deduction trust shall demand that a person administering a plan distribute the plan
14 income to the trust.

15 **SECTION 184.** 701.1126 (title) of the statutes is created to read:

16 **701.1126 (title) Timber.**

17 **SECTION 185.** 701.1134 (3) (c) and (d) and (4) of the statutes are created to read:

18 701.1134 (3) (c) Proportionately from principal and income to the extent that
19 receipts from the entity are allocated to both income and principal.

20 (d) From principal to the extent that the tax exceeds the total receipts from the
21 entity.

22 (4) After applying subs. (1) to (3), the trustee shall adjust income or principal
23 receipts to the extent that the trust's taxes are reduced because the trust receives a
24 deduction for payments made to a beneficiary.

25 **SECTION 186.** 701.115 of the statutes is repealed.

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1 proceedings or prejudice the rights of the parties, the particular provision of this
2 chapter does not apply to that judicial proceeding and the court shall apply ch. 701,
3 2011 stats., as the court finds to be necessary to prevent interference with the
4 effective conduct of the judicial proceeding and to avoid prejudicing the rights of the
5 parties.

6 **SECTION 192.** 701.13 of the statutes is repealed.

7 **SECTION 193.** 701.14 (title) and (1) of the statutes are repealed.

8 **SECTION 194.** 701.14 (2) of the statutes is renumbered 701.0205 and amended
9 to read:

10 **701.0205 Notice.** If notice of a judicial proceeding involving a trust proceeding
11 to ~~a~~ an interested person interested in the trust, to the person's representative or
12 guardian ad litem ~~as provided in s. 701.15~~, or to other persons, is required by law or
13 deemed necessary by the court, the court shall order such notice to be given as
14 prescribed in s. 879.05 except that service by publication ~~shall~~ may not be required
15 unless ordered by the court. The court may order both personal service and service
16 by publication on designated persons. Proof of service shall be made as provided in
17 s. 879.07. ~~Persons interested in the trust~~ Interested persons, on behalf of
18 themselves, or their representatives or guardians ad litem ~~as provided in s. 701.15~~,
19 on behalf of ~~themselves~~ the representative or guardian ad litem and those whom they
20 represent the interested person the representative or guardian ad litem represents,
21 may in writing waive service of notice and consent to the hearing of any matter
22 without notice. Waiver of notice or an appearance by any interested person
23 ~~interested in the trust~~ or the interested person's representative or guardian ad litem
24 ~~as provided in s. 701.15~~ is equivalent to timely service of notice.

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1 **SECTION 195.** 701.14 (3) of the statutes is renumbered 701.0206 and amended
2 to read:

3 **701.0206 Attorney for person in military service.** At the time of filing a
4 petition for a ~~trust judicial proceeding, involving a trust, the petitioner shall file an~~
5 affidavit ~~shall be filed~~ setting forth the name of any interested person interested in
6 the ~~proceeding~~ who is actively engaged in the military service of the United States.
7 Whenever it appears by the affidavit or otherwise that any person in the active
8 military service of the United States is an interested in ~~any trust proceeding person~~
9 and is not represented by an attorney, or by an attorney-in-fact who is duly
10 authorized to act on the interested person's behalf in the matter, the court shall
11 appoint an attorney to represent the interested person and protect the person's
12 interest.

13 **SECTION 196.** 701.14 (4) of the statutes is repealed.

14 **SECTION 197.** 701.15 of the statutes is repealed.

15 **SECTION 198.** 701.16 (title), (1), (2), (3), (4) (title) and (a) to (c), (5) and (6) of the
16 statutes are repealed.

17 **SECTION 199.** 701.16 (4) (d) of the statutes is renumbered 879.47 (2) and
18 amended to read:

19 879.47 (2) ~~Notwithstanding s. 879.47, trustees~~ Trustees and cotrustees may
20 submit to courts accounts in the format that they normally use for accounts
21 submitted to beneficiaries under this subsection, if all of the information required by
22 the court is included.

23 **SECTION 200.** 701.17 of the statutes is repealed.

24 **SECTION 201.** 701.18 of the statutes is repealed.

25 **SECTION 202.** 701.19 of the statutes is repealed.

SENATE BILL 384**SECTION 203**

1 **SECTION 203.** 701.20 (title) of the statutes is repealed.

2 **SECTION 204.** 701.20 (2) (intro.) of the statutes is repealed.

3 **SECTION 205.** 701.20 (2) (a) of the statutes is renumbered 701.1102 (1).

4 **SECTION 206.** 701.20 (2) (b) of the statutes is renumbered 701.1102 (1m) and
5 amended to read:

6 701.1102 (1m) “Beneficiary” Notwithstanding s. 701.0103 (3), “beneficiary”
7 means a person who has a beneficial interest in a trust or an estate and includes, in
8 the case of a decedent’s estate, an heir, a legatee, and a devisee and, in the case of a
9 trust, an income beneficiary and a remainder beneficiary.

10 **SECTION 207.** 701.20 (2) (c) of the statutes is renumbered 701.1102 (2).

11 **SECTION 208.** 701.20 (2) (d) of the statutes is renumbered 701.1102 (3) and
12 amended to read:

13 701.1102 (3) “Income” means money or property that a fiduciary receives as
14 current return from a principal asset. “Income” includes a portion of receipts from
15 a sale, exchange, or liquidation of a principal asset, to the extent provided in subs.
16 ~~(10)~~ ss. 701.1115 to ~~(24)~~ 701.1129.

17 **SECTION 209.** 701.20 (2) (e) of the statutes is renumbered 701.1102 (4).

18 **SECTION 210.** 701.20 (2) (f) of the statutes is renumbered 701.1102 (5).

19 **SECTION 211.** 701.20 (2) (g) of the statutes is renumbered 701.1102 (6).

20 **SECTION 212.** 701.20 (2) (h) of the statutes is renumbered 701.1102 (7) and
21 amended to read:

22 701.1102 (7) “Net income” means the total receipts allocated to income during
23 an accounting period, minus the disbursements made from income during the period,
24 plus or minus transfers under this section subchapter to or from income during the
25 period.

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1 **SECTION 213.** 701.20 (2) (i) of the statutes is repealed.

2 **SECTION 214.** 701.20 (2) (j) of the statutes is renumbered 701.1102 (8).

3 **SECTION 215.** 701.20 (2) (k) of the statutes is renumbered 701.1102 (9) and
4 amended to read:

5 701.1102 (9) “Remainder beneficiary” means a person entitled to receive
6 principal when an income interest ends who is a beneficiary under s. 701.0103 (21)
7 (b).

8 **SECTION 216.** 701.20 (2) (L), (m) and (n) of the statutes are repealed.

9 **SECTION 217.** 701.20 (3) of the statutes is renumbered 701.1103, and 701.1103
10 (1) and (2), as renumbered, are amended to read:

11 701.1103 (1) In allocating receipts and disbursements to income or principal
12 or between income and principal, and with respect to any matter within the scope of
13 ~~subs. (5) ss. 701.1110 to (9) 701.1114~~, a fiduciary:

14 (a) Shall first administer a trust or estate in accordance with the terms of the
15 trust or the will, even if there is a different provision in this section subchapter.

16 (b) May administer a trust or estate by the exercise of a discretionary power
17 of administration given to the fiduciary by the terms of the trust or the will, even if
18 the exercise of the power produces a result different from a result required or
19 permitted by this section subchapter.

20 (c) Shall administer a trust or estate in accordance with this section subchapter
21 if the terms of the trust or the will do not contain a different provision or do not give
22 the fiduciary a discretionary power of administration.

23 (d) Shall add a receipt or charge a disbursement to principal to the extent that
24 the terms of the trust and this section subchapter do not provide a rule for allocating
25 the receipt or disbursement to principal or income or between principal and income.

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1 (2) In exercising the power to adjust under ~~sub. (4) (a)~~ s. 701.1104 (1) or a
2 discretionary power of administration regarding a matter within the scope of this
3 ~~section~~ subchapter, whether granted by the terms of a trust, a will, or this ~~section~~
4 subchapter, a fiduciary shall administer a trust or estate impartially, based on what
5 is fair and reasonable to all of the beneficiaries, except to the extent that the terms
6 of the trust or the will clearly manifest an intention that the fiduciary shall or may
7 favor one or more of the beneficiaries. A determination in accordance with this
8 ~~section~~ subchapter is presumed to be fair and reasonable to all of the beneficiaries.

9 **SECTION 218.** 701.20 (4) of the statutes is renumbered 701.1104, and 701.1104
10 (1), (2) (intro.), (3) (h) and (i), (4), (5) and (6), as renumbered, are amended to read:

11 701.1104 (1) A trustee may adjust between principal and income to the extent
12 the trustee considers necessary if the trustee invests and manages trust assets as a
13 prudent investor, the terms of the trust describe the amount that may or must be
14 distributed to a beneficiary by referring to the trust's income, and the trustee
15 determines, after applying the rules in ~~sub. (3) (a)~~ s. 701.1103 (1), that the trustee
16 is unable to comply with ~~sub. (3) (b)~~ s. 701.1103 (2).

17 (2) (intro.) In deciding whether and to what extent to exercise the power
18 conferred by ~~par. (a)~~ sub. (1), a trustee shall consider all factors relevant to the trust
19 and its beneficiaries, including the following factors to the extent they are relevant:

20 (3) (h) If the trust has been converted under ~~sub. (4g)~~ s. 701.1106 to a unitrust.

21 (i) If the trust is an express unitrust, as defined in ~~sub. (4j) (a)~~ s. 701.1107 (1).

22 (4) If ~~par. (e) 5., 6.~~ sub. (3) (e), (f), or 7. (g) applies to a trustee and there is more
23 than one trustee, a cotrustee to whom the provision does not apply may make the
24 adjustment unless the terms of the trust do not permit the exercise of the power by
25 that cotrustee.

SENATE BILL 384**SECTION 218**

1 **(5)** A trustee may release the entire power conferred by ~~par. (a)~~ sub. (1) or may
2 release only the power to adjust from income to principal or the power to adjust from
3 principal to income if the trustee is uncertain about whether possessing or exercising
4 the power will cause a result described in ~~par. (e) 1.~~ sub. (3) (a) to 6. (f) or if the trustee
5 determines that possessing or exercising the power will or may deprive the trust of
6 a tax benefit or impose a tax burden not described in ~~par. (e)~~ sub. (3). The release may
7 be permanent or for a specified period, including a period measured by the life of an
8 individual.

9 **(6)** Terms of a trust that limit the power of a trustee to make an adjustment
10 between principal and income do not affect the application of this subsection unless
11 it is clear from the terms of the trust that the terms are intended to deny the trustee
12 the power of adjustment conferred by ~~par. (a)~~ sub. (1).

13 **SECTION 219.** 701.20 (4c) (title) of the statutes is renumbered 701.1105 (title).

