



State of Wisconsin
2013 - 2014 LEGISLATURE



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2013 ASSEMBLY BILL 490

November 4, 2013 – Introduced by Representative SANFELIPPO, cosponsored by Senators FARROW and RISSER. Referred to Committee on Financial Institutions.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to repeal** 46.27 (7g) (a) 5. b., 49.45 (4m) (a) 3. b., 49.45 (4m) (a) 3. d., 49.45
2 (4m) (a) 3. e., 49.453 (4c) (c), 49.496 (1) (cm) 2., 49.4962, 49.682 (1) (e) 2., 49.848,
3 49.849 (1) (d) 2., 59.43 (1) (w), 701.01, 701.02, 701.03, 701.04, 701.05, 701.06
4 (title), (1), (2), (3) and (6) (title) and (a), 701.065 (5), 701.07, 701.09 (3), (4) and
5 (5), 701.10, 701.105 (4), 701.11, 701.115, 701.12, 701.13, 701.14 (title) and (1),
6 701.14 (4), 701.15, 701.16 (title), (1), (2), (3), (4) (title) and (a) to (c), (5) and (6),
7 701.17, 701.18, 701.19, 701.20 (title), 701.20 (2) (intro.), 701.20 (2) (i), 701.20
8 (2) (L), (m) and (n), 701.20 (4c) (b) 3. a., b. and c., 701.20 (4g) (a) 1. c., 701.20 (18)
9 (a), 701.20 (21) (title), 701.20 (29) (c) 2. b., 701.20 (29) (d), 701.20 (31), 701.22
10 (title), 701.23, 701.24 (3), 701.26, 702.01 (6) and 881.05; **to renumber** 46.27 (7g)
11 (a) 5. a., 49.496 (1) (cm) 1., 49.682 (1) (e) 1., 49.849 (1) (d) 1., 445.125 (4), 701.06
12 (6) (d), 701.09 (title), (1) and (2), 701.20 (2) (a), 701.20 (2) (c), 701.20 (2) (e),
13 701.20 (2) (f), 701.20 (2) (g), 701.20 (2) (j), 701.20 (4c) (title), 701.20 (4c) (b) 1.,
14 701.20 (4c) (b) 2., 701.20 (4g) (title), 701.20 (4g) (a) 1. a., 701.20 (4g) (a) 1. e.,

ASSEMBLY BILL 490

1 701.20 (4g) (a) 2. b., 701.20 (4m) (title), 701.20 (4m) (b), 701.20 (4m) (d), 701.20
2 (18) (title), 701.20 (29) (title), 701.20 (29) (a), 701.20 (29) (b), 701.24 (title),
3 701.25 and 702.01 (intro.); **to renumber and amend** 49.849 (4) (c) 2., 701.06
4 (4), 701.06 (5) (intro.) and (a), 701.06 (5) (b), 701.06 (5) (c), 701.06 (5m), 701.06
5 (6) (b), 701.06 (6) (c), 701.06 (7), 701.06 (8), 701.065 (title), (1), (2), (3) and (4),
6 701.08, 701.105 (title), (1), (2) and (3), 701.14 (2), 701.14 (3), 701.16 (4) (d),
7 701.20 (2) (b), 701.20 (2) (d), 701.20 (2) (h), 701.20 (2) (k), 701.20 (3), 701.20 (4),
8 701.20 (4c) (b) (intro.), 701.20 (4c) (b) 3. (intro.), 701.20 (4c) (b) 4., 701.20 (4c)
9 (c), 701.20 (4c) (d), 701.20 (4c) (e), 701.20 (4c) (f), 701.20 (4c) (g), 701.20 (4g) (a)
10 (intro.), 701.20 (4g) (a) 1. (intro.), 701.20 (4g) (a) 1. b., 701.20 (4g) (a) 1. d., 701.20
11 (4g) (a) 2. (intro.), 701.20 (4g) (a) 2. a., 701.20 (4g) (b), (c), (d) and (e), 701.20 (4j),
12 701.20 (4k), 701.20 (4m) (a), 701.20 (4m) (am), 701.20 (4m) (c), 701.20 (5), 701.20
13 (6), 701.20 (7), 701.20 (8), 701.20 (9) (a), 701.20 (10), 701.20 (11), 701.20 (12),
14 701.20 (13), 701.20 (14), 701.20 (15), 701.20 (16), 701.20 (17), 701.20 (18) (b),
15 701.20 (18) (c) 1., 701.20 (18) (c) 2., 701.20 (18) (d), 701.20 (18) (e), 701.20 (19),
16 701.20 (20), 701.20 (21), 701.20 (22), 701.20 (23), 701.20 (24), 701.20 (25),
17 701.20 (26), 701.20 (27), 701.20 (28), 701.20 (29) (c) (intro.), 701.20 (29) (c) 1.,
18 701.20 (30), 701.21, 701.22, 701.24 (1), 701.24 (2), 702.01 (1), 702.01 (2), 702.01
19 (3), 702.01 (4), 702.01 (5), 702.15 (3), 702.17 (3), 879.47, 881.01 (1) (a) and 881.01
20 (4); **to consolidate, renumber and amend** 701.20 (29) (c) 2. (intro.) and a.;
21 **to amend** 20.435 (4) (im), 20.435 (4) (in), 20.435 (7) (im), 23.0918 (2), 25.70,
22 46.27 (7g) (c) 2m. b., 46.27 (7g) (c) 6m. b., 46.27 (7g) (g), 46.286 (7), 49.453 (2)
23 (a) (intro.), 49.453 (2) (b) (intro.), 49.496 (3) (aj) 2., 49.496 (3) (dm) 2., 49.496
24 (6m), 49.682 (2) (bm) 2., 49.682 (2) (fm) 2., 49.682 (5), 49.849 (2) (c), 49.849 (7),
25 223.07 (3), 223.105 (1) (c), 445.125 (1) (a) 1., 445.125 (1) (a) 2., 700.16 (1) (c),

ASSEMBLY BILL 490

1 700.27 (1) (d), (2) (a) 2. and (b), (4) (e), (5) (b), (7) (a) and (8) (a), 702.03, 702.05,
2 702.07, 702.08, 702.09 (title), (1) and (3) (a), (b) and (c), 702.11, 702.13 (title),
3 (1) (intro.), (a), (b) and (c) and (2), 702.15 (intro.), (1) and (2), 702.17 (1), (2) and
4 (5), 702.21, 766.55 (2) (bm), 766.575 (1) (e), 840.01 (1), 853.17 (2), 853.32 (3),
5 853.61 (2) (a), 854.13 (1) (c), (2) (a) 2. and (d), (4) (e), (5) (b), (7) (a) and (10) (a)
6 , 854.23 (5) (b), 859.18 (5) (a), 859.18 (5) (b), 861.015 (2), 861.11 (5) (b), 865.08
7 (6), 867.03 (2g) (a), 879.03 (2) (c), 881.01 (1) (b) and 893.33 (4r); **to repeal and**
8 **recreate** 881.01 (1) (title); and **to create** 49.849 (4) (c) 2. a., 49.849 (4) (c) 2. b.,
9 49.849 (4) (c) 2. c., 445.125 (4) (bn), subchapter I (title) of chapter 701 [precedes
10 701.0101], 701.0101, 701.0102, 701.0103, 701.0104, 701.0105, 701.0106,
11 701.0107, 701.0108, 701.0109, 701.0110, 701.0111, subchapter II (title) of
12 chapter 701 [precedes 701.0201], 701.0201, 701.0202, 701.0203, 701.0204,
13 subchapter III (title) of chapter 701 [precedes 701.0301], 701.0301, 701.0302,
14 701.0303, 701.0304, 701.0305, subchapter IV (title) of chapter 701 [precedes
15 701.0401], 701.0401, 701.0402, 701.0403, 701.0404, 701.0405, 701.0406,
16 701.0407, 701.0408, 701.0409, 701.0410, 701.0411, 701.0412, 701.0413,
17 701.0414, 701.0415, 701.0416, 701.0417, 701.0418, subchapter V (title) of
18 chapter 701 [precedes 701.0501], 701.0501, 701.0502, 701.0503 (title),
19 701.0504, 701.0505, 701.0506, 701.0507, subchapter VI (title) of chapter 701
20 [precedes 701.0601], 701.0601, 701.0602, 701.0603, 701.0604, subchapter VII
21 (title) of chapter 701 [precedes 701.0701], 701.0701, 701.0702, 701.0703,
22 701.0704, 701.0705, 701.0706, 701.0707, 701.0708, 701.0709, 701.0710,
23 subchapter VIII (title) of chapter 701 [precedes 701.0801], 701.0801, 701.0802,
24 701.0803, 701.0804, 701.0805, 701.0806, 701.0807, 701.0808, 701.0809,
25 701.0810, 701.0811, 701.0812, 701.0813, 701.0814, 701.0815, 701.0816,

ASSEMBLY BILL 490

1 701.0817, 701.0818, 701.0819, subchapter IX (title) of chapter 701 [precedes
2 701.0901], 701.0901, 701.0902, 701.0903, subchapter X (title) of chapter 701
3 [precedes 701.1001], 701.1001, 701.1002, 701.1003, 701.1004, 701.1005,
4 701.1006, 701.1007, 701.1008, 701.1009, 701.1010, 701.1011, 701.1012,
5 701.1013, subchapter XI (title) of chapter 701 [precedes 701.1101], 701.1101,
6 701.1102 (intro.), 701.1102 (1g), 701.1106 (6), 701.1123 (1), 701.1123 (4),
7 701.1126 (title), 701.1134 (3) (c) and (d) and (4), subchapter XII (title) of chapter
8 701 [precedes 701.1201], 701.1202, 701.1203, 701.1205 (3), 702.02 (1), 702.02
9 (3), 702.05 (5), 702.17 (3) (b), 702.17 (6), 853.34 (3), 881.01 (1) (a) 1. and 2. and
10 881.01 (4) (b) of the statutes; **relating to:** the laws of trusts, the Uniform Trust
11 Code, the Uniform Principal and Income Act, powers of appointment, and
12 changes to estate recovery and divestment provisions relating to public
13 assistance programs.

Analysis by the Legislative Reference Bureau

THE WISCONSIN TRUST CODE

This bill replaces current law related to trusts with the Wisconsin Trust Code (Code), a modified version of the Uniform Trust Code, as amended in 2005 (UTC). The Code is primarily a set of basic default rules that applies to certain trusts in this state. With some exceptions, the terms of a trust may override or modify the Code's default rules. There are, however, some mandatory provisions in the Code that may not be overridden or modified by the terms of a trust, including the requirements for creating a trust, the duty of a trustee to act in good faith, the effect of a spendthrift provision, limits on provisions that limit a trustee's liability, periods of limitation for commencing a judicial proceeding related to a trust, and the power of the court to take certain actions. The Code also includes default rules that are not included in the UTC, including rules related to a trustee's power to appoint assets to another trust, trust protectors, directed trusts, and life insurance contracts owned by trusts.

In addition to creating the Code, the bill clarifies the definitions of "general power of appointment" and "special power of appointment" and clarifies when a creditor can reach assets that are subject to a power of appointment. The bill also extends the prudent investor rule to directing parties and trust protectors who have a power over the investment of a trust, and clarifies rules relating to a trustee's

ASSEMBLY BILL 490

retention of securities received by a trustee. A further explanation of these changes is provided after the overview of the Code.

Under this bill, the 11 articles of the UTC are created as subchapters of the Code. Two differences in the structure of the UTC and the Code are: 1) the Uniform Prudent Investor Act, as adopted in this state, is referenced in the Code but otherwise remains outside the Code; and 2) the Uniform Principal and Income Act, which was previously adopted in this state, is included as subchapter 11 of the Code, moving the miscellaneous provisions of the Code to subchapter 12.

The following is an overview of each subchapter of the Code:

Subchapter 1: General Provisions and Definitions

Subchapter 1 provides definitions for terms that are used throughout the Code, including a number of new terms and definitions. The new terms introduced in subchapter 1 include “qualified beneficiary,” “directed trust property,” and “trust protector.” Under the Code, a “qualified beneficiary” is a person who is a current beneficiary of trust income or principal, a person who would be eligible to receive trust income or principal if the current beneficiaries’ interests in the trust terminate, or a person who would receive a distribution if the trust terminates. “Directed trust property” is defined as property that is invested or managed by a directing party and for which the trustee has no investment or management responsibility. A “trust protector” is defined as a person who is given a specified power over the trust in a capacity other than as a trustee or a directing party. The terms “directed trust property,” “directing party,” and “trust protector” are not included in the UTC.

In addition to providing definitions for the Code, subchapter 1 exempts certain types of trusts from the Code, lists the provisions of the Code that may not be overridden by the terms of a trust, incorporates the common law of trusts into the Code, provides procedures for determining and transferring the principal place of administration for a trust, and provides methods for giving and waiving notice. This subchapter also provides that interested persons may enter into a nonjudicial settlement agreement to address issues related to a trust to the extent that a court could approve the terms of the nonjudicial settlement agreement.

Subchapter 2: Judicial Proceedings

Subchapter 2 addresses the role of the court in administering a trust. Under current law, a testamentary trust is subject to continuing court supervision. Under the Code, a court may intervene in the administration of a trust to the extent that its jurisdiction is invoked by an interested person or as otherwise provided by law. However, under the Code, a trust is not subject to continuing judicial supervision unless ordered by the court in response to a petition requesting the supervision. This subchapter also addresses procedural issues such as personal jurisdiction, subject matter jurisdiction, and venue for judicial proceedings related to trusts.

Subchapter 3: Representation

Subchapter 3 allows a person to be represented and bound by another person for certain purposes. Under the Code, providing notice, information, accountings, or reports to a person who has the power to represent and bind another person has the same effect as providing the notice, information, accountings, or reports to the represented person. A person may be represented by a fiduciary, a parent, or by a

ASSEMBLY BILL 490

representative chosen by the trustee or a court. A trustee is not required to provide information to a beneficiary if the trustee provides the information to the beneficiary's representative. This subchapter also specifically allows a minor, incapacitated person, unborn individual, or person whose identity is not known, to be represented and legally bound by a person who has a substantially identical interest with respect to the particular question or dispute to the extent there is no conflict of interest in that representation.

Subchapter 4: Creation, Validity, Modification, and Termination of Trust

Subchapter 4 establishes the requirements for creating, modifying, and terminating a trust. Generally, the Code provides that a trust is created when a person transfers property to a trustee with the intent to create a trust relationship. This subchapter expands upon the common law by specifically validating trusts for animals and trusts for certain noncharitable purposes. This subchapter also recognizes oral trusts if the terms of the trust are established by clear and convincing evidence.

This subchapter provides default rules for when a trust may be modified or terminated. For example, under the Code, a noncharitable irrevocable trust may be modified or terminated without court approval with the consent of the settlor and all of the beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. Additionally, for purposes of terminating a trust, the Code increases the value of what qualifies as an uneconomic trust to a trust with a value of less than \$100,000, as adjusted for inflation. Upon providing notice to the qualified beneficiaries, every trust protector, every directing party, and the settlor, if living, the trustee of an uneconomic trust may terminate the trust without court approval.

Under this subchapter, a court is directed to apply liberally the doctrine of cy pres to a charitable trust if the charitable purpose identified in the trust becomes unlawful, impracticable, impossible, or wasteful. Under the doctrine of cy pres, a court may substitute an alternative charitable purpose for a purpose that is unlawful, impracticable, impossible, or wasteful. The Code preserves the requirement under current law that, when applying the doctrine of cy pres, a court must consider the community needs and charitable interest of the settlor in determining an alternative plan for disposition of the trust property.

Finally, this subchapter includes a concept not addressed in the UTC, which is the authority of a trustee of an irrevocable trust to appoint trust assets to the trustee of another trust (a second trust) under certain circumstances. This procedure is commonly referred to as decanting. Under the Code, subject to certain requirements, a trustee who has the power to invade trust principal for the benefit of an income beneficiary may appoint trust property to a second trust provided that the appointment does not reduce any fixed income, annuity, or unitrust interest of the beneficiary. If a trustee's power to invade trust income or principal under the first trust is limited by a standard, the second trust may not grant the trustee a broader power to invade trust income or principal. Also, if the trustee's power to invade the principal of the first trust is not limited by a standard, the beneficiaries of the second trust do not have to include all of the beneficiaries of the first trust; otherwise, the

ASSEMBLY BILL 490

beneficiaries of both trusts must be the same. A trustee may appoint assets to a second trust with or without court approval by providing notice to the qualified beneficiaries, every trust protector, every directing party, and the settlor, if living.

Subchapter 5: Creditor's Claim; Spendthrift and Discretionary Trusts

Subchapter 5 addresses the validity of a spendthrift provision and the rights of a creditor of a settlor or a beneficiary to reach trust assets. The Code defines a "spendthrift provision" as a provision that restrains either or both the voluntary or involuntary transfer of a beneficiary's interest in a trust. In general, the Code preserves current law related to spendthrift provisions and creditors' rights, including exceptions for claims for child support and public support. The Code also preserves current law that allows a trustee to limit the claims of a creditor of a settlor upon the settlor's death by providing or publishing notice to the creditors. Thus, the Code's treatment of spendthrift provisions and creditor's rights differs from the UTC.

Under the Code, a creditor may reach the assets of a revocable trust during the lifetime of the settlor. If the trust is a self-settled irrevocable trust, a creditor may reach the maximum amount that can be distributed to or for the settlor's benefit presently or in the future.

Subchapter 5 also specifies that a beneficiary's use of real or tangible property owned by a trust does not subject the property to the claims of the beneficiary's creditors. The Code treats trusts that give the trustee absolute discretion in making distributions and trusts that require the trustee to make distributions for purposes of support in a similar manner. Under the Code, a beneficiary's interest in a trust that is subject to a trustee's discretion does not constitute an interest in property.

Subchapter 6: Revocable Trusts

Subchapter 6 addresses "revocable trusts," which the Code defines as trusts that may be revoked by a settlor without the consent of the trustee or an adverse party. Property held in a revocable trust reverts back to the settlor if the trust is revoked. The Code treats a revocable trust as a will substitute and therefore provides that the capacity required to create or modify a revocable trust is the same as the capacity required to create or modify a will. Under the Code, a trust is revocable unless the trust instrument expressly provides that it is irrevocable. This reverses the presumption under current law and applies only to trusts that are created after the effective date of the bill.

This subchapter provides that, while a trust is revocable, the trustee owes its duties exclusively to the settlor. Under the Code, a settlor's powers of revocation may be exercised by a properly authorized agent, or by a conservator or guardian with court approval. Therefore, a trust may remain revocable, even for an incapacitated settlor, until the settlor's death. When the settlor dies, the trust is no longer revocable and the trustee owes its duties to the beneficiaries.

Finally, subchapter 6 limits the period during which a person may challenge the validity of a revocable trust. Under the Code, to challenge the validity of a revocable trust, a person must commence a judicial proceeding no later than one year after the settlor's death or four months after the trustee sends the person a copy of the trust and notice of the time allowed for commencing a proceeding, whichever occurs first.

ASSEMBLY BILL 490***Subchapter 7: Office of Trustee***

Subchapter 7 specifies numerous default procedural rules that apply to the office of the trustee. Subchapter 7 includes rules related to acceptance or declination of a trusteeship, requiring a bond, the rights and obligations of cotrustees, the vacancy and appointment of successor trustees, the resignation of a trustee, the grounds for removing a trustee, duties of a former trustee to deliver trust property, trustee compensation, and the reimbursement of trustee expenses. Subchapter 7 also provides that property is properly transferred to a trust by titling the property in the name of the trustee. However, property titled in the name of the trust also places legal title in the name of the trustee.

Subchapter 8: Duties and Powers of Trustees, Directing Parties, and Trust Protectors

Subchapter 8 sets forth the fiduciary obligations of a trustee, except for those fiduciary duties included in the Uniform Prudent Investor Act. Under the Code, a trustee must administer the trust in good faith, solely in the interests of the beneficiaries, impartially, and prudently, incurring only reasonable costs and using any special skills or expertise the trustee may have. A trustee must take reasonable steps to control and protect trust property, to maintain adequate records that clearly identify separate trust interests, to enforce claims of the trust and defend claims against the trust, to collect trust property and to redress breaches of former trustees, and to exercise discretion in good faith and in accordance with the terms of the trust. A trustee has a duty to inform and report and must provide requested trust accountings to certain beneficiaries.

Under the Code, a trustee may delegate certain duties and powers but must exercise reasonable care, skill, and caution when selecting an agent, establishing the scope and terms of the delegation, and periodically reviewing the agent's actions. An agent who accepts a delegation of duty or power from a trustee has a duty to exercise reasonable care to comply with the terms of the delegation. A trustee who properly delegates a duty or power to an agent is not liable to the beneficiaries for the agent's actions.

Subchapter 8 provides that a trustee has broad power to achieve proper investment, management, and distribution of the trust property and may exercise all the powers that an unmarried, competent owner would have over individually owned property. This subchapter also enumerates specific powers that a trustee has absent contrary provisions in the trust instrument, and requires a trustee to make certain presumptions related to certain tax objectives, including presumptions concerning marital deduction transfers that are not included in the UTC.

As an addition to the UTC, the Code specifically allows a settlor, a court, or interested persons in a nonjudicial settlement agreement to appoint directing parties and trust protectors. The Code defines "directing party" as a person who is granted a power, in a capacity other than as a trustee or a trust protector, to make or to direct the trustee to make investment and distribution decisions. A directing party is a fiduciary and is obligated to act in good faith, consistent with the terms and purposes of the trust, and the interests of the beneficiaries. A trustee has no duty to monitor the directing party, and a trustee who follows a directing party's directions

ASSEMBLY BILL 490

is not liable for any resulting losses, unless the loss is a result of the trustee's willful misconduct.

Under the Code, a "trust protector" is a person who is granted certain powers over the trust, the trustee, or trust property in a capacity other than as a trustee or a directing party. A settlor, court, or interested persons in a nonjudicial settlement agreement may specify whether a power granted to a trust protector must be exercised in a fiduciary or nonfiduciary capacity. If a settlor, court, or interested persons do not specify the legal capacity in which a trust protector is to exercise a particular power, the Code provides default rules for determining the capacity for specific powers. A trustee has no duty to monitor the actions of a trust protector and, subject to certain exceptions, is not liable for taking actions consistent with the actions of the trust protector.

Subchapter 9: Investment Management of Trusts

Subchapter 9 provides that, subject to certain exceptions, the investment management of trust property is governed by the Uniform Prudent Investor Act, which has been adopted in this state. As an exception to this general rule, a trustee who has no power over directed trust property does not have a duty to monitor the conduct or investment performance of the directing party.

The Code also limits the application of the Uniform Prudent Investor Act for life insurance trusts. If a principal purpose of a trust is to hold a life insurance contract, a trustee does not have a duty to determine whether the life insurance contract is, or remains, a proper investment. This change applies to all trusts executed after the effective date of the bill and to trusts executed before that date if the trustee provides a notice to the qualified beneficiaries.

Subchapter 10: Liability of Trustees and Rights of Persons Dealing with Trustee

Subchapter 10 identifies the remedies for breach of trust, provides how damages are determined for a breach of trust, reaffirms the court's power to award costs and attorney fees, specifies potential defenses, and addresses trustee relations with and liability to persons other than beneficiaries. Under the Code, a trust instrument may not waive or vary the trustee's duty of good faith or relieve the trustee of liability for reckless indifference. The Code also provides that a term in a trust that relieves a trustee of liability is not enforceable if the inclusion of the term is the result of an abuse of the settlor's confidential relationship with the trustee.

Generally, under the Code, a beneficiary must commence a proceeding against a trustee for breach of trust within five years after the first to occur of the following: the termination of the trust, the termination of the beneficiary's interest, or the removal, resignation, or death of the trustee. However, the Code creates a one-year statute of limitation for commencing such a proceeding if the beneficiary received a report that adequately disclosed the existence of a potential claim.

Under the Code, a trustee is protected from liability for a loss in value of the trust property if there is no breach of trust. A trustee generally is not liable if the trustee acts in reasonable reliance on the express provisions of the trust, if the trustee exercises reasonable care but fails to ascertain unknown external facts, or if a beneficiary provides a consent, release, or ratification for the trustee's action. A

ASSEMBLY BILL 490

trustee is also protected from personal liability on a contract entered into in a fiduciary capacity and for contracts and torts of a partnership in which the trustee holds a general partnership interest if the other party had notice of the fiduciary relationship.

In general, a trustee is entitled to payment from the trust for attorney fees incurred in good faith. However, if a claim against the trustee is based on a breach of trust, the trustee must provide notice to qualified beneficiaries of the trustee's intention to pay attorney fees from the trust. Any party to the action may seek a court order prohibiting payment of attorney fees from the trust by demonstrating to the court that there is a reasonable basis for the court to find that a breach of trust occurred.

A third party dealing with a trust is not liable for any breach of the trustee's obligations to the beneficiaries resulting from a transaction, unless the third party has knowledge of an actual breach by the trustee. In addition, a third party may rely on a certification of trust that sets out certain required information, including a statement that the trust has not been revoked, modified, or amended in any manner that would cause the representations in the certificate to be incorrect. A third party who receives a certification of trust and continues to demand a complete copy of a trust instrument may be liable for damages if the demand is not in good faith.

Subchapter 11: Uniform Principal and Income Act

Subchapter 11 incorporates into the Code the Uniform Principal and Income Act, which has been adopted in this state. The bill also updates the Uniform Principal and Income Act by incorporating recent changes recommended by the Uniform Law Commission related to deferred compensation, annuities, and other similar payments.

Subchapter 12: Miscellaneous Provisions

Subchapter 12 provides that, subject to certain exceptions, the Code applies to trusts that are in existence on the effective date of the bill as well as to trusts created after the effective date of the bill. It also provides that the Code applies to a judicial proceeding concerning a trust commenced before, on, or after the effective date of the bill, unless a court determines that the application of the Code to a proceeding commenced before the effective date of the bill will substantially interfere with the effective conduct of the judicial proceedings or will prejudice the rights of the parties. The effective date of the bill is the first day of the seventh month beginning after publication.

The following changes occur outside the Code:

Powers of Appointment

The bill changes the term "general power" to "general power of appointment," which means a power exercisable in favor of any one or more of the donee, the donee's estate, the donee's creditors, or the creditors of the donee's estate. Under the bill, a "special power of appointment" is defined as any power of appointment that is not a general power of appointment.

The bill also clarifies the rights of a creditor of a person who holds a power of appointment. Under the bill, a donee's creditor can reach property that is subject to a general power of appointment during a donee's life only if the general power is

ASSEMBLY BILL 490

presently exercisable. In general, upon the death of the donee, a creditor can reach property that is subject to a general power of appointment, whether or not the donee exercised the general power of appointment. However, under the bill, a creditor may not reach property subject to a general power of appointment that the donee has not exercised at the time of the donee's death if the donee or the donee's spouse is not the donor of the power of appointment.

Uniform Prudent Investor Act

The bill modifies the definition of "fiduciary" in the Uniform Prudent Investor Act to include a directing party with the power to direct the trustee's investment decisions and a trust protector who has a power exercisable in a fiduciary capacity over the investment of the trust assets. Therefore, the default rule is that directing parties and trust protectors are subject to the prudent investor rule if the directing party or trust protector has a power over the trust investments. Finally, the bill provides that the general rule of diversification does not apply to assets collected by a fiduciary.

ESTATE RECOVERY AND DIVESTMENT

The 2013-15 biennial budget act, 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 (divestment) and financial eligibility for Medical Assistance (MA). 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 limits the property that is subject to estate recovery to 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, and removes from the definition of property that is subject to estate recovery any real or personal property in which the

ASSEMBLY BILL 490

recipient's surviving spouse had any 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.

