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1 701.1205 (1) Except as otherwise provided in sub. (3) (2) and s. 701.19 (9) (a),
2 ~~ss. 701.01 to 701.19, 701.21, 701.22, and 701.23~~ are ss. 701.0602, 701.0813, and
3 701.0903 (4), this chapter is applicable to a trust existing on July 1, 1971 the effective
4 date of this subsection [LRB inserts date], as well as a trust created after such
5 date, and shall govern trustees acting under such trusts. If application of any
6 provision of ss. 701.01 to 701.19, 701.21, 701.22, and 701.23 this chapter to a trust
7 in existence on August 1, 1971 the effective date of this subsection [LRB inserts
8 date], is unconstitutional, it shall not affect application of the provision to a trust
9 created after that date.

10 **SECTION 261.** 701.24 (2) of the statutes is renumbered 701.1205 (2) and
11 amended to read:

12 701.1205 (2) ~~Section 701.20 Subchapter XI of this chapter~~ applies to every a
13 trust or decedent's estate existing on ~~May 17, 2005~~ the effective date of this
14 subsection [LRB inserts date], and to every a trust or decedent's estate created or
15 coming into existence after that date, except as otherwise expressly provided in s.
16 ~~701.20 subch. XI~~ or by the decedent's will or the terms of the trust. With respect to
17 a trust or decedent's estate existing on ~~May 17, 2005, s. 701.20 (5) to (30)~~ the effective
18 date of this subsection [LRB inserts date], ss. 701.1110 to 701.1135 shall apply at
19 the beginning of the trust's or estate's first accounting period, as defined in s. 701.20
20 701.1125 (2) (a), that begins on or after May 17, 2005 the effective date of this
21 subsection [LRB inserts date].

22 **SECTION 262.** 701.24 (3) of the statutes is repealed.

23 **SECTION 263.** 701.25 of the statutes is renumbered 701.1204.

24 **SECTION 264.** 701.26 of the statutes is repealed.

25 **SECTION 265.** 702.01 (intro.) of the statutes is renumbered 702.02 (intro.).

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1 **SECTION 266.** 702.01 (1) of the statutes is renumbered 702.02 (2) and amended
2 to read:

3 702.02 (2) “Creating instrument” means the will, trust agreement, or other
4 document which creates or reserves the power of appointment.

5 **SECTION 267.** 702.01 (2) of the statutes is renumbered 702.02 (4) and amended
6 to read:

7 702.02 (4) “Donor” means the person who creates or reserves the power;
8 “donee” means the person in whom the power is created or reserved; and “appointee”
9 means the person to whom an interest is appointed of appointment.

10 **SECTION 268.** 702.01 (3) of the statutes is renumbered 702.02 (5) and amended
11 to read:

12 702.02 (5) “General power of appointment” means a power exercisable in favor
13 of the donee, the donee’s estate, the donee’s creditors, or the creditors of the donee’s
14 estate, whether or not it is also exercisable in favor of others. A power to appoint to
15 any person or a power which of appointment that is not expressly restricted as to
16 appointees may be exercised in favor of the donee or the donee’s creditors if
17 exercisable during lifetime, and in favor of the donee’s estate or the creditors of the
18 donee’s estate if exercisable by will.

19 **SECTION 269.** 702.01 (4) of the statutes is renumbered 702.02 (6) and amended
20 to read:

21 702.02 (6) “Power of appointment” means a power ~~of appointment over to~~
22 appoint legal or equitable interests in real or personal property. A power of
23 appointment is ~~a power~~ created or reserved by a person having property subject to
24 his or her disposition which enables the donee of the power of appointment to
25 designate, within such limits as may be prescribed, the transferees of the property

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1 or the shares or the interests in which it shall be received; ~~it. A power of appointment~~
2 does not include a power of sale, a power of attorney, a power of revocation, or a power
3 exercisable by a trustee ~~or other, a directing party, as defined in s. 701.0103 (7),~~
4 another fiduciary in his or her fiduciary capacity, or a trust protector, as defined in
5 s. 701.0103 (31).

6 **SECTION 270.** 702.01 (5) of the statutes is renumbered 702.02 (7) and amended
7 to read:

8 702.02 (7) “Special power of appointment” means a power of appointment
9 exercisable ~~only in favor of one or more persons not including the donee, the donee’s~~
10 ~~estate, the donee’s creditors or the creditors of the donee’s estate and, when~~
11 ~~exercisable in favor of a class, so limited in size by description of the class that in the~~
12 ~~event of nonexercise of the power a court can make distribution to persons within the~~
13 ~~class if the donor has failed to provide for this contingency~~ that is not a general power
14 of appointment.

15 **SECTION 271.** 702.01 (6) of the statutes is repealed.

16 **SECTION 272.** 702.02 (1) of the statutes is created to read:

17 702.02 (1) “Appointee” means the person to whom an interest is appointed.

18 **SECTION 273.** 702.02 (3) of the statutes is created to read:

19 702.02 (3) “Donee” means the person in whom the power of appointment is
20 created or reserved.

21 **SECTION 274.** 702.03 of the statutes is amended to read:

22 **702.03 Manifestation of intent to exercise powers** a power of
23 appointment. (1) Unless the person who executed it had a contrary intention, if
24 a governing creating instrument, as defined in s. 854.01 (2), or an inter vivos
25 governing instrument, as defined in s. 700.27 (1) (e), creates a power of appointment

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1 that expressly requires that the power of appointment be exercised by any type of
2 reference to the power of appointment or its source, the donor's intention in requiring
3 the reference is presumed to be to prevent an inadvertent exercise of the power of
4 appointment. Extrinsic evidence, as defined in s. 854.01 (1), may be used to construe
5 the intent.

6 (2) In the case of other powers, ~~an~~ of appointment, a creating instrument
7 manifests an intent to exercise the power of appointment if the creating instrument
8 purports to transfer an interest in the appointive property which the donee would
9 have no power to transfer except by virtue of the power of appointment, even though
10 the power of appointment is not recited or referred to in the creating instrument, or
11 if the creating instrument either expressly or by necessary implication from its
12 wording interpreted in light of the circumstances surrounding its drafting and
13 execution manifests an intent to exercise the power of appointment. If there is a
14 general power of appointment exercisable by will with no gift in default in the
15 creating instrument, a residuary clause or other general language in the donee's will
16 purporting to dispose of all of the donee's estate or property operates to exercise the
17 power of appointment in favor of the donee's estate, but in all other cases such a
18 clause or language does not in itself manifest an intent to exercise a power of
19 appointment exercisable by will.

20 **SECTION 275.** 702.05 of the statutes is amended to read:

21 **702.05 Exercise of powers a power of appointment.** (1) CAPACITY TO
22 EXERCISE A POWER OF APPOINTMENT. A power of appointment can be exercised only by
23 a person who would have the capacity to transfer the property covered by the power
24 of appointment.

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1 (2) KIND OF INSTRUMENT AND FORMALITIES OF EXECUTION. A donee can exercise
2 a power of appointment only by an instrument which meets the intent of the donor
3 as to kind of instrument and formalities of execution. If the power of appointment
4 is exercisable by will, this means a will executed with the formalities necessary for
5 a valid will. A written instrument signed by the donee is sufficient if the donor fails
6 to require any additional formalities or fails to indicate a will, but if the power of
7 appointment is to appoint interests in land, it can be exercised only by an instrument
8 executed with sufficient formalities for that purpose.

