

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Kottkamp offered the following:

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3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause, and insert:

5 Section 1. Subsection (10) of section 711.501, Florida
6 Statutes, is amended to read:

7 711.501 Definitions.--In ss. 711.50-711.512, unless the
8 context otherwise requires, the term:

9 (10) "Security account" means:

10 (a) A reinvestment account associated with a security, a
11 securities account with a broker, a cash balance in a brokerage
12 account, cash, interest, earnings, or dividends earned or
13 declared on a security in an account, a reinvestment account, or
14 a brokerage account, whether or not credited to the account
15 before the owner's death; ~~or~~

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16 (b) An investment management account, investment advisory
17 account, investment agency account, custody account, or any
18 other type of account with a bank or trust company, and includes
19 the securities in the account, the cash balance in the account,
20 and cash equivalents, and any interest, earnings, or dividends
21 earned or declared on a security in the account, whether or not
22 credited to the account before the owner's death; or

23 (c)(b) A cash balance or other property held for or due to
24 the owner of a security as a replacement for or product of an
25 account security, whether or not credited to the account before
26 the owner's death.

27 Section 2. Paragraphs (y) and (z) of subsection (2) of
28 section 737.402, Florida Statutes, are amended to read:

29 737.402 Powers of trustees conferred by this part.--

30 (2) Unless otherwise provided in the trust instrument, a
31 trustee has the power:

32 (y) To employ persons, including attorneys, auditors,
33 investment advisers, or agents, even if they are the trustee or
34 associated with the trustee, to advise or assist the trustee in
35 the performance of his or her administrative duties and to pay
36 compensation and costs incurred in connection with such
37 employment from the assets of the trust; to act without
38 independent investigation upon their recommendations; and,
39 instead of acting personally, to employ one or more agents to
40 perform any act of administration, whether or not discretionary.

41 (z)1. To prosecute or defend actions, claims, or
42 proceedings, including appeals, for the protection of trust

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43 assets and of the trustee in the performance of his or her
44 duties.

45 2. To employ attorneys and other agents to advise and
46 assist the trustee in the exercise of any of the trustee's
47 powers and to pay compensation and costs incurred in connection
48 with such employment from the assets of the trust.

49 Section 3. Subsection (2) of section 737.403, Florida
50 Statutes, is amended to read:

51 737.403 Power of court to permit deviation or to approve
52 transactions involving conflict of interest.--

53 (2) If the duty of the trustee and the trustee's
54 individual interest or his or her interest as trustee of another
55 trust conflict in the exercise of a trust power, the power may
56 be exercised only by court authorization, ~~except as provided in~~
57 ~~s. 737.402(2)(a), (e), (g), (s) and (y)~~. Under this section,
58 personal profit or advantage to an affiliated or subsidiary
59 company or association is personal profit to any corporate
60 trustee. Court authorization is not required for any of the
61 following:

62 (a) The exercise of any power described in s.
63 737.402(2)(a), (e), (g), (s), or (y);

64 (b) The exercise of any power for which the trust
65 instrument acknowledges the trustee's conflict of interest and
66 expressly authorizes the exercise of that power notwithstanding
67 the conflict;

68 (c) The exercise of any power consented to in writing by a
69 settlor of the trust while the settlor holds the right of
70 revocation of the trust;

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71 (d) The exercise of any power consented to in writing by
72 each of the beneficiaries to whom the trustee is required to
73 provide any annual or periodic accounting. Consent under this
74 paragraph may be given by a person who represents the interest
75 of the beneficiary under s. 731.303 or by the legal guardian of
76 the beneficiary or, if there is no legal guardian, by the
77 natural guardian of the beneficiary; or

78 (e) Payment of costs or attorney's fees incurred in any
79 trust proceeding from the assets of the trust unless an action
80 has been filed or defense asserted against the trustee based
81 upon a breach of trust. Court authorization is not required if
82 the action or defense is later withdrawn or dismissed by the
83 party that is alleging a breach of trust, or resolved without a
84 determination by the court that the trustee has committed a
85 breach of trust.

86 Section 4. Paragraph (h) of subsection (3) of section
87 738.104, Florida Statutes, is amended, and subsection (11) is
88 added to said section, to read:

89 738.104 Trustee's power to adjust.--

90 (3) A trustee may not make an adjustment:

91 (h) If the trustee is not a beneficiary of the trust but
92 the adjustment would benefit the trustee directly or indirectly,
93 except that in the case of a trustee whose compensation for
94 acting as trustee is based upon the value of trust assets, an
95 adjustment that affects the value of trust assets shall not be
96 not deemed to benefit the trustee.

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97 (11) This section pertains to the administration of a
98 trust and is applicable to any trust that is administered either
99 in this state or under Florida law.

100 Section 5. Paragraphs (e) and (f) are added to subsection
101 (1) of section 738.1041, Florida Statutes, and subsections (10)
102 and (12) of said section are amended, to read:

103 738.1041 Total return unitrust.--

104 (1) For purposes of this section, the term:

105 (e) "Fair market value" means the fair market value of
106 assets held by the trust as otherwise determined under this
107 chapter, reduced by all known noncontingent liabilities except
108 for those liabilities that, upon payment, will represent
109 expenses under s. 738.701 or s. 738.702.

110 (f) "Unitrust amount" means the amount determined by
111 multiplying the fair market value of the assets as defined in
112 paragraph (e) by the percentage calculated under paragraph
113 (2)(b).

114 (10) Any trustee or disinterested person who in good faith
115 takes or fails to take any action under this section shall not
116 be liable to any person affected by such action or inaction,
117 regardless of whether such person received written notice as
118 provided in this section and regardless of whether such person
119 was under a legal disability at the time of the delivery of such
120 notice. Such person's exclusive remedy shall be to obtain, under
121 subsection (11), an order of the court directing the trustee to
122 convert an income trust to a total return unitrust, to reconvert
123 from a total return unitrust to an income trust, or to change
124 the percentage used to calculate the unitrust amount. If a court

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125 determines that the trustee or disinterested person has not
126 acted in good faith in taking or failing to take any action
127 under this section, the provisions of s. 738.105(3) apply.

128 (12) This section shall be construed as pertaining to the
129 administration of a trust and shall be available to any trust
130 that is administered either in this state or under Florida law
131 unless:

132 (a) The governing instrument reflects an intention that
133 the current beneficiary or beneficiaries are to receive an
134 amount other than a reasonable current return from the trust;

135 (b) The trust is a trust described in the Internal Revenue
136 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
137 1361(d), s. 2702(a)(3), or s. 2702(b);

138 (c) One or more persons to whom the trustee could
139 distribute income have a power of withdrawal over the trust:

140 1. That is not subject to an ascertainable standard under
141 the Internal Revenue Code, 26 U.S.C. s. 2041 or s. 2514, and
142 exceeds in any calendar year the amount set forth in the
143 Internal Revenue Code, 26 U.S.C. s. 2041(b)(2) or s. 2514(e); or

144 2. A power of withdrawal over the trust that can be
145 exercised to discharge a duty of support he or she possesses;

146 (d) The governing instrument expressly prohibits use of
147 this section by specific reference to the section. A provision
148 in the governing instrument that, "The provisions of section
149 738.1041, Florida Statutes, as amended, or any corresponding
150 provision of future law, shall not be used in the administration
151 of this trust," or similar words reflecting such intent shall be
152 sufficient to preclude the use of this section; or

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153 (e) The trust is a trust with respect to which a trustee
154 currently possesses the power to adjust under s. 738.104.

155 Section 6. Subsection (1) of section 738.303, Florida
156 Statutes, is amended to read:

157 738.303 Apportionment when income interest ends.--

158 (1) For purposes of this section, "undistributed income"
159 means net income received on or before the date on which an
160 income interest ends. The term does not include an item of
161 income or expense that is due or accrued or net income that has
162 been added or is required to be added to principal under the
163 terms of the trust. In the case of a trust being administered as
164 a unitrust under s. 738.1041, the term "undistributed income"
165 means the prorated unitrust amount computed on a daily basis
166 through the date on which the income interest ends.

167 Section 7. This act shall take effect upon becoming a law.

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169 ===== T I T L E A M E N D M E N T =====

170 Remove lines 2-18 and insert:
171 An act relating to fiduciary relationships; amending s.
172 711.501, F.S.; including additional investment instruments
173 within the definition of the term "security account";
174 amending s. 737.402, F.S.; revising the powers conferred
175 upon a trustee; amending s. 737.403, F.S.; specifying
176 circumstances in which court authorization is not required
177 for a trustee to exercise his or her power when a conflict
178 of interest exists; amending s. 738.104, F.S.; providing
179 that adjustments affecting the value of trust assets are
180 not deemed to benefit a trustee under certain

HOUSE AMENDMENT

Bill No. HB 1755

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181 | circumstances; providing for applicability of trustee
182 | adjustment power to certain trusts; amending s. 738.1041,
183 | F.S., relating to total return unitrust; defining the
184 | terms "fair market value" and "unitrust amount"; providing
185 | a remedy; providing that certain provisions shall apply to
186 | the administration of certain trusts; amending s. 738.303,
187 | F.S.; defining the term "undistributed income"; providing
188 | an effective date.

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