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

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

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

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

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

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

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

- 23 1. Correct a drafting error in the first trust.
24 2. Clarify potentially ambiguous terms contained in the first trust.
25 3. Change the age of distribution to a beneficiary of the first trust.

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- 1 4. Extend the duration of the first trust.
- 2 5. Protect a beneficiary of the first trust, including protecting the beneficiary
- 3 from self-destructive behavior.
- 4 6. Allow the trustee of the 2nd trust to transfer trust assets to a community
- 5 trust. In this subdivision, “community trust” means a master trust that is
- 6 established and managed by a nonprofit organization that maintains sub-accounts
- 7 for individual beneficiaries that each satisfy the definition of a trust for an individual
- 8 with a disability.
- 9 7. Add or remove a spendthrift trust provision to the first trust.
- 10 8. Modify investment provisions contained in the first trust, including those
- 11 relating to permissible investments, use of investment advisors, or self-dealing
- 12 transactions.
- 13 9. Change a present or future trustee of the first trust, including by defining
- 14 the method by which a trustee or cotrustee may be appointed or removed and
- 15 replaced.
- 16 10. Appoint a trust protector of the 2nd trust and define the powers of the trust
- 17 protector.
- 18 11. Appoint a directing party of the 2nd trust and define the powers of the
- 19 directing party.
- 20 12. Change the principal place of administration of the first trust.
- 21 13. Change the governing law of the first trust.
- 22 14. Allow for the division of the first trust into 2 or more trusts.
- 23 15. Allow for the merger of the first trust with one or more trusts.
- 24 16. Add or modify an exculpatory provision for a trustee, trust protector, or
- 25 directing party.

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

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

6 19. Modify or eliminate a general or special power of appointment in the first
7 trust.

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

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

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

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

20 1. Any trustee of the first trust who would benefit from the adoption of the term
21 in the 2nd trust abstains from the consideration and adoption of the term and the
22 trustees of the first trust who would not benefit from the adoption of the term adopt
23 the trust instrument of the 2nd trust.

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

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

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

- 10 a. The qualified beneficiaries of the first trust.
11 b. Each trust protector appointed under the terms of the first trust.
12 c. Each directing party appointed under the terms of the first trust.
13 d. The settlor of the first trust, if living.

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

- 16 a. A copy of the proposed written instrument under which the trustee will
17 appoint assets to a 2nd trust.
18 b. The proposed effective date of the appointment.
19 c. A copy of the trust instrument of the first trust.
20 d. A copy of the trust instrument of the 2nd trust.

21 3. A trustee may not appoint assets to the 2nd trust until 30 days after the
22 trustee provides notice as required under this paragraph unless every person who
23 is entitled to receive notice under subd. 1. waives the 30-day notice period by
24 delivering a signed written instrument to the trustee. A person's waiver of the

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1 30-day notice period does not constitute that person's consent to the trustee's
2 appointment of assets to a 2nd trust.

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

8 5. If the trustee does not receive a written objection from any person entitled
9 to receive notice under subd. 1. before the effective date of the appointment of assets
10 to the 2nd trust or all written objections to the proposed appointment of assets to the
11 2nd trust are withdrawn, the trustee may appoint the assets to a 2nd trust, as
12 specified in the notice.

13 (c) 1. If a trustee chooses to proceed with court approval, including after
14 receiving a written objection to a proposed appointment of assets, the trustee shall
15 petition a court to approve a proposed appointment of assets to a 2nd trust under sub.
16 (2). The trustee shall provide notice of the petition to all qualified beneficiaries of the
17 first trust, each trust protector appointed under the first trust, each directing party
18 appointed under the first trust, and to the settlor of the first trust, if living. The
19 trustee shall include in the notice of the petition the proposed effective date of the
20 appointment of assets to a 2nd trust. The trustee shall also provide to each person
21 who is entitled to receive notice under this paragraph a copy of the proposed
22 instrument under which the trustee will appoint assets to a 2nd trust, the proposed
23 effective date of the appointment, a copy of the trust instrument of the first trust, and
24 a copy of the trust instrument of the 2nd trust.

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

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

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

7 c. Changes in circumstances that have occurred since the creation of the first
8 trust.

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

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

16 **(6) SUBSEQUENTLY DISCOVERED ASSETS.** (a) The appointment of all of the assets
17 of the first trust in favor of the trustee of the 2nd trust includes subsequently
18 discovered assets otherwise belonging to the first trust and assets paid to or acquired
19 by the first trust subsequent to the appointment in favor of the 2nd trust.

20 (b) Except as otherwise provided by the trustee of the first trust, the
21 appointment of part but not all of the assets of the first trust in favor of the 2nd trust
22 does not include subsequently discovered assets belonging to the first trust or assets
23 paid to or acquired by the first trust subsequent to the appointment in favor of the
24 2nd trust, which remain the assets of the first trust.

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

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

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

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

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

16 (d) The restriction relating to a trustee under sub. (3) (c) does not preclude a
17 cotrustee who does not have a beneficial interest in the first trust from appointing
18 assets to a 2nd trust under sub. (2) even if the terms of the first trust, applicable law,
19 or other circumstances would otherwise require the majority or unanimous action of
20 the trustees of the first trust.

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

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

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

8 **SECTION 57.** 701.05 of the statutes is repealed.

9 **SECTION 58.** Subchapter V (title) of chapter 701 [precedes 701.0501] of the
10 statutes is created to read:

11 **CHAPTER 701**

12 **SUBCHAPTER V**

13 **CREDITOR'S CLAIMS; SPENDTHRIFT**

14 **AND DISCRETIONARY TRUSTS**

15 **SECTION 59.** 701.0501 of the statutes is created to read:

16 **701.0501 Rights of beneficiary's creditor or assignee.** (1) (a) To the
17 extent a beneficiary's interest is not protected by a spendthrift provision, the court
18 may authorize a judgment creditor or an assignee of the beneficiary to reach the
19 beneficiary's interest by attachment of present or future distributions to or for the
20 benefit of the beneficiary or other means. The court may limit the award to such
21 relief as is appropriate under the circumstances.