9 (3) CONSENT OF 3RD PERSONS. When the consent of the donor or of any other
10 person is required by the donor for the exercise of a power of appointment, such
11 consent must be expressed in the creating instrument exercising the power of
12 appointment or in a separate written instrument, signed in either case by the
13 persons whose consent is required. If any person whose consent is required dies or
14 becomes legally incapable of consenting, the power of appointment may be exercised
15 by the donee without the consent of that person unless the donor has manifested a
16 contrary intent in the creating instrument ~~creating the power~~.

17 (4) POWER OF APPOINTMENT VESTED IN 2 OR MORE DONEES. Unless the donor
18 manifests a contrary intent, when a power of appointment is vested in 2 or more
19 persons, all must unite in its exercise, but if one or more of the donees dies, becomes
20 incapable of exercising the power of appointment, or renounces, releases, or
21 disclaims the power of appointment, the power of appointment may be exercised by
22 the others.

23 **SECTION 276.** 702.05 (5) of the statutes is created to read:

24 702.05 (5) PRESUMPTION OF NONEXERCISE OF A POWER OF APPOINTMENT. A personal
25 representative, trustee, or other fiduciary who holds property subject to a power of

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1 appointment may administer that property as if the power of appointment was not
2 exercised if the personal representative, trustee, or other fiduciary has no notice of
3 the existence of any of the following within 6 months after the death of the donee of
4 the power of appointment:

5 (a) A document purporting to be a will of the donee of the power of appointment
6 if the power of appointment is exercisable by a will.

7 (b) Some other documentation of the donee purporting to exercise the power of
8 appointment if the power of appointment is exercisable other than by a will.

9 **SECTION 277.** 702.07 of the statutes is amended to read:

10 **702.07 Powers Power of appointment to be construed as exclusive.** The
11 donee of any power of appointment may appoint the whole or any part of the
12 appointive assets to any one or more of the permissible appointees and exclude
13 others, except to the extent that the donor specifies either a minimum share or
14 amount to be appointed to each permissible appointee or to designated appointees,
15 or a maximum share or amount appointable to any one or more appointees.

16 **SECTION 278.** 702.08 of the statutes is amended to read:

17 **702.08 Disclaimer of powers a power of appointment.** The donee of any
18 power of appointment may disclaim all or part of the power of appointment as
19 provided under s. 700.27 or 854.13.

20 **SECTION 279.** 702.09 (title), (1) and (3) (a), (b) and (c) of the statutes are
21 amended to read:

22 **702.09 (title) Release of powers a power of appointment.** (1) ~~Except as~~
23 Unless the creating instrument expressly provides that the power of appointment
24 cannot be released or expressly restricts the time, manner, or scope of release, the
25 donee of any power of appointment may do any of the following:

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- 1 (a) At any time completely release the donee's power; of appointment.
- 2 (b) At any time or times release the donee's power of appointment in any one
3 or more of the following respects:
- 4 1. As to the whole or any part of the property which is subject thereto;.
- 5 2. As to any one or more persons or objects, or classes of persons or objects, in
6 whose favor such power of appointment is exercisable;.
- 7 3. So as to limit in any other respect the extent to or manner in which it the
8 power of appointment may be exercised.
- 9 (3) (a) Delivery to any person specified in the creating instrument;.
- 10 (b) Delivery to a trustee or to one of several trustees of the property to which
11 the power of appointment relates, or filing with the court having jurisdiction over the
12 trust;.
- 13 (c) Delivery to any person, other than the donee, who could be adversely
14 affected by an exercise of the power; ~~or~~ of appointment.

15 **SECTION 280.** 702.11 of the statutes is amended to read:

16 **702.11 Irrevocability of creation, exercise and release of powers a**
17 **power of appointment**. The creation, exercise or release of a power of appointment
18 is irrevocable unless the power to revoke is reserved in the creation, exercise or
19 release of the power of appointment.

20 **SECTION 281.** 702.13 (title), (1) (intro.), (a), (b) and (c) and (2) of the statutes
21 are amended to read:

22 **702.13 (title) Recording instruments relating to powers a power of**
23 **appointment**. (1) (intro.) Any of the following instruments relating to powers a
24 power of appointment is entitled to be recorded as a conveyance upon compliance
25 with s. 706.05 (1):

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1 (a) An instrument, other than a will, exercising a power; of appointment.

2 (b) An instrument expressing consent to exercise;.

3 (c) A disclaimer;.

4 (2) If a power of appointment is exercised by a will, a certified copy of the will
5 and of the certificate of probate thereof may be recorded.

6 **SECTION 282.** 702.15 (intro.), (1) and (2) of the statutes are amended to read:

7 **702.15 Disposition when a special power of appointment is**
8 **unexercised.** (intro.) If the donee of a special power of appointment fails to exercise
9 effectively the special power of appointment, the interests which might have been
10 appointed under the special power of appointment pass in one of the following ways:

11 (1) If the creating instrument contains an express gift in default, then in
12 accordance with the terms of such gift;.

13 (2) If the creating instrument contains no express gift in default and does not
14 clearly indicate that the permissible appointees are to take only if the donee exercises
15 the special power of appointment, then to the permissible appointees equally, but if
16 the special power of appointment is to appoint among a class such as “relatives,”
17 “issue,” or “heirs,” then to those persons who would have taken had there been an
18 express gift to the described class; ~~or.~~

19 **SECTION 283.** 702.15 (3) of the statutes is renumbered 702.15 (3) (a) and
20 amended to read:

21 702.15 (3) (a) If Except as provided in par. (b), if the creating instrument
22 contains no express gift in default and clearly indicates that the permissible
23 appointees are to take only if the donee exercises the special power of appointment,
24 then by reversion to the donor or the donor’s estate. ~~But if~~

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1 **(b)** If the creating instrument expressly states that there is no reversion in the
2 donor, then any language in the creating instrument indicating or stating that the
3 permissible appointees are to take only if the donee exercises the special power of
4 appointment is to be disregarded and the interests shall pass in accordance with sub.
5 (2).

6 **SECTION 284.** 702.17 (1), (2) and (5) of the statutes are amended to read:

7 702.17 (1) ~~GENERAL POLICY; GENERAL POWER OF APPOINTMENT.~~ If the donee has
8 either a general power ~~or an unclassified power which is unlimited as to permissible~~
9 ~~appointees except for exclusion of the donee, the donee's estate, the donee's creditors~~
10 ~~and the creditors of the donee's estate, or a substantially similar exclusion of~~
11 appointment, any interest which the donee has power to appoint or has appointed
12 is to be treated as property of the donee for purposes of satisfying claims of the donee's
13 creditors, as provided in this section.

14 **(2) DURING LIFETIME OF THE DONEE.** If the donee has an unexercised general
15 ~~power of the kinds specified in sub. (1)~~ appointment, and can presently exercise such
16 ~~a the general power of appointment in favor of the donee or the donee's creditors,~~ any
17 creditor of the donee may by appropriate proceedings reach any interest which the
18 donee could appoint, to the extent that the donee's individual assets are insufficient
19 to satisfy the creditor's claim. Such an interest is to be treated as property of the
20 donee within ch. 816. If the donee has exercised such a general power of
21 appointment, the creditor can reach the appointed interests to the same extent that
22 under the law relating to fraudulent conveyances the creditor could reach property
23 which the donee has owned and transferred.

