WISCONSIN STATE SENATE
DAN KNODL
STATE SENATOR • 8TH DISTRICT

Senate Bill 667
Public Testimony
Senate Committee on Shared Revenue, Elections, and Consumer Protection
December 18, 2023

Thank you, members of the committee, for hearing my testimony in favor of Senate Bill 667.

We are here today to bring legacy trusts to Wisconsin. In some states, these are known as self-settled trusts or domestic asset protection trusts. In all cases, these trusts allow for the grantor to serve as the beneficiary of the trust.

This arrangement will modernize our wealth management laws to make Wisconsin competitive with other states in the trust market. If this bill passes, Wisconsin will join the growing list of both red and blue states that have adopted legacy trusts. The first state to do so was Alaska back in 1997. In drafting this legislation, we drew heavily from the experience of the states with the greatest success stories: Ohio, Delaware, South Dakota, and Nevada.

These states have decades of experience with these trusts. Along with my remarks, I have submitted testimony we have received from experts in states that have enacted this legislation. They can attest to the value of this arrangement for both the individual as well as the broader economy. You will also hear shortly from experienced attorneys in this field who can elaborate on why this wealth management tool will benefit our state.

Legacy trusts have a number of valuable applications. One of the most common uses is as an alternative to a prenuptial agreement. Legacy trusts can provide a way for the growing number of individuals remarrying late in life to retain control of their assets will pass them on to their adult children.

I would like to elaborate on a few details of this legislation. First, the bill includes a lookback period of eighteen months. This will prevent individuals from making fraudulent conveyances intended to defraud expected creditors. These trusts are only intended to serve legacy planning for unforeseen circumstances. Our legislation also ensures that assets in these trusts are not shielded against child support claims. It is also important to note that legacy trusts do not protect assets in cases of bankruptcy.

While half of our fellow states have passed this legislation, our neighboring states of Illinois, Iowa, and Minnesota have not. This presents Wisconsin with an opportunity to capture their business. Assets placed in Wisconsin-based legacy trusts will become part of our tax base, and the increased volume of business will benefit our financial services sector.

I would like to thank Representative O'Connor for leading this bill in the Assembly side, as well as the attorneys you will hear from shortly whose hard work made this legislation possible. Thank you for your time, and I would be happy to answer any questions you may have.

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Testimony for the Senate Committee on Shared Revenue, Elections, and Consumer Protection
SB- 667 Domestic Asset Protection Trusts (Legacy Trust)
December 19, 2023

Thank you Mister Chair and to the Committee members for the opportunity to share the goal of Senate Bill #667 which is designed to provide a new level of opportunity for wealth preservation in the form referred to as a Legacy Trust.

Today's commonly utilized trusts provide significant asset protection because they contain certain provisions preventing creditors from reaching the beneficiaries' interest in the trust. However, current law also presents a challenge for the transferor, which this bill will address.

Current Wisconsin law requires that the settlor (the one who transfers their assets into the Trust) cannot also be a beneficiary under the terms of an Irrevocable Trust. The parties transferring the assets to the Trust must choose between the one who controls the Trust or being a beneficiary. They cannot be both and therein lies a conflict. We can probably identify many individuals who would prefer to retain control both as a Trustee and as a beneficiary.

I am one. Today I am married to Luanne following the passing of our respective spouses. We each brought our various assets into our marriage. We are in the process of creating a Trust but are suspending this process since we find the benefits of the Legacy Trust preferential to existing law. For others, this tool is also particularly valuable as an alternative to a prenuptial agreement.

A Legacy Trust will protect the estate's assets transferred into the Trust from various claims, subject to an 18-month lookback, which will protect legitimate creditor claims. The language of the Trust will protect creditors from pre-existing debts, judgments, or other claims as outlined in the language of this bill. The bill's language protects child support claims and does not provide protection for the transfer of assets in a fraudulent manner

Twenty other states have enacted legislation enabling these trusts, with bipartisan support in both red and blue states. Examples include Ohio, where it passed unanimously, and Hawaii, where it passed 71-1.

Legacy trusts are growing in popularity, and the longer Wisconsin waits to adopt this legislation, the more ground we will lose to other states in this emerging and competitive market. An estimated $2 billion in assets are currently held in legacy trusts in the state of Delaware alone. We have testimony from other states that illustrate how much money is being transferred into Legacy Trusts.

As an early adopter of this legislation in the upper Midwest, Wisconsin will stand to both benefit our citizens but also attract business from the regional and national trust market. We will also retain assets that might otherwise end up in other states with more favorable trust laws. Our state's financial services sector as well as our income tax base will benefit as a result.

Thank you to Senator Knodl for bringing this opportunity to our attention. We would be happy to take your questions,

Jonathan G. Blattmachr
Alaska

I drafted the first self-settled trust legislation in the United States. It was adopted in Alaska in 1997. One newspaper article said it was the most important development in Estate Planning in a decade. My goal in seeking this legislation was two-fold. First, I wanted a jurisdiction in the United States that would permit an individual to be able to create a trust for himself or herself without subjecting the property to claims of the creditors of the person creating the trust provided the person was not attempting to defraud a known creditor. I wanted this because Federal tax law held that the property would permanently be included in the individual's gross estate for estate tax purposes if his or her creditors could attach the trust property. Second, although there were some jurisdictions outside of America that permitted that, I did not want assets to be placed outside of the United States. The estate planning business in Alaska for Alaskans and for families in other states has blossomed by this legislation. I have been advised that hundreds of jobs in Alaska have been created on account of this legislation.