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

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

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

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

2 **SECTION 60.** 701.0502 of the statutes is created to read:

3 **701.0502 Spendthrift provision.** (1) A spendthrift provision is valid only
4 if any of the following applies:

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

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

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

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

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

20 **SECTION 61.** 701.0503 (title) of the statutes is created to read:

21 **701.0503 (title) Exceptions to spendthrift provision.**

22 **SECTION 62.** 701.0504 of the statutes is created to read:

23 **701.0504 Discretionary trusts; effect of standard.** (1) For purposes of this
24 subchapter, and except as provided in sub. (3), a beneficiary's interest in a trust that
25 is subject to the trustee's discretion does not constitute an interest in property or an

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1 enforceable right even if the discretion is expressed in the form of a standard of
2 distribution or the beneficiary is then serving as sole trustee or cotrustee.

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

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

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

15 (b) The right of a beneficiary described in par. (a) may not be exercised by a
16 creditor.

17 **SECTION 63.** 701.0505 of the statutes is created to read:

18 **701.0505 Creditor's claim against settlor.** (1) (a) Whether or not the terms
19 of a trust include a spendthrift provision and except as provided in par. (b), the
20 following rules apply to claims of a settlor's creditors:

21 1. During the lifetime of the settlor, the property of a revocable trust is subject
22 to claims of the settlor's creditors.

23 2. With respect to an irrevocable trust that is not a trust for an individual with
24 a disability, upon application of a judgment creditor of the settlor, the court may, if
25 the trust instrument requires or authorizes the trustee to make payments of income

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1 or principal to or for the settlor, order the trustee to satisfy part or all of the judgment
2 out of part or all of the payments of income or principal as they are due, presently
3 or in the future, or which are payable in the trustee's discretion. If a trust has more
4 than one settlor, the amount the judgment creditor of a particular settlor may reach
5 may not exceed the settlor's interest in the trust.

6 3. After the death of a settlor, and subject to the settlor's right to direct the
7 source from which liabilities will be paid, the property of a trust that was revocable
8 at the settlor's death is subject to claims of the settlor's creditors, costs of
9 administration of the settlor's estate, the expenses of the settlor's funeral and
10 disposal of remains, and statutory allowances to a surviving spouse and children to
11 the extent the settlor's probate estate is inadequate to satisfy those claims, costs,
12 expenses, and allowances.

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

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

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

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

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

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

5 c. An irrevocable living trust for the settlor's spouse if after the death of the
6 settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that
7 receives property from the trust.

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

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

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

15 3. For purposes of this paragraph, notwithstanding s. 701.0103 (3),
16 "beneficiary" means a person who satisfies s. 701.0103 (3) (a) or (b) and who is
17 designated in a trust instrument or through the exercise of a special or general power
18 of appointment.

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

21 **SECTION 64.** 701.0506 of the statutes is created to read:

22 **701.0506 Overdue distribution.** (1) In this section, "mandatory
23 distribution" means a distribution of income or principal that the trustee is required
24 to make to a beneficiary under the terms of the trust, including a distribution upon

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1 termination of the trust. “Mandatory distribution” does not include a distribution
2 subject to the exercise of the trustee’s discretion even if any of the following applies:

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

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

6 (2) Whether or not a trust contains a spendthrift provision, a creditor or
7 assignee of a beneficiary may reach a mandatory distribution of income or principal,
8 including a distribution upon termination of the trust, if the trustee has not made
9 the distribution to the beneficiary within a reasonable time after the designated
10 distribution date.

11 **SECTION 65.** 701.0507 of the statutes is created to read:

12 **701.0507 Personal obligations of trustee.** Trust property is not subject to
13 personal obligations of the trustee, even if the trustee becomes insolvent or
14 bankrupt.

15 **SECTION 66.** 701.06 (title), (1), (2), (3) and (6) (title) and (a) of the statutes are
16 repealed.

17 **SECTION 67.** 701.06 (4) of the statutes is renumbered 701.0503 (1), and
18 701.0503 (1) (intro.) and (b), as renumbered, is amended to read:

19 701.0503 (1) CLAIMS FOR CHILD SUPPORT. (intro.) Notwithstanding ~~any provision~~
20 ~~in the creating instrument or subs. (1) and (2) s. 701.0502~~, upon application of a
21 person having a valid order directing a beneficiary to make payment for support of
22 the beneficiary’s child, the court may do any of the following:

23 (b) ~~In If the case of a beneficiary under a discretionary~~ may receive income or
24 principal at the trustee’s discretion under the trust, order the trustee to satisfy part
25 or all of the claim out of part or all of future payments of income or principal ~~which~~

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1 ~~that~~ are to be made pursuant to the exercise of the trustee's discretion in favor of such
2 beneficiary.

3 **SECTION 68.** 701.06 (5) (intro.) and (a) of the statutes are renumbered 701.0503
4 (2) (intro.) and (a) and amended to read:

5 701.0503 (2) CLAIMS FOR PUBLIC SUPPORT. (intro.) Notwithstanding any
6 ~~provision in the creating instrument or subs. (1) and (2) s. 701.0502 and except as~~
7 provided in sub. (3), if the settlor is legally obligated to pay for the public support of
8 a beneficiary under s. 46.10, 49.345, or 301.12 or the beneficiary is legally obligated
9 to pay for the beneficiary's public support or ~~that~~ for support furnished to the
10 beneficiary's spouse or minor child under s. 46.10, 49.345, or 301.12, upon
11 application by the appropriate state department or county official, the court may do
12 any of the following:

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

16 **SECTION 69.** 701.06 (5) (b) of the statutes is renumbered 701.0503 (2) (b) 1. and
17 amended to read:

18 701.0503 (2) (b) 1. Except as otherwise provided in ~~par. (e), in the case of a~~
19 ~~beneficiary under a discretionary trust subd. 2., if the beneficiary may receive income~~
20 or principal at the trustee's discretion under the trust, order the trustee to satisfy
21 part or all of the liability out of part or all of future payments of income or principal
22 which are to be made pursuant to the exercise of the trustee's discretion in favor of
23 ~~such~~ the beneficiary;

24 **SECTION 70.** 701.06 (5) (c) of the statutes is renumbered 701.0503 (2) (b) 2. and
25 amended to read:

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1 701.0503 (2) (b) 2. In the case of a beneficiary ~~under a discretionary trust~~ who
2 may receive income or principal of the trust at the trustee's discretion and who is a
3 settlor or a spouse or minor child of the settlor, order the trustee to satisfy part or all
4 of the liability without regard to whether the trustee has then exercised or may
5 thereafter exercise the trustee's discretion in favor of the beneficiary.