14 **SECTION 220.** 701.20 (4c) (b) (intro.) of the statutes is renumbered 701.1105 (1)
15 (intro.) and amended to read:

16 701.1105 (1) (intro.) A trustee may, but is not required to, obtain approval of
17 a proposed action under ~~sub. (4) (a)~~ s. 701.1104 (1) by providing a written notice that
18 complies with all of the following:

19 **SECTION 221.** 701.20 (4c) (b) 1. of the statutes is renumbered 701.1105 (1) (a).

20 **SECTION 222.** 701.20 (4c) (b) 2. of the statutes is renumbered 701.1105 (1) (b).

21 **SECTION 223.** 701.20 (4c) (b) 3. (intro.) of the statutes is renumbered 701.1105
22 (1) (c) and amended to read:

23 701.1105 (1) (c) Is given to all *sui juris* qualified beneficiaries ~~who are any of~~
24 the following:

25 **SECTION 224.** 701.20 (4c) (b) 3. a., b. and c. of the statutes are repealed.

SENATE BILL 384**SECTION 225**

1 **SECTION 225.** 701.20 (4c) (b) 4. of the statutes is renumbered 701.1105 (1) (d),
2 and 701.1105 (1) (d) (intro.) and 4., as renumbered, are amended to read:

3 701.1105 (1) (d) (intro.) States that it is given in accordance with this ~~subsection~~
4 section and discloses the following information:

5 4. The effective date of the proposed action if no objection is received from any
6 beneficiary within the time specified in subd. ~~4. c. 3.~~

7 **SECTION 226.** 701.20 (4c) (c) of the statutes is renumbered 701.1105 (2) and
8 amended to read:

9 701.1105 (2) If a trustee gives notice of a proposed action under this ~~subsection~~
10 section, the trustee is not required to give notice to a sui-juris qualified beneficiary
11 who consents to the proposed action in writing at any time before or after the
12 proposed action is taken.

13 **SECTION 227.** 701.20 (4c) (d) of the statutes is renumbered 701.1105 (3) and
14 amended to read:

15 701.1105 (3) A sui-juris qualified beneficiary may object to the proposed action
16 by giving a written objection to the trustee within the time specified in the notice
17 under ~~par. (b) 4. c. sub. (1) (d) 3.~~

18 **SECTION 228.** 701.20 (4c) (e) of the statutes is renumbered 701.1105 (4) and
19 amended to read:

20 701.1105 (4) A trustee may decide not to take a proposed action after the
21 trustee receives a written objection to the proposed action or at any other time for any
22 other reason. In that case, the trustee shall give written notice to the sui-juris
23 qualified beneficiaries of the decision not to take the proposed action.

24 **SECTION 229.** 701.20 (4c) (f) of the statutes is renumbered 701.1105 (5) and
25 amended to read:

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1 701.1105 (5) If a trustee receives a written objection to a proposed action within
2 the time specified in the notice under ~~par. (b) 4. e. sub. (1) (d) 3.~~, either the trustee
3 or the qualified beneficiary making the written objection may petition the court to
4 have the proposed action approved, modified, or prohibited. In the court proceeding,
5 the qualified beneficiary objecting to the proposed action has the burden of proving
6 that the proposed action should be modified or prohibited. A qualified beneficiary
7 who did not make the written objection may oppose the proposed action in the court
8 proceeding.

9 **SECTION 230.** 701.20 (4c) (g) of the statutes is renumbered 701.1105 (6) and
10 amended to read:

11 701.1105 (6) For purposes of this ~~subsection~~ section, a proposed action under
12 ~~sub. (4) s. 701.1104~~ includes a course of action or a decision not to take action under
13 ~~sub. (4) s. 701.1104~~.

14 **SECTION 231.** 701.20 (4g) (title) of the statutes is renumbered 701.1106 (title).

15 **SECTION 232.** 701.20 (4g) (a) (intro.) of the statutes is renumbered 701.1106 (1)
16 (intro.) and amended to read:

17 701.1106 (1) (intro.) Subject to ~~par. (d)~~ sub. (4), a trust may be converted to a
18 unitrust in any of the following ways:

19 **SECTION 233.** 701.20 (4g) (a) 1. (intro.) of the statutes is renumbered 701.1106
20 (1) (a) (intro.) and amended to read:

21 701.1106 (1) (a) (intro.) By the trustee, at his or her own discretion or at the
22 request of a qualified beneficiary, if all of the following apply:

23 **SECTION 234.** 701.20 (4g) (a) 1. a. of the statutes is renumbered 701.1106 (1)
24 (a) 1.

SENATE BILL 384**SECTION 235**

1 **SECTION 235.** 701.20 (4g) (a) 1. b. of the statutes is renumbered 701.1106 (1)
2 (a) 2. and amended to read:

3 701.1106 (1) (a) 2. The trustee provides notice in the same manner as provided
4 in ~~sub. (4e) (b)~~ s. 701.1105 (1) of the trustee's intention to convert the trust to a
5 unitrust, and the notice advises how the unitrust will operate, including the fixed
6 percentage under ~~par. (e) 1.~~ sub. (3) (a) and any other initial determinations under
7 ~~par. (e) 4.~~ sub. (3) (d) that the trustee intends to follow.

8 **SECTION 236.** 701.20 (4g) (a) 1. c. of the statutes is repealed.

9 **SECTION 237.** 701.20 (4g) (a) 1. d. of the statutes is renumbered 701.1106 (1)
10 (a) 3. and amended to read:

11 701.1106 (1) (a) 3. Every ~~sui-juris~~ qualified beneficiary consents to the
12 conversion to a unitrust in a writing delivered to the trustee.

13 **SECTION 238.** 701.20 (4g) (a) 1. e. of the statutes is renumbered 701.1106 (1) (a)
14 4.

15 **SECTION 239.** 701.20 (4g) (a) 2. (intro.) of the statutes is renumbered 701.1106
16 (1) (b) (intro.) and amended to read:

17 701.1106 (1) (b) (intro.) By a court on the petition of the trustee or a qualified
18 beneficiary, if all of the following apply:

19 **SECTION 240.** 701.20 (4g) (a) 2. a. of the statutes is renumbered 701.1106 (1)
20 (b) 1. and amended to read:

21 701.1106 (1) (b) 1. The trustee or qualified beneficiary has provided notice
22 under ~~sub. (4e)~~ s. 701.1105 of the intention to request the court to convert the trust
23 to a unitrust, and the notice advises how the unitrust will operate, including the fixed
24 percentage under ~~par. (e) 1.~~ sub. (3) (a) and any other initial determinations under
25 ~~par. (e) 4.~~ sub. (3) (d) that will be requested.

SENATE BILL 384**SECTION 241**

1 **SECTION 241.** 701.20 (4g) (a) 2. b. of the statutes is renumbered 701.1106 (1)
2 (b) 2.

3 **SECTION 242.** 701.20 (4g) (b), (c), (d) and (e) of the statutes are renumbered
4 701.1106 (2), (3), (4) and (5), and 701.1106 (2), (3) (a), (b), (c), (d) 7., (f) (intro.) and 2.,
5 (g) (intro.), 1. and 3. and (h), (4) (a) (intro.) and 1. and (b) and (5), as renumbered, are
6 amended to read:

7 701.1106 (2) In deciding whether to convert the trust to a unitrust under ~~par.~~
8 ~~(a) 1. sub. (1) (a) and in determining the fixed percentage under sub. (3) (b) 1.,~~ the
9 trustee shall consider all relevant factors under ~~sub. (4) (b) 1. to 9. s. 701.1104 (2) (a)~~
10 ~~to (i).~~

11 (3) (a) If a trust is converted to a unitrust under this ~~subsection~~ section by the
12 trustee or a court, notwithstanding ~~sub. (3) (a) 1. s. 701.1103 (1) (a) and 4. (d) and~~
13 ~~s. 701.21~~ 701.1136 (4) the trustee shall make distributions in accordance with the
14 ~~creating trust~~ instrument, except that any reference in the ~~creating trust~~ instrument
15 to “income” means a fixed percentage of the net fair market value of the unitrust’s
16 assets, whether such assets otherwise would be considered income or principal under
17 this ~~section~~ subchapter, averaged over a preceding period determined by the trustee,
18 which is at least 3 years but not more than 5 years, or the period since the original
19 trust was created, whichever is less.

20 (b) 1. Subject to subd. 2. b., if the trust is converted to a unitrust under ~~par. (a)~~
21 ~~1. sub. (1) (a),~~ the trustee shall determine the fixed percentage to be applied under
22 ~~subd. 1. par. (a),~~ and the notice under ~~par. (a) 1. b. sub. (1) (a) 2.~~ must state the fixed
23 percentage. If the trust is converted to a unitrust under ~~par. (a) 2. sub. (1) (b),~~ the
24 court shall determine the fixed percentage to be applied under ~~subd. 1. par. (a).~~

SENATE BILL 384**SECTION 242**

1 2. Any fixed percentage under ~~subd. 1. par. (a)~~ that is determined by a trustee
2 may not be less than 3 percent nor more than 5 percent.

3 (c) After a trust is converted to a unitrust, the trustee may, subject to the notice
4 requirement under ~~sub. (4c) s. 701.1105~~ and with the consent of every *sui-juris*
5 qualified beneficiary, do any of the following:

6 1. Convert the unitrust back to the original trust under the creating trust
7 instrument.

8 2. Change the fixed percentage under ~~subd. 1. par. (a)~~, subject to ~~subd. 2. b. par.~~
9 (b) 2.

10 (d) 7. The averaging under ~~subd. 1. par. (a)~~ to a different preceding period,
11 which is at least 3 years but not more than 5 years.

12 (f) (intro.) Unless otherwise provided by the creating trust instrument, the
13 unitrust distribution is considered to have been paid from the following sources in
14 the order of priority:

15 2. Ordinary income for federal income tax purposes that is not net income
16 under ~~subd. 6. a. 1.~~

17 (g) (intro.) A court may, on the petition of the trustee or a qualified beneficiary,
18 do any of the following:

19 1. Change the fixed percentage that was determined under ~~subd. 2. par. (b)~~ by
20 the trustee or by a prior court order.

21 3. Average the valuation of the unitrust's assets over a period other than that
22 specified in ~~subd. 1. par. (a).~~

23 (h) Conversion to a unitrust under this ~~subsection~~ section does not affect a
24 provision in the creating trust instrument that directs or authorizes the trustee to

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1 distribute principal or that authorizes a beneficiary to withdraw a portion or all of
2 the principal.

3 (4) (a) (intro.) A trust may not be converted under this ~~subsection~~ section to a
4 unitrust if any of the following applies:

5 1. The ~~creating~~ trust instrument specifically prohibits the conversion.

6 (b) Notwithstanding ~~subd. 1. par. (a)~~, if a trust may not be converted to a
7 unitrust solely because ~~subd. 1. g. par. (a) 7.~~ applies to a trustee, a cotrustee, if any,
8 to whom ~~subd. 1. g. par. (a) 7.~~ does not apply may convert the trust to a unitrust under
9 ~~par. (a) 1. sub. (1) (a)~~, unless prohibited by the creating instrument, or a court may
10 convert the trust to a unitrust under ~~par. (a) 2. sub. (1) (b)~~ on the petition of a trustee
11 or qualified beneficiary.

