

**BILL**

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

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

7           **(11) APPLICATION OF OTHER SECTIONS TO TRUST PROTECTORS.** Sections 701.0701,  
8 701.0708, 701.0709, 701.1001 to 701.1003, and 701.1005 to 701.1010 apply to a trust  
9 protector as if the trust protector is the trustee.

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

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

14           **701.0819 Marital deduction transfers.** (1) For purposes of this section,  
15 “marital deduction transfer” means a lifetime or testamentary transfer of property  
16 that is intended to qualify for the marital deduction as indicated by the terms of the  
17 trust.

18           (2) In interpreting, construing, or administering a trust instrument, absent a  
19 clear expression of intent by the settlor to the contrary, a trustee shall apply the  
20 following presumptions that may only be rebutted by clear and convincing evidence:

21           (a) The settlor intended to take advantage of tax deductions, exemptions,  
22 exclusions, and credits.

23           (b) The settlor intended that any transfer made to a spouse outright and free  
24 of trust qualify for the gift or estate tax marital deduction and is a marital deduction  
25 transfer.

**BILL****SECTION 115**

1 (c) If the trust instrument refers to a trust as a marital trust, qualified  
2 terminable interest property trust, or spousal trust, or refers to qualified terminable  
3 interest property, section 2044, 2056, 2056A, or 2523 of the Internal Revenue Code,  
4 or a similar provision of applicable state law, the settlor intended that the trust and  
5 property passing to the trust qualify for the applicable gift or estate tax marital  
6 deduction and that the transfer qualifies for the marital deduction for federal and  
7 state gift or estate tax purposes.

8 (3) If a trust receives a marital deduction transfer, the trust instrument shall  
9 be construed to comply with the marital deduction provisions of the Internal  
10 Revenue Code.

11 (4) If a trust receives a marital deduction transfer, the trustee has all the  
12 powers, duties, and discretionary authority necessary to comply with the marital  
13 deduction provisions of the Internal Revenue Code. The trustee may not take any  
14 action or have any power that may impair the availability of the marital deduction,  
15 but this does not require the trustee to make the election under either section 2056  
16 (b) (7), 2056A (a) (3), or 2523 (f) of the Internal Revenue Code.

17 **SECTION 116.** 701.09 (title), (1) and (2) of the statutes are renumbered 853.34  
18 (title), (1) and (2).

19 **SECTION 117.** 701.09 (3), (4) and (5) of the statutes are repealed.

20 **SECTION 118.** Subchapter IX (title) of chapter 701 [precedes 701.0901] of the  
21 statutes is created to read:

**CHAPTER 701****SUBCHAPTER IX****INVESTMENT MANAGEMENT OF TRUSTS**

22  
23  
24  
25 **SECTION 119.** 701.0901 of the statutes is created to read:

**BILL**

1           **701.0901 Application of the Wisconsin Prudent Investor Act.** Except as  
2 provided in this subchapter, the investment management of the property of a trust  
3 is governed by ch. 881.

4           **SECTION 120.** 701.0902 of the statutes is created to read:

5           **701.0902 Directed trust property. (1)** A directing party who has power over  
6 directed trust property shall do all of the following:

7           (a) Direct the trustee on the retention, purchase, sale, exchange, tender,  
8 encumbrance, or any other investment transaction of the directed trust property and  
9 the investment and reinvestment of principal and income.

10           (b) Direct the trustee with respect to the management, control, and voting  
11 powers, including voting proxies, of the directed trust property.

12           (c) Select and determine reasonable compensation of one or more outside  
13 investment advisors, managers, consultants, or counselors, which may include the  
14 trustee, and delegate investment authority to them pursuant to the investment  
15 delegation provisions under s. 881.01 (10).

16           (d) Determine the frequency of and methodology for valuing directed trust  
17 property and provide the value of property for which there is no readily available  
18 daily market value.

19           **(2)** A trustee who has no power over directed trust property does not have a  
20 duty to do any of the following with respect to the directed trust property:

21           (a) Prepare or review investment policy statements.

22           (b) Perform investment or suitability reviews, inquiries, or investigations.

23           (c) Determine or verify the value of directed trust property for which there is  
24 no readily available daily market value.

25           (d) Monitor the conduct or investment performance of the directing party.

**BILL****SECTION 121**

1           **SECTION 121.** 701.0903 of the statutes is created to read:

2           **701.0903 Nonapplication of prudent investor rule to life insurance**  
3 **contracts owned by trusts.** (1) Notwithstanding s. 881.01, if a principal purpose  
4 of a trust is to hold a life insurance contract or to purchase a life insurance contract  
5 from contributions made to the trust, the trustee does not have a duty to determine  
6 whether the life insurance contract is or remains a proper investment of the trust.  
7 For purposes of this subsection, determining whether a life insurance contract is or  
8 remains a proper investment includes all of the following:

9           (a) Investigating the financial strength or changes in the financial strength of  
10 the life insurance company maintaining the life insurance contract.

11           (b) Determining whether to exercise any policy option, right, or privilege  
12 available under the life insurance contract.

13           (c) Diversifying the life insurance contract relative to any other life insurance  
14 contracts or any other assets of the trust.

15           (d) Inquiring about or investigating the health or financial condition of an  
16 insured.

17           (e) Preventing the lapse of a life insurance contract if the trust does not receive  
18 contributions or hold other readily marketable assets to pay the life insurance  
19 contract premiums.

20           (2) A trustee is not liable for a loss that arises because the trustee did not take  
21 an action specified in sub. (1).

22           (3) This section does not apply to a life insurance contract that is purchased  
23 from an affiliate of the trustee or to a life insurance contract from which the trustee  
24 or an affiliate receives a commission, unless the power to purchase the life insurance  
25 contract has been delegated to another person and that other person made the

**BILL**

1 decision to purchase the life insurance contract from or through the trustee or an  
2 affiliate.

3 (4) This section does not apply to a trust that was executed before the effective  
4 date of this subsection .... [LRB inserts date], unless the trustee notifies the qualified  
5 beneficiaries that the trustee elects to be governed by this section and provides the  
6 qualified beneficiaries with a copy of this section.

7 (5) Subject to sub. (4), this section applies to a life insurance contract acquired,  
8 retained, or owned by a trustee before, on, or after the effective date of this subsection  
9 .... [LRB inserts date].

10 **SECTION 122.** 701.10 of the statutes is repealed.

11 **SECTION 123.** Subchapter X (title) of chapter 701 [precedes 701.1001] of the  
12 statutes is created to read:

13 **CHAPTER 701**

14 **SUBCHAPTER X**

15 **LIABILITY OF TRUSTEES AND RIGHTS**

16 **OF PERSONS DEALING WITH TRUSTEE**

17 **SECTION 124.** 701.1001 of the statutes is created to read:

18 **701.1001 Remedies for breach of trust.** (1) A violation by a trustee of a duty  
19 the trustee owes to a beneficiary is a breach of trust.

20 (2) To remedy a breach of trust that has occurred or may occur, a court may do  
21 any of the following:

22 (a) Compel the trustee to perform the trustee's duties.

23 (b) Enjoin the trustee from committing a breach of trust.

24 (c) Compel the trustee to redress a breach of trust by paying money, restoring  
25 property, or other means.

**BILL****SECTION 124**

1 (d) Order a trustee to account.

2 (e) Appoint an additional trustee, a directing party, or a trust protector having  
3 the duties and authority ordered by the court, including, in the case of an additional  
4 trustee, the authority to take possession of the trust property and administer the  
5 trust.

6 (f) Suspend the trustee.

7 (g) Remove the trustee as provided in s. 701.0706.

8 (h) Reduce the compensation of or deny compensation to the trustee.

9 (i) Subject to s. 701.1012, void an act of the trustee, impose a lien or a  
10 constructive trust on trust property, or trace trust property wrongfully disposed of  
11 and order recovery of the property or its proceeds.

12 (j) Order any other appropriate relief, whether provided elsewhere in this  
13 chapter, available at common law, or under equity principles.

14 **SECTION 125.** 701.1002 of the statutes is created to read:

15 **701.1002 Damages for breach of trust; liability of successor trustee. (1)**

16 A trustee who commits a breach of trust is liable to an affected beneficiary for the  
17 greater of the following:

18 (a) The amount required to restore the value of the trust property and trust  
19 distributions to what they would have been had the breach not occurred.

20 (b) The profit the trustee made by reason of the breach.

21 **(2)** Except as otherwise provided in this subsection, if more than one trustee  
22 is liable to a beneficiary for a breach of trust, a trustee is entitled to contribution from  
23 the other trustee or trustees. A trustee is not entitled to contribution if the trustee  
24 was substantially more at fault than another trustee or if the trustee committed the  
25 breach of trust in bad faith or with reckless indifference to the purposes of the trust

**BILL**

1 or the interests of the beneficiary. A trustee who received a benefit from the breach  
2 of trust is not entitled to contribution from another trustee to the extent of the benefit  
3 received.

4 (3) A successor trustee is not liable for the acts and omissions of a former  
5 trustee or for the acts or omissions of any directing party or trust protector that are  
6 taken before the appointment of the successor trustee.

7 **SECTION 126.** 701.1003 of the statutes is created to read:

8 **701.1003 Damages in absence of breach.** Absent a breach of trust, a trustee  
9 is not liable to a beneficiary for a loss or depreciation in the value of trust property  
10 or for not having made a profit.

11 **SECTION 127.** 701.1004 of the statutes is created to read:

12 **701.1004 Attorney fees and costs. (1)** In a judicial proceeding involving the  
13 administration of a trust, the court, as justice and equity may require, may award  
14 costs and expenses, including reasonable attorney fees, to any party, to be paid by  
15 another party or from the trust that is the subject of the controversy.

16 (2) Subject to sub. (3), if a trustee, directing party, or trust protector defends  
17 or prosecutes any proceeding in good faith, whether successful or not, the trustee,  
18 directing party, or trust protector is entitled to receive from the trust the necessary  
19 expenses and disbursements, including reasonable attorney fees, incurred. This  
20 subsection does not preclude a court from ordering another party to reimburse the  
21 trust for these expenses and disbursements as provided in sub. (1).

22 (3) (a) A trustee may pay costs or attorney fees incurred in any proceeding from  
23 the trust property without the approval of any person and without court  
24 authorization, unless the court orders otherwise as provided in par. (c).

