



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0010/P3
FFK:jld:rs

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DUE FRIDAY, if possible

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2013 BILL

701.0607
701.0608
P. 72

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1 AN ACT *to repeal* 701.01, 701.02, 701.03, 701.04, 701.05, 701.06 (title), (1), (2),
2 (3) and (6) (title) and (a), 701.07, 701.09 (3), (4) and (5), 701.10, 701.105 (4),
3 701.11, 701.115, 701.12, 701.13, 701.14 (title) and (1), 701.14 (4), 701.15, 701.16
4 (title), (1), (2), (3), (4) (title) and (a) to (c), (5) and (6), 701.17, 701.18, 701.19,
5 701.20 (title), 701.20 (2) (intro.), 701.20 (2) (i), 701.20 (2) (L), (m) and (n), 701.20
6 (4c) (b) 3. a., b. and c., 701.20 (4g) (a) 1. c., 701.20 (18) (a), 701.20 (21) (title),
7 701.20 (29) (c) 2. b., 701.20 (29) (d), 701.20 (31), 701.22 (title), 701.23, 701.24 (3),
8 701.26, 702.01 (6) and 881.05; *to renumber* 445.125 (4), 701.06 (6) (d), 701.09
9 (title), (1) and (2), 701.20 (2) (a), 701.20 (2) (c), 701.20 (2) (e), 701.20 (2) (f),
10 701.20 (2) (g), 701.20 (2) (j), 701.20 (4c) (title), 701.20 (4c) (b) 1., 701.20 (4c) (b)
11 2., 701.20 (4g) (title), 701.20 (4g) (a) 1. a., 701.20 (4g) (a) 1. e., 701.20 (4g) (a) 2.
12 b., 701.20 (4m) (title), 701.20 (4m) (b), 701.20 (4m) (d), 701.20 (18) (title), 701.20
13 (29) (title), 701.20 (29) (a), 701.20 (29) (b), 701.24 (title), 701.25 and 702.01
14 (intro.); *to renumber and amend* 701.06 (4), 701.06 (5) (intro.) and (a), 701.06
15 (5) (b), 701.06 (5) (c), 701.06 (5m), 701.06 (6) (b), 701.06 (6) (c), 701.06 (7), 701.06

1 (8), 701.065, 701.08, 701.105 (title), (1), (2) and (3), 701.14 (2), 701.14 (3), 701.16
2 (4) (d), 701.20 (2) (b), 701.20 (2) (d), 701.20 (2) (h), 701.20 (2) (k), 701.20 (3),
3 701.20 (4), 701.20 (4c) (b) (intro.), 701.20 (4c) (b) 3. (intro.), 701.20 (4c) (b) 4.,
4 701.20 (4c) (c), 701.20 (4c) (d), 701.20 (4c) (e), 701.20 (4c) (f), 701.20 (4c) (g),
5 701.20 (4g) (a) (intro.), 701.20 (4g) (a) 1. (intro.), 701.20 (4g) (a) 1. b., 701.20 (4g)
6 (a) 1. d., 701.20 (4g) (a) 2. (intro.), 701.20 (4g) (a) 2. a., 701.20 (4g) (b), (c), (d) and
7 (e), 701.20 (4j), 701.20 (4k), 701.20 (4m) (a), 701.20 (4m) (am), 701.20 (4m) (c),
8 701.20 (5), 701.20 (6), 701.20 (7), 701.20 (8), 701.20 (9) (a), 701.20 (10), 701.20
9 (11), 701.20 (12), 701.20 (13), 701.20 (14), 701.20 (15), 701.20 (16), 701.20 (17),
10 701.20 (18) (b), 701.20 (18) (c) 1., 701.20 (18) (c) 2., 701.20 (18) (d), 701.20 (18)
11 (e), 701.20 (19), 701.20 (20), 701.20 (21), 701.20 (22), 701.20 (23), 701.20 (24),
12 701.20 (25), 701.20 (26), 701.20 (27), 701.20 (28), 701.20 (29) (c) (intro.), 701.20
13 (29) (c) 1., 701.20 (30), 701.21, 701.22, 701.24 (1), 701.24 (2), 702.01 (1), 702.01
14 (2), 702.01 (3), 702.01 (4), 702.01 (5), 702.15 (3), 879.47, 881.01 (1) (a) and 881.01
15 (4); **to consolidate, renumber and amend** 701.20 (29) (c) 2. (intro.) and a.;
16 **to amend** 23.0918 (2), 25.70, 223.07 (3), 223.105 (1) (c), 445.125 (1) (a) 1.,
17 445.125 (1) (a) 2., 700.16 (1) (c), 700.27 (1) (d), (2) (a) 2. and (b), (4) (e), (5) (b),
18 (7) (a) and (8) (a), 702.03, 702.05, 702.07, 702.08, 702.09 (title), (1) and (3) (a),
19 (b) and (c), 702.11, 702.13 (title), (1) (intro.), (a), (b) and (c) and (2), 702.15
20 (intro.), (1) and (2), 702.17 (1), (2), (3) and (5), 702.21, 766.575 (1) (e), 840.01 (1),
21 853.17 (2), 853.32 (3), 853.61 (2) (a), 854.13 (1) (c), (2) (a) 2. and (d), (4) (e), (5)
22 (b), (7) (a) and (10) (a); 854.23 (5) (b), 859.18 (5) (a), 859.18 (5) (b), 861.015 (2),
23 861.11 (5) (b), 865.08 (6), 867.03 (2g) (a), 879.03 (2) (c) and 881.01 (1) (b); **to**
24 **repeal and recreate** 881.01 (1) (title); and **to create** 445.125 (4) (bn),
25 subchapter I (title) of chapter 701 [precedes 701.0101], 701.0101, 701.0102,