12 (5) A trustee may release the power conferred by ~~par. (a) 1. sub. (1) (a)~~ if the
13 trustee is uncertain about whether possessing or exercising the power will cause a
14 result described in ~~par. (d) 1. b. sub. (4) (a) 2. to f. 6.~~ or if the trustee determines that
15 possessing or exercising the power will or may deprive the trust of a tax benefit or
16 impose a tax burden not described in ~~par. (d) 1. sub. (4) (a)~~. The release may be
17 permanent or for a specified period, including a period measured by the life of an
18 individual.

19 **SECTION 243.** 701.20 (4j) of the statutes is renumbered 701.1107, and 701.1107
20 (1) and (2) (a), (e), (f) 2., (g) and (h), as renumbered, are amended to read:

21 701.1107 (1) In this ~~subsection~~ section, “express unitrust” means any trust that
22 by its ~~governing~~ trust instrument requires the distribution at least annually of a
23 unitrust amount equal to a fixed percentage of the net fair market value of the trust’s
24 assets, valued at least annually, other than a trust solely for charitable purposes or

SENATE BILL 384**SECTION 243**

1 a charitable split-interest trust under section 664 (d) or 170 (f) (2) (B) of the Internal
2 Revenue Code.

3 (2) (a) To the extent not otherwise provided for in the governing trust
4 instrument, the unitrust amount of not less than 3 percent nor more than 5 percent
5 may be determined by reference to the net fair market value of the trust's assets
6 averaged over a preceding period determined by the trustee, which is at least 3 years
7 but not more than 5 years.

8 (e) The governing trust instrument may grant discretion to the trustee to adopt
9 a consistent practice of treating capital gains as part of the unitrust distribution, to
10 the extent that the unitrust distribution exceeds the income determined as if the
11 trust were not a unitrust, or it may specify the ordering of such classes of income.

12 (f) 2. Ordinary income for federal income tax purposes that is not net income
13 under subd. ~~6. a.~~ 1.

14 (g) The trust ~~document~~ instrument may provide that assets used by the trust
15 beneficiary, such as a residence or tangible personal property, may be excluded from
16 the net fair market value for computing the unitrust amount. Such use may be
17 considered equivalent to the income or unitrust amount.

18 (h) In the absence of contrary provisions in the governing ~~document~~ trust
19 instrument of an express unitrust, the provisions of sub. ~~(4g) (e) 1., 4. s. 701.1106 (3)~~
20 (a), (d), and 5. (e) apply.

21 **SECTION 244.** 701.20 (4k) of the statutes is renumbered 701.1108 and amended
22 to read:

23 **701.1108 Power to treat capital gains as part of a distribution.** Unless
24 prohibited by the governing ~~instrument~~ will or trust instrument, a trustee fiduciary
25 may cause gains from the sale or exchange of estate or trust assets property, as

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1 determined for federal income tax purposes, to be taxed for federal income tax
2 purposes as part of a distribution of income that has been increased by an adjustment
3 from principal to income under ~~sub. (4) s. 701.1104~~, of a unitrust distribution, of a
4 fixed annuity distribution, or of a principal distribution to a beneficiary.

5 **SECTION 245.** 701.20 (4m) (title) of the statutes is renumbered 701.1109 (title).

6 **SECTION 246.** 701.20 (4m) (a) of the statutes is renumbered 701.1109 (1) and
7 amended to read:

8 701.1109 (1) Nothing in this ~~section~~ subchapter creates a duty to make an
9 adjustment under ~~sub. (4) s. 701.1104~~ or to convert a trust to a unitrust under ~~sub.~~
10 ~~(4g) s. 701.1106~~. Unless it determines that the decision to make an adjustment or
11 to convert to a unitrust was an abuse of the fiduciary's discretion, a court may not
12 grant relief from any decision a fiduciary makes regarding the exercise of a
13 discretionary power conferred by ~~sub. (4) s. 701.1104~~ or ~~(4g) 701.1106~~.

14 **SECTION 247.** 701.20 (4m) (am) of the statutes is renumbered 701.1109 (2) and
15 amended to read:

16 701.1109 (2) An action taken under ~~sub. (4) s. 701.1104~~ or ~~(4g) 701.1106~~ is not
17 an abuse of a fiduciary's discretion if the fiduciary gave written notice of the proposed
18 action under ~~sub. (4e) s. 701.1105~~ and did not receive a timely written objection to
19 the notice. It is not an abuse of discretion not to exercise the power to adjust under
20 ~~sub. (4) s. 701.1104~~ or to convert under ~~sub. (4g) s. 701.1106~~.

21 **SECTION 248.** 701.20 (4m) (b) of the statutes is renumbered 701.1109 (3).

22 **SECTION 249.** 701.20 (4m) (c) of the statutes is renumbered 701.1109 (4), and
23 701.1109 (4) (c), as renumbered, is amended to read:

24 701.1109 (4) (c) To the extent that the court is unable, after applying ~~subds. 1.~~
25 pars. (a) and 2. (b), to place the beneficiaries, the trust, or both in the positions that

SENATE BILL 384**SECTION 249**

1 they would have occupied had the discretion not been abused, the court may order
2 the fiduciary to pay an appropriate amount from its own funds to one or more of the
3 beneficiaries, the trust, or both.

4 **SECTION 250.** 701.20 (4m) (d) of the statutes is renumbered 701.1109 (5).

5 **SECTION 251.** 701.20 (5) of the statutes is renumbered 701.1110, and 701.1110
6 (1), (2) (intro.), (3), (4) and (5), as renumbered, are amended to read:

7 701.1110 (1) A fiduciary of an estate or of a terminating income interest shall
8 determine the amount of net income and net principal receipts received from
9 property specifically given to a beneficiary under the rules in ~~subs. (7)~~ ss. 701.1112
10 ~~to (30)~~ 701.1135 that apply to trustees and the rules in ~~par. (e) sub. (5)~~. The fiduciary
11 shall distribute the net income and net principal receipts to the beneficiary who is
12 to receive the specific property.

13 (2) (intro.) A fiduciary shall determine the remaining net income of a decedent's
14 estate or a terminating income interest under the rules in ~~subs. (7)~~ ss. 701.1112 to
15 ~~(30)~~ 701.1135 that apply to trustees and by:

16 (3) A fiduciary shall distribute to a beneficiary, including a trustee, who
17 receives a pecuniary amount not determined by a pecuniary formula related to a
18 transfer tax interest at the legal rate set forth in s. 138.04 on any unpaid portion of
19 the pecuniary amount for the period commencing one year after the decedent's death
20 or after the income interest in the trust ends. The interest under this ~~paragraph~~
21 subsection shall be distributed from net income determined under ~~par. (b) sub. (2)~~ or
22 from principal to the extent that net income is insufficient. For purposes of this
23 ~~paragraph~~ subsection, the deferred marital property elective share amount elected
24 by a surviving spouse under s. 861.02 (1) is a bequest of a specific pecuniary amount
25 ~~of money~~ not determined by a pecuniary formula related to a transfer tax.

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1 (4) A fiduciary shall distribute the net income remaining after distributions
2 required by ~~par. (e)~~ under subs. (1) to (3) in the manner described in ~~sub. (6)~~ s.
3 701.1111 to all other beneficiaries, including a beneficiary who receives a pecuniary
4 amount determined by a pecuniary formula related to a transfer tax.

5 (5) A fiduciary may not reduce principal or income receipts from property
6 described in ~~par. (a)~~ sub. (1) because of a payment described in ~~sub. (25)~~ s. 701.1130
7 or ~~(26)~~ 701.1131 to the extent that the will, the terms of the trust, or applicable law
8 requires the fiduciary to make the payment from assets other than the property or
9 to the extent that the fiduciary recovers or expects to recover the payment from a 3rd
10 party. The net income and principal receipts from the property are determined by
11 including all of the amounts the fiduciary receives or pays with respect to the
12 property, whether those amounts accrued or became due before, on, or after the date
13 of a decedent's death or an income interest's terminating event, and by making a
14 reasonable provision for amounts that the fiduciary believes the estate or
15 terminating income interest may become obligated to pay after the property is
16 distributed.

17 **SECTION 252.** 701.20 (6) of the statutes is renumbered 701.1111, and 701.1111
18 (1), (2) (d) and (4), as renumbered, are amended to read:

19 701.1111 (1) Each beneficiary described in ~~sub. (5) (d)~~ s. 701.1110 (4) is entitled
20 to receive a portion of the net income equal to the beneficiary's fractional interest in
21 undistributed principal assets, using values as of the distribution date. If a fiduciary
22 makes more than one distribution of assets to beneficiaries to whom this ~~subsection~~
23 section applies, each beneficiary, including one who does not receive part of the
24 distribution, is entitled, as of each distribution date, to the net income the fiduciary

SENATE BILL 384**SECTION 252**

1 has received after the date of death or terminating event or earlier distribution date
2 but has not distributed as of the current distribution date.

3 (2) (d) The distribution date for purposes of this ~~subsection~~ section may be the
4 date as of which the fiduciary calculates the value of the assets if that date is
5 reasonably near the date on which assets are actually distributed.

6 (4) A trustee may apply the rules in this ~~subsection~~ section, to the extent that
7 the trustee considers it appropriate, to net gain or loss realized after the date of death
8 or terminating event or earlier distribution date from the disposition of a principal
9 asset if this ~~subsection~~ section applies to the income from the asset.

10 **SECTION 253.** 701.20 (7) of the statutes is renumbered 701.1112, and 701.1112
11 (3), as renumbered, is amended to read:

12 701.1112 (3) An asset becomes subject to a successive income interest on the
13 day after the preceding income interest ends, as determined under ~~par. (d)~~ sub. (4),
14 even if there is an intervening period of administration to wind up the preceding
15 income interest.

16 **SECTION 254.** 701.20 (8) of the statutes is renumbered 701.1113, and 701.1113
17 (1) and (3), as renumbered, are amended to read:

18 701.1113 (1) A trustee shall allocate to principal an income receipt or
19 disbursement other than one to which ~~sub. (5) (a)~~ s. 701.1110 (1) applies if its due date
20 occurs before a decedent dies in the case of an estate or before an income interest
21 begins in the case of a trust or successive income interest.

22 (3) An item of income or an obligation is due on the date the payer is required
23 to make a payment. If a payment date is not stated, there is no due date for the
24 purposes of this section. Distributions to shareholders or other owners from an
25 entity, as defined in ~~sub. (10)~~ s. 701.1115, are due on the date fixed by the entity for

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1 determining who is entitled to receive the distribution or, if no date is fixed, on the
2 declaration date for the distribution. A due date is periodic for receipts or
3 disbursements that must be paid at regular intervals under a lease or an obligation
4 to pay interest or if an entity customarily makes distributions at regular intervals.

