



**CORRECTIONS IN:**

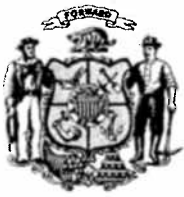
**2013 SENATE BILL 384**

Prepared by the Legislative Reference Bureau  
(December 5, 2013)

In enrolling, the following corrections were made:

1. Page 32, line 14: delete “appointment “ has” and substitute “appointment” has”.
2. Page 34, line 11: delete “a beneficiaries” and substitute “beneficiaries”.
3. Page 47, line 18: delete “who is a related” and substitute “who is related”.
4. Page 75, line 18: delete “is amended” and substitute “are amended”.
5. Page 120, line 21: delete “attorneys fees” and substitute “attorney fees”.
6. Page 133, line 10: delete “trust,” and substitute “trust,”.
7. Page 137, line 8: delete “(6)” and substitute “(6),”.
8. Page 150, line 13: delete “is amended” and substitute “are amended”.
9. Page 159, line 5: delete “are amended” and substitute “is amended”.
10. Page 162, line 2: delete “instrument, in” and substitute “instrument,  
in”.

(END)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0010/6  
FFK/PJK/TJD:jld:rs

## 2013 SENATE BILL 384

November 4, 2013 – Introduced by Senators FARROW and RISSER, cosponsored by Representative SANFELIPPO. Referred to Committee on Judiciary and Labor.

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** 46.27 (7g)  
11          (a) 5. a., 49.496 (1) (cm) 1., 49.682 (1) (e) 1., 49.849 (1) (d) 1., 445.125 (4), 701.06  
12          (6) (d), 701.09 (title), (1) and (2), 701.20 (2) (a), 701.20 (2) (c), 701.20 (2) (e),  
13          701.20 (2) (f), 701.20 (2) (g), 701.20 (2) (j), 701.20 (4c) (title), 701.20 (4c) (b) 1.,  
14          701.20 (4c) (b) 2., 701.20 (4g) (title), 701.20 (4g) (a) 1. a., 701.20 (4g) (a) 1. e.,

**SENATE BILL 384**

1 701.20 (4g) (a) 2. b., 701.20 (4m) (title), 701.20 (4m) (b), 701.20 (4m) (d), 701.20  
2 (18) (title), 701.20 (29) (title), 701.20 (29) (a), 701.20 (29) (b), 701.24 (title),  
3 701.25 and 702.01 (intro.); **to renumber and amend** 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),

**SENATE BILL 384**

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,

**SENATE BILL 384**

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 WISCONSIN TRUST CODE**

This bill replaces current law related to trusts with the Wisconsin Trust Code (Code), a modified version of the Uniform Trust Code, as amended in 2005 (UTC). The Code is primarily a set of basic default rules that applies to certain trusts in this state. With some exceptions, the terms of a trust may override or modify the Code's default rules. There are, however, some mandatory provisions in the Code that may not be overridden or modified by the terms of a trust, including the requirements for creating a trust, the duty of a trustee to act in good faith, the effect of a spendthrift provision, limits on provisions that limit a trustee's liability, periods of limitation for commencing a judicial proceeding related to a trust, and the power of the court to take certain actions. The Code also includes default rules that are not included in the UTC, including rules related to a trustee's power to appoint assets to another trust, trust protectors, directed trusts, and life insurance contracts owned by trusts.

In addition to creating the Code, the bill clarifies the definitions of "general power of appointment" and "special power of appointment" and clarifies when a creditor can reach assets that are subject to a power of appointment. The bill also extends the prudent investor rule to directing parties and trust protectors who have a power over the investment of a trust, and clarifies rules relating to a trustee's

**SENATE BILL 384**

retention of securities received by a trustee. A further explanation of these changes is provided after the overview of the Code.

Under this bill, the 11 articles of the UTC are created as subchapters of the Code. Two differences in the structure of the UTC and the Code are: 1) the Uniform Prudent Investor Act, as adopted in this state, is referenced in the Code but otherwise remains outside the Code; and 2) the Uniform Principal and Income Act, which was previously adopted in this state, is included as subchapter 11 of the Code, moving the miscellaneous provisions of the Code to subchapter 12.

The following is an overview of each subchapter of the Code:

***Subchapter 1: General Provisions and Definitions***

Subchapter 1 provides definitions for terms that are used throughout the Code, including a number of new terms and definitions. The new terms introduced in subchapter 1 include “qualified beneficiary,” “directed trust property,” and “trust protector.” Under the Code, a “qualified beneficiary” is a person who is a current beneficiary of trust income or principal, a person who would be eligible to receive trust income or principal if the current beneficiaries’ interests in the trust terminate, or a person who would receive a distribution if the trust terminates. “Directed trust property” is defined as property that is invested or managed by a directing party and for which the trustee has no investment or management responsibility. A “trust protector” is defined as a person who is given a specified power over the trust in a capacity other than as a trustee or a directing party. The terms “directed trust property,” “directing party,” and “trust protector” are not included in the UTC.

In addition to providing definitions for the Code, subchapter 1 exempts certain types of trusts from the Code, lists the provisions of the Code that may not be overridden by the terms of a trust, incorporates the common law of trusts into the Code, provides procedures for determining and transferring the principal place of administration for a trust, and provides methods for giving and waiving notice. This subchapter also provides that interested persons may enter into a nonjudicial settlement agreement to address issues related to a trust to the extent that a court could approve the terms of the nonjudicial settlement agreement.

***Subchapter 2: Judicial Proceedings***

Subchapter 2 addresses the role of the court in administering a trust. Under current law, a testamentary trust is subject to continuing court supervision. Under the Code, a court may intervene in the administration of a trust to the extent that its jurisdiction is invoked by an interested person or as otherwise provided by law. However, under the Code, a trust is not subject to continuing judicial supervision unless ordered by the court in response to a petition requesting the supervision. This subchapter also addresses procedural issues such as personal jurisdiction, subject matter jurisdiction, and venue for judicial proceedings related to trusts.

***Subchapter 3: Representation***

Subchapter 3 allows a person to be represented and bound by another person for certain purposes. Under the Code, providing notice, information, accountings, or reports to a person who has the power to represent and bind another person has the same effect as providing the notice, information, accountings, or reports to the represented person. A person may be represented by a fiduciary, a parent, or by a

**SENATE BILL 384**

representative chosen by the trustee or a court. A trustee is not required to provide information to a beneficiary if the trustee provides the information to the beneficiary's representative. This subchapter also specifically allows a minor, incapacitated person, unborn individual, or person whose identity is not known, to be represented and legally bound by a person who has a substantially identical interest with respect to the particular question or dispute to the extent there is no conflict of interest in that representation.

***Subchapter 4: Creation, Validity, Modification, and Termination of Trust***

Subchapter 4 establishes the requirements for creating, modifying, and terminating a trust. Generally, the Code provides that a trust is created when a person transfers property to a trustee with the intent to create a trust relationship. This subchapter expands upon the common law by specifically validating trusts for animals and trusts for certain noncharitable purposes. This subchapter also recognizes oral trusts if the terms of the trust are established by clear and convincing evidence.

