



**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 667**

February 16, 2024 - Offered by Senator KNODL.

1 **AN ACT** *to create* subchapter XIII of chapter 701 [precedes 701.1301] of the
2 statutes; **relating to:** domestic asset protection trusts.

Analysis by the Legislative Reference Bureau

2023 Senate Bill 667 creates a new chapter 669, stats., that governs a new type of trust, called a legacy trust. This substitute amendment places all of the bill language from 2023 Senate Bill 667 in a new subchapter of the Wisconsin Trust Code. In addition, under the substitute amendment, if a person who creates a legacy trust is married and transfers marital property to the legacy trust, the person must provide to that person's spouse written notice of the transfer of the property at the time of the transfer. For further information, see the analysis for 2023 Senate Bill 667.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** Subchapter XIII of chapter 701 [precedes 701.1301] of the statutes
4 is created to read:

5 **CHAPTER 701**

SUBCHAPTER XIII

LEGACY TRUSTS

701.1301 Definitions. In this subchapter:

(1) “Advisor” means a person who, under the terms of a legacy trust, is granted the power to do any of the following:

(a) Remove or appoint a trustee of the legacy trust.

(b) Direct, consent to, or disapprove a trustee’s actual or proposed investment, distribution, or any other action related to assets of the legacy trust.

(2) “Asset” means property of a transferor but does not include any of the following:

(a) Property to the extent it is encumbered by a valid lien.

(b) Property to the extent it is generally exempt under nonbankruptcy law at the time of a qualified disposition.

(c) Property held as marital property with rights of survivorship to the extent that under the law governing the marital property at the time of a qualified disposition the property is not subject to process by a creditor holding a claim against only one spouse.

(d) Property transferred from a nonlegacy trust to a legacy trust to the extent that the property would not be subject to attachment under applicable nonbankruptcy law that governs the nonlegacy trust.

(3) “Claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) “Creditor” means a person who has a claim against a transferor and includes any transferee of, assignee of, or successor to the claim.

1 **(5)** “Debt” means liability on a claim.

2 **(6)** “Disposition” means a transfer, conveyance, or assignment of a property
3 interest, including a partial, contingent, undivided, or co-ownership property
4 interest. “Disposition” includes an exercise of a general power of appointment that
5 results in a transfer of property to a trustee but does not include any of the following:

6 (a) The release or relinquishment of a property interest that is subject to a
7 qualified disposition until the release or relinquishment.

8 (b) The exercise of a special power of appointment that results in a transfer of
9 property to a trustee.

10 (c) A disclaimer under s. 700.27 or 854.13.

11 **(7)** “Investment decision” means a decision regarding the retention, purchase,
12 sale, exchange, tender, or other action affecting the ownership of or rights in an
13 investment.

14 **(8)** “Legacy trust” means a trust created by a written instrument, the terms of
15 which do all of the following:

16 (a) Appoint at least one qualified trustee to accept property that is the subject
17 of a disposition, regardless of whether the terms of the trust also appoint a
18 nonqualified trustee.

19 (b) Expressly designate the laws of this state to govern the meaning and effect
20 of the terms of the trust, in whole or in part.

21 (c) Expressly provide that the trust is irrevocable.

22 (d) Include a spendthrift provision that applies to an interest of a beneficiary
23 in trust property, including an interest of a transferor who is a beneficiary.

24 **(9)** “Lien” has the meaning given in s. 242.01 (8).

25 **(10)** “Nonlegacy trust” means a trust that is not a legacy trust.

1 (11) “Nonqualified trustee” means a trustee who is not a qualified trustee.

2 (12) “Qualified disposition” means a disposition by a transferor to any trustee
3 of a legacy trust.

4 (13) “Qualified trustee” means a trustee who is not a transferor and to whom
5 one of the following applies:

6 (a) If the trustee is an individual, the individual resides and is domiciled in this
7 state.

8 (b) If the trustee is a trust company or a bank, the trust company or bank is
9 organized under federal law, state law, or the laws of another state, and the trust
10 company or bank maintains an office in this state.

11 (14) “Transferor” means a person who directly or indirectly makes a disposition
12 to a legacy trust, including a settlor, as defined in s. 701.0103 (23).

13 (15) “Valid lien” has the meaning given in s. 242.01 (13).

14 **701.1302 Applicability.** (1) Unless the terms of a legacy trust provide
15 otherwise, this subchapter governs the construction, operation, and enforcement in
16 this state of a legacy trust, whether created in this state or any other state, if any of
17 the following applies:

18 (a) Any of the land, rents, issues, or profits that are the subject of a qualified
19 disposition are located in this state.

20 (b) Any portion of personal property, interest of money, or dividends of stock
21 that is the subject of a qualified disposition is located in this state.

22 (c) The transferor’s legal residence is in this state.

23 (d) A qualified trustee of the legacy trust has the power to maintain records and
24 prepare income tax returns for the trust, and all or part of the administration of the
25 trust is performed in this state.

1 **(2)** (a) If the transferor is married at the time of a qualified disposition, this
2 subchapter applies to the following:

3 1. Any of the transferor's individual property that is the subject of the qualified
4 disposition.

5 2. Any marital property that is the subject of the qualified disposition if the
6 transferor's spouse at the time of the disposition was provided with notice of the
7 qualified disposition as provided in par. (b) or executed a written consent to the
8 qualified disposition after being provided the information set forth in the notice.

9 (b) All of the following apply to a notice of a qualified disposition under this
10 subchapter:

11 1. The notice shall contain the following language, in capital letters, at or near
12 the top of the notice:

13 YOUR SPOUSE OR FORMER SPOUSE IS CREATING A PERMANENT
14 TRUST INTO WHICH PROPERTY IS BEING TRANSFERRED.

15 YOUR RIGHTS TO THIS PROPERTY MAY BE AFFECTED DURING YOUR
16 MARRIAGE, UPON DIVORCE (INCLUDING THE PAYMENT OF CHILD
17 SUPPORT OR ALIMONY OR A DIVISION OR DISTRIBUTION OF PROPERTY IN
18 A DIVORCE), OR AT THE DEATH OF YOUR SPOUSE OR FORMER SPOUSE.

19 YOU HAVE A VERY LIMITED PERIOD OF TIME TO OBJECT TO THE
20 TRANSFER OF PROPERTY INTO THIS TRUST.

21 YOU MAY, UPON REQUEST TO THE TRUSTEE AT THE ADDRESS BELOW,
22 BE FURNISHED A COPY OF THE TRUST DOCUMENT.

23 IF YOU HAVE ANY QUESTIONS, YOU SHOULD IMMEDIATELY SEEK
24 INDEPENDENT LEGAL ADVICE.

1 IF YOU FAIL TO OBJECT WITHIN 30 DAYS, YOU WILL HAVE
2 CONSENTED TO THE TRANSFER OF PROPERTY INTO THIS TRUST.

3 (address)

4 2. The notice shall contain a description of the property that is the subject of
5 the qualified disposition.

6 3. The notice may require that any person who is eligible to receive information
7 under this subsection be bound by the duty of confidentiality that binds the trustee
8 before receiving such information from the trustee.

9 4. The notice shall be provided by the transferor, the transferor's agent, the
10 trustee, or another fiduciary of the legacy trust.

11 (c) If a notice is provided under this subsection before the qualified disposition,
12 the period to commence an action under s. 701.1306 (3) begins to run on the date the
13 notice is provided. The period to commence an action to challenge a qualified
14 disposition under this subsection and s. 701.1306 (3) may not exceed the period set
15 forth in s. 893.425.

16 **701.1303 Spendthrift provision; legacy trust. (1)** Notwithstanding s.
17 701.0502 (1), a spendthrift provision of a legacy trust is not invalid because a
18 transferor or a person who is treated as a settlor under s. 701.0505 (2) is also a
19 beneficiary of the legacy trust.

20 **(2)** Except as otherwise provided in this section, a spendthrift provision in a
21 legacy trust restrains both voluntary and involuntary transfers of a transferor's
22 interest in the legacy trust. A spendthrift provision in a legacy trust is enforceable
23 under any applicable nonbankruptcy law within the meaning of 11 USC 541 (c) (2)
24 regardless of whether the legacy trust instrument makes any reference to that
25 enforceability. The terms of a legacy trust, including in a spendthrift provision, may

1 provide for any other restraint of alienation that are permitted under the laws of this
2 state.

3 (3) Section 701.0503 (2) does not apply to a spendthrift provision in a legacy
4 trust.

5 (4) Section 701.0505 (1) (a) 2. does not apply to a legacy trust.

6 (5) Nothing in this section may deprive a beneficiary of any exemption right
7 that the beneficiary has under any applicable law after the trust property is received
8 by the beneficiary.

9 **701.1304 Implied power to revoke or to transfer an interest in a legacy**
10 **trust.** None of the following is considered to be, including in combination, a power
11 to revoke a legacy trust or to voluntarily or involuntarily transfer an interest in the
12 legacy trust:

13 (1) A transferor's power to veto a distribution of income or principal from the
14 legacy trust.