24 **(5) THIRD PARTIES IN GOOD FAITH PROTECTED.** Any person acting without actual
25 notice of claims of creditors under this section incurs no liability to such creditors in

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1 transferring property which is subject to a power of appointment or which has been
2 appointed; and a purchaser without actual notice and for a valuable consideration
3 of any interest in property, legal or equitable, takes such interest free of any rights
4 which a creditor of the donee might have under this section.

5 **SECTION 285.** 702.17 (3) of the statutes is renumbered 702.17 (3) (a) and
6 amended to read:

7 702.17 (3) (a) If Except as provided in par. (b), if the donee has at the time of
8 ~~his or her~~ the donee's death a general power of ~~the kinds specified in sub. (1)~~
9 appointment, whether or not the donee exercises the general power of appointment,
10 any creditor of the donee may reach any interest which the donee could have
11 appointed or has appointed, to the extent that the claim of the creditor has been filed
12 and allowed in the donee's estate or filed with and ^{e approved} allowed by the trustee of a trust
13 that is revocable, as defined in s. 701.0103 (22), by the donee or jointly by the donee
14 and the donee's spouse but not paid because the assets of the estate or revocable trust
15 are insufficient.

16 **SECTION 286.** 702.17 (3) (b) of the statutes is created to read:

17 702.17 (3) (b) If the donee fails to exercise a general power of appointment, in
18 whole or in part, that the donee has at the time of the donee's death and neither the
19 donee nor the donee's spouse is the donor of the power, a creditor of the donee may
20 not reach an interest subject to the power, to the extent the power was not exercised.

21 **SECTION 287.** 702.17 (6) of the statutes is created to read:

22 702.17 (6) GENERAL POLICY: SPECIAL POWER OF APPOINTMENT. If the donee has a
23 special power of appointment, property subject to the donee's special power of
24 appointment is exempt from a claim of a creditor of the donee or the donee's estate.

25 **SECTION 288.** 702.21 of the statutes is amended to read:

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1 **702.21 Applicability of chapter.** The provisions of this chapter are
2 applicable to any power of appointment existing on May 16, 1965, as well as a power
3 of appointment created after such date.

4 **SECTION 289.** 766.575 (1) (e) of the statutes is amended to read:

5 766.575 (1) (e) “Trustee” has the meaning given under s. ~~701.01 (8)~~ 701.0103
6 (28).

7 **SECTION 290.** 840.01 (1) of the statutes is amended to read:

8 840.01 (1) Except as provided in sub. (2), “interest in real property” includes
9 estates in, powers of appointment under ch. 702 over, present and future rights to,
10 title to, and interests in real property, including, without limitation by enumeration,
11 security interests and liens on land, easements, profits, rights of appointees under
12 powers of appointment, rights under covenants running with the land, powers of
13 termination, and homestead rights. The interest may be an interest that was
14 formerly designated legal or equitable. The interest may be surface, subsurface,
15 suprasurface, riparian, or littoral.

16 **SECTION 291.** 853.17 (2) of the statutes is amended to read:

17 853.17 (2) This section does not prevent the court from requiring the contract
18 beneficiary to elect under s. 853.15 in order to take property under the will; ~~nor does~~
19 ~~it apply to naming a testamentary trustee as designated by a life insurance policy~~
20 ~~under s. 701.09.~~

21 **SECTION 292.** 853.32 (3) of the statutes is amended to read:

22 853.32 (3) TRANSFERS TO LIVING TRUSTS. The validity and implementation of a
23 will provision that purports to transfer or appoint property to a living trust are
24 governed by s. ~~701.08~~ 701.0419.

25 **SECTION 293.** 853.34 (3) of the statutes is created to read:

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1 853.34 (3) ASSETS TRANSFERRED TO TRUSTS CREATED BY WILL. If a trustee of a trust
2 created by a testator’s will is designated as the beneficiary of a transfer under
3 another governing instrument, as defined in s. 854.01 (2), at the death of the testator
4 or at the death of a 3rd party, the transfer of any assets under that other governing
5 instrument to the trustee does not cause the transferred assets to be included in the
6 property administered as part of the testator’s estate. The transferred assets are not
7 subject to taxes, debts, or charges enforceable against the testator’s estate to any
8 greater extent than if the proceeds were payable to a beneficiary other than the
9 testator’s estate.

10 **SECTION 294.** 853.61 (2) (a) of the statutes is amended to read:

11 853.61 (2) (a) In addition to any powers conferred upon trustees by law, the
12 trustee shall have all the powers listed in s. ~~701.16~~ ss. 701.0815 and 701.0816.

13 **SECTION 295.** 854.13 (1) (c), (2) (a) 2. and (d), (4) (e), (5) (b), (7) (a) and (10) (a)
14 of the statutes are amended to read:

15 854.13 (1) (c) “Power of appointment” has the meaning given in s. ~~702.01(4)~~
16 702.02 (6).

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

24 (d) *Partial disclaimer.* Property may be disclaimed in whole or in part, except
25 that a partial disclaimer of property passing by a governing instrument or by the

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1 exercise of a power of appointment may not be made if partial disclaimer is expressly
2 prohibited by the governing instrument or by the instrument exercising the power
3 of appointment.

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

9 (5) (b) *Delivery to trustee.* If the trustee of any trust to which the interest or
10 power of appointment relates does not receive the instrument of disclaimer under
11 par. (a), a copy shall also be delivered to the trustee.

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

24 (10) (a) *Subsequent interest not held by disclaimant.* Unless the governing
25 instrument provides otherwise, either expressly or as construed from extrinsic

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1 evidence, upon the disclaimer of a preceding interest, a subsequent interest not held
2 by the disclaimant and limited to take effect in possession or enjoyment after the
3 termination of the interest that is disclaimed accelerates to take effect as if the
4 disclaimant had died immediately before the time when the disclaimed interest
5 would have taken effect in possession or enjoyment or, if the disclaimant is an
6 appointee under a power of appointment and that power of appointment has been
7 ~~exercised by a power of appointment~~, as if the disclaimant had died before the
8 effective date of the exercise of the power of appointment.

9 **SECTION 296.** 854.23 (5) (b) of the statutes is amended to read:

10 854.23 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
11 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
12 705 a financial institution is not liable for having transferred an account to a
13 beneficiary designated in a governing instrument who, under this chapter, is not
14 entitled to the account, or for having taken any other action in reliance on the
15 beneficiary's apparent entitlement under the terms of a governing instrument,
16 regardless of whether the financial institution received written notice of a claimed
17 lack of entitlement under this chapter.

18 **SECTION 297.** 859.18 (5) (a) of the statutes is amended to read:

19 859.18 (5) (a) The availability of a trust described under s. ~~701.07 (3)~~ 701.0505
20 (1) is subject to s. ~~701.07 (3)~~ 701.0505 (1).

