



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0010(P2)
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In 7-26-13

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

DUE FRIDAY - 8/2
OR MONDAY A.M. please

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Regen

1 AN ACT *to repeal* 701.01, 701.02, 701.03, 701.04, 701.05, 701.06, 701.07, 701.09
2 (3), (4) and (5), 701.10, 701.105 (4), 701.11, 701.115, 701.12, 701.13, 701.14
3 (title) and (1), 701.14 (4), 701.15, 701.16 (title), (1), (2), (3), (4) (title) and (a) to
4 (c), (5) and (6), 701.17, 701.18, 701.19, 701.20 (title), 701.20 (2) (intro.), 701.20
5 (2) (i), 701.20 (2) (L), (m) and (n), 701.20 (4c) (b) 3. a., b. and c., 701.20 (4g) (a)
6 1. c., 701.20 (18) (a), 701.20 (21) (title), 701.20 (29) (c) 2. b., 701.20 (29) (d),
7 701.20 (31), 701.22 (title), 701.23, 701.24 (3), 701.26, 702.01 (6) and 881.05; *to*
8 *renumber* 701.09 (title), (1) and (2), 701.20 (2) (a), 701.20 (2) (c), 701.20 (2) (e),
9 701.20 (2) (f), 701.20 (2) (g), 701.20 (2) (j), 701.20 (2) (k), 701.20 (4c) (title),
10 701.20 (4c) (b) 1., 701.20 (4c) (b) 2., 701.20 (4g) (title), 701.20 (4g) (a) 1. a., 701.20
11 (4g) (a) 1. e., 701.20 (4g) (a) 2. b., 701.20 (4m) (title), 701.20 (4m) (b), 701.20 (4m)
12 (d), 701.20 (18) (title), 701.20 (29) (title), 701.20 (29) (a), 701.20 (29) (b), 701.24
13 (title), 701.25 and 702.01 (intro.); *to renumber and amend* 701.065, 701.08,
14 701.105 (title), (1), (2) and (3), 701.14 (2), 701.14 (3), 701.16 (4) (d), 701.20 (2)
15 (b), 701.20 (2) (d), 701.20 (2) (h), 701.20 (3), 701.20 (4), 701.20 (4c) (b) (intro.),

1 701.20 (4c) (b) 3. (intro.), 701.20 (4c) (b) 4., 701.20 (4c) (c), 701.20 (4c) (d), 701.20
2 (4c) (e), 701.20 (4c) (f), 701.20 (4c) (g), 701.20 (4g) (a) (intro.), 701.20 (4g) (a) 1.
3 (intro.), 701.20 (4g) (a) 1. b., 701.20 (4g) (a) 1. d., 701.20 (4g) (a) 2. (intro.), 701.20
4 (4g) (a) 2. a., 701.20 (4g) (b), (c), (d) and (e), 701.20 (4j), 701.20 (4k), 701.20 (4m)
5 (a), 701.20 (4m) (am), 701.20 (4m) (c), 701.20 (5), 701.20 (6), 701.20 (7), 701.20
6 (8), 701.20 (9) (a), 701.20 (10), 701.20 (11), 701.20 (12), 701.20 (13), 701.20 (14),
7 701.20 (15), 701.20 (16), 701.20 (17), 701.20 (18) (b), 701.20 (18) (c), 701.20 (18)
8 (d), 701.20 (18) (e), 701.20 (19), 701.20 (20), 701.20 (21), 701.20 (22), 701.20 (23),
9 701.20 (24), 701.20 (25), 701.20 (26), 701.20 (27), 701.20 (28), 701.20 (29) (c)
10 (intro.), 701.20 (29) (c) 1., 701.20 (30), 701.21, 701.22, 701.24 (1), 701.24 (2),
11 702.01 (1), 702.01 (2), 702.01 (3), 702.01 (4), 702.01 (5), 702.15 (3), 879.47,
12 881.01 (1) (a) and 881.01 (4); **to consolidate, renumber and amend** 701.20
13 (29) (c) 2. (intro.) and a.; **to amend** 23.0918 (2), 25.70, 223.07 (3), 223.105 (1)
14 (c), 445.125 (1) (a) 2., 700.16 (1) (c), 700.27 (1) (d), (2) (a) 2. and (b), (4) (e), (5)
15 (b), (7) (a) and (8) (a), 702.03, 702.05, 702.07, 702.08, 702.09 (title), (1) and (3)
16 (a), (b) and (c), 702.11, 702.13 (title), (1) (intro.), (a), (b) and (c) and (2), 702.15
17 (intro.), (1) and (2), 702.17 (1), (2), (3) and (5), 702.21, 766.575 (1) (e), 840.01 (1),
18 853.17 (2), 853.32 (3), 853.61 (2) (a), 854.13 (1) (c), (2) (a) 2. and (d), (4) (e), (5)
19 (b), (7) (a) and (10) (a), 854.23 (5) (b), 859.18 (5) (a), 859.18 (5) (b), 861.015 (2),
20 861.11 (5) (b), 865.08 (6), 867.03 (2g), 879.03 (2) (c) and 881.01 (1) (b); **to repeal**
21 **and recreate** 881.01 (1) (title); and **to create** subchapter I (title) of chapter 701
22 [precedes 701.0101], 701.0101, 701.0102, 701.0103, 701.0104, 701.0105,
23 701.0106, 701.0107, 701.0108, 701.0109, 701.0110, 701.0111, subchapter II
24 (title) of chapter 701 [precedes 701.0201], 701.0201, 701.0202, 701.0203,
25 701.0204, subchapter III (title) of chapter 701 [precedes 701.0301], 701.0301,

