

By the Committee on Judiciary; and Senators Carlton and Posey

308-2044-04

1 A bill to be entitled
2 An act relating to assets held in benefit
3 plans; amending s. 222.22, F.S.; exempting from
4 legal process in favor of creditors or other
5 claimants assets held in qualified tuition
6 programs, in certain medical savings accounts,
7 or in Coverdell education savings accounts;
8 amending s. 710.102, F.S.; redefining the term
9 "benefit plan," and defining the term
10 "qualified minor's trust," as used in the
11 Florida Uniform Transfers to Minors Act;
12 amending s. 710.104, F.S.; including benefit
13 plans in the types of property that a custodian
14 may be named to receive on behalf of a minor;
15 amending s. 710.108, F.S.; allowing a benefit
16 plan to be transferred to a custodian of a
17 minor who does not have a conservator by an
18 obligor of the minor; amending s. 710.116,
19 F.S.; allowing a minor's custodian, without
20 court order, to transfer custodial property to
21 a qualified minor's trust; providing
22 implications of the transfer; amending s.
23 733.808, F.S.; providing for the disposition of
24 benefits under a benefit plan after the death
25 of an owner of or participant in the plan;
26 amending s. 744.301, F.S.; providing for the
27 parents or natural guardians of a minor child
28 to collect, receive, manage, and dispose of and
29 make elections regarding the proceeds of an
30 annuity contract payable to a minor child or of
31 a benefit plan of which the minor is a

1 beneficiary, participant, or owner, without
2 appointment, authority, or bond, if the
3 proceeds equal less than a specified maximum
4 amount; providing an effective date.
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6 Be It Enacted by the Legislature of the State of Florida:
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8 Section 1. Section 222.22, Florida Statutes, is
9 amended to read:

10 222.22 Exemption of assets in qualified tuition
11 programs, medical savings accounts, and Coverdell education
12 savings accounts ~~moneys in the Prepaid College Trust Fund or~~
13 ~~in a Medical Savings Account~~ from legal process.--

14 (1)(~~a~~) Moneys paid into or out of, the assets of, and
15 the income of any validly existing qualified tuition program
16 authorized by s. 529 of the Internal Revenue Code of 1986, as
17 amended, including, but not limited to, the Florida Prepaid
18 College Trust Fund advance payment contracts under s. 1009.98
19 and Florida Prepaid College Trust Fund participation
20 agreements under s. 1009.981 ~~the Florida Prepaid College Trust~~
21 ~~Fund by or on behalf of a purchaser or qualified beneficiary~~
22 ~~pursuant to an advance payment contract made under part IV of~~
23 ~~chapter 1009, which contract has not been terminated, are not~~
24 liable to attachment, levy, garnishment, or legal process in
25 the state in favor of any creditor of or claimant against any
26 program participant, purchaser, owner or contributor, or
27 program beneficiary ~~the purchaser or beneficiary of such~~
28 ~~advance payment contract.~~

29 (2)(~~b~~) Moneys paid into or out of, the assets of, and
30 the income of a medical savings account authorized under s.
31 220 of the Internal Revenue Code of 1986, as amended, are not

1 liable to attachment, levy, garnishment, or legal process in
2 this state in favor of any creditor of or claimant against any
3 account participant, purchaser, owner or contributor, or
4 account beneficiary.

5 (3) Moneys paid into or out of, the assets of, and the
6 income of any Coverdell education savings account, also known
7 as an educational IRA, established or existing in accordance
8 with s. 530 of the Internal Revenue Code of 1986, as amended,
9 are not liable to attachment, levy, garnishment, or legal
10 process in this state in favor of any creditor of or claimant
11 against any account participant, purchaser, owner or
12 contributor, or account beneficiary. ~~the Prepaid College Trust~~
13 Fund by or on behalf of a benefactor or designated beneficiary
14 pursuant to a participation agreement made under s. 1009.981,
15 which agreement has not been terminated, are not liable to
16 attachment, garnishment, or legal process in the state in
17 favor of any creditor of the purchaser or beneficiary of such
18 participation agreement.