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 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, which may be rebutted, 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

ASSEMBLY BILL 490

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 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.

Divestment and asset verification

Under the law previous to the effective date of 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.

ASSEMBLY BILL 490

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; benefit associations; insurance companies; safe deposit companies; money market mutual funds; and similar entities authorized to do business in Wisconsin.

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

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

1 **SECTION 1.** 20.435 (4) (im) 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.

13 **SECTION 2.** 20.435 (4) (in) 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

ASSEMBLY BILL 490

1 assistance, the amounts in the schedule for administration of the recovery of costs
2 of the care.

3 **SECTION 3.** 20.435 (7) (im) of the statutes, as affected by 2013 Wisconsin Act
4 20, is amended to read:

5 20.435 (7) (im) *Community options program; family care benefit; recovery of*
6 *costs; birth to 3 waiver administration.* From the moneys received from the recovery
7 of costs of care under ss. 46.27 (7g), ~~49.848~~, and 49.849 for enrollees who are ineligible
8 for medical assistance, all moneys not appropriated under sub. (4) (in), and all
9 moneys transferred to this appropriation account from the appropriation account
10 under sub. (4) (o), for payments to county departments and aging units under s. 46.27
11 (7g) (d), payments to care management organizations for provision of the family care
12 benefit under s. 46.284 (5), payment of claims under s. 49.849 (5), payments for
13 long-term community support services funded under s. 46.27 (7) as provided in ss.
14 46.27 (7g) (e) and 49.849 (6) (b), and for administration of the waiver program under
15 s. 46.99.

16 **SECTION 4.** 23.0918 (2) of the statutes is amended to read:

17 23.0918 (2) Unless the natural resources board determines otherwise in a
18 specific case, only the income from the gifts, grants, or bequests in the fund is
19 available for expenditure. The natural resources board may authorize expenditures
20 only for preserving, developing, managing, or maintaining land under the
21 jurisdiction of the department that is used for any of the purposes specified in s. 23.09
22 (2) (d). In this subsection, unless otherwise provided in a gift, grant, or bequest,
23 principal and income are determined as provided under s. ~~701.20~~ subch. XI of ch. 701.

24 **SECTION 5.** 25.70 of the statutes is amended to read:

ASSEMBLY BILL 490**SECTION 5**

1 **25.70 Historical society trust fund.** There is established a separate
2 nonlapsible trust fund designated as the historical society trust fund, consisting of
3 all endowment principal and income and all cash balances of the historical society.
4 Unless the board of curators of the historical society determines otherwise in each
5 case, only the income from the assets in the historical society trust fund is available
6 for expenditure. In this section, unless otherwise provided in the gift, grant, or
7 bequest, principal and income are determined as provided under s. 701.20 subch. XI
8 of ch. 701.

9 **SECTION 6.** 46.27 (7g) (a) 5. a. of the statutes, as created by 2013 Wisconsin Act
10 20, is renumbered 46.27 (7g) (a) 5.

11 **SECTION 7.** 46.27 (7g) (a) 5. b. of the statutes, as created by 2013 Wisconsin Act
12 20, is repealed.

13 **SECTION 8.** 46.27 (7g) (c) 2m. b. of the statutes, as created by 2013 Wisconsin
14 Act 20, is amended to read:

15 46.27 (7g) (c) 2m. b. There is a presumption, ~~which may be rebutted by clear~~
16 ~~and convincing evidence~~ consistent with s. 766.31, which may be rebutted, that all
17 property in the estate of the nonclient surviving spouse was marital property held
18 with the client and that 100 percent of the property in the estate of the nonclient
19 surviving spouse is subject to the department's claim under subd. 1.

20 **SECTION 9.** 46.27 (7g) (c) 6m. b. of the statutes, as created by 2013 Wisconsin
21 Act 20, is amended to read:

22 46.27 (7g) (c) 6m. b. The department shall release the lien in the circumstances
23 described in s. ~~49.848 (5) (f)~~ 49.849 (4) (c) 2.

24 **SECTION 10.** 46.27 (7g) (g) of the statutes, as affected by 2013 Wisconsin Act 20,
25 is amended to read:

ASSEMBLY BILL 490

1 46.27 **(7g)** (g) The department shall promulgate rules establishing standards
2 for determining whether the application of this subsection would work an undue
3 hardship in individual cases. If the department determines that the application of
4 this subsection would work an undue hardship in a particular case, the department
5 shall waive application of this subsection in that case. ~~This paragraph does not apply
6 with respect to claims against the estates of nonclient surviving spouses.~~

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

9 46.286 **(7)** RECOVERY OF FAMILY CARE BENEFIT PAYMENTS. The department shall
10 apply to the recovery from persons who receive the family care benefit, including by
11 liens and affidavits and from estates, of correctly paid family care benefits, the
12 applicable provisions under ss. 49.496, ~~49.848,~~ and 49.849.

13 **SECTION 12.** 49.45 (4m) (a) 3. b. of the statutes, as created by 2013 Wisconsin
14 Act 20, is repealed.

15 **SECTION 13.** 49.45 (4m) (a) 3. d. of the statutes, as created by 2013 Wisconsin
16 Act 20, is repealed.

17 **SECTION 14.** 49.45 (4m) (a) 3. e. of the statutes, as created by 2013 Wisconsin
18 Act 20, is repealed.

19 **SECTION 15.** 49.453 (2) (a) (intro.) of the statutes, as affected by 2013 Wisconsin
20 Act 20, is amended to read:

21 49.453 **(2)** (a) *Institutionalized individuals.* (intro.) Except as provided in sub.
22 (8), if an institutionalized individual or his or her spouse, or another person acting
23 on behalf of the institutionalized individual or his or her spouse, transfers assets;
24 ~~regardless of whether those assets, if retained, are excluded under 42 USC 1396p;~~
25 for less than fair market value on or after the institutionalized individual's look-back

ASSEMBLY BILL 490

1 date, the institutionalized individual is ineligible for medical assistance for the
2 following services for the period specified under sub. (3):

3 **SECTION 16.** 49.453 (2) (b) (intro.) of the statutes, as affected by 2013 Wisconsin
4 Act 20, is amended to read:

5 49.453 (2) (b) *Noninstitutionalized individuals.* (intro.) Except as provided in
6 sub. (8), if a noninstitutionalized individual or his or her spouse, or another person
7 acting on behalf of the noninstitutionalized individual or his or her spouse, transfers
8 assets; ~~regardless of whether those assets, if retained, are excluded under 42 USC~~
9 ~~1396p~~; for less than fair market value on or after the noninstitutionalized
10 individual's look-back date, the noninstitutionalized individual is ineligible for
11 medical assistance for the following services for the period specified under sub. (3):

12 **SECTION 17.** 49.453 (4c) (c) of the statutes, as created by 2013 Wisconsin Act
13 20, is repealed.

14 **SECTION 18.** 49.496 (1) (cm) 1. of the statutes, as created by 2013 Wisconsin Act
15 20, is renumbered 49.496 (1) (cm).

16 **SECTION 19.** 49.496 (1) (cm) 2. of the statutes, as created by 2013 Wisconsin Act
17 20, is repealed.

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

20 49.496 (3) (aj) 2. There is a presumption, ~~which may be rebutted by clear and~~
21 ~~convincing evidence~~ consistent with s. 766.31, which may be rebutted, that all
22 property in the estate of a nonrecipient surviving spouse was marital property held
23 with the recipient and that 100 percent of the property in the estate of the
24 nonrecipient surviving spouse is subject to the department's claim under par. (a).

ASSEMBLY BILL 490

1 **SECTION 21.** 49.496 (3) (dm) 2. of the statutes, as created by 2013 Wisconsin Act
2 20, is amended to read:

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

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

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

14 **SECTION 23.** 49.4962 of the statutes, as created by 2013 Wisconsin Act 20, is
15 repealed.

16 **SECTION 24.** 49.682 (1) (e) 1. of the statutes, as created by 2013 Wisconsin Act
17 20, is renumbered 49.682 (1) (e).

18 **SECTION 25.** 49.682 (1) (e) 2. of the statutes, as created by 2013 Wisconsin Act
19 20, is repealed.

20 **SECTION 26.** 49.682 (2) (bm) 2. of the statutes, as created by 2013 Wisconsin Act
21 20, is amended to read:

22 49.682 (2) (bm) 2. There is a presumption, ~~which may be rebutted by clear and~~
23 ~~convincing evidence~~ consistent with s. 766.31, which may be rebutted, that all
24 property in the estate of the nonclient surviving spouse was marital property held

ASSEMBLY BILL 490

1 with the client and that 100 percent of the property in the estate of the nonclient
2 surviving spouse is subject to the department's claim under par. (a).

3 **SECTION 27.** 49.682 (2) (fm) 2. of the statutes, as created by 2013 Wisconsin Act
4 20, is amended to read:

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

7 **SECTION 28.** 49.682 (5) of the statutes, as affected by 2013 Wisconsin Act 20,
8 is amended to read:

9 49.682 (5) The department shall promulgate rules establishing standards for
10 determining whether the application of this section would work an undue hardship
11 in individual cases. If the department determines that the application of this section
12 would work an undue hardship in a particular case, the department shall waive
13 application of this section in that case. ~~This subsection does not apply with respect~~
14 ~~to claims against the estates of nonclient surviving spouses.~~

15 **SECTION 29.** 49.848 of the statutes, as created by 2013 Wisconsin Act 20, is
16 repealed.

17 **SECTION 30.** 49.849 (1) (d) 1. of the statutes, as created by 2013 Wisconsin Act
18 20, is renumbered 49.849 (1) (d).

19 **SECTION 31.** 49.849 (1) (d) 2. of the statutes, as created by 2013 Wisconsin Act
20 20, is repealed.

21 **SECTION 32.** 49.849 (2) (c) of the statutes, as created by 2013 Wisconsin Act 20,
22 is amended to read:

23 49.849 (2) (c) There is a presumption, ~~which may be rebutted by clear and~~
24 ~~convincing evidence~~ consistent with s. 766.31, which may be rebutted, that all
25 property of the deceased nonrecipient surviving spouse was marital property held

ASSEMBLY BILL 490

1 with the recipient and that 100 percent of the property of the deceased nonrecipient
2 surviving spouse is subject to the department's claim under par. (a).

3 **SECTION 33.** 49.849 (4) (c) 2. of the statutes, as created by 2013 Wisconsin Act
4 20, is renumbered 49.849 (4) (c) 2. (intro.) and amended to read:

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

7 **SECTION 34.** 49.849 (4) (c) 2. a. of the statutes is created to read:

8 49.849 (4) (c) 2. a. The recipient's surviving spouse or child who is under age
9 21 or disabled sells the property for fair market value, as described in sub. (5c) (d),
10 during the spouse's or child's lifetime.

11 **SECTION 35.** 49.849 (4) (c) 2. b. of the statutes is created to read:

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

19 **SECTION 36.** 49.849 (4) (c) 2. c. of the statutes is created to read:

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

ASSEMBLY BILL 490

1 secured amount upon the death of the recipient's spouse or disabled child or when
2 the recipient's child who is not disabled reaches age 21.

3 **SECTION 37.** 49.849 (7) of the statutes, as affected by 2013 Wisconsin Act 20,
4 is amended to read:

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

12 **SECTION 38.** 59.43 (1) (w) of the statutes, as created by 2013 Wisconsin Act 20,
13 is repealed.

14 **SECTION 39.** 223.07 (3) of the statutes is amended to read:

15 223.07 (3) If the depository institution at which a trust service office is to be
16 established has exercised trust powers, the trust company bank and the depository
17 institution shall enter into an agreement respecting those fiduciary powers to which
18 the trust company bank shall succeed and shall file the agreement with the division.
19 The trust company bank shall cause a notice of the filing, in a form prescribed by the
20 division, to be published as a class 1 notice, under ch. 985, in the city, village or town
21 where the depository institution is located. After filing and publication, the trust
22 company bank establishing the office shall, as of the date the office first opens for
23 business, without further authorization of any kind, succeed to and be substituted
24 for the depository institution as to all fiduciary powers, rights, duties, privileges, and
25 liabilities of the depository institution in its capacity as fiduciary for all estates,

ASSEMBLY BILL 490

1 trusts, guardianships, and other fiduciary relationships of which the depository
2 institution is then serving as fiduciary, except as may be otherwise specified in the
3 agreement between the trust company bank and the depository institution. The
4 trust company bank shall also be deemed named as fiduciary in all writings,
5 including, ~~but not limited to,~~ wills, trusts, court orders, and similar documents and
6 instruments naming the depository institution as fiduciary, signed before the date
7 the trust office first opens for business, unless expressly negated by the writing or
8 otherwise specified in the agreement between the trust company bank and the
9 depository institution. On the effective date of the substitution, the depository
10 institution shall be released and absolved from all fiduciary duties and obligations
11 under such writings and shall discontinue its exercise of trust powers on all matters
12 not specifically retained by the agreement. This subsection does not effect a
13 discharge ~~in the manner of s. 701.16 (6)~~ if required by a court under s. 701.0201 (1)
14 or other applicable statutes and does not absolve a depository institution exercising
15 trust powers from liabilities arising out of any breach of fiduciary duty or obligation
16 occurring prior to the date the trust service office first opens for business at the
17 depository institution. This subsection does not affect the authority, duties, or
18 obligations of a depository institution with respect to relationships which may be
19 established without trust powers, including escrow arrangements, whether the
20 relationships arise before or after the establishment of the trust service office.

21 **SECTION 40.** 223.105 (1) (c) of the statutes is amended to read:

22 223.105 (1) (c) "Trustee" has the meaning designated in s. ~~701.01 (8)~~ 701.0103
23 (28).

24 **SECTION 41.** 445.125 (1) (a) 1. of the statutes is amended to read:

ASSEMBLY BILL 490

1 445.125 (1) (a) 1. Except as provided in sub. (3m), whenever a person, referred
2 to in this subsection as the depositor, makes an agreement with another person
3 selling or offering for sale funeral or burial merchandise or services, referred to in
4 this subsection as the beneficiary, for the purchase of a casket, outer burial container
5 not preplaced into the burial excavation of a grave, combination casket-outer burial
6 container or other receptacle not described in sub. (4) ~~(b)~~ (a) 2. for the burial or other
7 disposition of human remains or for the furnishing of funeral or burial services,
8 either of which is intended to be provided for the final disposition of the body of a
9 person, referred to in this subsection as the potential decedent, wherein the use of
10 such personal property or the furnishing of such services is not immediately
11 required, all payments made under the agreement shall be and remain trust funds,
12 including interest and dividends if any, until occurrence of the death of the potential
13 decedent, unless the funds are sooner released upon demand to the depositor, after
14 written notice to the beneficiary.

15 **SECTION 42.** 445.125 (1) (a) 2. of the statutes is amended to read:

16 445.125 (1) (a) 2. ~~Notwithstanding s. 701.12 (1), such~~ Such agreements may be
17 made irrevocable as to the first \$3,000 of the funds paid under the agreement by each
18 depositor.

19 **SECTION 43.** 445.125 (4) of the statutes is renumbered 445.125 (4) (a).

20 **SECTION 44.** 445.125 (4) (bn) of the statutes is created to read:

21 445.125 (4) (bn) Sections 701.0410 to 701.0418 do not apply to an agreement,
22 interest, or dividend that is made irrevocable under sub. (1) (a) 2. to 4.

23 **SECTION 45.** 700.16 (1) (c) of the statutes is amended to read:

24 700.16 (1) (c) If a future interest or trust is created by exercise of a power of
25 appointment, the permissible period is computed from the time the power of

ASSEMBLY BILL 490

1 appointment is exercised if the power of appointment is a general power of
2 appointment as defined in s. ~~702.01 (3)~~ 702.02 (5) even if the general power of
3 appointment is exercisable only by will; ~~in.~~ In the case of other powers of
4 appointment the permissible period is computed from the time the power of
5 appointment is created but facts at the time the power of appointment is exercised
6 are considered in determining whether the power of alienation is suspended beyond
7 a life or lives in being at the time of creation of the power of appointment plus 30
8 years.

9 **SECTION 46.** 700.27 (1) (d), (2) (a) 2. and (b), (4) (e), (5) (b), (7) (a) and (8) (a) of
10 the statutes are amended to read:

11 700.27 (1) (d) “Power of appointment” has the meaning given in s. ~~702.01 (4)~~
12 702.02 (6).

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

21 (b) *Partial disclaimer.* Property transferred under an inter vivos governing
22 instrument may be disclaimed in whole or in part, except that a partial disclaimer
23 of property passing by an inter vivos governing instrument or by the exercise of a
24 power of appointment may not be made if partial disclaimer is expressly prohibited

ASSEMBLY BILL 490

1 by the inter vivos governing instrument or by the instrument exercising the power
2 of appointment.

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

8 (5) (b) *Delivery to trustee.* If the trustee of any trust to which the interest or
9 power of appointment relates does not receive the instrument of disclaimer under
10 par. (a), a copy shall also be delivered to the trustee. Failure to deliver a copy of the
11 instrument of disclaimer to the trustee within the time specified under sub. (4) does
12 not affect the validity of any disclaimer.

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

ASSEMBLY BILL 490

1 (2) A guardianship.

2 (3) A conservatorship.

3 (4) A custodial arrangement made pursuant to the Uniform Transfers to
4 Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust Act under ss.
5 54.950 to 54.988.

6 (5) A common trust or a collective investment fund.

7 (6) A trust created by a depository agreement with a financial institution.

8 (7) A trust made in connection with a business transaction, including a trust
9 created under a bond indenture or collateral trust agreement or in connection with
10 a structured finance transaction, a common law trust under s. 226.14, or a business
11 trust.

12 (8) A voting trust.

13 (9) A fund maintained pursuant to court order in conjunction with a
14 bankruptcy proceeding, business liquidation, or class action lawsuit.

15 (10) A trust that is part of an employee benefit arrangement or an individual
16 retirement account.

17 (11) A trust established under a qualified tuition savings program or
18 education savings account.

19 (12) A trust account maintained on behalf of a client or customer by a licensed
20 service professional, including a trust account maintained by an attorney or by a real
21 estate broker.

22 (13) Any other arrangement under which a person is a nominee or escrowee
23 for another.

24 **SECTION 51.** 701.0103 of the statutes is created to read:

25 **701.0103 Definitions.** In this chapter:

ASSEMBLY BILL 490

1 (1) “Action,” with respect to an act of a trustee, directing party, or trust
2 protector, includes a failure to act.

3 (2) “Ascertainable standard” means a standard relating to an individual’s
4 health, education, support, or maintenance within the meaning of section 2041 (b)
5 (1) (A) or 2514 (c) (1) of the Internal Revenue Code.

6 (3) “Beneficiary” means a person that satisfies any of the following:

7 (a) Has a present or future beneficial interest in a trust, vested or contingent.

8 (b) In a capacity other than that of trustee, trust protector, or a directing party,
9 holds a power of appointment over trust property.

10 (4) “Charitable trust” means a trust, or portion of a trust, created for a
11 charitable purpose described in s. 701.0405 (1). This subsection does not apply in s.
12 701.1201.

13 (5) “Conservator” means a person appointed by a court pursuant to s. 54.76.

14 (6) “Directed trust property” means all or any portion of the property of a trust
15 that is invested or managed by a directing party or is invested or managed at the
16 direction of a directing party and for which the trustee has no investment or
17 management responsibility.

18 (7) “Directing party” means a person who, in a trust instrument or court order,
19 is granted a power to direct a trustee’s investment or distribution decisions or a
20 power to make investment or distribution decisions regarding trust property and the
21 power is granted to the person in a capacity other than as a trustee or a trust
22 protector. For purposes of this subsection, a power of appointment is not a power to
23 direct a trustee’s investment or distribution decisions or a power to make investment
24 or distribution decisions regarding trust property.

ASSEMBLY BILL 490

1 **(8)** “Environmental law” means a federal, state, or local law, rule, regulation,
2 or ordinance relating to protection or remediation of the environment.

3 **(9)** “General power of appointment” has the meaning given in s. 702.02 (5).

4 **(10)** “Guardian of the estate” means a person appointed by a court under s.
5 54.10 as a guardian of the estate of a minor or adult individual.

6 **(11)** “Guardian of the person” means a person appointed by a court under s.
7 54.10 as a guardian of the person of a minor or adult individual.

8 **(12)** “Incapacitated” means unable to receive and evaluate information
9 effectively or to communicate decisions to such an extent that the individual lacks
10 the capacity to manage his or her decisions.

11 **(13)** “Individual with a disability” means an individual who meets one of the
12 following tests:

13 (a) The individual receives social security, supplemental security income, or
14 medical assistance benefits on the basis of being an individual who is disabled, as
15 defined by the applicable program.

16 (b) The individual has a mental or physical impairment of a type and severity
17 that would cause the individual to be considered an individual who is disabled for
18 purposes of participating in the social security, supplemental security income, or
19 medical assistance program, if the individual applied to be eligible for one of those
20 programs based on disability, and if the individual’s education, work record, and
21 engagement in substantial gainful activity were disregarded. The fact that the
22 individual is age 65 or older does not bar the individual from being considered an
23 individual with a disability.

24 **(14)** “Interests of the beneficiaries” means the beneficial interests provided in
25 the terms of a trust.

ASSEMBLY BILL 490

1 **(15)** “Internal Revenue Code” means the Internal Revenue Code of 1986, as
2 amended, or such subsequent federal revenue law as may be in effect from time to
3 time.

4 **(16)** “Jurisdiction,” with respect to a geographic area, includes a state or
5 country.

6 **(17)** “Person” means an individual, corporation, business trust, estate, trust,
7 partnership, limited liability company, association, joint venture, government;
8 governmental subdivision, agency, or instrumentality; public corporation; or any
9 other legal or commercial entity.

10 **(18)** “Power of appointment” has the meaning given in s. 702.02 (6).

11 **(19)** “Power of withdrawal” means a presently exercisable general power of
12 appointment but does not include any of the following:

13 (a) A power exercisable by a trustee and limited by an ascertainable standard.

14 (b) A power exercisable by another person only upon consent of a trustee or of
15 a person holding an adverse interest.

16 **(20)** “Property” means anything that may be the subject of ownership, whether
17 real or personal or legal or equitable, or any interest therein.

18 **(21)** “Qualified beneficiary” means a beneficiary who, on the date on which the
19 beneficiary’s qualification is determined, satisfies any of the following:

20 (a) Is a distributee or permissible distributee of trust income or principal.

21 (b) Without considering the existence or exercise of a power of appointment,
22 other than a power of appointment that has been irrevocably exercised and notice of
23 the exercise has been given to the trustee, would be any of the following:

ASSEMBLY BILL 490

1 1. A distributee or permissible distributee of trust income or principal if the
2 interests of the distributees described in par. (a) terminated on that date without
3 causing the trust to terminate.

4 2. A distributee or permissible distributee of trust income or principal if the
5 trust terminated on that date.

6 **(22)** “Revocable,” as applied to a trust, means that the trust can be revoked by
7 the settlor without the consent of the trustee or a person holding an adverse interest,
8 regardless of whether the settlor is incapacitated.

9 **(23)** “Settlor” means a person, including a testator, who creates or contributes
10 property to a trust. If more than one person creates or contributes property to a trust,
11 each person is a settlor of the portion of the trust property attributable to that
12 person’s contribution except to the extent another person has the power to revoke the
13 trust or withdraw that portion.

14 **(24)** “Special power of appointment “ has the meaning given in s. 702.02 (7).

15 **(25)** “Spendthrift provision” means a term of a trust that restrains either or
16 both of a voluntary or involuntary transfer of a beneficiary’s interest.

17 **(26)** “State” means a state of the United States, the District of Columbia,
18 Puerto Rico, the United States Virgin Islands, any territory or insular possession
19 subject to the jurisdiction of the United States, and an Indian tribe, band, or nation
20 recognized by federal law or formally acknowledged by a state.

21 **(27)** “Terms of a trust” means the manifestation of the settlor’s intent regarding
22 a trust’s provisions as expressed in the trust instrument or as may be established by
23 other evidence that would be admissible in a judicial proceeding.

24 **(28)** “Trustee” includes an original, additional, and successor trustee, and a
25 cotrustee.

ASSEMBLY BILL 490

1 **(29)** “Trust for an individual with a disability” means a trust that is established
2 for the benefit of an individual with a disability of any age, if the assets of the trust
3 would not be counted as resources of the individual with a disability for purposes of
4 eligibility for medical assistance under subch. IV of ch. 49, if he or she applied for
5 medical assistance and was otherwise eligible.

6 **(30)** “Trust instrument” means an instrument, including any amendments or
7 modifications to the instrument under s. 701.0111 or subch. IV, that is executed by
8 the settlor that contains terms of a trust or is created under a statute, judgment, or
9 decree that orders property to be transferred to a trustee to be administered for the
10 benefit of a beneficiary.

11 **(31)** “Trust protector” means a person who, in a trust instrument or court order,
12 is granted a power, other than a power of appointment, in a capacity other than as
13 a trustee or a directing party.

14 **SECTION 52.** 701.0104 of the statutes is created to read:

15 **701.0104 Knowledge.** (1) Subject to sub. (2), a person has knowledge of a fact
16 if any of the following applies:

17 (a) The person has actual knowledge of the fact.

18 (b) The person has received a notice or notification of the fact.

19 (c) The person has reason to know the fact from all the facts and circumstances
20 known to the person at the time in question.

21 **(2)** An organization that conducts activities through employees has notice or
22 knowledge of a fact involving a trust only from the time the information was received
23 by an employee having responsibility to act for the trust, or would have been received
24 by the employee if the organization had exercised reasonable diligence. An
25 organization exercises reasonable diligence if it maintains reasonable routines for

ASSEMBLY BILL 490

1 communicating significant information to the employee having responsibility to act
2 for the trust and there is reasonable compliance with the routines. Reasonable
3 diligence does not require an employee of the organization to communicate
4 information unless the communication is part of the individual's regular duties or the
5 individual knows a matter involving the trust would be materially affected by the
6 information.

7 **SECTION 53.** 701.0105 of the statutes is created to read:

8 **701.0105 Default and mandatory rules.** (1) Except as otherwise provided
9 in the terms of the trust, this chapter governs the duties and powers of trustees,
10 directing parties, and trust protectors; relations among trustees, directing parties,
11 and trust protectors; and the rights and interests of a beneficiaries.

12 (2) The terms of a trust prevail over any provision of this chapter except for the
13 following:

14 (a) The requirements for creating a trust.

15 (b) The duty of a trustee or a directing party to act in good faith and in
16 accordance with the terms and purposes of a trust instrument and the interests of
17 the beneficiaries.

18 (c) The requirement that a trust and its terms be for the benefit of its
19 beneficiaries, and that the trust have a purpose that is lawful.

20 (d) The power of a court to modify or terminate a trust under ss. 701.0410 to
21 701.0416.

22 (e) The effect of a spendthrift provision and the rights of certain creditors and
23 assignees to reach a trust as provided in ss. 701.0501 to 701.0508.

24 (f) The power of the court under s. 701.0702.

ASSEMBLY BILL 490

1 (g) The power of the court under s. 701.0708 (2) to adjust a trustee's, directing
2 party's or trust protector's compensation specified in the terms of the trust.

3 (h) The effect of an exculpatory term under s. 701.1008.

4 (i) The rights under ss. 701.1010 to 701.1013 of a person other than a trustee
5 or beneficiary.

6 (j) Periods of limitation for commencing a judicial proceeding.

7 (k) The power of the court to take such action and exercise such jurisdiction as
8 may be necessary in the interests of justice.

9 (L) The jurisdiction of the court and venue for commencing a proceeding as
10 provided in ss. 701.0202, 701.0203, and 701.0204.

