



**SENATE AMENDMENT 1,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2001 SENATE BILL 109**

March 11, 2002 – Offered by COMMITTEE ON JUDICIARY, CONSUMER AFFAIRS, AND
CAMPAIGN FINANCE REFORM.

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

2 **1.** Page 1, line 5: delete “and providing” and substitute “providing”.

3 **2.** Page 1, line 6: after “estates” insert “; and authorizing the conversion of a
4 trust to a unitrust”.

5 **3.** Page 4, line 7: after that line insert:

6 “**SECTION 5c.** 66.0603 (1m) (b) of the statutes, as affected by 2001 Wisconsin Act
7 30, is amended to read:

8 66.0603 (1m) (b) A town, city, or village may invest surplus funds in any bonds
9 or securities issued under the authority of the municipality, whether the bonds or
10 securities create a general municipality liability or a liability of the property owners
11 of the municipality for special improvements, and may sell or hypothecate the bonds
12 or securities. Funds of an employer, as defined by s. 40.02 (28), in a deferred

1 compensation plan may also be invested and reinvested in the same manner
2 authorized for investments under s. 881.01 (1). Funds of any school district
3 operating under ch. 119, held in trust for pension plans intended to qualify under
4 section 401 (a) of the Internal Revenue Code, other than funds held in the public
5 employee trust fund, may be invested and reinvested in the same manner as is
6 authorized for investments under s. 881.01.

7 “SECTION 5r. 701.12 (3) of the statutes is amended to read:

8 701.12 (3) Nothing in this section shall prevent revocation, modification, or
9 termination of a trust pursuant to its terms or otherwise in accordance with law or
10 prevent conversion of a trust to a unitrust under s. 701.20 (4g).”.

11 **4.** Page 4, line 9: delete “**Principal and income**” and substitute “**Revised**
12 **principal and income act**”.

13 **5.** Page 9, line 21: after “(4)” insert “(a)”.

14 **6.** Page 11, line 9: after that line insert:

15 “**(4g)** CONVERSION TO UNITRUST. (a) Subject to par. (d), a trust may be converted
16 to a unitrust in any of the following ways:

17 1. By the trustee, at his or her own discretion or at the request of a beneficiary,
18 if all of the following apply:

19 a. Subject to sub. (3), the trustee determines that the conversion will enable the
20 trustee to better carry out the purposes of the trust.

21 b. The trustee provides notice in the same manner as provided in sub. (4c) (b)
22 1. of the trustee’s intention to convert the trust to a unitrust, and the notice advises
23 how the unitrust will operate, including the fixed percentage under par. (c) 1. and any
24 other initial determinations under par. (c) 4. that the trustee intends to follow.

1 c. There is at least one sui juris beneficiary who is an income beneficiary who
2 is currently eligible to receive income from the trust and at least one other sui juris
3 beneficiary who is a remainder beneficiary who would receive, if no powers of
4 appointment were exercised, a distribution of principal if the trust were to terminate
5 immediately before the notice under subd. 1. b. is given.

6 d. Every sui juris beneficiary consents to the conversion to a unitrust in a
7 writing delivered to the trustee.

8 e. The terms of the trust describe the amount that may or must be distributed
9 by referring to the trust income.

10 f. The trustee invests and manages the trust assets as provided in s. 881.01.

11 2. By a court on the petition of the trustee or a beneficiary, if all of the following
12 apply:

13 a. The trustee or beneficiary has provided notice under sub. (4c) of the intention
14 to request the court to convert the trust to a unitrust, and the notice advises how the
15 unitrust will operate, including the fixed percentage under par. (c) 1. and any other
16 initial determinations under par. (c) 4. that will be requested.

17 b. The court determines that the conversion to a unitrust will enable the trustee
18 to better carry out the purposes of the trust.

19 (b) In deciding whether to convert the trust to a unitrust under par. (a) 1., the
20 trustee shall consider all relevant factors under sub. (4) (b) 1. to 9.

21 (c) 1. If a trust is converted to a unitrust under this subsection by the trustee
22 or a court, notwithstanding sub. (3) (a) 1. and 4. and s. 701.21 (4) the trustee shall
23 make distributions in accordance with the creating instrument, except that any
24 reference in the creating instrument to "income" shall be construed to mean a fixed
25 percentage of the net fair market value of the unitrust's assets, whether such assets

1 otherwise would be considered income or principal under this section, averaged over
2 the preceding 3 years or the period since the original trust was created, whichever
3 is less.

4 2. a. Subject to subd. 2. b., if the trust is converted to a unitrust under par. (a)
5 1., the fixed percentage to be applied under subd. 1. shall be determined by the
6 trustee and stated in the notice under par. (a) 1. b. If the trust is converted to a
7 unitrust under par. (a) 2., the fixed percentage to be applied under subd. 1. shall be
8 determined by the court.

9 b. Any fixed percentage under subd. 1. that is determined by a trustee may not
10 be less than 3% nor more than 5%.

11 3. After a trust is converted to a unitrust, the trustee may, subject to the notice
12 requirement under sub. (4c) and with the consent of every sui juris beneficiary, do
13 any of the following:

14 a. Convert the unitrust back to the original trust under the creating
15 instrument.

16 b. Change the fixed percentage under subd. 1., subject to subd. 2. b.

17 4. After a trust is converted to a unitrust, a trustee may determine or change
18 any of the following:

19 a. The frequency of distributions during the year.

20 b. Standards for prorating a distribution for a short year in which a
21 beneficiary's right to payments commences or ceases.

22 c. The effect on the valuation of the unitrust's assets of other payments from,
23 or contributions to, the unitrust.

24 d. How, and how frequently, to value the unitrust's assets.

25 e. The valuation dates to use.

1 f. Whether to omit from the calculation of the value of the unitrust's assets
2 unitrust property occupied by or in the possession of a beneficiary.

3 g. Any other matters necessary for the proper functioning of the unitrust.

4 5. The trustee may not deduct from a unitrust distribution expenses that would
5 be deducted from income if the trust were not a unitrust.

6 6. Unless otherwise provided by the creating instrument, a unitrust
7 distribution shall be paid as follows:

8 a. First, from net income, determined as if the trust were not a unitrust.

9 b. Next, to the extent that net income under subd. 6. a. is insufficient, from net
10 realized short-term capital gains.

11 c. Next, to the extent that net income under subd. 6. a. and short-term capital
12 gains under subd. 6. b. are insufficient, from net realized long-term capital gains.

13 d. Next, to the extent that net income under subd. 6. a., short-term capital
14 gains under subd. 6. b., and net realized long-term capital gains under subd. 6. c. are
15 insufficient, from principal.

16 7. A court may, on the petition of the trustee or a beneficiary, do any of the
17 following:

18 a. Change the fixed percentage under subd. 1. that was determined by the
19 trustee or by a prior court order.

20 b. If necessary to preserve a tax benefit, provide for a distribution of net income,
21 determined as if the trust were not a unitrust, that exceeds the unitrust distribution.

22 c. Average the valuation of the unitrust's assets over a period other than that
23 specified in subd. 1.

24 d. Require the unitrust to be converted back to the original trust under the
25 creating instrument.

1 8. Conversion to a unitrust under this subsection does not affect a provision in
2 the creating instrument that directs or authorizes the trustee to distribute principal
3 or that authorizes a beneficiary to withdraw a portion or all of the principal.

4 (d) 1. A trust may not be converted under this subsection to a unitrust if any
5 of the following applies:

6 a. The creating instrument specifically prohibits the conversion.

7 b. Payment of the unitrust distribution will change the amount payable to a
8 beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

9 c. The unitrust distribution will be made from any amount that is permanently
10 set aside for charitable purposes under the creating instrument and for which a
11 federal estate or gift tax deduction has been taken, unless both income and principal
12 are so set aside.

13 d. Converting to a unitrust will cause an individual to be treated as the owner
14 of all or part of the trust for federal income tax purposes and the individual would
15 not be treated as the owner if the trust were not converted.

16 e. Converting to a unitrust will cause all or a part of the trust assets to be
17 subject to federal estate or gift tax with respect to an individual and the trust assets
18 would not be subject to federal estate or gift tax with respect to the individual if the
19 trust were not converted.

20 f. Converting to a unitrust will result in the disallowance of a federal estate or
21 gift tax marital deduction that would be allowed if the trust were not converted.

22 g. A trustee is a beneficiary of the trust.

23 2. Notwithstanding subd. 1., if a trust may not be converted to a unitrust solely
24 because subd. 1. g. applies to a trustee, a cotrustee, if any, to whom subd. 1. g. does
25 not apply may convert the trust to a unitrust under par. (a) 1., unless prohibited by

1 the creating instrument, or a court may convert the trust to a unitrust under par. (a)
2 2. on the petition of a trustee or beneficiary.

3 (e) 1. Nothing in this subsection requires a trustee to convert a trust to a
4 unitrust under par. (a) 1. A trustee may not be held liable for choosing not to convert
5 a trust to a unitrust, or for not considering whether to convert a trust to a unitrust,
6 under par. (a) 1.

7 2. In a court proceeding related to a trustee's conversion or nonconversion of
8 a trust to a unitrust, the sole remedy is to direct, deny, or revise the conversion of the
9 trust to a unitrust.”.

10 **7.** Page 34, line 16: after that line insert:

11 **“(31) LIMITS ON LIABILITY.** (a) If a trustee sends to all beneficiaries a written
12 communication relating to the trust, any action against the trustee that is based on
13 the subject of the written communication shall be commenced within 2 years after
14 the trustee sends the written communication or be barred.

15 (b) 1. A written communication is sent to a sui juris beneficiary on the date on
16 which the written communication is delivered personally to the sui juris beneficiary
17 or on the date on which the written communication is postmarked if mailed to the
18 sui juris beneficiary at his or her last-known address.

19 2. A written communication is sent to a beneficiary who is not a sui juris
20 beneficiary on the date on which the written communication is delivered personally
21 to the beneficiary's parent or legal guardian or on the date on which the written
22 communication is postmarked if mailed to the beneficiary's parent or legal guardian
23 at his or her last-known address.

1 (c) The identity of all of the beneficiaries shall be determined on the date on
2 which the written communication is sent.

3 (d) Paragraph (a) does not apply to an action based on fraud or
4 misrepresentation with respect to the written communication.

5 **SECTION 6m.** 701.21 (1) of the statutes is amended to read:

6 701.21 (1) DISTRIBUTION OF INCOME. ~~Where~~ Except as otherwise determined by
7 the trustee or a court under s. 701.20 (4g) with respect to unitrust distributions, if
8 a beneficiary is entitled to receive income from a trust, but the creating instrument
9 fails to specify how frequently it is to be paid, the trustee shall distribute at least
10 annually the income to which such beneficiary is entitled.”.

11 **8.** Page 35, line 1: delete lines 1 to 8 and substitute:

12 “701.24 (2) Section 701.20 (1) to (4c), (4g) (a) 2., and (4m) to (31) applies to every
13 trust or decedent’s estate existing on the effective date of this subsection [revisor
14 inserts date], and to every trust or decedent’s estate created or coming into existence
15 after that date, except as otherwise expressly provided in s. 701.20 or by the
16 decedent’s will or the terms of the trust. With respect to a trust or decedent’s estate
17 existing on the effective date of this subsection [revisor inserts date], s. 701.20 (1)
18 to (4c) and (4m) to (30) does not apply before the trust’s or estate’s first accounting
19 period, as defined in s. 701.20 (2) (a), that begins after the effective date of this
20 subsection [revisor inserts date].

21 **SECTION 8m.** 701.24 (3) of the statutes is created to read:

22 701.24 (3) Section 701.20 (4g) (a) 1. applies to every trust created under a
23 creating instrument that is executed on or after the effective date of this subsection
24 [revisor inserts date].”.