1 701.0302, 701.0303, 701.0304, 701.0305, subchapter IV (title) of chapter 701
2 [precedes 701.0401], 701.0401, 701.0402, 701.0403, 701.0404, 701.0405,
3 701.0406, 701.0407, 701.0408, 701.0409, 701.0410, 701.0411, 701.0412,
4 701.0413, 701.0414, 701.0415, 701.0416, 701.0417, 701.0418, subchapter V
5 (title) of chapter 701 [precedes 701.0501], 701.0501, 701.0502, 701.0503,
6 701.0504, 701.0505, 701.0506, 701.0507, subchapter VI (title) of chapter 701
7 [precedes 701.0601], 701.0601, 701.0602, 701.0603, 701.0604, subchapter VII
8 (title) of chapter 701 [precedes 701.0701], 701.0701, 701.0702, 701.0703,
9 701.0704, 701.0705, 701.0706, 701.0707, 701.0708, 701.0709, 701.0710,
10 subchapter VIII (title) of chapter 701 [precedes 701.0801], 701.0801, 701.0802,
11 701.0803, 701.0804, 701.0805, 701.0806, 701.0807, 701.0808, 701.0809,
12 701.0810, 701.0811, 701.0812, 701.0813, 701.0814, 701.0815, 701.0816,
13 701.0817, 701.0818, 701.0819, subchapter IX (title) of chapter 701 [precedes
14 701.0901], 701.0901, 701.0902, 701.0903, subchapter X (title) of chapter 701
15 [precedes 701.1001], 701.1001, 701.1002, 701.1003, 701.1004, 701.1005,
16 701.1006, 701.1007, 701.1008, 701.1009, 701.1010, 701.1011, 701.1012,
17 701.1013, subchapter XI (title) of chapter 701 [precedes 701.1101], 701.1101,
18 701.1102 (intro.), 701.1102 (1g), 701.1123 (1), 701.1123 (4), 701.1126 (title),
19 701.1134 (3) (c) and (d) and (4), subchapter XII (title) of chapter 701 [precedes
20 701.1201], 701.1203, 701.1204, 701.1206 (3), 702.02 (1), 702.02 (3), 702.05 (5),
21 702.17 (2d) and (2m), 853.34 (3), 881.01 (1) (a) 1. and 2. and 881.01 (4) (b) of the

- 1 statutes; **relating to:** the laws of trusts, the Uniform Trust Code, the Uniform
2 Principal and Income Act, and powers of appointment.
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Analysis by the Legislative Reference Bureau

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 apply to certain trusts in this state. With certain exceptions, the terms of a trust may override or modify the terms of the Code. 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, the power of the court to take certain actions, and the trustee's duty to keep certain individuals informed about matters relating to the trust. The Code also includes default rules that are not included in the UTC, including rules related to decanting trusts, trust protectors, and directing parties.

The UTC consists of the following 11 articles: Article 1, General Provisions and Definitions; Article 2, Judicial Proceedings; Article 3, Representation; Article 4, Creation, Validity, Modification, and Termination of a Trust; Article 5, Creditor's Claims; Spendthrift and Discretionary Trusts; Article 6, Revocable Trusts; Article 7, Office of Trustee; Article 8, Duties and Powers of a Trustee; Article 9, the Uniform Prudent Investor Act; Article 10, Liability of Trustees and Rights of Persons Dealing with Trustee; and Article 11, Miscellaneous Provisions. Under this bill, 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 remains outside of the Code; and 2) the Uniform Principal and Income Act is recreated as Subchapter 11 of the Code. The following is an overview of each subchapter of the Code:

Subchapter 1: General Provisions and Definitions

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 resolve disputes related to a trust to the extent that the terms and conditions of the nonjudicial settlement agreement could be resolved by a court.

Subchapter 2: Judicial Proceedings

Subchapter 2 addresses the role of the court in administering a trust. 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, 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 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 purposes of determining whether notice has been received and whether consent has been given in a transaction or proceeding relating to a trust. Under the Code, notice, information, accountings, or reports given to a person who has the power to bind another person have the same effect as if the notice, information, accountings, or reports were given to the person entitled to receive the particular information. A trustee is not required to provide such 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 a person whose identity is not known, to be represented by 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 a Trust

Subchapter 4 establishes the requirements for creating, modifying, and terminating a trust. Generally, a trust is created when a person transfers property to a trustee with the intent to create a trust relationship. Under the Code, a trust must have a definite beneficiary or the trust must be a charitable trust, a trust for animals, or a trust for a noncharitable purpose. 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 trust may be modified or terminated if the settlor and beneficiaries consent to the termination or modification or if the beneficiaries' consent and the court concludes that the trust or a particular provision of the trust is not necessary to achieve a material purpose of the trust. 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 \$100,000 or less as adjusted for inflation.

The Code allows a court to apply 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. 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 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 authority 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 a 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 principal under the first trust is limited by a standard, the second trust may not grant the trustee a power to invade trust principal that is broader than the standard included in the first trust and the beneficiaries of the first trust must be the same as the beneficiaries of the second trust. A trustee may appoint assets to a second trust without court approval by providing notice to certain interested persons.

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 beneficiary to reach trust assets. The Code defines a spendthrift provision as a provision that restrains either or both of 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.

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 or that are payable in the trustee's discretion. The Code 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 and eliminates a distinction under current law between a discretionary distribution standard that is modified by a standard and a distribution standard that is absolute.

Subchapter 6: Revocable Trusts

Subchapter 6 addresses revocable trusts, which are defined under the Code 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 requires that the same capacity that is required to create or modify a will is required to create or modify a revocable trust. Under the Code, a trust is revocable unless the trust instrument expressly provides that it is irrevocable. This reverses the presumption under current law, which is that a trust is irrevocable unless the trust states otherwise. This change applies only to trusts that are created after the effective date of the bill.

The Code provides that while the settlor of a revocable trust is alive and is not incapacitated, a trustee owes its duties exclusively to the settlor. If the settlor becomes incapacitated or dies, the trust is no longer revocable and the duties of the trustee shift to the beneficiaries. The Code limits the time period for when a person may challenge the validity of a revocable trust to the earlier of one year after the settlor's death or four months after the trustee sends the potential trust contestant a copy of the trust and notice of the time allowed for commencing a proceeding.

Subchapter 7: Office of Trustee

Subchapter 7 specifies numerous default procedural rules that are applicable to the Office of the Trustee, including rules related to acceptance or declination of a trusteeship, requiring a bond, the rights and obligations of cotrustees, 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 trustee

expenses. This subchapter also clarifies that property that is titled in the name of the trust places legal title in the name of the trustee.

Subchapter 8: Duties and Powers of the Trustee

Subchapter 8 sets forth the fiduciary obligations of a trustee, except for those 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 take control of 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 its 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 is held to a prudent person standard when delegating a duty or power. An agent who accepts a delegation of duty or power from a trustee is held to the fiduciary standard of the trustee with regard to the appointment. A trustee, who uses reasonable care, skill, and caution in selecting an agent, establishing the scope of the delegation, and reviewing the agent's actions, is not liable to the beneficiaries for actions taken by the agent.

Subchapter 8 provides that a trustee has broad authority to achieve proper investment, management, and distribution of the trust property including all the powers that an unmarried, competent owner has over individually owned property. This subchapter also enumerates the 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.