19 ~~(2) Moneys paid into or out of a Medical Savings~~
20 ~~Account by or on behalf of a person depositing money into such~~
21 ~~account or a qualified beneficiary are not liable to~~
22 ~~attachment, garnishment, or legal process in the state in~~
23 ~~favor of any creditor of such person or beneficiary of such~~
24 ~~Medical Savings Account.~~

25 Section 2. Section 710.102, Florida Statutes, is
26 amended to read:

27 710.102 Definitions.--As used in this act, the term:

28 (1) "Adult" means an individual who has attained the
29 age of 21 years.

30 (2) "Benefit plan" means a retirement plan and may
31 include, but is not limited to, any pension, profit-sharing,

1 stock-bonus, or stock-ownership plan or individual retirement
2 account ~~an employer's plan for the benefit of an employee or~~
3 ~~partner.~~

4 (3) "Broker" means a person lawfully engaged in the
5 business of effecting transactions in securities or
6 commodities for the person's own account or for the account of
7 others.

8 (4) "Conservator" means a person appointed or
9 qualified by a court to act as general, limited, or temporary
10 guardian of a minor's property or a person legally authorized
11 to perform substantially the same functions.

12 (5) "Court" means the circuit court.

13 (6) "Custodial property" means any interest in
14 property transferred to a custodian under this act and the
15 income from and proceeds of that interest in property.

16 (7) "Custodian" means a person so designated under s.
17 710.111 or a successor or substitute custodian designated
18 under s. 710.121.

19 (8) "Financial institution" means a bank, trust
20 company, savings institution, or credit union, chartered and
21 supervised under state or federal law.

22 (9) "Legal representative" means an individual's
23 personal representative or conservator.

24 (10) "Member of the minor's family" means the minor's
25 parent, stepparent, spouse, grandparent, brother, sister,
26 uncle, or aunt, whether of the whole or half blood or by
27 adoption.

28 (11) "Minor" means an individual who has not attained
29 the age of 21 years.

30 (12) "Person" means an individual, corporation,
31 organization, or other legal entity.

1 (13) "Personal representative" means an executor,
2 administrator, successor personal representative, or special
3 administrator of a decedent's estate or a person legally
4 authorized to perform substantially the same functions.

5 (14) "Qualified minor's trust" means a trust that
6 meets the requirements of s. 2503(c) of the Internal Revenue
7 Code of 1986, as amended.

8 ~~(15)(14)~~ "State" includes any state of the United
9 States, the District of Columbia, the Commonwealth of Puerto
10 Rico, and any territory or possession subject to the
11 legislative authority of the United States.

12 ~~(16)(15)~~ "Transfer" means a transaction that creates
13 custodial property under s. 710.111.

14 ~~(17)(16)~~ "Transferor" means a person who makes a
15 transfer under this act.

16 ~~(18)(17)~~ "Trust company" means a financial
17 institution, corporation, or other legal entity, authorized to
18 exercise general trust powers.

19 Section 3. Subsection (1) of section 710.104, Florida
20 Statutes, is amended to read:

21 710.104 Nomination of custodian.--

22 (1) A person having the right to designate the
23 recipient of property transferable upon the occurrence of a
24 future event may revocably nominate a custodian to receive the
25 property for a minor beneficiary upon the occurrence of the
26 event by naming the custodian followed in substance by the
27 words: "as custodian for (name of minor) under the Florida
28 Uniform Transfers to Minors Act." The nomination may name one
29 or more persons as substitute custodians to whom the property
30 must be transferred, in the order named, if the first
31 nominated custodian dies before the transfer or is unable,

1 declines, or is ineligible to serve. The nomination may be
2 made in a will, a trust, a deed, an instrument exercising a
3 power of appointment, or in a writing designating a
4 beneficiary of contractual rights, including, but not limited
5 to, the right to a benefit plan, which is registered with or
6 delivered to the payor, issuer, or other obligor of the
7 contractual rights.