1 701.0103, 701.0104, 701.0105, 701.0106, 701.0107, 701.0108, 701.0109,
2 701.0110, 701.0111, subchapter II (title) of chapter 701 [precedes 701.0201],
3 701.0201, 701.0202, 701.0203, 701.0204, subchapter III (title) of chapter 701
4 [precedes 701.0301], 701.0301, 701.0302, 701.0303, 701.0304, 701.0305,
5 subchapter IV (title) of chapter 701 [precedes 701.0401], 701.0401, 701.0402,
6 701.0403, 701.0404, 701.0405, 701.0406, 701.0407, 701.0408, 701.0409,
7 701.0410, 701.0411, 701.0412, 701.0413, 701.0414, 701.0415, 701.0416,
8 701.0417, 701.0418, subchapter V (title) of chapter 701 [precedes 701.0501],
9 701.0501, 701.0502, 701.0503 (title), 701.0504, 701.0505, 701.0506, 701.0507,
10 subchapter VI (title) of chapter 701 [precedes 701.0601], 701.0601, 701.0602,
11 701.0603, 701.0604, subchapter VII (title) of chapter 701 [precedes 701.0701],
12 701.0701, 701.0702, 701.0703, 701.0704, 701.0705, 701.0706, 701.0707,
13 701.0708, 701.0709, 701.0710, subchapter VIII (title) of chapter 701 [precedes
14 701.0801], 701.0801, 701.0802, 701.0803, 701.0804, 701.0805, 701.0806,
15 701.0807, 701.0808, 701.0809, 701.0810, 701.0811, 701.0812, 701.0813,
16 701.0814, 701.0815, 701.0816, 701.0817, 701.0818, 701.0819, subchapter IX
17 (title) of chapter 701 [precedes 701.0901], 701.0901, 701.0902, 701.0903,
18 subchapter X (title) of chapter 701 [precedes 701.1001], 701.1001, 701.1002,
19 701.1003, 701.1004, 701.1005, 701.1006, 701.1007, 701.1008, 701.1009,
20 701.1010, 701.1011, 701.1012, 701.1013, subchapter XI (title) of chapter 701
21 [precedes 701.1101], 701.1101, 701.1102 (intro.), 701.1102 (1g), 701.1106 (6),
22 701.1123 (1), 701.1123 (4), 701.1126 (title), 701.1134 (3) (c) and (d) and (4),
23 subchapter XII (title) of chapter 701 [precedes 701.1201], 701.1202, 701.1203,
24 701.1205 (3), 702.02 (1), 702.02 (3), 702.05 (5), 853.34 (3), 881.01 (1) (a) 1. and

- 1 2. and 881.01 (4) (b) of the statutes; **relating to:** the laws of trusts, the Uniform
2 Trust Code, the Uniform Principal and Income Act, and powers of appointment.