As an addition to the UTC, the Code specifically allows a settlor to appoint two types of special fiduciaries: directing parties and trust protectors. A directing party is 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 subject to the same duties and standards as the trustee. The trustee has no duty to monitor the directing party and is not liable for taking action that are consistent with the direction of a directing party or for actions taken directly by a directing party.

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 may specify whether a power granted to a trust protector must be exercised in a fiduciary, nonfiduciary, or personal capacity. If a settlor does not specify the legal capacity in which a trust protector is to exercise a particular power, the Code provides default rules for determining the legal capacity for specific powers. A trustee has no duty to monitor the actions of a trust protector and is not liable for taking actions consistent with the actions of the trust protector unless the actions are clearly outside the trust protector's authority.

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. An exception to this general rule relates to who is responsible for investments under a trust with a directed party. The Code provides that 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 to life insurance trusts. If the principal purpose of a trust is to hold a life insurance contract, a trustee does not have a duty to take certain actions that would otherwise be required under the Uniform Prudent Investor Act, such as determining whether the contract is or remains a proper investment or investigating the financial strength of the company maintaining the contract.

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

Subchapter 10 identifies the remedies for breach of trust, discusses how damages are determined for a breach of trust, reaffirms the courts 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 obligation of good faith or exculpate the trustee for reckless indifference. The Code also provides that an exculpatory term in a trust 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 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, the resignation of the trustee, or the death of the trustee. However, the Code creates a one year statute of limitation for a beneficiary to commence a proceeding against a trustee if the beneficiary received a report that adequately disclosed the existence of a potential claim.

Under the Code, a trustee is protected from liability if there is no breach of trust, if the trustee acted in reasonable reliance on the express provisions of the trust, if the trustee failed to ascertain unknown external facts if the trustee exercised reasonable care to ascertain such information, or if the beneficiary provided consent, release, or ratification for the trustee's action. A trustee is also protected from personal liability on a contract entered into in a fiduciary capacity and from contracts and torts entered into by a partnership in which the trustee holds an general partnership interest if the other party was on notice of the fiduciary relationship.

A third party dealing with a trust is not liable for any breach of the trustee's obligations to the beneficiaries resulting from the transaction, unless the third party has knowledge of the actual breach by the trustee. In addition, a third party may rely upon a certification of trust that sets out certain required information including the 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.

Subchapter 11: The Uniform Principal and Income Act

Subchapter 11 incorporates the Uniform Principal and Income Act, which has been adopted in this state, into the Code.

Subchapter 12: Miscellaneous

Subchapter 12 provides that 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 people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 23.0918 (2) of the statutes is amended to read:

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

9 **SECTION 2.** 25.70 of the statutes is amended to read:

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

SECTION 2

1 bequest, principal and income are determined as provided under ~~s. 701.20~~ subch. XI
2 of ch. 701.

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

4 223.07 (3) If the depository institution at which a trust service office is to be
5 established has exercised trust powers, the trust company bank and the depository
6 institution shall enter into an agreement respecting those fiduciary powers to which
7 the trust company bank shall succeed and shall file the agreement with the division.
8 The trust company bank shall cause a notice of the filing, in a form prescribed by the
9 division, to be published as a class 1 notice, under ch. 985, in the city, village or town
10 where the depository institution is located. After filing and publication, the trust
11 company bank establishing the office shall, as of the date the office first opens for
12 business, without further authorization of any kind, succeed to and be substituted
13 for the depository institution as to all fiduciary powers, rights, duties, privileges, and
14 liabilities of the depository institution in its capacity as fiduciary for all estates,
15 trusts, guardianships, and other fiduciary relationships of which the depository
16 institution is then serving as fiduciary, except as may be otherwise specified in the
17 agreement between the trust company bank and the depository institution. The
18 trust company bank shall also be deemed named as fiduciary in all writings,
19 including, ~~but not limited to,~~ wills, trusts, court orders, and similar documents and
20 instruments naming the depository institution as fiduciary, signed before the date
21 the trust office first opens for business, unless expressly negated by the writing or
22 otherwise specified in the agreement between the trust company bank and the
23 depository institution. On the effective date of the substitution, the depository
24 institution shall be released and absolved from all fiduciary duties and obligations
25 under such writings and shall discontinue its exercise of trust powers on all matters

1 not specifically retained by the agreement. This subsection does not effect a
2 discharge ~~in the manner of s. 701.16 (6) if required by a court under s. 701.0201 (1)~~
3 or other applicable statutes and does not absolve a depository institution exercising
4 trust powers from liabilities arising out of any breach of fiduciary duty or obligation
5 occurring prior to the date the trust service office first opens for business at the
6 depository institution. This subsection does not affect the authority, duties, or
7 obligations of a depository institution with respect to relationships which may be
8 established without trust powers, including escrow arrangements, whether the
9 relationships arise before or after the establishment of the trust service office.

10 SECTION 4. 223.105 (1) (c) of the statutes is amended to read:

11 223.105 (1) (c) "Trustee" has the meaning designated in s. ~~701.01(8)~~ 701.0103
12 (28).

13 SECTION 5. 445.125 (1) (a) 2. of the statutes is amended to read:

14 445.125 (1) (a) 2. ~~Notwithstanding s. 701.12 (1), such~~ Such agreements may be
15 made irrevocable as to the first \$3,000 of the funds paid under the agreement by each
16 depositor.

17 SECTION 6. 700.16 (1) (c) of the statutes is amended to read:

18 700.16 (1) (c) If a future interest or trust is created by exercise of a power of
19 of appointment appointment, the permissible period is computed from the time the power is
20 exercised if the power of appointment is a general power of appointment as defined in s. 702.01 (3)
21 702.02 (5) even if the general power of appointment is exercisable only by will; ~~in~~
22 In the case of other powers of appointment the permissible period is computed from
23 the time the power of appointment is created but facts at the time the power of
24 appointment is exercised are considered in determining whether the power of

Ins 11-12

Ins 11-16

19
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SECTION 6

1 alienation is suspended beyond a life or lives in being at the time of creation of the
2 power of appointment plus 30 years.

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

5 700.27 (1) (d) “Power of appointment” has the meaning given in s. 702.01 (4)
6 702.02 (6).

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

15 (b) *Partial disclaimer.* Property transferred under an inter vivos governing
16 instrument may be disclaimed in whole or in part, except that a partial disclaimer
17 of property passing by an inter vivos governing instrument or by the exercise of a
18 power of appointment may not be made if partial disclaimer is expressly prohibited
19 by the inter vivos governing instrument or by the instrument exercising the power
20 of appointment.