5 **SECTION 255.** 701.20 (9) (a) of the statutes is renumbered 701.1114, and
6 701.1114 (1), as renumbered, is amended to read:

7 **701.1114 (1)** In this ~~subsection~~ section, “undistributed income” means net
8 income received before the date on which an income interest ends. “Undistributed
9 income” does not include an item of income or expense that is due or accrued or net
10 income that has been added or is required to be added to principal under the terms
11 of the trust.

12 **SECTION 256.** 701.20 (10) of the statutes is renumbered 701.1115, and 701.1115
13 (1), (2) and (5), as renumbered, are amended to read:

14 **701.1115 (1)** In this ~~subsection~~ section, “entity” means a corporation,
15 partnership, limited liability company, regulated investment company, real estate
16 investment trust, common trust fund, or any other organization in which a trustee
17 has an interest other than a trust or estate to which ~~sub. (11) s. 701.1116~~ applies, a
18 business or activity to which ~~sub. (12) s. 701.1117~~ applies, or an asset-backed
19 security to which ~~sub. (24) s. 701.1129~~ applies.

20 **(2)** Except as otherwise provided in this ~~subsection~~ section, a trustee shall
21 allocate to income money received from an entity.

22 **(5)** Money is not received in partial liquidation, nor may it be taken into account
23 under ~~par. (d) 2. sub. (4) (b)~~, to the extent that it does not exceed the amount of income
24 tax that a trustee or beneficiary must pay on taxable income of the entity that
25 distributes the money.

SENATE BILL 384**SECTION 257**

1 **SECTION 257.** 701.20 (11) of the statutes is renumbered 701.1116 and amended
2 to read:

3 **701.1116 Distribution from trust or estate.** A trustee shall allocate to
4 income an amount received as a distribution of income from a trust or an estate in
5 which the trust has an interest other than a purchased interest, and shall allocate
6 to principal an amount received as a distribution of principal from such a trust or
7 estate. If a trustee purchases an interest in a trust that is an investment entity, or
8 a decedent or donor transfers an interest in such a trust to a trustee, ~~sub. (10) s.~~
9 701.1115 or ~~(24) 701.1129~~ applies to a receipt from the trust.

10 **SECTION 258.** 701.20 (12) of the statutes is renumbered 701.1117 and 701.1117
11 (3) (g), as renumbered, is amended to read:

12 701.1117 (3) (g) Activities to which ~~sub. (23) s. 701.1128~~ applies.

13 **SECTION 259.** 701.20 (13) of the statutes is renumbered 701.1118, and 701.1118
14 (1), (2), (3) and (6), as renumbered, are amended to read:

15 701.1118 (1) To the extent not allocated to income under this section
16 subchapter, assets received from a transferor during the transferor's lifetime, a
17 decedent's estate, a trust with a terminating income interest, or a payer under a
18 contract naming the trust or its trustee as beneficiary.

19 (2) Money or other property received from the sale, exchange, liquidation, or
20 change in form of a principal asset, including realized profit, subject to ~~subs. (10) ss.~~
21 701.1115 to ~~(24) 701.1129~~.

22 (3) Amounts recovered from 3rd parties to reimburse the trust because of
23 disbursements described in ~~sub. (26) (a) 7. s. 701.1131 (1) (g)~~ or for other reasons to
24 the extent not based on the loss of income.

25 (6) Other receipts as provided in ~~subs. (17) ss. 701.1122~~ to ~~(24) 701.1129~~.

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1 **SECTION 260.** 701.20 (14) of the statutes is renumbered 701.1119 and amended
2 to read:

3 **701.1119 Rental property.** To the extent that a trustee accounts for receipts
4 from rental property in accordance with this ~~subsection~~ section, the trustee shall
5 allocate to income an amount received as rent of real or personal property, including
6 an amount received for cancellation or renewal of a lease. An amount received as a
7 refundable deposit, including a security deposit or a deposit that is to be applied as
8 rent for future periods, must be added to principal and held subject to the terms of
9 the lease and is not available for distribution to a beneficiary until the trustee's
10 contractual obligations have been satisfied with respect to that amount.

11 **SECTION 261.** 701.20 (15) of the statutes is renumbered 701.1120, and 701.1120
12 (3), as renumbered, is amended to read:

13 701.1120 (3) This ~~subsection~~ section does not apply to an obligation to which
14 ~~sub. (18), (19), (20), (21), (23) s. 701.1123, 701.1124, 701.1125, 701.1126, 701.1128, or~~
15 ~~(24) 701.1129~~ applies.

16 **SECTION 262.** 701.20 (16) of the statutes is renumbered 701.1121 and amended
17 to read:

18 **701.1121 Insurance policies and similar contracts.** (1) Except as
19 provided in ~~par. (b)~~ sub. (2), a trustee shall allocate to principal the proceeds of a life
20 insurance policy or other contract in which the trust or its trustee is named as
21 beneficiary, including a contract that insures the trust or its trustee against loss for
22 damage to, destruction of, or loss of title to, a trust asset. The trustee shall allocate
23 dividends on an insurance policy to income if the premiums on the policy are paid
24 from income, and to principal if the premiums are paid from principal.

SENATE BILL 384**SECTION 262**

1 (2) A trustee shall allocate to income proceeds of a contract that insures the
2 trustee against loss of occupancy or other use by an income beneficiary, loss of
3 income, or, subject to ~~sub. (12)~~ s. 701.1117, loss of profits from a business.

4 (3) This subsection ~~section~~ does not apply to a contract to which ~~sub. (18)~~ s.
5 701.1123 applies.

6 **SECTION 263.** 701.20 (17) of the statutes is renumbered 701.1122, and 701.1122
7 (intro.), as renumbered, is amended to read:

8 **701.1122 Insubstantial allocations not required.** (intro.) If a trustee
9 determines that an allocation between principal and income required by ~~sub. (15) (b),~~
10 ~~(18), (19), (20), (21)~~ s. 701.1120 (2), 701.1123, 701.1124, 701.1125, 701.1126, or (24)
11 701.1129 is insubstantial, the trustee may allocate the entire amount to principal
12 unless one of the circumstances described in ~~sub. (4) (e)~~ s. 701.1104 (3) applies to the
13 allocation. This power may be exercised by a cotrustee in the circumstances
14 described in ~~sub. (4) (d)~~ s. 701.1104 (4) and may be released for the reasons and in
15 the manner described in ~~sub. (4) (e)~~ s. 701.1104 (5). An allocation is presumed to be
16 insubstantial if:

17 **SECTION 264.** 701.20 (18) (title) of the statutes is renumbered 701.1123 (title).

18 **SECTION 265.** 701.20 (18) (a) of the statutes is repealed.

19 **SECTION 266.** 701.20 (18) (b) of the statutes is renumbered 701.1123 (2) and
20 amended to read:

21 701.1123 (2) To the extent that a payment is characterized as interest or, a
22 dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate
23 ~~it~~ the payment to income. The trustee shall allocate to principal the balance of the
24 payment and any other payment received in the same accounting period that is not

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1 characterized as interest, a dividend, or ~~an equivalent~~ a payment in lieu of interest
2 or a dividend.

3 **SECTION 267.** 701.20 (18) (c) 1. of the statutes is renumbered 701.1123 (1) (d)
4 and amended to read:

5 701.1123 (1) (d) ~~In this paragraph “plan~~ “Plan income” means any of the
6 following:

7 1. With respect to payments received from a plan that maintains separate
8 accounts ~~or funds~~ for its participants or account holders, ~~such as defined contribution~~
9 ~~retirement plans, individual retirement accounts, Roth individual retirement~~
10 ~~accounts, and some types of deferred compensation plans,~~ either the amount of the
11 ~~plan~~ separate account ~~or fund~~ held for the benefit of the trust that, if the plan
12 separate account ~~or fund~~ were a trust, would be allocated to income under pars. (b)
13 and (d) for that accounting period, or 4 percent of the value of the plan account ~~or fund~~
14 on the first day of the accounting period. The trustee shall, ~~in his or her discretion,~~
15 choose the method of determining “plan income” under this subd. 1. a. subdivision,
16 and may change the method of determining “plan income” under this subd. 1. a.
17 subdivision for any subsequent accounting period.

18 2. With respect to payments received from a plan that does not maintain
19 separate accounts ~~or funds~~ for its participants or account holders, ~~such as defined~~
20 ~~benefit retirement plans and some types of deferred compensation plans,~~ 4 percent
21 of the total present value of the trust’s interest in the plan as of the first day of the
22 accounting period, based on reasonable actuarial assumptions as determined by the
23 trustee.

24 **SECTION 268.** 701.20 (18) (c) 2. of the statutes is renumbered 701.1123 (3) and
25 amended to read:

SENATE BILL 384**SECTION 268**

1 701.1123 (3) For each accounting period of a trust in which the trust receives
2 a payment but no part of any payment is allocated to income under ~~par. (b)~~ sub. (2),
3 the trustee shall allocate to income that portion of the aggregate value of all
4 payments received by the trustee in that accounting period that is equal to the
5 amount of plan income that is attributable to the trust's interest in the plan from
6 which payment is received for that accounting period. The trustee shall allocate the
7 balance of any payments to principal.

8 **SECTION 269.** 701.20 (18) (d) of the statutes is renumbered 701.1123 (5) and
9 amended to read:

10 701.1123 (5) If, to obtain an estate or gift tax marital deduction for an interest
11 in a trust, a trustee must allocate more of a payment to income than provided for by
12 this subsection section, the trustee shall allocate to income the additional amount
13 necessary to obtain the marital deduction.

14 **SECTION 270.** 701.20 (18) (e) of the statutes is renumbered 701.1123 (6) and
15 amended to read:

16 701.1123 (6) This ~~subsection~~ section does not apply to ~~payments~~ a payment to
17 which ~~sub. (19)~~ s. 701.1124 applies.

18 **SECTION 271.** 701.20 (19) of the statutes is renumbered 701.1124, and 701.1124
19 (1), as renumbered, is amended to read:

20 701.1124 (1) In this ~~subsection~~ section, “liquidating asset” means an asset
21 whose value will diminish or terminate because the asset is expected to produce
22 receipts for a period of limited duration. The term includes a leasehold, patent,
23 copyright, royalty right, and right to receive payments during a period of more than
24 one year under an arrangement that does not provide for the payment of interest on
25 the unpaid balance. The term does not include a payment subject to ~~sub. (18)~~ s.

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1 701.1123, resources subject to ~~sub. (20)~~ s. 701.1125, timber subject to ~~sub. (21)~~ s.
2 701.1126, an activity subject to ~~sub. (23)~~ s. 701.1128, an asset subject to ~~sub. (24)~~ s.
3 701.1129, or any asset for which the trustee establishes a reserve for depreciation
4 under ~~sub. (27)~~ s. 701.1132.

