

CHAMBER ACTION

1 The Committee on Judiciary recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to assets held in benefit plans; amending  
7 s. 222.22, F.S.; exempting from legal process in favor of  
8 creditors or other claimants assets held in qualified  
9 tuition programs, in certain medical savings accounts, or  
10 in Coverdell education savings accounts; amending s.  
11 710.102, F.S.; redefining the term "benefit plan" and  
12 defining the term "qualified minor's trust" as used in the  
13 Florida Uniform Transfers to Minors Act; amending s.  
14 710.104, F.S.; including benefit plans in the types of  
15 property that a custodian may be named to receive on  
16 behalf of a minor; amending s. 710.108, F.S.; allowing a  
17 benefit plan to be transferred to a custodian of a minor  
18 who does not have a conservator by an obligor of the  
19 minor; increasing a monetary threshold limitation on  
20 certain transfers; amending s. 710.116, F.S.; allowing a  
21 minor's custodian, without a court order, to transfer  
22 custodial property to a qualified minor's trust; providing  
23 implications of the transfer; amending s. 733.808, F.S.;

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24 providing for the disposition of benefits under a benefit  
 25 plan after the death of an owner of or a participant in  
 26 the plan; amending s. 744.301, F.S.; revising provisions  
 27 relating to the powers of natural guardians; providing an  
 28 effective date.

29

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

31

32 Section 1. Section 222.22, Florida Statutes, is amended to  
 33 read:

34 222.22 Exemption of assets in qualified tuition programs,  
 35 medical savings accounts, and Coverdell education savings  
 36 accounts ~~moneys in the Prepaid College Trust Fund or in a~~  
 37 ~~Medical Savings Account~~ from legal process.--

38 (1)(a) Moneys paid into or out of, the assets of, and the  
 39 income of any validly existing qualified tuition program  
 40 authorized by s. 529 of the Internal Revenue Code of 1986, as  
 41 amended, including, but not limited to, the Florida Prepaid  
 42 College Trust Fund advance payment contracts under s. 1009.98  
 43 and Florida Prepaid College Trust Fund participation agreements  
 44 under s. 1009.981 ~~the Florida Prepaid College Trust Fund by or~~  
 45 ~~on behalf of a purchaser or qualified beneficiary pursuant to an~~  
 46 ~~advance payment contract made under part IV of chapter 1009,~~  
 47 ~~which contract has not been terminated,~~ are not liable to  
 48 attachment, levy, garnishment, or legal process in the state in  
 49 favor of any creditor of or claimant against any program  
 50 participant, purchaser, owner or contributor, or program

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51 ~~beneficiary the purchaser or beneficiary of such advance payment~~  
52 ~~contract.~~

53 (2)(b) Moneys paid into or out of, the assets of, and the  
54 income of a medical savings account authorized under s. 220 of  
55 the Internal Revenue Code of 1986, as amended, are not liable to  
56 attachment, levy, garnishment, or legal process in this state in  
57 favor of any creditor of or claimant against any account  
58 participant, purchaser, owner or contributor, or account  
59 beneficiary.

60 (3) Moneys paid into or out of, the assets of, and the  
61 income of any Coverdell education savings account, also known as  
62 an educational IRA, established or existing in accordance with  
63 s. 530 of the Internal Revenue Code of 1986, as amended, are not  
64 liable to attachment, levy, garnishment, or legal process in  
65 this state in favor of any creditor of or claimant against any  
66 account participant, purchaser, owner or contributor, or account  
67 beneficiary. the Prepaid College Trust Fund by or on behalf of a  
68 benefactor or designated beneficiary pursuant to a participation  
69 agreement made under s. 1009.981, which agreement has not been  
70 terminated, are not liable to attachment, garnishment, or legal  
71 process in the state in favor of any creditor of the purchaser  
72 or beneficiary of such participation agreement.

73 ~~(2) Moneys paid into or out of a Medical Savings Account~~  
74 ~~by or on behalf of a person depositing money into such account~~  
75 ~~or a qualified beneficiary are not liable to attachment,~~  
76 ~~garnishment, or legal process in the state in favor of any~~  
77 ~~creditor of such person or beneficiary of such Medical Savings~~  
78 ~~Account.~~

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79 Section 2. Section 710.102, Florida Statutes, is amended  
80 to read:

81 710.102 Definitions.--As used in this act, the term:

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

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

89 (3) "Broker" means a person lawfully engaged in the  
90 business of effecting transactions in securities or commodities  
91 for the person's own account or for the account of others.

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

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

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

100 (7) "Custodian" means a person so designated under s.  
101 710.111 or a successor or substitute custodian designated under  
102 s. 710.121.

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

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106 (9) "Legal representative" means an individual's personal  
107 representative or conservator.

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

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

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

115 (13) "Personal representative" means an executor,  
116 administrator, successor personal representative, or special  
117 administrator of a decedent's estate or a person legally  
118 authorized to perform substantially the same functions.

119 (14) "Qualified minor's trust" means a trust that meets  
120 the requirements of s. 2503(c) of the Internal Revenue Code of  
121 1986, as amended.

122 (15)~~(14)~~ "State" includes any state of the United States,  
123 the District of Columbia, the Commonwealth of Puerto Rico, and  
124 any territory or possession subject to the legislative authority  
125 of the United States.

126 (16)~~(15)~~ "Transfer" means a transaction that creates  
127 custodial property under s. 710.111.

128 (17)~~(16)~~ "Transferor" means a person who makes a transfer  
129 under this act.

130 (18)~~(17)~~ "Trust company" means a financial institution,  
131 corporation, or other legal entity, authorized to exercise  
132 general trust powers.

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

135 710.104 Nomination of custodian.--

136 (1) A person having the right to designate the recipient  
137 of property transferable upon the occurrence of a future event  
138 may revocably nominate a custodian to receive the property for a  
139 minor beneficiary upon the occurrence of the event by naming the  
140 custodian followed in substance by the words: "as custodian for  
141 ... (name of minor) ... under the Florida Uniform Transfers to  
142 Minors Act." The nomination may name one or more persons as  
143 substitute custodians to whom the property must be transferred,  
144 in the order named, if the first nominated custodian dies before  
145 the transfer or is unable, declines, or is ineligible to serve.  
146 The nomination may be made in a will, a trust, a deed, an  
147 instrument exercising a power of appointment, or in a writing  
148 designating a beneficiary of contractual rights, including, but  
149 not limited to, the right to a benefit plan, which is registered  
150 with or delivered to the payor, issuer, or other obligor of the  
151 contractual rights.

152 Section 4. Section 710.108, Florida Statutes, is amended  
153 to read:

154 710.108 Transfer by obligor.--

155 (1) Subject to subsections (2) and (3), a person not  
156 subject to s. 710.106 or s. 710.107 who holds property,   
157 including, but not limited to, a benefit plan, of a minor not  
158 having a conservator, or who owes a liquidated debt to ~~7~~ a minor  
159 not having a conservator,  may make an irrevocable transfer to a  
160 custodian for the benefit of the minor pursuant to s. 710.111.

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

164 (3) If no custodian has been nominated under s. 710.104,  
165 or all persons so nominated as custodian die before the transfer  
166 or are unable, decline, or are ineligible to serve, a transfer  
167 under this section may be made to an adult member of the minor's  
168 family or to a trust company unless the property exceeds \$15,000  
169 ~~\$10,000~~ in value.

170 Section 5. Section 710.116, Florida Statutes, is amended  
171 to read:

172 710.116 Use of custodial property.--

173 (1) A custodian may deliver or pay to the minor or expend  
174 for the minor's benefit so much of the custodial property as the  
175 custodian considers advisable for the use and benefit of the  
176 minor, without court order and without regard to the duty or  
177 ability of the custodian personally or of any other person to  
178 support the minor, or to any other income or property of the  
179 minor which may be applicable or available for that purpose.

180 (2) A custodian may, without court order, transfer all or  
181 part of the custodial property to a qualified minor's trust. A  
182 transfer of property pursuant to this subsection terminates the  
183 custodianship to the extent of the property transferred.

184 (3)~~(2)~~ On petition of an interested person or the minor if  
185 the minor has attained the age of 14 years, the court may order  
186 the custodian to deliver or pay to the minor or expend for the  
187 minor's benefit so much of the custodial property as the court  
188 considers advisable for the use and benefit of the minor.

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189        ~~(4)(3)~~ A delivery, payment, or expenditure under this  
 190 section is in addition to, not in substitution for, and does not  
 191 affect any obligation of a person to support the minor.

192        Section 6. Section 733.808, Florida Statutes, is amended  
 193 to read:

194        733.808 Death benefits; disposition of proceeds.--

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

197        (a) An individual life insurance policy;

198        (b) A group life insurance policy;

199        (c) A benefit plan as defined in s. 710.102 ~~An employees'~~  
 200 ~~trust or under a contract purchased by an employees' trust~~  
 201 ~~forming part of a pension, stock bonus, or profit sharing plan;~~

202        (d) An annuity or endowment contract; and

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

204  
 205 may be made payable to the trustee under a trust agreement or  
 206 declaration of trust in existence at the time of the death of  
 207 the insured, employee, or annuitant or the owner of or

208 participant in the benefit plan. The death benefits shall be  
 209 held and disposed of by the trustee in accordance with the terms  
 210 of the trust as they appear in writing on the date of the death  
 211 of the insured, employee, ~~or~~ annuitant, owner, or participant.

212 It shall not be necessary to the validity of the trust agreement  
 213 or declaration of trust, whether revocable or irrevocable, that  
 214 it have a trust corpus other than the right of the trustee to  
 215 receive death benefits.



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

218 (a) An individual life insurance policy;

219 (b) A group life insurance policy;

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

223 (d) An annuity or endowment contract; and

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

225

226 may be made payable to the trustee named, or to be named, in a  
227 written instrument that is admitted to probate as the last will  
228 of the insured, the owner of the policy, the employee, owner, or  
229 participant covered by the plan or contract, or any other  
230 person, whether or not the will is in existence at the time of  
231 designation. Upon the admission of the will to probate, the  
232 death benefits shall be paid to the trustee, to be held,  
233 administered, and disposed of in accordance with the terms of  
234 the trust or trusts created by the will.

235 (3) In the event no trustee makes proper claim to the  
236 proceeds from the insurance company or other obligor within a  
237 period of 6 months after the date of the death of the insured,  
238 employee, ~~or annuitant,~~ owner, or participant, or if  
239 satisfactory evidence is furnished to the insurance company or  
240 obligor within that period that there is, or will be, no trustee  
241 to receive the proceeds, payment shall be made by the insurance  
242 company or obligor to the personal representative of the person  
243 making the designation, unless otherwise provided by agreement

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244 with the insurer or obligor during the lifetime of the insured,  
245 employee, ~~or annuitant~~, owner, or participant.

246 (4) Death benefits payable as provided in subsection (1),  
247 subsection (2), or subsection (3), unless paid to a personal  
248 representative under the provisions of subsection (3), shall not  
249 be deemed to be part of the decedent's estate, and shall not be  
250 subject to any obligation to pay the expenses of the  
251 administration and obligations of the decedent's estate or for  
252 contribution required from a trust under s. 733.607(2) to any  
253 greater extent than if the proceeds were payable directly to the  
254 beneficiaries named in the trust.

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

257 (6) ~~Nothing in~~ This section does not shall affect the  
258 validity of any designation of a beneficiary of proceeds  
259 previously made that designates as beneficiary the trustee of  
260 any trust established under a trust agreement or declaration of  
261 trust or by will.

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

264 744.301 Natural guardians.--

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

267 (a) Settle and consummate a settlement of any claim or  
268 cause of action accruing to any of their minor children for  
269 damages to the person or property of any of said minor children;

270 (b) ~~and to~~ Collect, receive, manage, and dispose of the  
271 proceeds of any such settlement;

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

274        (d) Collect, receive, manage, dispose of, and make  
275 elections regarding the ~~ex~~ proceeds from a life insurance policy  
276 or annuity contract payable to, or otherwise accruing to the  
277 benefit of, the child; and

278        (e) Collect, receive, manage, dispose of, and make  
279 elections regarding the proceeds of any benefit plan as defined  
280 in s. 710.102 of which the minor is a beneficiary, participant,  
281 or owner,

282  
283 without appointment, authority, or bond ~~during minority~~, when  
284 the amount involved in any instance does not exceed \$15,000,  
285 ~~without appointment, authority, or bond.~~

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