Stephen J. Oshins
Nevada

You asked me how self-settled trusts have been beneficial for the State of Nevada. Nevada has now had this legislation for roughly 24 years. I can tell you it has been spectacular for the State of Nevada in that it has created a lot more trusts here, which in turn has created a whole lot of jobs for trust officers, estate planning attorneys and accountants, and related fields. It also keeps our residents (and their assets) here since many of them would otherwise leave the State of Nevada and go live in one of the 21 states that does allow these types of trusts.

I can tell you that I have personally referred roughly 4,000 trusts to my preferred trust company here in Nevada over roughly 22 years - and of those 4,000 trusts, my guess is that 60% to 80% of them (call it 3,000) are either regular self-settled asset protection trusts or a version of this trust that I call a "Hybrid" self-settled trust where it can be turned into such a trust.

Without hesitation, I can confirm that the authority to do self-settled trusts in Nevada has been great for my business, has been great for other professionals, has been great for the State of Nevada - and most importantly, we have helped a lot of people in the process.

Al W. King III
South Dakota

I have been in the trust industry for over 33 years. My trust career includes the establishment of a State chartered South Dakota Trust Company within a global money center bank as well as Co – Founding my own trust company 21 years ago, which has grown to $140 billion in assets under administration. My Co-founder and I have been actively involved in the development of South Dakota modern trust legislation since 1995. South Dakota has been a leader in the modern trust industry along with Alaska, Delaware, Nevada and Wyoming. The modern trusts laws have been very good for the State of South Dakota resulting in the creation of many job opportunities as well as additional business for the law firms, CPA firms, banks, investment firms and others.

Self-settled legislation has been present in the United States since 1997 with Alaska being the first state to pass such legislation. South Dakota followed suit in 2005, as have more than 17 other states since Alaska. During that time, countless individuals and families have been able to benefit from the structuring allowed for by such legislation, not only in the form of wealth protection, but mostly from its critical use in legacy planning. Many self-settled trusts are established as irrevocable dynasty trusts (i.e. excluded from the estate). The self-settled trust statute allows a trust grantor to be a permissible discretionary beneficiary of an irrevocable trust excluded from their estate. With the federal estate, gift and generation-skipping transfer tax exemptions at $13.61m per person in 2024, many families gain comfort knowing that they can efficiently gift away their assets to the next generations while also potentially being a permissible discretionary beneficiary in the remote case of hardship down the road. This powerful giving and legacy planning is often the critical component that allows lifetime giving to the next generation for families who may not otherwise feel comfortable doing so during their lifetime. In many cases, those families that do not have access to self-settled legislation, are left to legacy planning at death (i.e. once they are no longer with those in which they wish to provide for and guide). Additionally, while wealth preservation is also a critical component of self-settled planning, these trusts are generally not meant to avoid or remove existing creditors or obligations that are in place at the time they are established. Instead, self-settled trusts are typically meant to provide protection for an unforeseen unknown. As such, self-settled legislation would provide Wisconsin families powerful planning opportunities for their legacy, not only for today, but for generations to come.

Self-settled trusts can also be a very important part of a client's legacy planning allowing them to preserve and protect important family values. Many people do not know the names of their great great grandparents or even the names of their great grandparents. Not knowing or remembering the great grandparents names may be important to some, but not knowing or remembering family values is very important to a vast majority of families. The New York Times reported that 75% of people would like their family values to stay with the family wealth i.e. inheritance. More than $70 trillion is due to pass from Baby Boomers to Millennials and Generation Z. 61% of Baby Boomer parents are not confident that their children are able to handle their inheritance. The self-settled trust provides an important solution allowing grantors to feel comfortable making lifetime gifts to irrevocable trusts thus allowing them to mentor their families by promoting both fiscal and social responsibility in the family.

The increases in the S & P 500 as well as real estate has put many baby boomers in a position to want to "give while living" versus waiting until death. The self-settled trust along with the high Federal estate, gift and generation skipping tax exemption allows them to accomplish this goal. As a permissible beneficiary of the trust, the grantor can access the trust for hardship distributions, if needed. This gives the grantor more comfort to gift to trusts irrevocably while they are alive in order to get the many non-tax benefits. One very important non-tax benefit is the ability of the self-settled trust to make distributions to charities. This is very important to many families.

Trust planning can provide for both intergenerational family needs and desires as well as encourage behaviors in future generations that are consistent with family values. The self-settled

trust terms, combined with the ability of senior family members to mentor junior family members, provide a roadmap to perpetuate family goals and instruct subsequent generations about the values the family holds in high regard, all allowing for both the protection and purpose for the family assets. Consequently, the self-settled trust allows inheritance to be a process not an event.