



2023 SENATE BILL 667

November 9, 2023 - Introduced by Senators KNODL and FELZKOWSKI, cosponsored by Representatives O'CONNOR, DITTRICH, MURPHY, MURSAU, NEDWESKI and RETTINGER. Referred to Committee on Shared Revenue, Elections and Consumer Protection.

AN ACT *to create* chapter 699 of the statutes; **relating to:** domestic asset protection trusts.

Analysis by the Legislative Reference Bureau

This bill creates a new type of trust, called a legacy trust. A legacy trust is an irrevocable trust that contains a spendthrift provision and that appoints at least one qualified trustee. Under the bill, a person, called a transferor, may create a legacy trust into which he or she may place assets that will be managed by the trustee. The transferor may also be a co-trustee or a beneficiary of the legacy trust. The terms of the trust may grant a transferor the power to remove and replace a trustee or advisor and to direct trust investments.

A person who places assets in a trust is a settlor. Under current law, generally, the assets of a settlor are subject to creditor claims. If the assets are placed in a revocable trust, the assets are subject to the claims of the settlor's creditors. If the assets are placed in an irrevocable trust and the trust is not for an individual with a disability, the court may, if the trust instrument requires or authorizes the trustee to make payments of income or principal to or for the settlor, order the trustee to satisfy part or all of a judgment out of payments from the trust.

Current law also provides a spendthrift provision, which is a term of a trust that restricts voluntary or involuntary transfers of a beneficiary's interest in the trust. Under current law, a spendthrift provision is valid only if the beneficiary is someone other than the settlor, or if the beneficiary is disabled. Under current law

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there are exceptions that provide that a spendthrift provision does not protect assets from claims for child support under any circumstance or claims for public support unless the beneficiary is disabled.

Under the bill, a legacy trust must have a spendthrift provision, and none of the current law restrictions to spendthrift trusts apply. Assets in a legacy trust are not subject to claims for public support, but they are subject to claims for child support. Additionally, under the bill, a creditor generally may not bring an action of any kind against a transferor, against a trustee of a legacy trust, or against any assets that are held by a legacy trust. There are three exceptions to this prohibition. First, an action may be brought if the transfer of the asset was made to hinder, delay, or defraud the creditor. Second, an action may be brought by a creditor who was a creditor of the transferor when the disposition was made if the creditor commences the action within the later of 18 months after the transfer or six months after the creditor discovers or reasonably should have discovered the transfer. Third, an action may be brought by a creditor who becomes a creditor after the transfer occurs if the creditor commences the action no later than 18 months after the transfer occurred. Under the bill, a creditor includes a person seeking to enforce a judgment entered by a court or other authorized adjudicative body. No other actions are permitted for any reason.

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

SECTION 1. Chapter 699 of the statutes is created to read:

CHAPTER 699

LEGACY TRUSTS

699.01 Definitions. In this chapter:

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

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

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

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

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

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

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

(3) “Beneficiary” has the meaning given in s. 701.0103 (3).

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

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

(6) “Debt” means liability on a claim.

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

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

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

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

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

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

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

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

(c) Expressly provide that the trust is irrevocable.

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

(10) “Lien” has the meaning given in s. 242.01 (8).

(11) “Nonlegacy trust” means a trust that is not a legacy trust.

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

(13) “Person” has the meaning given in s. 701.0103 (17).

(14) “Property” has the meaning given in s. 701.0103 (20).

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

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

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

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

(18) “Spendthrift provision” has the meaning given in s. 701.0103 (25).

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

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

699.015 Applicability. Unless the terms of a legacy trust provide otherwise, this chapter governs the construction, operation, and enforcement in this state of a legacy trust, whether created in this state or any other state, if any of the following applies:

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

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

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

(4) A qualified trustee of the legacy trust has the power to maintain records

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and prepare income tax returns for the trust, and all or part of the administration of the trust is performed in this state.

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

(2) Except as otherwise provided in this section, a spendthrift provision in a legacy trust restrains both voluntary and involuntary transfers of a transferor's interest in the legacy trust. A spendthrift provision in a legacy trust is enforceable under any applicable nonbankruptcy law within the meaning of 11 USC 541 (c) (2) regardless of whether the legacy trust instrument makes any reference to that enforceability. The terms of a legacy trust, including in a spendthrift provision, may provide for any other restraint of alienation that are permitted under the laws of this state.

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

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

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

699.03 Implied power to revoke or to transfer an interest in a legacy trust. None of the following is considered to be, including in combination, a power

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to revoke a legacy trust or to voluntarily or involuntarily transfer an interest in the legacy trust:

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

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

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

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

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

(6) A transferor's potential or actual receipt or use of principal or income of

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the legacy trust if the potential or actual receipt or use is the result of any of the following:

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

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

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

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

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

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

(10) That a qualified trustee, whether pursuant to the qualified trustee's

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discretion, the terms of the legacy trust, or the direction of an advisor pays any of the following:

- (a) A transferor's debt that is outstanding at the time of the transferor's death.
- (b) The expenses of administering the transferor's estate.
- (c) Any estate, gift, generation-skipping transfer, or inheritance tax on behalf of the transferor or the transferor's estate.

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

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

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

(2) Notwithstanding s. 699.03, the terms of a legacy trust may grant a transferor, whether or not the transferor is a trustee, the power to do any of the following:

- (a) Remove and replace a trustee.
- (b) Remove and replace an advisor.
- (c) Direct trust investments.

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(d) Execute any other managerial duties.

699.05 Limitations on actions, remedies, and claims. (1) In this section:

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

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

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

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

(2) Subject to sub. (3) and s. 699.10 (4), a creditor may not bring an action of any kind, including an action to enforce a judgment, an action at law or in equity, or an action for an attachment or other final or provisional remedy, against a person who made or received a qualified disposition, against a trustee of a legacy trust, or against or involving any property that is the subject of a qualified disposition or is otherwise held by a legacy trust, except that, subject to s. 699.06, a creditor may

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

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

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

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

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

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

(5) Subject to s. 699.10 (4), with respect to a qualified disposition, a creditor has only the rights and remedies that are provided in this section and s. 699.06.

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(6) Subject to sub. (8), an advisor may not be found liable for damages a person suffers in connection with a legacy trust unless the person demonstrates by clear and convincing evidence that the advisor's actions violated the laws of this state, that the advisor acted knowingly and in bad faith, and that the advisor's actions directly caused the damages suffered by the person.

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

(8) (a) Subject to s. 699.10 (4), no person may bring an action of any kind related to a qualified disposition if the period under sub. (3) in which a creditor may bring an action against the qualified disposition that is the basis of the action has expired.

(b) An action barred under par. (a) includes an action to enforce a judgment entered by a court or other authorized adjudicative body, in law or equity, against a trustee or advisor of a legacy trust or against any person involved in the counseling in connection with, or the drafting, preparation, execution, administration, or funding of a legacy trust. For purposes of this paragraph, "counseling in connection with, or the drafting, preparation, execution, administration, or funding of a legacy trust" includes any of those actions related to any limited partnership, limited liability company, corporation, or similar entity if the limited partnership interests,

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limited liability company interests, stock, or other similar ownership interests in the relevant entity are subsequently the subject of a qualified disposition.

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

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

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

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

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

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

699.06 Creditor claims against qualified dispositions. (1) If a creditor's claim against a qualified disposition under s. 699.05 is successful, in whole or in part, all of the following apply:

(a) The creditor may recover damages from trust assets only to the extent

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necessary to satisfy a transferor's debt to the creditor and any part of the qualified disposition that is not used to satisfy the debt remains subject to the legacy trust.

(b) Any other qualified disposition to a trustee of the legacy trust and the legacy trust remain valid, including a qualified disposition of a partial, co-ownership, or undivided interest in property by a transferor whose transfer was the subject of a creditor claim under s. 699.05.

(c) If a court is satisfied that the trustee did not act in bad faith in accepting or administering the property that was the subject of the claim under s. 699.05, all of the following apply:

1. The trustee has a first lien against the property that was the subject of the claim under s. 699.05 in an amount equal to the entire cost, including attorney fees, properly incurred by the trustee in defense of the action or proceedings against the qualified disposition.

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

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

(e) 1. For purposes of par. (c), a trustee is not considered to have acted in bad

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faith solely because the trustee accepted the property that is the subject of the recoverable qualified disposition.

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

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

(2) A court shall award costs and reasonable attorney fees to a prevailing party in a final judgment in an action that is wholly or partially brought under this section or s. 699.05.

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

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

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

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

699.09 Discretionary interest not property of a beneficiary. No person, including a beneficiary, has a property interest in property of a legacy trust to the extent that the distribution of that property is subject to the discretion of a

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qualified trustee or advisor, whether acting alone or in conjunction with another person, including a person authorized to veto a distribution from the legacy trust.

699.10 Miscellaneous provisions. (1) If there is a conflict between a provision of this chapter and s. 242.07, the provision of this chapter shall control.

(2) A statement in a trust instrument that the trust is governed by “the laws of this state” or a statement to similar effect is considered to expressly designate the laws of this state to govern the validity, construction, and administration of the trust and satisfies s. 699.01 (9) (b).

(3) A disposition by a nonqualified trustee to a qualified trustee of a legacy trust is not disqualified from being a qualified disposition on the sole basis that the nonqualified trustee is a trustee of a trust that is a nonlegacy trust.

(4) A valid lien that is attached to property before the property is the subject of a qualified disposition survives the disposition, and the trustee of the legacy trust takes the property subject to the lien and subject to any agreements that created or perfected the lien. Nothing in this chapter may be construed to authorize any disposition that is prohibited by the terms of an agreement, note, guaranty, mortgage, indenture, instrument, undertaking, or other document.

(5) A trust administered under the laws of another state or a foreign jurisdiction is considered to be a legacy trust if all of the following apply:

(a) The trustee of the trust complies with the requirements in the trust instrument and any applicable requirements under the laws of the state or foreign jurisdiction in which the trust is being administered.

(b) 1. The trustee or other person having the power to transfer the domicile of

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the trust declares in writing that the trustee or other person intends to transfer the domicile of the trust to this state.

2. If the person making the declaration under subd. 1. is a person other than the trustee, the declaration is delivered to the trustee.

(c) At the time of or immediately following the transfer of the trustee to this state, the trust satisfies the definition of a legacy trust under this chapter.

SECTION 2. Initial applicability.

(1) This act first applies to qualified dispositions made on the effective date of this subsection.

(END)