21 **SECTION 298.** 859.18 (5) (b) of the statutes is amended to read:

22 859.18 (5) (b) The availability of a spendthrift trust described under s. ~~701.06~~
23 subch. V of ch. 701 is subject to s. ~~701.06~~ subch. V of ch. 701.

24 **SECTION 299.** 861.015 (2) of the statutes is amended to read:

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1 861.015 (2) For purposes of this section, property subject to a directive is valued
2 by its clear market value on the date of the decedent's death. Satisfaction of the
3 nonholding spouse's marital property interest in the property subject to the directive
4 shall be based on that value, plus any income from the property subject to the
5 directive after the death of the decedent and before satisfaction. For purposes of
6 determining the income from the property subject to a directive, such property shall
7 be treated as a legacy or devise of property other than money under s. ~~701.20~~
8 701.1115.

9 **SECTION 300.** 861.11 (5) (b) of the statutes is amended to read:

10 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
11 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
12 705 a financial institution is not liable for having transferred an account included
13 in the augmented deferred marital property estate under s. 861.03 to a beneficiary
14 designated in a governing instrument, or for having taken any other action in
15 reliance on the beneficiary's apparent entitlement under the terms of a governing
16 instrument, regardless of whether the financial institution received written notice
17 of an intent to file, or the filing of, a petition for the deferred marital property elective
18 share amount.

19 **SECTION 301.** 865.08 (6) of the statutes is amended to read:

20 865.08 (6) If the will of the decedent provides for a testamentary trust, letters
21 of trust shall be issued by the probate registrar to the trustee upon admission of the
22 will to informal probate at the same time that letters are granted to the personal
23 representative. The probate registrar shall determine if bond shall be required and,
24 if so, the amount thereof, and for such purpose the probate registrar shall have the
25 authority granted to the court by, and shall proceed pursuant to s. ~~701.16 (2)~~

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1 701.0702. Thereafter, the trustee shall continue to be interested in the estate, and
2 beneficiaries of the testamentary trust shall cease to be interested in the estate
3 except under s. 851.21 (3). The trust shall be administered under supervision of the
4 court under ch. 701.

5 **SECTION 302.** 867.03 (2g) (a) of the statutes, as affected by 2013 Wisconsin Act
6 20, is amended to read:

7 867.03 (2g) (a) By accepting the decedent's property under this section the heir,
8 trustee, or guardian assumes a duty to apply the property transferred for the
9 payment of obligations according to priorities established under s. 859.25 and to
10 distribute any balance to those persons designated in the appropriate governing
11 instrument, as defined in s. 854.01, of the decedent or if there is no governing
12 instrument, according to the rules of intestate succession under ch. 852, subject to
13 par. (b). An heir or guardian may publish a notice to creditors in the same manner
14 and with the same effect as a trustee under s. ~~701.065~~ 701.0508. This paragraph does
15 not prohibit any appropriate person from requesting administration of the
16 decedent's estate under s. 856.07 or ch. 865.

17 **SECTION 303.** 879.03 (2) (c) of the statutes is amended to read:

18 879.03 (2) (c) The attorney general where a charitable trust, as defined in s.
19 ~~701.01(2)~~ 701.0103 (4), is involved, and in all cases mentioned in s. 852.01 (3).

20 **SECTION 304.** 879.47 of the statutes is renumbered 879.47 (1) and amended to
21 read:

22 879.47 (1) The attorney for any person desiring to file any paper in court is
23 responsible for the preparation of the paper. Except as provided in s. ~~701.16(4)(d)~~
24 sub. (2), all papers shall be legibly written on substantial paper and shall state the
25 title of the proceeding in which they are filed and the character of the paper. Either

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1 uniform forms or computer-generated forms, if the forms exactly recreate the
2 original forms in wording, format and substance, shall be used. If papers are not so
3 written or if uniform forms or computer-generated forms that exactly recreate the
4 original forms in wording, format and substance are not used, the court may refuse
5 to receive and file them. The court shall show on all papers the date of their filing.

6 **SECTION 305.** 881.01 (1) (title) of the statutes is repealed and recreated to read:

7 881.01 (1) (title) DEFINITIONS.

8 **SECTION 306.** 881.01 (1) (a) of the statutes is renumbered 881.01 (1) (a) (intro.)
9 and amended to read:

10 881.01 (1) (a) (intro.) “Beneficiary,” ~~with respect to a guardianship of the~~
11 ~~estate,”~~ means any of the following:

12 3. With respect to guardianship of the estate, a ward for whom a guardian of
13 the estate has been appointed and, ~~with respect to a conservator,~~ means,

14 4. With respect to a conservatorship, a person for whose estate a conservator
15 has been appointed.

16 **SECTION 307.** 881.01 (1) (a) 1. and 2. of the statutes are created to read:

17 881.01 (1) (a) 1. With respect to a will, a beneficiary, as defined in s. 851.03.

18 2. With respect to a trust, a beneficiary, as defined in s. 701.0103 (3).

19 **SECTION 308.** 881.01 (1) (b) of the statutes is amended to read:

20 881.01 (1) (b) “Fiduciary” means a personal representative, trustee,
21 conservator, ~~or~~ guardian of the estate, a directing party, as defined in s. 701.0103 (7),
22 who has the power to direct the trustee’s investment decisions, a trust protector, as
23 defined in s. 701.0103 (31), who has a power exercisable in a fiduciary capacity over
24 the investment of trust assets, and any other person to whom a court appoints a

BILL**SECTION 308**

1 power over the investment of the assets of a decedent's estate, a trust, a
2 conservatorship, or a guardianship of the estate.

3 **SECTION 309.** 881.01 (4) of the statutes is renumbered 881.01 (4) (a) and
4 amended to read:

5 881.01 (4) (a) General rule. A fiduciary shall diversify investments unless the
6 fiduciary reasonably determines that, because of special circumstances, the
7 purposes of the estate, trust, conservatorship, or guardianship are better served
8 without diversifying.

9 **SECTION 310.** 881.01 (4) (b) of the statutes is created to read:

10 881.01 (4) (b) Special rule for assets collected by a fiduciary. 1. For purposes
11 of this paragraph, an “asset that is collected by the fiduciary” means an asset that
12 the fiduciary did not exercise discretion over to acquire or purchase.

13 2. Notwithstanding par. (a), a fiduciary may retain an asset that is collected by
14 the fiduciary until the fiduciary reasonably determines that it is advisable to dispose
15 of the asset. While the asset is being retained, the fiduciary has a duty to exercise
16 discretion at reasonable intervals to determine the advisability of continuing to
17 retain or disposing of the asset that was collected.

18 3. At any time while an asset that is collected by the fiduciary is being retained,
19 a beneficiary may file an application with a court that has jurisdiction over the
20 fiduciary to compel the fiduciary to sell the asset and invest the sale proceeds in
21 accordance with this section.

22 4. If a beneficiary files an application under subd. 3., the court shall conduct
23 a hearing after giving notice to all interested persons, as determined by the court.
24 After the hearing, the court shall enter an order directing the fiduciary to retain or
25 sell the asset that is being retained based on what the court finds to be in accordance

BILL

1 with the terms and purposes of the estate, trust, conservatorship, or guardianship
2 of the estate and the interests of the beneficiaries.

3 **SECTION 311.** 881.05 of the statutes is repealed.