This subchapter provides default rules for when a trust may be modified or terminated. For example, under the Code, a noncharitable irrevocable trust may be modified or terminated without court approval with the consent of the settlor and all of the beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. Additionally, for purposes of terminating a trust, the Code increases the value of what qualifies as an uneconomic trust to a trust with a value of less than \$100,000, as adjusted for inflation. Upon providing notice to the qualified beneficiaries, every trust protector, every directing party, and the settlor, if living, the trustee of an uneconomic trust may terminate the trust without court approval.

Under this subchapter, a court is directed to apply liberally the doctrine of cy pres to a charitable trust if the charitable purpose identified in the trust becomes unlawful, impracticable, impossible, or wasteful. Under the doctrine of cy pres, a court may substitute an alternative charitable purpose for a purpose that is unlawful, impracticable, impossible, or wasteful. The Code preserves the requirement under current law that, when applying the doctrine of cy pres, a court must consider the community needs and charitable interest of the settlor in determining an alternative plan for disposition of the trust property.

Finally, this subchapter includes a concept not addressed in the UTC, which is the authority of a trustee of an irrevocable trust to appoint trust assets to the trustee of another trust (a second trust) under certain circumstances. This procedure is commonly referred to as decanting. Under the Code, subject to certain requirements, a trustee who has the power to invade trust principal for the benefit of an income beneficiary may appoint trust property to a second trust provided that the appointment does not reduce any fixed income, annuity, or unitrust interest of the beneficiary. If a trustee's power to invade trust income or principal under the first trust is limited by a standard, the second trust may not grant the trustee a broader power to invade trust income or principal. Also, if the trustee's power to invade the principal of the first trust is not limited by a standard, the beneficiaries of the second trust do not have to include all of the beneficiaries of the first trust; otherwise, the

**SENATE BILL 384**

beneficiaries of both trusts must be the same. A trustee may appoint assets to a second trust with or without court approval by providing notice to the qualified beneficiaries, every trust protector, every directing party, and the settlor, if living.

***Subchapter 5: Creditor's Claim; Spendthrift and Discretionary Trusts***

Subchapter 5 addresses the validity of a spendthrift provision and the rights of a creditor of a settlor or a beneficiary to reach trust assets. The Code defines a "spendthrift provision" as a provision that restrains either or both the voluntary or involuntary transfer of a beneficiary's interest in a trust. In general, the Code preserves current law related to spendthrift provisions and creditors' rights, including exceptions for claims for child support and public support. The Code also preserves current law that allows a trustee to limit the claims of a creditor of a settlor upon the settlor's death by providing or publishing notice to the creditors. Thus, the Code's treatment of spendthrift provisions and creditor's rights differs from the UTC.

Under the Code, a creditor may reach the assets of a revocable trust during the lifetime of the settlor. If the trust is a self-settled irrevocable trust, a creditor may reach the maximum amount that can be distributed to or for the settlor's benefit presently or in the future.

Subchapter 5 also specifies that a beneficiary's use of real or tangible property owned by a trust does not subject the property to the claims of the beneficiary's creditors. The Code treats trusts that give the trustee absolute discretion in making distributions and trusts that require the trustee to make distributions for purposes of support in a similar manner. Under the Code, a beneficiary's interest in a trust that is subject to a trustee's discretion does not constitute an interest in property.

***Subchapter 6: Revocable Trusts***

Subchapter 6 addresses "revocable trusts," which the Code defines as trusts that may be revoked by a settlor without the consent of the trustee or an adverse party. Property held in a revocable trust reverts back to the settlor if the trust is revoked. The Code treats a revocable trust as a will substitute and therefore provides that the capacity required to create or modify a revocable trust is the same as the capacity required to create or modify a will. Under the Code, a trust is revocable unless the trust instrument expressly provides that it is irrevocable. This reverses the presumption under current law and applies only to trusts that are created after the effective date of the bill.

This subchapter provides that, while a trust is revocable, the trustee owes its duties exclusively to the settlor. Under the Code, a settlor's powers of revocation may be exercised by a properly authorized agent, or by a conservator or guardian with court approval. Therefore, a trust may remain revocable, even for an incapacitated settlor, until the settlor's death. When the settlor dies, the trust is no longer revocable and the trustee owes its duties to the beneficiaries.

Finally, subchapter 6 limits the period during which a person may challenge the validity of a revocable trust. Under the Code, to challenge the validity of a revocable trust, a person must commence a judicial proceeding no later than one year after the settlor's death or four months after the trustee sends the person a copy of the trust and notice of the time allowed for commencing a proceeding, whichever occurs first.



**SENATE BILL 384*****Subchapter 7: Office of Trustee***

Subchapter 7 specifies numerous default procedural rules that apply to the office of the trustee. Subchapter 7 includes rules related to acceptance or declination of a trusteeship, requiring a bond, the rights and obligations of cotrustees, the vacancy and appointment of successor trustees, the resignation of a trustee, the grounds for removing a trustee, duties of a former trustee to deliver trust property, trustee compensation, and the reimbursement of trustee expenses. Subchapter 7 also provides that property is properly transferred to a trust by titling the property in the name of the trustee. However, property titled in the name of the trust also places legal title in the name of the trustee.

***Subchapter 8: Duties and Powers of Trustees, Directing Parties, and Trust Protectors***

Subchapter 8 sets forth the fiduciary obligations of a trustee, except for those fiduciary duties included in the Uniform Prudent Investor Act. Under the Code, a trustee must administer the trust in good faith, solely in the interests of the beneficiaries, impartially, and prudently, incurring only reasonable costs and using any special skills or expertise the trustee may have. A trustee must take reasonable steps to control and protect trust property, to maintain adequate records that clearly identify separate trust interests, to enforce claims of the trust and defend claims against the trust, to collect trust property and to redress breaches of former trustees, and to exercise discretion in good faith and in accordance with the terms of the trust. A trustee has a duty to inform and report and must provide requested trust accountings to certain beneficiaries.

Under the Code, a trustee may delegate certain duties and powers but must exercise reasonable care, skill, and caution when selecting an agent, establishing the scope and terms of the delegation, and periodically reviewing the agent's actions. An agent who accepts a delegation of duty or power from a trustee has a duty to exercise reasonable care to comply with the terms of the delegation. A trustee who properly delegates a duty or power to an agent is not liable to the beneficiaries for the agent's actions.

Subchapter 8 provides that a trustee has broad power to achieve proper investment, management, and distribution of the trust property and may exercise all the powers that an unmarried, competent owner would have over individually owned property. This subchapter also enumerates specific powers that a trustee has absent contrary provisions in the trust instrument, and requires a trustee to make certain presumptions related to certain tax objectives, including presumptions concerning marital deduction transfers that are not included in the UTC.

As an addition to the UTC, the Code specifically allows a settlor, a court, or interested persons in a nonjudicial settlement agreement to appoint directing parties and trust protectors. The Code defines "directing party" as a person who is granted a power, in a capacity other than as a trustee or a trust protector, to make or to direct the trustee to make investment and distribution decisions. A directing party is a fiduciary and is obligated to act in good faith, consistent with the terms and purposes of the trust, and the interests of the beneficiaries. A trustee has no duty to monitor the directing party, and a trustee who follows a directing party's directions

**SENATE BILL 384**

is not liable for any resulting losses, unless the loss is a result of the trustee's willful misconduct.