8 Section 4. Section 710.108, Florida Statutes, is
9 amended to read:

10 710.108 Transfer by obligor.--

11 (1) Subject to subsections (2) and (3), a person not
12 subject to s. 710.106 or s. 710.107 who holds property, l
13 including, but not limited to, a benefit plan, of a minor not
14 having a conservator, or who owes a liquidated debt to, a
15 minor not having a conservator, l may make an irrevocable
16 transfer to a custodian for the benefit of the minor pursuant
17 to s. 710.111.

18 (2) If a person having the right to do so under s.
19 710.104 has nominated a custodian under that section to
20 receive the custodial property, the transfer must be made to
21 that person.

22 (3) If no custodian has been nominated under s.
23 710.104, or all persons so nominated as custodian die before
24 the transfer or are unable, decline, or are ineligible to
25 serve, a transfer under this section may be made to an adult
26 member of the minor's family or to a trust company unless the
27 property exceeds ~~\$15,000~~ ~~\$10,000~~ in value.

28 Section 5. Section 710.116, Florida Statutes, is
29 amended to read:

30 710.116 Use of custodial property.--

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1 (1) A custodian may deliver or pay to the minor or
2 expend for the minor's benefit so much of the custodial
3 property as the custodian considers advisable for the use and
4 benefit of the minor, without court order and without regard
5 to the duty or ability of the custodian personally or of any
6 other person to support the minor, or to any other income or
7 property of the minor which may be applicable or available for
8 that purpose.

9 (2) A custodian may, without court order, transfer all
10 or part of the custodial property to a qualified minor's
11 trust. A transfer of property pursuant to this subsection
12 terminates the custodianship to the extent of the property
13 transferred.

14 ~~(3)(2)~~ On petition of an interested person or the
15 minor if the minor has attained the age of 14 years, the court
16 may order the custodian to deliver or pay to the minor or
17 expend for the minor's benefit so much of the custodial
18 property as the court considers advisable for the use and
19 benefit of the minor.

20 ~~(4)(3)~~ A delivery, payment, or expenditure under this
21 section is in addition to, not in substitution for, and does
22 not affect any obligation of a person to support the minor.

23 Section 6. Section 733.808, Florida Statutes, is
24 amended to read:

25 733.808 Death benefits; disposition of proceeds.--

26 (1) Death benefits of any kind, including, but not
27 limited to, proceeds of:

28 (a) An individual life insurance policy;

29 (b) A group life insurance policy;

30 (c) A benefit plan as defined by s. 710.102 ~~An~~
31 ~~employees' trust or under a contract purchased by an~~

1 ~~employees' trust forming part of a pension, stock bonus, or~~
2 ~~profit sharing plan;~~
3 (d) An annuity or endowment contract; and
4 (e) A health or ~~and~~ accident policy,
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6 may be made payable to the trustee under a trust agreement or
7 declaration of trust in existence at the time of the death of
8 the insured, employee, or annuitant or the owner of or
9 participant in the benefit plan. The death benefits shall be
10 held and disposed of by the trustee in accordance with the
11 terms of the trust as they appear in writing on the date of
12 the death of the insured, employee, ~~or~~ annuitant, owner, or
13 participant. It shall not be necessary to the validity of the
14 trust agreement or declaration of trust, whether revocable or
15 irrevocable, that it have a trust corpus other than the right
16 of the trustee to receive death benefits.
17 (2) Death benefits of any kind, including, but not
18 limited to, proceeds of:
19 (a) An individual life insurance policy;
20 (b) A group life insurance policy;
21 (c) A benefit plan as defined by s. 710.102 An
22 ~~employees' trust, or under a contract purchased by an~~
23 ~~employees' trust, forming part of a pension, stock bonus, or~~
24 ~~profit sharing plan;~~
25 (d) An annuity or endowment contract; and
26 (e) A health or ~~and~~ accident policy,
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28 may be made payable to the trustee named, or to be named, in a
29 written instrument that is admitted to probate as the last
30 will of the insured, the owner of the policy, the employee,
31 owner, or participant covered by the plan or contract, or any

1 other person, whether or not the will is in existence at the
2 time of designation. Upon the admission of the will to
3 probate, the death benefits shall be paid to the trustee, to
4 be held, administered, and disposed of in accordance with the
5 terms of the trust or trusts created by the will.

6 (3) In the event no trustee makes proper claim to the
7 proceeds from the insurance company or other obligor within a
8 period of 6 months after the date of the death of the insured,
9 employee, ~~or annuitant,~~ owner, or participant, or if
10 satisfactory evidence is furnished to the insurance company or
11 obligor within that period that there is, or will be, no
12 trustee to receive the proceeds, payment shall be made by the
13 insurance company or obligor to the personal representative of
14 the person making the designation, unless otherwise provided
15 by agreement with the insurer or obligor during the lifetime
16 of the insured, employee, ~~or annuitant,~~ owner, or participant.

17 (4) Death benefits payable as provided in subsection
18 (1), subsection (2), or subsection (3), unless paid to a
19 personal representative under the provisions of subsection
20 (3), shall not be deemed to be part of the decedent's estate,
21 and shall not be subject to any obligation to pay the expenses
22 of the administration and obligations of the decedent's estate
23 or for contribution required from a trust under s. 733.607(2)
24 to any greater extent than if the proceeds were payable
25 directly to the beneficiaries named in the trust.

26 (5) The death benefits held in trust may be commingled
27 with any other assets that may properly come into the trust.

28 (6) ~~Nothing in~~ This section does not shall affect the
29 validity of any designation of a beneficiary of proceeds
30 previously made that designates as beneficiary the trustee of
31

1 any trust established under a trust agreement or declaration
2 of trust or by will.

3 Section 7. Subsection (2) of section 744.301, Florida
4 Statutes, is amended to read:

5 744.301 Natural guardians.--

6 (2) The natural guardian or guardians are authorized,
7 on behalf of any of their minor children, to:

8 (a) Settle and consummate a settlement of any claim or
9 cause of action accruing to any of their minor children for
10 damages to the person or property of any of said minor
11 children; ~~and to~~

12 (b) Collect, receive, manage, and dispose of the
13 proceeds of any such settlement; ~~and~~

14 (c) Collect, receive, manage, and dispose of any ~~other~~
15 real or personal property distributed from an estate or trust;
16 ~~or~~

17 (d) Collect, receive, manage, and dispose of and make
18 elections regarding the proceeds from a life insurance policy
19 or annuity contract payable to, or otherwise accruing to the
20 benefit of, the child; and

21 (e) Collect, receive, manage, dispose of, and make
22 elections regarding the proceeds of any benefit plan as
23 defined by s. 710.102, of which the minor is a beneficiary,
24 participant, or owner,

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26 without appointment, authority, or bond ~~during minority,~~ when
27 the amount involved in any instance does not exceed \$15,000,
28 ~~without appointment, authority, or bond.~~

29 Section 8. This act shall take effect upon becoming a
30 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1486

- Amends the Florida Uniform Minors Act to expand the scope of authority to manage or transfer monies for or on behalf of a minor by expanding the category of plan proceeds that may be made payable to a trust to include stock ownership plans, individual retirement accounts and other options, to expand the authority of a custodian to transfer part or all of custodial account funds into a s. 2503(c) Qualified Minor's Trust, to allow for the nomination of a custodian in any benefit plan as redefined in the Act, and to increase from \$10,000 to \$15,000 which may be transferred under specified circumstances, directly to a family member or trust company.
- Amends the Probate Code to add to the categories of plans or policies from which death benefit proceeds may be payable to a trust to recognize that these type of proceeds may be payable from any type of benefit plan as is newly redefined in the Florida Uniform Transfer to Minor's Act.
- Amends the Florida Guardianship Law to expand a natural guardian's authority to act without a court order on legal monetary matters relating to a minor consistent with the changes made to the Florida Uniform Transfers to Minors Act, but without exceeding the statutory threshold of \$15,000.