

1 **AN ACT** *to renumber and amend* 70.11 (4); *to amend* 70.11 (4) and 70.11 (4); and *to*
2 *create* 70.11 (4c) and 70.11 (4) (a) of the statutes; **relating to:** defining a benevolent
3 retirement home for the aged for the purpose of qualifying for an exemption from the
4 property tax.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council's Special Committee on Tax Exemptions for Residential Property (Columbus Park).

Under current law, s. 70.11 (4), stats., generally exempts from the property tax property owned and used exclusively by educational institutions, churches, and religious, educational, or benevolent associations, including benevolent nursing homes and retirement homes for the aged, women's clubs, historical societies, and certain library associations and fraternal societies.

Prior to 1969, the word "benevolent" was interpreted as requiring charity, meaning providing services without regard to ability to pay. [*St. Joseph's Hospital Assoc. v. Ashland County* (1897), 96 Wis. 636, 639, 72 N. W. 43.] In 1969, the Wisconsin supreme court issued an interpretation of the term "benevolent" as it is used in s. 70.11 (4), in the case *Milwaukee Protestant Home v. City of Milwaukee*, 41 Wis. 2d 284, 164 N.W.2d 289 (1969). The court stated that the word "benevolent" has no in-built implication or requirement of almsgiving. The court said that to help retired persons of moderate means live out their remaining years is "benevolent" whether or not it is also considered, as we would consider it to be "charitable".

The legislature has not required that a benevolent association maintaining a retirement home for the aged and operating it not for profit must extend free services to at least some of its residents. Under s. 70.11, stats., it is the basic nature of the institution and the dominant purpose of the operation that controls.

Persistent confusion over the meaning of the word "benevolent" led to the formation of a task force within the department of revenue, the benevolent retirement home for the aged task force. The task force was

directed to examine the property tax exemption for benevolent retirement homes and all problems associated with it. The task force was unable to come to an agreement defining the term “benevolent”.

This draft presents 3 alternative ways of defining “benevolent retirement home for the aged” for the purpose of qualifying for an exemption from property taxation.

[ALTERNATIVE 1]

SECTION 1. 70.11 (4) of the statutes is amended to read:

70.11 (4) EDUCATIONAL, RELIGIOUS AND BENEVOLENT INSTITUTIONS; WOMEN’S CLUBS; HISTORICAL SOCIETIES; FRATERNITIES; LIBRARIES. Property owned and used exclusively by educational institutions offering regular courses 6 months in the year; or by churches or religious, educational or benevolent associations, including benevolent nursing homes and retirement homes for the aged but, community-based residential facilities, and residential care apartment complexes, but not including retirement homes for the aged, except as described in sub. (4c), and not including an organization that is organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance organization as defined in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that offers a health maintenance organization or a limited service health organization and not including property owned by any nonstock, nonprofit corporation which services guaranteed student loans for others or on its own account, and also including property owned and used for housing for pastors and their ordained assistants, members of religious orders and communities, and ordained teachers, whether or not contiguous to and a part of other property owned and used by such associations or churches; or by women’s clubs; or by domestic, incorporated historical societies; or by domestic, incorporated, free public library associations; or by fraternal societies operating under the lodge system (except university, college and high school fraternities and sororities),

1 but not exceeding 10 acres of land necessary for location and convenience of buildings while
2 such property is not used for profit. Property owned by churches or religious associations
3 necessary for location and convenience of buildings, used for educational purposes and not
4 for profit, shall not be subject to the 10-acre limitation but shall be subject to a 30-acre
5 limitation. Property that is exempt from taxation under this subsection and is leased remains
6 exempt from taxation only if, in addition to the requirements specified in the introductory
7 phrase of this section, the lessee does not discriminate on the basis of race.

8 **SECTION 2.** 70.11 (4c) of the statutes is created to read:

9 70.11 (4c) CHARITABLE RETIREMENT HOMES FOR THE AGED. Property owned by a
10 nonprofit organization and exclusively used as a charitable retirement home for the aged, but
11 not exceeding 10 acres of land necessary for the location and convenience of buildings while
12 such property is not used for profit. In this subsection:

13 (a) "Charitable retirement home for the aged" means a housing facility that provides
14 charitable services, including a housing facility above the level of room and board for 5 or
15 more persons that meets the requirements under s. 106.50 (1m) (m) and (5m) (a) 1., and that
16 charges for a reasonable percentage of the services based on the ability to pay.

17 (b) "Charitable service" means a service that is such service to the community that its
18 discontinuation by the provider may result in the allocation of public funds so that it can be
19 continued.

20 (c) "Nonprofit organization" means an organization that is described in section 501 (c)
21 (3) of the Internal Revenue Code and that is exempt from federal income tax under section 501
22 (a) of the Internal Revenue Code.

NOTE: Alternative 1 deletes the property tax exemption for benevolent retirement homes for the aged that is present in current s. 70.11 (4) of the statutes. This alternative retains the property tax exemption for

benevolent nursing homes, and further specifies that benevolent community-based residential facilities and benevolent residential care apartment complexes are also exempt from property taxation.

This alternative also provides that charitable retirement homes for the aged are exempt only as provided in newly created s. 70.11 (4c). Under this exemption, property owned and used by a nonprofit organization and used exclusively as a charitable retirement home for the aged would be eligible for a property tax exemption. A charitable retirement home for the aged is defined in the draft as a housing facility that provides charitable services, including a housing facility above the level of room and board for 5 or more persons that meets the requirements under s. 106.50 (1m) (m) and (5m) (a) 1., and that charges for a reasonable percentage of the services based on the ability to pay.

[ALTERNATIVE 2]

SECTION 3. 70.11 (4) of the statutes is renumbered 70.11 (4) (b) and amended to read:

70.11 (4) (b) EDUCATIONAL, RELIGIOUS AND BENEVOLENT INSTITUTIONS; WOMEN'S CLUBS; HISTORICAL SOCIETIES; FRATERNITIES; LIBRARIES. Property owned and used exclusively by educational institutions offering regular courses 6 months in the year; or by churches or religious, educational or benevolent associations, including benevolent ~~nursing homes and~~ retirement homes for the aged as defined in par. (a) but not including an organization that is organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance organization as defined in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that offers a health maintenance organization or a limited service health organization and not including property owned by any nonstock, nonprofit corporation which services guaranteed student loans for others or on its own account, and also including property owned and used for housing for pastors and their ordained assistants, members of religious orders and communities, and ordained teachers, whether or not contiguous to and a part of other property owned and used by such associations or churches; or by women's clubs; or by domestic,

1 incorporated historical societies; or by domestic, incorporated, free public library
2 associations; or by fraternal societies operating under the lodge system (except university,
3 college and high school fraternities and sororities), but not exceeding 10 acres of land
4 necessary for location and convenience of buildings while such property is not used for profit.
5 Property owned by churches or religious associations necessary for location and convenience
6 of buildings, used for educational purposes and not for profit, shall not be subject to the
7 10-acre limitation but shall be subject to a 30-acre limitation. Property that is exempt from
8 taxation under this subsection and is leased remains exempt from taxation only if, in addition
9 to the requirements specified in the introductory phrase of this section, the lessee does not
10 discriminate on the basis of race.

11 **SECTION 4.** 70.11 (4) (a) of the statutes is created to read:

12 70.11 (4) (a) In this subsection, a “benevolent retirement home for the aged” means
13 property owned by a nonprofit organization that provides housing for 5 or more persons,
14 which may provide care or services that are above the level of room and board, is exempt from
15 federal taxation under section 501 (c) of the Internal Revenue Code, and is either:

16 1. A not-for-profit nursing home, community-based residential facility, or residential
17 care apartment complex.

18 2. A senior housing facility that meets the requirements for housing for older persons
19 under s. 106.50 (1m) (m) and (a) 1. and satisfies the requirements under Revenue Ruling
20 72-174 of the Internal Revenue Service.

NOTE: Alternative 2 is based on a suggestion submitted by public member John Sauer. It creates a definition of “benevolent retirement home for the aged” in s. 70.11 (4). Under the newly created definition, a “benevolent retirement home for the aged” means property owned by a nonprofit organization that provides housing for 5 or more persons, which may provide care or services that are above the level of room and

board, is exempt from federal taxation under section 501 (c) of the Internal Revenue Code, and is either:

1. A not-for-profit nursing home, community-based residential facility, or residential care apartment complex.
2. A senior housing facility that meets the requirements for housing for older persons under s. 106.50 (1m) (m) and (a) 1. and satisfies the requirements under Revenue Ruling 72-174 of the Internal Revenue Service.

[ALTERNATIVE 3]

SECTION 5. 70.11 (4) of the statutes is amended to read:

70.11 (4) EDUCATIONAL, RELIGIOUS AND BENEVOLENT INSTITUTIONS; WOMEN'S CLUBS; HISTORICAL SOCIETIES; FRATERNITIES; LIBRARIES. Property owned and used exclusively by educational institutions offering regular courses 6 months in the year; or by churches or religious, educational or benevolent associations, including benevolent nursing homes and retirement homes for the aged if those retirement homes for the aged are not operated for profit and include in at least 50% of their occupied units persons whose household income, as defined in s. 71.52 (5) and (6), for the taxable year that ends before the January 1 assessment does not exceed the maximum income allowed for claiming the homestead credit under subch. VIII of ch. 71 but not including an organization that is organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance organization as defined in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that offers a health maintenance organization or a limited service health organization and not including property owned by any nonstock, nonprofit corporation which services guaranteed student loans for others or on its own account, and also including property owned and used for housing for pastors and their ordained assistants, members of religious orders and communities, and ordained teachers, whether or not contiguous to and a part of other property owned and used by such associations

1 or churches; or by women's clubs; or by domestic, incorporated historical societies; or by
2 domestic, incorporated, free public library associations; or by fraternal societies operating
3 under the lodge system (except university, college and high school fraternities and sororities),
4 but not exceeding 10 acres of land necessary for location and convenience of buildings while
5 such property is not used for profit. Property owned by churches or religious associations
6 necessary for location and convenience of buildings, used for educational purposes and not
7 for profit, shall not be subject to the 10-acre limitation but shall be subject to a 30-acre
8 limitation. Property that is exempt from taxation under this subsection and is leased remains
9 exempt from taxation only if, in addition to the requirements specified in the introductory
10 phrase of this section, the lessee does not discriminate on the basis of race.

NOTE: Alternative 3 is based on a proposal from 1995 by the department of revenue that would limit the exemption for benevolent retirement homes for the aged to homes that are not operated for profit, and would have at least 50% of their units be occupied by persons whose income does not exceed the maximum income allowed for claiming the homestead tax credit.