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

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

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

19 (8) (a) *Subsequent interest not held by disclaimant.* Unless the inter vivos
20 governing instrument provides otherwise, either expressly or as construed from
21 extrinsic evidence, upon the disclaimer of a preceding interest, a subsequent interest
22 not held by the disclaimant and limited to take effect in possession or enjoyment after
23 the termination of the interest that is disclaimed accelerates to take effect as if the
24 disclaimant had died immediately before the time when the disclaimed interest
25 would have taken effect in possession or enjoyment or, if the disclaimant is an

1 appointee under a power of appointment and that power of appointment has been
2 exercised by a ~~power of appointment~~, as if the disclaimant had died before the
3 effective date of the exercise of the power of appointment.

4 **SECTION 8.** 701.01 of the statutes is repealed.

5 **SECTION 9.** Subchapter I (title) of chapter 701 [precedes 701.0101] of the
6 statutes is created to read:

7 **CHAPTER 701**

8 **SUBCHAPTER I**

9 **GENERAL PROVISIONS AND**

10 **DEFINITIONS**

11 **SECTION 10.** 701.0101 of the statutes is created to read:

12 **701.0101 Short title.** This chapter may be cited as the Wisconsin Trust Code.

13 **SECTION 11.** 701.0102 of the statutes is created to read:

14 **701.0102 Scope.** This chapter applies to express, charitable or noncharitable,
15 and testamentary or living trusts, and any trust created pursuant to a statute,
16 judgment, or decree that requires the trust to be administered in the manner of an
17 express trust. This chapter does not apply to any of the following:

18 (1) A constructive or resulting trust.

19 (2) A guardianship.

20 (3) A conservatorship.

21 (4) A custodial arrangement made pursuant to the Uniform Transfers to
22 Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust Act under ss.
23 54.950 to 54.988.

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

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

1 (7) A trust made in connection with a business transaction, including a trust
2 created under a bond indenture or collateral trust agreement or in connection with
3 a structured finance transaction, a common law trust under s. 226.14, or a business
4 trust.

5 (8) A voting trust.

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

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

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

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

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

17 **SECTION 12.** 701.0103 of the statutes is created to read:

18 **701.0103 Definitions.** In this chapter:

19 (1) “Action,” with respect to an act of a trustee, includes a failure to act.

20 (2) “Ascertainable standard” means a standard relating to an individual’s
21 health, education, support, or maintenance within the meaning of section 2041 (b)

22 (1) (A) or 2514 (c) (1) of the Internal Revenue Code.

23 (3) “Beneficiary” means a person that satisfies ^{any}one of the following: ✓

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

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

3 (4) "Charitable trust" means a trust, or portion of a trust, created for a
4 charitable purpose described in s. 701.0405 (1). This subsection does not apply to s.
5 701.1201. *in*

6 (5) "Conservator" means a person appointed by a court pursuant to s. 54.76.

7 (6) "Directed trust property" means all or any portion of the property of a trust
8 that is invested or managed by a directing party or is invested or managed at the
9 direction of a directing party and for which the trustee has no investment or
10 management responsibility.

11 (7) "Directing party" means a person who, in a trust instrument, is granted a
12 power to direct a trustee's investment or distribution decisions or a power to make
13 investment or distribution decisions regarding trust property and the power is
14 granted to the person in a capacity other than as a trustee or a trust protector. For
15 purposes of this subsection, a power of appointment is not a power to direct a trustee's
16 investment or distribution decisions or a power to make investment or distribution
17 decisions regarding trust property. *or court order*

18 (8) "Environmental law" means a federal, state, or local law, rule, regulation,
19 or ordinance relating to protection or remediation of the environment.

20 (9) "General power of appointment" has the meaning given in s. 702.02 (5). ✓

21 (10) "Guardian of the estate" means a person appointed by a court *under s. 54.10*
22 of the estate of a minor or adult individual *as guardian* under to s. 54.10. "Guardian of the estate"
23 does not include a guardian ad litem.

1 (10m) "Guardian of the person" means a person appointed by a court, as a
2 guardian of the person of a minor or adult individual ^{made} under s. 54.10. "Guardian of
3 the person" does not include a guardian ad litem.

4 (11) ^{"Incapacitated" & "unable"} "Incapacity" means the inability to receive and evaluate information
5 effectively or to communicate decisions to such an extent that the individual lacks
6 the capacity to manage his or her decisions.

7 (12) "Individual with a disability" means an individual who meets one of the
8 following tests:

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

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

20 (13) "Interests of the beneficiaries" means the beneficial interests provided in
21 the terms of a trust.

22 (14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as
23 amended, or such subsequent federal revenue law as may be in effect from time to
24 time.

1 **(15)** “Jurisdiction,” with respect to a geographic area, includes a state or
2 country.

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

7 **(16m)** “Power of appointment” has the meaning given in s. 702.02 (6).

8 **(17)** “Power of withdrawal” means a presently exercisable general power of
9 appointment but does not include any of the following:

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

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

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

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

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

18 (b) Without considering the existence or exercise of a power of appointment,
19 would be a distributee or permissible distributee of trust income or principal if the
20 interests of the distributees described in par. (a) terminated on that date without
21 causing the trust to terminate.

22 (c) Without considering the existence or exercise of a power of appointment,
23 would be a distributee or permissible distributee of trust income or principal if the
24 trust terminated on that date.

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

4 **(21)** “Settlor” means a person, including a testator, who creates or contributes
5 property to a trust. If more than one person creates or contributes property to a trust,
6 each person is a settlor of the portion of the trust property attributable to that
7 person’s contribution except to the extent another person has the power to revoke the
8 trust or withdraw that portion.

9 **(21m)** “Special power of appointment “ has the meaning given in s. 702.02 (7).

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

12 **(23)** “State” means a state of the United States, the District of Columbia,
13 Puerto Rico, the United States Virgin Islands, any territory or insular possession
14 subject to the jurisdiction of the United States, and an Indian tribe, band, or nation
15 recognized by federal law or formally acknowledged by a state.

16 **(24)** “Terms of a trust” means the manifestation of the settlor’s intent regarding
17 a trust’s provisions as expressed in the trust instrument or as may be established by
18 other evidence that would be admissible in a judicial proceeding.

19 **(25)** “Trustee” includes an original, additional, and successor trustee, and a
20 cotrustee.

21 **(26)** “Trust for an individual with a disability” means a trust that is established
22 for the benefit of an individual with a disability of any age, if the assets of the trust
23 would not be counted as resources of the individual with a disability for purposes of
24 eligibility for medical assistance under subch. IV of ch. 49, if he or she applied for
25 medical assistance and was otherwise eligible.

SECTION 12

a power, including a power under s. 701.0818(3) but not including a power of appointment, in a capacity other than as a trustee or a directing party.

(27) "Trust instrument" means an instrument executed by a settlor or created by an order of the court that contains terms of a trust, including any amendments to the trust or modifications to the trust under s. 701.0111 or subch. IV.

(28) "Trust protector" means a person who, in a trust instrument, is granted

or court order

any of the following powers in a capacity other than as a trustee or a directing party:

- (a) The power to modify or interpret the terms of the trust.
- (b) The power to consent to or veto a trustee's or directing party's decision regarding the investment, distribution, or administration of trust property.
- (c) The power to advise a trustee or directing party regarding the investment, distribution, or administration of trust property.
- (d) The power to direct the trustee's decisions, other than investment or distribution decisions, about the administration of the trust.
- (e) The power to remove and replace a trustee, directing party, or trust protector, or to appoint a successor trustee, directing party, or trust protector.

***NOTE: Please confirm that this definition is consistent with proposed s. 701.0818.

SECTION 13. 701.0104 of the statutes is created to read:

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

- (a) The person has actual knowledge of the fact.
- (b) The person has received a notice or notification of the fact.
- (c) The person has reason to know the fact from all the facts and circumstances known to the person at the time in question.

(2) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received

1 by an employee having responsibility to act for the trust, or would have been received
2 by the employee if the organization had exercised reasonable diligence. An
3 organization exercises reasonable diligence if it maintains reasonable routines for
4 communicating significant information to the employee having responsibility to act
5 for the trust and there is reasonable compliance with the routines. Reasonable
6 diligence does not require an employee of the organization to communicate
7 information unless the communication is part of the individual's regular duties or the
8 individual knows a matter involving the trust would be materially affected by the
9 information.

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

11 **701.0105 Default and mandatory rules.** (1) Except as otherwise provided
12 in the terms of the trust, this chapter governs the duties and powers of a trustee, a
13 directing party, and a trust protector, relations among trustees, directing parties,
14 and trust protectors, and the rights and interests of a beneficiary.

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

17 (a) The requirements for creating a trust.

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

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

23 (d) The power of a court to modify or terminate a trust under ss. 701.0410 to
24 701.0416.

1 (e) The effect of a spendthrift provision and the rights of certain creditors and
2 assignees to reach a trust as provided in ss. 701.0501 to 701.0507.

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

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

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

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

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

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

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

14 (m) The jurisdiction of the court under ss. 701.0807 (4), 701.0808 (7), and
15 701.0818 (10). (12) ✓

(8) ✓

16 SECTION 15. 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 16. 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.

1 SECTION 17. 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 ^{of any} one 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 ^(par.) place of administration is not validly designated in the trust
13 instrument, ^{under sub (a)} the jurisdiction where the trustee's usual place of business is located or,
14 if the trustee has no place of business, the jurisdiction where the trustee's residence
15 is located.

Ins from next page
(24-13)

16 (c) If a corporate trustee is designated as the trustee of a trust and the corporate

17 trustee has offices in multiple states and performs administrative functions for the

18 trust in multiple states, the corporate trustee may designate the ^{corporate trustee's usual} principal place of

19 administration of the trust ^{business} by providing notice to the qualified beneficiaries, any

20 trust protectors, and ^e any directing parties. The notice is valid and controlling if the

21 corporate trustee has a connection to the jurisdiction designated in the notice,

22 including an office where trustee services are performed and the actual performance

23 of some administrative functions for that particular trust in that particular

24 jurisdiction. The subsequent transfer of some of the administrative functions of the

25 corporate trustee to another state or states does not transfer the ^{usual} principal place of

NOTE: Please confirm that subs. (1) and (2) are consistent with your intent.

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

5 (b), (d) If there are cotrustees, ^{the trustee's usual place of business} one of the following: ^{is determined by any}

- 6 1. If there is only one corporate trustee, the jurisdiction where the usual place
- 7 of business of the corporate trustee is located.
- 8 2. The jurisdiction where the usual place of business or the residence of any of
- 9 the cotrustees is located as agreed to by all of the cotrustees with notice to the
- 10 qualified beneficiaries, trust protectors, and directing parties.
- 11 3. If the cotrustees cannot agree on a jurisdiction under subd. 2., and subd. 1.
- 12 does not apply, by a court.

13 ^{Ans 24-13} (e) The jurisdiction selected by the trustee under sub. (2). (3) ^(end of ins 24-13)

14 (3) (2) Without precluding the right of the court to approve or disapprove a transfer
15 and subject to sub. (4), a trustee may, but has no affirmative duty to, transfer a trust's
16 principal place of administration to another state or to a jurisdiction outside of the
17 United States.

18 (4) (3) A trustee shall notify the qualified beneficiaries, trust protectors, and
19 directing parties of a proposed transfer of a trust's principal place of administration
20 not less than 30 days before initiating the transfer. The trustee shall include in the
21 notice of proposed transfer all of the following:

- 22 (a) The name of the jurisdiction to which the principal place of administration
- 23 is to be transferred.
- 24 (b) The mailing address, electronic mail address, if available, and telephone
- 25 number at the new location at which the trustee can be contacted.

- 1 (c) An explanation of the reasons for the proposed transfer.
- 2 (d) The date on which the proposed transfer is anticipated to occur.
- 3 (e) The date, not less than 30 days after the giving of the notice, by which a
- 4 qualified beneficiary, trust protector, or directing party must notify the trustee of an
- 5 objection to the proposed transfer.
- 6 (4) If a qualified beneficiary, trust protector, or directing party commences a
- 7 judicial proceeding objecting to the proposed transfer on or before the date specified
- 8 in the notice, a trustee may not act under sub. (2) without court approval to transfer
- 9 a trust's principal place of administration until the judicial proceeding is resolved or
- 10 withdrawn.

***NOTE: Please confirm that this is consistent with your intent.

- 11 (5) In connection with a transfer of a trust's principal place of administration,
- 12 the trustee may transfer some or all of the trust property to a successor trustee
- 13 designated in the terms of the trust or appointed pursuant to s. 701.0704.
- 14 (6) The law of the trust's principal place of administration governs
- 15 administrative matters related to the trust.