11 (m) The jurisdiction of the court under ss. 701.0807 (4), 701.0808 (9), and
12 701.0818 (12).

13 (n) The legal capacity under s. 701.0818 (2) (c) in which a trust protector who
14 is also serving as a trustee or a directing party must exercise any power granted to
15 the trust protector.

16 **SECTION 54.** 701.0106 of the statutes is created to read:

17 **701.0106 Common law of trusts; principles of equity.** The common law
18 of trusts and principles of equity supplement this chapter, except to the extent
19 modified by this chapter or another statute of this state.

20 **SECTION 55.** 701.0107 of the statutes is created to read:

21 **701.0107 Governing law.** The meaning and effect of the terms of a trust are
22 determined by one of the following:

23 **(1)** The law of the jurisdiction designated in the trust instrument.

24 **(2)** In the absence of a controlling designation in the terms of a trust, the law
25 of the jurisdiction having the most significant relationship to the matter at issue.

ASSEMBLY BILL 490

1 **SECTION 56.** 701.0108 of the statutes is created to read:

2 **701.0108 Principal place of administration.** (1) The principal place of
3 administration of a trust is determined by any of the following:

4 (a) The designation in the trust instrument if any of the following applies:

5 1. A trustee's usual place of business is located in the jurisdiction designated
6 in the trust instrument.

7 2. A trustee is a resident of the jurisdiction designated in the trust instrument.

8 3. All or part of the administration of the trust occurs in the jurisdiction
9 designated in the trust instrument.

10 4. The trust instrument designates the jurisdiction where the settlor is
11 domiciled at the time the trust instrument is executed.

12 (b) If the principal place of administration is not validly designated in the trust
13 instrument under par. (a), the jurisdiction where the trustee's usual place of business
14 is located or, if the trustee has no place of business, the jurisdiction where the
15 trustee's residence is located.

16 (c) The jurisdiction selected by the trustee under sub. (3).

17 **(2)** (a) If a corporate trustee is designated as the trustee of a trust and the
18 corporate trustee has offices in multiple states and performs administrative
19 functions for the trust in multiple states, the corporate trustee may designate the
20 corporate trustee's usual place of business by providing notice to the qualified
21 beneficiaries, trust protectors, and directing parties. The notice is valid and
22 controlling if the corporate trustee has a connection to the jurisdiction designated in
23 the notice, including an office where trustee services are performed and the actual
24 performance of some administrative functions for that particular trust in that
25 particular jurisdiction. The subsequent transfer of some of the administrative

ASSEMBLY BILL 490

1 functions of the corporate trustee to another state or states does not transfer the
2 usual place of business as long as the corporate trustee continues to maintain an
3 office and perform some administrative functions in the jurisdiction designated in
4 the notice and the corporate trustee does not transfer the principal place of
5 administration pursuant to sub. (4).

6 (b) If there are cotrustees, the trustee's usual place of business is determined
7 by any of the following:

8 1. If there is only one corporate trustee, the jurisdiction where the usual place
9 of business of the corporate trustee is located.

10 2. The jurisdiction where the usual place of business or the residence of any of
11 the cotrustees is located as agreed to by all of the cotrustees with notice to the
12 qualified beneficiaries, trust protectors, and directing parties.

13 3. If the cotrustees cannot agree on a jurisdiction under subd. 2., and subd. 1.
14 does not apply, by a court.

15 (3) Without precluding the right of the court to approve or disapprove a transfer
16 and subject to sub. (5), a trustee may, but has no affirmative duty to, transfer a trust's
17 principal place of administration to another state or to a jurisdiction outside of the
18 United States.

19 (4) A trustee shall notify the qualified beneficiaries, trust protectors, and
20 directing parties of a proposed transfer of a trust's principal place of administration
21 not less than 30 days before initiating the transfer. The trustee shall include in the
22 notice of proposed transfer all of the following:

23 (a) The name of the jurisdiction to which the principal place of administration
24 is to be transferred.

ASSEMBLY BILL 490

1 (b) The mailing address, electronic mail address, if available, and telephone
2 number at the new location at which the trustee can be contacted.

3 (c) An explanation of the reasons for the proposed transfer.

4 (d) The date on which the proposed transfer is anticipated to occur.

5 (e) The date, not less than 30 days after the giving of the notice, by which a
6 qualified beneficiary, trust protector, or directing party must notify the trustee of an
7 objection to the proposed transfer.

8 (5) If a qualified beneficiary, trust protector, or directing party commences a
9 judicial proceeding objecting to the proposed transfer on or before the date specified
10 in the notice, a trustee may not act under sub. (3) without court approval to transfer
11 a trust's principal place of administration until the judicial proceeding is resolved or
12 withdrawn.

13 (6) In connection with a transfer of a trust's principal place of administration,
14 the trustee may transfer some or all of the trust property to a successor trustee
15 designated in the terms of the trust or appointed pursuant to s. 701.0704.

16 (7) The law of the trust's principal place of administration governs
17 administrative matters related to the trust.

18 **SECTION 57.** 701.0109 of the statutes is created to read:

19 **701.0109 Methods and waiver of notice.** (1) Notice to a person under this
20 chapter or the sending of a document to a person under this chapter shall be
21 accomplished in a manner reasonably suitable under the circumstances and likely
22 to result in receipt of the notice or document. Permissible methods of notice or for
23 sending a document include 1st class mail, personal delivery, delivery to the person's
24 last known place of residence or place of business, or a properly directed electronic
25 message.

ASSEMBLY BILL 490

1 (2) Notice otherwise required under this chapter or a document otherwise
2 required to be sent under this chapter does not need to be provided to a person whose
3 identity or location is unknown to and not reasonably ascertainable by a trustee.

4 (3) Notice under this chapter or the sending of a document under this chapter
5 may be waived by the person to be notified or sent the document.

6 (4) Notice of a judicial proceeding shall be given as provided in s. 701.0205.

7 **SECTION 58.** 701.0110 of the statutes is created to read:

8 **701.0110 Others treated as qualified beneficiaries.** (1) A charitable
9 organization that is expressly designated to receive distributions under the terms of
10 a charitable trust and that is not subject to a right of substitution by the settlor or
11 by any other party prior to the charitable organization becoming a distributee or
12 permissible distributee of trust income or principal has the rights of a qualified
13 beneficiary under this chapter if the charitable organization, on the date on which
14 the charitable organization's qualification is being determined, satisfies one of the
15 following:

16 (a) The charitable organization is a distributee or permissible distributee of
17 trust income or principal.

18 (b) The charitable organization would be a distributee or permissible
19 distributee of trust income or principal upon the termination of the interests of other
20 distributees or permissible distributees then receiving or eligible to receive
21 distributions.

22 (c) The charitable organization would be a distributee or permissible
23 distributee of trust income or principal if the trust terminated on that date.

ASSEMBLY BILL 490

1 (2) A person appointed to enforce a trust created for the care of an animal or
2 another noncharitable purpose as provided in s. 701.0408 or 701.0409 has the rights
3 of a qualified beneficiary under this chapter.

4 (3) The attorney general of this state has the rights of a qualified beneficiary
5 with respect to a charitable trust having its principal place of administration in this
6 state only when the charitable interest to be represented would qualify under sub.
7 (1) but no charitable organization has been expressly designated to receive
8 distribution under the terms of a charitable trust.

9 **SECTION 59.** 701.0111 of the statutes is created to read:

10 **701.0111 Nonjudicial settlement agreements.** (1) In this section,
11 “interested person” means a person whose consent would be required in order to
12 achieve a binding settlement were the settlement to be approved by the court.

13 (2) An interested person may be represented under this section as provided in
14 subch. III.

15 (3) Except as provided in sub. (4), an interested person may enter into a binding
16 nonjudicial settlement agreement with respect to any matter involving a trust. A
17 binding nonjudicial settlement agreement is considered part of the trust instrument.

18 (4) A nonjudicial settlement agreement is valid only to the extent it includes
19 terms and conditions that could be properly approved by a court under this chapter
20 or other applicable law.

21 (5) Except as provided in sub. (4), matters that may be addressed by a
22 nonjudicial settlement agreement include any of the following:

23 (a) The interpretation or construction of the terms of the trust.

24 (b) The approval of a trustee’s report or accounting or waiver of the preparation
25 of a trustee’s report or accounting.

ASSEMBLY BILL 490

1 (c) Direction to a trustee to perform or refrain from performing a particular act
2 or the grant to a trustee of any necessary power.

3 (d) The resignation or appointment of a trustee.

4 (e) The determination of a trustee's compensation.

5 (f) The transfer of a trust's principal place of administration.

6 (g) The liability or release from liability of a trustee for an action relating to the
7 trust.

8 (h) The criteria for distribution to a beneficiary where the trustee is given
9 discretion.

10 (i) The resolution of disputes arising out of the administration or distribution
11 of the trust.

12 (j) An investment action.

13 (k) The appointment of and powers granted to a directing party or a trust
14 protector.

15 (L) Direction to a directing party or to a trust protector to perform or refrain
16 from performing a particular act or the grant of a power to a directing party or trust
17 protector.

18 **(6)** Any interested person may request a court to approve a nonjudicial
19 settlement agreement, to determine whether the representation as provided in
20 subch. III was adequate, or to determine whether the agreement contains terms and
21 conditions the court could have properly approved.

22 **SECTION 60.** 701.02 of the statutes is repealed.

23 **SECTION 61.** Subchapter II (title) of chapter 701 [precedes 701.0201] of the
24 statutes is created to read:

25 **CHAPTER 701**

ASSEMBLY BILL 490

SUBCHAPTER II

JUDICIAL PROCEEDINGS

SECTION 62. 701.0201 of the statutes is created to read:

701.0201 Role of court in administration of trust. (1) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(2) Unless ordered by the court upon a petition of a settlor, trustee, or qualified beneficiary requesting continuing judicial supervision, a trust is not subject to continuing judicial supervision.

(3) A judicial proceeding involving a trust or the trust's administration may involve any of the following:

(a) Determining the validity of all or any part of a trust.

(b) Appointing or removing a trustee, directing party, or trust protector.

(c) Appointing a representative or guardian ad litem, as provided in s. 701.0305, whether or not any other judicial proceeding concerning the trust is pending.

(d) Reviewing and approving a fee of a trustee, directing party, or trust protector.

(e) Approving interim or final accounts.

(f) Ascertaining trust beneficiaries.

(g) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.

(h) Requesting trustee instructions.

(i) Obtaining a declaratory judgment.

(j) Seeking reformation or other equitable relief with respect to a trust.

ASSEMBLY BILL 490

1 (k) Resolving a question arising in the administration of a trust, including a
2 question of construction of a trust instrument.

3 (L) Determining any other matter involving a trustee, directing party, trust
4 protector, or beneficiary.

5 **SECTION 63.** 701.0202 of the statutes is created to read:

6 **701.0202 Personal jurisdiction. (1)** A trustee, trust protector, or directing
7 party submits personally to the jurisdiction of the courts of this state regarding any
8 matter involving the trust by accepting an appointment as a trustee, trust protector,
9 or directing party of a trust having its principal place of administration in this state
10 or by continuing to serve as the trustee, trust protector, or directing party of a trust
11 after the principal place of administration of the trust is moved to this state.

12 **(2)** With respect to a beneficiary's interest in a trust, the beneficiary of a trust
13 having its principal place of administration in this state is subject to the jurisdiction
14 of the courts of this state regarding any matter involving the trust. By accepting a
15 distribution from a trust having its principal place of administration in this state,
16 a recipient submits personally to the jurisdiction of the courts of this state regarding
17 any matter involving the trust.

18 **(3)** Notwithstanding any contractual provision or other agreement between
19 the trustee and the agent to the contrary, by accepting the delegation of a trust
20 function pursuant to s. 701.0807 or 881.01 (10), or otherwise, from the trustee of a
21 trust having a principal place of administration in this state, the agent submits
22 personally to the jurisdiction of the courts of this state regarding any matter
23 involving the trust.

ASSEMBLY BILL 490

1 (4) This section does not preclude other methods of obtaining jurisdiction over
2 a trustee, directing party, trust protector, beneficiary, or other person receiving
3 property from the trust.

4 **SECTION 64.** 701.0203 of the statutes is created to read:

5 **701.0203 Subject matter jurisdiction.** (1) The circuit court assigned to
6 exercise probate jurisdiction has exclusive jurisdiction of proceedings in this state
7 brought by a trustee, trust protector, directing party, or beneficiary concerning the
8 administration of a trust. Except as otherwise provided in this chapter, and as
9 applicable, the probate procedure described in ch. 879 applies to a proceeding
10 brought by a trustee, trust protector, directing party, or beneficiary concerning the
11 administration of a trust.

12 (2) This section does not preclude judicial or nonjudicial alternative dispute
13 resolution, including nonjudicial settlement agreements described in s. 701.0111.

14 **SECTION 65.** 701.0204 of the statutes is created to read:

15 **701.0204 Venue.** (1) Except as provided in sub. (2), venue for a judicial
16 proceeding involving a trust may be in the county of this state in which the trust's
17 principal place of administration is or will be located or, if the trust is a testamentary
18 trust and the decedent's estate is not yet closed, in the county of this state in which
19 the decedent's estate is being administered.

20 (2) If a trust has no trustee, venue for a judicial proceeding for the appointment
21 of a trustee is in any of the following:

22 (a) A county of this state in which a beneficiary resides.

23 (b) A county of this state in which any trust property is located.

24 (c) A county of this state in which the holder of trust property maintains an
25 office.

ASSEMBLY BILL 490

1 (d) If the trust is a testamentary trust and the decedent's estate is not yet
2 closed, in the county of this state in which the decedent's estate is being
3 administered.

4 (3) Venue for a judicial proceeding involving a trust is also governed by ss.
5 801.50 to 801.62, as applicable, and the proceeding is regarded as a civil action for
6 that purpose.

7 **SECTION 66.** 701.03 of the statutes is repealed.

8 **SECTION 67.** Subchapter III (title) of chapter 701 [precedes 701.0301] of the
9 statutes is created to read:

10 **CHAPTER 701**

11 **SUBCHAPTER III**

12 **REPRESENTATION**

13 **SECTION 68.** 701.0301 of the statutes is created to read:

14 **701.0301 Representation: basic effect.** (1) Notice, information, an
15 accounting, or a report given to a person who may represent and bind another person
16 under this subchapter is a substitute for and has the same effect as notice,
17 information, an accounting, or a report given directly to the other person.

18 (2) The consent of a person who may represent and bind another person under
19 this subchapter is binding on the person represented unless the person represented
20 objects to the representation by notifying the trustee or the representative in writing
21 before the consent would otherwise have become effective.

22 (3) Except as provided in ss. 701.0411 and 701.0602, a person who under this
23 subchapter may represent a settlor who lacks capacity may receive notice and may
24 give a binding consent on the settlor's behalf.

ASSEMBLY BILL 490

1 (4) A settlor may not represent and bind a beneficiary under this subchapter
2 with respect to the termination or modification of a trust under s. 701.0411 (1).

3 (5) A trustee is not liable for giving notice, information, an accounting, or a
4 report to a beneficiary who is represented by another person under this subchapter
5 and nothing in this subchapter prohibits the trustee from giving notice, information,
6 an accounting, or a report to the person represented.

7 **SECTION 69.** 701.0302 of the statutes is created to read:

8 **701.0302 Representation by holder of general power of appointment.**

9 To the extent there is no conflict of interest between a holder of a general power of
10 appointment and a person represented with respect to the particular question or
11 dispute, the holder may represent and bind the person whose interests, as a
12 permissible appointee, a taker in default, or otherwise, are subject to the power.

13 **SECTION 70.** 701.0303 of the statutes is created to read:

14 **701.0303 Representation by fiduciaries, parents, or a person**
15 **appointed by a trustee.** Except as provided in s. 701.0411, to the extent there is
16 no conflict of interest between a representative and the person represented or among
17 those being represented with respect to a particular question or dispute, all of the
18 following apply:

19 (1) A conservator may represent and bind the estate that the conservator
20 controls.

21 (2) Notwithstanding ss. 54.20 (2) and 54.25 (2), a guardian of the estate may
22 represent and bind the ward and a guardian of the person may represent and bind
23 the ward if a guardian of the estate of the ward has not been appointed.

24 (3) An agent having authority to act with respect to the particular question or
25 dispute may represent and bind the principal.

ASSEMBLY BILL 490

1 **(4)** A trustee may represent and bind the beneficiaries of the trust, except as
2 to matters relating to the administration or distribution of the trust.

3 **(5)** A personal representative of a decedent's estate may represent and bind a
4 person interested in the estate, except as to matters relating to the administration
5 or distribution of the estate.

6 **(6)** A parent may represent and bind the parent's minor or unborn child. If a
7 disagreement arises between parents seeking to represent the same minor child or
8 unborn child, representation is determined as follows:

9 (a) If only one parent is a beneficiary of the trust that is the subject of the
10 representation, that parent may represent the minor child or unborn child.

11 (b) If both parents are beneficiaries of the trust that is the subject of the
12 representation, the parent who is related to the settlor, other than by reason of being
13 married to the other parent, may represent the minor child or unborn child.

14 (c) Subject to s. 701.0301 (4), if neither parent is a beneficiary of the trust that
15 is the subject of the representation, the parent who is the settlor of the trust that is
16 the subject of the representation may represent the minor child or unborn child.

17 (d) If neither parent is a beneficiary or settlor of the trust that is the subject
18 of the representation, the parent who is a related to the settlor, other than by reason
19 of being married to the other parent, may represent the minor child or unborn child.

20 **(7)** The order in which the representatives are listed in subs. (1) to (6) sets forth
21 the priority that each such representative has relative to the others.

22 **(8)** If there is no representation by a person having a substantially identical
23 interest under s. 710.0304, the trustee may appoint a representative to act if any of
24 the following applies:

25 (a) There is no one permitted to act under subs. (1) to (6).

ASSEMBLY BILL 490

1 (b) All of the people entitled to act under subs. (1) to (6) have declined to act.

2 (c) The trustee determines that the otherwise available representation under
3 subs. (1) to (6) might be inadequate.

4 **SECTION 71.** 701.0304 of the statutes is created to read:

5 **701.0304 Representation by person having substantially identical**
6 **interest.** Unless otherwise represented with respect to a particular question or
7 dispute, a minor, incapacitated, or unborn individual or a person whose identity or
8 location is unknown and not reasonably ascertainable may be represented by and
9 bound by another person having a substantially identical interest with respect to the
10 particular question or dispute, but only to the extent there is no conflict of interest
11 between the representative and the person represented with respect to the
12 particular question or dispute.

13 **SECTION 72.** 701.0305 of the statutes is created to read:

14 **701.0305 Appointment of representative by a court.** (1) If the court
15 determines that an interest is not represented under this subchapter, or that the
16 otherwise available representation might be inadequate, the court may appoint a
17 representative or guardian ad litem to receive notice, give consent, and otherwise
18 represent, bind, and act on behalf of the person who is not represented or whose
19 representation might be inadequate. A representative or guardian ad litem may be
20 appointed to represent several persons or interests.

21 (2) A representative or guardian ad litem may act on behalf of the individual
22 represented with respect to any matter arising under this chapter, whether or not
23 a judicial proceeding concerning the trust is pending.

24 (3) In making decisions, a representative or guardian ad litem may consider
25 any general benefit accruing to the living members of the individual's family.

ASSEMBLY BILL 490

1 **701.0402 Requirements for creation. (1)** A trust is created only if all of the
2 following are satisfied:

3 (a) The settlor of the trust has capacity, as defined in sub. (4), to create the trust,
4 unless the trust is created by court order or by an agent, guardian of the estate,
5 conservator, or representative payee with authority to act.

6 (b) The settlor indicates an intention to create the trust; or a statute,
7 regulation, common law, other provision having the effect of law, judgment, or decree
8 creates or authorizes the creation of a trust.

9 (c) The trust has a definite beneficiary or is one of the following:

10 1. A charitable trust.

11 2. A trust for the care of an animal, as provided in s. 701.0408.

12 3. A trust for a noncharitable purpose, as provided in s. 701.0409.

13 (d) The trustee has duties to perform.

14 (e) The same person is not the sole trustee and sole beneficiary.

15 **(2)** A beneficiary is definite if the beneficiary can be ascertained at the time the
16 trust is created or in the future.

17 **(3)** A power in a trustee or trust protector to select a beneficiary from an
18 indefinite class is valid. If the power is not exercised within a reasonable time, the
19 power fails and the property subject to the power passes to the persons who would
20 have taken the property had the power not been conferred.

21 **(4)** The capacity required to create a trust is the same as the capacity to make
22 a will.

23 **SECTION 77.** 701.0403 of the statutes is created to read:

24 **701.0403 Trusts created in other jurisdictions.** A trust not created by will
25 is validly created if its creation complies with the law of the jurisdiction in which the

ASSEMBLY BILL 490

1 trust instrument was executed, or the law of the jurisdiction in which, at the time of
2 creation, any of the following was satisfied:

3 (1) The settlor was domiciled, had a place of abode, or was a national.

4 (2) A trustee was domiciled or had a place of business.

5 (3) Any trust property was located.

6 **SECTION 78.** 701.0404 of the statutes is created to read:

7 **701.0404 Trust purposes.** A trust may be created only to the extent its
8 purposes are lawful and possible to achieve. A trust and its terms must be for the
9 benefit of its beneficiaries or for a noncharitable, but otherwise valid, purpose as
10 described in s. 701.0409.

11 **SECTION 79.** 701.0405 of the statutes is created to read:

12 **701.0405 Charitable purposes; enforcement.** (1) A charitable trust may
13 be created for the relief of poverty, the advancement of education or religion, the
14 promotion of health or governmental or municipal purposes, or other purposes the
15 achievement of which is beneficial to the community.

16 (2) If the terms of a charitable trust do not indicate a particular charitable
17 purpose or beneficiary, or designate persons or procedures for selecting charitable
18 purposes or beneficiaries, the court may select one or more charitable purposes or
19 beneficiaries. The selection must be consistent with the settlor's intention to the
20 extent it can be ascertained.

21 (3) The settlor of a charitable trust or his or her designees, whether identified
22 within or without the terms of the trust, or a charitable entity named in the trust
23 instrument, or the attorney general, or a cotrustee, or such other person the court
24 determines to have sufficient interest may maintain a proceeding to enforce the
25 trust.

ASSEMBLY BILL 490

1 **SECTION 80.** 701.0406 of the statutes is created to read:

2 **701.0406 Creation of trust induced by fraud, duress, or undue**
3 **influence.** A trust is void to the extent its creation was induced by fraud, duress,
4 or undue influence.

5 **SECTION 81.** 701.0407 of the statutes is created to read:

6 **701.0407 Evidence of oral trust.** Except as required by a statute other than
7 this chapter, a trust does not need to be evidenced by a trust instrument, but the
8 creation of an oral trust and its terms may be established only by clear and
9 convincing evidence.

10 **SECTION 82.** 701.0408 of the statutes is created to read:

11 **701.0408 Trust for care of animal. (1)** A trust may be created to provide
12 for the care of an animal alive during the settlor's lifetime. The trust terminates
13 upon the death of the animal or, if the trust was created to provide for the care of more
14 than one animal alive during the settlor's lifetime, upon the death of the last
15 surviving animal.

16 **(2)** A trust authorized by this section may be enforced by a person appointed
17 in the terms of the trust or, if no person is so appointed, by a person appointed by the
18 court. A person having an interest in the welfare of the animal may request the court
19 to appoint a person to enforce the trust or to remove a person appointed under this
20 subsection.

21 **(3)** Property of a trust authorized by this section may be applied only to its
22 intended use, except to the extent the court determines that the value of the trust
23 property exceeds the amount required for the intended use. Property not required
24 for the intended use must be distributed to the settlor, if then living, otherwise to the
25 settlor's successors in interest.

ASSEMBLY BILL 490

1 **SECTION 83.** 701.0409 of the statutes is created to read:

2 **701.0409 Noncharitable trust without ascertainable beneficiary.**

3 Except as otherwise provided in s. 701.0408 or by another statute, the following rules
4 apply:

5 (1) A trust may be created for a noncharitable purpose without a definite or
6 definitely ascertainable beneficiary or for a noncharitable but otherwise valid
7 purpose to be selected by the trustee.

8 (2) A trust may be created for maintaining, keeping in repair, and preserving
9 any grave, tomb, monument, gravestone, or any cemetery. Any cemetery authority
10 under s. 157.061 (2) may receive property in trust for any of the purposes specified
11 in this subsection and apply the income from the trust to the purpose stated in the
12 trust instrument.

13 (3) A trust authorized by this section may be enforced by a trust protector with
14 the power to enforce the trust. If there is not a trust protector with the power to
15 enforce the trust, a court may appoint a trust protector with the power to enforce the
16 trust under s. 701.0818.

17 (4) Property of a trust authorized by this section may be applied only to its
18 intended use, except to the extent the court determines that the value of the trust
19 property exceeds the amount required for the intended use. Property not required
20 for the intended use must be distributed to the settlor, if then living, otherwise to the
21 settlor's successors in interest.

22 **SECTION 84.** 701.0410 of the statutes is created to read:

23 **701.0410 Modification or termination of trust; proceedings for**
24 **approval or disapproval. (1)** In addition to the methods of termination prescribed
25 by ss. 701.0411 to 701.0414, a trust terminates to the extent the trust is revoked or

ASSEMBLY BILL 490

1 expires pursuant to its terms, no purpose of the trust remains to be achieved, or the
2 purposes of the trust have become unlawful or impossible to achieve.

3 (2) A proceeding to approve or disapprove a proposed modification or
4 termination under ss. 701.0411 to 701.0416, or a proposed trust combination or
5 division under s. 701.0417, may be commenced by a trustee or beneficiary, and a
6 proceeding to approve or disapprove a proposed modification or termination under
7 s. 701.0411 may be commenced by the settlor. The settlor of a charitable trust may
8 maintain a proceeding to modify the trust under s. 701.0413. A trustee does not have
9 standing to oppose a proposed modification or termination commenced under s.
10 701.0411 (1).

11 (3) A trustee may not be compelled by a modification or termination under this
12 section or under ss. 701.0411 to 701.0416 to make distributions to or for any
13 beneficiary of a trust for an individual with a disability or to terminate the trust,
14 during the lifetime of the individual with a disability. A court may modify the terms
15 of a trust for an individual with a disability with retroactive effect or reform the
16 terms of such trust to achieve the settlor's objective or, if because of circumstances
17 not anticipated by the settlor, to otherwise further the purposes of the trust so that
18 it does not result in trust property being countable as resources or income of the
19 individual with a disability for purposes of public assistance.

20 **SECTION 85.** 701.0411 of the statutes is created to read:

21 **701.0411 Modification or termination of noncharitable irrevocable**
22 **trust by consent.** (1) A noncharitable irrevocable trust may be modified or
23 terminated, with or without court approval, upon consent of the settlor and all
24 beneficiaries, even if the modification or termination is inconsistent with a material
25 purpose of the trust. A settlor's power to consent to a trust's modification or

ASSEMBLY BILL 490

1 termination may be exercised by a representative under s. 701.0303 only if the
2 representative is specifically authorized to consent to a trust's modification or
3 termination under a power of attorney, the terms of the trust, or by a court under a
4 guardianship or conservatorship.

5 (2) (a) A noncharitable irrevocable trust may be terminated upon consent of all
6 of the beneficiaries if the court concludes that continuance of the trust is not
7 necessary to achieve any material purpose of the trust.

8 (b) A noncharitable irrevocable trust may be modified upon consent of all of the
9 beneficiaries if the court concludes that modification is not inconsistent with a
10 material purpose of the trust.