5 **SECTION 272.** 701.20 (20) of the statutes is renumbered 701.1125, and 701.1125
6 (1) (intro.) and (d), (3) and (4), as renumbered, are amended to read:

7 701.1125 (1) (intro.) To the extent that a trustee accounts for receipts from an
8 interest in minerals or other natural resources in accordance with this ~~subsection~~
9 section, the trustee shall allocate them as follows:

10 (d) If an amount is received from a working interest or any other interest not
11 provided for in ~~subd. 1., 2.~~ par. (a), (b), or 3. (c), 90 percent of the net amount received
12 must be allocated to principal and the balance to income.

13 (3) This ~~subsection~~ section applies whether or not a decedent or donor was
14 extracting minerals, water, or other natural resources before the interest became
15 subject to the trust.

16 (4) If a trust owns an interest in minerals, water, or other natural resources
17 on May 17, 2005, the trustee may allocate receipts from the interest as provided in
18 this ~~subsection~~ section or in the manner used by the trustee before May 17, 2005.
19 If the trust acquires an interest in minerals, water, or other natural resources after
20 May 17, 2005, the trustee shall allocate receipts from the interest as provided in this
21 ~~subsection~~ section.

22 **SECTION 273.** 701.20 (21) (title) of the statutes is repealed.

23 **SECTION 274.** 701.20 (21) of the statutes is renumbered 701.1126, and 701.1126
24 (1) (intro.), (c) and (d), (2), (3) and (4), as renumbered, are amended to read:

SENATE BILL 384**SECTION 274**

1 701.1126 (1) (intro.) To the extent that a trustee accounts for receipts from the
2 sale of timber and related products in accordance with this ~~subsection~~ section, the
3 trustee shall allocate the net receipts:

4 (c) To income or principal or between income and principal if the net receipts
5 are from the lease of timberland or from a contract to cut timber from land owned by
6 a trust, by determining the amount of timber removed from the land under the lease
7 or contract and applying the rules in ~~subds. 1. pars. (a) and 2. (b).~~

8 (d) To principal to the extent that advance payments, bonuses, and other
9 payments are not allocated under ~~subd. 1., 2. par. (a), (b), or 3. (c).~~

10 (2) In determining net receipts to be allocated under ~~par. (a)~~ sub. (1), a trustee
11 shall deduct and transfer to principal a reasonable amount for depletion.

12 (3) This ~~subsection~~ section applies whether or not a decedent or transferor was
13 harvesting timber from the property before it became subject to the trust.

14 (4) If a trust owns an interest in timberland on May 17, 2005, the trustee may
15 allocate net receipts from the sale of timber and related products as provided in this
16 ~~subsection~~ section or in the manner used by the trustee before May 17, 2005. If the
17 trust acquires an interest in timberland after May 17, 2005, the trustee shall allocate
18 net receipts from the sale of timber and related products as provided in this
19 ~~subsection~~ section.

20 **SECTION 275.** 701.20 (22) of the statutes is renumbered 701.1127 and amended
21 to read:

22 **701.1127 Property not productive of income.** (1) If a marital deduction
23 is allowed for all or part of a trust whose assets consist substantially of property that
24 does not provide the surviving spouse with sufficient income from or use of the trust
25 assets, and if the amounts that the trustee transfers from principal to income under

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1 ~~sub. (4)~~ s. 701.1104 and distributes to the spouse from principal in accordance with
2 the terms of the trust are insufficient to provide the spouse with the beneficial
3 enjoyment required to obtain the marital deduction, the spouse may require the
4 trustee to make property productive of income, convert property within a reasonable
5 time, or exercise the power conferred by ~~sub. (4) (a)~~ s. 701.1104 (1). The trustee may
6 decide which action or combination of actions to take.

7 **(2)** In cases not governed by ~~par. (a)~~ sub. (1), proceeds from the sale or other
8 disposition of an asset are principal without regard to the amount of income the asset
9 produces during any accounting period.

10 **SECTION 276.** 701.20 (23) of the statutes is renumbered 701.1128, and 701.1128
11 (1) and (2), as renumbered, are amended to read:

12 701.1128 (1) In this ~~subsection~~ section, “derivative” means a contract or
13 financial instrument or a combination of contracts and financial instruments that
14 gives a trust the right or obligation to participate in some or all changes in the price
15 of a tangible or intangible asset or group of assets, or changes in a rate, an index of
16 prices or rates, or another market indicator for an asset or a group of assets.

17 **(2)** To the extent that a trustee does not account under ~~sub. (12)~~ s. 701.1117 for
18 transactions in derivatives, the trustee shall allocate to principal receipts from and
19 disbursements made in connection with those transactions.

20 **SECTION 277.** 701.20 (24) of the statutes is renumbered 701.1129, and 701.1129
21 (1), as renumbered, is amended to read:

22 701.1129 (1) In this ~~subsection~~ section, “asset-backed security” means an asset
23 whose value is based upon the right it gives the owner to receive distributions from
24 the proceeds of financial assets that provide collateral for the security. The term
25 includes an asset that gives the owner the right to receive from the collateral

SENATE BILL 384**SECTION 277**

1 financial assets only the interest or other current return or only the proceeds other
2 than interest or current return. The term does not include an asset to which ~~sub. (10)~~
3 s. 701.1115 or ~~(18)~~ 701.1123 applies.

4 **SECTION 278.** 701.20 (25) of the statutes is renumbered 701.1130, and 701.1130
5 (intro.), as renumbered, is amended to read:

6 **701.1130 Disbursements from income.** (intro.) A trustee shall make the
7 following disbursements from income to the extent that they are not disbursements
8 specified in ~~sub. (5) (b) 2.~~ s. 701.1110 (2) (b) or ~~3. (c):~~

9 **SECTION 279.** 701.20 (26) of the statutes is renumbered 701.1131, and 701.1131
10 (1) (a), (e) and (g), as renumbered, are amended to read:

11 701.1131 (1) (a) The remaining one-half of the disbursements described in ~~sub.~~
12 ~~(25) (a)~~ s. 701.1130 (1) and ~~(b) (2).~~

13 (e) Premiums paid on a policy of insurance not described in ~~sub. (25) (d)~~ s.
14 701.1130 (4) of which the trust is the owner and beneficiary.

15 (g) Disbursements related to environmental matters, including reclamation,
16 assessing environmental conditions, remedying and removing environmental
17 contamination, monitoring remedial activities and the release of substances,
18 preventing future releases of substances, collecting amounts from persons liable or
19 potentially liable for the costs of those activities, penalties imposed under
20 environmental laws or regulations law and other payments made to comply with
21 ~~those laws or regulations~~ environmental law, statutory or common law claims by 3rd
22 parties, and defending claims based on environmental matters.

23 **SECTION 280.** 701.20 (27) of the statutes is renumbered 701.1132, and 701.1132
24 (1) and (2) (c), as renumbered, are amended to read:

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1 701.1132 (1) In this ~~subsection~~ section, “depreciation” means a reduction in
2 value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset
3 having a useful life of more than one year.

4 (2) (c) Under this ~~subsection~~ section if the trustee is accounting under ~~sub. (12)~~
5 s. 701.1117 for the business or activity in which the asset is used.

6 **SECTION 281.** 701.20 (28) of the statutes is renumbered 701.1133, and 701.1133
7 (1), (2) (intro.) and (e) and (3), as renumbered, are amended to read:

8 701.1133 (1) If a trustee makes or expects to make a principal disbursement
9 described in this ~~subsection~~ section, the trustee may transfer an appropriate amount
10 from income to principal in one or more accounting periods to reimburse principal
11 or to provide a reserve for future principal disbursements.

12 (2) (intro.) Principal disbursements to which ~~par. (a)~~ sub. (1) applies include the
13 following, but only to the extent that the trustee has not been and does not expect
14 to be reimbursed by a 3rd party:

15 (e) Disbursements described in ~~sub. (26) (a) 7.~~ s. 701.1131 (1) (g).

16 (3) If the asset whose ownership gives rise to the disbursements becomes
17 subject to a successive income interest after an income interest ends, a trustee may
18 continue to transfer amounts from income to principal as provided in ~~par. (a)~~ sub. (1).

19 **SECTION 282.** 701.20 (29) (title) of the statutes is renumbered 701.1134 (title).

20 **SECTION 283.** 701.20 (29) (a) of the statutes is renumbered 701.1134 (1).

21 **SECTION 284.** 701.20 (29) (b) of the statutes is renumbered 701.1134 (2).

22 **SECTION 285.** 701.20 (29) (c) (intro.) of the statutes is renumbered 701.1134 (3)
23 (intro.) and amended to read:

24 701.1134 (3) (intro.) A tax required to be paid by a trustee on the trust’s share
25 of an entity’s taxable income must be paid ~~proportionately~~ as follows:

SENATE BILL 384**SECTION 286**

1 **SECTION 286.** 701.20 (29) (c) 1. of the statutes is renumbered 701.1134 (3) (a)
2 and amended to read:

3 701.1134 (3) (a) From income to the extent that receipts from the entity are
4 allocated only to income.

5 **SECTION 287.** 701.20 (29) (c) 2. (intro.) and a. of the statutes are consolidated,
6 renumbered 701.1134 (3) (b) and amended to read:

7 701.1134 (3) (b) From principal to the extent that: ~~2. a. Receipts~~ receipts from
8 the entity are allocated only to principal.

9 **SECTION 288.** 701.20 (29) (c) 2. b. of the statutes is repealed.

10 **SECTION 289.** 701.20 (29) (d) of the statutes is repealed.

11 **SECTION 290.** 701.20 (30) of the statutes is renumbered 701.1135, and 701.1135
12 (1) (a), as renumbered, is amended to read:

13 701.1135 (1) (a) Elections and decisions, other than those described in ~~par. (b)~~
14 sub. (2), that the fiduciary makes from time to time regarding tax matters.

15 **SECTION 291.** 701.20 (31) of the statutes is repealed.

16 **SECTION 292.** 701.21 of the statutes is renumbered 701.1136, and 701.1136 (1),
17 (2) and (4), as renumbered, are amended to read:

18 701.1136 (1) DISTRIBUTION OF INCOME. Except as otherwise determined by the
19 trustee or a court under s. ~~701.20 (4g)~~ 701.1106 with respect to unitrust distributions,
20 if a beneficiary is entitled to receive income from a trust, but the ~~creating~~ trust
21 instrument fails to specify how frequently it is to be paid, the trustee shall distribute
22 at least annually the income to which such beneficiary is entitled.

23 (2) PERMITTED ACCUMULATIONS. No provision directing or authorizing
24 accumulation of ~~trust~~ income shall be is invalid.

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1 (4) DISPOSITION OF ACCUMULATED INCOME. Income not required to be distributed
2 by the creating trust instrument, ~~in the absence of a governing provision in the~~
3 ~~instrument,~~ may, in the trustee's discretion, be held in reserve for future distribution
4 as income or be added to principal subject to retransfer to income of the dollar amount
5 originally transferred to principal; ~~but at.~~ At the termination of the income interest,
6 any undistributed income shall be distributed as principal.

7 **SECTION 293.** 701.22 (title) of the statutes is repealed.

8 **SECTION 294.** 701.22 of the statutes is renumbered 701.0417 (4) and amended
9 to read:

10 701.0417 (4) In case of a division of a trust assets into 2 or more trusts ~~or shares,~~
11 any distribution or allocation of assets as an equivalent of a dollar amount fixed by
12 formula or otherwise shall be made at current fair market values unless the
13 governing trust instrument expressly provided that another value may be used. If
14 the governing trust instrument requires or permits a different value to be used, all
15 assets property available for distribution, including cash, shall, ~~unless otherwise~~
16 ~~expressly provided,~~ be so distributed so that the assets property, including cash,
17 ~~distributed as such an equivalent will be~~ is fairly representative of the net
18 appreciation or depreciation in the value of the available property on the date or
19 dates of distribution. A provision in the governing trust instrument that the trustee
20 may fix values for purposes of distribution or allocation does not of itself constitute
21 authorization to fix a value other than current fair market value.

22 **SECTION 295.** 701.23 of the statutes is repealed.

23 **SECTION 296.** 701.24 (title) of the statutes is renumbered 701.1205 (title).

24 **SECTION 297.** 701.24 (1) of the statutes is renumbered 701.1205 (1) and
25 amended to read:

SENATE BILL 384**SECTION 297**

1 701.1205 (1) Except as otherwise provided in sub. (3) (2) and s. ~~701.19 (9) (a),~~
2 ~~ss. 701.01 to 701.19, 701.21, 701.22, and 701.23~~ are ss. 701.0602, 701.0813, and
3 701.0903 (4), this chapter is applicable to a trust existing on ~~July 1, 1971~~ the effective
4 date of this subsection ... [LRB inserts date], as well as a trust created after such
5 date, and shall govern trustees acting under such trusts. If application of any
6 provision of ~~ss. 701.01 to 701.19, 701.21, 701.22, and 701.23~~ this chapter to a trust
7 in existence on ~~August 1, 1971~~ the effective date of this subsection ... [LRB inserts
8 date], is unconstitutional, it shall not affect application of the provision to a trust
9 created after that date.

10 **SECTION 298.** 701.24 (2) of the statutes is renumbered 701.1205 (2) and
11 amended to read:

12 701.1205 (2) ~~Section 701.20 Subchapter XI of this chapter~~ applies to every a
13 trust or decedent's estate existing on ~~May 17, 2005~~ the effective date of this
14 subsection ... [LRB inserts date], and to every a trust or decedent's estate created or
15 coming into existence after that date, except as otherwise expressly provided in s.
16 ~~701.20 subch. XI~~ or by the decedent's will or the terms of the trust. With respect to
17 a trust or decedent's estate existing on ~~May 17, 2005, s. 701.20 (5) to (30)~~ the effective
18 date of this subsection ... [LRB inserts date], ~~ss. 701.1110 to 701.1135~~ shall apply at
19 the beginning of the trust's or estate's first accounting period, as defined in s. ~~701.20~~
20 ~~701.1125 (2) (a), that begins on or after May 17, 2005~~ the effective date of this
21 subsection ... [LRB inserts date].

22 **SECTION 299.** 701.24 (3) of the statutes is repealed.

23 **SECTION 300.** 701.25 of the statutes is renumbered 701.1204.

24 **SECTION 301.** 701.26 of the statutes is repealed.

25 **SECTION 302.** 702.01 (intro.) of the statutes is renumbered 702.02 (intro.).

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1 **SECTION 303.** 702.01 (1) of the statutes is renumbered 702.02 (2) and amended
2 to read:

3 702.02 (2) “Creating instrument” means the will, trust agreement, or other
4 document which creates or reserves the power of appointment.

5 **SECTION 304.** 702.01 (2) of the statutes is renumbered 702.02 (4) and amended
6 to read:

7 702.02 (4) “Donor” means the person who creates or reserves the power;
8 “donee” means the person in whom the power is created or reserved; and “appointee”
9 means the person to whom an interest is appointed of appointment.

10 **SECTION 305.** 702.01 (3) of the statutes is renumbered 702.02 (5) and amended
11 to read:

12 702.02 (5) “General power of appointment” means a power exercisable in favor
13 of the donee, the donee’s estate, the donee’s creditors, or the creditors of the donee’s
14 estate, whether or not it is also exercisable in favor of others. A power to appoint to
15 any person or a power which of appointment that is not expressly restricted as to
16 appointees may be exercised in favor of the donee or the donee’s creditors if
17 exercisable during lifetime, and in favor of the donee’s estate or the creditors of the
18 donee’s estate if exercisable by will.

19 **SECTION 306.** 702.01 (4) of the statutes is renumbered 702.02 (6) and amended
20 to read:

21 702.02 (6) “Power of appointment” means a power ~~of appointment over to~~
22 appoint legal or equitable interests in real or personal property. A power of
23 appointment is ~~a power~~ created or reserved by a person having property subject to
24 his or her disposition which enables the donee of the power of appointment to
25 designate, within such limits as may be prescribed, the transferees of the property

SENATE BILL 384**SECTION 306**

1 or the shares or the interests in which it shall be received; ~~it.~~ A power of appointment
2 does not include a power of sale, a power of attorney, a power of revocation, or a power
3 exercisable by a trustee ~~or other,~~ a directing party, as defined in s. 701.0103 (7),
4 another fiduciary in his or her fiduciary capacity, or a trust protector, as defined in
5 s. 701.0103 (31).

6 **SECTION 307.** 702.01 (5) of the statutes is renumbered 702.02 (7) and amended
7 to read:

8 702.02 (7) “Special power of appointment” means a power of appointment
9 ~~exercisable only in favor of one or more persons not including the donee, the donee’s~~
10 ~~estate, the donee’s creditors or the creditors of the donee’s estate and, when~~
11 ~~exercisable in favor of a class, so limited in size by description of the class that in the~~
12 ~~event of nonexercise of the power a court can make distribution to persons within the~~
13 ~~class if the donor has failed to provide for this contingency~~ that is not a general power
14 of appointment.

15 **SECTION 308.** 702.01 (6) of the statutes is repealed.

16 **SECTION 309.** 702.02 (1) of the statutes is created to read:

17 702.02 (1) “Appointee” means the person to whom an interest is appointed.

18 **SECTION 310.** 702.02 (3) of the statutes is created to read:

19 702.02 (3) “Donee” means the person in whom the power of appointment is
20 created or reserved.

21 **SECTION 311.** 702.03 of the statutes is amended to read:

22 **702.03 Manifestation of intent to exercise powers a power of**
23 **appointment.** (1) Unless the person who executed it had a contrary intention, if
24 a governing creating instrument, as defined in s. 854.01 (2), or an inter vivos
25 governing instrument, as defined in s. 700.27 (1) (e), creates a power of appointment

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1 that expressly requires that the power of appointment be exercised by any type of
2 reference to the power of appointment or its source, the donor's intention in requiring
3 the reference is presumed to be to prevent an inadvertent exercise of the power of
4 appointment. Extrinsic evidence, as defined in s. 854.01 (1), may be used to construe
5 the intent.

6 (2) In the case of other powers, ~~an~~ of appointment, a creating instrument
7 manifests an intent to exercise the power of appointment if the creating instrument
8 purports to transfer an interest in the appointive property which the donee would
9 have no power to transfer except by virtue of the power of appointment, even though
10 the power of appointment is not recited or referred to in the creating instrument, or
11 if the creating instrument either expressly or by necessary implication from its
12 wording interpreted in light of the circumstances surrounding its drafting and
13 execution manifests an intent to exercise the power of appointment. If there is a
14 general power of appointment exercisable by will with no gift in default in the
15 creating instrument, a residuary clause or other general language in the donee's will
16 purporting to dispose of all of the donee's estate or property operates to exercise the
17 power of appointment in favor of the donee's estate, but in all other cases such a
18 clause or language does not in itself manifest an intent to exercise a power of
19 appointment exercisable by will.

20 **SECTION 312.** 702.05 of the statutes is amended to read:

21 **702.05 Exercise of powers a power of appointment.** (1) CAPACITY TO
22 EXERCISE A POWER OF APPOINTMENT. A power of appointment can be exercised only by
23 a person who would have the capacity to transfer the property covered by the power
24 of appointment.

SENATE BILL 384**SECTION 312**

1 (2) KIND OF INSTRUMENT AND FORMALITIES OF EXECUTION. A donee can exercise
2 a power of appointment only by an instrument which meets the intent of the donor
3 as to kind of instrument and formalities of execution. If the power of appointment
4 is exercisable by will, this means a will executed with the formalities necessary for
5 a valid will. A written instrument signed by the donee is sufficient if the donor fails
6 to require any additional formalities or fails to indicate a will, but if the power of
7 appointment is to appoint interests in land, it can be exercised only by an instrument
8 executed with sufficient formalities for that purpose.

9 (3) CONSENT OF 3RD PERSONS. When the consent of the donor or of any other
10 person is required by the donor for the exercise of a power of appointment, such
11 consent must be expressed in the creating instrument exercising the power of
12 appointment or in a separate written instrument, signed in either case by the
13 persons whose consent is required. If any person whose consent is required dies or
14 becomes legally incapable of consenting, the power of appointment may be exercised
15 by the donee without the consent of that person unless the donor has manifested a
16 contrary intent in the creating instrument ~~creating the power~~.

17 (4) POWER OF APPOINTMENT VESTED IN 2 OR MORE DONEES. Unless the donor
18 manifests a contrary intent, when a power of appointment is vested in 2 or more
19 persons, all must unite in its exercise, but if one or more of the donees dies, becomes
20 incapable of exercising the power of appointment, or renounces, releases, or
21 disclaims the power of appointment, the power of appointment may be exercised by
22 the others.

23 **SECTION 313.** 702.05 (5) of the statutes is created to read:

24 702.05 (5) PRESUMPTION OF NONEXERCISE OF A POWER OF APPOINTMENT. A personal
25 representative, trustee, or other fiduciary who holds property subject to a power of

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1 appointment may administer that property as if the power of appointment was not
2 exercised if the personal representative, trustee, or other fiduciary has no notice of
3 the existence of any of the following within 6 months after the death of the donee of
4 the power of appointment:

5 (a) A document purporting to be a will of the donee of the power of appointment
6 if the power of appointment is exercisable by a will.

7 (b) Some other documentation of the donee purporting to exercise the power of
8 appointment if the power of appointment is exercisable other than by a will.

9 **SECTION 314.** 702.07 of the statutes is amended to read:

10 **702.07 Powers Power of appointment to be construed as exclusive.** The
11 donee of any power of appointment may appoint the whole or any part of the
12 appointive assets to any one or more of the permissible appointees and exclude
13 others, except to the extent that the donor specifies either a minimum share or
14 amount to be appointed to each permissible appointee or to designated appointees,
15 or a maximum share or amount appointable to any one or more appointees.