4 **SECTION 312. Effective date.**

5 (1) This act takes effect on the first day of the 7th month after publication.

6

(END)

Insert 171-5 ✓

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PJK & TJD ANALYSIS

ESTATE RECOVERY AND DIVESTMENT

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

Property subject to estate recovery

Current law defines the property that is subject to estate recovery as all real and personal property to which the individual who received the recoverable public assistance benefits under a public assistance program (recipient) held any legal title or in which the recipient had any legal interest immediately before death, including assets transferred to an heir or a survivor through jointly owned property, a living trust, or other specified arrangements. In addition, the property subject to estate recovery includes any real or personal property in which the recipient's surviving spouse had an ownership interest at the recipient's death and in which the recipient had a marital property interest with that spouse at any time within five years before the recipient applied for the public assistance program or during the time that the recipient was eligible for the public assistance program. The bill defines the property that is subject to estate recovery as all real and personal property to which the recipient held any legal title or in which the recipient had any legal interest immediately before death, including assets transferred to an heir or a survivor through the specified arrangements, but excluding property transferred at death through a living trust. In addition, the bill expands the property that is subject to estate recovery to any real or personal property in which the recipient had a marital property interest at any time within five years before the recipient applied for the public assistance program or during the time that the recipient was eligible for the public assistance program. The marital property is not limited to property in which the recipient's spouse had an ownership interest at the recipient's death and a marital property interest with the recipient within five years before the recipient applied for the public assistance program or during the time that the recipient was eligible for the public assistance program.

Current law provides that there is a presumption, which may be rebutted with clear and convincing evidence, that all nonprobate property, and all property in the estate, of the recipient's deceased spouse who survived the recipient was marital property held with the recipient and that 100 percent of that property is subject to

PJK & TJD and cont

estate recovery by DHS. The bill provides that there is a presumption, consistent with the statutes relating to the classification of the property of spouses, that all nonprobate property, and all property in the estate, of the recipient's deceased surviving spouse was marital property held with the recipient and that 100 percent of that property is subject to estate recovery by DHS.

Voidable transfers

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

Interests in property and notices of encumbrance

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

Trusts

Current law requires trustees of living trusts to notify DHS, within 30 days after the death of the trust settlor and before any assets are distributed, if the trust settlor, or his or her predeceased spouse, received any recoverable public assistance benefits. If DHS sends the trustee a claim for the estate recovery of recoverable public assistance benefits, the trustee must, within 90 days, pay DHS the recoverable amount or provide DHS with information about any property that was distributed and to whom it was distributed. Current law requires a trustee of a special needs or pooled trust, the beneficiaries of which receive MA, to provide notice to DHS within 30 days after the death of a trust beneficiary, and to repay DHS, within 90 days after receiving a claim from DHS, for the amount of MA paid on behalf of the beneficiary. If the trustee fails to comply with the notice or repayments

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PJK & TJD anal cont'd

requirements, the trustee is personally liable to DHS for any MA[✓] amounts paid on behalf of the beneficiary that DHS is unable to recover. Current law also provides that, after the death of a beneficiary under a pooled trust, the trustee may retain up to 30 percent[✓] of the balance in the deceased beneficiary's account, unless the trustee failed to comply with the notice and repayment requirements, in which case the trustee may not retain any of the balance in the deceased beneficiary's account.[✓] JCF did not approve the implementation of these trust and trustee provisions and the bill repeals them.

Hardship waiver

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

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

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1 **SECTION 1.** 20.435 (4) (im) ^x of the statutes, as affected by 2013 Wisconsin Act
2 20, is amended to read:
3 20.435 (4) (im) *Medical assistance; correct payment recovery; collections; other*
4 *recoveries.* All moneys received from the recovery of correct medical assistance
5 payments under ss. 49.496, ~~49.848~~,[✓] and 49.849, all moneys received as collections
6 and other recoveries from providers, drug manufacturers, and other 3rd parties
7 under medical assistance performance-based contracts, and all moneys credited to
8 this appropriation account under s. 49.89 (7) (f), for payments to counties and tribal
9 governing bodies under s. 49.496 (4) (a), for payment of claims under s. [✓]49.849 (5),
10 for payments to the federal government for its share of medical assistance benefits
11 recovered, for the state share of medical assistance benefits provided under subch.
12 IV of ch. 49, and for costs related to collections and other recoveries.

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293; 1999 a. 5, 9, 32, 52, 84, 103, 109, 113, 133, 185, 186; 2001 a. 16, 69, 103, 105; 2003 a. 33, 139, 186, 318, 320, 326, 327; 2005 a. 15, 22; 2005 a. 25 ss. 299 to 331, 2498 to 2500, 2510; 2005 a. 74, 107, 199, 228, 264, 388, 406, 434; 2007 a. 20 ss. 331 to 422, 9121 (6) (a); 2007 a. 39, 88, 107, 111, 130; 2009 a. 2, 16; 2009 a. 28 ss. 325 to 470, 485, 488, 490; 2009 a. 76, 180, 190, 219, 274, 276, 279, 318, 334; 2011 a. 32, 70, 257; 2013 a. 20; s. 35.17 correction in (4) (gr), (5) (ma).

13 **SECTION 2.** 20.435 (4) (in) ^x of the statutes, as affected by 2013 Wisconsin Act 20,
14 is amended to read:
15 20.435 (4) (in) *Community options program; family care; recovery of costs*
16 *administration.* From the moneys received from the recovery of costs of care under
17 ss. 46.27 (7g), ~~49.848~~,[✓] and 49.849 for enrollees who are ineligible for medical
18 assistance, the amounts in the schedule for administration of the recovery of costs
19 of the care.

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g);



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1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293; 1999 a. 5, 9, 32, 52, 84, 103, 109, 113, 133, 185, 186; 2001 a. 16, 69, 103, 105; 2003 a. 33, 139, 186, 318, 320, 326, 327; 2005 a. 15, 22; 2005 a. 25 ss. 299 to 331, 2498 to 2500, 2510; 2005 a. 74, 107, 199, 228, 264, 388, 406, 434; 2007 a. 20 ss. 331 to 422, 9121 (6) (a); 2007 a. 39, 88, 107, 111, 130; 2009 a. 2, 15; 2009 a. 28 ss. 325 to 470, 485, 488, 490; 2009 a. 76, 180, 190, 219, 274, 276, 279, 318, 334; 2011 a. 32, 70, 257; 2013 a. 20; s. 35.17 correction in (4) (gr), (5) (ma).

1 SECTION 3. 20.435 (7) (im) of the statutes, as affected by 2013 Wisconsin Act

2 20, is amended to read:

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

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293; 1999 a. 5, 9, 32, 52, 84, 103, 109, 113, 133, 185, 186; 2001 a. 16, 69, 103, 105; 2003 a. 33, 139, 186, 318, 320, 326, 327; 2005 a. 15, 22; 2005 a. 25 ss. 299 to 331, 2498 to 2500, 2510; 2005 a. 74, 107, 199, 228, 264, 388, 406, 434; 2007 a. 20 ss. 331 to 422, 9121 (6) (a); 2007 a. 39, 88, 107, 111, 130; 2009 a. 2, 15; 2009 a. 28 ss. 325 to 470, 485, 488, 490; 2009 a. 76, 180, 190, 219, 274, 276, 279, 318, 334; 2011 a. 32, 70, 257; 2013 a. 20; s. 35.17 correction in (4) (gr), (5) (ma).