6 **SECTION 71.** 701.06 (5m) of the statutes is renumbered 701.0503 (3) and
7 amended to read:

8 701.0503 (3) ~~TRUST FOR DISABLED~~ AN INDIVIDUAL WITH A DISABILITY. Subsection
9 (5) (2) does not apply to any trust ~~that is established for the benefit of an individual~~
10 ~~who has~~ with a disability ~~which has continued or can be expected to continue~~
11 ~~indefinitely, substantially impairs the individual from adequately providing for his~~
12 ~~or her own care or custody, and constitutes a substantial handicap to the afflicted~~
13 ~~individual if the trust does not result in ineligibility for public assistance under ch.~~
14 ~~49. A trustee of a trust which is exempt from claims for public support under this~~
15 ~~subsection shall notify the county department under s. 46.215 or 46.22 in the county~~
16 ~~where the disabled beneficiary resides of the existence of the trust.~~

17 **SECTION 72.** 701.06 (6) (b) of the statutes is renumbered 701.0505 (2) (b), and
18 701.0505 (2) (b) 2., as renumbered, is amended to read:

19 701.0505 (2) (b) 2. The beneficiary's right to withdraw part of the trust
20 property, to the extent that the value of the property affected by the lapse, waiver,
21 or release in any year does not exceed the greater of the ~~amount in~~ following:

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

24 b. ~~Section~~ The amount referenced in section 2503 (b), of the Internal Revenue
25 Code ~~of 1986 for each individual other than the beneficiary who makes a transfer to~~

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1 the trust or who is deemed to make a transfer to the trust pursuant to an election to
2 split gifts under section 2513 (a) of the Internal Revenue Code.

3 **SECTION 73.** 701.06 (6) (c) of the statutes is renumbered 701.0505 (2) (c), and
4 701.0505 (2) (c) (intro.), 1. a. and b. and 4., as renumbered, are amended to read:

5 701.0505 (2) (c) (intro.) A beneficiary of a trust is not a settlor, has not made a
6 voluntary or involuntary transfer of the beneficiary's interest in the trust, ~~or~~ and
7 does not have the power to make a voluntary or involuntary transfer of the
8 beneficiary's interest in the trust solely because the beneficiary holds ~~or~~, exercises,
9 or allows in any capacity, any of the following:

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

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

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

15 **SECTION 74.** 701.06 (6) (d) of the statutes is renumbered 701.0505 (2) (d).

16 **SECTION 75.** 701.06 (7) of the statutes is renumbered 701.0503 (4) and amended
17 to read:

18 701.0503 (4) SUBSEQUENT MODIFICATION OF COURT'S ORDER. Any order entered by
19 a court under sub. (4), (5) (1) or (6) (a) ~~is subject to modification~~ (2) may be modified
20 upon application of an interested person.

21 **SECTION 76.** 701.06 (8) of the statutes is renumbered 701.0503 (5) and amended
22 to read:

23 701.0503 (5) EXEMPT ASSETS. Assets of a trust, ~~to the extent they~~ that are
24 exempt from claims of creditors under other statutes, ~~shall~~ are not be subject to sub.
25 (4), (5), (1) or (6) (a) (2).

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1 **SECTION 77.** Subchapter VI (title) of chapter 701 [precedes 701.0601] of the
2 statutes is created to read:

CHAPTER 701**SUBCHAPTER VI****REVOCABLE TRUSTS**

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6 **SECTION 78.** 701.0601 of the statutes is created to read:

7 **701.0601 Capacity of settlor of revocable trust.** The capacity required to
8 create, amend, revoke, or add property to a revocable trust, or to direct the actions
9 of the trustee of a revocable trust, is the same as that required to make a will.

10 **SECTION 79.** 701.0602 of the statutes is created to read:

11 **701.0602 Revocation or amendment of revocable trust.** (1) Unless the
12 terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke
13 or amend the trust. This subsection does not apply to a trust created under an
14 instrument executed before the effective date of this subsection [LRB inserts
15 date].

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

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

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

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1 (c) Upon the revocation or amendment of the trust by fewer than all of the
2 settlers, the trustee shall promptly notify the other settlers of the revocation or
3 amendment.

4 **(3)** A settlor may revoke or amend a revocable trust by any of the following
5 means:

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

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

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

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

13 **(4)** Upon revocation of a revocable trust, the trustee shall transfer the trust
14 property as the settlor directs. However, with respect to marital or community
15 property, the trustee shall transfer the property to both spouses as marital or
16 community property.

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

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

24 **(7)** A trustee who does not know that a trust has been revoked or amended is
25 not liable for distributions made and other actions taken on the assumption that the

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1 trust had not been amended or revoked, or for distributions made pursuant to sub.
2 (5).

3 **SECTION 80.** 701.0603 of the statutes is created to read:

4 **701.0603 Settlor's powers; powers of withdrawal.** (1) While a trust is
5 revocable, the rights of the beneficiaries are subject to the control of, and the duties
6 of the trustee, a directing party, and a trust protector are owed exclusively to, the
7 settlor.

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

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

13 **SECTION 81.** 701.0604 of the statutes is created to read:

14 **701.0604 Limitation on action contesting validity of revocable trust;
15 distribution of trust property.** (1) A person must commence a judicial proceeding
16 to contest the validity of a trust that was revocable immediately before the settlor's
17 death within the earlier of the following:

18 (a) One year after the settlor's death.