**BILL****SECTION 127**

1 (b) If a claim or defense based upon a breach of trust is made against a trustee,  
2 directing party, or trust protector in a proceeding, the trustee shall provide notice to  
3 each qualified beneficiary, directing party, and trust protector of the trustee's  
4 intention to pay costs or attorney fees incurred in the proceeding from the trust prior  
5 to making payment. The notice shall inform each qualified beneficiary, directing  
6 party, and trust protector of the right to apply to the court for an order prohibiting  
7 the trustee from paying attorney fees or costs from trust property. If a trustee is  
8 served with a motion for an order prohibiting the trustee from paying from the trust  
9 attorney fees or costs in the proceeding and the trustee pays attorney fees or costs  
10 from the trust before an order is entered on the motion, the trustee, directing party,  
11 or trust protector and their respective attorneys who have been paid attorney fees  
12 or costs from trust property are subject to the remedies in pars. (c) and (d).

13 (c) 1. If a claim or defense based upon breach of trust is made against a trustee,  
14 directing party, or trust protector in a proceeding, a party may move the court for an  
15 order to prohibit the trustee from paying costs or attorney fees from trust property.

16 2. Except as provided in subd. 3., if the moving party demonstrates to the court  
17 that there is a reasonable basis for the court to find that a breach of trust occurred,  
18 the court shall enter an order prohibiting the payment of further attorney fees and  
19 costs from trust property and shall order attorney fees or costs previously paid from  
20 trust property in such proceeding to be refunded, unless the court finds good cause  
21 to allow attorney fees and costs to be paid from the trust. A trustee, directing party,  
22 or trust protector may offer evidence to rebut the evidence submitted to the court by  
23 the moving party.

24 3. The court may defer ruling on a motion to prohibit a trustee from paying costs  
25 or attorney fees from trust property until discovery is taken by the parties.



**BILL**

1           4. An order entered under this paragraph does not limit a trustee's, directing  
2 party's, or trust protector's right to seek an order allowing the payment of some or  
3 all of the attorneys fees or costs incurred in the proceeding from trust property,  
4 including any fees required to be refunded, after the claim or defense is finally  
5 determined by the court. If a claim or defense based upon a breach of trust is  
6 withdrawn, dismissed, or resolved without a determination by the court that the  
7 trustee committed a breach of trust, after the entry of an order prohibiting payment  
8 of attorney fees and costs pursuant to this paragraph, the trustee may pay costs or  
9 attorney fees incurred in the proceeding from the trust property without further  
10 court authorization.

11           (d) If the court orders a refund under par. (c), the court may enter sanctions as  
12 are appropriate if a refund is not made as directed by the court, including striking  
13 defenses or pleadings filed by the trustee, directing party, or trust protector. Nothing  
14 in this paragraph limits other remedies and sanctions the court may employ for the  
15 failure to refund the trust in a timely manner.

16           (e) Subject to s. 701.1005, nothing in this subsection limits the power of the  
17 court to review fees and costs or the right of any interested persons to challenge fees  
18 and costs after payment, after an accounting, or after conclusion of the litigation.

19           (f) Notice under par. (b) is not required if the action or defense is later  
20 withdrawn or dismissed by the party that is alleging a breach of trust or resolved  
21 without a determination by the court that the trustee has not committed a breach  
22 of trust.

23           (4) A provision of a trust instrument drafted or caused to be drafted by a  
24 trustee, directing party, or trust protector that modifies the application of this section  
25 in a manner favorable to the trustee, directing party, or trust protector and

**BILL****SECTION 127**

1 potentially detrimental to a beneficiary is invalid with respect to the trustee,  
2 directing party, or trust protector unless the trustee, directing party, or trust  
3 protector proves that the provision was fair under the circumstances existing at the  
4 time the trust instrument was signed and that the existence and contents of the  
5 provision were adequately communicated to the settlor.

6 **SECTION 128.** 701.1005 of the statutes is created to read:

7 **701.1005 Limitation of action against trustee. (1)** A beneficiary may not  
8 commence a proceeding against a trustee for breach of trust more than one year after  
9 the date on which the beneficiary or a representative of the beneficiary was sent a  
10 report that adequately disclosed the existence of a potential claim for breach of trust.

11 **(2)** A report adequately discloses the existence of a potential claim for breach  
12 of trust if it provides sufficient information so that the beneficiary or representative  
13 knows of the potential claim or should have inquired into its existence.

14 **(3)** If sub. (1) does not apply, a proceeding by a beneficiary against a trustee for  
15 breach of trust must be commenced within 5 years after the first to occur of the  
16 following:

17 (a) The removal, resignation, or death of the trustee.

18 (b) The termination of the beneficiary's interest in the trust.

19 (c) The termination of the trust.

20 **(4)** Subsections (1) and (3) do not apply to a claim for fraud. The time for  
21 asserting a claim for fraud is governed by applicable law.

22 **SECTION 129.** 701.1006 of the statutes is created to read:

23 **701.1006 Reliance on trust instrument.** A trustee who acts in reasonable  
24 reliance on the terms of the trust as expressed in the trust instrument is not liable

**BILL**

1 to a beneficiary for a breach of trust to the extent the breach resulted from the  
2 reliance.

3 **SECTION 130.** 701.1007 of the statutes is created to read:

4 **701.1007 Event affecting administration or distribution.** If the  
5 happening of an event, including marriage, divorce, performance of educational  
6 requirements, or death, affects the administration or distribution of a trust, a trustee  
7 who has exercised reasonable care to ascertain the happening of the event is not  
8 liable for a loss resulting from the trustee's lack of knowledge.

9 **SECTION 131.** 701.1008 of the statutes is created to read:

10 **701.1008 Exculpation of trustee.** (1) A term of a trust relieving a trustee  
11 of liability for breach of trust is unenforceable to the extent that it does any of the  
12 following:

13 (a) Relieves the trustee of liability for breach of trust committed in bad faith  
14 or with reckless indifference to the purposes of the trust or the interests of a  
15 beneficiary.

16 (b) Was inserted as the result of an abuse by the trustee of a fiduciary or  
17 confidential relationship with the settlor.

18 (2) An exculpatory term drafted or caused to be drafted by the trustee is invalid  
19 as an abuse of a fiduciary or confidential relationship unless the trustee proves that  
20 the exculpatory term was fair under the circumstances existing at the time the trust  
21 instrument was signed and that the existence and contents of the exculpatory term  
22 were adequately communicated to the settlor.

23 **SECTION 132.** 701.1009 of the statutes is created to read:

24 **701.1009 Beneficiary's consent, release, or ratification.** A trustee is not  
25 liable to a beneficiary for breach of trust if the beneficiary consented to the conduct

**BILL****SECTION 132**

1 constituting the breach, released the trustee from liability for the breach, or ratified  
2 the transaction constituting the breach, unless any of the following applies:

3 (1) The consent, release, or ratification of the beneficiary was induced by  
4 improper conduct of the trustee.

5 (2) At the time of the consent, release, or ratification, the beneficiary did not  
6 have knowledge of the beneficiary's rights or of the material facts relating to the  
7 breach.

8 **SECTION 133.** 701.1010 of the statutes is created to read:

9 **701.1010 Limitation on personal liability of trustee.** (1) Except as  
10 otherwise provided in the contract, a trustee is not personally liable on a contract  
11 properly entered into in the trustee's fiduciary capacity in the course of  
12 administering the trust if the trustee in the contract disclosed the fiduciary capacity.

13 (2) A trustee is personally liable for torts committed in the course of  
14 administering a trust, or for obligations arising from ownership or control of trust  
15 property, including liability for violation of environmental law, only if the trustee is  
16 personally at fault.

17 **SECTION 134.** 701.1011 of the statutes is created to read:

18 **701.1011 Interest as general partner.** (1) Unless personal liability is  
19 imposed in the contract, a trustee who holds an interest as a general partner in a  
20 general or limited partnership is not personally liable on a contract entered into by  
21 the partnership after the trust's acquisition of the interest if the fiduciary capacity  
22 was disclosed in the contract.

23 (2) A trustee who holds an interest as a general partner is not personally liable  
24 for torts committed by the partnership or for obligations arising from ownership or  
25 control of the interest unless the trustee is personally at fault.

**BILL**

1           (3) If the trustee of a revocable trust holds an interest as a general partner, the  
2 settlor is personally liable for contracts and other obligations of the partnership as  
3 if the settlor were a general partner.

4           **SECTION 135.** 701.1012 of the statutes is created to read:

5           **701.1012 Protection of person dealing with trustee.** (1) A person other  
6 than a beneficiary who in good faith assists a trustee, or who in good faith and for  
7 value deals with a trustee, without knowledge that the trustee is exceeding or  
8 improperly exercising the trustee's powers is protected from liability as if the trustee  
9 properly exercised the power.

10           (2) A person other than a beneficiary who in good faith deals with a trustee is  
11 not required to inquire into the extent of the trustee's powers or the propriety of their  
12 exercise.

13           (3) A person who in good faith delivers assets to a trustee does not need to  
14 ensure their proper application.

15           (4) A person other than a beneficiary who in good faith assists a former trustee,  
16 or who in good faith and for value deals with a former trustee, without knowledge  
17 that the trusteeship has terminated is protected from liability as if the former trustee  
18 were still a trustee.

19           (5) Comparable protective provisions of other laws relating to commercial  
20 transactions or transfer of securities by fiduciaries prevail over the protection  
21 provided by this section.

22           **SECTION 136.** 701.1013 of the statutes is created to read:

23           **701.1013 Certification of trust.** (1) Instead of furnishing a copy of the trust  
24 instrument to a person other than a beneficiary, the trustee may furnish to the  
25 person a certification of trust containing the following information:

**BILL****SECTION 136**

1           (a) That the trust exists and the date on which the trust instrument was  
2           executed.

3           (b) The identity of the settlor.

4           (c) The identity and address of the currently acting trustee.

5           (d) The powers of the trustee.

6           (e) The revocability or irrevocability of the trust and the identity of any person  
7           holding a power to revoke the trust.

8           (f) The authority of a cotrustee to sign or otherwise authenticate and whether  
9           all cotrustees or less than all cotrustees are required to sign or otherwise  
10           authenticate in order to exercise powers of the trustee.

11           (g) The manner in which title to trust property may be taken.

12           (2) A certification of trust may be signed or otherwise authenticated by any  
13           trustee.

14           (3) A trustee shall include in a certification of trust that the trust has not been  
15           revoked, modified, or amended in any manner that would cause the representations  
16           contained in the certification of trust to be incorrect.

17           (4) A certification of trust does not need to contain the dispositive terms of a  
18           trust.

19           (5) A recipient of a certification of trust may require the trustee to furnish  
20           copies of those excerpts from the original trust instrument and later amendments  
21           that designate the trustee and confer upon the trustee the power to act in the pending  
22           transaction.