✓ applies

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~~ apply to certain trusts in this state. With some exceptions, the terms of a trust may override or modify the Code's default rules. There are, however, some mandatory provisions in the Code that may not be overridden or modified by the terms of a trust, including the requirements for creating a trust, the duty of a trustee to act in good faith, the effect of a spendthrift provision, limits on provisions that limit a trustee's liability, periods of limitation for commencing a judicial proceeding related to a trust, and the power of the court to take certain actions. The Code also includes default rules that are not included in the UTC, including rules related to the trustee's power to appoint assets to another trust, trust protectors, directed trusts, and life insurance contracts owned by trusts.

In addition to creating the Code, the bill clarifies the definitions of "general power of appointment" and "special power of appointment" and clarifies when a creditor can reach assets that are subject to a power of appointment. The bill also extends the prudent investor rule to directing parties and trust protectors who have a power over the investment of a trust, and clarifies rules relating to a trustee's retention of securities received by a trustee. A further explanation of these changes is provided after the overview of the Code.

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

The following is an overview of each subchapter of the Code as created under the bill:

Subchapter 1: General Provisions and Definitions

Subchapter 1 provides definitions for terms that are used throughout the Code, including a number of new terms and definitions. The new terms introduced in subchapter 1 include "qualified beneficiary," "directed trust property," and "trust protector." Under the Code, a "qualified beneficiary" is a person who is a current beneficiary of trust income or principal, a person who would be a beneficiary of trust income or principal if the current beneficiaries' interests in the trust terminate, or a person who would be a beneficiary if the trust terminates. "Directed trust property" is defined as property that is invested or managed by a directing party and for which the trustee has no investment or management responsibility. A "trust protector" is defined as a person who is given a specified power over the trust in a capacity other

than as a trustee or a directing party. The terms "directed trust property," "directing party," and "trust protector" are not included in the UTC.

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

Subchapter 2: Judicial Proceedings

Subchapter 2 addresses the role of the court in administering a trust. Under current law, a testamentary trust is subject to continuing court supervision. Under the Code, a court may intervene in the administration of a trust to the extent that its jurisdiction is invoked by an interested person or as otherwise provided by law. However, 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 certain purposes. Under the Code, notice, information, accountings, or reports given to a person who has the power to represent and bind another person have the same effect as if the notice, information, accountings, or reports were given to the represented person. A person may be represented by a fiduciary, a parent, or by a representative chosen by the trustee or a court. A trustee is not required to provide this 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, the Code provides that a trust is created when a person transfers property to a trustee with the intent to create a trust relationship. This subchapter expands upon the common law by specifically validating trusts for animals and trusts for certain noncharitable purposes. This subchapter also recognizes oral trusts if the terms of the trust are established by clear and convincing evidence.

This subchapter provides default rules for when a trust may be modified or terminated. For example, under the Code, a noncharitable irrevocable trust may be modified or terminated without court approval with the consent of the settlor and all of the beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. Additionally, for purposes of terminating a trust, the

under the Code

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Code increases the value of what qualifies as an uneconomic trust to a trust with a value of less than \$100,000, as adjusted for inflation. Upon providing notice to the qualified beneficiaries, every trust protector, every directing party, and the settlor, if living, the trustee of an uneconomic trust may terminate the trust without court approval.