Under the Code, a "trust protector" is a person who is granted certain powers over the trust, the trustee, or trust property in a capacity other than as a trustee or a directing party. A settlor, court, or interested persons in a nonjudicial settlement agreement may specify whether a power granted to a trust protector must be exercised in a fiduciary or nonfiduciary capacity. If a settlor, court, or interested persons do not specify the legal capacity in which a trust protector is to exercise a particular power, the Code provides default rules for determining the capacity for specific powers. A trustee has no duty to monitor the actions of a trust protector and, subject to certain exceptions, is not liable for taking actions consistent with the actions of the trust protector.

***Subchapter 9: Investment Management of Trusts***

Subchapter 9 provides that, subject to certain exceptions, the investment management of trust property is governed by the Uniform Prudent Investor Act, which has been adopted in this state. As an exception to this general rule, a trustee who has no power over directed trust property does not have a duty to monitor the conduct or investment performance of the directing party.

The Code also limits the application of the Uniform Prudent Investor Act for life insurance trusts. If a principal purpose of a trust is to hold a life insurance contract, a trustee does not have a duty to determine whether the life insurance contract is, or remains, a proper investment. This change applies to all trusts executed after the effective date of the bill and to trusts executed before that date if the trustee provides a notice to the qualified beneficiaries.

***Subchapter 10: Liability of Trustees and Rights of Persons Dealing with Trustee***

Subchapter 10 identifies the remedies for breach of trust, provides how damages are determined for a breach of trust, reaffirms the court's power to award costs and attorney fees, specifies potential defenses, and addresses trustee relations with and liability to persons other than beneficiaries. Under the Code, a trust instrument may not waive or vary the trustee's duty of good faith or relieve the trustee of liability for reckless indifference. The Code also provides that a term in a trust that relieves a trustee of liability is not enforceable if the inclusion of the term is the result of an abuse of the settlor's confidential relationship with the trustee.

Generally, under the Code, a beneficiary must commence a proceeding against a trustee for breach of trust within five years after the first to occur of the following: the termination of the trust, the termination of the beneficiary's interest, or the removal, resignation, or death of the trustee. However, the Code creates a one-year statute of limitation for commencing such a proceeding if the beneficiary received a report that adequately disclosed the existence of a potential claim.

Under the Code, a trustee is protected from liability for a loss in value of the trust property if there is no breach of trust. A trustee generally is not liable if the trustee acts in reasonable reliance on the express provisions of the trust, if the trustee exercises reasonable care but fails to ascertain unknown external facts, or if a beneficiary provides a consent, release, or ratification for the trustee's action. A

**SENATE BILL 384**

trustee is also protected from personal liability on a contract entered into in a fiduciary capacity and for contracts and torts of a partnership in which the trustee holds a general partnership interest if the other party had notice of the fiduciary relationship.

In general, a trustee is entitled to payment from the trust for attorney fees incurred in good faith. However, if a claim against the trustee is based on a breach of trust, the trustee must provide notice to qualified beneficiaries of the trustee's intention to pay attorney fees from the trust. Any party to the action may seek a court order prohibiting payment of attorney fees from the trust by demonstrating to the court that there is a reasonable basis for the court to find that a breach of trust occurred.

A third party dealing with a trust is not liable for any breach of the trustee's obligations to the beneficiaries resulting from a transaction, unless the third party has knowledge of an actual breach by the trustee. In addition, a third party may rely on a certification of trust that sets out certain required information, including a statement that the trust has not been revoked, modified, or amended in any manner that would cause the representations in the certificate to be incorrect. A third party who receives a certification of trust and continues to demand a complete copy of a trust instrument may be liable for damages if the demand is not in good faith.

***Subchapter 11: Uniform Principal and Income Act***

Subchapter 11 incorporates into the Code the Uniform Principal and Income Act, which has been adopted in this state. The bill also updates the Uniform Principal and Income Act by incorporating recent changes recommended by the Uniform Law Commission related to deferred compensation, annuities, and other similar payments.

***Subchapter 12: Miscellaneous Provisions***

Subchapter 12 provides that, subject to certain exceptions, the Code applies to trusts that are in existence on the effective date of the bill as well as to trusts created after the effective date of the bill. It also provides that the Code applies to a judicial proceeding concerning a trust commenced before, on, or after the effective date of the bill, unless a court determines that the application of the Code to a proceeding commenced before the effective date of the bill will substantially interfere with the effective conduct of the judicial proceedings or will prejudice the rights of the parties. The effective date of the bill is the first day of the seventh month beginning after publication.

The following changes occur outside the Code:

***Powers of Appointment***

The bill changes the term "general power" to "general power of appointment," which means a power exercisable in favor of any one or more of the donee, the donee's estate, the donee's creditors, or the creditors of the donee's estate. Under the bill, a "special power of appointment" is defined as any power of appointment that is not a general power of appointment.

The bill also clarifies the rights of a creditor of a person who holds a power of appointment. Under the bill, a donee's creditor can reach property that is subject to a general power of appointment during a donee's life only if the general power is

**SENATE BILL 384**

presently exercisable. In general, upon the death of the donee, a creditor can reach property that is subject to a general power of appointment, whether or not the donee exercised the general power of appointment. However, under the bill, a creditor may not reach property subject to a general power of appointment that the donee has not exercised at the time of the donee's death if the donee or the donee's spouse is not the donor of the power of appointment.

***Uniform Prudent Investor Act***

The bill modifies the definition of "fiduciary" in the Uniform Prudent Investor Act to include a directing party with the power to direct the trustee's investment decisions and a trust protector who has a power exercisable in a fiduciary capacity over the investment of the trust assets. Therefore, the default rule is that directing parties and trust protectors are subject to the prudent investor rule if the directing party or trust protector has a power over the trust investments. Finally, the bill provides that the general rule of diversification does not apply to assets collected by a fiduciary.

**ESTATE RECOVERY AND DIVESTMENT**

The 2013-15 biennial budget act, 2013 Wisconsin Act 20 (Act 20), made a number of changes to the laws relating to recovery from nonprobate property and estates for public assistance provided (estate recovery) and divestment (divestment) and financial eligibility for Medical Assistance (MA). The divestment changes went into effect on July 2, 2013, and the estate recovery changes went into effect on October 1, 2013, except that the Department of Health Services (DHS) was prohibited from implementing any of the changes without the approval of the Joint Committee on Finance (JCF). DHS submitted proposals for the implementation of the divestment and estate recovery provisions to JCF and most, but not all, of the provisions were approved by JCF for implementation. This bill repeals the estate recovery and divestment provisions that were not approved by JCF and makes a few changes to the estate recovery and divestment provisions that were approved.

***Property subject to estate recovery***

Current law defines the property that is subject to estate recovery as all real and personal property to which the individual who received the recoverable public assistance benefits under a public assistance program (recipient) held any legal title or in which the recipient had any legal interest immediately before death, including assets transferred to an heir or a survivor through jointly owned property, a living trust, or other specified arrangements. In addition, the property subject to estate recovery includes any real or personal property in which the recipient's surviving spouse had an ownership interest at the recipient's death and in which the recipient had a marital property interest with that spouse at any time within five years before the recipient applied for the public assistance program or during the time that the recipient was eligible for the public assistance program. The bill limits the property that is subject to estate recovery to all real and personal property to which the recipient held any legal title or in which the recipient had any legal interest immediately before death, including assets transferred to an heir or a survivor through the specified arrangements, and removes from the definition of property that is subject to estate recovery any real or personal property in which the

**SENATE BILL 384**

recipient's surviving spouse had any ownership interest at the recipient's death and in which the recipient had a marital property interest with that spouse at any time within five years before the recipient applied for the public assistance program or during the time that the recipient was eligible for the public assistance program.