23           (6) A person who acts in reliance upon a certification of trust without  
24           knowledge that the representations contained therein are incorrect is not liable to  
25           any person for so acting and may assume without inquiry the existence of the facts

**BILL**

1 contained in the certification. Knowledge of the terms of the trust may not be  
2 inferred solely from the fact that a copy of all or part of the trust instrument is held  
3 by the person relying upon the certification.

4 (7) A person who in good faith enters into a transaction in reliance upon a  
5 certification of trust may enforce the transaction against the trust property as if the  
6 representations contained in the certification were correct.

7 (8) A person making a demand for copies of the trust instrument or excerpts  
8 from the trust instrument, other than those excerpts described in sub. (5), in addition  
9 to a certification of trust is liable for costs, expenses, reasonable attorney fees and  
10 damages if the court determines that the person did not act in good faith in  
11 demanding the copies.

12 (9) This section does not limit the right of a person to obtain a copy of the trust  
13 instrument in a judicial proceeding concerning the trust.

14 **SECTION 137.** 701.105 (title), (1), (2) and (3) of the statutes are renumbered  
15 701.1201 (title), (1), (2) and (3), and 701.1201 (1), (2) and (3), as renumbered, are  
16 amended to read:

17 701.1201 (1) (a) In the administration of any trust ~~which~~ that is a private  
18 foundation, as defined in section 509 of the ~~internal revenue code~~ Internal Revenue  
19 Code, a charitable trust, as ~~defined~~ described in section 4947 (a) (1) of the ~~internal~~  
20 ~~revenue code~~ Internal Revenue Code, or a split-interest trust as ~~defined~~ described  
21 in section 4947 (a) (2) of the ~~internal revenue code~~ Internal Revenue Code, all of the  
22 following acts shall be prohibited:

23 1. Engaging in any act of self-dealing, as defined in section 4941 (d) of the  
24 ~~internal revenue code, which~~ Internal Revenue Code, ~~that~~ would give rise to any

**BILL****SECTION 137**

1 liability for the tax imposed by section 4941 (a) of the ~~internal revenue code~~ Internal  
2 Revenue Code.

3 2. Retaining any excess business holdings, as defined in section 4943 (c) of the  
4 ~~internal revenue code, which~~ Internal Revenue Code, that would give rise to any  
5 liability for the tax imposed by section 4943 (a) of the ~~internal revenue code~~ Internal  
6 Revenue Code.

7 3. Making any investments ~~which~~ that would jeopardize the carrying out of any  
8 of the exempt purposes of the trust, within the meaning of section 4944 of the ~~internal~~  
9 ~~revenue code~~ Internal Revenue Code, so as to give rise to any liability for the tax  
10 imposed by section 4944 (a) of the ~~internal revenue code~~ Internal Revenue Code.

11 4. Making any taxable expenditures, as defined in section 4945 (d) of the  
12 ~~internal revenue code, which~~ Internal Revenue Code, that would give rise to any  
13 liability for the tax imposed by section 4945 (a) of the ~~internal revenue code~~ Internal  
14 Revenue Code.

15 (b) This subsection shall does not apply either to those split-interest trusts or  
16 to amounts thereof ~~which~~ that are not subject to the prohibitions applicable to  
17 private foundations by reason of the provisions of section 4947 of the ~~internal~~  
18 ~~revenue code~~ Internal Revenue Code.

19 (2) In the administration of any trust ~~which~~ that is a private foundation, as  
20 defined in section 509 of the ~~internal revenue code~~ Internal Revenue Code, or ~~which~~  
21 that is a charitable trust, as defined described in section 4947 (a) (1) of the ~~internal~~  
22 ~~revenue code~~ Internal Revenue Code, there shall be distributed, for the purposes  
23 specified in the trust instrument, for each taxable year, amounts at least sufficient  
24 to avoid liability for the tax imposed by section 4942 (a) of the ~~internal revenue code~~  
25 Internal Revenue Code.





**BILL****SECTION 145**

1           701.1123 (1) In this section:

2           (a) “Marital deduction trust” means a trust for which an election to qualify for  
3 a marital deduction under section 2056 (b) (7), 2056A (a) (3), or 2523 (f) of the Internal  
4 Revenue Code has been made or a trust that qualified for the marital deduction  
5 under other provisions of section 2056 or 2523 of the Internal Revenue Code.

6           (b) “Payment” means an amount of money or property received by a trustee that  
7 is any of the following:

8           1. Part of a series, or eligible to be part of a series, of distributions payable over  
9 a fixed number of years or during the life of one or more individuals because of  
10 services rendered or property transferred to the payer in exchange for the future  
11 distributions.

12           2. Distributed from a plan, regardless of the reason for the distribution.

13           (c) “Plan” means a contractual, custodial, trust, or other arrangement that  
14 provides for distributions to a trust. “Plan” includes a private or commercial annuity,  
15 an individual retirement account, a Roth individual retirement account, a qualified  
16 retirement plan such as a pension, profit-sharing, stock-bonus, or stock-ownership  
17 plan, or any nonqualified deferred compensation plan.

18           (e) “Separate account” means an account established or maintained under a  
19 plan under which income, gains, and losses, whether or not realized, from assets  
20 allocated to the account, are credited to or charged against the account without  
21 regard to other income, gains, or losses of the plan.

22           **SECTION 146.** 701.1123 (4) of the statutes is created to read:

23           701.1123 (4) (a) Notwithstanding sub. (3), a trustee of a marital deduction trust  
24 shall determine plan income for an accounting period as if the plan were a trust  
25 subject to this subchapter. If the trustee of a marital deduction trust cannot

**BILL**

1 determine the plan income, the plan income is 4 percent of the total present value  
2 of the trust's income in the plan on the first day of the accounting period, based on  
3 reasonable actuarial assumptions as determined by the trustee of the marital  
4 deduction trust.

5 (b) Notwithstanding subs. (2) and (3), a trustee of a marital deduction trust  
6 shall allocate a payment from a plan to income to the extent of the plan income and  
7 distribute that amount to the surviving spouse. The trustee of the marital deduction  
8 trust shall allocate the balance of the payment to principal. Upon the request of the  
9 surviving spouse, the trustee of a marital deduction trust shall allocate principal to  
10 income to the extent the plan income exceeds payments made from the plan to the  
11 trust during the accounting period.

12 (c) Upon the request of the surviving spouse of the settlor, a trustee of a marital  
13 deduction trust shall demand that a person administering a plan distribute the plan  
14 income to the trust.

15 **SECTION 147.** 701.1126 (title) of the statutes is created to read:

16 **701.1126 (title) Timber.**

17 **SECTION 148.** 701.1134 (3) (c) and (d) and (4) of the statutes are created to read:

18 701.1134 (3) (c) Proportionately from principal and income to the extent that  
19 receipts from the entity are allocated to both income and principal.

20 (d) From principal to the extent that the tax exceeds the total receipts from the  
21 entity.

22 (4) After applying subs. (1) to (3), the trustee shall adjust income or principal  
23 receipts to the extent that the trust's taxes are reduced because the trust receives a  
24 deduction for payments made to a beneficiary.

25 **SECTION 149.** 701.115 of the statutes is repealed.



**BILL**

1 proceedings or prejudice the rights of the parties, the particular provision of this  
2 chapter does not apply to that judicial proceeding and the court shall apply ch. 701,  
3 2011 stats., as the court finds to be necessary to prevent interference with the  
4 effective conduct of the judicial proceeding and to avoid prejudicing the rights of the  
5 parties.

6 **SECTION 155.** 701.13 of the statutes is repealed.

7 **SECTION 156.** 701.14 (title) and (1) of the statutes are repealed.

8 **SECTION 157.** 701.14 (2) of the statutes is renumbered 701.0205 and amended  
9 to read:

10 **701.0205 Notice** <sup>Bald</sup> ~~If notice of a judicial proceeding involving a trust proceeding~~ <sup>\*</sup>  
11 ~~to a~~ an interested person interested in the trust, to the person's representative or  
12 guardian ad litem ~~as provided in s. 701.15~~, or to other persons, is required by law or  
13 deemed necessary by the court, the court shall order such notice to be given as  
14 prescribed in s. 879.05 except that service by publication shall may not be required  
15 unless ordered by the court. The court may order both personal service and service  
16 by publication on designated persons. Proof of service shall be made as provided in  
17 s. 879.07. ~~Persons interested in the trust~~ Interested persons, on behalf of  
18 themselves, or their representatives or guardians ad litem ~~as provided in s. 701.15~~,  
19 on behalf of ~~themselves~~ the representative or guardian ad litem and those whom they  
20 represent the interested person the representative or guardian ad litem represents,  
21 may in writing waive service of notice and consent to the hearing of any matter  
22 without notice. Waiver of notice or an appearance by any interested person  
23 ~~interested in the trust~~ or the interested person's representative or guardian ad litem  
24 ~~as provided in s. 701.15~~ is equivalent to timely service of notice.

**BILL****SECTION 158**

1           **SECTION 158.** 701.14 (3) of the statutes is renumbered 701.0206 and amended  
2 to read:

3           **701.0206 Attorney for person in military service.** At the time of filing a *ok Bold*  
4 petition for a ~~trust~~ judicial proceeding, involving a trust, the petitioner shall file an  
5 affidavit ~~shall be filed~~ setting forth the name of any interested person interested in  
6 the ~~proceeding~~ who is actively engaged in the military service of the United States.  
7 Whenever it appears by the affidavit or otherwise that any person in the active  
8 military service of the United States is an interested in any trust proceeding person  
9 and is not represented by an attorney, or by an attorney-in-fact who is duly  
10 authorized to act on the interested person's behalf in the matter, the court shall  
11 appoint an attorney to represent the interested person and protect the person's  
12 interest.

13           **SECTION 159.** 701.14 (4) of the statutes is repealed.

14           **SECTION 160.** 701.15 of the statutes is repealed.

15           **SECTION 161.** 701.16 (title), (1), (2), (3), (4) (title) and (a) to (c), (5) and (6) of the  
16 statutes are repealed.

17           **SECTION 162.** 701.16 (4) (d) of the statutes is renumbered 879.47 (2) and  
18 amended to read:

19           879.47 (2) ~~Notwithstanding s. 879.47, trustees~~ Trustees and cotrustees may  
20 submit to courts accounts in the format that they normally use for accounts  
21 submitted to beneficiaries under this subsection, if all of the information required by  
22 the court is included.

23           **SECTION 163.** 701.17 of the statutes is repealed.

24           **SECTION 164.** 701.18 of the statutes is repealed.

25           **SECTION 165.** 701.19 of the statutes is repealed.

**BILL**

1           **SECTION 166.** 701.20 (title) of the statutes is repealed.