19 (b) Four months after the trustee sent the person a copy of the trust instrument
20 and a notice informing the person of the trust's existence, of the trustee's name and
21 address, and of the time allowed for commencing a proceeding. Except as provided
22 in s. 701.0813 (2), a trustee is not liable to any person for not providing the
23 information described in this paragraph.

24 (2) Upon the death of the settlor of a trust that was revocable immediately
25 before the settlor's death, the trustee may proceed to distribute the trust property

BILL

1 in accordance with the terms of the trust. The trustee is not subject to liability for
2 doing so unless one of the following applies:

3 (a) The trustee knows of a pending judicial proceeding contesting the validity
4 of the trust.

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

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

10 **SECTION 82.** 701.065 of the statutes, as affected by 2013 Wisconsin Act 20, is
11 renumbered 701.0508, and 701.0508 (1) (a) 2. and (5) (b) (title), 1. and 2., as
12 renumbered, are amended to read:

13 701.0508 (1) (a) 2. Except as provided in pars. (b) and (c), if the trustee satisfies
14 the requirements for the publication of the notice under subd. 1., all claims, including
15 claims of the any state and any subdivision thereof of its subdivisions, whether due
16 or to become due, absolute or contingent, liquidated or unliquidated, are barred
17 against the trustee, the trust property and any recipient of trust property unless filed
18 with the trustee on or before the date specified in the notice under subd. 1.

19 (5) (b) (title) *Living Revocable trusts.* 1. Notwithstanding sub. (1) (a), if a
20 settlor of a living revocable trust, or if the predeceased spouse of a settlor of a living
21 revocable trust, at any time received any services provided as a benefit under a
22 long-term care program, medical assistance under subch. IV of ch. 49, long-term
23 community support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683,
24 or 49.685, the trustee shall provide written notice to the department by registered
25 or certified mail, within 30 days after the death of the settlor and before any property

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1 held in the trust is distributed. The notice shall include demographic information
2 about the settlor and the settlor's predeceased spouse, if any, information about how
3 to file a claim, a copy of the trust document, and documentation supporting the value
4 of the trust on the settlor's date of death.

5 2. After the death of a settlor who, or whose predeceased spouse, received
6 services, medical assistance, long-term community support services, or aid
7 described in subd. 1., the department may recover under s. 46.27 (7g), 49.496, 49.682,
8 or 49.849, from property held in the living revocable trust immediately before the
9 settlor's death, an amount equal to the medical assistance that is recoverable under
10 s. 49.496 (3) (a), an amount equal to aid under s. 49.68, 49.683, or 49.685 that is
11 recoverable under s. 49.682 (2) (a), or an amount equal to long-term community
12 support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1. and that
13 was paid on behalf of the settlor or the settlor's predeceased spouse. The deadline
14 for the department to file a claim for recovery under this subdivision shall be the date
15 that is 4 months after the date of the trustee's notice under subd. 1.

16 **SECTION 83.** 701.07 of the statutes is repealed.

17 **SECTION 84.** Subchapter VII (title) of chapter 701 [precedes 701.0701] of the
18 statutes is created to read:

CHAPTER 701**SUBCHAPTER VII****OFFICE OF TRUSTEE**

22 **SECTION 85.** 701.0701 of the statutes is created to read:

23 **701.0701 Accepting or declining trusteeship.** (1) Except as provided in
24 sub. (3), a person designated as trustee accepts the trusteeship by doing any of the
25 following:

BILL

1 (a) Substantially complying with a method of acceptance provided in the terms
2 of the trust.

3 (b) If the terms of the trust do not provide a method or the method provided in
4 the terms is not expressly made exclusive, by accepting delivery of the trust property,
5 exercising powers or performing duties as trustee, or otherwise indicating
6 acceptance of the trusteeship.

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

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

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

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

19 **SECTION 86.** 701.0702 of the statutes is created to read:

20 **701.0702 Trustee's bond.** (1) A trustee shall give bond to secure performance
21 of the trustee's duties only if the court finds that a bond is needed to protect the
22 interests of the beneficiaries or is required by the terms of the trust and the court has
23 not dispensed with the requirement.

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

BILL

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

5 **SECTION 87.** 701.0703 of the statutes is created to read:

6 **701.0703 Cotrustees.** (1) Cotrustees may act only by majority decision.

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

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

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

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

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

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

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

BILL

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

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

5 **SECTION 88.** 701.0704 of the statutes is created to read:

6 **701.0704 Vacancy in trusteeship; appointment of successor.** (1) A
7 vacancy in a trusteeship exists if any of the following occurs:

8 (a) A person designated as trustee declines the trusteeship.

9 (b) A person designated as trustee cannot be identified or does not exist.

10 (c) A trustee resigns.

11 (d) A trustee is disqualified or removed.

12 (e) A trustee dies.

13 (f) A guardian or conservator is appointed for an individual serving as trustee.

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

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

19 (a) By a person designated in the terms of the trust to act as successor trustee.

20 (b) By a person appointed by unanimous agreement of the qualified
21 beneficiaries, except that, if the trust is a trust for an individual with a disability, the
22 person appointed under this paragraph may not be the individual with a disability,
23 his or her spouse, or a relative of the individual with a disability who is legally
24 responsible for his or her support.

25 (c) By a person appointed by the court.

BILL

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

5 **SECTION 89.** 701.0705 of the statutes is created to read:

6 **701.0705 Resignation of trustee.** (1) A trustee may resign in any of the
7 following manners:

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

10 (b) With the approval of the court.

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

13 (3) Any liability of a resigning trustee or of any sureties on the trustee's bond
14 for acts or omissions of the trustee is not discharged or affected by the trustee's
15 resignation.

16 **SECTION 90.** 701.0706 of the statutes is created to read:

17 **701.0706 Removal of trustee.** (1) The settlor, a cotrustee, or a qualified
18 beneficiary may request the court to remove a trustee, or a trustee may be removed
19 by the court on its own initiative.

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

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

22 (b) A lack of cooperation among cotrustees substantially impairs the
23 administration of the trust.