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

Finally, this subchapter includes a concept not addressed in the UTC, which is the authority of a trustee of an irrevocable trust to appoint trust assets to the trustee of another trust (a second trust) under certain circumstances. This procedure is commonly referred to as decanting. Under the Code, subject to certain requirements, a trustee who has the power to invade trust principal for the benefit of an income beneficiary may appoint trust property to a second trust provided that the appointment does not reduce any fixed income, annuity, or unitrust interest of the beneficiary. If a trustee's power to invade trust principal under the first trust is limited by a standard, the second trust may not grant the trustee a broader power to invade trust income or principal. Also, if the trustee's power to invade the principal of the first trust is not limited by a standard, the beneficiaries of the second trust do not have to include all of the beneficiaries of the first trust; otherwise, the beneficiaries of both trusts must be the same. A trustee may appoint assets to a second trust with or without court approval by providing notice to the qualified beneficiaries, every trust protector, every directing party, and the settlor, if living.

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

Subchapter 5 addresses the validity of a spendthrift provision and the rights of a creditor of a settlor or a beneficiary to reach trust assets. The Code defines a "spendthrift provision" as a provision that restrains either or both 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, including exceptions for claims for child support and public support. The Code also preserves current law that allows a trustee to limit the claims of a creditor of a settlor upon the settlor's death by providing or publishing notice to the creditors and current law that, upon implementation, allows the Department of Health Services to recover medical assistance payments from certain trusts. Thus, the Code's treatment of spendthrift provisions and creditor's rights differs from the UTC.

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

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

Subchapter 6: Revocable Trusts

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

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

Owes its duties

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

Subchapter 7: Office of Trustee

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

Subchapter 8: Duties and Powers of the Trustee, Directing Parties, and Trust Protectors

Subchapter 8 sets forth the fiduciary obligations of a trustee, except for those fiduciary duties included in the Uniform Prudent Investor Act. Under the Code, a trustee must administer the trust in good faith, solely in the interests of the beneficiaries, impartially, and prudently, incurring only reasonable costs and using any special skills or expertise the trustee may have. A trustee must take reasonable

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steps to control and protect trust property, to maintain adequate records that clearly identify separate trust interests, to enforce claims of the trust and defend claims against the trust, to collect trust property and to redress breaches of former trustees, and to exercise 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 must exercise reasonable care, skill, and caution when selecting an agent, establishing the scope and terms of the delegation, and periodically reviewing the agent's actions. An agent who accepts a delegation of duty or power from a trustee has a duty to exercise reasonable care to comply with the terms of the delegation. A trustee who properly delegates to an agent is not liable to the beneficiaries for the agent's actions.

a duty or power

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

As an addition to the UTC, the Code specifically allows a settlor or court to appoint directing parties and trust protectors. The Code defines "directing party" as a person who is granted a power, in a capacity other than as a trustee or a trust protector, to make or to direct the trustee to make investment and distribution decisions. A directing party is a fiduciary and is obligated to act in good faith, consistent with the terms and purposes of the trust, and the interests of the beneficiaries. A trustee has no duty to monitor the directing party, and a trustee who follows a directing party's directions is not liable for any resulting losses, unless the loss is a result of the trustee's willful misconduct.

or interested persons in a nonjudicial settlement agreement

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 or court may specify whether a power granted to a trust protector must be exercised in a fiduciary or nonfiduciary 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 capacity for specific powers. A trustee has no duty to monitor the actions of a trust protector and, subject to certain exceptions, is not liable for taking actions consistent with the actions of the trust protector.

Subchapter 9: Investment Management of Trusts

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

The Code also limits the application of the Uniform Prudent Investor Act to life insurance trusts. If the principal purpose of a trust is to hold a life insurance

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contract, a trustee does not have a duty to determine whether the life insurance contract is, or remains, a proper investment. This change applies to all trusts executed after the effective date of the bill and to trusts executed before that date if the trustee provides a notice to the qualified beneficiaries.

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

Subchapter 10 identifies the remedies for breach of trust, provides 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 trustee's duty of good faith or relieve the trustee of liability for reckless indifference. The Code also provides that a term in a trust that relieves a trustee of liability is not enforceable if the inclusion of the term is the result of an abuse of the settlor's confidential relationship with the trustee.