11 (3) A spendthrift provision in the terms of the trust is not presumed to
12 constitute a material purpose of the trust.

13 (4) A court may not compel a beneficiary to consent to a modification or
14 termination to satisfy a creditor of the beneficiary.

15 (5) Upon termination of a trust under sub. (1) or (2), the trustee shall distribute
16 the trust property as agreed by the beneficiaries.

17 (6) If not all of the beneficiaries consent to a proposed modification or
18 termination of the trust under sub. (1) or (2), the modification or termination may
19 be approved by the court if the court is satisfied that all of the following apply:

20 (a) If all of the beneficiaries had consented, the trust could have been modified
21 or terminated under this section.

22 (b) The interests of a beneficiary who does not consent will be adequately
23 protected.

24 (7) A party proposing to modify or terminate a trust under sub. (1) or (2) shall
25 give notice of the proposed modification or termination to the settlor, if living, the

ASSEMBLY BILL 490

1 trustee, each trust protector, each directing party, and each beneficiary at least 30
2 days before the proposed effective date of the modification or termination.

3 **SECTION 86.** 701.0412 of the statutes is created to read:

4 **701.0412 Modification or termination because of unanticipated**
5 **circumstances or inability to administer trust effectively. (1)** The court may
6 modify the administrative or dispositive terms of a trust or terminate the trust if,
7 because of circumstances not anticipated by the settlor, modification or termination
8 will further the purposes of the trust. To the extent practicable, the court shall make
9 the modification in accordance with the settlor's probable intention.

10 **(2)** The court may modify the administrative terms of a trust if continuation
11 of the trust on its existing terms would be impracticable or wasteful or impair the
12 trust's administration.

13 **(3)** Upon termination of a trust under this section, the trustee shall distribute
14 the trust property in a manner consistent with the purposes of the trust.

15 **(4)** A party petitioning the court for action under this section shall give notice
16 of the proceeding to the settlor, if living, the trustee, each trust protector, each
17 directing party, and the qualified beneficiaries.

18 **SECTION 87.** 701.0413 of the statutes is created to read:

19 **701.0413 Cy pres. (1)** The purpose of this section is to broaden the power of
20 the courts to make charitable gifts more effective. The court shall liberally apply the
21 cy pres doctrine.

22 **(2)** Except as provided in sub. (3), if a particular charitable purpose becomes
23 unlawful, impracticable, impossible to achieve, or wasteful, all of the following apply:

24 **(a)** The trust does not fail, in whole or in part.

ASSEMBLY BILL 490

1 (b) The trust property does not revert to the settlor or the settlor's successors
2 in interest.

3 (c) The court may apply the cy pres doctrine to modify or terminate the trust
4 by directing that the trust property be applied or distributed, in whole or in part, in
5 a manner consistent with the settlor's charitable purposes. In determining the
6 alternative plan for disposition of the property under this paragraph, the court shall
7 take into account current and future community needs in the general field of charity
8 within which the original charitable purpose falls, other charitable interests of the
9 settlor, the amount of principal and income available under the trust, and other
10 relevant factors. A person with standing to enforce the terms of a charitable trust
11 under s. 701.0405 (3) has standing to commence a proceeding under this paragraph.
12 The attorney general is a necessary party in all proceedings under this paragraph.

13 (3) A provision in the terms of a charitable trust that would result in
14 distribution of the trust property to a noncharitable beneficiary prevails over the
15 power of the court under sub. (2) to apply the cy pres doctrine to modify or terminate
16 the trust only if, when the provision takes effect, the trust property is to revert to the
17 settlor and the settlor is still living.

18 (4) A party petitioning the court for action under this section shall give notice
19 to the settlor, if living, the trustee, each trust protector, each directing party, the
20 qualified beneficiaries, and any person with standing to enforce the terms of a
21 charitable trust under s. 701.0405 (3).

22 **SECTION 88.** 701.0414 of the statutes is created to read:

23 **701.0414 Modification or termination of uneconomic trust.** (1) In this
24 section:

ASSEMBLY BILL 490

1 (a) "Adjustment reference number" means the consumer price index for all
2 urban consumers, as published by the United States bureau of labor statistics, in
3 effect on January 1 of the year in which an adjustment is to be made in accordance
4 with sub. (3).

5 (b) "Base reference number" means the consumer price index for all urban
6 consumers, as published by the United States bureau of labor statistics, in effect on
7 January 1 of the base year.

8 (c) "Base year" means the year in which this paragraph takes effect [LRB
9 inserts date].

10 (2) After notice to the settlor, if living, each trust protector, each directing party,
11 and the qualified beneficiaries, the trustee of a trust consisting of trust property
12 having a total value less than \$100,000 or a revised applicable figure, as determined
13 under sub. (3), may terminate the trust if the trustee concludes that the value of the
14 trust property is insufficient to justify the cost of administration.

15 (3) The dollar amount specified in sub. (2) shall be adjusted to a revised
16 applicable figure on the 5th anniversary of the effective date of this subsection
17 [LRB inserts date], and every 5 years thereafter. The revised applicable figure shall
18 be determined as follows:

19 (a) Calculate the percentage change between the base reference number and
20 the adjustment reference number for the year in which the adjustment is being
21 made.

22 (b) 1. If the percentage change determined in par. (a) is a positive number,
23 determine the revised applicable figure as follows:

24 a. Multiply \$100,000 by the percentage change determined in par. (a),
25 expressed as a decimal.

ASSEMBLY BILL 490

- 1 b. Round the product under subd. 1. a. to the nearest \$1,000.
- 2 c. Add the value determined under subd. 1. b. to \$100,000.
- 3 2. If the percentage change determined in par. (a) is a negative number,
4 determine the revised applicable figure as follows:
- 5 a. Multiply \$100,000 by the absolute value of the percentage change
6 determined in par. (a), expressed as a decimal.
- 7 b. Round the product under subd. 2. a. to the nearest \$1,000.
- 8 c. Subtract the value determined under subd. 2. b. from \$100,000.
- 9 (4) The court may modify or terminate a trust or remove the trustee and
10 appoint a different trustee if it determines that the value of the trust property is
11 insufficient to justify the cost of administration even if the trust property has a total
12 value in excess of the amount described in sub. (2).
- 13 (5) Upon termination of a trust under this section, the trustee shall distribute
14 the trust property in a manner consistent with the purposes of the trust.
- 15 (6) This section does not apply to an easement for conservation or preservation.
- 16 (7) A party petitioning the court for action under this section shall give notice
17 of the proceeding to the settlor, if living, the trustee, each trust protector, each
18 directing party, and the qualified beneficiaries.
- 19 **SECTION 89.** 701.0415 of the statutes is created to read:
- 20 **701.0415 Reformation to correct mistakes.** The court may reform the
21 terms of a trust, even if unambiguous, to conform the terms to the settlor's intent if
22 it is proved by clear and convincing evidence that both the settlor's intent and the
23 terms of the trust were affected by a mistake of fact or law, whether in expression or
24 inducement. A party petitioning the court for action under this section shall give

ASSEMBLY BILL 490

1 notice of the proceeding to the settlor, if living, the trustee, each trust protector, each
2 directing party, and the qualified beneficiaries.

3 **SECTION 90.** 701.0416 of the statutes is created to read:

4 **701.0416 Modification to achieve settlor's tax objectives.** To achieve the
5 settlor's tax objectives, the court may modify the terms of a trust in a manner that
6 is not contrary to the settlor's probable intent. The court may provide that the
7 modification has retroactive effect. A party petitioning the court for action under this
8 section shall give notice of the proceeding to the settlor, if living, the trustee, each
9 trust protector, each directing party, and the qualified beneficiaries.

10 **SECTION 91.** 701.0417 of the statutes is created to read:

11 **701.0417 Combination and division of trusts. (1)** After notice to each trust
12 protector, each directing party, and the qualified beneficiaries, a trustee may do any
13 of the following if the result does not impair rights of any beneficiary or adversely
14 affect achievement of any trust purposes:

15 (a) Combine 2 or more trusts into a single trust.

16 (b) Divide a trust into 2 or more separate trusts.

17 **(2)** Subject to the terms of the trust, the trustee may take into consideration
18 differences in federal tax attributes and other pertinent factors in administering the
19 trust property of any separate account or trust, in making applicable tax elections,
20 and in making distributions. A separate trust created by severance under sub. (1)
21 (b) is treated as a separate trust for all purposes from the date on which the severance
22 is effective. The effective date of the severance may be retroactive to a date before
23 the date on which the trustee exercises the power.

24 **(3)** If a trustee combines 2 or more trusts into a single trust, the trustee shall
25 identify which trust is the surviving trust.

ASSEMBLY BILL 490

1 **SECTION 92.** 701.0418 of the statutes is created to read:

2 **701.0418 Trustee's power to appoint assets to new trust. (1) DEFINITIONS.**

3 In this section:

4 (a) "Absolute power" means a power to invade trust assets for the benefit of a
5 beneficiary that is not limited by a specific or ascertainable standard, whether or not
6 the term "absolute" is used in the trust instrument. "Absolute power" includes a
7 power to invade trust assets for the best interests, welfare, comfort, or happiness of
8 a beneficiary.

9 (b) "First trust" means the trust from which assets are or may be appointed
10 under sub. (2).

11 (c) "Second trust" means the trust or trusts to which assets are or may be
12 appointed under sub. (2).

13 **(2) POWER TO APPOINT.** (a) Except as otherwise provided in this subsection and
14 in subs. (3) and (5), a trustee who has the power to invade the principal of a first trust
15 for the benefit of a beneficiary who is eligible to receive or entitled to the income of
16 the first trust or entitled to an annuity or unitrust payment from the first trust may
17 exercise the power by appointing part or all of the assets of the first trust in favor of
18 a trustee of a 2nd trust if all of the following apply:

19 1. The appointment of assets does not reduce any fixed income, annuity, or
20 unitrust interest of a beneficiary.

21 2. If the trustee's power to invade income or principal of the first trust is limited
22 by a specific or ascertainable standard, the appointment of assets does not result in
23 the trustee of the 2nd trust or any other person having a power to invade the income
24 or principal of the 2nd trust that is broader than the trustee's power to invade income

ASSEMBLY BILL 490

1 or principal of the first trust. This subdivision does not apply if the 2nd trust is a trust
2 for an individual with a disability.

3 3. One of the following applies:

4 a. The beneficiaries of the first trust are the same as the beneficiaries of the 2nd
5 trust.

6 b. If the first trust grants the trustee the absolute power to invade principal,
7 the 2nd trust includes only all or some of the beneficiaries of the first trust.

8 (b) Paragraph (a) applies to a trustee whether or not the trustee has an absolute
9 power to invade principal and whether or not there is a current need to invade
10 principal under the terms of the first trust.

11 **(3) LIMITATIONS ON EXERCISE OF POWER.** A trustee may not appoint assets to a
12 2nd trust under sub. (2) if any of the following applies:

13 (a) The trust instrument creating the first trust expressly prohibits the trustee
14 from appointing assets of the first trust to a 2nd trust by reference to this section or
15 by using the term “decanting.”

16 (b) A contribution to the first trust qualified for a marital or charitable
17 deduction for federal income, gift, or estate tax purposes under the Internal Revenue
18 Code and one of the following applies:

19 1. The 2nd trust contains a provision that, if included in the first trust, would
20 have prevented the first trust from qualifying for the deduction or would have
21 reduced the amount of the deduction.

22 2. The 2nd trust does not contain a provision that was contained in the first
23 trust that, if omitted from the first trust, would have prevented the first trust from
24 qualifying for the deduction or would have reduced the amount of the deduction.

ASSEMBLY BILL 490

1 (c) The trustee has a beneficial interest in the first trust unless the 2nd trust
2 is a trust for an individual with a disability, the trustee's only beneficial interest in
3 the first trust is as a remainder beneficiary, and the trustee's beneficial interest in
4 the 2nd trust is not greater than the trustee's beneficial interest in the first trust.

5 (d) The appointment of assets to a 2nd trust would impair currently exercisable
6 withdrawal rights of a beneficiary of the first trust and one of the following applies:

7 1. The withdrawal rights were granted to the beneficiary in a manner designed
8 to allow contributions subject to the withdrawal rights to qualify for the federal gift
9 tax annual exclusion.

10 2. The terms of the 2nd trust would impair gifts previously made to the first
11 trust from qualifying for the federal gift tax annual exclusion under section 2503 of
12 the Internal Revenue Code.

13 (e) The appointment of assets to the 2nd trust would violate a rule against
14 perpetuities applicable to the first trust or suspend a trustee's power of alienation
15 over assets of the first trust in a manner that would cause all or a portion of the 2nd
16 trust to be void.

17 (f) The appointment of assets to the 2nd trust under sub. (2) would impair the
18 essential purpose of a trust for an individual with a disability.

19 **(4) PERMISSIBLE TERMS OF 2ND TRUST.** (a) Subject to pars. (b) to (d) and subs. (2),
20 (3), and (5), the trustee of the first trust may create a 2nd trust instrument that
21 includes terms that are intended to achieve any purpose, including terms that are
22 intended to do any of the following:

- 23 1. Correct a drafting error in the first trust.
24 2. Clarify potentially ambiguous terms contained in the first trust.
25 3. Change the age of distribution to a beneficiary of the first trust.

ASSEMBLY BILL 490

- 1 4. Extend the duration of the first trust.
- 2 5. Protect a beneficiary of the first trust, including protecting the beneficiary
- 3 from self-destructive behavior.
- 4 6. Allow the trustee of the 2nd trust to transfer trust assets to a community
- 5 trust. In this subdivision, “community trust” means a master trust that is
- 6 established and managed by a nonprofit organization that maintains sub-accounts
- 7 for individual beneficiaries that each satisfy the definition of a trust for an individual
- 8 with a disability.
- 9 7. Add or remove a spendthrift trust provision to the first trust.
- 10 8. Modify investment provisions contained in the first trust, including those
- 11 relating to permissible investments, use of investment advisors, or self-dealing
- 12 transactions.
- 13 9. Change a present or future trustee of the first trust, including by defining
- 14 the method by which a trustee or cotrustee may be appointed or removed and
- 15 replaced.
- 16 10. Appoint a trust protector of the 2nd trust and define the powers of the trust
- 17 protector.
- 18 11. Appoint a directing party of the 2nd trust and define the powers of the
- 19 directing party.
- 20 12. Change the principal place of administration of the first trust.
- 21 13. Change the governing law of the first trust.
- 22 14. Allow for the division of the first trust into 2 or more trusts.
- 23 15. Allow for the merger of the first trust with one or more trusts.
- 24 16. Add or modify an exculpatory provision for a trustee, trust protector, or
- 25 directing party.

ASSEMBLY BILL 490

1 17. Obtain desirable tax treatment, as determined by the trustee of the first
2 trust, or to avoid adverse tax consequences, as determined by the trustee of the first
3 trust, including provisions relating to grantor trust status under sections 671 to 679
4 of the Internal Revenue Code.

5 18. Modify a power in the first trust to invade income and principal.

6 19. Modify or eliminate a general or special power of appointment in the first
7 trust.

8 (b) The trust instrument of the 2nd trust may include terms granting a
9 beneficiary a general or special power of appointment only if the trustee of the first
10 trust has the absolute power to invade income and principal.

11 (c) 1. The trust instrument of the 2nd trust may include terms that are intended
12 to change terms of the first trust that are applicable to a beneficiary who is an
13 individual with a disability only if the purpose of the change is to allow the
14 beneficiary to qualify or continue to be qualified to receive public assistance.

15 2. Subdivision 1. applies regardless of whether the first trust includes specific
16 or ascertainable standards for distribution.

17 (d) The trust instrument of the 2nd trust may include a term that adopts or
18 expands an exculpatory provision relating to the trustee only if one of the following
19 applies:

20 1. Any trustee of the first trust who would benefit from the adoption of the term
21 in the 2nd trust abstains from the consideration and adoption of the term and the
22 trustees of the first trust who would not benefit from the adoption of the term adopt
23 the trust instrument of the 2nd trust.

24 2. A court approves the trust instrument of the 2nd trust.

ASSEMBLY BILL 490

1 **(5) PROCEDURAL MATTERS.** (a) A trustee shall appoint assets to a 2nd trust under
2 sub. (2) by an instrument in writing that is signed and acknowledged by the trustee
3 and shall include the written instrument with the records of the first and 2nd trusts.
4 A trustee may appoint assets to a 2nd trust under sub. (2) upon notice, without court
5 approval, under the procedure described in par. (b), or with court approval, under the
6 procedure described in par. (c).

7 (b) 1. If a trustee chooses to proceed without a court order, the trustee shall give
8 notice of the manner in which the trustee intends to appoint assets to a 2nd trust
9 under sub. (2) to all of the following:

- 10 a. The qualified beneficiaries of the first trust.
11 b. Each trust protector appointed under the terms of the first trust.
12 c. Each directing party appointed under the terms of the first trust.
13 d. The settlor of the first trust, if living.

14 2. To satisfy the trustee's notice obligation under this paragraph, a trustee shall
15 provide each person entitled to receive notice under subd. 1. all of the following:

- 16 a. A copy of the proposed written instrument under which the trustee will
17 appoint assets to a 2nd trust.
18 b. The proposed effective date of the appointment.
19 c. A copy of the trust instrument of the first trust.
20 d. A copy of the trust instrument of the 2nd trust.

21 3. A trustee may not appoint assets to the 2nd trust until 30 days after the
22 trustee provides notice as required under this paragraph unless every person who
23 is entitled to receive notice under subd. 1. waives the 30-day notice period by
24 delivering a signed written instrument to the trustee. A person's waiver of the

ASSEMBLY BILL 490

1 30-day notice period does not constitute that person's consent to the trustee's
2 appointment of assets to a 2nd trust.

3 4. If a person entitled to receive notice under subd. 1. delivers a written
4 objection to the trustee before the effective date of the appointment of assets to a 2nd
5 trust, the trustee may not appoint the assets to a 2nd trust, as specified in the
6 trustee's notice, without obtaining court approval under par. (c) unless the written
7 objection is withdrawn.

8 5. If the trustee does not receive a written objection from any person entitled
9 to receive notice under subd. 1. before the effective date of the appointment of assets
10 to the 2nd trust or all written objections to the proposed appointment of assets to the
11 2nd trust are withdrawn, the trustee may appoint the assets to a 2nd trust, as
12 specified in the notice.

13 (c) 1. If a trustee chooses to proceed with court approval, including after
14 receiving a written objection to a proposed appointment of assets, the trustee shall
15 petition a court to approve a proposed appointment of assets to a 2nd trust under sub.
16 (2). The trustee shall provide notice of the petition to all qualified beneficiaries of the
17 first trust, each trust protector appointed under the first trust, each directing party
18 appointed under the first trust, and to the settlor of the first trust, if living. The
19 trustee shall include in the notice of the petition the proposed effective date of the
20 appointment of assets to a 2nd trust. The trustee shall also provide to each person
21 who is entitled to receive notice under this paragraph a copy of the proposed
22 instrument under which the trustee will appoint assets to a 2nd trust, the proposed
23 effective date of the appointment, a copy of the trust instrument of the first trust, and
24 a copy of the trust instrument of the 2nd trust.

ASSEMBLY BILL 490

1 2. If a person who is entitled to receive notice under subd. 1. files an objection
2 with the court, in determining whether to grant or deny a petition under subd. 1., the
3 court shall consider all of the following:

4 a. The purpose of the proposed appointment of assets under sub. (2).

5 b. The reasons for any objection made by a person entitled to receive notice
6 under subd. 1.

7 c. Changes in circumstances that have occurred since the creation of the first
8 trust.

9 d. Whether the appointment of assets under sub. (2) complies with the
10 requirements of this section.

11 3. If no person who is entitled to receive notice under subd. 1. files an objection
12 with the court or any objection that has been filed with the court is withdrawn, the
13 court shall enter an order approving the appointment of assets under sub. (2) as set
14 forth in the trustee's notice unless the court determines that the appointment of
15 assets does not comply with the requirements of this section.

16 **(6) SUBSEQUENTLY DISCOVERED ASSETS.** (a) The appointment of all of the assets
17 of the first trust in favor of the trustee of the 2nd trust includes subsequently
18 discovered assets otherwise belonging to the first trust and assets paid to or acquired
19 by the first trust subsequent to the appointment in favor of the 2nd trust.

20 (b) Except as otherwise provided by the trustee of the first trust, the
21 appointment of part but not all of the assets of the first trust in favor of the 2nd trust
22 does not include subsequently discovered assets belonging to the first trust or assets
23 paid to or acquired by the first trust subsequent to the appointment in favor of the
24 2nd trust, which remain the assets of the first trust.

ASSEMBLY BILL 490

1 **(7) LIABILITY.** (a) This section does not create or imply a duty on a trustee to
2 appoint assets to a 2nd trust under sub. (2). A trustee that does not appoint assets
3 to a 2nd trust under sub. (2) is not liable for the failure to do so.

4 (b) A trustee who appoints assets to a 2nd trust under sub. (2) is not liable to
5 any beneficiary for any loss related to the appointment unless the trustee did not
6 appoint the assets in good faith.

7 **(8) MISCELLANEOUS PROVISIONS.** (a) The appointment of assets to a 2nd trust
8 under sub. (2) is not an exercise of a general power of appointment.

9 (b) A trustee may appoint assets to a 2nd trust under sub. (2) even if the first
10 trust includes a spendthrift clause or a provision that prohibits amendment or
11 revocation of the trust.

12 (c) This section does not limit a trustee who has a power to invade principal to
13 appoint property in further trust to the extent the power arises under the terms of
14 the first trust or under any other section of this chapter or under another provision
15 of law or under common law.

16 (d) The restriction relating to a trustee under sub. (3) (c) does not preclude a
17 cotrustee who does not have a beneficial interest in the first trust from appointing
18 assets to a 2nd trust under sub. (2) even if the terms of the first trust, applicable law,
19 or other circumstances would otherwise require the majority or unanimous action of
20 the trustees of the first trust.

21 (e) For purposes of this section, if beneficiaries of a first trust are defined as a
22 class of persons, the class shall include any person who falls within the class of
23 persons after the trustee appoints assets to the 2nd trust.

ASSEMBLY BILL 490

1 (f) Notwithstanding s. 701.0103 (23), a trustee of a first trust who appoints
2 assets to a 2nd trust under sub. (2) or creates a 2nd trust instrument under sub. (4)
3 is not the settlor of the 2nd trust.

4 (g) To the extent a directing party or trust protector has the power to invade
5 the principal of a first trust, as described in sub. (2), this section applies to the
6 directing party or trust protector as if the directing party or trust protector is a
7 trustee.

8 **SECTION 93.** 701.05 of the statutes is repealed.

9 **SECTION 94.** Subchapter V (title) of chapter 701 [precedes 701.0501] of the
10 statutes is created to read:

11 **CHAPTER 701**

12 **SUBCHAPTER V**

13 **CREDITOR'S CLAIMS; SPENDTHRIFT**

14 **AND DISCRETIONARY TRUSTS**

15 **SECTION 95.** 701.0501 of the statutes is created to read:

16 **701.0501 Rights of beneficiary's creditor or assignee. (1)** (a) To the
17 extent a beneficiary's interest is not protected by a spendthrift provision, the court
18 may authorize a judgment creditor or an assignee of the beneficiary to reach the
19 beneficiary's interest by attachment of present or future distributions to or for the
20 benefit of the beneficiary or other means. The court may limit the award to such
21 relief as is appropriate under the circumstances.

22 (b) This subsection does not apply to a trust for an individual with a disability.

23 **(2)** A trustee is not liable to any creditor of a beneficiary for any distributions
24 made to or for the benefit of the beneficiary if any of the following applies:

25 (a) The beneficiary's interest is protected by a spendthrift provision.

ASSEMBLY BILL 490

1 (b) The trust is a trust for an individual with a disability.

2 **SECTION 96.** 701.0502 of the statutes is created to read:

3 **701.0502 Spendthrift provision. (1)** A spendthrift provision is valid only
4 if any of the following applies:

5 (a) The beneficiary is a person other than the settlor and is not treated as the
6 settlor under s. 701.0505 (2).

7 (b) The trust is a trust for an individual with a disability.

8 **(2)** Subject to sub. (1), a term of a trust providing that the interest of a
9 beneficiary is held subject to a spendthrift trust, or words of similar import, restrains
10 both a voluntary and involuntary transfer of the beneficiary's interest.

11 **(3)** A beneficiary may not transfer an interest in a trust in violation of a valid
12 spendthrift provision and, except as otherwise provided in this subchapter, a creditor
13 or assignee of the beneficiary may not attach, garnish, execute on, or otherwise reach
14 the interest or a distribution by the trustee before its receipt by the beneficiary.

15 **(4)** Real property or tangible personal property that is owned by the trust but
16 that is made available for a beneficiary's occupancy or use in accordance with the
17 trustee's authority under the trust instrument may not be considered to have been
18 distributed by the trustee or received by the beneficiary for purposes of allowing a
19 creditor or assignee of the beneficiary to reach the property.

20 **SECTION 97.** 701.0503 (title) of the statutes is created to read:

21 **701.0503 (title) Exceptions to spendthrift provision.**

22 **SECTION 98.** 701.0504 of the statutes is created to read:

23 **701.0504 Discretionary trusts; effect of standard. (1)** For purposes of this
24 subchapter, and except as provided in sub. (3), a beneficiary's interest in a trust that
25 is subject to the trustee's discretion does not constitute an interest in property or an

ASSEMBLY BILL 490

1 enforceable right even if the discretion is expressed in the form of a standard of
2 distribution or the beneficiary is then serving as sole trustee or cotrustee.

3 (2) Except as provided in this subchapter, a creditor or other claimant may not
4 attach present or future distributions from a beneficiary's interest in property or an
5 enforceable right, obtain an order from a court forcing the judicial sale of the interest
6 or compelling the trustee to make distributions, or reach the interest or right by any
7 other means, even if the trustee has abused the trustee's discretion.

8 (3) Subsections (1) and (2) do not apply if a beneficiary is acting as sole trustee
9 of a trust for his or her benefit and his or her discretion to make distributions to
10 himself or herself is not limited by an ascertainable standard or the consent of a party
11 holding an adverse interest to the beneficiary.

12 (4) (a) Except as provided in par. (b), this section does not limit the right of a
13 beneficiary to maintain a judicial proceeding against a trustee for an abuse of
14 discretion or failure to comply with a standard for distribution.

15 (b) The right of a beneficiary described in par. (a) may not be exercised by a
16 creditor.

17 **SECTION 99.** 701.0505 of the statutes is created to read:

18 **701.0505 Creditor's claim against settlor.** (1) (a) Whether or not the terms
19 of a trust include a spendthrift provision and except as provided in par. (b), the
20 following rules apply to claims of a settlor's creditors:

21 1. During the lifetime of the settlor, the property of a revocable trust is subject
22 to claims of the settlor's creditors.

23 2. With respect to an irrevocable trust that is not a trust for an individual with
24 a disability, upon application of a judgment creditor of the settlor, the court may, if
25 the trust instrument requires or authorizes the trustee to make payments of income

ASSEMBLY BILL 490

1 or principal to or for the settlor, order the trustee to satisfy part or all of the judgment
2 out of part or all of the payments of income or principal as they are due, presently
3 or in the future, or which are payable in the trustee's discretion. If a trust has more
4 than one settlor, the amount the judgment creditor of a particular settlor may reach
5 may not exceed the settlor's interest in the trust.

6 3. After the death of a settlor, and subject to the settlor's right to direct the
7 source from which liabilities will be paid, the property of a trust that was revocable
8 at the settlor's death is subject to claims of the settlor's creditors, costs of
9 administration of the settlor's estate, the expenses of the settlor's funeral and
10 disposal of remains, and statutory allowances to a surviving spouse and children to
11 the extent the settlor's probate estate is inadequate to satisfy those claims, costs,
12 expenses, and allowances.

13 (b) Assets of a trust that are exempt from claims of creditors under other
14 statutes are not subject to par. (a).

15 **(2)** For purposes of this subchapter, all of the following apply:

16 (a) During the period the power may be exercised, the holder of a power of
17 withdrawal is treated in the same manner as the settlor of a revocable trust to the
18 extent of the property subject to the power.

19 (e) 1. Contributions to the following trusts are not considered to have been
20 contributed by the settlor:

21 a. An irrevocable marital trust that is treated as qualified terminable interest
22 property under section 2523 (f) of the Internal Revenue Code if after the death of the
23 settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that
24 receives property from the trust.

ASSEMBLY BILL 490

1 b. An irrevocable marital trust that is treated as a general power of
2 appointment trust under section 2523 (e) of the Internal Revenue Code if after the
3 death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable
4 trust that receives property from the trust.

5 c. An irrevocable trust for the settlor's spouse if after the death of the settlor's
6 spouse the settlor is a beneficiary of the trust or an irrevocable trust that receives
7 property from the trust.

8 d. An irrevocable trust for the benefit of a person, the settlor of which is the
9 person's spouse, regardless of whether or when the person was the settlor of an
10 irrevocable trust for the benefit of that spouse.

11 e. An irrevocable trust for the benefit of a person to the extent that the property
12 of the trust was subject to a general power of appointment in another person.

13 2. A person who would otherwise be treated as a settlor of a trust described in
14 subd. 1. a. to e. is not treated as a settlor of the trust.

15 3. For purposes of this paragraph, notwithstanding s. 701.0103 (3),
16 "beneficiary" means a person who satisfies s. 701.0103 (3) (a) or (b) and who is
17 designated in a trust instrument or through the exercise of a special or general power
18 of appointment.

19 **(3)** Any order entered by a court under this section is subject to modification
20 upon application of an interested person.

21 **SECTION 100.** 701.0506 of the statutes is created to read:

22 **701.0506 Overdue distribution.** (1) In this section, "mandatory
23 distribution" means a distribution of income or principal that the trustee is required
24 to make to a beneficiary under the terms of the trust, including a distribution upon

ASSEMBLY BILL 490

1 termination of the trust. "Mandatory distribution" does not include a distribution
2 subject to the exercise of the trustee's discretion even if any of the following applies:

3 (a) The discretion is expressed in the form of a standard of distribution.

4 (b) The terms of the trust authorizing a distribution couple language of
5 discretion with language of direction.

6 (2) Whether or not a trust contains a spendthrift provision, a creditor or
7 assignee of a beneficiary may reach a mandatory distribution of income or principal,
8 including a distribution upon termination of the trust, if the trustee has not made
9 the distribution to the beneficiary within a reasonable time after the designated
10 distribution date.

11 **SECTION 101.** 701.0507 of the statutes is created to read:

12 **701.0507 Personal obligations of trustee.** Trust property is not subject to
13 personal obligations of the trustee, even if the trustee becomes insolvent or
14 bankrupt.

15 **SECTION 102.** 701.06 (title), (1), (2), (3) and (6) (title) and (a) of the statutes are
16 repealed.

17 **SECTION 103.** 701.06 (4) of the statutes is renumbered 701.0503 (1), and
18 701.0503 (1) (intro.) and (b), as renumbered, is amended to read:

19 701.0503 (1) CLAIMS FOR CHILD SUPPORT. (intro.) Notwithstanding ~~any provision~~
20 ~~in the creating instrument or subs. (1) and (2) s. 701.0502~~, upon application of a
21 person having a valid order directing a beneficiary to make payment for support of
22 the beneficiary's child, the court may do any of the following:

23 (b) ~~In If the case of a beneficiary under a discretionary may receive income or~~
24 ~~principal at the trustee's discretion under the trust, order the trustee to satisfy part~~
25 or all of the claim out of part or all of future payments of income or principal ~~which~~

ASSEMBLY BILL 490**SECTION 103**

1 ~~that are to be~~ made pursuant to the exercise of the trustee's discretion in favor of such
2 beneficiary.

3 **SECTION 104.** 701.06 (5) (intro.) and (a) of the statutes are renumbered
4 701.0503 (2) (intro.) and (a) and amended to read:

5 701.0503 (2) CLAIMS FOR PUBLIC SUPPORT. (intro.) Notwithstanding any
6 ~~provision in the creating instrument or subs. (1) and (2) s. 701.0502 and except as~~
7 provided in sub. (3), if the settlor is legally obligated to pay for the public support of
8 a beneficiary under s. 46.10, 49.345, or 301.12 or the beneficiary is legally obligated
9 to pay for the beneficiary's public support or ~~that~~ for support furnished to the
10 beneficiary's spouse or minor child under s. 46.10, 49.345, or 301.12, upon
11 application by the appropriate state department or county official, the court may do
12 any of the following:

13 (a) If ~~such~~ the beneficiary is entitled to receive income or principal under the
14 trust, order the trustee to satisfy part or all of the liability out of part or all of
15 payments of income or principal as they are due, presently or in the future;

16 **SECTION 105.** 701.06 (5) (b) of the statutes is renumbered 701.0503 (2) (b) 1. and
17 amended to read:

18 701.0503 (2) (b) 1. Except as otherwise provided in par. (c), ~~in the case of a~~
19 ~~beneficiary under a discretionary trust subd. 2., if the beneficiary may receive income~~
20 or principal at the trustee's discretion under the trust, order the trustee to satisfy
21 part or all of the liability out of part or all of future payments of income or principal
22 which are to be made pursuant to the exercise of the trustee's discretion in favor of
23 ~~such~~ the beneficiary;

24 **SECTION 106.** 701.06 (5) (c) of the statutes is renumbered 701.0503 (2) (b) 2. and
25 amended to read:

ASSEMBLY BILL 490

1 701.0503 (2) (b) 2. In the case of a beneficiary ~~under a discretionary trust~~ who
2 may receive income or principal of the trust at the trustee's discretion and who is a
3 settlor or a spouse or minor child of the settlor, order the trustee to satisfy part or all
4 of the liability without regard to whether the trustee has then exercised or may
5 thereafter exercise the trustee's discretion in favor of the beneficiary.

6 **SECTION 107.** 701.06 (5m) of the statutes is renumbered 701.0503 (3) and
7 amended to read:

8 701.0503 (3) ~~TRUST FOR DISABLED~~ AN INDIVIDUAL WITH A DISABILITY. Subsection
9 (5) (2) does not apply to any trust ~~that is established for the benefit of an individual~~
10 ~~who has~~ with a disability ~~which has continued or can be expected to continue~~
11 ~~indefinitely, substantially impairs the individual from adequately providing for his~~
12 ~~or her own care or custody, and constitutes a substantial handicap to the afflicted~~
13 ~~individual if the trust does not result in ineligibility for public assistance under ch.~~
14 ~~49. A trustee of a trust which is exempt from claims for public support under this~~
15 ~~subsection shall notify the county department under s. 46.215 or 46.22 in the county~~
16 ~~where the disabled beneficiary resides of the existence of the trust.~~

17 **SECTION 108.** 701.06 (6) (b) of the statutes is renumbered 701.0505 (2) (b), and
18 701.0505 (2) (b) 2., as renumbered, is amended to read:

19 701.0505 (2) (b) 2. The beneficiary's right to withdraw part of the trust
20 property, to the extent that the value of the property affected by the lapse, waiver,
21 or release in any year does not exceed the greater of the amount in following:

22 a. ~~Section~~ The amount referenced in section 2041 (b) (2) or 2514 (e), of the
23 Internal Revenue Code of 1986.

24 b. ~~Section~~ The amount referenced in section 2503 (b), of the Internal Revenue
25 Code of 1986 for each individual other than the beneficiary who makes a transfer to

ASSEMBLY BILL 490

1 the trust or who is deemed to make a transfer to the trust pursuant to an election to
2 split gifts under section 2513 (a) of the Internal Revenue Code.

3 **SECTION 109.** 701.06 (6) (c) of the statutes is renumbered 701.0505 (2) (c), and
4 701.0505 (2) (c) (intro.), 1. a. and b. and 4., as renumbered, are amended to read:

5 701.0505 (2) (c) (intro.) A beneficiary of a trust is not a settlor, has not made a
6 voluntary or involuntary transfer of the beneficiary's interest in the trust, ~~or~~ and
7 does not have the power to make a voluntary or involuntary transfer of the
8 beneficiary's interest in the trust solely because the beneficiary holds ~~or~~, exercises,
9 or allows in any capacity, any of the following:

10 1. a. Exercisable only ~~on~~ with the consent of another person holding an interest
11 adverse to the beneficiary's interest.

12 b. Limited by an ascertainable standard, ~~such as health, education, support,~~
13 ~~or maintenance~~ of the beneficiary.

14 4. A presently exercisable right described in ~~par. (b) 2.~~ sub. (2) (b).

15 **SECTION 110.** 701.06 (6) (d) of the statutes is renumbered 701.0505 (2) (d).

16 **SECTION 111.** 701.06 (7) of the statutes is renumbered 701.0503 (4) and
17 amended to read:

18 701.0503 (4) SUBSEQUENT MODIFICATION OF COURT'S ORDER. Any order entered by
19 a court under sub. (4), (5) (1) or ~~(6) (a)~~ is subject to modification (2) may be modified
20 upon application of an interested person.

21 **SECTION 112.** 701.06 (8) of the statutes is renumbered 701.0503 (5) and
22 amended to read:

23 701.0503 (5) EXEMPT ASSETS. Assets of a trust, ~~to the extent they that~~ are
24 exempt from claims of creditors under other statutes, ~~shall~~ are not be subject to sub.
25 ~~(4), (5), (1) or (6) (a)~~ (2).

ASSEMBLY BILL 490

1 (c) Upon the revocation or amendment of the trust by fewer than all of the
2 settlers, the trustee shall promptly notify the other settlers of the revocation or
3 amendment.

4 **(3)** A settlor may revoke or amend a revocable trust by any of the following
5 means:

6 (a) By substantial compliance with a method provided in the terms of the trust.

7 (b) If the terms of the trust do not provide a method, by any of the following
8 means:

9 1. A later will or codicil that expressly refers to the trust or specifically devises
10 property that would otherwise have passed according to the terms of the trust.

11 2. Any other method manifesting clear and convincing evidence of the settlor's
12 intent.

13 **(4)** Upon revocation of a revocable trust, the trustee shall transfer the trust
14 property as the settlor directs. However, with respect to marital or community
15 property, the trustee shall transfer the property to both spouses as marital or
16 community property.

17 **(5)** A settlor's powers with respect to revocation, amendment, or distribution
18 of trust property may be exercised by an agent under a power of attorney only to the
19 extent expressly authorized by the terms of the power of attorney.

20 **(6)** A guardian of the estate or a conservator of the settlor may exercise a
21 settlor's powers with respect to revocation, amendment, or distribution of trust
22 property only with the approval of the court supervising the guardianship or
23 conservatorship.

24 **(7)** A trustee who does not know that a trust has been revoked or amended is
25 not liable for distributions made and other actions taken on the assumption that the

ASSEMBLY BILL 490

1 trust had not been amended or revoked, or for distributions made pursuant to sub.
2 (5).

3 **SECTION 116.** 701.0603 of the statutes is created to read:

4 **701.0603 Settlor's powers; powers of withdrawal.** (1) While a trust is
5 revocable, the rights of the beneficiaries are subject to the control of, and the duties
6 of the trustee, a directing party, and a trust protector are owed exclusively to, the
7 settlor.

8 (2) If a revocable trust has more than one settlor, the duties of the trustee, a
9 directing party, and a trust protector are owed to all of the settlors.

10 (3) During the period in which a power of withdrawal may be exercised, the
11 holder of the power has the rights of a settlor of a revocable trust under this section
12 to the extent of the property subject to the power.

13 **SECTION 117.** 701.0604 of the statutes is created to read:

14 **701.0604 Limitation on action contesting validity of revocable trust;**
15 **distribution of trust property.** (1) A person must commence a judicial proceeding
16 to contest the validity of a trust that was revocable immediately before the settlor's
17 death within the earlier of the following:

18 (a) One year after the settlor's death.

19 (b) Four months after the trustee sent the person a copy of the trust instrument
20 and a notice informing the person of the trust's existence, of the trustee's name and
21 address, and of the time allowed for commencing a proceeding. Except as provided
22 in s. 701.0813 (2), a trustee is not liable to any person for not providing the
23 information described in this paragraph.

24 (2) Upon the death of the settlor of a trust that was revocable immediately
25 before the settlor's death, the trustee may proceed to distribute the trust property

ASSEMBLY BILL 490**SECTION 117**

1 in accordance with the terms of the trust. The trustee is not subject to liability for
2 doing so unless one of the following applies:

3 (a) The trustee knows of a pending judicial proceeding contesting the validity
4 of the trust.

5 (b) A potential contestant has notified the trustee of a possible judicial
6 proceeding to contest the trust and a judicial proceeding is commenced within 60
7 days after the contestant sent the notification.

8 (3) A beneficiary of a trust that is determined to have been invalid is liable to
9 return any distribution received.

10 **SECTION 118.** 701.065 (title), (1), (2), (3) and (4) of the statutes are renumbered
11 701.0508 (title), (1), (2), (3) and (4), and 701.0508 (1) (a) 2., as renumbered, is
12 amended to read:

13 701.0508 (1) (a) 2. Except as provided in pars. (b) and (c), if the trustee satisfies
14 the requirements for the publication of the notice under subd. 1., all claims, including
15 claims of the any state and any subdivision thereof of its subdivisions, whether due
16 or to become due, absolute or contingent, liquidated or unliquidated, are barred
17 against the trustee, the trust property and any recipient of trust property unless filed
18 with the trustee on or before the date specified in the notice under subd. 1.

19 **SECTION 119.** 701.065 (5) of the statutes, as created by 2013 Wisconsin Act 20,
20 is repealed.

21 **SECTION 120.** 701.07 of the statutes is repealed.

22 **SECTION 121.** Subchapter VII (title) of chapter 701 [precedes 701.0701] of the
23 statutes is created to read:

CHAPTER 701**SUBCHAPTER VII**

24
25

ASSEMBLY BILL 490

OFFICE OF TRUSTEE

SECTION 122. 701.0701 of the statutes is created to read:

701.0701 Accepting or declining trusteeship. (1) Except as provided in sub. (3), a person designated as trustee accepts the trusteeship by doing any of the following:

(a) Substantially complying with a method of acceptance provided in the terms of the trust.

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may decline the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is considered to have rejected the trusteeship.

(3) A person designated as trustee, without accepting the trusteeship, may do any of the following:

(a) Act to preserve the trust property if, within a reasonable time after acting, the person sends a declination of the trusteeship in writing to the settlor or, if the settlor is dead or incapacitated, to the designated cotrustee, or, if none, to the successor trustee, or, if none, to a distributee or a permissible distributee of the trust.

(b) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

SECTION 123. 701.0702 of the statutes is created to read:

ASSEMBLY BILL 490

1 **701.0702 Trustee's bond. (1)** A trustee shall give bond to secure performance
2 of the trustee's duties only if the court finds that a bond is needed to protect the
3 interests of the beneficiaries or is required by the terms of the trust and the court has
4 not dispensed with the requirement.

5 **(2)** The court may specify the amount of a bond, its liabilities, and whether
6 sureties are necessary. The court may modify or terminate a bond at any time.

7 **(3)** A court may not require a bond from a trust company bank, state bank, or
8 national bank that is authorized to exercise trust powers and that has complied with
9 s. 220.09 or 223.02 nor shall a bond be required of a religious, charitable, or
10 educational corporation or society.

11 **SECTION 124.** 701.0703 of the statutes is created to read:

12 **701.0703 Cotrustees. (1)** Cotrustees may act only by majority decision.

13 **(2)** If a vacancy occurs in a cotrusteeship, as provided under s. 701.0704, a
14 majority of the remaining cotrustees may act for the trust.

15 **(3)** A cotrustee shall participate in the performance of a trustee's function
16 unless the cotrustee is unavailable to perform the function because of absence,
17 illness, disqualification under other law, or the cotrustee is otherwise temporarily
18 incapacitated or the cotrustee has properly delegated the performance of the
19 function to another trustee.

20 **(4)** If a cotrustee is unavailable to perform duties because of absence, illness,
21 disqualification under other law, or the cotrustee is otherwise temporarily
22 incapacitated, and prompt action is necessary to achieve the purposes of the trust or
23 to avoid injury to the trust property, the remaining cotrustee or a majority of the
24 remaining cotrustees may act for the trust.

ASSEMBLY BILL 490

1 **(5)** A trustee may delegate to a cotrustee a function unless the delegation is
2 expressly prohibited by the terms of the trust. Unless a delegation is irrevocable, a
3 trustee may revoke a delegation previously made.

4 **(6)** Except as provided in sub. (7), a trustee who does not join in an action of
5 another trustee is not liable for the action.

6 **(7)** Each trustee shall exercise reasonable care to do all of the following:

7 (a) Prevent a cotrustee from committing a material breach of trust.

8 (b) Compel a cotrustee to redress a material breach of trust.

9 **(8)** A dissenting trustee who joins in an action at the direction of the majority
10 of the trustees and who notified all cotrustees of the dissent at or before the time of
11 the action is not liable for the action unless the action is a material breach of trust.

12 **SECTION 125.** 701.0704 of the statutes is created to read:

13 **701.0704 Vacancy in trusteeship; appointment of successor.** **(1)** A
14 vacancy in a trusteeship exists if any of the following occurs:

15 (a) A person designated as trustee declines the trusteeship.

16 (b) A person designated as trustee cannot be identified or does not exist.

17 (c) A trustee resigns.

18 (d) A trustee is disqualified or removed.

19 (e) A trustee dies.

20 (f) A guardian or conservator is appointed for an individual serving as trustee.

21 **(2)** If one or more cotrustees remain in office, a vacancy in a trusteeship does
22 not need to be filled. A vacancy in a trusteeship shall be filled if the trust has no
23 remaining trustee.

24 **(3)** A vacancy in a trusteeship that is required to be filled shall be filled in the
25 following order of priority:

ASSEMBLY BILL 490

1 (a) By a person designated in the terms of the trust to act as successor trustee.

2 (b) By a person appointed by unanimous agreement of the qualified
3 beneficiaries, except that, if the trust is a trust for an individual with a disability, the
4 person appointed under this paragraph may not be the individual with a disability,
5 his or her spouse, or a relative of the individual with a disability who is legally
6 responsible for his or her support.

7 (c) By a person appointed by the court.

8 (4) Whether or not a vacancy in a trusteeship exists or is required to be filled,
9 the court may appoint an additional trustee, directing party, or trust protector
10 whenever the court considers the appointment necessary for the administration of
11 the trust.

12 **SECTION 126.** 701.0705 of the statutes is created to read:

13 **701.0705 Resignation of trustee. (1)** A trustee may resign in any of the
14 following manners:

15 (a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if
16 living, each cotrustee, each trust protector, and each directing party.

17 (b) With the approval of the court.

18 (2) In approving a resignation, the court may issue orders and impose
19 conditions reasonably necessary for the protection of the trust property.

20 (3) Any liability of a resigning trustee or of any sureties on the trustee's bond
21 for acts or omissions of the trustee is not discharged or affected by the trustee's
22 resignation.

23 **SECTION 127.** 701.0706 of the statutes is created to read:

ASSEMBLY BILL 490

1 **701.0706 Removal of trustee.** (1) The settlor, a cotrustee, or a qualified
2 beneficiary may request the court to remove a trustee, or a trustee may be removed
3 by the court on its own initiative.

4 (2) The court may remove a trustee if any of the following applies:

5 (a) The trustee has committed a material breach of trust.

6 (b) A lack of cooperation among cotrustees substantially impairs the
7 administration of the trust.

8 (c) The court determines that removal of the trustee best serves the interests
9 of the beneficiaries because of unfitness, unwillingness, or persistent failure of the
10 trustee to administer the trust effectively.

11 (d) There has been a substantial change of circumstances or removal is
12 requested by all of the qualified beneficiaries, the court finds that removal of the
13 trustee best serves the interests of all of the beneficiaries and is not inconsistent with
14 a material purpose of the trust, and a suitable cotrustee or successor trustee is
15 available.

16 (3) Pending a final decision on a request to remove a trustee, or in lieu of or in
17 addition to removing a trustee, the court may order such appropriate relief under s.
18 701.1001 (2) as may be necessary to protect the trust property or the interests of the
19 beneficiaries.

20 **SECTION 128.** 701.0707 of the statutes is created to read:

21 **701.0707 Delivery of property by former trustee.** (1) Unless a cotrustee
22 remains in office or the court otherwise orders, and until the trust property is
23 delivered to a successor trustee or other person entitled to it, a trustee who has
24 resigned or been removed has the duties of a trustee and the powers necessary to
25 protect the trust property.

ASSEMBLY BILL 490

1 (2) A trustee who has resigned or been removed shall proceed expeditiously to
2 deliver the trust property within the trustee's possession to the cotrustee, successor
3 trustee, or other person entitled to it.

4 **SECTION 129.** 701.0708 of the statutes is created to read:

5 **701.0708 Compensation of trustee.** (1) If the terms of a trust do not specify
6 the trustee's compensation, a trustee is entitled to compensation that is reasonable
7 under the circumstances.

8 (2) If the terms of a trust specify the trustee's compensation or refer to another
9 ascertainable source for determining that compensation, the trustee is entitled to be
10 compensated as specified, but the court may allow more or less compensation if any
11 of the following applies:

12 (a) The duties of the trustee are substantially different from those
13 contemplated when the trust was created.

14 (b) The compensation specified by the terms of the trust would be unreasonably
15 low or high.

16 (3) If the trustee has rendered other services in connection with the
17 administration of the trust, the trustee may receive reasonable compensation for the
18 other services rendered, in addition to reasonable compensation as trustee.

19 **SECTION 130.** 701.0709 of the statutes is created to read:

20 **701.0709 Reimbursement of expenses.** (1) A trustee is entitled to be
21 reimbursed out of the trust property, with interest as appropriate, for all of the
22 following:

23 (a) Expenses that were properly incurred in the administration of the trust.

24 (b) To the extent necessary to prevent unjust enrichment of the trust, expenses
25 that were not properly incurred in the administration of the trust.

ASSEMBLY BILL 490

1 **(2)** An advance by the trustee of money for the protection of the trust gives rise
2 to a lien against trust property to secure reimbursement with reasonable interest.

3 **SECTION 131.** 701.0710 of the statutes is created to read:

4 **701.0710 Title of trust property.** A settlor or transferor may effectively
5 transfer property to a trust by placing legal title of the property in the name of the
6 trustee, which shall include any successor trustee regardless of whether a successor
7 trustee is referenced in the transfer document. A transfer that places legal title in
8 the name of the trust itself places legal title in the name of the trustee.

9 **SECTION 132.** 701.08 of the statutes is renumbered 701.0419 and amended to
10 read:

11 **701.0419 Transfers to living trusts. (1) VALIDITY AND EFFECT.** The order of
12 execution of a living trust instrument and a will or other instrument purporting to
13 transfer or appoint property to the trust evidenced by the trust instrument shall be
14 disregarded in determining the validity of the transfer or appointment. No reference
15 in any will to a living trust shall cause assets in such trust to be included in property
16 administered as part of the testator's estate; ~~nor shall it cause the trust or any~~
17 ~~portion thereof to be treated as a testamentary trust.~~

18 **(2) GOVERNING TERMS.** Property transferred or appointed by a will or by a
19 beneficiary designation under an employee benefit plan, life insurance policy, or
20 other instrument permitting designation of a beneficiary to a living trust, ~~the terms~~
21 ~~of which the testator or designator was the sole holder of a power to modify,~~ shall be
22 administered in accordance with the terms of the trust as ~~they~~ the terms of the trust
23 may have been modified prior to the testator's or designator's death, even though the
24 will ~~or,~~ beneficiary designation, or other instrument was not reexecuted or
25 republished after exercise of the power to modify, unless the will ~~or,~~ beneficiary

ASSEMBLY BILL 490**SECTION 132**

1 designation, or other instrument expressly provides otherwise. Such ~~property~~
2 transferred or appointed to a living trust, which is subject to a power of modification
3 requiring action or consent of a person other than the testator or designator, shall be
4 administered in accordance with the terms of the trust instrument as they exist at
5 the execution of the will or beneficiary designation, unless expressly otherwise
6 provided. If the will or beneficiary designation expressly provides that the property
7 shall be administered in accordance with the terms of the trust instrument as they
8 may be modified thereafter, the will or beneficiary designation need not be
9 reexecuted or republished after exercise of the power to modify.

10 **(3) DISPOSITION WHEN NO EXISTING LIVING TRUST.** If at the death of a testator a
11 living trust has been completely revoked, or otherwise terminated, a provision in the
12 testator's will purporting to transfer or appoint property to such the trust shall have
13 the following effect, unless the will provides otherwise:

14 (a) If the testator was a necessary party to the revocation or other termination
15 of such the trust, the provision in the testator's will shall be invalid;

16 (b) If the testator was not a necessary party to the revocation or other
17 termination of such trust, the provision in the testator's will shall be deemed to
18 create a ~~testamentary~~ trust upon the terms of the ~~living~~ trust instrument at the time
19 the will was executed or as otherwise provided where sub. (2) is applicable.

20 **SECTION 133.** Subchapter VIII (title) of chapter 701 [precedes 701.0801] of the
21 statutes is created to read:

CHAPTER 701**SUBCHAPTER VIII****DUTIES AND POWERS OF TRUSTEES,**

ASSEMBLY BILL 490

DIRECTING PARTIES, AND

TRUST PROTECTORS

SECTION 134. 701.0801 of the statutes is created to read:

701.0801 Duty to administer trust. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

SECTION 135. 701.0802 of the statutes is created to read:

701.0802 Duty of loyalty. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in s. 701.1012, a sale, encumbrance, or other transaction that involves the investment or management of trust property and is entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless any of the following applies:

(a) The transaction was authorized by the terms of the trust.

(b) The transaction was approved by the court.

(c) The beneficiary did not commence a judicial proceeding within the time allowed by s. 701.1005.

(d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with s. 701.1009.

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became trustee.

(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between

ASSEMBLY BILL 490

1 personal and fiduciary interests if it is entered into by the trustee with any of the
2 following:

3 (a) The trustee's spouse.

4 (b) The trustee's descendants, siblings, parents, or their spouses.

5 (c) An agent or attorney of the trustee.

6 (d) A corporation or other person or enterprise in which the trustee, or a person
7 that owns a significant interest in the trustee, has an interest that might affect the
8 trustee's best judgment.

9 (4) A transaction not concerning trust property in which the trustee engages
10 in the trustee's individual capacity involves a conflict between personal and fiduciary
11 interests if the transaction concerns an opportunity properly belonging to the trust.

12 (5) An investment by a trustee in securities of an investment company or
13 investment trust to which the trustee, or its affiliate, provides services in a capacity
14 other than as trustee is not presumed to be affected by a conflict between personal
15 and fiduciary interests if the investment otherwise complies with the prudent
16 investor rule in s. 881.01. In addition to receiving compensation for acting as trustee,
17 the trustee may be compensated by the investment company or investment trust for
18 providing those services out of fees charged to the trust. If the trustee receives
19 compensation from the investment company or investment trust for providing
20 investment advisory or investment management services, the trustee shall at least
21 annually notify the persons entitled to receive a copy of the trustee's report under s.
22 701.0813 (3) of the rate and method by which that compensation was determined.

23 (6) In voting shares of stock or in exercising powers of control over similar
24 interests in other forms of enterprise, the trustee shall act in the best interests of the
25 beneficiaries. If the trust is the sole owner of a corporation or other form of

ASSEMBLY BILL 490

1 enterprise, the trustee shall elect or appoint directors or other managers who will
2 manage the corporation or enterprise in the best interests of the beneficiaries.

3 (7) This section does not preclude the following transactions, if fair to the
4 beneficiaries:

5 (a) An agreement between a trustee and a beneficiary relating to the
6 appointment or compensation of the trustee.

7 (b) Payment of reasonable compensation to the trustee.

8 (c) A transaction between a trust and another trust, a decedent's estate, a
9 guardianship of the estate, a conservatorship, or a custodianship of which the trustee
10 is a fiduciary or in which a beneficiary has an interest.

11 (d) A deposit of trust money in a regulated financial-service institution
12 operated by the trustee.

13 (e) An advance by the trustee of money for the protection of the trust.

14 (8) The court may appoint a trustee, trust protector, or directing party to make
15 a decision with respect to any proposed transaction that might violate this section
16 if entered into by the trustee.

17 **SECTION 136.** 701.0803 of the statutes is created to read:

18 **701.0803 Impartiality.** If a trust has 2 or more beneficiaries, the trustee shall
19 act impartially in investing, managing, and distributing the trust property, giving
20 due regard to the beneficiaries' respective interests and the purposes and terms of
21 the trust.

22 **SECTION 137.** 701.0804 of the statutes is created to read:

23 **701.0804 Prudent administration.** A trustee shall administer the trust as
24 a prudent person would, by considering the purposes, terms, distributional

ASSEMBLY BILL 490

1 requirements, and other circumstances of the trust. In satisfying this standard, the
2 trustee shall exercise reasonable care, skill, and caution.

3 **SECTION 138.** 701.0805 of the statutes is created to read:

4 **701.0805 Costs of administration.** In administering a trust, the trustee may
5 incur only costs that are reasonable in relation to the trust property, the purposes of
6 the trust, the skills of the trustee, and the complexity of the trust administration.

7 **SECTION 139.** 701.0806 of the statutes is created to read:

8 **701.0806 Trustee's skills.** A trustee who has special skills or expertise, or is
9 named trustee in reliance upon the trustee's representation that the trustee has
10 special skills or expertise, shall use those special skills or expertise.

11 **SECTION 140.** 701.0807 of the statutes is created to read:

12 **701.0807 Delegation by trustee. (1)** A trustee may delegate duties and
13 powers that a prudent trustee of comparable skills could properly delegate under the
14 circumstances. The trustee shall exercise reasonable care, skill, and caution in each
15 of the following:

16 (a) Selecting an agent.

17 (b) Establishing the scope and terms of the delegation, consistent with the
18 purposes and terms of the trust.

19 (c) Periodically reviewing the agent's actions in order to monitor the agent's
20 performance and compliance with the terms of the delegation.

21 **(2)** In performing a delegated function, an agent owes a duty to the trust to
22 exercise reasonable care to comply with the terms of the delegation.

23 **(3)** A trustee who complies with sub. (1) is not liable to the beneficiaries or to
24 the trust for an action of the agent to whom the function was delegated.

ASSEMBLY BILL 490

1 (4) By accepting a delegation of powers or duties from the trustee of a trust that
2 is subject to the law of this state, an agent submits to the jurisdiction of the courts
3 of this state even if the terms of the delegation provide for a different jurisdiction or
4 venue.

5 (5) This section does not apply to a trustee's delegation of investment and
6 management functions. A trustee's delegation of investment and management
7 functions is governed by s. 881.01 (10).

8 **SECTION 141.** 701.0808 of the statutes is created to read:

9 **701.0808 Powers to direct; directing parties.** (1) While a trust is
10 revocable, the trustee may follow a direction of the settlor that is contrary to the
11 terms of the trust.

12 (2) A settlor in a trust instrument, a court in a trust instrument or court order,
13 or interested persons in a nonjudicial settlement agreement may appoint a directing
14 party to direct the trustee on investment or distribution decisions or to make
15 investment or distribution decisions regarding directed trust property. If a trustee
16 acts in accordance with the direction of a directing party or fails to act due to lack of
17 direction from a directing party, the trustee is not liable for any loss resulting directly
18 or indirectly from any action taken or omitted with respect to the direction or lack
19 of direction except for acts or omissions that are a result of the trustee's willful
20 misconduct.

21 (3) A trustee does not have a duty to do any of the following:

22 (a) Provide advice to, consult with, monitor, or evaluate a directing party's
23 conduct.

24 (b) Inform or warn a beneficiary, a 3rd party, or a directing party that the
25 trustee disagrees with any of the directing party's actions or directions.

ASSEMBLY BILL 490**SECTION 141**

1 (c) Prevent a directing party from giving a direction or taking any action.

2 (d) Compel a directing party to redress the directing party's actions or
3 directions.

4 **(4)** The administrative actions of a trustee related to matters within the scope
5 of a directing party's power, including confirming that the directing party's directions
6 have been carried out and recording and reporting actions taken pursuant to the
7 directing party's direction, do not constitute either monitoring the directing party's
8 actions or participating in the actions of the directing party.

9 **(5)** A directing party is a fiduciary and is required to act in good faith with
10 regard to the terms of the trust and the interests of the beneficiaries. A directing
11 party is liable for any loss that results from a breach of any of the directing party's
12 fiduciary duties.

13 **(6)** (a) A directing party may request information about the trust from the
14 trustee and, if the requested information is related to a power granted to the
15 directing party, the trustee shall provide the requested information to the directing
16 party. If a trustee is bound by any confidentiality restrictions with respect to
17 information requested by a directing party, the trustee may require that the
18 directing party agree to be bound by the confidentiality restrictions before delivering
19 such information to the directing party. A trustee is not liable to any beneficiary for
20 any loss or damages resulting from the trustee providing information to the directing
21 party that is related to the power granted to the directing party.

22 (b) Except as otherwise provided in this chapter, a trustee does not have a duty
23 to provide any information to the directing party that the directing party does not
24 request.

ASSEMBLY BILL 490

1 **(7)** PAYMENT OR REIMBURSEMENT OF ATTORNEY FEES AND COSTS. A trustee shall,
2 in accordance with s. 701.1004, pay or reimburse a directing party for attorney fees
3 and costs to defend any claim made against the directing party.

4 **(8)** Sections 701.0701, 701.0708, 701.0709, 701.1001 to 701.1003, and 701.1005
5 to 701.1010 apply to a directing party as if the directing party was a trustee.

6 **(9)** A person who accepts an appointment as a directing party of a trust submits
7 to the jurisdiction of the courts of this state, as provided in s. 701.0202 (1).

8 **SECTION 142.** 701.0809 of the statutes is created to read:

9 **701.0809 Control and protection of trust property.** A trustee shall take
10 reasonable steps to take control of and protect the trust property.

11 **SECTION 143.** 701.0810 of the statutes is created to read:

12 **701.0810 Record keeping and identification of trust property. (1)** A
13 trustee shall keep adequate records of the administration of the trust.

14 **(2)** A trustee shall keep trust property separate from the trustee's own
15 property.

16 **(3)** Except as otherwise provided in sub. (4), a trustee shall cause the trust
17 property to be designated so that the interest of the trust, to the extent feasible,
18 appears in records maintained by a party other than a trustee or beneficiary.

19 **(4)** If the trustee maintains records clearly indicating the respective interests,
20 a trustee may invest as a whole the property of 2 or more separate trusts.

21 **SECTION 144.** 701.0811 of the statutes is created to read:

22 **701.0811 Enforcement and defense of claims.** A trustee shall take
23 reasonable steps to enforce claims of the trust known to the trustee and to defend
24 claims against the trust known to the trustee.

25 **SECTION 145.** 701.0812 of the statutes is created to read:

ASSEMBLY BILL 490

1 **701.0812 Collecting trust property; duties of successor trustees. (1)** A
2 trustee shall take reasonable steps to compel a former trustee or other person to
3 deliver trust property to the trustee, and to redress a breach of trust known to the
4 trustee to have been committed by a trustee or former trustee, or a trust protector
5 or former trust protector.

6 **(2)** A successor trustee does not have a duty to examine the accounts of a former
7 trustee.

8 **SECTION 146.** 701.0813 of the statutes is created to read:

9 **701.0813 Duty to inform and report. (1)** A trustee shall keep the
10 distributees or permissible distributees of trust income or principal, and other
11 qualified beneficiaries who so request, reasonably informed about the
12 administration of the trust. Unless unreasonable under the circumstances, a trustee
13 shall promptly respond to a qualified beneficiary's request for information related to
14 the administration of the trust.

15 **(2)** A trustee shall do all of the following:

16 (a) Upon the request of a qualified beneficiary for a copy of the trust
17 instrument, promptly furnish to the qualified beneficiary either a copy of the
18 portions of the trust instrument relating to the interest of the qualified beneficiary
19 or a copy of the trust instrument.

20 (b) Within a reasonable period of time after accepting a trusteeship, notify the
21 qualified beneficiaries of the acceptance and of the trustee's name, address, and
22 telephone number.

23 (c) Within a reasonable period of time after the date on which the trustee
24 acquires knowledge of the creation of an irrevocable trust, or the date on which the
25 trustee acquires knowledge that a formerly revocable trust has become irrevocable,

ASSEMBLY BILL 490

1 whether by the death of the settlor or otherwise, notify the qualified beneficiaries of
2 all of the following:

3 1. The trust's existence.

4 2. The identity of the settlor or settlors.

5 3. The name, address, and telephone number of each directing party and trust
6 protector.

7 4. The right to request a copy of the documentation referred to in par. (a).

8 5. The right to request information under sub. (1).

9 6. The right to a trustee's report as provided in sub. (3).

10 (d) Notify the distributees or permissible distributees of trust income or
11 principal, and other qualified beneficiaries who so request, of any change in the
12 method or rate of the trustee's compensation.

13 (e) Upon receiving a petition to the court for action under ss. 701.0411 to
14 701.0416 that does not identify each trust protector and each directing party of the
15 trust, notify the petitioning party of the identity of each trust protector and directing
16 party, including the name, address, and telephone number of each trust protector
17 and directing party, who is serving at the time the petition is filed.

18 **(3)** (a) At least annually and upon the termination of a trust, a trustee shall
19 send to the distributees or permissible distributees of trust income or principal, and
20 to other qualified beneficiaries who request it, all of the following:

21 1. A report of the trust property, liabilities, receipts, and disbursements,
22 including the source and amount of the trustee's compensation.

23 2. A listing of the trust assets and, if feasible, their respective market values.

24 (b) Upon a vacancy in a trusteeship, unless a cotrustee remains in office, the
25 former trustee shall send a report containing the information described under par.

ASSEMBLY BILL 490

1 (a) 1. to the qualified beneficiaries. A personal representative or guardian may send
2 the qualified beneficiaries a report containing the information described in par. (a)
3 1. on behalf of a deceased or incapacitated trustee.

4 (4) A qualified beneficiary may waive the right to a trustee's report or other
5 information otherwise required to be furnished under this section. A qualified
6 beneficiary, with respect to future reports and other information, may withdraw a
7 waiver previously given.

8 (5) Subsections (2) (b) and (c) and (3) do not apply to a trustee who accepts a
9 trusteeship before the effective date of this subsection [LRB inserts date], to an
10 irrevocable trust created before the effective date of this subsection [LRB inserts
11 date], or to a revocable trust that becomes irrevocable before the effective date of this
12 subsection [LRB inserts date].

13 **SECTION 147.** 701.0814 of the statutes is created to read:

14 **701.0814 Discretionary powers; tax savings.** (1) Notwithstanding the
15 breadth of discretion granted to a trustee in the terms of the trust, including the use
16 of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a
17 discretionary power in good faith and in accordance with the terms and purposes of
18 the trust and the interests of the beneficiaries. A court may not determine that a
19 trustee abused its discretion merely because the court would have exercised the
20 discretion in a different manner or would not have exercised the discretion.

21 (2) Subject to sub. (4), and unless the terms of the trust expressly indicate that
22 a provision of this subsection does not apply, all of the following apply:

23 (a) A person other than a settlor who is a beneficiary and a trustee, directing
24 party, or trust protector of a trust that confers on the trustee, directing party, or trust
25 protector a power to make discretionary distributions to or for the trustee's, directing

ASSEMBLY BILL 490

1 party's, or trust protector's personal benefit may exercise the power only in
2 accordance with an ascertainable standard.

3 (b) A trustee, directing party, or trust protector may not exercise a power to
4 make discretionary distributions to satisfy a legal obligation of support that the
5 trustee, directing party, or trust protector personally owes another person.

6 (3) A power whose exercise is limited or prohibited by sub. (2) may be exercised
7 by a majority of the remaining trustees, directing parties, or trust protectors whose
8 exercise of the power is not so limited or prohibited. If the power of all trustees,
9 directing parties, or trust protectors is so limited or prohibited, the court may appoint
10 a trustee, directing party, or trust protector with authority to exercise the power.

11 (4) Subsection (2) does not apply to any of the following:

12 (a) A power held by the settlor's spouse who is the trustee, directing party, or
13 trust protector of a trust for which a marital deduction, as defined in section 2056 (b)
14 (5) or 2523 (e) of the Internal Revenue Code, was previously allowed.

15 (b) A trust during a period when the trust may be revoked or amended by its
16 settlor.

17 (c) A trust if contributions to the trust qualify for the annual exclusion under
18 section 2503 (c) of the Internal Revenue Code.

19 **SECTION 148.** 701.0815 of the statutes is created to read:

20 **701.0815 General powers of trustee.** (1) A trustee, without authorization
21 by the court, may exercise the following powers:

22 (a) Powers conferred by the terms of the trust.

23 (b) Except as limited by the terms of the trust, all of the following powers:

24 1. All powers over the trust property that an unmarried, competent owner has
25 over individually owned property.

ASSEMBLY BILL 490

1 2. Any other powers appropriate to achieve the proper investment,
2 management, and distribution of the trust property.

3 3. Any other powers conferred by this chapter.

4 **(2)** The exercise of a power is subject to the fiduciary duties prescribed by this
5 chapter.

6 **SECTION 149.** 701.0816 of the statutes is created to read:

7 **701.0816 Specific powers of trustee.** Without limiting the authority
8 conferred by s. 701.0815, a trustee may do all of the following:

9 **(1)** Collect trust property and accept or reject additions to the trust property
10 from a settlor or any other person.

11 **(2)** Acquire or sell property, for cash or on credit, at public or private sale.

12 **(3)** Exchange, partition, or otherwise change the character of trust property.

13 **(4)** Deposit trust money in an account in a regulated financial-service
14 institution.

15 **(5)** Borrow money, with or without security, and mortgage or pledge trust
16 property for a period within or extending beyond the duration of the trust.

17 **(6)** With respect to an interest in a proprietorship, partnership, limited liability
18 company, business trust, corporation, or other form of business or enterprise,
19 continue the business or other enterprise and take any action that may be taken by
20 shareholders, members, or property owners, including merging, dissolving, or
21 otherwise changing the form of business organization or contributing additional
22 capital.

23 **(7)** With respect to a stock or other security, exercise the rights of an absolute
24 owner, including the right to do any of the following:

ASSEMBLY BILL 490

1 (a) Vote, or give proxies to vote, with or without power of substitution, or enter
2 into or continue a voting trust agreement.

3 (b) Hold a stock or other security in the name of a nominee or in other form
4 without disclosure of the trust so that title may pass by delivery.

5 (c) Pay calls, assessments, and other sums chargeable or accruing against the
6 stock or other security, and sell or exercise stock subscription or conversion rights.

7 (d) Deposit the stock or other security with a depository or other regulated
8 financial-service institution.

9 **(8)** With respect to an interest in real property, construct, or make ordinary or
10 extraordinary repairs to, alterations to, or improvements in, buildings or other
11 structures, demolish improvements, raze existing or erect new party walls or
12 buildings, subdivide or develop land, dedicate land to public use or grant public or
13 private easements, and make or vacate plats and adjust boundaries.

14 **(9)** Enter into a lease for any purpose as lessor or lessee, including a lease or
15 other arrangement for exploration and removal of natural resources, with or without
16 the option to purchase or renew, for a period within or extending beyond the duration
17 of the trust.

18 **(10)** Grant an option involving a sale, lease, or other disposition of trust
19 property or acquire an option for the acquisition of property, including an option
20 exercisable beyond the duration of the trust, and exercise an option so acquired.

21 **(11)** Insure the property of the trust against damage or loss and insure the
22 trustee, the trustee's agents, any directing party, any trust protector, and the
23 beneficiaries against liability arising from the administration of the trust.

24 **(12)** Abandon or decline to administer property of no value or of insufficient
25 value to justify its collection or continued administration.

ASSEMBLY BILL 490

1 **(13)** With respect to possible liability for violation of environmental law, do any
2 of the following:

3 (a) Inspect or investigate property the trustee holds or has been asked to hold,
4 or property owned or operated by an organization in which the trustee holds or has
5 been asked to hold an interest, for the purpose of determining the application of
6 environmental law with respect to the property.

7 (b) Take action to prevent, abate, or otherwise remedy any actual or potential
8 violation of any environmental law affecting property held directly or indirectly by
9 the trustee, whether taken before or after the assertion of a claim or the initiation
10 of governmental enforcement.

11 (c) Decline to accept property into trust or disclaim any power with respect to
12 property that is or may be burdened with liability for violation of environmental law.

13 (d) Compromise claims against the trust that may be asserted for an alleged
14 violation of environmental law.

15 (e) Pay the expense of any inspection, review, abatement, or remedial action to
16 comply with environmental law.

17 **(14)** Pay or contest any claim, settle a claim by or against the trust, and release,
18 in whole or in part, a claim belonging to the trust.

19 **(15)** Pay taxes; assessments; compensation of the trustee, a directing party, a
20 trust protector, and employees and agents of the trust; and other expenses incurred
21 in the administration of the trust.

22 **(16)** Exercise elections with respect to federal, state, and local taxes.

23 **(17)** Select a mode of payment under any employee benefit or retirement plan,
24 annuity, or life insurance payable to the trustee, exercise rights thereunder,

ASSEMBLY BILL 490

1 including exercise of the right to indemnification for expenses and against liabilities,
2 and take appropriate action to collect the proceeds.

3 (18) Make loans out of trust property, including loans to a beneficiary on terms
4 and conditions the trustee considers to be fair and reasonable under the
5 circumstances. The trustee has a lien on future distributions for repayment of loans
6 under this subsection.

7 (19) Pledge trust property to guarantee loans made by others to the beneficiary.

8 (20) Appoint a trustee to act in another jurisdiction with respect to trust
9 property located in the other jurisdiction, confer upon the appointed trustee all of the
10 powers and duties of the appointing trustee, require that the appointed trustee
11 furnish security, and remove any trustee so appointed.

12 (21) Pay an amount distributable to a beneficiary who is under a legal
13 disability or who the trustee reasonably believes is incapacitated, by paying it
14 directly to the beneficiary, applying it for the beneficiary's benefit, or by doing any
15 of the following:

16 (a) Paying the amount to the beneficiary's conservator or the beneficiary's
17 guardian of the estate.

18 (b) Paying the amount to the beneficiary's custodian under the Uniform
19 Transfers to Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust
20 Act under ss. 54.950 to 54.988, and, for that purpose, creating a custodianship or
21 custodial trust.

22 (c) If the trustee does not know of a conservator, guardian of the estate,
23 custodian, or custodial trustee, paying the amount to an adult relative or other
24 person having legal or physical care or custody of the beneficiary or to the guardian
25 of the person of the beneficiary, to be expended on the beneficiary's behalf.

ASSEMBLY BILL 490**SECTION 149**

1 (d) Managing the amount as a separate fund on the beneficiary's behalf, subject
2 to the beneficiary's continuing right to withdraw the distribution.

3 (22) On distribution of trust property or the division or termination of a trust,
4 make distributions in divided or undivided interests, allocate particular assets in
5 proportionate or disproportionate shares, value the trust property for those
6 purposes, and adjust for resulting differences in valuation.

7 (23) Resolve a dispute concerning the interpretation of the trust or its
8 administration by mediation, arbitration, or other procedure for alternative dispute
9 resolution.

10 (24) Prosecute or defend an action, claim, or judicial proceeding in any
11 jurisdiction to protect trust property or the trustee, a directing party, or a trust
12 protector in the performance of the trustee's, directing party's or trust protector's
13 duties.

14 (25) Sign and deliver contracts and other instruments that are useful to
15 achieve or facilitate the exercise of the trustee's, directing party's or trust protector's
16 powers.

17 (26) On termination of the trust, exercise the powers appropriate to wind up
18 the administration of the trust and distribute the trust property to the persons
19 entitled to it.

20 (27) Create or fund a plan under section 529 of the Internal Revenue Code, or
21 other college savings vehicle, for a beneficiary's benefit.

22 **SECTION 150.** 701.0817 of the statutes is created to read:

23 **701.0817 Distribution upon termination.** (1) Upon termination or partial
24 termination of a trust, the trustee may send a proposal for distribution to the
25 beneficiaries of the trust. The right of any beneficiary to whom the proposal is sent

ASSEMBLY BILL 490

1 to object to the proposed distribution terminates if the beneficiary does not notify the
2 trustee of an objection within 30 days after the proposal was sent but only if the
3 proposal informed the beneficiary of the right to object and of the time allowed for
4 objection.

5 (2) Upon the occurrence of an event terminating or partially terminating a
6 trust, the trustee shall proceed within a reasonable time to distribute the trust
7 property to the persons entitled to it, subject to the right of the trustee to retain a
8 reasonable reserve for the payment of debts, expenses, and taxes.

9 (3) A release by a beneficiary of a trustee from liability for breach of trust is
10 invalid to the extent any of the following applies:

11 (a) The release was induced by improper conduct of the trustee.

12 (b) The beneficiary, at the time of the release, did not know of the beneficiary's
13 rights or of the material facts relating to the breach.

14 **SECTION 151.** 701.0818 of the statutes is created to read:

15 **701.0818 Trust protectors. (1) APPOINTMENT.** A settlor in a trust instrument,
16 a court in a trust instrument or court order, or interested persons in a nonjudicial
17 settlement agreement may provide for the appointment of a trust protector, whether
18 referred to as a trust protector, another title, or no title. A trust protector has only
19 the powers granted to the trust protector in the trust instrument, court order, or
20 nonjudicial settlement agreement.

21 (2) **TRUST PROTECTOR POWERS; LEGAL CAPACITY.** (a) A settlor in a trust instrument,
22 a court in a trust instrument or court order, or interested persons in a nonjudicial
23 settlement agreement may specify the legal capacity in which a particular power is
24 exercisable by a trust protector and whether a power granted to the trust protector
25 in a capacity other than a fiduciary capacity must be exercised in good faith.

ASSEMBLY BILL 490

1 (b) If the settlor, court, or interested persons do not specify the legal capacity
2 in which a particular power is exercisable by the trust protector, all of the following
3 apply:

4 1. The power is exercisable in a fiduciary capacity if it is a power to do any of
5 the following:

6 a. Interpret or enforce the terms of the trust at the request of the trustee.

7 b. Review and approve the trustee's reports or accounting.

8 c. Resolve disputes between the trustee or a directing party and a beneficiary.

9 d. Consent to or veto distributions to a beneficiary.

10 e. Consent to or veto investment actions.

11 2. If it is not a power described in subd. 1. a. to e., the power is exercisable in
12 a nonfiduciary capacity, including a power to do any of the following:

13 a. Modify or amend the trust instrument to respond to opportunities related
14 to, or changes in, restraints on alienation or other state laws restricting the terms
15 of a trust, the distribution of trust property, or the administration of the trust.

16 b. Modify or amend the trust instrument to achieve a different tax status or to
17 respond to changes in federal or state law.

18 c. Change the principal place of administration, the tax situs of the trust, or the
19 governing law of the trust.

20 d. Eliminate or modify the interests of a beneficiary, add a new beneficiary or
21 class of beneficiaries, or select a beneficiary from an indefinite class.

22 e. Modify the terms of a power of appointment granted under the trust.

23 f. Remove, replace, or appoint a trustee, trust protector, or directing party or
24 a successor trustee, trust protector, or directing party.

25 g. Terminate the trust.

ASSEMBLY BILL 490

1 h. Appoint assets to a new trust under s. 701.0418.

2 i. Advise the trustee on matters concerning a beneficiary, including whether to
3 provide information to a beneficiary under s. 701.0813.

4 j. Correct errors or ambiguities in the terms of the trust that might otherwise
5 require court construction or defeat the settlor's intent.

6 3. Notwithstanding subds. 1. and 2., a trust protector who is also the settlor
7 may exercise any power granted to the trust protector in the trust protector's
8 personal interests.

9 4. Notwithstanding subd. 2., a trust protector who is also a qualified beneficiary
10 may exercise any power granted to the trust protector that is exercisable in a
11 nonfiduciary capacity in the trust protector's personal interests.

12 (c) Notwithstanding pars. (a) and (b) and any provision in the trust instrument
13 to the contrary, a trust protector who is also serving as the trustee or a directing party
14 shall exercise any power granted to the trust protector in a fiduciary capacity.

15 **(3) TRUST PROTECTOR DUTIES.** (a) If a power is exercisable in a fiduciary capacity,
16 the trust protector shall act in good faith and shall exercise the power in a manner
17 that is consistent with the terms and purposes of the trust instrument, court order,
18 or nonjudicial settlement agreement and the interests of the beneficiaries.

19 (b) If a power is exercisable in a nonfiduciary capacity, the trust protector shall
20 act in good faith unless the trust instrument, court order, or nonjudicial settlement
21 agreement provides otherwise.

22 (c) A trust protector does not have a duty to exercise its powers, to monitor the
23 conduct of the trustee or a directing party, or to monitor changes in the law or
24 circumstances of the beneficiaries.

ASSEMBLY BILL 490**SECTION 151**

1 **(4) LIABILITY.** A trust protector is liable for any loss that results from a breach
2 of the trust protector's duties, except as follows:

3 (a) If the trust protector is also the settlor, the trust protector is not liable for
4 any loss that results from a breach of the trust protector's duties.

5 (b) If the trust protector is also a qualified beneficiary, the trust protector is not
6 liable for any loss that results from a breach of the trust protector's duties for a power
7 that is exercised in a nonfiduciary capacity.

8 **(5) RESIGNATION AND RELEASE OF POWERS.** A trust protector may resign or
9 release a power granted to the trust protector by giving written notice to the trustee
10 and to any successor trust protector.

11 **(6) PROHIBITED ACTIONS.** A trust protector may not exercise a power granted to
12 the trust protector to do any of the following:

13 (a) Except as provided in sub. (2) (b) 3. and 4., create or expand any beneficial
14 interest, power of appointment, right of withdrawal, or right to receive trust property
15 as a result of the exercise of a power of appointment if the creation or expansion
16 would benefit the trust protector, the trust protector's estate, the trust protector's
17 creditors, or creditors of the trust protector's estate.

18 (b) Modify or amend a trust to do any of the following:

19 1. Remove a requirement pursuant to 42 USC 1396p (d) (4) to pay back a
20 governmental entity for benefits provided to the permissible beneficiary at the death
21 of that beneficiary.

22 2. Reduce or eliminate an income interest of an income beneficiary of any of the
23 following trusts:

24 a. A trust for which a marital deduction has been taken for federal or state
25 estate tax purposes under section 2056, 2056A, or 2523 of the Internal Revenue Code

ASSEMBLY BILL 490

1 or any comparable provision of applicable state law, during the life of the settlor's
2 spouse.

