

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

1 of which the minor is a beneficiary,
2 participant, or owner, without appointment,
3 authority, or bond, if the proceeds equal less
4 than a specified maximum amount; providing an
5 effective date.

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7 Be It Enacted by the Legislature of the State of Florida:

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9 Section 1. Section 222.22, Florida Statutes, is
10 amended to read:

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

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

30 (2)~~(b)~~ Moneys paid into or out of, the assets of, and
31 the income of a health savings account or medical savings

1 account authorized under ss. 220 and 223 of the Internal
2 Revenue Code of 1986, as amended, are not liable to
3 attachment, levy, garnishment, or legal process in this state
4 in favor of any creditor of or claimant against any account
5 participant, purchaser, owner or contributor, or account
6 beneficiary.

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

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

27 Section 2. Section 710.102, Florida Statutes, is
28 amended to read:

29 710.102 Definitions.--As used in this act, the term:

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

1 (2) "Benefit plan" means a retirement plan and may
2 include, but is not limited to, any pension, profit-sharing,
3 stock-bonus, or stock-ownership plan or individual retirement
4 account ~~an employer's plan for the benefit of an employee or~~
5 ~~partner.~~

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

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

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

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

18 (7) "Custodian" means a person so designated under s.
19 710.111 or a successor or substitute custodian designated
20 under s. 710.121.

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

24 (9) "Legal representative" means an individual's
25 personal representative or conservator.

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

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

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

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

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

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

14 (16)~~(15)~~ "Transfer" means a transaction that creates
15 custodial property under s. 710.111.

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

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

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

23 710.104 Nomination of custodian.--

24 (1) A person having the right to designate the
25 recipient of property transferable upon the occurrence of a
26 future event may revocably nominate a custodian to receive the
27 property for a minor beneficiary upon the occurrence of the
28 event by naming the custodian followed in substance by the
29 words: "as custodian for (name of minor) under the Florida
30 Uniform Transfers to Minors Act." The nomination may name one
31 or more persons as substitute custodians to whom the property

1 must be transferred, in the order named, if the first
2 nominated custodian dies before the transfer or is unable,
3 declines, or is ineligible to serve. The nomination may be
4 made in a will, a trust, a deed, an instrument exercising a
5 power of appointment, or in a writing designating a
6 beneficiary of contractual rights, including, but not limited
7 to, the right to a benefit plan, which is registered with or
8 delivered to the payor, issuer, or other obligor of the
9 contractual rights.

10 Section 4. Section 710.108, Florida Statutes, is
11 amended to read:

12 710.108 Transfer by obligor.--

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

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

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

30 Section 5. Section 710.116, Florida Statutes, is
31 amended to read:

1 710.116 Use of custodial property.--

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

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

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

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

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

26 733.808 Death benefits; disposition of proceeds.--

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

29 (a) An individual life insurance policy;

30 (b) A group life insurance policy;

31

1 (c) A benefit plan as defined by s. 710.102 An
2 ~~employees' trust or under a contract purchased by an~~
3 ~~employees' trust forming part of a pension, stock bonus, or~~
4 ~~profit-sharing plan;~~

5 (d) An annuity or endowment contract; and

6 (e) A health or ~~and~~ accident policy,

7
8 may be made payable to the trustee under a trust agreement or
9 declaration of trust in existence at the time of the death of
10 the insured, employee, or annuitant or the owner of or
11 participant in the benefit plan. The death benefits shall be
12 held and disposed of by the trustee in accordance with the
13 terms of the trust as they appear in writing on the date of
14 the death of the insured, employee, ~~or~~ annuitant, owner, or
15 participant. It shall not be necessary to the validity of the
16 trust agreement or declaration of trust, whether revocable or
17 irrevocable, that it have a trust corpus other than the right
18 of the trustee to receive death benefits.

19 (2) Death benefits of any kind, including, but not
20 limited to, proceeds of:

21 (a) An individual life insurance policy;

22 (b) A group life insurance policy;

23 (c) A benefit plan as defined by s. 710.102 An
24 ~~employees' trust, or under a contract purchased by an~~
25 ~~employees' trust, forming part of a pension, stock bonus, or~~
26 ~~profit-sharing plan;~~

27 (d) An annuity or endowment contract; and

28 (e) A health or ~~and~~ accident policy,

29
30 may be made payable to the trustee named, or to be named, in a
31 written instrument that is admitted to probate as the last

1 will of the insured, the owner of the policy, the employee,
2 owner, or participant covered by the plan or contract, or any
3 other person, whether or not the will is in existence at the
4 time of designation. Upon the admission of the will to
5 probate, the death benefits shall be paid to the trustee, to
6 be held, administered, and disposed of in accordance with the
7 terms of the trust or trusts created by the will.

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

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

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

30 (6) ~~Nothing in~~ This section does not ~~shall~~ affect the
31 validity of any designation of a beneficiary of proceeds

1 previously made that designates as beneficiary the trustee of
2 any trust established under a trust agreement or declaration
3 of trust or by will.

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

6 744.301 Natural guardians.--

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

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

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

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

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

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

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

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