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

Under the Code, a trustee is protected from liability for a loss in value of the trust property if there is no breach of trust. A trustee generally is not liable if the trustee acts in reasonable reliance on the express provisions of the trust, if the trustee exercises reasonable care but fails to ascertain unknown external facts, or if a beneficiary provides a consent, release, or ratification for the trustee's action. A trustee is also protected from personal liability on a contract entered into in a fiduciary capacity and for contracts and torts of a partnership in which the trustee holds a general partnership interest if the other party had notice of the fiduciary relationship.

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

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

recommended by the Uniform Law Commission

Subchapter 11: The Uniform Principal and Income Act

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

Subchapter 12: Miscellaneous Provisions

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

The following provisions of the bill occur outside of the Code:

Powers of Appointment

The bill changes the "general power" to "general power of appointment," which means a power exercisable in favor of any one or more of the donee, the donee's estate, the donee's creditors, or the creditors of the donee's estate. Under the bill, a "special power of appointment" is defined as any power of appointment that is not a general power of appointment. The bill also clarifies the rights of a creditor of a person who holds a power of appointment. Under the bill, a donee's creditor can reach property that is subject to a general power of appointment during a donee's life if the general power is presently exercisable. Upon the death of the donee, a creditor can reach property that is subject to a general power of appointment, whether or not the donee exercised the general power of appointment.

Uniform Prudent Investor Act

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

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:

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

In general

exercisable in a fiduciary capacity

appointment

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

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

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

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

18 223.07 (3) If the depository institution at which a trust service office is to be
19 established has exercised trust powers, the trust company bank and the depository
20 institution shall enter into an agreement respecting those fiduciary powers to which
21 the trust company bank shall succeed and shall file the agreement with the division.
22 The trust company bank shall cause a notice of the filing, in a form prescribed by the
23 division, to be published as a class 1 notice, under ch. 985, in the city, village or town
24 where the depository institution is located. After filing and publication, the trust
25 company bank establishing the office shall, as of the date the office first opens for

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

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

1 223.105 (1) (c) “Trustee” has the meaning designated in s. ~~701.01(8)~~ 701.0103
2 (28).

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

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

18 **SECTION 6.** 445.125 (1) (a) 2. of the statutes is amended to read:

19 445.125 (1) (a) 2. ~~Notwithstanding s. 701.12(1), such~~ Such agreements may be
20 made irrevocable as to the first \$3,000 of the funds paid under the agreement by each
21 depositor.

22 **SECTION 7.** 445.125 (4) of the statutes is renumbered 445.125 (4) (a).

23 **SECTION 8.** 445.125 (4) (bn) of the statutes is created to read:

24 445.125 (4) (bn) Sections 701.0410 to 701.0418 do not apply to an agreement,
25 interest, or dividend that is made irrevocable under sub. (1) (a) 2. to 4.

****NOTE: In your instructions you asked about the placement of your proposed s. 701.0410 (4) and (5), which address the applicability of a range of sections in subchapter IV. It is my recommendation to move each of those provisions to the section with which the range of sections interacts, in this case s. 445.125. Proposed s. 701.0410 (5) of the /P2 version states that sections 701.0410 to 704.0418 are subject to s. 445.125. Upon comparing s. 445.125 to the range of sections in subchapter IV, I assumed that the proposed language was intended to preserve s. 701.12 (1) under current law. Please review this provision and confirm that it is consistent with your intent. If it is not consistent with your intent, please let me know how else ss. 701.0410 to 704.0418 may be subject to s. 445.125.

1 **SECTION 9.** 700.16 (1) (c) of the statutes is amended to read:

2 700.16 (1) (c) If a future interest or trust is created by exercise of a power of
3 appointment, the permissible period is computed from the time the power of
4 appointment is exercised if the power of appointment is a general power of
5 appointment as defined in s. ~~702.01(3)~~ 702.02 (5) even if the general power of
6 appointment is exercisable only by will; ~~in.~~ In the case of other powers of
7 appointment the permissible period is computed from the time the power of
8 appointment is created but facts at the time the power of appointment is exercised
9 are considered in determining whether the power of alienation is suspended beyond
10 a life or lives in being at the time of creation of the power of appointment plus 30
11 years.

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

14 700.27 (1) (d) “Power of appointment” has the meaning given in s. ~~702.01(4)~~
15 702.02(6).

16 (2) (a) 2. A person who is a recipient of property or beneficiary under an inter
17 vivos governing instrument, donee of a power of appointment created by an inter
18 vivos governing instrument, appointee under a power of appointment exercised by
19 an inter vivos governing instrument, taker in default under a power of appointment
20 created by an inter vivos governing instrument, or person succeeding to disclaimed

1 property created by an inter vivos governing instrument may disclaim any property,
2 including contingent or future interests or the right to receive discretionary
3 distributions, by delivering a written instrument of disclaimer under this section.

4 (b) *Partial disclaimer.* Property transferred under an inter vivos governing
5 instrument may be disclaimed in whole or in part, except that a partial disclaimer
6 of property passing by an inter vivos governing instrument or by the exercise of a
7 power of appointment may not be made if partial disclaimer is expressly prohibited
8 by the inter vivos governing instrument or by the instrument exercising the power
9 of appointment.

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

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

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

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

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

18 **SECTION 11.** 701.01 of the statutes is repealed.

19 **SECTION 12.** Subchapter I (title) of chapter 701 [precedes 701.0101] of the
20 statutes is created to read:

21 **CHAPTER 701**

22 **SUBCHAPTER I**

23 **GENERAL PROVISIONS AND**

24 **DEFINITIONS**

25 **SECTION 13.** 701.0101 of the statutes is created to read:

1 **701.0101 Short title.** This chapter may be cited as the Wisconsin Trust Code.

2 **SECTION 14.** 701.0102 of the statutes is created to read:

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

7 (1) A constructive or resulting trust.

8 (2) A guardianship.

9 (3) A conservatorship.

10 (4) A custodial arrangement made pursuant to the Uniform Transfers to
11 Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust Act under ss.
12 54.950 to 54.988.

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

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

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

19 (8) A voting trust.

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

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

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

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

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

6 SECTION 15. 701.0103 of the statutes is created to read:

7 701.0103 Definitions. In this chapter:

8 (1) "Action," with respect to an act of a trustee, includes a failure to act.

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

12 (3) "Beneficiary" means a person that satisfies any of the following:

- 13 (a) Has a present or future beneficial interest in a trust, vested or contingent.
- 14 (b) In a capacity other than that of trustee, trust protector, or a directing party,
15 holds a power of appointment over trust property.

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

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

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

24 (7) "Directing party" means a person who, in a trust instrument or court order,
25 is granted a power to direct a trustee's investment or distribution decisions or a

directing party, or trust protector ✓

1 power to make investment or distribution decisions regarding trust property and the
2 power is granted to the person in a capacity other than as a trustee or a trust
3 protector. For purposes of this subsection, a power of appointment is not a power to
4 direct a trustee's investment or distribution decisions or a power to make investment
5 or distribution decisions regarding trust property.

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

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

9 (10) "Guardian of the estate" means a person appointed by a court under s.
10 54.10 as a guardian of the estate of a minor or adult individual.

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

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

16 (13) "Individual with a disability" means an individual who meets one of the
17 following tests:

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

21 (b) The individual has a mental or physical impairment of a type and severity
22 that would cause the individual to be considered an individual who is disabled for
23 purposes of participating in the social security, supplemental security income, or
24 medical assistance program, if the individual applied to be eligible for one of those
25 programs based on disability, and if the individual's education, work record, and

1 engagement in substantial gainful activity were disregarded. The fact that the
2 individual is age 65 or older does not bar the individual from being considered an
3 individual with a disability.

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

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

9 (16) “Jurisdiction,” with respect to a geographic area, includes a state or
10 country.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (31) "Trust protector" means a person who, in a trust instrument or court order,
17 is granted a power, including a power under s. 701.0818 (3) but not including a power
18 of appointment, in a capacity other than as a trustee or a directing party.