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

17 **701.0109 Methods and waiver of notice.** (1) Notice to a person under this

18 chapter or the sending of a document to a person under this chapter shall be

19 accomplished in a manner reasonably suitable under the circumstances and likely

20 to result in receipt of the notice or document. Permissible methods of notice or for

21 sending a document include 1st class mail, personal delivery, delivery to the person's

22 last known place of residence or place of business, or a properly directed electronic

23 message.

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 the applicable
7 rules of civil procedure. s. 701.0205 ✓

****NOTE: How is this subsection intended to interact with s. 701.0205, which is
renumbered from s. 701.14 (2)?

8 SECTION 19. 701.0110 of the statutes is created to read:

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

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

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

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

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

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

11 SECTION 20. 701.0111 of the statutes is created to read:

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

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

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

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

23 (5) Except as provided in sub. (4), a nonjudicial settlement agreement may
24 resolve any matter involving a trust, including any of the following:

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

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

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

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

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

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

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

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

12 (i) The resolution of disputes arising out of the administration or distribution
13 of the trust.

14 (j) An investment action.

15 (k) ^{The} Appointment of a directing party or a trust protector.

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

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

23 SECTION 21. 701.02 of the statutes is repealed.

24 SECTION 22. Subchapter II (title) of chapter 701 [precedes 701.0201] of the
25 statutes is created to read:

CHAPTER 701

SUBCHAPTER II

JUDICIAL PROCEEDINGS

SECTION 23. 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 litem³ as provided in s. 701.0305,[✓] whether or not any other judicial proceeding concerning the trust is pending.

(d) [✓] Reviewing ^{and approving} a trustee's fee or the fee of a ^{trustee} directing party³ 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.

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 24. 701.0202 of the statutes is created to read:

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

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.

NO
by accepting an appointment as ^{agent} trustee, trust protector, or
directing party of a trust having its principal place of
administration in this state or by continuing to serve as the
trustee, trust protector, or directing party of a trust after the
principal place of administration of the trust is moved to this state ✓

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 25.** 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 26.** 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.

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 ~~such~~^{the} proceeding is regarded as a civil action for
6 that purpose.

7 SECTION 27. 701.03 of the statutes is repealed.

8 SECTION 28. 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 29. 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~~^{is incapacitated} may receive notice and may
24 give a binding consent on the settlor's behalf.

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 30. 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 31. 701.0303 of the statutes is created to read:

*Except as provided in
s. 701.0411
s. 701.0414*

14 **701.0303 Representation by fiduciaries and parents.** To the extent there

15 is no conflict of interest between a representative and the person represented or
16 among those being represented with respect to a particular question or dispute, all
17 of the following apply:

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

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

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

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} ~~is entitled to~~ 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} ~~is entitled to~~ 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} ~~is entitled to~~ represent the minor child or unborn
17 child.

18 (d) If neither parent is a beneficiary or settlor of the trust that is the subject
19 of the representation, the parent who is a related to the settlor, other than by reason
20 of being married to the other parent, ^{may} ~~is entitled to~~ represent the minor child or
21 unborn child.

22 (7) The order in which the representatives are listed in subs. (1) to (6) sets forth
23 the priority ^{that} ~~each such~~ representative has relative to the others.

24 (8) If ^(a) there is no one permitted to act under subs. (1) to (6) ^(b) if all of the people
25 entitled to act under ^(c) those subsections ^(d) have declined to act ^(e) or if the trustee

there is no representation by a person having a substantially identical interest under s. 710.0304, the trustee may appoint a representative to act if any of the following ^(f) apply: ^(g) ~~the~~ applies: ~~(f)~~

1 determines that the otherwise available representation under subs. (1) to (6) might
2 be inadequate and there is not representation by a person having a substantially
3 identical interest under s. 710.0304, the trustee may appoint a representative to act.

***NOTE: Please confirm that this is consistent with your intent.

4 **SECTION 32.** 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 33.** 701.0305 of the statutes is created to read:

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

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

3 SECTION 34. 701.04 of the statutes is repealed.

4 SECTION 35. Subchapter IV (title) of chapter 701 [precedes 701.0401] of the
5 statutes is created to read:

6 CHAPTER 701

7 SUBCHAPTER IV

8 CREATION, VALIDITY,

9 MODIFICATION, AND TERMINATION

10 OF TRUST

11 SECTION 36. 701.0401 of the statutes is created to read:

12 701.0401 **Methods of creating a trust.** A trust may be created by any of the
13 following:

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

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

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

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

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

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

1 SECTION 37. 701.0402 of the statutes is created to read:

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

4 (a) The settlor of the trust has capacity⁹ as defined in sub. (4)⁹ to create the trust,
5 unless the trust is created by court order or by an agent, guardian of the estate,
6 conservator, or representative payee with authority to act.

7 (b) The settlor indicates an intention to create the trust⁹ or a statute,
8 regulation, common law, other provision having the effect of law, judgment, or decree
9 creates or authorizes the creation of a trust.

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

- 11 1. A charitable trust.
- 12 2. A trust for the care of an animal, as provided in s. 701.0408.
- 13 3. A trust for a noncharitable purpose, as provided in s. 701.0409.

14 (d) The trustee has duties to perform.

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

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

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

****NOTE: Please confirm that the inclusion of "trust protector" in this subsection is consistent with the definition of "trust protector" in s. 701.0103?

22 (4) ^{The} Capacity required to create a trust is the same as the capacity to make a
23 will.

1 **SECTION 38.** 701.0403 of the statutes is created to read:

2 **701.0403 Trusts created in other jurisdictions.** A trust not created by will
3 is validly created if its creation complies with the law of the jurisdiction in which the
4 trust instrument was executed, or the law of the jurisdiction in which, at the time of
5 creation, any of the following was satisfied:

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

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

8 (3) Any trust property was located.

9 **SECTION 39.** 701.0404 of the statutes is created to read:

10 **701.0404 Trust purposes.** A trust may be created only to the extent its
11 purposes are lawful and possible to achieve. A trust and its terms must be for the
12 benefit of its beneficiaries or for a noncharitable, but otherwise valid, purpose as
13 described in s. 701.0409.

14 **SECTION 40.** 701.0405 of the statutes is created to read:

15 **701.0405 Charitable purposes; enforcement.** (1) A charitable trust may
16 be created for the relief of poverty, the advancement of education or religion, the
17 promotion of health or governmental or municipal purposes, or other purposes the
18 achievement of which is beneficial to the community.

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

24 (3) The settlor of a charitable trust or his or her designees, whether identified
25 within or without the terms of the trust, or a charitable entity named in the trust

1 instrument, or the attorney general, or a cotrustee, or such other person the court
2 determines to have sufficient interest may maintain a proceeding to enforce the
3 trust.

4 **SECTION 41.** 701.0406 of the statutes is created to read:

5 **701.0406 Creation of trust induced by fraud, duress, or undue**
6 **influence.** A trust is void to the extent its creation was induced by fraud, duress,
7 or undue influence.

8 **SECTION 42.** 701.0407 of the statutes is created to read:

9 **701.0407 Evidence of oral trust.** Except as required by a statute other than
10 this chapter, a trust does not need to be evidenced by a trust instrument, but the
11 creation of an oral trust and its terms may be established only by clear and
12 convincing evidence.

13 **SECTION 43.** 701.0408 of the statutes is created to read:

14 **701.0408 Trust for care of animal. (1)** A trust may be created to provide
15 for the care of an animal alive during the settlor's lifetime. The trust terminates
16 upon the death of the animal or, if the trust was created to provide for the care of more
17 than one animal alive during the settlor's lifetime, upon the death of the last
18 surviving animal.

19 **(2)** A trust authorized by this section may be enforced by a person appointed
20 in the terms of the trust or, if no person is so appointed, by a person appointed by the
21 court. A person having an interest in the welfare of the animal may request the court
22 to appoint a person to enforce the trust or to remove a person appointed under this
23 subsection.

24 **(3)** Property of a trust authorized by this section may be applied only to its
25 intended use, except to the extent the court determines that the value of the trust

1 property exceeds the amount required for the intended use. Property not required
2 for the intended use must be distributed to the settlor, if then living, otherwise to the
3 settlor's successors in interest.

4 SECTION 44. 701.0409 of the statutes is created to read:

5 **701.0409 Noncharitable trust without ascertainable beneficiary.**

6 Except as otherwise provided in s. 701.0408 or by another statute, the following rules
7 apply:

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

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

16 (3) A trust authorized by this section may be enforced by a trust protector ✓
17 *with the power to enforce the trust as*
18 *appointed in the terms of the trust or, if no person is so appointed, by a trust protector ✓*
with the power to enforce the trust as
18 *appointed by a court.*

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

24 SECTION 45. 701.0410 of the statutes is created to read:

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

6 (2) A proceeding to approve or disapprove a proposed modification or
 7 termination under ss. 701.0411 to 701.0416, or a proposed trust combination or
 8 division under s. 701.0417, may be commenced by a trustee or beneficiary, and a
 9 proceeding to approve or disapprove a proposed modification or termination under
 10 s. 701.0411 may be commenced by the settlor. The settlor of a charitable trust may
 11 maintain a proceeding to modify the trust under s. 701.0413. A trustee has no
 12 standing to oppose a proposed modification or termination commenced under s.
 13 701.0411 (1).

14 (3) A trustee may not be compelled by a modification or termination under this
 15 section ^{or} under ss. 701.0411 to 701.0416, or by any other statute or legal or equitable
 16 doctrine to make distributions to or for any beneficiary of a trust for an individual
 17 with a disability or to terminate the trust, during the lifetime of the individual with
 18 a disability. A court may modify the terms of a trust for an individual with a disability
 19 with retroactive effect or reform the terms of such trust to achieve the settlor's
 20 objective or, if because of circumstances not anticipated by the settlor, to otherwise
 21 further the purposes of the trust so that it does not result in the ^{trust property} ineligibility of the
 22 ^{being countable as resources or income of the} individual with the disability for benefits under a government program. purposes of

23 ~~(4) Sections 701.0410 to 701.0418 are not applicable to a conversion of a trust~~
 24 ~~to a unitrust under s. 701.1106.~~

25 ~~(5) Sections 701.0410 to 701.0418 are subject to s. 445.125.~~

Is
41-22

Handwritten annotations:
 - A large scribble and arrow pointing from the bottom of the text to the crossed-out section 4.
 - "not apply" written above the crossed-out section 4.
 - "trust property" written above "ineligibility of the".
 - "being countable as resources or income of the" written above "individual with the disability".
 - "purposes of" written in a box to the right of "benefits under a government program".

SECTION 46

→ a representative under S. 701.0303[✓] only if the representative is specifically authorized to consent to a trust's modification or termination under a power of attorney, the terms of the trust, or by a court under a guardianship or conservatorship.[✓]

1 SECTION 46. 701.0411 of the statutes is created to read:

2 **701.0411 Modification or termination of noncharitable irrevocable**

3 **trust by consent.** (1) A noncharitable irrevocable trust may be modified or
4 terminated, with or without court approval, upon consent of the settlor and all
5 beneficiaries, even if the modification or termination is inconsistent with a material
6 purpose of the trust. A settlor's power to consent to a trust's modification or

7 termination may be exercised by any of the following:

8 ~~(a) By an agent of the settlor under a power of attorney only to the extent
9 expressly authorized by the power of attorney or the terms of the trust.~~

10 ~~(b) By the settlor's guardian with the approval of the court supervising the
11 guardianship if an agent is not so authorized.~~

12 ~~(c) By the settlor's conservator with the approval of the court supervising the
13 conservatorship if an agent is not so authorized and a guardian has not been
14 appointed.~~

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

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

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

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

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

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

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

8 (b) The interests of a beneficiary who does not consent will be adequately
9 protected. *A party may apply to modify or terminate the trust under sub. (1) or (2)*

✓
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→

~~(7) The trustee shall give notice of a proceeding under this section to the settlor,
if living and not under incapacity, any trust protector, and any directing party.~~
The trustee shall give notice of a proceeding under this section to the settlor, if living and not under incapacity, any trust protector, and any directing party.

12 SECTION 47. 701.0412 of the statutes is created to read:

13 **701.0412 Modification or termination because of unanticipated**
14 **circumstances or inability to administer trust effectively.** (1) The court may
15 modify the administrative or dispositive terms of a trust or terminate the trust if,
16 because of circumstances not anticipated by the settlor, modification or termination
17 will further the purposes of the trust. To the extent practicable, the court shall make
18 the modification in accordance with the settlor's probable intention.

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

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

1
2
3

(4) ^A The party petitioning the court for action under this section shall give notice of the proceeding to the settlor, if living and not under incapacity, the trustee, any ^{each} trust protector, and any ^{each} directing party, ^{and the qualified beneficiaries}

****NOTE: Will the party petitioning the court always know if there is a trust protector or directing party? If not, does this create a problem? The same issue applies to ss. 701.0413 to 701.0416.

4 SECTION 48. 701.0413 of the statutes is created to read:

5 701.0413 Cy pres. (1) The purpose of this section is to broaden the power of
6 the courts to make charitable gifts more effective. In any situation not expressly
7 covered the court shall liberally apply the cy pres doctrine.

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

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

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

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

1 (3) A provision in the terms of a charitable trust that would result in
 2 distribution of the trust property to a noncharitable beneficiary prevails over the
 3 power of the court under sub. (2) to apply the cy pres doctrine to modify or terminate
 4 the trust only if, when the provision takes effect, the trust property is to revert to the
 5 settlor and the settlor is still living.

6 (4) ^A ~~The~~ party petitioning the court for action under this section shall give notice
 7 to the settlor, if living ~~and not under incapacity~~, the trustee, ^{each} ~~any~~ trust protector, ~~any~~
 8 ^{each} directing party, ^{the qualified beneficiaries,} and any person with standing to enforce the terms of a charitable
 9 trust under s. 701.0405 (3). ✓

10 SECTION 49. 701.0414 of the statutes is created to read:

11 **701.0414 Modification or termination of uneconomic trust.** (1) In this
 12 section:

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

17 (b) "Base reference number" means the consumer price index for all urban
 18 consumers, as published by the United States bureau of labor statistics, in effect on
 19 January 1 of the base year.

20 (c) "Base year" means the year in which this paragraph takes effect [LRB
 21 inserts date].

22 (2) After notice to the settlor, if living ~~and not under incapacity~~, ^{each} ~~any~~ trust
 23 protector, ^{each} ~~any~~ directing party, and the qualified beneficiaries, the trustee of a trust
 24 consisting of trust property having a total value less than \$100,000 or a revised
 25 applicable figure, as determined under sub. (3), may terminate the trust if the

1 trustee concludes that the value of the trust property is insufficient to justify the cost
2 of administration.

3 (3) The dollar amount specified in sub. (2) shall be adjusted to a revised
4 applicable figure on the 5th anniversary of the effective date of this subsection
5 [LRB inserts date], and every 5 years thereafter. The revised applicable figure shall
6 be determined as follows:

7 (a) Calculate the percentage change between the base reference number and
8 the adjustment reference number for the year in which the adjustment is being
9 made.

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

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

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

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

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

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

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

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

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

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

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

4 (7) ~~The~~ party petitioning the court for action under this section shall give notice
5 of the proceeding to the settlor, if living and not under incapacity, the trustee, any
6 each trust protector, and any each directing party, and the qualified beneficiaries

7 SECTION 50. 701.0415 of the statutes is created to read:

8 **701.0415 Reformation to correct mistakes.** The court may reform the
9 terms of a trust, even if unambiguous, to conform the terms to the settlor's intent if
10 it is proved by clear and convincing evidence that both the settlor's intent and the
11 terms of the trust were affected by a mistake of fact or law, whether in expression or
12 inducement. ~~The~~ party petitioning the court for action under this section shall give

13 notice of the proceeding to the settlor, if living and not under incapacity, the trustee,
14 each trust protector, and any each directing party, and the qualified beneficiaries

15 SECTION 51. 701.0416 of the statutes is created to read:

16 **701.0416 Modification to achieve settlor's tax objectives.** To achieve the
17 settlor's tax objectives, the court may modify the terms of a trust in a manner that
18 is not contrary to the settlor's probable intent. The court may provide that the
19 modification has retroactive effect. ~~The~~ party petitioning the court for action under

20 this section shall give notice of the proceeding to the settlor, if living and not under
21 incapacity, the trustee, each trust protector, and any each directing party, and the qualified beneficiaries ✓

22 SECTION 52. 701.0417 of the statutes is created to read:

23 **701.0417 Combination and division of trusts.** (1) After notice to any trust
24 protector, any directing party, and the qualified beneficiaries, a trustee may do any

1 of the following if the result does not impair rights of any beneficiary or adversely
2 affect achievement of any trust purposes:

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

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

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

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

14 SECTION 53. 701.0418 of the statutes is created to read:

15 **701.0418 Trustee's power to appoint assets to new trust. (1) DEFINITIONS.**

16 In this section:

17 (a) "Absolute power" means a power to invade trust assets for the benefit of a
18 beneficiary that is not limited by a specific or ascertainable standard, whether or not
19 the term "absolute" is used in the trust instrument. "Absolute power" includes a
20 power to invade trust assets for the best interests, welfare, comfort, or happiness of
21 a beneficiary.

22 (b) "First trust" means the trust from which assets are ^{✓ or may be} appointed under sub.

23 (2).

24 (c) "Second trust" means the trust or trusts to which assets ^{✓ or may be} appointed under
25 sub. (2).

1 (2) POWER TO APPOINT. (a) Except as otherwise provided in this subsection and
2 in subs. (3) and (5), a trustee who has the power to invade the principal of a first trust
3 for the benefit of a beneficiary who is eligible ^{✓ to receive} for or entitled to the income of the first
4 trust or entitled to an annuity or unitrust payment from the first trust may exercise
5 the power by appointing part or all of the assets of the first trust in favor of a trustee
6 of a 2nd trust if all of the following apply:

****NOTE: Please review this paragraph by replacing the terms "first trust" and
"2nd trust" with the respective definitions. Is this consistent with your intent?

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

9 2. If the trustee's power to invade income or principal of the first trust is limited
10 by a specific or ascertainable standard, the appointment of assets does not result in
11 the trustee of the 2nd trust having a power to invade the income or principal of the
12 2nd trust that is broader than the trustee's power to invade income or principal of
13 the first trust. This subdivision does not apply if the 2nd trust is a trust for an
14 individual with a disability.

15 3. One of the following applies:

16 a. The beneficiaries of the first trust are the same as the beneficiaries of the 2nd
17 trust.

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

20 (b) Paragraph (a) applies to a trustee whether or not the trustee has ^{an} absolute
21 power to invade principal and whether or not there is a current need to invade
22 principal under the terms of the first trust.

1 (3) LIMITATIONS ON EXERCISE OF POWER. A trustee may not appoint assets to a 2nd
2 trust, as described in sub. (2) ^{under} if any of the following applies: ✓

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

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

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

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

15 (c) The trustee has a beneficial interest in the first trust unless the 2nd trust
16 is a trust for an individual with a disability and the trustee’s only beneficial interest
17 in the first trust is as a remainder beneficiary.

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

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

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