3 b. A charitable remainder trust under section 664 of the Internal Revenue
4 Code, during the life of the noncharitable beneficiary.

5 c. A trust in which the settlor has a qualified interest under section 2702 (b)
6 of the Internal Revenue Code, during any period in which the settlor is a beneficiary.

7 d. A trust for which an election as a qualified Subchapter S Trust under section
8 1361(d) of the Internal Revenue Code is in place.

9 (c) Modify any beneficial interest in a trust that qualified for a marital
10 deduction or charitable deduction from federal or state estate tax in a manner that
11 would have caused the trust not to qualify for the deduction.

12 **(7) SETTLOR RIGHTS.** A trust protector is not subject to the direction of the settlor
13 and the settlor may not bring a cause of action against the trust protector. A trust
14 protector may consider a settlor's goals, objectives, and philosophies in establishing
15 the trust and the trust's structure when exercising the powers granted to the trust
16 protector and may do so regardless of whether the settlor is deceased.

17 **(8) DUTIES OF A TRUSTEE AND A DIRECTING PARTY.** (a) A trustee and a directing
18 party shall act in accordance with a trust protector's exercise of a power granted to
19 the trust protector. A trustee and a directing party are not liable for acting in
20 accordance with the trust protector's exercise of a power granted to the trust
21 protector unless the attempted exercise is manifestly contrary to the power granted
22 to the trust protector or the trustee or the directing party knows that the attempted
23 exercise would constitute a serious breach of a duty that the trust protector owes to
24 the beneficiaries of the trust.

ASSEMBLY BILL 490**SECTION 151**

1 (b) A trustee and a directing party do not have a duty to monitor the conduct
2 of the trust protector, provide advice to or consult with the trust protector, or
3 communicate with, warn, or apprise any beneficiary concerning instances in which
4 the trustee or the directing party would or might have exercised the trustee's or the
5 directing party's discretion in a manner different from the manner in which the trust
6 protector exercised its discretion.

7 **(9) RIGHT TO INFORMATION.** (a) A trust protector may request information about
8 the trust from the trustee and, if the requested information is related to a power
9 granted to the trust protector, the trustee shall provide the requested information to
10 the trust protector. If a trustee is bound by any confidentiality restrictions with
11 respect to information requested by a trust protector, the trustee may require that
12 the trust protector agree to be bound by the confidentiality restrictions before
13 delivering such information to the trust protector. A trustee is not liable to any
14 beneficiary for any loss or damages resulting from the trustee providing information
15 to the trust protector that is related to the power granted to the trust protector.

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

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

22 **(11) APPLICATION OF OTHER SECTIONS TO TRUST PROTECTORS.** Sections 701.0701,
23 701.0708, 701.0709, 701.1001 to 701.1003, and 701.1005 to 701.1010 apply to a trust
24 protector as if the trust protector is the trustee.

ASSEMBLY BILL 490

1 **(12) JURISDICTION.** A person who accepts an appointment as a trust protector
2 of a trust submits to the jurisdiction of the courts of this state, as provided in s.
3 701.0202 (1).

4 **SECTION 152.** 701.0819 of the statutes is created to read:

5 **701.0819 Marital deduction transfers.** (1) For purposes of this section,
6 “marital deduction transfer” means a lifetime or testamentary transfer of property
7 that is intended to qualify for the marital deduction as indicated by the terms of the
8 trust.

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

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

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

17 (c) If the trust instrument refers to a trust as a marital trust, qualified
18 terminable interest property trust, or spousal trust, or refers to qualified terminable
19 interest property, section 2044, 2056, 2056A, or 2523 of the Internal Revenue Code,
20 or a similar provision of applicable state law, the settlor intended that the trust and
21 property passing to the trust qualify for the applicable gift or estate tax marital
22 deduction and that the transfer qualifies for the marital deduction for federal and
23 state gift or estate tax purposes.

ASSEMBLY BILL 490

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

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

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

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

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

15 (a) Prepare or review investment policy statements.

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

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

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

20 **SECTION 158.** 701.0903 of the statutes is created to read:

21 **701.0903 Nonapplication of prudent investor rule to life insurance**
22 **contracts owned by trusts.** (1) Notwithstanding s. 881.01, if a principal purpose
23 of a trust is to hold a life insurance contract or to purchase a life insurance contract
24 from contributions made to the trust, the trustee does not have a duty to determine
25 whether the life insurance contract is or remains a proper investment of the trust.

ASSEMBLY BILL 490

1 For purposes of this subsection, determining whether a life insurance contact is or
2 remains a proper investment includes all of the following:

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

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

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

9 (d) Inquiring about or investigating the health or financial condition of an
10 insured.

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

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

16 **(3)** This section does not apply to a life insurance contract that is purchased
17 from an affiliate of the trustee or to a life insurance contract from which the trustee
18 or an affiliate receives a commission, unless the power to purchase the life insurance
19 contract has been delegated to another person and that other person made the
20 decision to purchase the life insurance contract from or through the trustee or an
21 affiliate.

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

ASSEMBLY BILL 490**SECTION 161**

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

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

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

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

8 **SECTION 162.** 701.1002 of the statutes is created to read:

9 **701.1002 Damages for breach of trust; liability of successor trustee. (1)**

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

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

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

15 **(2)** Except as otherwise provided in this subsection, if more than one trustee
16 is liable to a beneficiary for a breach of trust, a trustee is entitled to contribution from
17 the other trustee or trustees. A trustee is not entitled to contribution if the trustee
18 was substantially more at fault than another trustee or if the trustee committed the
19 breach of trust in bad faith or with reckless indifference to the purposes of the trust
20 or the interests of the beneficiary. A trustee who received a benefit from the breach
21 of trust is not entitled to contribution from another trustee to the extent of the benefit
22 received.

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

ASSEMBLY BILL 490

1 **SECTION 163.** 701.1003 of the statutes is created to read:

2 **701.1003 Damages in absence of breach.** Absent a breach of trust, a trustee
3 is not liable to a beneficiary for a loss or depreciation in the value of trust property
4 or for not having made a profit.

5 **SECTION 164.** 701.1004 of the statutes is created to read:

6 **701.1004 Attorney fees and costs. (1)** In a judicial proceeding involving the
7 administration of a trust, the court, as justice and equity may require, may award
8 costs and expenses, including reasonable attorney fees, to any party, to be paid by
9 another party or from the trust that is the subject of the controversy.

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

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

19 **(b)** If a claim or defense based upon a breach of trust is made against a trustee,
20 directing party, or trust protector in a proceeding, the trustee shall provide notice to
21 each qualified beneficiary, directing party, and trust protector of the trustee's
22 intention to pay costs or attorney fees incurred in the proceeding from the trust prior
23 to making payment. The notice shall inform each qualified beneficiary, directing
24 party, and trust protector of the right to apply to the court for an order prohibiting
25 the trustee from paying attorney fees or costs from trust property. If a trustee is

ASSEMBLY BILL 490

1 served with a motion for an order prohibiting the trustee from paying from the trust
2 attorney fees or costs in the proceeding and the trustee pays attorney fees or costs
3 from the trust before an order is entered on the motion, the trustee, directing party,
4 or trust protector and their respective attorneys who have been paid attorney fees
5 or costs from trust property are subject to the remedies in pars. (c) and (d).

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

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

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

19 4. An order entered under this paragraph does not limit a trustee's, directing
20 party's, or trust protector's right to seek an order allowing the payment of some or
21 all of the attorneys fees or costs incurred in the proceeding from trust property,
22 including any fees required to be refunded, after the claim or defense is finally
23 determined by the court. If a claim or defense based upon a breach of trust is
24 withdrawn, dismissed, or resolved without a determination by the court that the
25 trustee committed a breach of trust, after the entry of an order prohibiting payment

ASSEMBLY BILL 490

1 of attorney fees and costs pursuant to this paragraph, the trustee may pay costs or
2 attorney fees incurred in the proceeding from the trust property without further
3 court authorization.

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

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

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

16 (4) A provision of a trust instrument drafted or caused to be drafted by a
17 trustee, directing party, or trust protector that modifies the application of this section
18 in a manner favorable to the trustee, directing party, or trust protector and
19 potentially detrimental to a beneficiary is invalid with respect to the trustee,
20 directing party, or trust protector unless the trustee, directing party, or trust
21 protector proves that the provision was fair under the circumstances existing at the
22 time the trust instrument was signed and that the existence and contents of the
23 provision were adequately communicated to the settlor.

24 **SECTION 165.** 701.1005 of the statutes is created to read:

ASSEMBLY BILL 490

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

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

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

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

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

13 (c) The termination of the trust.

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

16 **SECTION 166.** 701.1006 of the statutes is created to read:

17 **701.1006 Reliance on trust instrument.** A trustee who acts in reasonable
18 reliance on the terms of the trust as expressed in the trust instrument is not liable
19 to a beneficiary for a breach of trust to the extent the breach resulted from the
20 reliance.

21 **SECTION 167.** 701.1007 of the statutes is created to read:

22 **701.1007 Event affecting administration or distribution.** If the
23 happening of an event, including marriage, divorce, performance of educational
24 requirements, or death, affects the administration or distribution of a trust, a trustee

ASSEMBLY BILL 490

1 who has exercised reasonable care to ascertain the happening of the event is not
2 liable for a loss resulting from the trustee's lack of knowledge.

3 **SECTION 168.** 701.1008 of the statutes is created to read:

4 **701.1008 Exculpation of trustee. (1)** A term of a trust relieving a trustee
5 of liability for breach of trust is unenforceable to the extent that it does any of the
6 following:

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

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

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

17 **SECTION 169.** 701.1009 of the statutes is created to read:

18 **701.1009 Beneficiary's consent, release, or ratification.** A trustee is not
19 liable to a beneficiary for breach of trust if the beneficiary consented to the conduct
20 constituting the breach, released the trustee from liability for the breach, or ratified
21 the transaction constituting the breach, unless any of the following applies:

22 **(1)** The consent, release, or ratification of the beneficiary was induced by
23 improper conduct of the trustee.

ASSEMBLY BILL 490**SECTION 169**

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

4 **SECTION 170.** 701.1010 of the statutes is created to read:

5 **701.1010 Limitation on personal liability of trustee.** (1) Except as
6 otherwise provided in the contract, a trustee is not personally liable on a contract
7 properly entered into in the trustee's fiduciary capacity in the course of
8 administering the trust if the trustee in the contract disclosed the fiduciary capacity.

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

13 **SECTION 171.** 701.1011 of the statutes is created to read:

14 **701.1011 Interest as general partner.** (1) Unless personal liability is
15 imposed in the contract, a trustee who holds an interest as a general partner in a
16 general or limited partnership is not personally liable on a contract entered into by
17 the partnership after the trust's acquisition of the interest if the fiduciary capacity
18 was disclosed in the contract.

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

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

25 **SECTION 172.** 701.1012 of the statutes is created to read:

ASSEMBLY BILL 490

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

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

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

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

15 **(5)** Comparable protective provisions of other laws relating to commercial
16 transactions or transfer of securities by fiduciaries prevail over the protection
17 provided by this section.

18 **SECTION 173.** 701.1013 of the statutes is created to read:

19 **701.1013 Certification of trust. (1)** Instead of furnishing a copy of the trust
20 instrument to a person other than a beneficiary, the trustee may furnish to the
21 person a certification of trust containing the following information:

22 (a) That the trust exists and the date on which the trust instrument was
23 executed.

24 (b) The identity of the settlor.

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

ASSEMBLY BILL 490

1 (d) The powers of the trustee.

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

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

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

8 **(2)** A certification of trust may be signed or otherwise authenticated by any
9 trustee.

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

13 **(4)** A certification of trust does not need to contain the dispositive terms of a
14 trust.

15 **(5)** A recipient of a certification of trust may require the trustee to furnish
16 copies of those excerpts from the original trust instrument and later amendments
17 that designate the trustee and confer upon the trustee the power to act in the pending
18 transaction.

19 **(6)** A person who acts in reliance upon a certification of trust without
20 knowledge that the representations contained therein are incorrect is not liable to
21 any person for so acting and may assume without inquiry the existence of the facts
22 contained in the certification. Knowledge of the terms of the trust may not be
23 inferred solely from the fact that a copy of all or part of the trust instrument is held
24 by the person relying upon the certification.

ASSEMBLY BILL 490

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

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

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

11 **SECTION 174.** 701.105 (title), (1), (2) and (3) of the statutes are renumbered
12 701.1201 (title), (1), (2) and (3), and 701.1201 (1), (2) and (3), as renumbered, are
13 amended to read:

14 701.1201 (1) (a) In the administration of any trust ~~which~~ that is a private
15 foundation, as defined in section 509 of the ~~internal revenue code~~ Internal Revenue
16 Code, a charitable trust, as ~~defined~~ described in section 4947 (a) (1) of the ~~internal~~
17 ~~revenue code~~ Internal Revenue Code, or a split-interest trust as ~~defined~~ described
18 in section 4947 (a) (2) of the ~~internal revenue code~~ Internal Revenue Code, all of the
19 following acts shall be prohibited:

20 1. Engaging in any act of self-dealing, as defined in section 4941 (d) of the
21 ~~internal revenue code, which~~ Internal Revenue Code, that would give rise to any
22 liability for the tax imposed by section 4941 (a) of the ~~internal revenue code~~ Internal
23 Revenue Code.

24 2. Retaining any excess business holdings, as defined in section 4943 (c) of the
25 ~~internal revenue code, which~~ Internal Revenue Code, that would give rise to any

ASSEMBLY BILL 490**SECTION 174**

1 liability for the tax imposed by section 4943 (a) of the ~~internal revenue code~~ Internal
2 Revenue Code.

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

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

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

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

22 **(3)** Subsections (1) and (2) ~~shall~~ do not apply to any trust to the extent that a
23 court of competent jurisdiction ~~shall determine~~ determines that ~~such~~ the application
24 would be contrary to the terms of the ~~instrument governing such~~ trust and that the
25 same may not properly be changed to conform to such subsections.

ASSEMBLY BILL 490

1 Revenue Code has been made or a trust that qualified for the marital deduction
2 under other provisions of section 2056 or 2523 of the Internal Revenue Code.

3 (b) "Payment" means an amount of money or property received by a trustee that
4 is any of the following:

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

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

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

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

19 **SECTION 183.** 701.1123 (4) of the statutes is created to read:

20 701.1123 (4) (a) Notwithstanding sub. (3), a trustee of a marital deduction trust
21 shall determine plan income for an accounting period as if the plan were a trust
22 subject to this subchapter. If the trustee of a marital deduction trust cannot
23 determine the plan income, the plan income is 4 percent of the total present value
24 of the trust's income in the plan on the first day of the accounting period, based on

ASSEMBLY BILL 490

1 reasonable actuarial assumptions as determined by the trustee of the marital
2 deduction trust.

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

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

13 **SECTION 184.** 701.1126 (title) of the statutes is created to read:

14 **701.1126 (title) Timber.**

15 **SECTION 185.** 701.1134 (3) (c) and (d) and (4) of the statutes are created to read:

16 701.1134 (3) (c) Proportionately from principal and income to the extent that
17 receipts from the entity are allocated to both income and principal.

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

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

23 **SECTION 186.** 701.115 of the statutes is repealed.

24 **SECTION 187.** 701.12 of the statutes is repealed.

ASSEMBLY BILL 490

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

5 **SECTION 192.** 701.13 of the statutes is repealed.

6 **SECTION 193.** 701.14 (title) and (1) of the statutes are repealed.

7 **SECTION 194.** 701.14 (2) of the statutes is renumbered 701.0205 and amended
8 to read:

9 **701.0205 Notice.** If notice of a judicial proceeding involving a trust proceeding
10 to ~~a~~ an interested person interested in the trust, to the person's representative or
11 guardian ad litem as ~~provided in s. 701.15,~~ or to other persons, is required by law or
12 deemed necessary by the court, the court shall order such notice to be given as
13 prescribed in s. 879.05 except that service by publication ~~shall~~ may not be required
14 unless ordered by the court. The court may order both personal service and service
15 by publication on designated persons. Proof of service shall be made as provided in
16 s. 879.07. ~~Persons interested in the trust~~ Interested persons, on behalf of
17 themselves, or their representatives or guardians ad litem as ~~provided in s. 701.15,~~
18 on behalf of themselves the representative or guardian ad litem and those whom they
19 represent the interested person the representative or guardian ad litem represents,
20 may in writing waive service of notice and consent to the hearing of any matter
21 without notice. Waiver of notice or an appearance by any interested person
22 ~~interested in the trust~~ or the interested person's representative or guardian ad litem
23 as ~~provided in s. 701.15~~ is equivalent to timely service of notice.

24 **SECTION 195.** 701.14 (3) of the statutes is renumbered 701.0206 and amended
25 to read:

ASSEMBLY BILL 490**SECTION 195**

1 **701.0206 Attorney for person in military service.** At the time of filing a
2 petition for a ~~trust judicial~~ proceeding, ~~involving a trust, the petitioner shall file an~~
3 affidavit ~~shall be filed~~ setting forth the name of any interested person interested in
4 the proceeding who is actively engaged in the military service of the United States.
5 Whenever it appears by the affidavit or otherwise that any person in the active
6 military service of the United States is an interested in any trust proceeding person
7 and is not represented by an attorney, or by an attorney-in-fact who is duly
8 authorized to act on the interested person's behalf in the matter, the court shall
9 appoint an attorney to represent the interested person and protect the person's
10 interest.

11 **SECTION 196.** 701.14 (4) of the statutes is repealed.

12 **SECTION 197.** 701.15 of the statutes is repealed.

13 **SECTION 198.** 701.16 (title), (1), (2), (3), (4) (title) and (a) to (c), (5) and (6) of the
14 statutes are repealed.

15 **SECTION 199.** 701.16 (4) (d) of the statutes is renumbered 879.47 (2) and
16 amended to read:

17 879.47 (2) ~~Notwithstanding s. 879.47, trustees~~ Trustees and cotrustees may
18 submit to courts accounts in the format that they normally use for accounts
19 submitted to beneficiaries under this subsection, if all of the information required by
20 the court is included.

21 **SECTION 200.** 701.17 of the statutes is repealed.

22 **SECTION 201.** 701.18 of the statutes is repealed.

23 **SECTION 202.** 701.19 of the statutes is repealed.

24 **SECTION 203.** 701.20 (title) of the statutes is repealed.

25 **SECTION 204.** 701.20 (2) (intro.) of the statutes is repealed.

ASSEMBLY BILL 490

1 **SECTION 205.** 701.20 (2) (a) of the statutes is renumbered 701.1102 (1).

2 **SECTION 206.** 701.20 (2) (b) of the statutes is renumbered 701.1102 (1m) and
3 amended to read:

4 701.1102 (1m) “Beneficiary” Notwithstanding s. 701.0103 (3), “beneficiary”
5 means a person who has a beneficial interest in a trust or an estate and includes, in
6 the case of a decedent’s estate, an heir, a legatee, and a devisee and, in the case of a
7 trust, an income beneficiary and a remainder beneficiary.

8 **SECTION 207.** 701.20 (2) (c) of the statutes is renumbered 701.1102 (2).

9 **SECTION 208.** 701.20 (2) (d) of the statutes is renumbered 701.1102 (3) and
10 amended to read:

11 701.1102 (3) “Income” means money or property that a fiduciary receives as
12 current return from a principal asset. “Income” includes a portion of receipts from
13 a sale, exchange, or liquidation of a principal asset, to the extent provided in ~~subs.~~
14 ~~(10) ss. 701.1115 to (24) 701.1129.~~

15 **SECTION 209.** 701.20 (2) (e) of the statutes is renumbered 701.1102 (4).

16 **SECTION 210.** 701.20 (2) (f) of the statutes is renumbered 701.1102 (5).

17 **SECTION 211.** 701.20 (2) (g) of the statutes is renumbered 701.1102 (6).

18 **SECTION 212.** 701.20 (2) (h) of the statutes is renumbered 701.1102 (7) and
19 amended to read:

20 701.1102 (7) “Net income” means the total receipts allocated to income during
21 an accounting period, minus the disbursements made from income during the period,
22 plus or minus transfers under this ~~section~~ subchapter to or from income during the
23 period.

24 **SECTION 213.** 701.20 (2) (i) of the statutes is repealed.

25 **SECTION 214.** 701.20 (2) (j) of the statutes is renumbered 701.1102 (8).

ASSEMBLY BILL 490

1 **SECTION 215.** 701.20 (2) (k) of the statutes is renumbered 701.1102 (9) and
2 amended to read:

3 701.1102 **(9)** “Remainder beneficiary” means a person ~~entitled to receive~~
4 ~~principal when an income interest ends~~ who is a beneficiary under s. 701.0103 (21)
5 (b).

6 **SECTION 216.** 701.20 (2) (L), (m) and (n) of the statutes are repealed.

7 **SECTION 217.** 701.20 (3) of the statutes is renumbered 701.1103, and 701.1103
8 (1) and (2), as renumbered, are amended to read:

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

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

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

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

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

24 **(2)** In exercising the power to adjust under ~~sub. (4) (a)~~ s. 701.1104 (1) or a
25 discretionary power of administration regarding a matter within the scope of this

ASSEMBLY BILL 490

1 ~~section subchapter~~, whether granted by the terms of a trust, a will, or this ~~section~~
2 ~~subchapter~~, a fiduciary shall administer a trust or estate impartially, based on what
3 is fair and reasonable to all of the beneficiaries, except to the extent that the terms
4 of the trust or the will clearly manifest an intention that the fiduciary shall or may
5 favor one or more of the beneficiaries. A determination in accordance with this
6 ~~section subchapter~~ is presumed to be fair and reasonable to all of the beneficiaries.

7 **SECTION 218.** 701.20 (4) of the statutes is renumbered 701.1104, and 701.1104
8 (1), (2) (intro.), (3) (h) and (i), (4), (5) and (6) as renumbered, are amended to read:

9 701.1104 (1) A trustee may adjust between principal and income to the extent
10 the trustee considers necessary if the trustee invests and manages trust assets as a
11 prudent investor, the terms of the trust describe the amount that may or must be
12 distributed to a beneficiary by referring to the trust's income, and the trustee
13 determines, after applying the rules in ~~sub. (3) (a)~~ s. 701.1103 (1), that the trustee
14 is unable to comply with ~~sub. (3) (b)~~ s. 701.1103 (2).

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

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

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

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

24 (5) A trustee may release the entire power conferred by ~~par. (a) sub. (1)~~ or may
25 release only the power to adjust from income to principal or the power to adjust from

ASSEMBLY BILL 490

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

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

11 **SECTION 219.** 701.20 (4c) (title) of the statutes is renumbered 701.1105 (title).

12 **SECTION 220.** 701.20 (4c) (b) (intro.) of the statutes is renumbered 701.1105 (1)
13 (intro.) and amended to read:

14 701.1105 **(1)** (intro.) A trustee may, but is not required to, obtain approval of
15 a proposed action under ~~sub. (4) (a) s. 701.1104 (1)~~ by providing a written notice that
16 complies with all of the following:

17 **SECTION 221.** 701.20 (4c) (b) 1. of the statutes is renumbered 701.1105 (1) (a).

18 **SECTION 222.** 701.20 (4c) (b) 2. of the statutes is renumbered 701.1105 (1) (b).

19 **SECTION 223.** 701.20 (4c) (b) 3. (intro.) of the statutes is renumbered 701.1105
20 (1) (c) and amended to read:

21 701.1105 **(1)** (c) Is given to all sui-juris qualified beneficiaries ~~who are any of~~
22 ~~the following:~~

23 **SECTION 224.** 701.20 (4c) (b) 3. a., b. and c. of the statutes are repealed.

24 **SECTION 225.** 701.20 (4c) (b) 4. of the statutes is renumbered 701.1105 (1) (d),
25 and 701.1105 (1) (d) (intro.) and 4., as renumbered, are amended to read:

ASSEMBLY BILL 490

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

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

5 **SECTION 226.** 701.20 (4c) (c) of the statutes is renumbered 701.1105 (2) and
6 amended to read:

7 701.1105 (2) If a trustee gives notice of a proposed action under this ~~subsection~~
8 section, the trustee is not required to give notice to a ~~sui-juris~~ qualified beneficiary
9 who consents to the proposed action in writing at any time before or after the
10 proposed action is taken.

11 **SECTION 227.** 701.20 (4c) (d) of the statutes is renumbered 701.1105 (3) and
12 amended to read:

13 701.1105 (3) A ~~sui-juris~~ qualified beneficiary may object to the proposed action
14 by giving a written objection to the trustee within the time specified in the notice
15 under ~~par. (b) 4. e. sub. (1) (d) 3.~~

16 **SECTION 228.** 701.20 (4c) (e) of the statutes is renumbered 701.1105 (4) and
17 amended to read:

18 701.1105 (4) A trustee may decide not to take a proposed action after the
19 trustee receives a written objection to the proposed action or at any other time for any
20 other reason. In that case, the trustee shall give written notice to the ~~sui-juris~~
21 qualified beneficiaries of the decision not to take the proposed action.

22 **SECTION 229.** 701.20 (4c) (f) of the statutes is renumbered 701.1105 (5) and
23 amended to read:

24 701.1105 (5) If a trustee receives a written objection to a proposed action within
25 the time specified in the notice under ~~par. (b) 4. e. sub. (1) (d) 3.~~, either the trustee

ASSEMBLY BILL 490

1 or the qualified beneficiary making the written objection may petition the court to
2 have the proposed action approved, modified, or prohibited. In the court proceeding,
3 the qualified beneficiary objecting to the proposed action has the burden of proving
4 that the proposed action should be modified or prohibited. A qualified beneficiary
5 who did not make the written objection may oppose the proposed action in the court
6 proceeding.

7 **SECTION 230.** 701.20 (4c) (g) of the statutes is renumbered 701.1105 (6) and
8 amended to read:

9 701.1105 (6) For purposes of this subsection section, a proposed action under
10 ~~sub. (4) s. 701.1104~~ includes a course of action or a decision not to take action under
11 ~~sub. (4) s. 701.1104~~.

12 **SECTION 231.** 701.20 (4g) (title) of the statutes is renumbered 701.1106 (title).

13 **SECTION 232.** 701.20 (4g) (a) (intro.) of the statutes is renumbered 701.1106 (1)
14 (intro.) and amended to read:

15 701.1106 (1) (intro.) Subject to ~~par. (d)~~ sub. (4), a trust may be converted to a
16 unitrust in any of the following ways:

17 **SECTION 233.** 701.20 (4g) (a) 1. (intro.) of the statutes is renumbered 701.1106
18 (1) (a) (intro.) and amended to read:

19 701.1106 (1) (a) (intro.) By the trustee, at his or her own discretion or at the
20 request of a qualified beneficiary, if all of the following apply:

21 **SECTION 234.** 701.20 (4g) (a) 1. a. of the statutes is renumbered 701.1106 (1)
22 (a) 1.

23 **SECTION 235.** 701.20 (4g) (a) 1. b. of the statutes is renumbered 701.1106 (1)
24 (a) 2. and amended to read:

ASSEMBLY BILL 490

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

6 **SECTION 236.** 701.20 (4g) (a) 1. c. of the statutes is repealed.

7 **SECTION 237.** 701.20 (4g) (a) 1. d. of the statutes is renumbered 701.1106 (1)
8 (a) 3. and amended to read:

9 701.1106 (1) (a) 3. Every ~~sui-juris~~ qualified beneficiary consents to the
10 conversion to a unitrust in a writing delivered to the trustee.

11 **SECTION 238.** 701.20 (4g) (a) 1. e. of the statutes is renumbered 701.1106 (1) (a)
12 4.

13 **SECTION 239.** 701.20 (4g) (a) 2. (intro.) of the statutes is renumbered 701.1106
14 (1) (b) (intro.) and amended to read:

15 701.1106 (1) (b) (intro.) By a court on the petition of the trustee or a qualified
16 beneficiary, if all of the following apply:

17 **SECTION 240.** 701.20 (4g) (a) 2. a. of the statutes is renumbered 701.1106 (1)
18 (b) 1. and amended to read:

19 701.1106 (1) (b) 1. The trustee or qualified beneficiary has provided notice
20 under ~~sub. (4e) s. 701.1105~~ of the intention to request the court to convert the trust
21 to a unitrust, and the notice advises how the unitrust will operate, including the fixed
22 percentage under ~~par. (e) 1.~~ sub. (3) (a) and any other initial determinations under
23 ~~par. (e) 4.~~ sub. (3) (d) that will be requested.

24 **SECTION 241.** 701.20 (4g) (a) 2. b. of the statutes is renumbered 701.1106 (1)
25 (b) 2.

ASSEMBLY BILL 490**SECTION 242**

1 **SECTION 242.** 701.20 (4g) (b), (c), (d) and (e) of the statutes are renumbered
2 701.1106 (2), (3), (4) and (5), and 701.1106 (2), (3) (a), (b), (c), (d) 7., (f) (intro.) and 2.,
3 (g) (intro.), 1. and 3. and (h), (4) (a) (intro.) and 1. and (b) and (5), as renumbered, are
4 amended to read:

5 701.1106 (2) In deciding whether to convert the trust to a unitrust under ~~par.~~
6 ~~(a) 1. sub. (1) (a) and in determining the fixed percentage under sub. (3) (b) 1.,~~ the
7 trustee shall consider all relevant factors under ~~sub. (4) (b) 1. to 9. s. 701.1104 (2) (a)~~
8 ~~to (i).~~

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

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

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

ASSEMBLY BILL 490

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

4 1. Convert the unitrust back to the original trust under the ~~creating~~ trust
5 instrument.

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

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

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

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

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

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

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

21 (h) Conversion to a unitrust under this ~~subsection~~ section does not affect a
22 provision in the ~~creating~~ trust instrument that directs or authorizes the trustee to
23 distribute principal or that authorizes a beneficiary to withdraw a portion or all of
24 the principal.

ASSEMBLY BILL 490

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

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

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

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

17 **SECTION 243.** 701.20 (4j) of the statutes is renumbered 701.1107, and 701.1107
18 (1) and (2) (a), (e), (f) 2., (g) and (h), as renumbered, are amended to read:

19 701.1107 (1) In this ~~subsection~~ section, “express unitrust” means any trust that
20 by its governing trust instrument requires the distribution at least annually of a
21 unitrust amount equal to a fixed percentage of the net fair market value of the trust’s
22 assets, valued at least annually, other than a trust solely for charitable purposes or
23 a charitable split-interest trust under section 664 (d) or 170 (f) (2) (B) of the Internal
24 Revenue Code.

ASSEMBLY BILL 490

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

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

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

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

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

19 **SECTION 244.** 701.20 (4k) of the statutes is renumbered 701.1108 and amended
20 to read:

21 **701.1108 Power to treat capital gains as part of a distribution.** Unless
22 prohibited by the governing instrument will or trust instrument, a trustee fiduciary
23 may cause gains from the sale or exchange of estate or trust assets property, as
24 determined for federal income tax purposes, to be taxed for federal income tax
25 purposes as part of a distribution of income that has been increased by an adjustment

ASSEMBLY BILL 490

1 from principal to income under ~~sub. (4) s. 701.1104~~, of a unitrust distribution, of a
2 fixed annuity distribution, or of a principal distribution to a beneficiary.

3 **SECTION 245.** 701.20 (4m) (title) of the statutes is renumbered 701.1109 (title).

4 **SECTION 246.** 701.20 (4m) (a) of the statutes is renumbered 701.1109 (1) and
5 amended to read:

6 701.1109 (1) Nothing in this section subchapter creates a duty to make an
7 adjustment under ~~sub. (4) s. 701.1104~~ or to convert a trust to a unitrust under ~~sub.~~
8 ~~(4g) s. 701.1106~~. Unless it determines that the decision to make an adjustment or
9 to convert to a unitrust was an abuse of the fiduciary's discretion, a court may not
10 grant relief from any decision a fiduciary makes regarding the exercise of a
11 discretionary power conferred by ~~sub. (4) s. 701.1104~~ or ~~(4g) 701.1106~~.

12 **SECTION 247.** 701.20 (4m) (am) of the statutes is renumbered 701.1109 (2) and
13 amended to read:

14 701.1109 (2) An action taken under ~~sub. (4) s. 701.1104~~ or ~~(4g) 701.1106~~ is not
15 an abuse of a fiduciary's discretion if the fiduciary gave written notice of the proposed
16 action under ~~sub. (4e) s. 701.1105~~ and did not receive a timely written objection to
17 the notice. It is not an abuse of discretion not to exercise the power to adjust under
18 ~~sub. (4) s. 701.1104~~ or to convert under ~~sub. (4g) s. 701.1106~~.

19 **SECTION 248.** 701.20 (4m) (b) of the statutes is renumbered 701.1109 (3).

20 **SECTION 249.** 701.20 (4m) (c) of the statutes is renumbered 701.1109 (4), and
21 701.1109 (4) (c), as renumbered, is amended to read:

22 701.1109 (4) (c) To the extent that the court is unable, after applying ~~subs. 1.~~
23 ~~pars. (a) and 2. (b)~~, to place the beneficiaries, the trust, or both in the positions that
24 they would have occupied had the discretion not been abused, the court may order

ASSEMBLY BILL 490

1 the fiduciary to pay an appropriate amount from its own funds to one or more of the
2 beneficiaries, the trust, or both.

3 **SECTION 250.** 701.20 (4m) (d) of the statutes is renumbered 701.1109 (5).

4 **SECTION 251.** 701.20 (5) of the statutes is renumbered 701.1110, and 701.1110
5 (1), (2) (intro.), (3), (4) and (5), as renumbered, are amended to read:

6 701.1110 (1) A fiduciary of an estate or of a terminating income interest shall
7 determine the amount of net income and net principal receipts received from
8 property specifically given to a beneficiary under the rules in ~~subs. (7)~~ ss. 701.1112
9 to ~~(30)~~ 701.1135 that apply to trustees and the rules in ~~par. (e)~~ sub. (5). The fiduciary
10 shall distribute the net income and net principal receipts to the beneficiary who is
11 to receive the specific property.

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

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

ASSEMBLY BILL 490**SECTION 251**

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

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

17 **SECTION 252.** 701.20 (6) of the statutes is renumbered 701.1111, and 701.1111
18 (1), (2) (d) and (4), as renumbered, are amended to read:

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

ASSEMBLY BILL 490

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

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

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

10 **SECTION 253.** 701.20 (7) of the statutes is renumbered 701.1112, and 701.1112
11 (3), as renumbered, is amended to read:

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

16 **SECTION 254.** 701.20 (8) of the statutes is renumbered 701.1113, and 701.1113
17 (1) and (3), as renumbered, are amended to read:

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

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

ASSEMBLY BILL 490

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

5 **SECTION 255.** 701.20 (9) (a) of the statutes is renumbered 701.1114, and
6 701.1114 (1), as renumbered, is amended to read:

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

12 **SECTION 256.** 701.20 (10) of the statutes is renumbered 701.1115, and 701.1115
13 (1), (2) and (5), as renumbered, is amended to read:

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

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

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

ASSEMBLY BILL 490

1 **SECTION 257.** 701.20 (11) of the statutes is renumbered 701.1116 and amended
2 to read:

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

10 **SECTION 258.** 701.20 (12) of the statutes is renumbered 701.1117 and 701.1117
11 (3) (g), as renumbered, is amended to read:

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

13 **SECTION 259.** 701.20 (13) of the statutes is renumbered 701.1118, and 701.1118
14 (1), (2), (3) and (6), as renumbered, are amended to read:

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

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

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

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

ASSEMBLY BILL 490

1 **SECTION 260.** 701.20 (14) of the statutes is renumbered 701.1119 and amended
2 to read:

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

11 **SECTION 261.** 701.20 (15) of the statutes is renumbered 701.1120, and 701.1120
12 (3), as renumbered, is amended to read:

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

16 **SECTION 262.** 701.20 (16) of the statutes is renumbered 701.1121 and amended
17 to read:

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

ASSEMBLY BILL 490

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

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

6 **SECTION 263.** 701.20 (17) of the statutes is renumbered 701.1122, and 701.1122
7 (intro.), as renumbered, is amended to read:

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

17 **SECTION 264.** 701.20 (18) (title) of the statutes is renumbered 701.1123 (title).

18 **SECTION 265.** 701.20 (18) (a) of the statutes is repealed.

19 **SECTION 266.** 701.20 (18) (b) of the statutes is renumbered 701.1123 (2) and
20 amended to read:

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

ASSEMBLY BILL 490**SECTION 266**

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

3 **SECTION 267.** 701.20 (18) (c) 1. of the statutes is renumbered 701.1123 (1) (d)
4 and amended to read:

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

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

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

24 **SECTION 268.** 701.20 (18) (c) 2. of the statutes is renumbered 701.1123 (3) and
25 amended to read:

ASSEMBLY BILL 490

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

8 **SECTION 269.** 701.20 (18) (d) of the statutes is renumbered 701.1123 (5) and
9 amended to read:

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

14 **SECTION 270.** 701.20 (18) (e) of the statutes is renumbered 701.1123 (6) and
15 amended to read:

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

18 **SECTION 271.** 701.20 (19) of the statutes is renumbered 701.1124, and 701.1124
19 (1), as renumbered, is amended to read:

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

ASSEMBLY BILL 490**SECTION 271**

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

5 **SECTION 272.** 701.20 (20) of the statutes is renumbered 701.1125, and 701.1125
6 (1) (intro.) and (d), (3) and (4), as renumbered, are amended to read:

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

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

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

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

22 **SECTION 273.** 701.20 (21) (title) of the statutes is repealed.

23 **SECTION 274.** 701.20 (21) of the statutes is renumbered 701.1126, and 701.1126
24 (1) (intro.), (c) and (d), (2), (3) and (4), as renumbered, are amended to read:

ASSEMBLY BILL 490

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

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

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

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

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

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

20 **SECTION 275.** 701.20 (22) of the statutes is renumbered 701.1127 and amended
21 to read:

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

ASSEMBLY BILL 490

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

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

10 **SECTION 276.** 701.20 (23) of the statutes is renumbered 701.1128, and 701.1128
11 (1) and (2), as renumbered, are amended to read:

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

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

20 **SECTION 277.** 701.20 (24) of the statutes is renumbered 701.1129, and 701.1129
21 (1), as renumbered, is amended to read:

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

ASSEMBLY BILL 490

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

4 **SECTION 278.** 701.20 (25) of the statutes is renumbered 701.1130, and 701.1130
5 (intro.), as renumbered, are amended to read:

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

9 **SECTION 279.** 701.20 (26) of the statutes is renumbered 701.1131, and 701.1131
10 (1) (a), (e) and (g), as renumbered, are amended to read:

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

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

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

23 **SECTION 280.** 701.20 (27) of the statutes is renumbered 701.1132, and 701.1132
24 (1) and (2) (c), as renumbered, are amended to read:

ASSEMBLY BILL 490

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

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

6 **SECTION 281.** 701.20 (28) of the statutes is renumbered 701.1133, and 701.1133
7 (1), (2) (intro.) and (e) and (3), as renumbered, are amended to read:

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

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

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

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

19 **SECTION 282.** 701.20 (29) (title) of the statutes is renumbered 701.1134 (title).

20 **SECTION 283.** 701.20 (29) (a) of the statutes is renumbered 701.1134 (1).

21 **SECTION 284.** 701.20 (29) (b) of the statutes is renumbered 701.1134 (2).

22 **SECTION 285.** 701.20 (29) (c) (intro.) of the statutes is renumbered 701.1134 (3)
23 (intro.) and amended to read:

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

ASSEMBLY BILL 490

1 **SECTION 286.** 701.20 (29) (c) 1. of the statutes is renumbered 701.1134 (3) (a)
2 and amended to read:

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

5 **SECTION 287.** 701.20 (29) (c) 2. (intro.) and a. of the statutes are consolidated,
6 renumbered 701.1134 (3) (b) and amended to read:

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

9 **SECTION 288.** 701.20 (29) (c) 2. b. of the statutes is repealed.

10 **SECTION 289.** 701.20 (29) (d) of the statutes is repealed.

11 **SECTION 290.** 701.20 (30) of the statutes is renumbered 701.1135, and 701.1135
12 (1) (a), as renumbered, is amended to read:

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

15 **SECTION 291.** 701.20 (31) of the statutes is repealed.

16 **SECTION 292.** 701.21 of the statutes is renumbered 701.1136, and 701.1136 (1),
17 (2) and (4), as renumbered, are amended to read:

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

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

ASSEMBLY BILL 490**SECTION 292**

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

7 **SECTION 293.** 701.22 (title) of the statutes is repealed.

8 **SECTION 294.** 701.22 of the statutes is renumbered 701.0417 (4) and amended
9 to read:

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

22 **SECTION 295.** 701.23 of the statutes is repealed.

23 **SECTION 296.** 701.24 (title) of the statutes is renumbered 701.1205 (title).

24 **SECTION 297.** 701.24 (1) of the statutes is renumbered 701.1205 (1) and
25 amended to read:

ASSEMBLY BILL 490

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 298.** 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 299.** 701.24 (3) of the statutes is repealed.

23 **SECTION 300.** 701.25 of the statutes is renumbered 701.1204.

24 **SECTION 301.** 701.26 of the statutes is repealed.

25 **SECTION 302.** 702.01 (intro.) of the statutes is renumbered 702.02 (intro.).

ASSEMBLY BILL 490

1 **SECTION 303.** 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 304.** 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 305.** 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 306.** 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

ASSEMBLY BILL 490

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 307.** 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 308.** 702.01 (6) of the statutes is repealed.

16 **SECTION 309.** 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 310.** 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 311.** 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

ASSEMBLY BILL 490**SECTION 311**

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 312.** 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.

ASSEMBLY BILL 490

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 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 of appointment, such
11 consent must be expressed in the creating instrument exercising the power of 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 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 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 of appointment, or renounces, releases, or
21 disclaims the power of of appointment, the power of of appointment may be exercised by
22 the others.

23 **SECTION 313.** 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

ASSEMBLY BILL 490

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 314.** 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 315.** 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 316.** 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:

ASSEMBLY BILL 490

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 317.** 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 318.** 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):

ASSEMBLY BILL 490

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 319.** 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 320.** 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~~

ASSEMBLY BILL 490

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 321.** 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

ASSEMBLY BILL 490

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 322.** 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 approved 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 323.** 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 324.** 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 325.** 702.21 of the statutes is amended to read:

ASSEMBLY BILL 490

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 326.** 766.55 (2) (bm) of the statutes, as created by 2013 Wisconsin Act
5 20, is amended to read:

6 766.55 (2) (bm) An obligation incurred by a spouse that is recoverable under
7 s. 46.27 (7g), 49.496, 49.682, or 49.849 may be satisfied from all property that was
8 the property of that spouse immediately before that spouse's death ~~and from all~~
9 ~~property that was marital property at any time within 5 years before that spouse~~
10 ~~applied for public assistance, as defined in s. 49.849 (1) (e), or while that spouse was~~
11 ~~eligible for public assistance, as defined in s. 49.849 (1) (e).~~

12 **SECTION 327.** 766.575 (1) (e) of the statutes is amended to read:

13 766.575 (1) (e) "Trustee" has the meaning given under s. 701.01 (8) 701.0103
14 (28).

15 **SECTION 328.** 840.01 (1) of the statutes is amended to read:

16 840.01 (1) Except as provided in sub. (2), "interest in real property" includes
17 estates in, powers of appointment under ch. 702 over, present and future rights to,
18 title to, and interests in real property, including, without limitation by enumeration,
19 security interests and liens on land, easements, profits, rights of appointees under
20 powers of appointment, rights under covenants running with the land, powers of
21 termination, and homestead rights. The interest may be an interest that was
22 formerly designated legal or equitable. The interest may be surface, subsurface,
23 suprasurface, riparian, or littoral.

24 **SECTION 329.** 853.17 (2) of the statutes is amended to read:

ASSEMBLY BILL 490

1 853.17 (2) This section does not prevent the court from requiring the contract
2 beneficiary to elect under s. 853.15 in order to take property under the will; ~~nor does~~
3 ~~it apply to naming a testamentary trustee as designated by a life insurance policy~~
4 ~~under s. 701.09.~~

5 **SECTION 330.** 853.32 (3) of the statutes is amended to read:

6 853.32 (3) TRANSFERS TO LIVING TRUSTS. The validity and implementation of a
7 will provision that purports to transfer or appoint property to a living trust are
8 governed by s. ~~701.08~~ 701.0419.

9 **SECTION 331.** 853.34 (3) of the statutes is created to read:

10 853.34 (3) ASSETS TRANSFERRED TO TRUSTS CREATED BY WILL. If a trustee of a trust
11 created by a testator's will is designated as the beneficiary of a transfer under
12 another governing instrument, as defined in s. 854.01 (2), at the death of the testator
13 or at the death of a 3rd party, the transfer of any assets under that other governing
14 instrument to the trustee does not cause the transferred assets to be included in the
15 property administered as part of the testator's estate. The transferred assets are not
16 subject to taxes, debts, or charges enforceable against the testator's estate to any
17 greater extent than if the proceeds were payable to a beneficiary other than the
18 testator's estate.

19 **SECTION 332.** 853.61 (2) (a) of the statutes is amended to read:

20 853.61 (2) (a) In addition to any powers conferred upon trustees by law, the
21 trustee shall have all the powers listed in s. ~~701.16~~ ss. 701.0815 and 701.0816.

22 **SECTION 333.** 854.13 (1) (c), (2) (a) 2. and (d), (4) (e), (5) (b), (7) (a) and (10) (a)
23 of the statutes are amended to read:

24 854.13 (1) (c) "Power of appointment" has the meaning given in s. ~~702.01~~ (4)
25 702.02 (6).

ASSEMBLY BILL 490

1 **(2) (a) 2.** A person who is an heir, recipient of property, or beneficiary under a
2 governing instrument, donee of a power of appointment created by a governing
3 instrument, appointee under a power of appointment exercised by a governing
4 instrument, taker in default under a power of appointment created by a governing
5 instrument, or person succeeding to disclaimed property may disclaim any property,
6 including contingent or future interests or the right to receive discretionary
7 distributions, by delivering a written instrument of disclaimer under this section.

8 **(d) *Partial disclaimer.*** Property may be disclaimed in whole or in part, except
9 that a partial disclaimer of property passing by a governing instrument or by the
10 exercise of a power of appointment may not be made if partial disclaimer is expressly
11 prohibited by the governing instrument or by the instrument exercising the power
12 of appointment.

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

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

21 **(7) (a) *In general.*** Subject to pars. (bm) and (c) and subs. (8), (9), and (10), unless
22 the governing instrument provides otherwise, either expressly or as construed from
23 extrinsic evidence, the disclaimed property devolves as if the disclaimant had died
24 before the decedent. If the disclaimed interest is a remainder contingent on
25 surviving to the time of distribution, the disclaimed interest passes as if the

ASSEMBLY BILL 490

1 disclaimant had died immediately before the time for distribution. If the disclaimant
2 is an appointee under a power of appointment exercised by a governing instrument,
3 the disclaimed property devolves as if the disclaimant had died before the effective
4 date of the exercise of the power of appointment. If the disclaimant is a taker in
5 default under a power of appointment created by a governing instrument, the
6 disclaimed property devolves as if the disclaimant had predeceased the donee of the
7 power of appointment.

8 (10) (a) *Subsequent interest not held by disclaimant.* Unless the governing
9 instrument provides otherwise, either expressly or as construed from extrinsic
10 evidence, upon the disclaimer of a preceding interest, a subsequent interest not held
11 by the disclaimant and limited to take effect in possession or enjoyment after the
12 termination of the interest that is disclaimed accelerates to take effect as if the
13 disclaimant had died immediately before the time when the disclaimed interest
14 would have taken effect in possession or enjoyment or, if the disclaimant is an
15 appointee under a power of appointment and that power of appointment has been
16 ~~exercised by a power of appointment~~, as if the disclaimant had died before the
17 effective date of the exercise of the power of appointment.

18 **SECTION 334.** 854.23 (5) (b) of the statutes is amended to read:

19 854.23 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
20 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
21 705 a financial institution is not liable for having transferred an account to a
22 beneficiary designated in a governing instrument who, under this chapter, is not
23 entitled to the account, or for having taken any other action in reliance on the
24 beneficiary's apparent entitlement under the terms of a governing instrument,

ASSEMBLY BILL 490

1 regardless of whether the financial institution received written notice of a claimed
2 lack of entitlement under this chapter.

3 **SECTION 335.** 859.18 (5) (a) of the statutes is amended to read:

4 859.18 (5) (a) The availability of a trust described under s. ~~701.07 (3)~~ 701.0505
5 (1) is subject to s. ~~701.07 (3)~~ 701.0505 (1).

6 **SECTION 336.** 859.18 (5) (b) of the statutes is amended to read:

7 859.18 (5) (b) The availability of a spendthrift trust described under s. ~~701.06~~
8 subch. V of ch. 701 is subject to s. ~~701.06 subch. V of ch. 701~~.

9 **SECTION 337.** 861.015 (2) of the statutes is amended to read:

10 861.015 (2) For purposes of this section, property subject to a directive is valued
11 by its clear market value on the date of the decedent's death. Satisfaction of the
12 nonholding spouse's marital property interest in the property subject to the directive
13 shall be based on that value, plus any income from the property subject to the
14 directive after the death of the decedent and before satisfaction. For purposes of
15 determining the income from the property subject to a directive, such property shall
16 be treated as a legacy or devise of property other than money under s. ~~701.20~~
17 701.1115.

18 **SECTION 338.** 861.11 (5) (b) of the statutes is amended to read:

19 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
20 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
21 705 a financial institution is not liable for having transferred an account included
22 in the augmented deferred marital property estate under s. 861.03 to a beneficiary
23 designated in a governing instrument, or for having taken any other action in
24 reliance on the beneficiary's apparent entitlement under the terms of a governing
25 instrument, regardless of whether the financial institution received written notice

ASSEMBLY BILL 490

1 of an intent to file, or the filing of, a petition for the deferred marital property elective
2 share amount.

3 **SECTION 339.** 865.08 (6) of the statutes is amended to read:

4 865.08 (6) If the will of the decedent provides for a testamentary trust, letters
5 of trust shall be issued by the probate registrar to the trustee upon admission of the
6 will to informal probate at the same time that letters are granted to the personal
7 representative. The probate registrar shall determine if bond shall be required and,
8 if so, the amount thereof, and for such purpose the probate registrar shall have the
9 authority granted to the court by, and shall proceed pursuant to s. ~~701.16 (2)~~
10 701.0702. Thereafter, the trustee shall continue to be interested in the estate, and
11 beneficiaries of the testamentary trust shall cease to be interested in the estate
12 except under s. 851.21 (3). The trust shall be administered under supervision of the
13 court under ch. 701.

14 **SECTION 340.** 867.03 (2g) (a) of the statutes, as affected by 2013 Wisconsin Act
15 20, is amended to read:

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

ASSEMBLY BILL 490

1 **SECTION 341.** 879.03 (2) (c) of the statutes is amended to read:

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

4 **SECTION 342.** 879.47 of the statutes is renumbered 879.47 (1) and amended to
5 read:

6 879.47 (1) The attorney for any person desiring to file any paper in court is
7 responsible for the preparation of the paper. Except as provided in s. 701.16 (4) (d)
8 sub. (2), all papers shall be legibly written on substantial paper and shall state the
9 title of the proceeding in which they are filed and the character of the paper. Either
10 uniform forms or computer-generated forms, if the forms exactly recreate the
11 original forms in wording, format and substance, shall be used. If papers are not so
12 written or if uniform forms or computer-generated forms that exactly recreate the
13 original forms in wording, format and substance are not used, the court may refuse
14 to receive and file them. The court shall show on all papers the date of their filing.

15 **SECTION 343.** 881.01 (1) (title) of the statutes is repealed and recreated to read:

16 881.01 (1) (title) DEFINITIONS.

17 **SECTION 344.** 881.01 (1) (a) of the statutes is renumbered 881.01 (1) (a) (intro.)
18 and amended to read:

19 881.01 (1) (a) (intro.) “Beneficiary,” ~~with respect to a guardianship of the~~
20 ~~estate,”~~ means any of the following:

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

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

25 **SECTION 345.** 881.01 (1) (a) 1. and 2. of the statutes are created to read:

ASSEMBLY BILL 490

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

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

3 **SECTION 346.** 881.01 (1) (b) of the statutes is amended to read:

4 881.01 (1) (b) “Fiduciary” means a personal representative, trustee,
5 conservator, ~~or~~ guardian of the estate, a directing party, as defined in s. 701.0103 (7),
6 who has the power to direct the trustee’s investment decisions, a trust protector, as
7 defined in s. 701.0103 (31), who has a power exercisable in a fiduciary capacity over
8 the investment of trust assets, and any other person to whom a court appoints a
9 power over the investment of the assets of a decedent’s estate, a trust, a
10 conservatorship, or a guardianship of the estate.

11 **SECTION 347.** 881.01 (4) of the statutes is renumbered 881.01 (4) (a) and
12 amended to read:

13 881.01 (4) (a) *General rule.* A fiduciary shall diversify investments unless the
14 fiduciary reasonably determines that, because of special circumstances, the
15 purposes of the estate, trust, conservatorship, or guardianship are better served
16 without diversifying.

17 **SECTION 348.** 881.01 (4) (b) of the statutes is created to read:

18 881.01 (4) (b) *Special rule for assets collected by a fiduciary.* 1. For purposes
19 of this paragraph, an “asset that is collected by the fiduciary” means an asset that
20 the fiduciary did not exercise discretion over to acquire or purchase.

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

ASSEMBLY BILL 490

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

5 4. If a beneficiary files an application under subd. 3., the court shall conduct
6 a hearing after giving notice to all interested persons, as determined by the court.
7 After the hearing, the court shall enter an order directing the fiduciary to retain or
8 sell the asset that is being retained based on what the court finds to be in accordance
9 with the terms and purposes of the estate, trust, conservatorship, or guardianship
10 of the estate and the interests of the beneficiaries.

11 **SECTION 349.** 881.05 of the statutes is repealed.

12 **SECTION 350.** 893.33 (4r) of the statutes, as created by 2013 Wisconsin Act 20,
13 is amended to read:

14 893.33 (4r) This section applies to liens of the department of health services
15 on real property under ss. 46.27 (7g), 49.496, 49.682, ~~49.848~~, and 49.849.

16 **SECTION 351. Initial applicability.**

17 (1) ESTATE RECOVERY CHANGES. The treatment of sections 46.27 (7g) (a) 5. a. and
18 b., (c) 2m. b. and 6m. b., and (g), 49.496 (1) (cm) 1. and 2., (3m) (aj) 2. and (dm) 2., and
19 (6m), 49.682 (1) (e) 1. and 2., (2) (bm) 2. and (fm) 2., and (5), 49.849 (1) (d) 1. and 2.,
20 (2) (c), and (7), and 766.55 (2) (bm) of the statutes, the renumbering and amendment
21 of section 49.849 (4) (c) 2. of the statutes, and the creation of section 49.849 (4) (c) 2.
22 a., b., and c. of the statutes first apply to the recovery of public assistance as defined
23 in section 49.849 (1) (e) of the statutes, provided to individuals who die on October
24 1, 2013.