2           **SECTION 167.** 701.20 (2) (intro.) of the statutes is repealed.

3           **SECTION 168.** 701.20 (2) (a) of the statutes is renumbered 701.1102 (1).

4           **SECTION 169.** 701.20 (2) (b) of the statutes is renumbered 701.1102 (1m) and  
5 amended to read:

6           701.1102 (1m) “Beneficiary” Notwithstanding s. 701.0103 (3), “beneficiary”  
7 means a person who has a beneficial interest in a trust or an estate and includes, in  
8 the case of a decedent’s estate, an heir, a legatee, and a devisee and, in the case of a  
9 trust, an income beneficiary and a remainder beneficiary.

10          **SECTION 170.** 701.20 (2) (c) of the statutes is renumbered 701.1102 (2).

11          **SECTION 171.** 701.20 (2) (d) of the statutes is renumbered 701.1102 (3) and  
12 amended to read:

13          701.1102 (3) “Income” means money or property that a fiduciary receives as  
14 current return from a principal asset. “Income” includes a portion of receipts from  
15 a sale, exchange, or liquidation of a principal asset, to the extent provided in ~~subs.~~  
16 ~~(10)~~ ss. 701.1115 to (24) 701.1129.

17          **SECTION 172.** 701.20 (2) (e) of the statutes is renumbered 701.1102 (4).

18          **SECTION 173.** 701.20 (2) (f) of the statutes is renumbered 701.1102 (5).

19          **SECTION 174.** 701.20 (2) (g) of the statutes is renumbered 701.1102 (6).

20          **SECTION 175.** 701.20 (2) (h) of the statutes is renumbered 701.1102 (7) and  
21 amended to read:

22          701.1102 (7) “Net income” means the total receipts allocated to income during  
23 an accounting period, minus the disbursements made from income during the period,  
24 plus or minus transfers under this ~~section~~ subchapter to or from income during the  
25 period.

**BILL****SECTION 176**

1           **SECTION 176.** 701.20 (2) (i) of the statutes is repealed.

2           **SECTION 177.** 701.20 (2) (j) of the statutes is renumbered 701.1102 (8).

3           **SECTION 178.** 701.20 (2) (k) of the statutes is renumbered 701.1102 (9) and  
4 amended to read:

5           701.1102 (9) “Remainder beneficiary” means a person entitled to receive  
6 principal when an income interest ends who is a beneficiary under s. 701.0103 (21)  
7 (b).

8           **SECTION 179.** 701.20 (2) (L), (m) and (n) of the statutes are repealed.

9           **SECTION 180.** 701.20 (3) of the statutes is renumbered 701.1103, and 701.1103  
10 (1) and (2), as renumbered, are amended to read:

11           701.1103 (1) In allocating receipts and disbursements to income or principal  
12 or between income and principal, and with respect to any matter within the scope of  
13 ~~subs. (5)~~ ss. 701.1110 to (9) 701.1114, a fiduciary:

14           (a) Shall first administer a trust or estate in accordance with the terms of the  
15 trust or the will, even if there is a different provision in this ~~section~~ subchapter.

16           (b) May administer a trust or estate by the exercise of a discretionary power  
17 of administration given to the fiduciary by the terms of the trust or the will, even if  
18 the exercise of the power produces a result different from a result required or  
19 permitted by this ~~section~~ subchapter.

20           (c) Shall administer a trust or estate in accordance with this ~~section~~ subchapter  
21 if the terms of the trust or the will do not contain a different provision or do not give  
22 the fiduciary a discretionary power of administration.

23           (d) Shall add a receipt or charge a disbursement to principal to the extent that  
24 the terms of the trust and this ~~section~~ subchapter do not provide a rule for allocating  
25 the receipt or disbursement to principal or income or between principal and income.



**BILL**

1           (2) In exercising the power to adjust under ~~sub. (4) (a)~~ s. 701.1104 (1) or a  
2 discretionary power of administration regarding a matter within the scope of this  
3 section ~~subchapter~~, whether granted by the terms of a trust, a will, or this ~~section~~  
4 ~~subchapter~~, a fiduciary shall administer a trust or estate impartially, based on what  
5 is fair and reasonable to all of the beneficiaries, except to the extent that the terms  
6 of the trust or the will clearly manifest an intention that the fiduciary shall or may  
7 favor one or more of the beneficiaries. A determination in accordance with this  
8 ~~section subchapter~~ is presumed to be fair and reasonable to all of the beneficiaries.

9           **SECTION 181.** 701.20 (4) of the statutes is renumbered 701.1104, and 701.1104  
10 (1), (2) (intro.), (3) (h) and (i), (4), (5) and (6) as renumbered, are amended to read:

11           701.1104 (1) A trustee may adjust between principal and income to the extent  
12 the trustee considers necessary if the trustee invests and manages trust assets as a  
13 prudent investor, the terms of the trust describe the amount that may or must be  
14 distributed to a beneficiary by referring to the trust's income, and the trustee  
15 determines, after applying the rules in ~~sub. (3) (a)~~ s. 701.1103 (1), that the trustee  
16 is unable to comply with ~~sub. (3) (b)~~ s. 701.1103 (2).

17           (2) (intro.) In deciding whether and to what extent to exercise the power  
18 conferred by ~~par. (a)~~ sub. (1), a trustee shall consider all factors relevant to the trust  
19 and its beneficiaries, including the following factors to the extent they are relevant:

20           (3) (h) If the trust has been converted under ~~sub. (4g)~~ s. 701.1106 to a unitrust.

21           (i) If the trust is an express unitrust, as defined in ~~sub. (4j) (a)~~ s. 701.1107 (1).

22           (4) If ~~par. (e) 5., 6.~~ sub. (3) (e), (f), or 7. (g) applies to a trustee and there is more  
23 than one trustee, a cotrustee to whom the provision does not apply may make the  
24 adjustment unless the terms of the trust do not permit the exercise of the power by  
25 that cotrustee.

**BILL****SECTION 181**

1           (5) A trustee may release the entire power conferred by ~~par. (a)~~ sub. (1) or may  
2 release only the power to adjust from income to principal or the power to adjust from  
3 principal to income if the trustee is uncertain about whether possessing or exercising  
4 the power will cause a result described in ~~par. (e) 1.~~ sub. (3) (a) to ~~6. (f)~~ or if the trustee  
5 determines that possessing or exercising the power will or may deprive the trust of  
6 a tax benefit or impose a tax burden not described in ~~par. (e)~~ sub. (3). The release may  
7 be permanent or for a specified period, including a period measured by the life of an  
8 individual.

9           (6) Terms of a trust that limit the power of a trustee to make an adjustment  
10 between principal and income do not affect the application of this subsection unless  
11 it is clear from the terms of the trust that the terms are intended to deny the trustee  
12 the power of adjustment conferred by ~~par. (a)~~ sub. (1).

13           **SECTION 182.** 701.20 (4c) (title) of the statutes is renumbered 701.1105 (title).

14           **SECTION 183.** 701.20 (4c) (b) (intro.) of the statutes is renumbered 701.1105 (1)  
15 (intro.) and amended to read:

16           701.1105 (1) (intro.) A trustee may, but is not required to, obtain approval of  
17 a proposed action under ~~sub. (4) (a)~~ s. 701.1104 (1) by providing a written notice that  
18 complies with all of the following:

19           **SECTION 184.** 701.20 (4c) (b) 1. of the statutes is renumbered 701.1105 (1) (a).

20           **SECTION 185.** 701.20 (4c) (b) 2. of the statutes is renumbered 701.1105 (1) (b).

21           **SECTION 186.** 701.20 (4c) (b) 3. (intro.) of the statutes is renumbered 701.1105  
22 (1) (c) and amended to read:

23           701.1105 (1) (c) Is given to all sui-juris qualified beneficiaries ~~who are any of~~  
24 ~~the following:~~

25           **SECTION 187.** 701.20 (4c) (b) 3. a., b. and c. of the statutes are repealed.

**BILL**

1           **SECTION 188.** 701.20 (4c) (b) 4. of the statutes is renumbered 701.1105 (1) (d),  
2 and 701.1105 (1) (d) (intro.) and 4., as renumbered, are amended to read:

3           701.1105 (1) (d) (intro.) States that it is given in accordance with this ~~subsection~~  
4 section and discloses the following information:

5           4. The effective date of the proposed action if no objection is received from any  
6 beneficiary within the time specified in subd. ~~4. e. 3.~~

7           **SECTION 189.** 701.20 (4c) (c) of the statutes is renumbered 701.1105 (2) and  
8 amended to read:

9           701.1105 (2) If a trustee gives notice of a proposed action under this ~~subsection~~  
10 section, the trustee is not required to give notice to a sui-juris qualified beneficiary  
11 who consents to the proposed action in writing at any time before or after the  
12 proposed action is taken.

13           **SECTION 190.** 701.20 (4c) (d) of the statutes is renumbered 701.1105 (3) and  
14 amended to read:

15           701.1105 (3) A sui-juris qualified beneficiary may object to the proposed action  
16 by giving a written objection to the trustee within the time specified in the notice  
17 under ~~par. (b) 4. e. sub. (1) (d) 3.~~

18           **SECTION 191.** 701.20 (4c) (e) of the statutes is renumbered 701.1105 (4) and  
19 amended to read:

20           701.1105 (4) A trustee may decide not to take a proposed action after the  
21 trustee receives a written objection to the proposed action or at any other time for any  
22 other reason. In that case, the trustee shall give written notice to the sui-juris  
23 qualified beneficiaries of the decision not to take the proposed action.

24           **SECTION 192.** 701.20 (4c) (f) of the statutes is renumbered 701.1105 (5) and  
25 amended to read:

**BILL****SECTION 192**

1           701.1105 (5) If a trustee receives a written objection to a proposed action within  
2 the time specified in the notice under ~~par. (b) 4. e. sub. (1) (d) 3.~~, either the trustee  
3 or the qualified beneficiary making the written objection may petition the court to  
4 have the proposed action approved, modified, or prohibited. In the court proceeding,  
5 the qualified beneficiary objecting to the proposed action has the burden of proving  
6 that the proposed action should be modified or prohibited. A qualified beneficiary  
7 who did not make the written objection may oppose the proposed action in the court  
8 proceeding.

9           **SECTION 193.** 701.20 (4c) (g) of the statutes is renumbered 701.1105 (6) and  
10 amended to read:

11           701.1105 (6) For purposes of this ~~subsection~~ section, a proposed action under  
12 ~~sub. (4) s. 701.1104~~ includes a course of action or a decision not to take action under  
13 ~~sub. (4) s. 701.1104.~~

14           **SECTION 194.** 701.20 (4g) (title) of the statutes is renumbered 701.1106 (title).

15           **SECTION 195.** 701.20 (4g) (a) (intro.) of the statutes is renumbered 701.1106 (1)  
16 (intro.) and amended to read:

17           701.1106 (1) (intro.) Subject to ~~par. (d)~~ sub. (4), a trust may be converted to a  
18 unitrust in any of the following ways:

19           **SECTION 196.** 701.20 (4g) (a) 1. (intro.) of the statutes is renumbered 701.1106  
20 (1) (a) (intro.) and amended to read:

21           701.1106 (1) (a) (intro.) By the trustee, at his or her own discretion or at the  
22 request of a qualified beneficiary, if all of the following apply:

23           **SECTION 197.** 701.20 (4g) (a) 1. a. of the statutes is renumbered 701.1106 (1)  
24 (a) 1.

**BILL**

1           **SECTION 198.** 701.20 (4g) (a) 1. b. of the statutes is renumbered 701.1106 (1)

2           (a) 2. and amended to read:

3           701.1106 (1) (a) 2. The trustee provides notice in the same manner as provided  
4           in ~~sub. (4e) (b)~~ s. 701.1105 (1) of the trustee's intention to convert the trust to a  
5           unitrust, and the notice advises how the unitrust will operate, including the fixed  
6           percentage under ~~par. (e) 1. sub. (3) (a)~~ and any other initial determinations under  
7           ~~par. (e) 4. sub. (3) (d)~~ that the trustee intends to follow.

8           **SECTION 199.** 701.20 (4g) (a) 1. c. of the statutes is repealed.

9           **SECTION 200.** 701.20 (4g) (a) 1. d. of the statutes is renumbered 701.1106 (1)  
10          (a) 3. and amended to read:

11          701.1106 (1) (a) 3. Every ~~sui-juris~~ qualified beneficiary consents to the  
12          conversion to a unitrust in a writing delivered to the trustee.

13          **SECTION 201.** 701.20 (4g) (a) 1. e. of the statutes is renumbered 701.1106 (1) (a)  
14          4.

15          **SECTION 202.** 701.20 (4g) (a) 2. (intro.) of the statutes is renumbered 701.1106  
16          (1) (b) (intro.) and amended to read:

17          701.1106 (1) (b) (intro.) By a court on the petition of the trustee or a qualified  
18          beneficiary, if all of the following apply:

19          **SECTION 203.** 701.20 (4g) (a) 2. a. of the statutes is renumbered 701.1106 (1)  
20          (b) 1. and amended to read:

21          701.1106 (1) (b) 1. The trustee or qualified beneficiary has provided notice  
22          under ~~sub. (4e) s. 701.1105~~ of the intention to request the court to convert the trust  
23          to a unitrust, and the notice advises how the unitrust will operate, including the fixed  
24          percentage under ~~par. (e) 1. sub. (3) (a)~~ and any other initial determinations under  
25          ~~par. (e) 4. sub. (3) (d)~~ that will be requested.

**BILL****SECTION 204**

1           **SECTION 204.** 701.20 (4g) (a) 2. b. of the statutes is renumbered 701.1106 (1)  
2 (b) 2.

3           **SECTION 205.** 701.20 (4g) (b), (c), (d) and (e) of the statutes are renumbered  
4 701.1106 (2), (3), (4) and (5), and 701.1106 (2), (3) (a), (b), (c), (d) 7., (f) (intro.) and 2.,  
5 (g) (intro.), 1. and 3. and (h), (4) (a) (intro.) and 1. and (b) and (5), as renumbered, are  
6 amended to read:

7           701.1106 (2) In deciding whether to convert the trust to a unitrust under par.  
8 ~~(a) 1. sub. (1) (a) and in determining the fixed percentage under sub. (3) (b) 1.,~~ the  
9 trustee shall consider all relevant factors under ~~sub. (4) (b) 1. to 9. s. 701.1104 (2) (a)~~  
10 to (i).

11           (3) (a) If a trust is converted to a unitrust under this ~~subsection~~ section by the  
12 trustee or a court, notwithstanding ~~sub. (3) (a) 1. s. 701.1103 (1) (a) and 4. (d) and~~  
13 ~~s. 701.21~~ 701.1136 (4) the trustee shall make distributions in accordance with the  
14 ~~creating trust instrument~~, except that any reference in the ~~creating trust instrument~~  
15 to “income” means a fixed percentage of the net fair market value of the unitrust’s  
16 assets, whether such assets otherwise would be considered income or principal under  
17 this ~~section~~ subchapter, averaged over a preceding period determined by the trustee,  
18 which is at least 3 years but not more than 5 years, or the period since the original  
19 trust was created, whichever is less.

20           (b) 1. Subject to subd. 2. b., if the trust is converted to a unitrust under ~~par. (a)~~  
21 ~~1. sub. (1) (a),~~ the trustee shall determine the fixed percentage to be applied under  
22 ~~subd. 1. par. (a),~~ and the notice under ~~par. (a) 1. b. sub. (1) (a) 2.~~ must state the fixed  
23 percentage. If the trust is converted to a unitrust under ~~par. (a) 2. sub. (1) (b),~~ the  
24 court shall determine the fixed percentage to be applied under ~~subd. 1. par. (a).~~

**BILL**

1           2. Any fixed percentage under ~~subd. 1. par. (a)~~ that is determined by a trustee  
2 may not be less than 3 percent nor more than 5 percent.

3           (c) After a trust is converted to a unitrust, the trustee may, subject to the notice  
4 requirement under ~~sub. (4e) s. 701.1105~~ and with the consent of every ~~sui-juris~~  
5 qualified beneficiary, do any of the following:

6           1. Convert the unitrust back to the original trust under the creating trust  
7 instrument.

8           2. Change the fixed percentage under ~~subd. 1. par. (a)~~, subject to ~~subd. 2. b. par.~~  
9 (b) 2.

10          (d) 7. The averaging under ~~subd. 1. par. (a)~~ to a different preceding period,  
11 which is at least 3 years but not more than 5 years.

12          (f) (intro.) Unless otherwise provided by the creating trust instrument, the  
13 unitrust distribution is considered to have been paid from the following sources in  
14 the order of priority:

15           2. Ordinary income for federal income tax purposes that is not net income  
16 under ~~subd. 6. a. 1.~~

17          (g) (intro.) A court may, on the petition of the trustee or a qualified beneficiary,  
18 do any of the following:

19           1. Change the fixed percentage that was determined under ~~subd. 2. par. (b)~~ by  
20 the trustee or by a prior court order.

21           3. Average the valuation of the unitrust's assets over a period other than that  
22 specified in ~~subd. 1. par. (a)~~.

23          (h) Conversion to a unitrust under this ~~subsection~~ section does not affect a  
24 provision in the creating trust instrument that directs or authorizes the trustee to

**BILL****SECTION 205**

1 distribute principal or that authorizes a beneficiary to withdraw a portion or all of  
2 the principal.

3 (4) (a) (intro.) A trust may not be converted under this ~~subsection~~ section to a  
4 unitrust if any of the following applies:

5 1. The ~~creating~~ trust instrument specifically prohibits the conversion.

6 (b) Notwithstanding ~~subd. 1. par. (a)~~, if a trust may not be converted to a  
7 unitrust solely because ~~subd. 1. g. par. (a) 7.~~ applies to a trustee, a cotrustee, if any,  
8 to whom ~~subd. 1. g. par. (a) 7.~~ does not apply may convert the trust to a unitrust under  
9 ~~par. (a) 1. sub. (1) (a)~~, unless prohibited by the creating instrument, or a court may  
10 convert the trust to a unitrust under ~~par. (a) 2. sub. (1) (b)~~ on the petition of a trustee  
11 or qualified beneficiary.

12 (5) A trustee may release the power conferred by ~~par. (a) 1. sub. (1) (a)~~ if the  
13 trustee is uncertain about whether possessing or exercising the power will cause a  
14 result described in ~~par. (d) 1. b. sub. (4) (a) 2. to f. 6.~~ or if the trustee determines that  
15 possessing or exercising the power will or may deprive the trust of a tax benefit or  
16 impose a tax burden not described in ~~par. (d) 1. sub. (4) (a)~~. The release may be  
17 permanent or for a specified period, including a period measured by the life of an  
18 individual.

19 **SECTION 206.** 701.20 (4j) of the statutes is renumbered 701.1107, and 701.1107  
20 (1) and (2) (a), (e), (f) 2., (g) and (h), as renumbered, are amended to read:

21 701.1107 (1) In this ~~subsection~~ section, “express unitrust” means any trust that  
22 by its governing trust instrument requires the distribution at least annually of a  
23 unitrust amount equal to a fixed percentage of the net fair market value of the trust’s  
24 assets, valued at least annually, other than a trust solely for charitable purposes or



**BILL**

1 a charitable split-interest trust under section 664 (d) or 170 (f) (2) (B) of the Internal  
2 Revenue Code.

3 (2) (a) To the extent not otherwise provided for in the governing trust  
4 instrument, the unitrust amount of not less than 3 percent nor more than 5 percent  
5 may be determined by reference to the net fair market value of the trust's assets  
6 averaged over a preceding period determined by the trustee, which is at least 3 years  
7 but not more than 5 years.

8 (e) The ~~governing trust~~ instrument may grant discretion to the trustee to adopt  
9 a consistent practice of treating capital gains as part of the unitrust distribution, to  
10 the extent that the unitrust distribution exceeds the income determined as if the  
11 trust were not a unitrust, or it may specify the ordering of such classes of income.

12 (f) 2. Ordinary income for federal income tax purposes that is not net income  
13 under subd. ~~6. a. 1.~~

14 (g) The trust ~~document~~ instrument may provide that assets used by the trust  
15 beneficiary, such as a residence or tangible personal property, may be excluded from  
16 the net fair market value for computing the unitrust amount. Such use may be  
17 considered equivalent to the income or unitrust amount.

18 (h) In the absence of contrary provisions in the ~~governing document~~ trust  
19 instrument of an express unitrust, the provisions of ~~sub. (4g) (e) 1., 4. s. 701.1106 (3)~~  
20 (a), (d), and 5. (e) apply.

21 **SECTION 207.** 701.20 (4k) of the statutes is renumbered 701.1108 and amended  
22 to read:

23 **701.1108 Power to treat capital gains as part of a distribution.** Unless  
24 prohibited by the ~~governing instrument~~ will or trust instrument, a trustee fiduciary  
25 may cause gains from the sale or exchange of estate or trust assets property, as

**BILL****SECTION 207**

1 determined for federal income tax purposes, to be taxed for federal income tax  
2 purposes as part of a distribution of income that has been increased by an adjustment  
3 from principal to income under ~~sub. (4) s. 701.1104~~, of a unitrust distribution, of a  
4 fixed annuity distribution, or of a principal distribution to a beneficiary.

5 **SECTION 208.** 701.20 (4m) (title) of the statutes is renumbered 701.1109 (title).

6 **SECTION 209.** 701.20 (4m) (a) of the statutes is renumbered 701.1109 (1) and  
7 amended to read:

8 701.1109 (1) Nothing in this ~~section~~ subchapter creates a duty to make an  
9 adjustment under ~~sub. (4) s. 701.1104~~ or to convert a trust to a unitrust under ~~sub.~~  
10 ~~(4g) s. 701.1106~~. Unless it determines that the decision to make an adjustment or  
11 to convert to a unitrust was an abuse of the fiduciary's discretion, a court may not  
12 grant relief from any decision a fiduciary makes regarding the exercise of a  
13 discretionary power conferred by ~~sub. (4) s. 701.1104~~ or ~~(4g) 701.1106~~.

14 **SECTION 210.** 701.20 (4m) (am) of the statutes is renumbered 701.1109 (2) and  
15 amended to read:

16 701.1109 (2) An action taken under ~~sub. (4) s. 701.1104~~ or ~~(4g) 701.1106~~ is not  
17 an abuse of a fiduciary's discretion if the fiduciary gave written notice of the proposed  
18 action under ~~sub. (4e) s. 701.1105~~ and did not receive a timely written objection to  
19 the notice. It is not an abuse of discretion not to exercise the power to adjust under  
20 ~~sub. (4) s. 701.1104~~ or to convert under ~~sub. (4g) s. 701.1106~~.

21 **SECTION 211.** 701.20 (4m) (b) of the statutes is renumbered 701.1109 (3).

22 **SECTION 212.** 701.20 (4m) (c) of the statutes is renumbered 701.1109 (4), and  
23 701.1109 (4) (c), as renumbered, is amended to read:

24 701.1109 (4) (c) To the extent that the court is unable, after applying ~~subds. 1-~~  
25 pars. (a) and 2. (b), to place the beneficiaries, the trust, or both in the positions that

**BILL**

1 they would have occupied had the discretion not been abused, the court may order  
2 the fiduciary to pay an appropriate amount from its own funds to one or more of the  
3 beneficiaries, the trust, or both.

4 **SECTION 213.** 701.20 (4m) (d) of the statutes is renumbered 701.1109 (5).

5 **SECTION 214.** 701.20 (5) of the statutes is renumbered 701.1110, and 701.1110  
6 (1), (2) (intro.), (3), (4) and (5), as renumbered, are amended to read:

7 701.1110 (1) A fiduciary of an estate or of a terminating income interest shall  
8 determine the amount of net income and net principal receipts received from  
9 property specifically given to a beneficiary under the rules in ~~subs. (7)~~ ss. 701.1112  
10 ~~to (30) 701.1135~~ that apply to trustees and the rules in ~~par. (e) sub. (5)~~. The fiduciary  
11 shall distribute the net income and net principal receipts to the beneficiary who is  
12 to receive the specific property.

13 (2) (intro.) A fiduciary shall determine the remaining net income of a decedent's  
14 estate or a terminating income interest under the rules in ~~subs. (7)~~ ss. 701.1112 to  
15 ~~(30) 701.1135~~ that apply to trustees and by:

16 (3) A fiduciary shall distribute to a beneficiary, including a trustee, who  
17 receives a pecuniary amount not determined by a pecuniary formula related to a  
18 transfer tax interest at the legal rate set forth in s. 138.04 on any unpaid portion of  
19 the pecuniary amount for the period commencing one year after the decedent's death  
20 or after the income interest in the trust ends. The interest under this ~~paragraph~~  
21 subsection shall be distributed from net income determined under ~~par. (b) sub. (2)~~ or  
22 from principal to the extent that net income is insufficient. For purposes of this  
23 ~~paragraph subsection~~, the deferred marital property elective share amount elected  
24 by a surviving spouse under s. 861.02 (1) is a bequest of a specific pecuniary amount  
25 ~~of money~~ not determined by a pecuniary formula related to a transfer tax.

**BILL****SECTION 214**

1           (4) A fiduciary shall distribute the net income remaining after distributions  
2 required by ~~par. (e)~~ under subs. (1) to (3) in the manner described in ~~sub. (6)~~ s.  
3 701.1111 to all other beneficiaries, including a beneficiary who receives a pecuniary  
4 amount determined by a pecuniary formula related to a transfer tax.

5           (5) A fiduciary may not reduce principal or income receipts from property  
6 described in ~~par. (a)~~ sub. (1) because of a payment described in ~~sub. (25)~~ s. 701.1130  
7 or ~~(26)~~ 701.1131 to the extent that the will, the terms of the trust, or applicable law  
8 requires the fiduciary to make the payment from assets other than the property or  
9 to the extent that the fiduciary recovers or expects to recover the payment from a 3rd  
10 party. The net income and principal receipts from the property are determined by  
11 including all of the amounts the fiduciary receives or pays with respect to the  
12 property, whether those amounts accrued or became due before, on, or after the date  
13 of a decedent's death or an income interest's terminating event, and by making a  
14 reasonable provision for amounts that the fiduciary believes the estate or  
15 terminating income interest may become obligated to pay after the property is  
16 distributed.

17           **SECTION 215.** 701.20 (6) of the statutes is renumbered 701.1111, and 701.1111  
18 (1), (2) (d) and (4), as renumbered, are amended to read:

19           701.1111 (1) Each beneficiary described in ~~sub. (5)-(d)~~ s. 701.1110 (4) is entitled  
20 to receive a portion of the net income equal to the beneficiary's fractional interest in  
21 undistributed principal assets, using values as of the distribution date. If a fiduciary  
22 makes more than one distribution of assets to beneficiaries to whom this ~~subsection~~  
23 section applies, each beneficiary, including one who does not receive part of the  
24 distribution, is entitled, as of each distribution date, to the net income the fiduciary

**BILL**

1 has received after the date of death or terminating event or earlier distribution date  
2 but has not distributed as of the current distribution date.

3 (2) (d) The distribution date for purposes of this ~~subsection~~ section may be the  
4 date as of which the fiduciary calculates the value of the assets if that date is  
5 reasonably near the date on which assets are actually distributed.

6 (4) A trustee may apply the rules in this ~~subsection~~ section, to the extent that  
7 the trustee considers it appropriate, to net gain or loss realized after the date of death  
8 or terminating event or earlier distribution date from the disposition of a principal  
9 asset if this ~~subsection~~ section applies to the income from the asset.

10 **SECTION 216.** 701.20 (7) of the statutes is renumbered 701.1112, and 701.1112  
11 (3), as renumbered, is amended to read:

12 701.1112 (3) An asset becomes subject to a successive income interest on the  
13 day after the preceding income interest ends, as determined under ~~par. (d)~~ sub. (4),  
14 even if there is an intervening period of administration to wind up the preceding  
15 income interest.

16 **SECTION 217.** 701.20 (8) of the statutes is renumbered 701.1113, and 701.1113  
17 (1) and (3), as renumbered, are amended to read:

18 701.1113 (1) A trustee shall allocate to principal an income receipt or  
19 disbursement other than one to which ~~sub. (5) (a)~~ s. 701.1110 (1) applies if its due date  
20 occurs before a decedent dies in the case of an estate or before an income interest  
21 begins in the case of a trust or successive income interest.

22 (3) An item of income or an obligation is due on the date the payer is required  
23 to make a payment. If a payment date is not stated, there is no due date for the  
24 purposes of this section. Distributions to shareholders or other owners from an  
25 entity, as defined in ~~sub. (10)~~ s. 701.1115, are due on the date fixed by the entity for

**BILL****SECTION 217**

1 determining who is entitled to receive the distribution or, if no date is fixed, on the  
2 declaration date for the distribution. A due date is periodic for receipts or  
3 disbursements that must be paid at regular intervals under a lease or an obligation  
4 to pay interest or if an entity customarily makes distributions at regular intervals.

5 **SECTION 218.** 701.20 (9) (a) of the statutes is renumbered 701.1114, and  
6 701.1114 (1), as renumbered, is amended to read:

7 **701.1114 (1)** In this ~~subsection~~ section, “undistributed income” means net  
8 income received before the date on which an income interest ends. “Undistributed  
9 income” does not include an item of income or expense that is due or accrued or net  
10 income that has been added or is required to be added to principal under the terms  
11 of the trust.

12 **SECTION 219.** 701.20 (10) of the statutes is renumbered 701.1115, and 701.1115  
13 (1), (2) and (5), as renumbered, is amended to read:

14 **701.1115 (1)** In this ~~subsection~~ section, “entity” means a corporation,  
15 partnership, limited liability company, regulated investment company, real estate  
16 investment trust, common trust fund, or any other organization in which a trustee  
17 has an interest other than a trust or estate to which ~~sub. (11) s. 701.1116~~ applies, a  
18 business or activity to which ~~sub. (12) s. 701.1117~~ applies, or an asset-backed  
19 security to which ~~sub. (24) s. 701.1129~~ applies.

20 **(2)** Except as otherwise provided in this ~~subsection~~ section, a trustee shall  
21 allocate to income money received from an entity.

22 **(5)** Money is not received in partial liquidation, nor may it be taken into account  
23 under ~~par. (d) 2. sub. (4) (b)~~, to the extent that it does not exceed the amount of income  
24 tax that a trustee or beneficiary must pay on taxable income of the entity that  
25 distributes the money.

**BILL**

1           **SECTION 220.** 701.20 (11) of the statutes is renumbered 701.1116 and amended  
2 to read:

3           **701.1116 Distribution from trust or estate.** A trustee shall allocate to  
4 income an amount received as a distribution of income from a trust or an estate in  
5 which the trust has an interest other than a purchased interest, and shall allocate  
6 to principal an amount received as a distribution of principal from such a trust or  
7 estate. If a trustee purchases an interest in a trust that is an investment entity, or  
8 a decedent or donor transfers an interest in such a trust to a trustee, ~~sub. (10) s.~~  
9 701.1115 or ~~(24) 701.1129~~ applies to a receipt from the trust.

10           **SECTION 221.** 701.20 (12) of the statutes is renumbered 701.1117 and 701.1117  
11 (3) (g), as renumbered, is amended to read:

12           701.1117 (3) (g) Activities to which ~~sub. (23) s. 701.1128~~ applies.

13           **SECTION 222.** 701.20 (13) of the statutes is renumbered 701.1118, and 701.1118  
14 (1), (2), (3) and (6), as renumbered, are amended to read:

15           701.1118 (1) To the extent not allocated to income under this section  
16 subchapter, assets received from a transferor during the transferor's lifetime, a  
17 decedent's estate, a trust with a terminating income interest, or a payer under a  
18 contract naming the trust or its trustee as beneficiary.

19           (2) Money or other property received from the sale, exchange, liquidation, or  
20 change in form of a principal asset, including realized profit, subject to ~~subs. (10) ss.~~  
21 701.1115 to ~~(24) 701.1129~~.

22           (3) Amounts recovered from 3rd parties to reimburse the trust because of  
23 disbursements described in ~~sub. (26) (a) 7. s. 701.1131 (1) (g)~~ or for other reasons to  
24 the extent not based on the loss of income.

25           (6) Other receipts as provided in ~~subs. (17) ss. 701.1122~~ to ~~(24) 701.1129~~.

**BILL****SECTION 223**

1           **SECTION 223.** 701.20 (14) of the statutes is renumbered 701.1119 and amended  
2 to read:

3           **701.1119 Rental property.** To the extent that a trustee accounts for receipts  
4 from rental property in accordance with this ~~subsection~~ section, the trustee shall  
5 allocate to income an amount received as rent of real or personal property, including  
6 an amount received for cancellation or renewal of a lease. An amount received as a  
7 refundable deposit, including a security deposit or a deposit that is to be applied as  
8 rent for future periods, must be added to principal and held subject to the terms of  
9 the lease and is not available for distribution to a beneficiary until the trustee's  
10 contractual obligations have been satisfied with respect to that amount.

11           **SECTION 224.** 701.20 (15) of the statutes is renumbered 701.1120, and 701.1120  
12 (3), as renumbered, is amended to read:

13           701.1120 (3) This ~~subsection~~ section does not apply to an obligation to which  
14 ~~sub. (18), (19), (20), (21), (23) s. 701.1123, 701.1124, 701.1125, 701.1126, 701.1128, or~~  
15 ~~(24)~~ 701.1129 applies.

16           **SECTION 225.** 701.20 (16) of the statutes is renumbered 701.1121 and amended  
17 to read:

18           **701.1121 Insurance policies and similar contracts.** (1) Except as  
19 provided in ~~par. (b)~~ sub. (2), a trustee shall allocate to principal the proceeds of a life  
20 insurance policy or other contract in which the trust or its trustee is named as  
21 beneficiary, including a contract that insures the trust or its trustee against loss for  
22 damage to, destruction of, or loss of title to, a trust asset. The trustee shall allocate  
23 dividends on an insurance policy to income if the premiums on the policy are paid  
24 from income, and to principal if the premiums are paid from principal.



**BILL**

1           (2) A trustee shall allocate to income proceeds of a contract that insures the  
2 trustee against loss of occupancy or other use by an income beneficiary, loss of  
3 income, or, subject to ~~sub. (12)~~ s. 701.1117, loss of profits from a business.

4           (3) This ~~subsection~~ section does not apply to a contract to which ~~sub. (18)~~ s.  
5 701.1123 applies.

6           **SECTION 226.** 701.20 (17) of the statutes is renumbered 701.1122, and 701.1122  
7 (intro.), as renumbered, is amended to read:

8           **701.1122 Insubstantial allocations not required.** (intro.) If a trustee  
9 determines that an allocation between principal and income required by ~~sub. (15) (b),~~  
10 ~~(18), (19), (20), (21)~~ s. 701.1120 (2), 701.1123, 701.1124, 701.1125, 701.1126, or (24)  
11 701.1129 is insubstantial, the trustee may allocate the entire amount to principal  
12 unless one of the circumstances described in ~~sub. (4) (e)~~ s. 701.1104 (3) applies to the  
13 allocation. This power may be exercised by a cotrustee in the circumstances  
14 described in ~~sub. (4) (d)~~ s. 701.1104 (4) and may be released for the reasons and in  
15 the manner described in ~~sub. (4) (e)~~ s. 701.1104 (5). An allocation is presumed to be  
16 insubstantial if:

17           **SECTION 227.** 701.20 (18) (title) of the statutes is renumbered 701.1123 (title).

18           **SECTION 228.** 701.20 (18) (a) of the statutes is repealed.

19           **SECTION 229.** 701.20 (18) (b) of the statutes is renumbered 701.1123 (2) and  
20 amended to read:

21           701.1123 (2) To the extent that a payment is characterized as interest or, a  
22 dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate  
23 it the payment to income. The trustee shall allocate to principal the balance of the  
24 payment and any other payment received in the same accounting period that is not

**BILL****SECTION 229**

1 characterized as interest, a dividend, or ~~an equivalent~~ a payment in lieu of interest  
2 or a dividend.

3 **SECTION 230.** 701.20 (18) (c) 1. of the statutes is renumbered 701.1123 (1) (d)  
4 and amended to read:

5 701.1123 (1) (d) ~~In this paragraph “plan~~ “Plan income” means any of the  
6 following:

7 1. With respect to payments received from a plan that maintains separate  
8 accounts ~~or funds~~ for its participants or account holders, ~~such as defined contribution~~  
9 ~~retirement plans, individual retirement accounts, Roth individual retirement~~  
10 ~~accounts, and some types of deferred compensation plans~~, either the amount of the  
11 ~~plan~~ separate account ~~or fund~~ held for the benefit of the trust that, if the ~~plan~~  
12 separate account ~~or fund~~ were a trust, would be allocated to income ~~under pars. (b)~~  
13 ~~and (d)~~ for that accounting period, or 4 percent of the value of the plan account ~~or fund~~  
14 on the first day of the accounting period. The trustee shall, ~~in his or her discretion,~~  
15 choose the method of determining “plan income” under this ~~subd. 1. a.~~ subdivision,  
16 and may change the method of determining “plan income” under this ~~subd. 1. a.~~  
17 subdivision for any subsequent accounting period.

18 2. With respect to payments received from a plan that does not maintain  
19 separate accounts ~~or funds~~ for its participants or account holders, ~~such as defined~~  
20 ~~benefit retirement plans and some types of deferred compensation plans~~, 4 percent  
21 of the total present value of the trust’s interest in the plan as of the first day of the  
22 accounting period, based on reasonable actuarial assumptions as determined by the  
23 trustee.

24 **SECTION 231.** 701.20 (18) (c) 2. of the statutes is renumbered 701.1123 (3) and  
25 amended to read:

**BILL**

1           701.1123 (3) For each accounting period of a trust in which the trust receives  
2 a payment but no part of any payment is allocated to income under par-~~(b)~~ sub. (2),  
3 the trustee shall allocate to income that portion of the aggregate value of all  
4 payments received by the trustee in that accounting period that is equal to the  
5 amount of plan income that is attributable to the trust's interest in the plan from  
6 which payment is received for that accounting period. The trustee shall allocate the  
7 balance of any payments to principal.

8           **SECTION 232.** 701.20 (18) (d) of the statutes is renumbered 701.1123 (5) and  
9 amended to read:

10           701.1123 (5) If, to obtain an estate or gift tax marital deduction for an interest  
11 in a trust, a trustee must allocate more of a payment to income than provided for by  
12 this ~~subsection~~ section, the trustee shall allocate to income the additional amount  
13 necessary to obtain the marital deduction.

14           **SECTION 233.** 701.20 (18) (e) of the statutes is renumbered 701.1123 (6) and  
15 amended to read:

16           701.1123 (6) This ~~subsection~~ section does not apply to ~~payments~~ a payment to  
17 which ~~sub. (19)~~ s. 701.1124 applies.

18           **SECTION 234.** 701.20 (19) of the statutes is renumbered 701.1124, and 701.1124  
19 (1), as renumbered, is amended to read:

20           701.1124 (1) In this ~~subsection~~ section, “liquidating asset” means an asset  
21 whose value will diminish or terminate because the asset is expected to produce  
22 receipts for a period of limited duration. The term includes a leasehold, patent,  
23 copyright, royalty right, and right to receive payments during a period of more than  
24 one year under an arrangement that does not provide for the payment of interest on  
25 the unpaid balance. The term does not include a payment subject to ~~sub. (18)~~ s.

**BILL****SECTION 234**

1 701.1123, resources subject to ~~sub. (20)~~ s. 701.1125, timber subject to ~~sub. (21)~~ s.  
2 701.1126, an activity subject to ~~sub. (23)~~ s. 701.1128, an asset subject to ~~sub. (24)~~ s.  
3 701.1129, or any asset for which the trustee establishes a reserve for depreciation  
4 under ~~sub. (27)~~ s. 701.1132.

5 **SECTION 235.** 701.20 (20) of the statutes is renumbered 701.1125, and 701.1125  
6 (1) (intro.) and (d), (3) and (4), as renumbered, are amended to read:

7 701.1125 (1) (intro.) To the extent that a trustee accounts for receipts from an  
8 interest in minerals or other natural resources in accordance with this ~~subsection~~  
9 section, the trustee shall allocate them as follows:

10 (d) If an amount is received from a working interest or any other interest not  
11 provided for in ~~subd. 1., 2. par. (a), (b), or 3. (c)~~, 90 percent of the net amount received  
12 must be allocated to principal and the balance to income.

13 (3) This ~~subsection~~ section applies whether or not a decedent or donor was  
14 extracting minerals, water, or other natural resources before the interest became  
15 subject to the trust.

16 (4) If a trust owns an interest in minerals, water, or other natural resources  
17 on May 17, 2005, the trustee may allocate receipts from the interest as provided in  
18 this ~~subsection~~ section or in the manner used by the trustee before May 17, 2005.  
19 If the trust acquires an interest in minerals, water, or other natural resources after  
20 May 17, 2005, the trustee shall allocate receipts from the interest as provided in this  
21 ~~subsection~~ section.

22 **SECTION 236.** 701.20 (21) (title) of the statutes is repealed.

23 **SECTION 237.** 701.20 (21) of the statutes is renumbered 701.1126, and 701.1126  
24 (1) (intro.), (c) and (d), (2), (3) and (4), as renumbered, are amended to read:

**BILL**

1           701.1126 (1) (intro.) To the extent that a trustee accounts for receipts from the  
2 sale of timber and related products in accordance with this ~~subsection~~ section, the  
3 trustee shall allocate the net receipts:

4           (c) To income or principal or between income and principal if the net receipts  
5 are from the lease of timberland or from a contract to cut timber from land owned by  
6 a trust, by determining the amount of timber removed from the land under the lease  
7 or contract and applying the rules in ~~subds. 1. pars. (a) and 2. (b).~~

8           (d) To principal to the extent that advance payments, bonuses, and other  
9 payments are not allocated under ~~subd. 1., 2. par. (a), (b), or 3. (c).~~

10           (2) In determining net receipts to be allocated under ~~par. (a) sub. (1)~~, a trustee  
11 shall deduct and transfer to principal a reasonable amount for depletion.

12           (3) This ~~subsection~~ section applies whether or not a decedent or transferor was  
13 harvesting timber from the property before it became subject to the trust.

14           (4) If a trust owns an interest in timberland on May 17, 2005, the trustee may  
15 allocate net receipts from the sale of timber and related products as provided in this  
16 ~~subsection~~ section or in the manner used by the trustee before May 17, 2005. If the  
17 trust acquires an interest in timberland after May 17, 2005, the trustee shall allocate  
18 net receipts from the sale of timber and related products as provided in this  
19 ~~subsection~~ section.

20           **SECTION 238.** 701.20 (22) of the statutes is renumbered 701.1127 and amended  
21 to read:

22           **701.1127 Property not productive of income.** (1) If a marital deduction  
23 is allowed for all or part of a trust whose assets consist substantially of property that  
24 does not provide the surviving spouse with sufficient income from or use of the trust  
25 assets, and if the amounts that the trustee transfers from principal to income under

**BILL****SECTION 238**

1 ~~sub. (4)~~ s. 701.1104 and distributes to the spouse from principal in accordance with  
2 the terms of the trust are insufficient to provide the spouse with the beneficial  
3 enjoyment required to obtain the marital deduction, the spouse may require the  
4 trustee to make property productive of income, convert property within a reasonable  
5 time, or exercise the power conferred by ~~sub. (4)(a)~~ s. 701.1104 (1). The trustee may  
6 decide which action or combination of actions to take.

7 (2) In cases not governed by ~~par. (a)~~ sub. (1), proceeds from the sale or other  
8 disposition of an asset are principal without regard to the amount of income the asset  
9 produces during any accounting period.

10 **SECTION 239.** 701.20 (23) of the statutes is renumbered 701.1128, and 701.1128  
11 (1) and (2), as renumbered, are amended to read:

12 701.1128 (1) In this ~~subsection~~ section, “derivative” means a contract or  
13 financial instrument or a combination of contracts and financial instruments that  
14 gives a trust the right or obligation to participate in some or all changes in the price  
15 of a tangible or intangible asset or group of assets, or changes in a rate, an index of  
16 prices or rates, or another market indicator for an asset or a group of assets.

17 (2) To the extent that a trustee does not account under ~~sub. (12)~~ s. 701.1117 for  
18 transactions in derivatives, the trustee shall allocate to principal receipts from and  
19 disbursements made in connection with those transactions.

20 **SECTION 240.** 701.20 (24) of the statutes is renumbered 701.1129, and 701.1129  
21 (1), as renumbered, is amended to read:

22 701.1129 (1) In this ~~subsection~~ section, “asset-backed security” means an asset  
23 whose value is based upon the right it gives the owner to receive distributions from  
24 the proceeds of financial assets that provide collateral for the security. The term  
25 includes an asset that gives the owner the right to receive from the collateral

**BILL**

1 financial assets only the interest or other current return or only the proceeds other  
2 than interest or current return. The term does not include an asset to which ~~sub. (10)~~  
3 s. 701.1115 or ~~(18)~~ 701.1123 applies.

4 **SECTION 241.** 701.20 (25) of the statutes is renumbered 701.1130, and 701.1130  
5 (intro.), as renumbered, are amended to read:

6 **701.1130 Disbursements from income.** (intro.) A trustee shall make the  
7 following disbursements from income to the extent that they are not disbursements  
8 specified in ~~sub. (5) (b) 2.~~ s. 701.1110 (2) (b) or 3. (c):

9 **SECTION 242.** 701.20 (26) of the statutes is renumbered 701.1131, and 701.1131  
10 (1) (a), (e) and (g), as renumbered, are amended to read:

11 701.1131 (1) (a) The remaining one-half of the disbursements described in ~~sub.~~  
12 ~~(25) (a)~~ s. 701.1130 (1) and (b) (2).

13 (e) Premiums paid on a policy of insurance not described in ~~sub. (25) (d)~~ s.  
14 701.1130 (4) of which the trust is the owner and beneficiary.

15 (g) Disbursements related to environmental matters, including reclamation,  
16 assessing environmental conditions, remedying and removing environmental  
17 contamination, monitoring remedial activities and the release of substances,  
18 preventing future releases of substances, collecting amounts from persons liable or  
19 potentially liable for the costs of those activities, penalties imposed under  
20 environmental laws or regulations law and other payments made to comply with  
21 ~~these laws or regulations~~ environmental law, statutory or common law claims by 3rd  
22 parties, and defending claims based on environmental matters.

23 **SECTION 243.** 701.20 (27) of the statutes is renumbered 701.1132, and 701.1132  
24 (1) and (2) (c), as renumbered, are amended to read:

**BILL****SECTION 243**

1           701.1132 (1) In this subsection ~~section~~ section, “depreciation” means a reduction in  
2 value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset  
3 having a useful life of more than one year.

4           (2) (c) Under this subsection ~~section~~ section if the trustee is accounting under ~~sub. (12)~~  
5 s. 701.1117 for the business or activity in which the asset is used.

6           **SECTION 244.** 701.20 (28) of the statutes is renumbered 701.1133, and 701.1133  
7 (1), (2) (intro.) and (e) and (3), as renumbered, are amended to read:

8           701.1133 (1) If a trustee makes or expects to make a principal disbursement  
9 described in this subsection ~~section~~ section, the trustee may transfer an appropriate amount  
10 from income to principal in one or more accounting periods to reimburse principal  
11 or to provide a reserve for future principal disbursements.

12           (2) (intro.) Principal disbursements to which ~~par. (a) sub. (1)~~ sub. (1) applies include the  
13 following, but only to the extent that the trustee has not been and does not expect  
14 to be reimbursed by a 3rd party:

15           (e) Disbursements described in ~~sub. (26) (a) 7. s. 701.1131 (1) (g).~~

16           (3) If the asset whose ownership gives rise to the disbursements becomes  
17 subject to a successive income interest after an income interest ends, a trustee may  
18 continue to transfer amounts from income to principal as provided in ~~par. (a) sub. (1).~~

19           **SECTION 245.** 701.20 (29) (title) of the statutes is renumbered 701.1134 (title).

20           **SECTION 246.** 701.20 (29) (a) of the statutes is renumbered 701.1134 (1).

21           **SECTION 247.** 701.20 (29) (b) of the statutes is renumbered 701.1134 (2).

22           **SECTION 248.** 701.20 (29) (c) (intro.) of the statutes is renumbered 701.1134 (3)  
23 (intro.) and amended to read:

24           701.1134 (3) (intro.) A tax required to be paid by a trustee on the trust’s share  
25 of an entity’s taxable income must be paid ~~proportionately~~ as follows:



**BILL**

1           **SECTION 249.** 701.20 (29) (c) 1. of the statutes is renumbered 701.1134 (3) (a)  
2 and amended to read:

3           701.1134 (3) (a) From income to the extent that receipts from the entity are  
4 allocated only to income.

5           **SECTION 250.** 701.20 (29) (c) 2. (intro.) and a. of the statutes are consolidated,  
6 renumbered 701.1134 (3) (b) and amended to read:

7           701.1134 (3) (b) From principal to the extent that: ~~2. a. Receipts~~ receipts from  
8 the entity are allocated only to principal.

9           **SECTION 251.** 701.20 (29) (c) 2. b. of the statutes is repealed.

10          **SECTION 252.** 701.20 (29) (d) of the statutes is repealed.

11          **SECTION 253.** 701.20 (30) of the statutes is renumbered 701.1135, and 701.1135  
12 (1) (a), as renumbered, is amended to read:

13          701.1135 (1) (a) Elections and decisions, other than those described in ~~par. (b)~~  
14 sub. (2), that the fiduciary makes from time to time regarding tax matters.

15          **SECTION 254.** 701.20 (31) of the statutes is repealed.

16          **SECTION 255.** 701.21 of the statutes is renumbered 701.1136, and 701.1136 (1),  
17 (2) and (4), as renumbered, are amended to read:

18          701.1136 (1) DISTRIBUTION OF INCOME. Except as otherwise determined by the  
19 trustee or a court under s. ~~701.20 (4g)~~ 701.1106 with respect to unitrust distributions,  
20 if a beneficiary is entitled to receive income from a trust, but the ~~creating trust~~  
21 instrument fails to specify how frequently it is to be paid, the trustee shall distribute  
22 at least annually the income to which such beneficiary is entitled.

23          (2) PERMITTED ACCUMULATIONS. No provision directing or authorizing  
24 accumulation of ~~trust income shall be~~ is invalid.

**BILL****SECTION 255**

1           (4) DISPOSITION OF ACCUMULATED INCOME. Income not required to be distributed  
2 by the ~~creating trust instrument, in the absence of a governing provision in the~~  
3 ~~instrument,~~ may, in the trustee's discretion, be held in reserve for future distribution  
4 as income or be added to principal subject to retransfer to income of the dollar amount  
5 originally transferred to principal; ~~but at.~~ At the termination of the income interest,  
6 any undistributed income shall be distributed as principal.

7           **SECTION 256.** 701.22 (title) of the statutes is repealed.

8           **SECTION 257.** 701.22 of the statutes is renumbered 701.0417 (4) and amended  
9 to read:

10           701.0417 (4) In case of a division of a trust assets into 2 or more trusts ~~or shares,~~  
11 any distribution or allocation of assets as an equivalent of a dollar amount fixed by  
12 formula or otherwise shall be made at current fair market values unless the  
13 ~~governing trust instrument expressly provided that another value may be used.~~ If  
14 the ~~governing trust instrument~~ requires or permits a different value to be used, all  
15 ~~assets property~~ available for distribution, including cash, shall, ~~unless otherwise~~  
16 ~~expressly provided,~~ be so distributed so that the ~~assets property,~~ including cash,  
17 ~~distributed as such an equivalent will be~~ is fairly representative of the net  
18 appreciation or depreciation in the value of the available property on the date or  
19 dates of distribution. A provision in the ~~governing trust instrument~~ that the trustee  
20 may fix values for purposes of distribution or allocation does not of itself constitute  
21 authorization to fix a value other than current fair market value.

22           **SECTION 258.** 701.23 of the statutes is repealed.

23           **SECTION 259.** 701.24 (title) of the statutes is renumbered 701.1205 (title).

24           **SECTION 260.** 701.24 (1) of the statutes is renumbered 701.1205 (1) and  
25 amended to read: