LRB-4545/P2 TJD:amn

## PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT to repeal 49.453 (4c) (am) and 49.453 (4c) (b) 2.; and to renumber 49.453

(4c) (b) 1. of the statutes; relating to: evaluation of promissory notes for divestment (suggested as remedial legislation by the Department of Health Services).

## Analysis by the Legislative Reference Bureau

Certain individuals who are eligible for Medical Assistance benefits are subject to an asset test to determine eligibility for those benefits, and this eligibility determination considers whether assets have been transferred before the date on which eligibility is determined. Current law specifies the circumstances under which a transfer of assets constitutes an impermissible divestment, and the transfer of assets for less than fair market value is one of these impermissible divestments. An impermissible divestment results in a period of ineligibility for Medical Assistance. Currently, the purchase of a promissory note is a transfer of assets for less than fair market value unless all of the following are satisfied: 1) the repayment term for the note is actuarially sound, 2) the payments for the note are to be made in equal amounts during the loan's terms, 3) it is prohibited to cancel the balance of the loan upon the death of the lender, and 4) the note is negotiable, assignable, enforceable, and does not contain any terms making it unmarketable.

The Medical Assistance program is a jointly funded federal and state program. The federal law relating to divestment and periods of ineligibility for Medical Assistance includes as an asset for which transfer is an impermissible divestment a promissory note, unless the note meets the first three criteria specified under

current state law. This bill eliminates the criterion in current law that the note is negotiable, assignable, enforceable, and does not contain terms that make it unmarketable to be consider an acceptable asset transfer that is not considered an impermissible divestment.

For further information, see the Notes provided by the Law Revision Committee of the Joint Legislative Council.

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

Law Revision Committee prefatory note: This bill is a remedial legislation proposal, requested by the Department of Health Services and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

**SECTION 1.** 49.453 (4c) (am) of the statutes is repealed.

Note: Sections 1 and 3 align state law with federal Social Security Act requirements regarding treatment of promissory notes for purposes of divestment of assets and eligibility for Medical Assistance.

**SECTION 2.** 49.453 (4c) (b) 1. of the statutes is renumbered 49.453 (4c) (b).

Note: This Section renumbers a provision of current law to account for the repeal of language by Section 3.

**Section 3.** 49.453 (4c) (b) 2. of the statutes is repealed.

4 (END)

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