BILL

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

4 (d) There has been a substantial change of circumstances or removal is
5 requested by all of the qualified beneficiaries, the court finds that removal of the
6 trustee best serves the interests of all of the beneficiaries and is not inconsistent with
7 a material purpose of the trust, and a suitable cotrustee or successor trustee is
8 available.

9 (3) Pending a final decision on a request to remove a trustee, or in lieu of or in
10 addition to removing a trustee, the court may order such appropriate relief under s.
11 701.1001 (2) as may be necessary to protect the trust property or the interests of the
12 beneficiaries.

13 **SECTION 91.** 701.0707 of the statutes is created to read:

14 **701.0707 Delivery of property by former trustee.** (1) Unless a cotrustee
15 remains in office or the court otherwise orders, and until the trust property is
16 delivered to a successor trustee or other person entitled to it, a trustee who has
17 resigned or been removed has the duties of a trustee and the powers necessary to
18 protect the trust property.

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

22 **SECTION 92.** 701.0708 of the statutes is created to read:

23 **701.0708 Compensation of trustee.** (1) If the terms of a trust do not specify
24 the trustee's compensation, a trustee is entitled to compensation that is reasonable
25 under the circumstances.

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

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

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

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

12 **SECTION 93.** 701.0709 of the statutes is created to read:

13 **701.0709 Reimbursement of expenses.** (1) A trustee is entitled to be
14 reimbursed out of the trust property, with interest as appropriate, for all of the
15 following:

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

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

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

21 **SECTION 94.** 701.0710 of the statutes is created to read:

22 **701.0710 Title of trust property.** A settlor or transferor may effectively
23 transfer property to a trust by placing legal title of the property in the name of the
24 trustee, which shall include any successor trustee regardless of whether a successor

BILL

1 trustee is referenced in the transfer document. A transfer that places legal title in
2 the name of the trust itself places legal title in the name of the trustee.

3 **SECTION 95.** 701.08 of the statutes is renumbered 701.0419 and amended to
4 read:

5 **701.0419 Transfers to living trusts.** (1) VALIDITY AND EFFECT. The order of
6 execution of a living trust instrument and a will or other instrument purporting to
7 transfer or appoint property to the trust evidenced by the trust instrument shall be
8 disregarded in determining the validity of the transfer or appointment. No reference
9 in any will to a living trust shall cause assets in such trust to be included in property
10 administered as part of the testator's estate; ~~nor shall it cause the trust or any~~
11 ~~portion thereof to be treated as a testamentary trust.~~

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

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1 shall be administered in accordance with the terms of the trust instrument as they
2 may be modified thereafter, the will or beneficiary designation need not be
3 reexecuted or republished after exercise of the power to modify.

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

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

10 (b) If the testator was not a necessary party to the revocation or other
11 termination of such trust, the provision in the testator’s will shall be deemed to
12 create a ^{strike} ~~testamentary~~ trust upon the terms of the living trust instrument at the time
13 the will was executed or as otherwise provided where sub. (2) is applicable.

14 SECTION 96. Subchapter VIII (title) of chapter 701 [precedes 701.0801] of the
15 statutes is created to read:

CHAPTER 701

SUBCHAPTER VIII

DUTIES AND POWERS OF TRUSTEES,

DIRECTING PARTIES, AND

TRUST PROTECTORS

21 SECTION 97. 701.0801 of the statutes is created to read:

22 701.0801 Duty to administer trust. Upon acceptance of a trusteeship, the
23 trustee shall administer the trust in good faith, in accordance with its terms and
24 purposes and the interests of the beneficiaries, and in accordance with this chapter.

25 SECTION 98. 701.0802 of the statutes is created to read:

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

3 **(2)** Subject to the rights of persons dealing with or assisting the trustee as
4 provided in s. 701.1012, a sale, encumbrance, or other transaction that involves the
5 investment or management of trust property and is entered into by the trustee for
6 the trustee's own personal account or that is otherwise affected by a conflict between
7 the trustee's fiduciary and personal interests is voidable by a beneficiary affected by
8 the transaction unless any of the following applies:

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

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

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

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

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

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

21 (a) The trustee's spouse.

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

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

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

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

7 (5) An investment by a trustee in securities of an investment company or
8 investment trust to which the trustee, or its affiliate, provides services in a capacity
9 other than as trustee is not presumed to be affected by a conflict between personal
10 and fiduciary interests if the investment otherwise complies with the prudent
11 investor rule in s. 881.01. In addition to receiving compensation for acting as trustee,
12 the trustee may be compensated by the investment company or investment trust for
13 providing those services out of fees charged to the trust. If the trustee receives
14 compensation from the investment company or investment trust for providing
15 investment advisory or investment management services, the trustee shall at least
16 annually notify the persons entitled to receive a copy of the trustee's report under s.
17 701.0813 (3) of the rate and method by which that compensation was determined.

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

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

BILL

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

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

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

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

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

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

13 **SECTION 99.** 701.0803 of the statutes is created to read:

14 **701.0803 Impartiality.** If a trust has 2 or more beneficiaries, the trustee shall
15 act impartially in investing, managing, and distributing the trust property, giving
16 due regard to the beneficiaries' respective interests and the purposes and terms of
17 the trust.

18 **SECTION 100.** 701.0804 of the statutes is created to read:

19 **701.0804 Prudent administration.** A trustee shall administer the trust as
20 a prudent person would, by considering the purposes, terms, distributional
21 requirements, and other circumstances of the trust. In satisfying this standard, the
22 trustee shall exercise reasonable care, skill, and caution.

23 **SECTION 101.** 701.0805 of the statutes is created to read:

BILL**SECTION 101**

1 **701.0805 Costs of administration.** In administering a trust, the trustee may
2 incur only costs that are reasonable in relation to the trust property, the purposes of
3 the trust, the skills of the trustee, and the complexity of the trust administration.

4 **SECTION 102.** 701.0806 of the statutes is created to read:

5 **701.0806 Trustee's skills.** A trustee who has special skills or expertise, or is
6 named trustee in reliance upon the trustee's representation that the trustee has
7 special skills or expertise, shall use those special skills or expertise.