15 (2) A special power of appointment, as defined in s. 702.02 (7), exercisable by
16 a transferor by will or another written document that is effective during the lifetime
17 of the transferor or upon the death of the transferor.

18 (3) The right of a transferor to receive income from the legacy trust in
19 accordance with the terms of the legacy trust.

20 (4) That a transferor is a beneficiary of the legacy trust regardless of whether
21 the trust qualifies as a charitable remainder annuity trust under 26 USC 664 (d) (1)
22 or as a charitable remainder unitrust under 26 USC 664 (d) (2), even if the transferor
23 has the right to release the transferor's retained interest, in whole or in part, in the
24 charitable remainder annuity trust or charitable remainder unitrust at any time in
25 favor of one or more of the remainder beneficiaries of the legacy trust.

1 **(5)** A transferor’s annual receipt of a percentage of the value of the legacy trust
2 assets, as determined in accordance with the terms of the trust, as long as the amount
3 the transferor receives in a year is not more than the amount defined as the income
4 of the legacy trust under 26 USC 643 (b) or, for any qualified retirement plan or
5 eligible deferred compensation plan that is an asset of the legacy trust, the minimum
6 required distribution, as defined in 26 USC 4974 (b).

7 **(6)** A transferor’s potential or actual receipt or use of principal or income of the
8 legacy trust if the potential or actual receipt or use is the result of any of the following:

9 (a) A qualified trustee’s discretion. For purposes of this paragraph, a qualified
10 trustee has discretion with respect to the distribution and use of the principal and
11 income of a legacy trust unless the terms of the legacy trust expressly provide
12 otherwise.

13 (b) A qualified trustee applying a standard that governs the distribution or use
14 of principal or income of the legacy trust.

15 (c) A qualified trustee acting at the direction of an advisor if the advisor’s
16 direction is discretionary or pursuant to a standard that governs the distribution or
17 use of principal or income under the terms of the legacy trust. For purposes of this
18 paragraph, an advisor’s direction is discretionary unless the terms of the legacy trust
19 expressly provide otherwise.

20 **(7)** A transferor’s potential or actual right to use real or tangible personal
21 property owned by the legacy trust.

22 **(8)** A transferor’s right to possess and enjoy a qualified interest, as defined in
23 26 USC 2702 (b), or property held under a qualified personal residence trust, as
24 described in 26 USC 2702 (c).

1 **(9)** A qualified trustee’s mandatory or discretionary power to use the income
2 or principal of the legacy trust to pay, in whole or in part, income taxes due on the
3 income of the legacy trust.

4 **(10)** That a qualified trustee, whether pursuant to the qualified trustee’s
5 discretion, the terms of the legacy trust, or the direction of an advisor pays any of the
6 following:

7 (a) A transferor’s debt that is outstanding at the time of the transferor’s death.

8 (b) The expenses of administering the transferor’s estate.

9 (c) Any estate, gift, generation–skipping transfer, or inheritance tax on behalf
10 of the transferor or the transferor’s estate.

11 **(11)** A provision in the legacy trust that transfers all or part of the trust assets
12 to the transferor’s estate or revocable trust.

13 **(12)** A transferor is a beneficiary of the legacy trust and is authorized to receive
14 a payment of income or principal from a qualified annuity interest, as defined in 26
15 CFR 25.2702-3 (b), or a qualified unitrust interest, as defined in 26 CFR 25.2702-3
16 (c).

17 **701.1305 Transferor’s powers.** **(1)** A transferor of a legacy trust has only
18 the powers and rights that are granted to the transferor by the trust instrument. An
19 agreement or understanding, express or implied, between the transferor and a
20 trustee that attempts to grant or permit the retention of greater rights or authority
21 than is stated in the trust instrument is void.

22 **(2)** Notwithstanding s. 701.1304, the terms of a legacy trust may grant a
23 transferor, whether or not the transferor is a trustee, the power to do any of the
24 following:

25 (a) Remove and replace a trustee.

1 (b) Remove and replace an advisor.

2 (c) Direct trust investments.

3 (d) Execute any other managerial duties.

4 **701.1306 Limitations on actions, remedies, and claims.** (1) In this
5 section:

6 (a) “Cash” means the coins or currency of the United States or any other nation.

7 (b) “Cash equivalent” means a monetary instrument or device that is commonly
8 or routinely accepted instead of cash, including a certified or uncertified check;
9 money order; bank draft; electronic transfer of funds; negotiable instrument or an
10 instrument endorsed in blank or in bearer form; securities issued or guaranteed by
11 the United States, a state, or a state or federal agency; funds on deposit in a savings
12 or checking account or any similar account; funds on deposit in a money market
13 account or similar account; or demand deposit account, time deposit account, or
14 savings deposit account at any bank, savings and loan association, brokerage house,
15 or similar institution.

16 (c) “Fungible asset” means an asset other than money that is interchangeable
17 for commercial purposes and the properties of which are essentially identical.

18 (d) “Money” means cash or a cash equivalent.

19 **(2)** Subject to sub. (3) and s. 701.1311 (4), a creditor may not bring an action
20 of any kind, including an action to enforce a judgment, an action at law or in equity,
21 or an action for an attachment or other final or provisional remedy, against a person
22 who made or received a qualified disposition, against a trustee of a legacy trust, or
23 against or involving any property that is the subject of a qualified disposition or is
24 otherwise held by a legacy trust, except that, subject to s. 701.1307, a creditor may

1 bring an action against a qualified disposition of an asset if the transferor made the
2 qualified disposition with the intent to hinder, delay, or defraud the creditor.

3 **(3)** A creditor may bring an action against a qualified disposition under sub.
4 (2) only if the creditor satisfies one of the following:

5 (a) The creditor was a creditor of the transferor when the qualified disposition
6 was made and the creditor commences the action within the later of the following:

7 1. Eighteen months after the qualified disposition.

8 2. Six months after the creditor discovers or reasonably should have discovered
9 the qualified disposition. For purposes of this subdivision, a creditor is considered
10 to have discovered a transfer at the time a public record is made of the transfer.

11 (b) The creditor becomes a creditor after the qualified disposition is made, and
12 the creditor commences the action no later than 18 months after the qualified
13 disposition.

14 **(4)** In an action against a qualified disposition under sub. (2), each creditor has
15 the burden of proving by clear and convincing evidence that the transferor made the
16 qualified disposition with the intent to hinder, delay, or defraud the creditor. Proof
17 by one creditor that a transferor made a qualified disposition with the intent to
18 hinder, delay, or defraud that creditor is not proof that the transferor made a
19 qualified disposition with the intent to hinder, delay, or defraud any other creditor
20 and does not invalidate any other transfer of property to the legacy trust.

21 **(5)** Subject to s. 701.1311 (4), with respect to a qualified disposition, a creditor
22 has only the rights and remedies that are provided in this section and s. 701.1307.

23 **(6)** Subject to sub. (8), an advisor may not be found liable for damages a person
24 suffers in connection with a legacy trust unless the person demonstrates by clear and
25 convincing evidence that the advisor's actions violated the laws of this state, that the

1 advisor acted knowingly and in bad faith, and that the advisor's actions directly
2 caused the damages suffered by the person.

3 (7) Subject to sub. (8), a trustee of a legacy trust may not be found liable to a
4 person who is not a beneficiary or a transferor of the legacy trust unless the person
5 demonstrates by clear and convincing evidence that the trustee's actions violated the
6 laws of this state, that the trustee acted knowingly and in bad faith, and that the
7 trustee's actions directly caused the damages suffered by the person.

8 (8) (a) Subject to s. 701.1311 (4), no person may bring an action of any kind
9 related to a qualified disposition if the period under sub. (3) in which a creditor may
10 bring an action against the qualified disposition that is the basis of the action has
11 expired.

12 (b) An action barred under par. (a) includes an action to enforce a judgment
13 entered by a court or other authorized adjudicative body, in law or equity, against a
14 trustee or advisor of a legacy trust or against any person involved in the counseling
15 in connection with, or the drafting, preparation, execution, administration, or
16 funding of a legacy trust. For purposes of this paragraph, "counseling in connection
17 with, or the drafting, preparation, execution, administration, or funding of a legacy
18 trust" includes any of those actions related to any limited partnership, limited
19 liability company, corporation, or similar entity if the limited partnership interests,
20 limited liability company interests, stock, or other similar ownership interests in the
21 relevant entity are subsequently the subject of a qualified disposition.

22 (9) If more than one qualified disposition is made to a legacy trust, all of the
23 following apply:

1 (a) For purposes of determining whether a creditor's claim against a qualified
2 disposition is barred under sub. (3), each qualified disposition shall be evaluated
3 individually without regard to any subsequent qualified disposition.

4 (b) For purposes of determining the order in which property is paid, applied,
5 or distributed from a legacy trust, all of the following apply:

6 1. A payment, application, or distribution of money is considered to be made
7 from or with the money most recently received or acquired by any trustee of a legacy
8 trust except to the extent that it is proven otherwise beyond a reasonable doubt.

9 2. A payment, application, or distribution of a fungible asset is considered to
10 be made from or with the fungible asset most recently received or acquired by any
11 trustee of a legacy trust except to the extent that it is proven otherwise by clear and
12 convincing evidence.

13 (c) A distribution to a beneficiary is considered to have been made from the most
14 recent transfer to the legacy trust.

15 **701.1307 Creditor claims against qualified dispositions.** (1) If a
16 creditor's claim against a qualified disposition under s. 701.1306 is successful, in
17 whole or in part, all of the following apply:

18 (a) The creditor may recover damages from trust assets only to the extent
19 necessary to satisfy a transferor's debt to the creditor and any part of the qualified
20 disposition that is not used to satisfy the debt remains subject to the legacy trust.

21 (b) Any other qualified disposition to a trustee of the legacy trust and the legacy
22 trust remain valid, including a qualified disposition of a partial, co-ownership, or
23 undivided interest in property by a transferor whose transfer was the subject of a
24 creditor claim under s. 701.1306.

1 (c) If a court is satisfied that the trustee did not act in bad faith in accepting
2 or administering the property that was the subject of the claim under s. 701.1306,
3 all of the following apply:

4 1. The trustee has a first lien against the property that was the subject of the
5 claim under s. 701.1306 in an amount equal to the entire cost, including attorney
6 fees, properly incurred by the trustee in defense of the action or proceedings against
7 the qualified disposition.

8 2. Any recovery for damages under par. (a) is subject to the fees, costs, and
9 preexisting rights, claims, and interests of the trustee and of any predecessor trustee
10 that has not acted in bad faith.

11 (d) If a court is satisfied that a beneficiary of the legacy trust did not act in bad
12 faith in receiving a distribution from the legacy trust, the creditor's recovery of the
13 qualified disposition is subject to the right of the beneficiary to retain that
14 distribution if the distribution was the result of an exercise of a trust power or of
15 discretion vested in a trustee or advisor and that power or discretion was exercised
16 before the creditor commenced the action against the qualified disposition.

17 (e) 1. For purposes of par. (c), a trustee is not considered to have acted in bad
18 faith solely because the trustee accepted the property that is the subject of the
19 recoverable qualified disposition.

20 2. For purposes of par. (d), a beneficiary, including a beneficiary who is a
21 transferor, is not considered to have acted in bad faith solely because the beneficiary
22 accepted a distribution made in accordance with the terms of the legacy trust.

23 3. For purposes of pars. (c) and (d), a creditor has the burden of proving by clear
24 and convincing evidence that a trustee or a beneficiary acted in bad faith.

1 **(2)** A court shall award costs and reasonable attorney fees to a prevailing party
2 in a final judgment in an action that is wholly or partially brought under this section
3 or s. 701.1306.

4 **701.1308 Trust advisors; eligibility; default fiduciary status.** **(1)** Except
5 as provided in sub. (2), any person is eligible to serve as an advisor of a legacy trust.

6 **(2)** A transferor of a legacy trust may serve as an advisor only in connection
7 with investment decisions related to trust assets.

8 **(3)** Notwithstanding s. 701.0818 (2), an advisor is a fiduciary unless the terms
9 of a legacy trust expressly provide otherwise.

10 **701.1309 Rules regarding discretion.** Except as otherwise provided under
11 the terms of a legacy trust, each trustee and each advisor of the legacy trust has the
12 greatest discretion permitted by law in connection with all matters of trust
13 administration, trust distributions, and any other trustee or advisor decision.

14 **701.1310 Discretionary interest not property of a beneficiary.** No
15 person, including a beneficiary, has a property interest in property of a legacy trust
16 to the extent that the distribution of that property is subject to the discretion of a
17 qualified trustee or advisor, whether acting alone or in conjunction with another
18 person, including a person authorized to veto a distribution from the legacy trust.

19 **701.1311 Miscellaneous provisions.** **(1)** If there is a conflict between a
20 provision of this subchapter and s. 242.07, the provision of this subchapter shall
21 control.

22 **(2)** A statement in a trust instrument that the trust is governed by “the laws
23 of this state” or a statement to similar effect is considered to expressly designate the
24 laws of this state to govern the validity, construction, and administration of the trust
25 and satisfies s. 701.1301 (8) (b).