16 **SECTION 315.** 702.08 of the statutes is amended to read:

17 **702.08 Disclaimer of ~~powers~~ a power of appointment.** The donee of any
18 power of appointment may disclaim all or part of the power of appointment as
19 provided under s. 700.27 or 854.13.

20 **SECTION 316.** 702.09 (title), (1) and (3) (a), (b) and (c) of the statutes are
21 amended to read:

22 **702.09 (title) Release of ~~powers~~ a power of appointment.** (1) ~~Except as~~
23 Unless the creating instrument expressly provides that the power of appointment
24 cannot be released or expressly restricts the time, manner, or scope of release, the
25 donee of any power of appointment may do any of the following:

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1 (a) At any time completely release the donee's power; of appointment.

2 (b) At any time or times release the donee's power of appointment in any one
3 or more of the following respects:

4 1. As to the whole or any part of the property which is subject thereto;.

5 2. As to any one or more persons or objects, or classes of persons or objects, in
6 whose favor such power of appointment is exercisable;.

7 3. So as to limit in any other respect the extent to or manner in which ~~it~~ the
8 power of appointment may be exercised.

9 **(3)** (a) Delivery to any person specified in the creating instrument;.

10 (b) Delivery to a trustee or to one of several trustees of the property to which
11 the power of appointment relates, or filing with the court having jurisdiction over the
12 trust;.

13 (c) Delivery to any person, other than the donee, who could be adversely
14 affected by an exercise of the power; ~~or~~ of appointment.

15 **SECTION 317.** 702.11 of the statutes is amended to read:

16 **702.11 Irrevocability of creation, exercise and release of powers a**
17 **power of appointment**. The creation, exercise or release of a power of appointment
18 is irrevocable unless the power to revoke is reserved in the creation, exercise or
19 release of the power of appointment.

20 **SECTION 318.** 702.13 (title), (1) (intro.), (a), (b) and (c) and (2) of the statutes
21 are amended to read:

22 **702.13 (title) Recording instruments relating to powers a power of**
23 **appointment**. **(1)** (intro.) Any of the following instruments relating to ~~powers a~~
24 power of appointment is entitled to be recorded as a conveyance upon compliance
25 with s. 706.05 (1):

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1 (a) An instrument, other than a will, exercising a power; of appointment.

2 (b) An instrument expressing consent to exercise;.

3 (c) A disclaimer;.

4 (2) If a power of appointment is exercised by a will, a certified copy of the will
5 and of the certificate of probate thereof may be recorded.

6 **SECTION 319.** 702.15 (intro.), (1) and (2) of the statutes are amended to read:

7 **702.15 Disposition when a special power of appointment is**
8 **unexercised.** (intro.) If the donee of a special power of appointment fails to exercise
9 effectively the special power of appointment, the interests which might have been
10 appointed under the special power of appointment pass in one of the following ways:

11 (1) If the creating instrument contains an express gift in default, then in
12 accordance with the terms of such gift;.

13 (2) If the creating instrument contains no express gift in default and does not
14 clearly indicate that the permissible appointees are to take only if the donee exercises
15 the special power of appointment, then to the permissible appointees equally, but if
16 the special power of appointment is to appoint among a class such as “relatives,”
17 “issue,” or “heirs,” then to those persons who would have taken had there been an
18 express gift to the described class; or.

19 **SECTION 320.** 702.15 (3) of the statutes is renumbered 702.15 (3) (a) and
20 amended to read:

21 702.15 (3) (a) If Except as provided in par. (b), if the creating instrument
22 contains no express gift in default and clearly indicates that the permissible
23 appointees are to take only if the donee exercises the special power of appointment,
24 then by reversion to the donor or the donor’s estate. ~~But if~~

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1 **(b)** If the creating instrument expressly states that there is no reversion in the
2 donor, then any language in the creating instrument indicating or stating that the
3 permissible appointees are to take only if the donee exercises the special power of
4 appointment is to be disregarded and the interests shall pass in accordance with sub.
5 (2).

6 **SECTION 321.** 702.17 (1), (2) and (5) of the statutes are amended to read:

7 702.17 (1) GENERAL POLICY: GENERAL POWER OF APPOINTMENT. If the donee has
8 either a general power ~~or an unclassified power which is unlimited as to permissible~~
9 ~~appointees except for exclusion of the donee, the donee's estate, the donee's creditors~~
10 ~~and the creditors of the donee's estate, or a substantially similar exclusion of~~
11 appointment, any interest which the donee has power to appoint or has appointed
12 is to be treated as property of the donee for purposes of satisfying claims of the donee's
13 creditors, as provided in this section.

14 **(2)** DURING LIFETIME OF THE DONEE. If the donee has an unexercised general
15 ~~power of the kinds specified in sub. (1)~~ appointment, and can presently exercise such
16 ~~a the general power of appointment in favor of the donee or the donee's creditors~~, any
17 creditor of the donee may by appropriate proceedings reach any interest which the
18 donee could appoint, to the extent that the donee's individual assets are insufficient
19 to satisfy the creditor's claim. Such an interest is to be treated as property of the
20 donee within ch. 816. If the donee has exercised such a general power of
21 appointment, the creditor can reach the appointed interests to the same extent that
22 under the law relating to fraudulent conveyances the creditor could reach property
23 which the donee has owned and transferred.

24 **(5)** THIRD PARTIES IN GOOD FAITH PROTECTED. Any person acting without actual
25 notice of claims of creditors under this section incurs no liability to such creditors in

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1 transferring property which is subject to a power of appointment or which has been
2 appointed; and a purchaser without actual notice and for a valuable consideration
3 of any interest in property, legal or equitable, takes such interest free of any rights
4 which a creditor of the donee might have under this section.

5 **SECTION 322.** 702.17 (3) of the statutes is renumbered 702.17 (3) (a) and
6 amended to read:

7 702.17 (3) (a) If Except as provided in par. (b), if the donee has at the time of
8 ~~his or her~~ the donee's death a general power of the kinds specified in sub. (1)
9 appointment, whether or not the donee exercises the general power of appointment,
10 any creditor of the donee may reach any interest which the donee could have
11 appointed or has appointed, to the extent that the claim of the creditor has been filed
12 and allowed in the donee's estate or filed with and approved by the trustee of a trust
13 that is revocable, as defined in s. 701.0103 (22), by the donee or jointly by the donee
14 and the donee's spouse but not paid because the assets of the estate or revocable trust
15 are insufficient.

16 **SECTION 323.** 702.17 (3) (b) of the statutes is created to read:

17 702.17 (3) (b) If the donee fails to exercise a general power of appointment, in
18 whole or in part, that the donee has at the time of the donee's death and neither the
19 donee nor the donee's spouse is the donor of the power, a creditor of the donee may
20 not reach an interest subject to the power, to the extent the power was not exercised.

21 **SECTION 324.** 702.17 (6) of the statutes is created to read:

22 702.17 (6) GENERAL POLICY: SPECIAL POWER OF APPOINTMENT. If the donee has a
23 special power of appointment, property subject to the donee's special power of
24 appointment is exempt from a claim of a creditor of the donee or the donee's estate.

25 **SECTION 325.** 702.21 of the statutes is amended to read:

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1 **702.21 Applicability of chapter.** The provisions of this chapter are
2 applicable to any power of appointment existing on May 16, 1965, as well as a power
3 of appointment created after such date.

4 **SECTION 326.** 766.55 (2) (bm) of the statutes, as created by 2013 Wisconsin Act
5 20, is amended to read:

6 766.55 (2) (bm) An obligation incurred by a spouse that is recoverable under
7 s. 46.27 (7g), 49.496, 49.682, or 49.849 may be satisfied from all property that was
8 the property of that spouse immediately before that spouse's death and from all
9 property that was marital property at any time within 5 years before that spouse
10 applied for public assistance, as defined in s. 49.849 (1) (e), or while that spouse was
11 eligible for public assistance, as defined in s. 49.849 (1) (e).

12 **SECTION 327.** 766.575 (1) (e) of the statutes is amended to read:

13 766.575 (1) (e) "Trustee" has the meaning given under s. ~~701.01 (8)~~ 701.0103
14 (28).

15 **SECTION 328.** 840.01 (1) of the statutes is amended to read:

16 840.01 (1) Except as provided in sub. (2), "interest in real property" includes
17 estates in, powers of appointment under ch. 702 over, present and future rights to,
18 title to, and interests in real property, including, without limitation by enumeration,
19 security interests and liens on land, easements, profits, rights of appointees under
20 powers of appointment, rights under covenants running with the land, powers of
21 termination, and homestead rights. The interest may be an interest that was
22 formerly designated legal or equitable. The interest may be surface, subsurface,
23 suprasurface, riparian, or littoral.

24 **SECTION 329.** 853.17 (2) of the statutes is amended to read:

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1 853.17 (2) This section does not prevent the court from requiring the contract
2 beneficiary to elect under s. 853.15 in order to take property under the will; ~~nor does~~
3 ~~it apply to naming a testamentary trustee as designated by a life insurance policy~~
4 ~~under s. 701.09.~~

5 **SECTION 330.** 853.32 (3) of the statutes is amended to read:

6 853.32 (3) TRANSFERS TO LIVING TRUSTS. The validity and implementation of a
7 will provision that purports to transfer or appoint property to a living trust are
8 governed by s. 701.08 701.0419.

9 **SECTION 331.** 853.34 (3) of the statutes is created to read:

10 853.34 (3) ASSETS TRANSFERRED TO TRUSTS CREATED BY WILL. If a trustee of a trust
11 created by a testator's will is designated as the beneficiary of a transfer under
12 another governing instrument, as defined in s. 854.01 (2), at the death of the testator
13 or at the death of a 3rd party, the transfer of any assets under that other governing
14 instrument to the trustee does not cause the transferred assets to be included in the
15 property administered as part of the testator's estate. The transferred assets are not
16 subject to taxes, debts, or charges enforceable against the testator's estate to any
17 greater extent than if the proceeds were payable to a beneficiary other than the
18 testator's estate.

19 **SECTION 332.** 853.61 (2) (a) of the statutes is amended to read:

20 853.61 (2) (a) In addition to any powers conferred upon trustees by law, the
21 trustee shall have all the powers listed in s. 701.16 ss. 701.0815 and 701.0816.

22 **SECTION 333.** 854.13 (1) (c), (2) (a) 2. and (d), (4) (e), (5) (b), (7) (a) and (10) (a)
23 of the statutes are amended to read:

24 854.13 (1) (c) "Power of appointment" has the meaning given in s. 702.01 (4)
25 702.02 (6).

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1 (2) (a) 2. A person who is an heir, recipient of property, or beneficiary under a
2 governing instrument, donee of a power of appointment created by a governing
3 instrument, appointee under a power of appointment exercised by a governing
4 instrument, taker in default under a power of appointment created by a governing
5 instrument, or person succeeding to disclaimed property may disclaim any property,
6 including contingent or future interests or the right to receive discretionary
7 distributions, by delivering a written instrument of disclaimer under this section.

