



**ASSEMBLY AMENDMENT 3,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 645**

January 20, 1998 - Offered by Representative GREEN.

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 6, line 6: after that line insert:

3 **"SECTION 17m.** 701.065 of the statutes is created to read:

4 **701.065 Debts of decedents. (1) LIMITATIONS ON CLAIMS.** (a) 1. A trustee who
5 has a duty or power to pay the debts of a decedent may publish in the county in which
6 the decedent resided, as a class 3 notice, under ch. 985, a deadline for filing claims
7 with the trustee. The deadline shall be the date that is 4 months after the date of
8 the first insertion of the notice.

9 2. Except as provided in pars. (b) and (c), if the trustee satisfies the
10 requirements for the publication of the notice under subd. 1., all claims, including
11 claims of the state and any subdivision thereof, whether due or to become due,
12 absolute or contingent, liquidated or unliquidated, are barred against the trustee,

1 the trust property and any recipient of trust property unless filed with the trustee
2 on or before the date specified in the notice under subd. 1.

3 (b) Notwithstanding par. (a) 2., a claim that is not filed on or before the date
4 specified in the notice under par. (a) 1. is not barred if any of the following apply:

5 1. The claim is a claim based on tort, on a marital property agreement that is
6 subject to the time limitations under s. 766.58 (13) (b) or (c), on Wisconsin income,
7 franchise, sales, withholding, gift or death taxes, or on unemployment compensation
8 contributions due or benefits overpaid, a claim for funeral or administrative
9 expenses, a claim of this state under s. 46.27 (7g), 49.496 or 49.682 or a claim of the
10 United States.

11 2. All of the following circumstances exist:

12 a. On or before the date specified in the notice under par. (a) 1., the trustee
13 knew, or in the exercise of reasonable diligence should have known, of the existence
14 of the potential claim and of the identity and mailing address of the potential
15 claimant.

16 b. At least 30 days before the date specified in the notice under par. (a) 1., the
17 trustee had not given notice to the potential claimant of the final day for filing his
18 or her claim.

19 c. At least 30 days before the date specified in the notice under par. (a) 1., the
20 claimant did not have actual knowledge of the date on which the claim would be
21 barred.

22 (c) If an action is pending against a decedent at the time of his or her death and
23 the action survives, the plaintiff in that action may serve a notice of substitution of
24 party defendant on the trustee and file proof of service of notice in the court. Filing
25 of proof of service on or before the deadline for filing a claim under par. (a) 1. gives

1 the plaintiff the same rights against the trust as the filing of a claim. A judgment
2 in any such action constitutes an adjudication for or against the trust.

3 **(2) EFFECT OF STATUTE OF LIMITATIONS.** A trustee shall not pay a claim that was
4 barred by a statute of limitations at the time of the decedent's death. A claim not
5 barred by a statute of limitations at the time of the decedent's death shall not be
6 barred thereafter by a statute of limitations if the claim is filed with the trustee on
7 or before the deadline for filing a claim under sub. (1) (a) 1.

8 **(3) CLAIMS OF CREDITORS WITHOUT NOTICE.** (a) A claim not barred by sub. (1) (a)
9 2. because of the operation of sub. (1) (b) 2. may be enforced against trust property
10 only as provided in this subsection.

11 (b) The claimant shall file the claim with the trustee within one year after the
12 decedent's death and within 30 days after the earlier of the following:

13 1. The date that the trustee gives notice to the potential claimant of the
14 deadline for filing a claim under sub. (1) (a) 1.

15 2. The date that the claimant first acquires actual knowledge of the deadline
16 for filing a claim under sub. (1) (a) 1.

17 (c) The claimant shall have the burden of establishing by the greater weight
18 of the credible evidence that all of the circumstances under sub. (1) (b) 2. existed.

19 (d) This subsection does not extend the time for commencement of a claim
20 beyond the time provided by any statute of limitations applicable to that claim.

21 **(4) SATISFACTION OF CLAIM FROM OTHER PROPERTY.** Failure of a claimant timely
22 to file a claim as provided in this section does not bar the claimant from satisfying
23 the claim, if not otherwise barred, from property other than trust property.”

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(END)