8 **SECTION 103.** 701.0807 of the statutes is created to read:

9 **701.0807 Delegation by trustee.** (1) A trustee may delegate duties and
10 powers that a prudent trustee of comparable skills could properly delegate under the
11 circumstances. The trustee shall exercise reasonable care, skill, and caution in each
12 of the following:

13 (a) Selecting an agent.

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

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

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

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

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

BILL

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

4 **SECTION 104.** 701.0808 of the statutes is created to read:

5 **701.0808 Powers to direct; directing parties.** (1) While a trust is
6 revocable, the trustee may follow a direction of the settlor that is contrary to the
7 terms of the trust.

8 (2) A settlor in a trust instrument, a court in a trust instrument or court order,
9 or interested persons in a nonjudicial settlement agreement may appoint a directing
10 party to direct the trustee on investment or distribution decisions or to make
11 investment or distribution decisions regarding directed trust property. If a trustee
12 acts in accordance with the direction of a directing party or fails to act due to lack of
13 direction from a directing party, the trustee is not liable for any loss resulting directly
14 or indirectly from any action taken or omitted with respect to the direction or lack
15 of direction except for acts or omissions that are a result of the trustee's willful
16 misconduct.

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

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

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

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

23 (d) Compel a directing party to redress a breach of the directing party's duties.

24 (4) The administrative actions of a trustee related to matters within the scope
25 of a directing party's power, including confirming that the directing party's directions

actions or directions

BILL**SECTION 104**

1 have been carried out and recording and reporting actions taken pursuant to the
2 directing party's direction, do not constitute either monitoring the directing party's
3 actions or participating in the actions of the directing party.

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

8 (6) (a) A directing party may request information about the trust from the
9 trustee and, if the requested information is related to a power granted to the
10 directing party, the trustee shall provide the requested information to the directing
11 party. If a trustee is bound by any confidentiality restrictions with respect to
12 information requested by a directing party, the trustee may require that the
13 directing party agree to be bound by the confidentiality restrictions before delivering
14 such information to the directing party. A trustee is not liable to any beneficiary for
15 any loss or damages resulting from the trustee providing information to the directing
16 party that is related to the power granted to the directing party.

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

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

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

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

3 **SECTION 105.** 701.0809 of the statutes is created to read:

4 **701.0809 Control and protection of trust property.** A trustee shall take
5 reasonable steps to take control of and protect the trust property.

6 **SECTION 106.** 701.0810 of the statutes is created to read:

7 **701.0810 Record keeping and identification of trust property.** (1) A
8 trustee shall keep adequate records of the administration of the trust.

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

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

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

16 **SECTION 107.** 701.0811 of the statutes is created to read:

17 **701.0811 Enforcement and defense of claims.** A trustee shall take
18 reasonable steps to enforce claims of the trust known to the trustee and to defend
19 claims against the trust known to the trustee.

20 **SECTION 108.** 701.0812 of the statutes is created to read:

21 **701.0812 Collecting trust property; duties of successor trustees.** (1) A
22 trustee shall take reasonable steps to compel a former trustee or other person to
23 deliver trust property to the trustee, and to redress a breach of trust known to the
24 trustee to have been committed by a trustee or former trustee, or a trust protector
25 or former trust protector.

BILL**SECTION 108**

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

3 **SECTION 109.** 701.0813 of the statutes is created to read:

4 **701.0813 Duty to inform and report.** (1) A trustee shall keep the
5 distributees or permissible distributees of trust income or principal, and other
6 qualified beneficiaries who so request, reasonably informed about the
7 administration of the trust. Unless unreasonable under the circumstances, a trustee
8 shall promptly respond to a qualified beneficiary's request for information related to
9 the administration of the trust.

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

11 (a) Upon the request of a qualified beneficiary for a copy of the trust
12 instrument, promptly furnish to the qualified beneficiary either a copy of the
13 portions of the trust instrument relating to the interest of the qualified beneficiary
14 or a copy of the trust instrument.

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

18 (c) Within a reasonable period of time after the date on which the trustee
19 acquires knowledge of the creation of an irrevocable trust, or the date on which the
20 trustee acquires knowledge that a formerly revocable trust has become irrevocable,
21 whether by the death of the settlor or otherwise, notify the qualified beneficiaries of
22 all of the following:

- 23 1. The trust's existence.
- 24 2. The identity of the settlor or settlors.

BILL

1 3. The name, address, and telephone number of each directing party and trust
2 protector.

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

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

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

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

9 (e) Upon receiving a petition to the court for action under ss. 701.0411 to
10 701.0416 that does not identify each trust protector and each directing party of the
11 trust, notify the petitioning party of the identity of each trust protector and directing
12 party, including the name, address, and telephone number of each trust protector
13 and directing party, who is serving at the time the petition is filed.

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

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

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

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

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

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

BILL**SECTION 109**

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

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

10 **SECTION 110.** 701.0814 of the statutes is created to read:

11 **701.0814 Discretionary powers; tax savings.** (1) Notwithstanding the
12 breadth of discretion granted to a trustee in the terms of the trust, including the use
13 of such terms as “absolute,” “sole,” or “uncontrolled,” the trustee shall exercise a
14 discretionary power in good faith and in accordance with the terms and purposes of
15 the trust and the interests of the beneficiaries. A court may not determine that a
16 trustee abused its discretion merely because the court would have exercised the
17 discretion in a different manner or would not have exercised the discretion.

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

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

BILL

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

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

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

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

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

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

17 **SECTION 111.** 701.0815 of the statutes is created to read:

18 **701.0815 General powers of trustee.** (1) A trustee, without authorization
19 by the court, may exercise the following powers:

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

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

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

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

BILL**SECTION 111**

1 3. Any other powers conferred by this chapter.

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

4 **SECTION 112.** 701.0816 of the statutes is created to read:

5 **701.0816 Specific powers of trustee.** Without limiting the authority
6 conferred by s. 701.0815, a trustee may do all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

12 (9) Enter into a lease for any purpose as lessor or lessee, including a lease or
13 other arrangement for exploration and removal of natural resources, with or without
14 the option to purchase or renew, for a period within or extending beyond the duration
15 of the trust.