19 SECTION 16. 701.0104 of the statutes is created to read:

20 **701.0104 Knowledge.** (1) Subject to sub. (2), a person has knowledge of a fact
21 if any of the following applies:

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

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

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

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

12 **SECTION 17.** 701.0105 of the statutes is created to read:

13 **701.0105 Default and mandatory rules.** (1) Except as otherwise provided
14 in the terms of the trust, this chapter governs the duties and powers of trustees,
15 directing parties, and trust protectors; relations among trustees, directing parties,
16 and trust protectors; and the rights and interests of a beneficiaries.

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

19 (a) The requirements for creating a trust.

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

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

1 (d) The power of a court to modify or terminate a trust under ss. 701.0410 to
2 701.0416.

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

****NOTE: I included s. 701.0508, which is renumbered from s. 701.065, in this
paragraph. Okay?

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

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

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

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

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

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

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

16 (m) The jurisdiction of the court under ss. 701.0807 (4), 701.0808 (8), and
17 701.0818 (12).

18 **SECTION 18.** 701.0106 of the statutes is created to read:

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

22 **SECTION 19.** 701.0107 of the statutes is created to read:

1 **701.0107 Governing law.** The meaning and effect of the terms of a trust are
2 determined by one of the following:

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

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

6 **SECTION 20.** 701.0108 of the statutes is created to read:

7 **701.0108 Principal place of administration.** (1) The principal place of
8 administration of a trust is determined by any of the following:

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

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

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

13 3. All or part of the administration of the trust occurs in the jurisdiction
14 designated in the trust instrument.

15 4. The trust instrument designates the jurisdiction where the settlor is
16 domiciled at the time the trust instrument is executed.

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

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

22 (2) (a) If a corporate trustee is designated as the trustee of a trust and the
23 corporate trustee has offices in multiple states and performs administrative
24 functions for the trust in multiple states, the corporate trustee may designate the
25 corporate trustee's usual place of business by providing notice to the qualified

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **SECTION 21.** 701.0109 of the statutes is created to read:

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

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

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

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

14 **SECTION 22.** 701.0110 of the statutes is created to read:

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

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

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

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

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

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

15 **SECTION 23.** 701.0111 of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (j) An investment action.

21 (k) The appointment of a directing party or a trust protector.

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

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

5 **SECTION 24.** 701.02 of the statutes is repealed.

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

8 **CHAPTER 701**

9 **SUBCHAPTER II**

10 **JUDICIAL PROCEEDINGS**

11 **SECTION 26.** 701.0201 of the statutes is created to read:

12 **701.0201 Role of court in administration of trust.** (1) The court may
13 intervene in the administration of a trust to the extent its jurisdiction is invoked by
14 an interested person or as provided by law.

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

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

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

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

22 (c) Appointing a representative or guardian ad litem, as provided in s.
23 701.0305, whether or not any other judicial proceeding concerning the trust is
24 pending.

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

3 (e) Approving interim or final accounts.

4 (f) Ascertaining trust beneficiaries.

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

7 (h) Requesting trustee instructions.

8 (i) Obtaining a declaratory judgment.

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

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

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

14 **SECTION 27.** 701.0202 of the statutes is created to read:

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

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

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

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

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

12 **SECTION 28.** 701.0203 of the statutes is created to read:

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

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

22 **SECTION 29.** 701.0204 of the statutes is created to read:

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

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

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

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

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

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

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

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

15 **SECTION 30.** 701.03 of the statutes is repealed.

16 **SECTION 31.** Subchapter III (title) of chapter 701 [precedes 701.0301] of the
17 statutes is created to read:

18 **CHAPTER 701**

19 **SUBCHAPTER III**

20 **REPRESENTATION**

21 **SECTION 32.** 701.0301 of the statutes is created to read:

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

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

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

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

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

14 **SECTION 33.** 701.0302 of the statutes is created to read:

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

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

20 **SECTION 34.** 701.0303 of the statutes is created to read:

21 **701.0303 Representation by fiduciaries, parents, or a person**
22 **appointed by a trustee.** Except as provided in s. 701.0411, to the extent there is
23 no conflict of interest between a representative and the person represented or among
24 those being represented with respect to a particular question or dispute, all of the
25 following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **SECTION 35.** 701.0304 of the statutes is created to read:

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

22 **SECTION 36.** 701.0305 of the statutes is created to read:

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

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

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

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

10 **SECTION 37.** 701.04 of the statutes is repealed.

11 **SECTION 38.** Subchapter IV (title) of chapter 701 [precedes 701.0401] of the
12 statutes is created to read:

13 **CHAPTER 701**

14 **SUBCHAPTER IV**

15 **CREATION, VALIDITY,**

16 **MODIFICATION, AND TERMINATION**

17 **OF TRUST**

18 **SECTION 39.** 701.0401 of the statutes is created to read:

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

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

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

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

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

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

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

8 **SECTION 40.** 701.0402 of the statutes is created to read:

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

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

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

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

18 1. A charitable trust.

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

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

21 (d) The trustee has duties to perform.

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

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

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

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

7 **SECTION 41.** 701.0403 of the statutes is created to read:

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

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

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

14 (3) Any trust property was located.

15 **SECTION 42.** 701.0404 of the statutes is created to read:

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

20 **SECTION 43.** 701.0405 of the statutes is created to read:

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

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

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

11 **SECTION 44.** 701.0406 of the statutes is created to read:

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

15 **SECTION 45.** 701.0407 of the statutes is created to read:

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

20 **SECTION 46.** 701.0408 of the statutes is created to read:

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

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

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

11 SECTION 47. 701.0409 of the statutes is created to read:

12 **701.0409 Noncharitable trust without ascertainable beneficiary.**

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

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

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

23 (3) A trust authorized by this section may be enforced by a trust protector with
24 the power to enforce the trust as appointed in the terms of the trust or, if ~~no person~~

there is not a trust protector with the power to enforce the trust

1 is so appointed, *a court may appoint* by a trust protector with the power to enforce the trust as appointed
 2 by a court. *under s. 701.0818*

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

8 SECTION 48. 701.0410 of the statutes is created to read:

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

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

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

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

****NOTE: The proposed language ends with "for purposes of public assistance."
However, the definition of a trust for an individual with a disability described assets that
are not counted for purposes of "eligibility for medical assistance under subch. IV of ch.
49." Is this an intentional distinction?

6 **SECTION 49.** 701.0411 of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

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

16 **SECTION 50.** 701.0412 of the statutes is created to read:

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

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

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

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

9 **SECTION 51.** 701.0413 of the statutes is created to read:

10 **701.0413 Cy pres.** (1) The purpose of this section is to broaden the power of
11 the courts to make charitable gifts more effective. The court shall liberally apply the
12 cy pres doctrine.

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

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

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

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

1 under s. 701.0405 (3) has standing to commence a proceeding under this paragraph.

2 The attorney general is a necessary party in all proceedings under this paragraph.

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

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

12 **SECTION 52.** 701.0414 of the statutes is created to read:

13 **701.0414 Modification or termination of uneconomic trust.** (1) In this
14 section:

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

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

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

24 (2) After notice to the settlor, if living, each trust protector, each directing party,
25 and the qualified beneficiaries, the trustee of a trust consisting of trust property

1 having a total value less than \$100,000 or a revised applicable figure, as determined
2 under sub. (3), may terminate the trust if the trustee concludes that the value of the
3 trust property is insufficient to justify the cost of administration.

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

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

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

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

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

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

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

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

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

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

23 (4) The court may modify or terminate a trust or remove the trustee and
24 appoint a different trustee if it determines that the value of the trust property is

1 insufficient to justify the cost of administration even if the trust property has a total
2 value in excess of the amount described in sub. (2).

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

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

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

9 **SECTION 53.** 701.0415 of the statutes is created to read:

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

17 **SECTION 54.** 701.0416 of the statutes is created to read:

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

24 **SECTION 55.** 701.0417 of the statutes is created to read:

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

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

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

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

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

SECTION 56. 701.0418 of the statutes is created to read:

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

In this section:

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

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

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1 (c) "Second trust" means the trust or trusts to which assets are or may be
2 appointed under sub. (2).

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

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

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

17 3. One of the following applies:

18 a. The beneficiaries of the first trust are the same as the beneficiaries of the 2nd
19 trust.

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

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