8 (d) *Partial disclaimer.* Property may be disclaimed in whole or in part, except
9 that a partial disclaimer of property passing by a governing instrument or by the
10 exercise of a power of appointment may not be made if partial disclaimer is expressly
11 prohibited by the governing instrument or by the instrument exercising the power
12 of appointment.

13 (4) (e) *Interests arising by disclaimer.* Notwithstanding pars. (a) and (b), a
14 person whose interest in property arises by disclaimer or by default of exercise of a
15 power of appointment created by a governing instrument may disclaim at any time
16 not later than 9 months after the day on which the prior instrument of disclaimer is
17 delivered, or the date of death of the donee of the power of appointment.

18 (5) (b) *Delivery to trustee.* If the trustee of any trust to which the interest or
19 power of appointment relates does not receive the instrument of disclaimer under
20 par. (a), a copy shall also be delivered to the trustee.

21 (7) (a) *In general.* Subject to pars. (bm) and (c) and subs. (8), (9), and (10), unless
22 the governing instrument provides otherwise, either expressly or as construed from
23 extrinsic evidence, the disclaimed property devolves as if the disclaimant had died
24 before the decedent. If the disclaimed interest is a remainder contingent on
25 surviving to the time of distribution, the disclaimed interest passes as if the

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1 disclaimant had died immediately before the time for distribution. If the disclaimant
2 is an appointee under a power of appointment exercised by a governing instrument,
3 the disclaimed property devolves as if the disclaimant had died before the effective
4 date of the exercise of the power of appointment. If the disclaimant is a taker in
5 default under a power of appointment created by a governing instrument, the
6 disclaimed property devolves as if the disclaimant had predeceased the donee of the
7 power of appointment.

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

18 **SECTION 334.** 854.23 (5) (b) of the statutes is amended to read:

19 854.23 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
20 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
21 705 a financial institution is not liable for having transferred an account to a
22 beneficiary designated in a governing instrument who, under this chapter, is not
23 entitled to the account, or for having taken any other action in reliance on the
24 beneficiary's apparent entitlement under the terms of a governing instrument,

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1 regardless of whether the financial institution received written notice of a claimed
2 lack of entitlement under this chapter.

3 **SECTION 335.** 859.18 (5) (a) of the statutes is amended to read:

4 859.18 (5) (a) The availability of a trust described under s. ~~701.07 (3)~~ 701.0505
5 (1) is subject to s. ~~701.07 (3)~~ 701.0505 (1).

6 **SECTION 336.** 859.18 (5) (b) of the statutes is amended to read:

7 859.18 (5) (b) The availability of a spendthrift trust described under s. ~~701.06~~
8 subch. V of ch. 701 is subject to s. ~~701.06~~ subch. V of ch. 701.

9 **SECTION 337.** 861.015 (2) of the statutes is amended to read:

10 861.015 (2) For purposes of this section, property subject to a directive is valued
11 by its clear market value on the date of the decedent's death. Satisfaction of the
12 nonholding spouse's marital property interest in the property subject to the directive
13 shall be based on that value, plus any income from the property subject to the
14 directive after the death of the decedent and before satisfaction. For purposes of
15 determining the income from the property subject to a directive, such property shall
16 be treated as a legacy or devise of property other than money under s. ~~701.20~~
17 701.1115.

18 **SECTION 338.** 861.11 (5) (b) of the statutes is amended to read:

19 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
20 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
21 705 a financial institution is not liable for having transferred an account included
22 in the augmented deferred marital property estate under s. 861.03 to a beneficiary
23 designated in a governing instrument, or for having taken any other action in
24 reliance on the beneficiary's apparent entitlement under the terms of a governing
25 instrument, regardless of whether the financial institution received written notice

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1 of an intent to file, or the filing of, a petition for the deferred marital property elective
2 share amount.

3 **SECTION 339.** 865.08 (6) of the statutes is amended to read:

4 865.08 (6) If the will of the decedent provides for a testamentary trust, letters
5 of trust shall be issued by the probate registrar to the trustee upon admission of the
6 will to informal probate at the same time that letters are granted to the personal
7 representative. The probate registrar shall determine if bond shall be required and,
8 if so, the amount thereof, and for such purpose the probate registrar shall have the
9 authority granted to the court by, and shall proceed pursuant to s. ~~701.16~~ (2)
10 701.0702. Thereafter, the trustee shall continue to be interested in the estate, and
11 beneficiaries of the testamentary trust shall cease to be interested in the estate
12 except under s. 851.21 (3). The trust shall be administered under supervision of the
13 court under ch. 701.

14 **SECTION 340.** 867.03 (2g) (a) of the statutes, as affected by 2013 Wisconsin Act
15 20, is amended to read:

16 867.03 (2g) (a) By accepting the decedent's property under this section the heir,
17 trustee, or guardian assumes a duty to apply the property transferred for the
18 payment of obligations according to priorities established under s. 859.25 and to
19 distribute any balance to those persons designated in the appropriate governing
20 instrument, as defined in s. 854.01, of the decedent or if there is no governing
21 instrument, according to the rules of intestate succession under ch. 852, subject to
22 par. (b). An heir or guardian may publish a notice to creditors in the same manner
23 and with the same effect as a trustee under s. ~~701.065~~ 701.0508. This paragraph does
24 not prohibit any appropriate person from requesting administration of the
25 decedent's estate under s. 856.07 or ch. 865.

SENATE BILL 384**SECTION 341**

1 **SECTION 341.** 879.03 (2) (c) of the statutes is amended to read:

2 879.03 (2) (c) The attorney general where a charitable trust, as defined in s.
3 701.01 (2) 701.0103 (4), is involved, and in all cases mentioned in s. 852.01 (3).

4 **SECTION 342.** 879.47 of the statutes is renumbered 879.47 (1) and amended to
5 read:

6 879.47 (1) The attorney for any person desiring to file any paper in court is
7 responsible for the preparation of the paper. Except as provided in s. 701.16 (4) (d)
8 sub. (2), all papers shall be legibly written on substantial paper and shall state the
9 title of the proceeding in which they are filed and the character of the paper. Either
10 uniform forms or computer-generated forms, if the forms exactly recreate the
11 original forms in wording, format and substance, shall be used. If papers are not so
12 written or if uniform forms or computer-generated forms that exactly recreate the
13 original forms in wording, format and substance are not used, the court may refuse
14 to receive and file them. The court shall show on all papers the date of their filing.

15 **SECTION 343.** 881.01 (1) (title) of the statutes is repealed and recreated to read:

16 881.01 (1) (title) DEFINITIONS.

17 **SECTION 344.** 881.01 (1) (a) of the statutes is renumbered 881.01 (1) (a) (intro.)
18 and amended to read:

19 881.01 (1) (a) (intro.) “Beneficiary,” ~~with respect to a guardianship of the~~
20 ~~estate,”~~ means any of the following:

21 3. With respect to guardianship of the estate, a ward for whom a guardian of
22 the estate has been appointed ~~and, with respect to a conservator, means,~~

23 4. With respect to a conservatorship, a person for whose estate a conservator
24 has been appointed.

25 **SECTION 345.** 881.01 (1) (a) 1. and 2. of the statutes are created to read:

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1 881.01 (1) (a) 1. With respect to a will, a beneficiary, as defined in s. 851.03.

2 2. With respect to a trust, a beneficiary, as defined in s. 701.0103 (3).

3 **SECTION 346.** 881.01 (1) (b) of the statutes is amended to read:

4 881.01 (1) (b) “Fiduciary” means a personal representative, trustee,
5 conservator, ~~or~~ guardian of the estate, a directing party, as defined in s. 701.0103 (7),
6 who has the power to direct the trustee’s investment decisions, a trust protector, as
7 defined in s. 701.0103 (31), who has a power exercisable in a fiduciary capacity over
8 the investment of trust assets, and any other person to whom a court appoints a
9 power over the investment of the assets of a decedent’s estate, a trust, a
10 conservatorship, or a guardianship of the estate.

11 **SECTION 347.** 881.01 (4) of the statutes is renumbered 881.01 (4) (a) and
12 amended to read:

13 881.01 (4) (a) *General rule.* A fiduciary shall diversify investments unless the
14 fiduciary reasonably determines that, because of special circumstances, the
15 purposes of the estate, trust, conservatorship, or guardianship are better served
16 without diversifying.

17 **SECTION 348.** 881.01 (4) (b) of the statutes is created to read:

18 881.01 (4) (b) *Special rule for assets collected by a fiduciary.* 1. For purposes
19 of this paragraph, an “asset that is collected by the fiduciary” means an asset that
20 the fiduciary did not exercise discretion over to acquire or purchase.

21 2. Notwithstanding par. (a), a fiduciary may retain an asset that is collected by
22 the fiduciary until the fiduciary reasonably determines that it is advisable to dispose
23 of the asset. While the asset is being retained, the fiduciary has a duty to exercise
24 discretion at reasonable intervals to determine the advisability of continuing to
25 retain or disposing of the asset that was collected.

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1 3. At any time while an asset that is collected by the fiduciary is being retained,
2 a beneficiary may file an application with a court that has jurisdiction over the
3 fiduciary to compel the fiduciary to sell the asset and invest the sale proceeds in
4 accordance with this section.

5 4. If a beneficiary files an application under subd. 3., the court shall conduct
6 a hearing after giving notice to all interested persons, as determined by the court.
7 After the hearing, the court shall enter an order directing the fiduciary to retain or
8 sell the asset that is being retained based on what the court finds to be in accordance
9 with the terms and purposes of the estate, trust, conservatorship, or guardianship
10 of the estate and the interests of the beneficiaries.

11 **SECTION 349.** 881.05 of the statutes is repealed.

12 **SECTION 350.** 893.33 (4r) of the statutes, as created by 2013 Wisconsin Act 20,
13 is amended to read:

14 893.33 (4r) This section applies to liens of the department of health services
15 on real property under ss. 46.27 (7g), 49.496, 49.682, ~~49.848~~, and 49.849.

16 **SECTION 351. Initial applicability.**

17 (1) ESTATE RECOVERY CHANGES. The treatment of sections 46.27 (7g) (a) 5. a. and
18 b., (c) 2m. b. and 6m. b., and (g), 49.496 (1) (cm) 1. and 2., (3m) (aj) 2. and (dm) 2., and
19 (6m), 49.682 (1) (e) 1. and 2., (2) (bm) 2. and (fm) 2., and (5), 49.849 (1) (d) 1. and 2.,
20 (2) (c), and (7), and 766.55 (2) (bm) of the statutes, the renumbering and amendment
21 of section 49.849 (4) (c) 2. of the statutes, and the creation of section 49.849 (4) (c) 2.
22 a., b., and c. of the statutes first apply to the recovery of public assistance as defined
23 in section 49.849 (1) (e) of the statutes, provided to individuals who die on October
24 1, 2013.