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

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

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

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

BILL**SECTION 112**

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (a) Paying the amount to the beneficiary's conservator or the beneficiary's
15 guardian of the estate.

16 (b) Paying the amount to the beneficiary's custodian under the Uniform
17 Transfers to Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust
18 Act under ss. 54.950 to 54.988, and, for that purpose, creating a custodianship or
19 custodial trust.

20 (c) If the trustee does not know of a conservator, guardian of the estate,
21 custodian, or custodial trustee, paying the amount to an adult relative or other
22 person having legal or physical care or custody of the beneficiary or to the guardian
23 of the person of the beneficiary, to be expended on the beneficiary's behalf.

24 (d) Managing the amount as a separate fund on the beneficiary's behalf, subject
25 to the beneficiary's continuing right to withdraw the distribution.

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

5 (23) Resolve a dispute concerning the interpretation of the trust or its
6 administration by mediation, arbitration, or other procedure for alternative dispute
7 resolution.

8 (24) Prosecute or defend an action, claim, or judicial proceeding in any
9 jurisdiction to protect trust property or the trustee, a directing party, or a trust
10 protector in the performance of the trustee's, directing party's or trust protector's
11 duties.

12 (25) Sign and deliver contracts and other instruments that are useful to
13 achieve or facilitate the exercise of the trustee's, directing party's or trust protector's
14 powers.

15 (26) On termination of the trust, exercise the powers appropriate to wind up
16 the administration of the trust and distribute the trust property to the persons
17 entitled to it.

18 (27) Create or fund a plan under section 529 of the Internal Revenue Code, or
19 other college savings vehicle, for a beneficiary's benefit.

20 **SECTION 113.** 701.0817 of the statutes is created to read:

21 **701.0817 Distribution upon termination.** (1) Upon termination or partial
22 termination of a trust, the trustee may send a proposal for distribution to the
23 beneficiaries of the trust. The right of any beneficiary to whom the proposal is sent
24 to object to the proposed distribution terminates if the beneficiary does not notify the
25 trustee of an objection within 30 days after the proposal was sent but only if the

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1 proposal informed the beneficiary of the right to object and of the time allowed for
2 objection.

3 (2) Upon the occurrence of an event terminating or partially terminating a
4 trust, the trustee shall proceed within a reasonable time to distribute the trust
5 property to the persons entitled to it, subject to the right of the trustee to retain a
6 reasonable reserve for the payment of debts, expenses, and taxes.

7 (3) A release by a beneficiary of a trustee from liability for breach of trust is
8 invalid to the extent any of the following applies:

- 9 (a) The release was induced by improper conduct of the trustee.
- 10 (b) The beneficiary, at the time of the release, did not know of the beneficiary's
- 11 rights or of the material facts relating to the breach.

12 **SECTION 114.** 701.0818 of the statutes is created to read:

13 **701.0818 Trust protectors. (1) APPOINTMENT.** A settlor in a trust instrument,
14 a court in a trust instrument or court order, or interested persons in a nonjudicial
15 settlement agreement may provide for the appointment of a trust protector, whether
16 referred to as a trust protector, another title, or no title. A trust protector has the
17 powers granted to the trust protector in the trust instrument.

18 (2) **TRUST PROTECTOR POWERS; LEGAL CAPACITY.** (a) A settlor, in a trust
19 instrument, or a court, in a trust instrument or court order, may specify that a
20 particular power granted to a trust protector is exercisable in a fiduciary or
21 nonfiduciary capacity and whether a power granted to the trust protector in a
22 nonfiduciary capacity is required to be exercised in good faith.

23 (b) If a settlor or the court does not specify in a trust instrument that a
24 particular power granted to a trust protector is exercisable in a fiduciary or
25 nonfiduciary capacity, all of the following apply:

or interested persons in a nonjudicial settlement agreement

BILL

1

1. The trust protector shall exercise the power ^{is exercisable} in a fiduciary capacity if it is a

2

power to do any of the following:

3

a. Interpret or enforce the terms of the trust at the request of the trustee.

4

b. Review and approve the trustee's reports or accounting.

5

c. Resolve disputes between the trustee or a directing party and a beneficiary.

6

d. Consent to or veto distributions to a beneficiary.

7

e. Consent to or veto investment actions.

8

2. If it is not a power described in subd. 1. a. to e., the trust protector shall ^{is exercisable}

9

exercise the power ^{is exercisable} in a nonfiduciary capacity ^{is} including a power to do any of the

10

following:

11

a. Modify or amend the trust instrument to respond to opportunities related

12

to, or changes in, restraints on alienation or other state laws restricting the terms

13

of a trust, the distribution of trust property, or the administration of the trust.

14

b. Modify or amend the trust instrument to achieve a different tax status or to

15

respond to changes in federal or state law.

16

c. Change the principal place of administration, the tax situs of the trust, or the

17

governing law of the trust.

18

d. Eliminate or modify the interests of a beneficiary, add a new beneficiary or

19

class of beneficiaries, or select a beneficiary from an indefinite class.

20

e. Modify the terms of a power of appointment granted under the trust.

21

f. Remove, replace, or appoint a trustee, trust protector, or directing party or

22

a successor trustee, trust protector, or directing party.

23

g. Terminate the trust.

24

h. Appoint assets to a new trust under s. 701.0418.

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1 i. Advise the trustee on matters concerning a beneficiary, including whether to
2 provide information to a beneficiary under s. 701.0813.

3 j. Correct errors or ambiguities in the terms of the trust that might otherwise
4 require court construction or defeat the settlor's intent.

5 3. Notwithstanding subds. 1. and 2., a trust protector who is also the settlor
6 may exercise any power granted to the trust protector in the trust protector's
7 personal interests.

8 4. Notwithstanding subd. 2., a trust protector who is also a qualified beneficiary
9 may exercise any power granted to the trust protector that is exercisable in a
10 nonfiduciary capacity in the trust protector's personal interests.