Current law provides that there is a presumption, which may be rebutted with clear and convincing evidence, that all nonprobate property, and all property in the estate, of the recipient's deceased spouse who survived the recipient was marital property held with the recipient and that 100 percent of that property is subject to estate recovery by DHS. The bill provides that there is a presumption, consistent with the statutes relating to the classification of the property of spouses, which may be rebutted, that all nonprobate property, and all property in the estate, of the recipient's deceased surviving spouse was marital property held with the recipient and that 100 percent of that property is subject to estate recovery by DHS.

***Voidable transfers***

Current law provides that certain transfers of real property are voidable by DHS in court actions, in which case title to the real property reverts to the grantor or his or her estate. A voidable transfer is one that satisfies all of the following criteria: the transfer was made by a grantor who was receiving or who received MA; the transfer was made while the grantor was eligible for MA; DHS was unaware of the transfer; and the transfer was made to hinder, delay, or defraud DHS from recovering MA paid on behalf of the grantor. Current law provides that there is a rebuttable presumption that any "fraudulent transfer" was made to hinder, delay, or defraud DHS from recovering MA if the transfer was made by a grantor who was receiving or who received MA and while the grantor was eligible for MA. Current law defines a "fraudulent transfer" as one in which the property was transferred for less than fair market value or one in which the deed or other conveyance was not recorded during the lifetime of the grantor. JCF did not approve the implementation of these voidable transfer provisions and the bill repeals them.

***Interests in property and notices of encumbrance***

Current law establishes procedures for DHS to follow with respect to real property owned by a recipient, both before and after death. Whenever a recipient, upon becoming eligible for a public assistance program or during the time that the recipient is eligible for a public assistance program, has a current ownership interest in real property, or has a spouse with a current ownership interest in real property in which the recipient had a marital property interest with that spouse at any time within the five years before the recipient applied for the public assistance program or during the time that the recipient is eligible for the public assistance program, DHS may record a document with respect to the property, which requires any person intending to transfer title to, encumber, or terminate an interest in the property to notify DHS. JCF did not approve the implementation of the provisions establishing these procedures and the bill repeals them.

***Trusts***

Current law requires trustees of living trusts to notify DHS, within 30 days after the death of the trust settlor and before any assets are distributed, if the trust settlor, or his or her predeceased spouse, received any recoverable public assistance

**SENATE BILL 384**

benefits. If DHS sends the trustee a claim for the estate recovery of recoverable public assistance benefits, the trustee must, within 90 days, pay DHS the recoverable amount or provide DHS with information about any property that was distributed and to whom it was distributed. Current law requires a trustee of a special needs or pooled trust, the beneficiaries of which receive MA, to provide notice to DHS within 30 days after the death of a trust beneficiary, and to repay DHS, within 90 days after receiving a claim from DHS, for the amount of MA paid on behalf of the beneficiary. If the trustee fails to comply with the notice or repayments requirements, the trustee is personally liable to DHS for any MA amounts paid on behalf of the beneficiary that DHS is unable to recover. Current law also provides that, after the death of a beneficiary under a pooled trust, the trustee may retain up to 30 percent of the balance in the deceased beneficiary's account, unless the trustee failed to comply with the notice and repayment requirements, in which case the trustee may not retain any of the balance in the deceased beneficiary's account. JCF did not approve the implementation of these trust and trustee provisions and the bill repeals them.

***Hardship waiver***

Under current law, DHS may promulgate rules that establish standards for determining whether the application of estate recovery would work a hardship in an individual case. DHS must waive the application of estate recovery in a particular case if it would work an undue hardship, except for estate recovery with respect to a recipient's deceased surviving spouse. The bill removes this exception so that DHS is required to waive the application of estate recovery against the nonprobate property and estate of a recipient's deceased surviving spouse, also, if estate recovery would work an undue hardship in that case.

***Divestment and asset verification***

Under the law previous to the effective date of Act 20, with certain exceptions, if an institutionalized, or noninstitutionalized, individual or his or her spouse transfers assets for less than fair market value on or after a specific date the individual is ineligible for certain MA services for a specified period of time. Current law, under Act 20, specified that an eligibility period applies for an institutionalized or noninstitutionalized individual regardless of whether the assets transferred for less than fair market value are considered excluded assets, if retained, under federal law. JCF did not approve the implementation of this change in Act 20 and the bill repeals the change.

Under the law previous to the effective date of Act 20, the purchase by an individual or his or her spouse of a promissory note, loan, or mortgage is a transfer of assets for less than fair market value triggers an ineligibility period unless certain circumstances apply including that the loan's terms prohibit cancellation of the balance upon the death of the lender. Current law, under Act 20, specifies that a promissory note in which the debtor is a presumptive heir of the lender or in which neither the lender nor debtor has any incentive to enforce repayment is considered cancelled upon the death of the lender for purposes of divestment and eligibility for MA. JCF did not approve the implementation of this change in Act 20 and the bill repeals the change.

**SENATE BILL 384**

Act 20 changes the definition of “financial institutions” for purposes of verifying the assets of applicants for and recipients of MA programs. The bill removes from that definition institution-affiliated parties of depository institutions and credit unions, as institutional-affiliated parties are defined under federal law; benefit associations; insurance companies; safe deposit companies; money market mutual funds; and similar entities authorized to do business in Wisconsin.

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

---

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

1           **SECTION 1.** 20.435 (4) (im) of the statutes, as affected by 2013 Wisconsin Act  
2 20, is amended to read:

3           20.435 (4) (im) *Medical assistance; correct payment recovery; collections; other*  
4 *recoveries.* All moneys received from the recovery of correct medical assistance  
5 payments under ss. 49.496, ~~49.848~~, and 49.849, all moneys received as collections  
6 and other recoveries from providers, drug manufacturers, and other 3rd parties  
7 under medical assistance performance-based contracts, and all moneys credited to  
8 this appropriation account under s. 49.89 (7) (f), for payments to counties and tribal  
9 governing bodies under s. 49.496 (4) (a), for payment of claims under s. 49.849 (5),  
10 for payments to the federal government for its share of medical assistance benefits  
11 recovered, for the state share of medical assistance benefits provided under subch.  
12 IV of ch. 49, and for costs related to collections and other recoveries.

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

15           20.435 (4) (in) *Community options program; family care; recovery of costs*  
16 *administration.* From the moneys received from the recovery of costs of care under  
17 ss. 46.27 (7g), ~~49.848~~, and 49.849 for enrollees who are ineligible for medical

**SENATE BILL 384**

1 assistance, the amounts in the schedule for administration of the recovery of costs  
2 of the care.

3 **SECTION 3.** 20.435 (7) (im) of the statutes, as affected by 2013 Wisconsin Act  
4 20, is amended to read:

5 20.435 (7) (im) *Community options program; family care benefit; recovery of*  
6 *costs; birth to 3 waiver administration.* From the moneys received from the recovery  
7 of costs of care under ss. 46.27 (7g), ~~49.848~~, and 49.849 for enrollees who are ineligible  
8 for medical assistance, all moneys not appropriated under sub. (4) (in), and all  
9 moneys transferred to this appropriation account from the appropriation account  
10 under sub. (4) (o), for payments to county departments and aging units under s. 46.27  
11 (7g) (d), payments to care management organizations for provision of the family care  
12 benefit under s. 46.284 (5), payment of claims under s. 49.849 (5), payments for  
13 long-term community support services funded under s. 46.27 (7) as provided in ss.  
14 46.27 (7g) (e) and 49.849 (6) (b), and for administration of the waiver program under  
15 s. 46.99.

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

17 23.0918 (2) Unless the natural resources board determines otherwise in a  
18 specific case, only the income from the gifts, grants, or bequests in the fund is  
19 available for expenditure. The natural resources board may authorize expenditures  
20 only for preserving, developing, managing, or maintaining land under the  
21 jurisdiction of the department that is used for any of the purposes specified in s. 23.09  
22 (2) (d). In this subsection, unless otherwise provided in a gift, grant, or bequest,  
23 principal and income are determined as provided under s. ~~701.20~~ subch. XI of ch. 701.

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



## SENATE BILL 384

## SECTION 5

1           **25.70 Historical society trust fund.** There is established a separate  
2 nonlapsible trust fund designated as the historical society trust fund, consisting of  
3 all endowment principal and income and all cash balances of the historical society.  
4 Unless the board of curators of the historical society determines otherwise in each  
5 case, only the income from the assets in the historical society trust fund is available  
6 for expenditure. In this section, unless otherwise provided in the gift, grant, or  
7 bequest, principal and income are determined as provided under s. 701.20 subch. XI  
8 of ch. 701.

9           **SECTION 6.** 46.27 (7g) (a) 5. a. of the statutes, as created by 2013 Wisconsin Act  
10 20, is renumbered 46.27 (7g) (a) 5. *INS SAI-1*

11           **SECTION 7.** 46.27 (7g) (a) 5. b. of the statutes, as created by 2013 Wisconsin Act  
12 20, is repealed.

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

15           46.27 (7g) (c) 2m. b. There is a presumption, ~~which may be rebutted by clear~~  
16 ~~and convincing evidence~~ consistent with s. 766.31, which may be rebutted, that all  
17 property in the estate of the nonclient surviving spouse was marital property held  
18 with the client and that 100 percent of the property in the estate of the nonclient  
19 surviving spouse is subject to the department's claim under subd. 1.

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

22           46.27 (7g) (c) 6m. b. The department shall release the lien in the circumstances  
23 described in s. ~~49.848 (5) (f)~~ 49.849 (4) (c) 2.

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

**SENATE BILL 384**

1           46.27 (7g) (g) The department shall promulgate rules establishing standards  
2 for determining whether the application of this subsection would work an undue  
3 hardship in individual cases. If the department determines that the application of  
4 this subsection would work an undue hardship in a particular case, the department  
5 shall waive application of this subsection in that case. ~~This paragraph does not apply  
6 with respect to claims against the estates of nonclient surviving spouses.~~

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

9           46.286 (7) RECOVERY OF FAMILY CARE BENEFIT PAYMENTS. The department shall  
10 apply to the recovery from persons who receive the family care benefit, including by  
11 liens and affidavits and from estates, of correctly paid family care benefits, the  
12 applicable provisions under ss. 49.496, 49.848, and 49.849.

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

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

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

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

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

## SENATE BILL 384

1 date, the institutionalized individual is ineligible for medical assistance for the  
2 following services for the period specified under sub. (3):

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

5 49.453 (2) (b) *Noninstitutionalized individuals.* (intro.) Except as provided in  
6 sub. (8), if a noninstitutionalized individual or his or her spouse, or another person  
7 acting on behalf of the noninstitutionalized individual or his or her spouse, transfers  
8 assets; ~~regardless of whether those assets, if retained, are excluded under 42 USC~~  
9 ~~1396p~~; for less than fair market value on or after the noninstitutionalized  
10 individual's look-back date, the noninstitutionalized individual is ineligible for  
11 medical assistance for the following services for the period specified under sub. (3):

12 SECTION 17. 49.453 (4c) (c) of the statutes, as created by 2013 Wisconsin Act  
13 20, is repealed.

14 SECTION 18. 49.496 (1) (cm) 1. of the statutes, as created by 2013 Wisconsin Act  
15 20, is renumbered 49.496 (1) (cm). INS SAI-2

16 SECTION 19. 49.496 (1) (cm) 2. of the statutes, as created by 2013 Wisconsin Act  
17 20, is repealed.

18 SECTION 20. 49.496 (3) (aj) 2. of the statutes, as created by 2013 Wisconsin Act  
19 20, is amended to read:

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

## SENATE BILL 384

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

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

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

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

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

16          **SECTION 24.** 49.682 (1) (e) 1. of the statutes, as created by 2013 Wisconsin Act  
17          20, is renumbered 49.682 (1) (e). INS SA1-3

18          **SECTION 25.** 49.682 (1) (e) 2. of the statutes, as created by 2013 Wisconsin Act  
19          20, is repealed.

20          **SECTION 26.** 49.682 (2) (bm) 2. of the statutes, as created by 2013 Wisconsin Act  
21          20, is amended to read:

22          49.682 (2) (bm) 2. There is a presumption, ~~which may be rebutted by clear and  
23          convincing evidence~~ consistent with s. 766.31, which may be rebutted, that all  
24          property in the estate of the nonclient surviving spouse was marital property held

## SENATE BILL 384

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

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

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

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

9 49.682 (5) The department shall promulgate rules establishing standards for  
10 determining whether the application of this section would work an undue hardship  
11 in individual cases. If the department determines that the application of this section  
12 would work an undue hardship in a particular case, the department shall waive  
13 application of this section in that case. ~~This subsection does not apply with respect~~  
14 ~~to claims against the estates of nonclient surviving spouses.~~

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

17 **SECTION 30.** 49.849 (1) (d) 1. of the statutes, as created by 2013 Wisconsin Act  
18 20, is renumbered 49.849 (1) (d). INS SA1-4

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

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

23 49.849 (2) (c) There is a presumption, ~~which may be rebutted by clear and~~  
24 ~~convincing evidence~~ consistent with s. 766.31, which may be rebutted, that all  
25 property of the deceased nonrecipient surviving spouse was marital property held

**SENATE BILL 384**

1 with the recipient and that 100 percent of the property of the deceased nonrecipient  
2 surviving spouse is subject to the department's claim under par. (a).

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

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

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

8 49.849 (4) (c) 2. a. The recipient's surviving spouse or child who is under age  
9 21 or disabled sells the property for fair market value, as described in sub. (5c) (d),  
10 during the spouse's or child's lifetime.

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

12 49.849 (4) (c) 2. b. The recipient's surviving spouse or child who is under age  
13 21 or disabled transfers the property for less than fair market value, as described in  
14 sub. (5c) (d), during the spouse's or child's lifetime, the transferee sells the property  
15 during the spouse's or child's lifetime and places proceeds equal to the lesser of the  
16 department's lien or the sale proceeds due to the seller in a trust or bond, and the  
17 department is paid the secured amount upon the death of the recipient's spouse or  
18 disabled child or when the recipient's child who is not disabled reaches age 21.

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

20 49.849 (4) (c) 2. c. The surviving owner or transferee of the property, who is not  
21 the recipient's surviving spouse or child who is under age 21 or disabled, sells the  
22 property during the lifetime of the recipient's surviving spouse or child who is under  
23 age 21 or disabled and places proceeds equal to the lesser of the department's lien or  
24 the sale proceeds due to the seller in a trust or bond, and the department is paid the

**SENATE BILL 384**

1 secured amount upon the death of the recipient's spouse or disabled child or when  
2 the recipient's child who is not disabled reaches age 21.

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

5 **49.849 (7) RULES FOR HARDSHIP WAIVER.** The department shall promulgate rules  
6 establishing standards to determine whether the application of this section would  
7 work an undue hardship in individual cases. If the department determines that the  
8 application of this section would work an undue hardship in a particular case, the  
9 department shall waive the application of this section in that case. ~~This subsection~~  
10 ~~does not apply with respect to collecting from the property of a decedent if the~~  
11 ~~decedent is a deceased nonrecipient surviving spouse.~~

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

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

15 **223.07 (3)** If the depository institution at which a trust service office is to be  
16 established has exercised trust powers, the trust company bank and the depository  
17 institution shall enter into an agreement respecting those fiduciary powers to which  
18 the trust company bank shall succeed and shall file the agreement with the division.  
19 The trust company bank shall cause a notice of the filing, in a form prescribed by the  
20 division, to be published as a class 1 notice, under ch. 985, in the city, village or town  
21 where the depository institution is located. After filing and publication, the trust  
22 company bank establishing the office shall, as of the date the office first opens for  
23 business, without further authorization of any kind, succeed to and be substituted  
24 for the depository institution as to all fiduciary powers, rights, duties, privileges, and  
25 liabilities of the depository institution in its capacity as fiduciary for all estates,

**SENATE BILL 384**

1 trusts, guardianships, and other fiduciary relationships of which the depository  
2 institution is then serving as fiduciary, except as may be otherwise specified in the  
3 agreement between the trust company bank and the depository institution. The  
4 trust company bank shall also be deemed named as fiduciary in all writings,  
5 including, ~~but not limited to,~~ wills, trusts, court orders, and similar documents and  
6 instruments naming the depository institution as fiduciary, signed before the date  
7 the trust office first opens for business, unless expressly negated by the writing or  
8 otherwise specified in the agreement between the trust company bank and the  
9 depository institution. On the effective date of the substitution, the depository  
10 institution shall be released and absolved from all fiduciary duties and obligations  
11 under such writings and shall discontinue its exercise of trust powers on all matters  
12 not specifically retained by the agreement. This subsection does not effect a  
13 discharge ~~in the manner of s. 701.16 (6) if required by a court under s. 701.0201 (1)~~  
14 or other applicable statutes and does not absolve a depository institution exercising  
15 trust powers from liabilities arising out of any breach of fiduciary duty or obligation  
16 occurring prior to the date the trust service office first opens for business at the  
17 depository institution. This subsection does not affect the authority, duties, or  
18 obligations of a depository institution with respect to relationships which may be  
19 established without trust powers, including escrow arrangements, whether the  
20 relationships arise before or after the establishment of the trust service office.

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

22 223.105 (1) (c) "Trustee" has the meaning designated in s. ~~701.01 (8)~~ 701.0103  
23 (28).

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



**SENATE BILL 384****SECTION 41**

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

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

16           445.125 (1) (a) 2. ~~Notwithstanding s. 701.12 (1), such~~ Such agreements may be  
17 made irrevocable as to the first \$3,000 of the funds paid under the agreement by each  
18 depositor.

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

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

21           445.125 (4) (bn) Sections 701.0410 to 701.0418 do not apply to an agreement,  
22 interest, or dividend that is made irrevocable under sub. (1) (a) 2. to 4.

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

24           700.16 (1) (c) If a future interest or trust is created by exercise of a power of  
25 appointment, the permissible period is computed from the time the power of of

## SENATE BILL 384

1 appointment is exercised if the power of appointment is a general power of  
2 appointment as defined in s. ~~702.01 (3)~~ 702.02 (5) even if the general power of  
3 appointment is exercisable only by will; ~~in~~. In the case of other powers of  
4 appointment the permissible period is computed from the time the power of  
5 appointment is created but facts at the time the power of appointment is exercised  
6 are considered in determining whether the power of alienation is suspended beyond  
7 a life or lives in being at the time of creation of the power of appointment plus 30  
8 years.

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

11 700.27 (1) (d) "Power of appointment" has the meaning given in s. ~~702.01 (4)~~  
12 702.02 (6).

13 (2) (a) 2. A person who is a recipient of property or beneficiary under an inter  
14 vivos governing instrument, donee of a power of appointment created by an inter  
15 vivos governing instrument, appointee under a power of appointment exercised by  
16 an inter vivos governing instrument, taker in default under a power of appointment  
17 created by an inter vivos governing instrument, or person succeeding to disclaimed  
18 property created by an inter vivos governing instrument may disclaim any property,  
19 including contingent or future interests or the right to receive discretionary  
20 distributions, by delivering a written instrument of disclaimer under this section.

21 (b) *Partial disclaimer.* Property transferred under an inter vivos governing  
22 instrument may be disclaimed in whole or in part, except that a partial disclaimer  
23 of property passing by an inter vivos governing instrument or by the exercise of a  
24 power of appointment may not be made if partial disclaimer is expressly prohibited

**SENATE BILL 384****SECTION 46**

1 by the inter vivos governing instrument or by the instrument exercising the power  
2 of appointment.

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

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

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



**SENATE BILL 384**

- 1           (2) A guardianship.
- 2           (3) A conservatorship.
- 3           (4) A custodial arrangement made pursuant to the Uniform Transfers to  
4 Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust Act under ss.  
5 54.950 to 54.988.
- 6           (5) A common trust or a collective investment fund.
- 7           (6) A trust created by a depository agreement with a financial institution.
- 8           (7) A trust made in connection with a business transaction, including a trust  
9 created under a bond indenture or collateral trust agreement or in connection with  
10 a structured finance transaction, a common law trust under s. 226.14, or a business  
11 trust.
- 12          (8) A voting trust.
- 13          (9) A fund maintained pursuant to court order in conjunction with a  
14 bankruptcy proceeding, business liquidation, or class action lawsuit.
- 15          (10) A trust that is part of an employee benefit arrangement or an individual  
16 retirement account.
- 17          (11) A trust established under a qualified tuition savings program or  
18 education savings account.
- 19          (12) A trust account maintained on behalf of a client or customer by a licensed  
20 service professional, including a trust account maintained by an attorney or by a real  
21 estate broker.
- 22          (13) Any other arrangement under which a person is a nominee or escrowee  
23 for another.

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

25           **701.0103 Definitions.** In this chapter:

**SENATE BILL 384**

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

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

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

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

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

10          (4) “Charitable trust” means a trust, or portion of a trust, created for a  
11 charitable purpose described in s. 701.0405 (1). This subsection does not apply in s.  
12 701.1201.

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

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

18          (7) “Directing party” means a person who, in a trust instrument or court order,  
19 is granted a power to direct a trustee’s investment or distribution decisions or a  
20 power to make investment or distribution decisions regarding trust property and the  
21 power is granted to the person in a capacity other than as a trustee or a trust  
22 protector. For purposes of this subsection, a power of appointment is not a power to  
23 direct a trustee’s investment or distribution decisions or a power to make investment  
24 or distribution decisions regarding trust property.

**SENATE BILL 384**

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

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

4           (10) “Guardian of the estate” means a person appointed by a court under s.  
5 54.10 as a guardian of the estate of a minor or adult individual.

6           (11) “Guardian of the person” means a person appointed by a court under s.  
7 54.10 as a guardian of the person of a minor or adult individual.

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

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

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

16           (b) The individual has a mental or physical impairment of a type and severity  
17 that would cause the individual to be considered an individual who is disabled for  
18 purposes of participating in the social security, supplemental security income, or  
19 medical assistance program, if the individual applied to be eligible for one of those  
20 programs based on disability, and if the individual’s education, work record, and  
21 engagement in substantial gainful activity were disregarded. The fact that the  
22 individual is age 65 or older does not bar the individual from being considered an  
23 individual with a disability.

24           (14) “Interests of the beneficiaries” means the beneficial interests provided in  
25 the terms of a trust.

**SENATE BILL 384**

1           **(15)** “Internal Revenue Code” means the Internal Revenue Code of 1986, as  
2 amended, or such subsequent federal revenue law as may be in effect from time to  
3 time.

4           **(16)** “Jurisdiction,” with respect to a geographic area, includes a state or  
5 country.

6           **(17)** “Person” means an individual, corporation, business trust, estate, trust,  
7 partnership, limited liability company, association, joint venture, government;  
8 governmental subdivision, agency, or instrumentality; public corporation; or any  
9 other legal or commercial entity.

10           **(18)** “Power of appointment” has the meaning given in s. 702.02 (6).

11           **(19)** “Power of withdrawal” means a presently exercisable general power of  
12 appointment but does not include any of the following:

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

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

16           **(20)** “Property” means anything that may be the subject of ownership, whether  
17 real or personal or legal or equitable, or any interest therein.

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

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

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



## SENATE BILL 384

## SECTION 51

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

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

6           (22) "Revocable," as applied to a trust, means that the trust can be revoked by  
7 the settlor without the consent of the trustee or a person holding an adverse interest,  
8 regardless of whether the settlor is incapacitated.

9           (23) "Settlor" means a person, including a testator, who creates or contributes  
10 property to a trust. If more than one person creates or contributes property to a trust,  
11 each person is a settlor of the portion of the trust property attributable to that  
12 person's contribution except to the extent another person has the power to revoke the  
13 trust or withdraw that portion.

14           (24) "Special power of appointment" has the meaning given in s. 702.02 (7).

15           (25) "Spendthrift provision" means a term of a trust that restrains either or  
16 both of a voluntary or involuntary transfer of a beneficiary's interest.

17           (26) "State" means a state of the United States, the District of Columbia,  
18 Puerto Rico, the United States Virgin Islands, any territory or insular possession  
19 subject to the jurisdiction of the United States, and an Indian tribe, band, or nation  
20 recognized by federal law or formally acknowledged by a state.

21           (27) "Terms of a trust" means the manifestation of the settlor's intent regarding  
22 a trust's provisions as expressed in the trust instrument or as may be established by  
23 other evidence that would be admissible in a judicial proceeding.

24           (28) "Trustee" includes an original, additional, and successor trustee, and a  
25 cotrustee.

## SENATE BILL 384

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

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

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

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

15           **701.0104 Knowledge.** (1) Subject to sub. (2), a person has knowledge of a fact  
16 if any of the following applies:

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

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

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

21           (2) An organization that conducts activities through employees has notice or  
22 knowledge of a fact involving a trust only from the time the information was received  
23 by an employee having responsibility to act for the trust, or would have been received  
24 by the employee if the organization had exercised reasonable diligence. An  
25 organization exercises reasonable diligence if it maintains reasonable routines for

## SENATE BILL 384

1 communicating significant information to the employee having responsibility to act  
2 for the trust and there is reasonable compliance with the routines. Reasonable  
3 diligence does not require an employee of the organization to communicate  
4 information unless the communication is part of the individual's regular duties or the  
5 individual knows a matter involving the trust would be materially affected by the  
6 information.

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

8 **701.0105 Default and mandatory rules.** (1) Except as otherwise provided  
9 in the terms of the trust, this chapter governs the duties and powers of trustees,  
10 directing parties, and trust protectors; relations among trustees, directing parties,  
11 and trust protectors; and the rights and interests of ~~the~~ beneficiaries.

12 (2) The terms of a trust prevail over any provision of this chapter except for the  
13 following:

14 (a) The requirements for creating a trust.

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

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

20 (d) The power of a court to modify or terminate a trust under ss. 701.0410 to  
21 701.0416.

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

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

**SENATE BILL 384**

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

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

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

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

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

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

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

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

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

17 **701.0106 Common law of trusts; principles of equity.** The common law  
18 of trusts and principles of equity supplement this chapter, except to the extent  
19 modified by this chapter or another statute of this state.

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

21 **701.0107 Governing law.** The meaning and effect of the terms of a trust are  
22 determined by one of the following:

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

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

**SENATE BILL 384**

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

2           **701.0108 Principal place of administration.** (1) The principal place of  
3 administration of a trust is determined by any of the following:

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

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

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

8           3. All or part of the administration of the trust occurs in the jurisdiction  
9 designated in the trust instrument.

10          4. The trust instrument designates the jurisdiction where the settlor is  
11 domiciled at the time the trust instrument is executed.

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

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

17          (2) (a) If a corporate trustee is designated as the trustee of a trust and the  
18 corporate trustee has offices in multiple states and performs administrative  
19 functions for the trust in multiple states, the corporate trustee may designate the  
20 corporate trustee's usual place of business by providing notice to the qualified  
21 beneficiaries, trust protectors, and directing parties. The notice is valid and  
22 controlling if the corporate trustee has a connection to the jurisdiction designated in  
23 the notice, including an office where trustee services are performed and the actual  
24 performance of some administrative functions for that particular trust in that  
25 particular jurisdiction. The subsequent transfer of some of the administrative

**SENATE BILL 384**

1 functions of the corporate trustee to another state or states does not transfer the  
2 usual place of business as long as the corporate trustee continues to maintain an  
3 office and perform some administrative functions in the jurisdiction designated in  
4 the notice and the corporate trustee does not transfer the principal place of  
5 administration pursuant to sub. (4).

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

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

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

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

15 (3) Without precluding the right of the court to approve or disapprove a transfer  
16 and subject to sub. (5), a trustee may, but has no affirmative duty to, transfer a trust's  
17 principal place of administration to another state or to a jurisdiction outside of the  
18 United States.

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

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

**SENATE BILL 384****SECTION 56**

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

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

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

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

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

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

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

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

19 **701.0109 Methods and waiver of notice.** (1) Notice to a person under this  
20 chapter or the sending of a document to a person under this chapter shall be  
21 accomplished in a manner reasonably suitable under the circumstances and likely  
22 to result in receipt of the notice or document. Permissible methods of notice or for  
23 sending a document include 1st class mail, personal delivery, delivery to the person's  
24 last known place of residence or place of business, or a properly directed electronic  
25 message.

**SENATE BILL 384**

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

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

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

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

8           **701.0110 Others treated as qualified beneficiaries.** (1) A charitable  
9 organization that is expressly designated to receive distributions under the terms of  
10 a charitable trust and that is not subject to a right of substitution by the settlor or  
11 by any other party prior to the charitable organization becoming a distributee or  
12 permissible distributee of trust income or principal has the rights of a qualified  
13 beneficiary under this chapter if the charitable organization, on the date on which  
14 the charitable organization's qualification is being determined, satisfies one of the  
15 following:

16           (a) The charitable organization is a distributee or permissible distributee of  
17 trust income or principal.

18           (b) The charitable organization would be a distributee or permissible  
19 distributee of trust income or principal upon the termination of the interests of other  
20 distributees or permissible distributees then receiving or eligible to receive  
21 distributions.

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



**SENATE BILL 384****SECTION 58**

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

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

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

10           **701.0111 Nonjudicial settlement agreements.** (1) In this section,  
11 “interested person” means a person whose consent would be required in order to  
12 achieve a binding settlement were the settlement to be approved by the court.

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

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

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

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

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

24           (b) The approval of a trustee’s report or accounting or waiver of the preparation  
25 of a trustee’s report or accounting.

**SENATE BILL 384**

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

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

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

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

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

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

10 (i) The resolution of disputes arising out of the administration or distribution  
11 of the trust.

12 (j) An investment action.

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

15 (L) Direction to a directing party or to a trust protector to perform or refrain  
16 from performing a particular act or the grant of a power to a directing party or trust  
17 protector.

18 (6) Any interested person may request a court to approve a nonjudicial  
19 settlement agreement, to determine whether the representation as provided in  
20 subch. III was adequate, or to determine whether the agreement contains terms and  
21 conditions the court could have properly approved.

22 **SECTION 60.** 701.02 of the statutes is repealed.

23 **SECTION 61.** Subchapter II (title) of chapter 701 [precedes 701.0201] of the  
24 statutes is created to read:

25 **CHAPTER 701**

**SENATE BILL 384**

SUBCHAPTER II

JUDICIAL PROCEEDINGS

**SECTION 62.** 701.0201 of the statutes is created to read:

**701.0201 Role of court in administration of trust.** (1) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(2) Unless ordered by the court upon a petition of a settlor, trustee, or qualified beneficiary requesting continuing judicial supervision, a trust is not subject to continuing judicial supervision.

(3) A judicial proceeding involving a trust or the trust's administration may involve any of the following:

(a) Determining the validity of all or any part of a trust.

(b) Appointing or removing a trustee, directing party, or trust protector.

(c) Appointing a representative or guardian ad litem, as provided in s. 701.0305, whether or not any other judicial proceeding concerning the trust is pending.

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

(e) Approving interim or final accounts.

(f) Ascertaining trust beneficiaries.

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

(h) Requesting trustee instructions.

(i) Obtaining a declaratory judgment.

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

**SENATE BILL 384**

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

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

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

6           **701.0202 Personal jurisdiction.** (1) A trustee, trust protector, or directing  
7 party submits personally to the jurisdiction of the courts of this state regarding any  
8 matter involving the trust by accepting an appointment as a trustee, trust protector,  
9 or directing party of a trust having its principal place of administration in this state  
10 or by continuing to serve as the trustee, trust protector, or directing party of a trust  
11 after the principal place of administration of the trust is moved to this state.

12           (2) With respect to a beneficiary's interest in a trust, the beneficiary of a trust  
13 having its principal place of administration in this state is subject to the jurisdiction  
14 of the courts of this state regarding any matter involving the trust. By accepting a  
15 distribution from a trust having its principal place of administration in this state,  
16 a recipient submits personally to the jurisdiction of the courts of this state regarding  
17 any matter involving the trust.

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

**SENATE BILL 384****SECTION 63**

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

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

5           **701.0203 Subject matter jurisdiction.** (1) The circuit court assigned to  
6 exercise probate jurisdiction has exclusive jurisdiction of proceedings in this state  
7 brought by a trustee, trust protector, directing party, or beneficiary concerning the  
8 administration of a trust. Except as otherwise provided in this chapter, and as  
9 applicable, the probate procedure described in ch. 879 applies to a proceeding  
10 brought by a trustee, trust protector, directing party, or beneficiary concerning the  
11 administration of a trust.

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

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

15           **701.0204 Venue.** (1) Except as provided in sub. (2), venue for a judicial  
16 proceeding involving a trust may be in the county of this state in which the trust's  
17 principal place of administration is or will be located or, if the trust is a testamentary  
18 trust and the decedent's estate is not yet closed, in the county of this state in which  
19 the decedent's estate is being administered.

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

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

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

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

**SENATE BILL 384**

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

4 (3) Venue for a judicial proceeding involving a trust is also governed by ss.  
5 801.50 to 801.62, as applicable, and the proceeding is regarded as a civil action for  
6 that purpose.

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

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

10 **CHAPTER 701**

11 **SUBCHAPTER III**

12 **REPRESENTATION**

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

14 **701.0301 Representation: basic effect.** (1) Notice, information, an  
15 accounting, or a report given to a person who may represent and bind another person  
16 under this subchapter is a substitute for and has the same effect as notice,  
17 information, an accounting, or a report given directly to the other person.

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

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

**SENATE BILL 384**

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

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

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

8           **701.0302 Representation by holder of general power of appointment.**

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

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

14           **701.0303 Representation by fiduciaries, parents, or a person**  
15 **appointed by a trustee.** Except as provided in s. 701.0411, to the extent there is  
16 no conflict of interest between a representative and the person represented or among  
17 those being represented with respect to a particular question or dispute, all of the  
18 following apply:

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

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

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

**SENATE BILL 384**

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

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

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

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

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

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

17           (d) If neither parent is a beneficiary or settlor of the trust that is the subject  
18 of the representation, the parent who is <sup>also</sup> related to the settlor, other than by reason  
19 of being married to the other parent, may represent the minor child or unborn child.

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

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

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



**SENATE BILL 384**

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

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

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

5 **701.0304 Representation by person having substantially identical**  
6 **interest.** Unless otherwise represented with respect to a particular question or  
7 dispute, a minor, incapacitated, or unborn individual or a person whose identity or  
8 location is unknown and not reasonably ascertainable may be represented by and  
9 bound by another person having a substantially identical interest with respect to the  
10 particular question or dispute, but only to the extent there is no conflict of interest  
11 between the representative and the person represented with respect to the  
12 particular question or dispute.

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

14 **701.0305 Appointment of representative by a court.** (1) If the court  
15 determines that an interest is not represented under this subchapter, or that the  
16 otherwise available representation might be inadequate, the court may appoint a  
17 representative or guardian ad litem to receive notice, give consent, and otherwise  
18 represent, bind, and act on behalf of the person who is not represented or whose  
19 representation might be inadequate. A representative or guardian ad litem may be  
20 appointed to represent several persons or interests.

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

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



**SENATE BILL 384**

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

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

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

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

10           1. A charitable trust.

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

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

13           (d) The trustee has duties to perform.

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

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

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

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

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

24           **701.0403 Trusts created in other jurisdictions.** A trust not created by will  
25 is validly created if its creation complies with the law of the jurisdiction in which the