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14 SECTION 4. 46.27 (7g) (a) 5. a. of the statutes, as created by 2013 Wisconsin Act

15 20, is amended to read:

16 46.27 (7g) (a) 5. a. "Property of a decedent" means all real and personal
17 property to which the client held any legal title or in which the client had any legal

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1 interest immediately before death, to the extent of that title or interest, including
2 assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in
3 common, survivorship, life estate, ~~living trust,~~ or any other arrangement, excluding
4 a living trust.

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; 2013 a. 20; s. 13.92 (1) (bm) 2.

5 **SECTION 5. 46.27 (7g) (a) 5. b.** of the statutes, as created by 2013 Wisconsin Act
6 20, is amended to read:

7 46.27 (7g) (a) 5. b. Notwithstanding subd. 5. a., "property of a decedent"
8 includes all real and personal property in which the ~~nonclient surviving spouse had~~
9 ~~an ownership interest at the client's death and in which the~~ client had a marital
10 property interest ~~with that nonclient surviving spouse~~ at any time within 5 years
11 before the client applied for long-term community support services funded under
12 sub. (7) or during the time that the client was eligible for long-term community
13 support services funded under sub. (7).

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; 2013 a. 20; s. 13.92 (1) (bm) 2.

14 **SECTION 6. 46.27 (7g) (c) 2m. b.** of the statutes, as created by 2013 Wisconsin
15 Act 20, is amended to read:

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

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; 2013 a. 20; s. 13.92 (1) (bm) 2.

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

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1 46.27 (7g) (c) 6m. b. The department shall release the lien in the circumstances
2 described in s. ~~49.848 (5) (f)~~ 49.849 (4) (c) 2.

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; 2013 a. 20; s. 13.92 (1) (bm) 2.

3 **SECTION 8.** 46.27 (7g) (g) of the statutes, as affected by 2013 Wisconsin Act 20,
4 is amended to read:

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

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; 2013 a. 20; s. 13.92 (1) (bm) 2.

11 **SECTION 9.** 46.286 (7) of the statutes, as affected by 2013 Wisconsin Act 20, is
12 amended to read:

13 46.286 (7) RECOVERY OF FAMILY CARE BENEFIT PAYMENTS. The department shall
14 apply to the recovery from persons who receive the family care benefit, including by
15 liens and affidavits and from estates, of correctly paid family care benefits, the
16 applicable provisions under ss. 49.496, 49.848, and 49.849.

History: 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 25, 264, 388; 2007 a. 20; 2009 a. 28; 2013 a. 20.

17 **SECTION 10.** 49.496 (1) (cm) 1. of the statutes, as created by 2013 Wisconsin Act
18 20, is amended to read:

19 49.496 (1) (cm) 1. "Property of a decedent" means all real and personal property
20 to which the recipient held any legal title or in which the recipient had any legal
21 interest immediately before death, to the extent of that title or interest, including
22 assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in

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A-11



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1 common, survivorship, life estate, living trust,[✓] or any other arrangement, excluding
2 a living trust.

3 **History:** 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27;[✓] 1997 a. 27; 1999 a. 9; 2003 a. 33; 2007 a. 20; 2009 a. 15; 2013 a. 20.

3 **SECTION 11.** 49.496 (1) (cm) 2. of the statutes, as created by 2013 Wisconsin Act
4 20, is amended to read:

5 49.496 (1) (cm) 2. Notwithstanding subd. 1., "property of a decedent" includes
6 all real and personal property in which the ~~nonrecipient surviving spouse had an~~
7 ~~ownership interest at the recipient's death and in which the~~[✓] recipient had a marital
8 property interest ~~with that nonrecipient surviving spouse~~[✓] at any time within 5 years
9 before the recipient applied for medical assistance or during the time that the
10 recipient was eligible for medical assistance.

11 **History:** 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27;[✓] 1999 a. 9; 2003 a. 33; 2007 a. 20; 2009 a. 15; 2013 a. 20.

11 **SECTION 12.** 49.496 (3) (aj) 2. of the statutes, as created by 2013 Wisconsin Act
12 20, is amended to read:

13 49.496 (3) (aj) 2. There is a presumption, ~~which may be rebutted by clear and~~
14 ~~convincing evidence consistent with s. 766.31~~[✓], that all property in the estate of a
15 nonrecipient surviving spouse was marital property held with the recipient and that
16 100 percent of the property in the estate of the nonrecipient surviving spouse is
17 subject to the department's claim under par. (a).

18 **History:** 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2003 a. 33; 2007 a. 20; 2009 a. 15; 2013 a. 20.[✓]

18 **SECTION 13.** 49.496 (3) (dm) 2. of the statutes, as created by 2013 Wisconsin Act
19 20, is amended to read:

20 49.496 (3) (dm) 2. The department shall release the lien in the circumstances
21 described in s. ~~49.848 (5) (f)~~[✓] 49.849 (4) (c) 2.[✓]

22 **History:** 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2003 a. 33; 2007 a. 20; 2009 a. 15; 2013 a. 20.[✓]

22 **SECTION 14.** 49.496 (6m) of the statutes, as affected by 2013 Wisconsin Act 20,
23 is amended to read:

✓

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1 49.496 (6m) WAIVER DUE TO HARDSHIP. The department shall promulgate rules
2 establishing standards for determining whether the application of this section would
3 work an undue hardship in individual cases. If the department determines that the
4 application of this section would work an undue hardship in a particular case, the
5 department shall waive application of this section in that case. ~~This subsection does~~
6 ~~not apply with respect to claims against the estates of nonrecipient surviving~~
7 ~~spouses.~~ ✓

History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 20 ✓ 1997 a. 27; 1999 a. 9; 2003 a. 33; 2007 a. 20; 2009 a. 15; 2013 a. 20.

8 **SECTION 15.** 49.4962 of the statutes, as created by 2013 Wisconsin Act 20, is
9 repealed. ✓

10 **SECTION 16.** 49.682 (1) (e) 1. of the statutes, as created by 2013 Wisconsin Act
11 20, is amended to read: ✓

12 49.682 (1) (e) 1. "Property of a decedent" means all real and personal property
13 to which the client held any legal title or in which the client had any legal interest
14 immediately before death, to the extent of that title or interest, including assets
15 transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common,
16 survivorship, life estate, living trust, ✓ or any other arrangement, ✓ excluding a living
17 trust.

History: 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20 ✓.

18 **SECTION 17.** 49.682 (1) (e) 2. of the statutes, as created by 2013 Wisconsin Act
19 20, is amended to read:

20 49.682 (1) (e) 2. Notwithstanding subd. 1., "property of a decedent" includes all
21 real and personal property in which the ~~nonclient surviving spouse had an~~
22 ~~ownership interest at the client's death and in which the~~ ✓ client had a marital
23 ~~property interest with that nonclient surviving spouse~~ ✓ at any time within 5 years



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1 before the client applied for aid under s. 49.68, 49.683, or 49.685 or during the time
2 that the recipient was eligible for aid under s. 49.68, 49.683, or 49.685.

3 **History:** 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20.

3 **SECTION 18.** 49.682 (2) (bm) 2. of the statutes, as created by 2013 Wisconsin Act
4 20, is amended to read:

5 49.682 (2) (bm) 2. There is a presumption, which may be rebutted by clear and
6 convincing evidence consistent with s. 766.31, that all property in the estate of the
7 nonclient surviving spouse was marital property held with the client and that 100
8 percent of the property in the estate of the nonclient surviving spouse is subject to
9 the department's claim under par. (a).

10 **History:** 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20.

10 **SECTION 19.** 49.682 (2) (fm) 2. of the statutes, as created by 2013 Wisconsin Act
11 20, is amended to read:

12 49.682 (2) (fm) 2. The department shall release the lien in the circumstances
13 described in s. 49.848 (5) (f) 49.849 (4) (c) 2.

14 **History:** 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20.

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

16 49.682 (5) The department shall promulgate rules establishing standards for
17 determining whether the application of this section would work an undue hardship
18 in individual cases. If the department determines that the application of this section
19 would work an undue hardship in a particular case, the department shall waive
20 application of this section in that case. This subsection does not apply with respect
21 to claims against the estates of nonclient surviving spouses.

22 **History:** 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20.

22 **SECTION 21.** 49.848 of the statutes, as created by 2013 Wisconsin Act 20, is
23 repealed.

↓

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1 **SECTION 22.** 49.849 (1) (d) 1. of the statutes, as created by 2013 Wisconsin Act
2 20, is amended to read:

3 49.849 (1) (d) 1. "Property of a decedent" means all real and personal property
4 to which the recipient held any legal title or in which the recipient had any legal
5 interest immediately before death, to the extent of that title or interest, including
6 assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in
7 common, survivorship, life estate, living trust, or any other arrangement, excluding
8 a living trust.

History: 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317.

9 **SECTION 23.** 49.849 (1) (d) 2. of the statutes, as created by 2013 Wisconsin Act
10 20, is amended to read:

11 49.849 (1) (d) 2. Notwithstanding subd. 1., "property of a decedent" includes all
12 real and personal property in which the ~~nonrecipient surviving spouse had an~~
13 ~~ownership interest at the recipient's death and in which the recipient had a marital~~
14 ~~property interest with that nonrecipient surviving spouse~~ at any time within 5 years
15 before the recipient applied for public assistance or during the time that the recipient
16 was eligible for public assistance.

History: 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317.

17 **SECTION 24.** 49.849 (2) (c) of the statutes, as created by 2013 Wisconsin Act 20,
18 is amended to read:

19 49.849 (2) (c) There is a presumption, ~~which may be rebutted by clear and~~
20 ~~convincing evidence~~ consistent with s. 766.31, that all property of the deceased
21 nonrecipient surviving spouse was marital property held with the recipient and that
22 100 percent of the property of the deceased nonrecipient surviving spouse is subject
23 to the department's claim under par. (a).

History: 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317.

✓

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X

1 **SECTION 25.** 49.849 (4) (c) 2. of the statutes, as created by 2013 Wisconsin Act
2 20, is renumbered 49.849 (4) (c) 2. (intro.) and amended to read:

3 49.849 (4) (c) 2. (intro.) The department shall release the lien ~~in the~~
4 ~~circumstances described in s. 49.848 (5) (f).~~ if any of the following applies:

History: 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317.

5 **SECTION 26.** 49.849 (4) (c) 2. a. of the statutes is created to read:

6 49.849 (4) (c) 2. a. The recipient's surviving spouse or child who is under age
7 21 or disabled sells the property for fair market value, as described in sub. (5c) (d),
8 during the spouse's or child's lifetime.

9 **SECTION 27.** 49.849 (4) (c) 2. b. of the statutes is created to read:

10 49.849 (4) (c) 2. b. The recipient's surviving spouse or child who is under age
11 21 or disabled transfers the property for less than fair market value, as described in
12 sub. (5c) (d), during the spouse's or child's lifetime, the transferee sells the property
13 during the spouse's or child's lifetime and places proceeds equal to the lesser of the
14 department's lien or the sale proceeds due to the seller in a trust or bond, and the
15 department is paid the secured amount upon the death of the recipient's spouse or
16 disabled child or when the recipient's child who is not disabled reaches age 21.

17 **SECTION 28.** 49.849 (4) (c) 2. c. of the statutes is created to read:

18 49.849 (4) (c) 2. c. The surviving owner or transferee of the property, who is not
19 the recipient's surviving spouse or child who is under age 21 or disabled, sells the
20 property during the lifetime of the recipient's surviving spouse or child who is under
21 age 21 or disabled and places proceeds equal to the lesser of the department's lien or
22 the sale proceeds due to the seller in a trust or bond, and the department is paid the
23 secured amount upon the death of the recipient's spouse or disabled child or when
24 the recipient's child who is not disabled reaches age 21.

J

Ins 11-17 cont'd 9/9

1 **SECTION 29.** 49.849 (7) of the statutes, as affected by 2013 Wisconsin Act 20,
2 is amended to read:

3 49.849 (7) RULES FOR HARDSHIP WAIVER. The department shall promulgate rules
4 establishing standards to determine whether the application of this section would
5 work an undue hardship in individual cases. If the department determines that the
6 application of this section would work an undue hardship in a particular case, the
7 department shall waive the application of this section in that case. ~~This subsection~~
8 ~~does not apply with respect to collecting from the property of a decedent if the~~
9 ~~decedent is a deceased nonrecipient surviving spouse.~~

History: 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317.

10 **SECTION 30.** 59.43 (1) (w) of the statutes, as created by 2013 Wisconsin Act 20,
11 is repealed.

(END OF INSERT 11-17)

INSERT 73-3

12 **SECTION 31.** 701.065 (5) of the statutes, as created by 2013 Wisconsin Act 20,
13 is repealed.

(END OF INSERT 73-3)

INSERT 171-5

14 **SECTION 32.** 893.33 (4r) of the statutes, as created by 2013 Wisconsin Act 20,
15 is amended to read:

16 893.33 (4r) This section applies to liens of the department of health services
17 on real property under ss. 46.27 (7g), 49.496, 49.682, 49.848, and 49.849.

History: 1979 c. 323; 1981 c. 261; 1985 a. 135; 1987 a. 27, 330; 1991 a. 39; 1997 a. 140; 1999 a. 150; 2009 a. 378, 379; 2013 a. 20.

18 **SECTION 33. Initial applicability.**

19 (1) ESTATE RECOVERY CHANGES. The treatment of sections 46.27 (7g) (a) 5. a. and
20 b., (c) 2m. b. and 6m. b., and (g), 49.496 (1) (cm) 1. and 2., (3m) (aj) 2. and (dm) 2., and

auto ref A
auto ref B

↓

INS B to Ins 171-5 cont

1 statutes first applies to determinations of initial eligibility for Medical Assistance for
2 individuals who apply for Medical Assistance on July 2, 2013.

(END INSERT TO INSERT ~~171-5~~)^B 171-5

3 INSERT to INSERT ~~171-5~~^C 171-5

4 (2) DIVESTMENT AND ASSET VERIFICATION CHANGES. The treatment of sections
5 49.45 (4m) (a) 3. b. and d. and 49.453 (2) (a) (intro.) and (b) (intro.) and (4c) (c) of the
6 statutes and SECTION (X) (C) take effect on the day after publication.

(END INSERT TO INSERT ~~171-5~~)^C 171-5

Auto ref A (from PJX insert)
Auto ref C (from previous page)

1 INSERT to INSERT TJD ANALYSIS

Divestment and asset verification ✓

* Under the law previous to the effective date of the biennial budget bill, 2013
* Wisconsin Act 20 (Act 20), with certain exceptions, if an institutionalized, or
noninstitutionalized, individual or his or her spouse transfers assets for less than
fair market value on or after a specific date the individual is ineligible for certain MA
services for a specified period of time. ✓ Current law, under Act 20, specified that an
eligibility period applies for an institutionalized or noninstitutionalized individual
regardless of whether the assets transferred for less than fair market value are
considered excluded assets, if retained, under federal law. ✓ JCF did not approve the
implementation of this change in Act 20 and the bill repeals the change. ✓

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

* Act 20 changes the definition of "financial institutions" for purposes of verifying
the assets of applicants for and recipients of MA programs. The bill removes from
that definition institution-affiliated parties of depository institutions and credit
unions, as institutional-affiliated parties are defined under federal law. ✓

(END INSERT TO INSERT TJD ANALYSIS)

2 INSERT to INSERT 4-17

3 SECTION 1. 49.45 (4m) (a) 3. b. of the statutes, as created by 2013 Wisconsin Act
4 20, is repealed.

5 SECTION 2. 49.45 (4m) (a) 3. d. of the statutes, as created by 2013 Wisconsin Act
6 20, is repealed.

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

INS A to Ins 11-17 cont

1 49.453 (2) (a) *Institutionalized individuals*. (intro.) Except as provided in sub.
 2 (8), if an institutionalized individual or his or her spouse, or another person acting
 3 on behalf of the institutionalized individual or his or her spouse, transfers assets;
 4 ~~regardless of whether those assets, if retained, are excluded under 42 USC 1396p;~~
 5 ✓ for less than fair market value on or after the institutionalized individual's look-back
 6 date, the institutionalized individual is ineligible for medical assistance for the
 7 following services for the period specified under sub. (3):

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185; 2007 a. 20; 2013 ✓ 20.

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

10 49.453 (2) (b) *Noninstitutionalized individuals*. (intro.) Except as provided in
 11 sub. (8), if a noninstitutionalized individual or his or her spouse, or another person
 12 acting on behalf of the noninstitutionalized individual or his or her spouse, transfers
 13 assets; ~~regardless of whether those assets, if retained, are excluded under 42 USC~~
 14 ~~1396p;~~ ✓ for less than fair market value on or after the noninstitutionalized
 15 individual's look-back date, the noninstitutionalized individual is ineligible for
 16 medical assistance for the following services for the period specified under sub. (3):

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185; 2007 ✓ a. 20; 2013 a. 20.

17 **SECTION 5.** 49.453 (4c) (c) of the statutes, as created by 2013 Wisconsin Act 20,
 18 is repealed.

(END INSERT ^A TO INSERT ^{g 11} 4-17)

Autoref C

B

171-5

19 INSERT TO INSERT 11-6
 20 (2) DIVESTMENT AND ASSET VERIFICATION CHANGES. The treatment of sections
 21 49.45 (4m) (a) 3. b. ✓ and d. ✓ and 49.453 (2) (a) (intro.) ✓ and (b) (intro.) ✓ and (4c) (c) ✓ of the



Insert 171-5 could 2572

Insert to Insert 171-5

1 (6m), 49.682 (1) (e) 1. and 2., (2) (bm) 2. and (fm) 2., and (5), and 49.849 (1) (d) 1. and
2., (2) (c), and (7) of the statutes, the renumbering and amendment of section 49.849
3 (4) (c) 2. of the statutes, and the creation of section 49.849 (4) (c) 2. a., b., and c. of the
4 statutes first apply to the recovery of public assistance as defined in section 49.849
5 (1) (e) of the statutes, provided to individuals who die on October 1, 2013.

6 **SECTION 34. Effective dates.** This act takes effect on the first day of the 7th
7 month beginning after publication, except as follows:

8 (1) ESTATE RECOVERY CHANGES. The treatment of sections 20.435 (4) (im) and (in)
9 and (7) (im), 46.27 (7g) (a) 5. a. and b., (c) 2m. b. and 6m. b., and (g), 46.286 (7), 49.496
10 (1) (cm) 1. and 2., (3m) (aj) 2. and (dm) 2., and (6m), 49.4962, 49.682 (1) (e) 1. and 2.,
11 (2) (bm) 2. and (fm) 2., and (5), 49.848, 49.849 (1) (d) 1. and 2., (2) (c), and (7), 59.43
12 (1) (w), 701.065 (5), and 893.33 (4r) of the statutes, the renumbering and amendment
13 of section 49.849 (4) (c) 2. of the statutes, the creation of section 49.849 (4) (c) 2. a.,
14 b., and c. of the statutes, and SECTION X (Z) of this act take effect on the day after
15 publication.

auto ref A → ← auto ref B
stet

(END OF INSERT 171-5)

Insert to Insert 171-5

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0010/3dn

PJK:.....

✓ m s m

date

I made the changes suggested in the drafting instructions, except that, in the definitions of "property of a decedent," I explicitly excluded living trusts, rather than just striking the phrase. ✓ "Living trust" currently is part of a list that begins with "including." Therefore, all of the different types of arrangements for transferring assets that are listed after the word "including" are merely examples. Taking away one example by striking it has no substantive effect. I assumed that the intent was to exclude assets transferred by a living trust from property that is subject to recovery. Let me know if that was not the intent. ✓

In the presumption language, "which may be rebutted by clear and convincing evidence" was removed. ✓ This may create a question about whether the presumption may be rebutted or not. Therefore, I would recommend that at least the word "rebuttable" be reinstated before "presumption." Also in the presumption language, if the presumption is that "all of the property of the deceased nonrecipient surviving spouse was marital property held with the recipient," should the "100 percent of the property of the deceased nonrecipient spouse" that is subject to the department's claim be limited by the language "to the extent of the recipient's interest"? ✓

Pamela J. Kahler
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E-mail: pam.kahler@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0010/3dn
PJK:jld:jf

October 16, 2013

I made the changes suggested in the drafting instructions, except that, in the definitions of "property of a decedent," I explicitly excluded living trusts, rather than just striking the phrase. "Living trust" currently is part of a list that begins with "including." Therefore, all of the different types of arrangements for transferring assets that are listed after the word "including" are merely examples. Taking away one example by striking it has no substantive effect. I assumed that the intent was to exclude assets transferred by a living trust from property that is subject to recovery. Let me know if that was not the intent.

In the presumption language, "which may be rebutted by clear and convincing evidence" was removed. This may create a question about whether the presumption may be rebutted or not. Therefore, I would recommend that at least the word "rebuttable" be reinstated before "presumption." Also in the presumption language, if the presumption is that "all of the property of the deceased nonrecipient surviving spouse was marital property held with the recipient," should the "100 percent of the property of the deceased nonrecipient spouse" that is subject to the department's claim be limited by the language "to the extent of the recipient's interest"?

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