11 (c) Notwithstanding pars. (a) and (b) and any provision in the trust instrument
12 to the contrary, a trust protector who is also serving as the trustee or a directing party
13 shall exercise any power granted to the trust protector in a fiduciary capacity.

14 (3) TRUST PROTECTOR DUTIES. (a) If a power is exercisable in a fiduciary capacity,
15 the trust protector shall act in good faith and shall exercise the power in a manner
16 that is consistent with the terms and purposes of the trust instrument ~~or~~ court order ✓
17 and the interests of the beneficiaries.

or nonjudicial settlement agreements

18 (b) If a power is exercisable in a nonfiduciary capacity, the trust protector shall
19 act in good faith unless the trust instrument ~~or~~ court order provides otherwise.

20 (c) A trust protector does not have a duty to exercise its powers, to monitor the
21 conduct of the trustee or a directing party, or to monitor changes in the law or
22 circumstances of the beneficiaries.

23 (4) LIABILITY. A trust protector is liable for any loss that results from a breach
24 of the trust protector's duties, except as follows:

BILL

1 (a) If the trust protector is also the settlor, the trust protector is not liable for
2 any loss that results from a breach of the trust protector’s duties.

3 (b) If the trust protector is also a qualified beneficiary, the trust protector is not
4 liable for any loss that results from a breach of the trust protector’s duties for a power
5 that is exercised in a nonfiduciary capacity.

6 (5) RESIGNATION AND RELEASE OF POWERS. A trust protector may resign or
7 release a power granted to the trust protector by giving written notice to the trustee
8 and to any successor trust protector.

9 (6) PROHIBITED ACTIONS. A trust protector may not exercise a power granted to
10 the trust protector to do any of the following:

11 (a) Except as provided in sub. (2) (b) 3. and 4., create or expand any beneficial
12 interest, power of appointment, right of withdrawal, or right to receive trust property
13 as a result of the exercise of a power of appointment if the creation or expansion
14 would benefit the trust protector, the trust protector’s estate, the trust protector’s
15 creditors, or creditors of the trust protector’s estate.

16 (b) Modify or amend a trust to do any of the following:

17 1. Remove a requirement pursuant to 42 USC 1396p (d) (4) to pay back a
18 governmental entity for benefits provided to the permissible beneficiary at the death
19 of that beneficiary.

20 2. Reduce or eliminate an income interest of an income beneficiary of any of the
21 following trusts:

22 a. A trust for which a marital deduction has been taken for federal income tax
23 purposes under section 2056^{2056 A} (or 2523 of the Internal Revenue Code or for state tax
24 purposes under any comparable provision of applicable state law, during the life of
25 the settlor’s spouse.

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In which the settlor has a qualified interest ✓

1 b. A charitable remainder trust under section 664 of the Internal Revenue
2 Code, during the life of the noncharitable beneficiary.

3 c. A grantor retained annuity trust under section 2702^(b) of the Internal Revenue
4 Code, during any period in which the settlor is a beneficiary.

5 d. A trust for which an election as a qualified Subchapter S Trust under section
6 1361(d) of the Internal Revenue Code is in place.

7 (c) Modify any beneficial interest of a trust that qualified for a marital
8 deduction or charitable deduction from federal or state estate tax in a manner that
9 would have caused the trust not to qualify for the deduction.

10 (7) SETTLOR RIGHTS. A trust protector is not subject to the direction of the settlor
11 and the settlor may not bring a cause of action against the trust protector. A trust
12 protector may consider a settlor's goals, objectives, and philosophies in establishing
13 the trust and the trust's structure when exercising the powers granted to the trust
14 protector and may do so regardless of whether the settlor is deceased.

15 (8) DUTIES OF A TRUSTEE AND A DIRECTING PARTY. (a) A trustee and a directing
16 party shall act in accordance with a trust protector's exercise of a power granted to
17 the trust protector. A trustee and a directing party are not liable for acting in
18 accordance with the trust protector's exercise of a power granted to the trust
19 protector unless the attempted exercise is manifestly contrary to the power granted
20 to the trust protector or the trustee or the directing party knows that the attempted
21 exercise would constitute a serious breach of a duty that the trust protector owes to
22 the beneficiaries of the trust.

23 (b) A trustee and a directing party do not have a duty to monitor the conduct
24 of the trust protector, provide advice to or consult with the trust protector, or
25 communicate with, warn, or apprise any beneficiary concerning instances in which

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1 the trustee or the directing party would or might have exercised the trustee's or the
2 directing party's discretion in a manner different from the manner in which the trust
3 protector exercised its discretion.

4 (9) RIGHT TO INFORMATION. (a) A trust protector may request information about
5 the trust from the trustee and, if the requested information is related to a power
6 granted to the trust protector, the trustee shall provide the requested information to
7 the trust protector. If a trustee is bound by any confidentiality restrictions with
8 respect to information requested by a trust protector, the trustee may require that
9 the trust protector agree to be bound by the confidentiality restrictions before
10 delivering such information to the trust protector. A trustee is not liable to any
11 beneficiary for any loss or damages resulting from the trustee providing information
12 to the trust protector that is related to the power granted to the trust protector.

13 (b) Except as otherwise provided in this chapter, a trustee does not have to
14 provide any information to the trust protector that the trust protector does not
15 request.

16 (10) PAYMENT OR REIMBURSEMENT OF ATTORNEY FEES AND COSTS. A trustee shall,
17 in accordance with s. 701.1004, pay or reimburse a trust protector for attorney fees
18 and costs to defend any claim made against the trust protector.

19 (11) APPLICATION OF OTHER SECTIONS TO TRUST PROTECTORS. Sections 701.0701,
20 701.0708, 701.0709, 701.1001 to 701.1003, and 701.1005 to 701.1010 apply to a trust
21 protector as if the trust protector is the trustee.

22 (12) JURISDICTION. A person who accepts an appointment as a trust protector
23 of a trust submits to the jurisdiction of the courts of this state, as provided in s.
24 701.0202 (1).

25 **SECTION 115.** 701.0819 of the statutes is created to read: