
Wisconsin Legislative Council

AMENDMENT MEMO



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2023 Senate Bill 667

Senate Substitute Amendment 1 and Assembly Amendment 1

2023 SENATE BILL 667

2023 Senate Bill 667 creates a new type of domestic asset protection trust, called a legacy trust. Among its distinctions from other trusts that may be created under Wisconsin law, a legacy trust would differ in the treatment of its spendthrift provision. Generally, a spendthrift provision is a term of a trust that restricts transfers of a beneficiary's interest in the trust. Treatment of a spendthrift provision in a legacy trust would differ from treatment of spendthrift provisions in other trusts in numerous ways, most prominently in that the settlor or transferor of assets to a legacy trust may also be the beneficiary of the trust. Claims against assets in legacy trust are also limited as compared to claims that may be made against other trusts. While assets in a legacy trust would be subject to claims for child support, those assets would not be subject to claims for public support. Other claims against assets in a legacy trust would be time-barred, generally 18 months after the transfer of the asset to the trust, unless the transfer was made in order to defraud a creditor.

SENATE SUBSTITUTE AMENDMENT 1

Relative to the bill as introduced, Senate Substitute Amendment 1 makes two changes. First, the substitute amendment reorganizes the law authorizing creation of a legacy trust as a new subchapter of ch. 701, Stats., rather than creating the provisions in a new chapter of the statutes.

Second, with respect to a transferor who is married at the time of a qualified disposition to a legacy trust, the substitute amendment specifies the following:

- The provisions of the legacy trust law apply to any of the transferor's individual property that is the subject of the disposition.
- The provisions of the legacy trust law may apply to any of the transferor's marital property, but only if one of the following occurs:
- Notice of the disposition, in prescribed form, is provided to the transferor's spouse.
- The spouse of the transferor executes written consent to the disposition after being provided the information set forth in the notice.

ASSEMBLY AMENDMENT 1

As shown by Senate Substitute Amendment 1, the new type of trust contemplated by the bill is referred to as a legacy trust, and other trusts are referred to as nonlegacy trusts. Assembly Amendment 1 revises the terms used in the bill to instead refer to domestic asset preservation trusts and nondomestic asset preservation trusts. Assembly Amendment 1 also makes the following changes:

- Revises the criteria that may be satisfied by a qualified trustee such that a domestic asset preservation trust may be governed by Wisconsin law.
- Requires a transferor to sign a qualified affidavit before or contemporaneously with making a qualified disposition. Generally, the qualified affidavit specifies that the transferor has the right to make the transfer, that the purpose of the transfer is not to defraud creditors or avoid legal action, and that the property transferred to the trust is not derived from unlawful activities. A qualified affidavit is not required from a transferor who is not the beneficiary of the domestic asset preservation trust that receives the disposition.
- Specifies additional requirements regarding provision of the notice to a spouse, as described under Senate Substitute Amendment 1.
- Specifies that the substantive provisions of the bill relating to conflicts of law, applicability of the domestic asset preservation trust subchapter, limitations on actions, creditor claims, and treatment of discretionary interests do not apply to the collection of taxes and debts by the Department of Revenue.
- Reconciles certain contents of the bill contingent on future passage of 2023 Senate Bill 759.
- Specifies that the bill takes effect on July 1, 2025.

BILL HISTORY

Senator Knodl introduced 2023 Senate Bill 667 on November 9, 2023, and offered Senate Substitute Amendment 1 on February 16, 2024. On February 20, 2024, the Senate adopted Senate Substitute Amendment 1 and passed Senate Bill 667 on successive voice votes. Representative O'Connor offered Assembly Amendment 1 on February 22, 2024. On the same day, the Assembly adopted Assembly Amendment 1 and concurred in 2023 Senate Bill 667, as amended, on successive voice votes.

For a full history of the bill, visit the Legislature's [bill history page](#).

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