

By Senator Atwater

25-440A-05

1 A bill to be entitled
2 An act relating to trusts and other agency
3 relationships; amending s. 711.501, F.S.;
4 including additional investment instruments
5 within the definition of the term "security
6 account"; amending s. 737.402, F.S.; revising
7 the powers conferred upon a trustee; amending
8 s. 737.403, F.S.; specifying circumstances in
9 which court authorization is not required for a
10 trustee to exercise his or her power when a
11 conflict of interest exists; amending s.
12 738.104, F.S.; revising the circumstances in
13 which a trustee is prohibited from making an
14 adjustment when such adjustment would benefit
15 the trustee; clarifying the application of law
16 pertaining to the trustee's power to adjust;
17 amending s. 738.1041, F.S.; providing
18 definitions governing certain trust
19 conversions; revising method of determining
20 fair market value; specifying consequences when
21 a court determines that a fiduciary has not
22 acted in good faith; providing for creating an
23 express total return unitrust; amending s.
24 738.303, F.S.; defining the term "undistributed
25 income" for purposes of a trust that is
26 administered as a unitrust; amending s.
27 738.401, F.S.; providing guidelines for
28 allocation of certain moneys received from
29 targeted entities and investment entities;
30 defining terms; providing an effective date.
31

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

2

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

5 711.501 Definitions.--In ss. 711.50-711.512, unless
6 the context otherwise requires, the term:

7 (10) "Security account" means:

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

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

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

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

27 737.402 Powers of trustees conferred by this part.--

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

30 (y) To employ persons, including attorneys, auditors,
31 investment advisers, or agents, even if they are the trustee

1 or associated with the trustee, to advise or assist the
2 trustee in the performance of his or her administrative duties
3 and to pay compensation and costs incurred in connection with
4 such employment from the assets of the trust; to act without
5 independent investigation upon their recommendations; and,
6 instead of acting personally, to employ one or more agents to
7 perform any act of administration, whether or not
8 discretionary.

9 (z) To prosecute or defend actions, claims, or
10 proceedings, including appeals, for the protection of trust
11 assets and of the trustee in the performance of his or her
12 duties; to employ attorneys and other agents to advise and
13 assist the trustee in the exercise of those powers; and to pay
14 compensation and costs incurred in connection with such
15 employment from the assets of the trust.

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

18 737.403 Power of court to permit deviation or to
19 approve transactions involving conflict of interest.--

20 (2) If the duty of the trustee and the trustee's
21 individual interest or his or her interest as trustee of
22 another trust conflict in the exercise of a trust power, the
23 power may be exercised only by court authorization, ~~except as~~
24 ~~provided in s. 737.402(2)(a), (e), (g), (s) or (y).~~ Under this
25 section, personal profit or advantage to an affiliated or
26 subsidiary company or association is personal profit to any
27 corporate trustee. Court authorization is not required for any
28 of the following:

29 (a) The exercise of any power described in s.
30 737.402(2)(a), (e), (g), (s), or (y);

31

1 (b) The exercise of any power for which the trust
2 instrument acknowledges the trustee's conflict of interest and
3 expressly authorizes the exercise of that power
4 notwithstanding conflict;

5 (c) The exercise of any power consented to in writing
6 by a settlor of the trust while the settlor holds the right of
7 revocation of the trust;

8 (d) The exercise of any power consented to in writing
9 by each of the beneficiaries to whom the trustee is required
10 to provide any annual or periodic accounting. Consent under
11 this paragraph may be given by a person who represents the
12 interest of the beneficiary under s. 731.303, or by the legal
13 guardian of the beneficiary or, if there is no legal guardian,
14 by the natural guardian of the beneficiary; or

15 (e) Payment of costs or attorney's fees incurred in
16 any trust proceeding from the assets of the trust unless an
17 action has been filed or defense asserted against the trustee
18 based upon a breach of trust. Court authorization is not
19 required if the action or defense is later withdrawn or
20 dismissed by the party that is alleging a breach of trust, or
21 resolved without a determination by the court that the trustee
22 has committed a breach of trust.

23 Section 4. Subsections (3) and (4) and paragraph (b)
24 of subsection (5) of section 738.104, Florida Statutes, are
25 amended, and subsection (11) is added to that section, to
26 read:

27 738.104 Trustee's power to adjust.--

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

29 ~~(a) That diminishes the income interest in a trust~~
30 ~~that requires all of the income to be paid at least annually~~
31 ~~to a spouse and for which an estate tax or gift tax marital~~

1 ~~deduction would be allowed, in whole or in part, if the~~
2 ~~trustee did not have the power to adjust;~~

3 ~~(a)(b)~~ That reduces the actuarial value of the income
4 interest in a trust to which a person transfers property with
5 the intent to qualify for a gift tax exclusion;

6 ~~(b)(c)~~ That changes the amount payable to a
7 beneficiary as a fixed annuity or a fixed fraction of the
8 value of the trust assets;

9 ~~(c)(d)~~ From any amount that is permanently set aside
10 for charitable purposes under a will or the terms of a trust
11 unless both income and principal are so set aside;

12 ~~(d)(e)~~ If possessing or exercising the power to adjust
13 causes an individual to be treated as the owner of all or part
14 of the trust for income tax purposes and the individual would
15 not be treated as the owner if the trustee did not possess the
16 power to adjust;

17 ~~(e)(f)~~ If possessing or exercising the power to adjust
18 causes all or part of the trust assets to be included for
19 estate tax purposes in the estate of an individual who has the
20 power to remove a trustee or appoint a trustee, or both, and
21 the assets would not be included in the estate of the
22 individual if the trustee did not possess the power to adjust;

23 ~~(f)(g)~~ If the trustee is a beneficiary of the trust;

24 or

25 ~~(g)(h)~~ If the trustee is not a beneficiary of the
26 trust but the adjustment would benefit the trustee directly or
27 indirectly, except that, in the case of a trustee whose
28 compensation for acting as trustee is based upon the value of
29 trust assets, an adjustment that affects the value of trust
30 assets shall not be deemed to benefit the trustee.

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1 (4) If paragraph (3)(d), paragraph (3)(e), paragraph
2 (3)(f), or paragraph (3)(g), ~~or paragraph (3)(h)~~ applies to a
3 trustee and there is more than one trustee, a cotrustee to
4 whom the provision does not apply may make the adjustment
5 unless the exercise of the power by the remaining trustee is
6 not permitted by the terms of the trust.

7 (5)

8 (b) A trustee may release the entire power to adjust
9 conferred by subsection (1) or may release only the power to
10 adjust from income to principal or the power to adjust from
11 principal to income if the trustee is uncertain about whether
12 possessing or exercising the power will cause a result
13 described in paragraphs (3)(a)-(e) ~~(3)(a)-(f)~~ or paragraph
14 ~~(3)(g)-(h)~~ or if the trustee determines that possessing or
15 exercising the power will or may deprive the trust of a tax
16 benefit or impose a tax burden not described in subsection
17 (3).

18 (11) This section shall be construed as pertaining to
19 the administration of a trust and is applicable to any trust
20 that is administered either in this state or under Florida
21 law.

22 Section 5. Section 738.1041, Florida Statutes, is
23 amended to read:

24 738.1041 Total return unitrust.--

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

26 (a) "Disinterested person" means a person who is not a
27 "related or subordinate party" as defined in s. 672(c) of the
28 United States Internal Revenue Code, 26 U.S.C. ss. 1 et seq.,
29 or any successor provision thereof, with respect to the person
30 then acting as trustee of the trust and excludes the grantor
31 and any interested trustee.

1 **(b)** "Fair market value" means the fair market value of
2 assets held by the trust as otherwise determined under this
3 chapter, reduced by all known noncontingent liabilities.

4 **(c)**~~(b)~~ "Income trust" means a trust, created by either
5 an inter vivos or a testamentary instrument, which directs or
6 permits the trustee to distribute the net income of the trust
7 to one or more persons, either in fixed proportions or in
8 amounts or proportions determined by the trustee and
9 regardless of whether the trust directs or permits the trustee
10 to distribute the principal of the trust to one or more such
11 persons. Notwithstanding the foregoing, no trust that
12 otherwise is an "income trust" shall qualify hereunder, if it
13 may be subject to taxation under the Internal Revenue Code, 26
14 U.S.C. s. 2001 or s. 2501, until the expiration of the period
15 for filing the return therefor, including extensions.

16 **(d)**~~(c)~~ "Interested distributee" means a person to whom
17 distributions of income or principal can currently be made who
18 has the power to remove the existing trustee and designate as
19 successor a person who may be a "related or subordinate
20 party," as defined in the Internal Revenue Code, 26 U.S.C. s.
21 672(c), with respect to such distributee.

22 **(e)**~~(d)~~ "Interested trustee" means an individual
23 trustee to whom the net income or principal of the trust can
24 currently be distributed or would be distributed if the trust
25 were then to terminate and be distributed, any trustee whom an
26 interested distributee has the power to remove and replace
27 with a related or subordinate party as defined in paragraph
28 (c), or an individual trustee whose legal obligation to
29 support a beneficiary may be satisfied by distributions of
30 income and principal of the trust.

31

1 (f) "Unitrust amount" means the amount determined by
2 multiplying the fair market value of the assets as defined in
3 paragraph (b) by the percentage calculated under paragraph
4 (2)(b).

5 (2) A trustee may, without court approval, convert an
6 income trust to a total return unitrust, reconvert a total
7 return unitrust to an income trust, or change the percentage
8 used to calculate the unitrust amount or the method used to
9 determine the fair market value of the trust if:

10 (a) The trustee adopts a written statement regarding
11 trust distributions that provides:

12 1. In the case of a trust being administered as an
13 income trust, that future distributions from the trust will be
14 unitrust amounts rather than net income, and indicates the
15 manner in which the unitrust amount will be calculated and the
16 method in which the fair market value of the trust will be
17 determined.

18 2. In the case of a trust being administered as a
19 total return unitrust, that:

20 a. Future distributions from the trust will be net
21 income rather than unitrust amounts; or

22 b. The percentage used to calculate the unitrust
23 amount or the method used to determine the fair market value
24 of the trust will be changed, and indicates the manner in
25 which the new unitrust amount will be calculated and the
26 method in which the new fair market value of the trust will be
27 determined;

28 (b)~~1~~ The trustee determines the terms of the unitrust
29 under one of the following methods:

30 1. A trustee who is a disinterested trustee
31 determines, or if there is no trustee other than an interested

1 trustee, the interested trustee appoints a disinterested
2 person who, in its sole discretion but acting in a fiduciary
3 capacity, determines for the interested trustee:

4 a. The percentage to be used to calculate the unitrust
5 amount, provided the percentage used is not greater than 5
6 percent nor less than 3 percent;

7 b. The method to be used in determining the fair
8 market value of the trust; and

9 c. Which assets, if any, are to be excluded in
10 determining the unitrust amount; or

11 2. The interested trustee or disinterested trustee
12 administers the trust such that:

13 a. The percentage used to calculate the unitrust
14 amount is 50 percent of the applicable federal rate as defined
15 in the Internal Revenue Code, 26 U.S.C. s. 7520, in effect for
16 the month the conversion under this section becomes effective
17 and for each January thereafter; however, if the percentage
18 calculated exceeds 5 percent, the unitrust percentage shall be
19 5 percent and if the percentage calculated is less than 3
20 percent, the unitrust percentage shall be 3 percent; and

21 b. The fair market value of the trust shall be
22 determined at least annually on an asset-by-asset basis,
23 reasonably and in good faith, in accordance with the
24 provisions of s. 738.202(5), except the following property
25 shall not be included in determining the value of the trust:

26 (I) Any residential property or any tangible personal
27 property that, as of the first business day of the current
28 valuation year, one or more current beneficiaries of the trust
29 have or have had the right to occupy, or have or have had the
30 right to possess or control (other than in his or her capacity
31 as trustee of the trust), and instead the right of occupancy

1 or the right to possession and control shall be deemed to be
2 the unitrust amount with respect to such property; however,
3 the unitrust amount shall be adjusted to take into account
4 partial distributions from or receipt into the trust of such
5 property during the valuation year.

6 (II) Any asset specifically given to a beneficiary and
7 the return on investment on such property, which return on
8 investment shall be distributable to such beneficiary.

9 (III) Any asset while held in a testator's estate;

10 (c) The trustee sends written notice of its intention
11 to take such action, along with copies of such written
12 statement and this section, and, if applicable, the
13 determinations of either the trustee or the disinterested
14 person to:

- 15 1. The grantor of the trust, if living.
- 16 2. All living persons who are currently receiving or
17 eligible to receive distributions of income of the trust.
- 18 3. All living persons who would receive distributions
19 of principal of the trust if the trust were to terminate at
20 the time of the giving of such notice (without regard to the
21 exercise of any power of appointment) or, if the trust does
22 not provide for its termination, all living persons who would
23 receive or be eligible to receive distributions of income or
24 principal of the trust if the persons identified in
25 subparagraph 2. were deceased.
- 26 4. All persons acting as advisers or protectors of the
27 trust.

28
29 Notice under this paragraph shall be served informally, in the
30 manner provided in the Florida Rules of Civil Procedure
31 relating to service of pleadings subsequent to the initial

1 pleading. Notice may be served on a legal representative or
2 natural guardian of a person without the filing of any
3 proceeding or approval of any court;

4 (d) At least one person receiving notice under each of
5 subparagraphs (c)2. and 3. is legally competent; and

6 (e) No person receiving such notice objects, by
7 written instrument delivered to the trustee, to the proposed
8 action of the trustee or the determinations of the
9 disinterested person within 60 days after service ~~receipt~~ of
10 such notice. An objection under this section may be executed
11 by a legal representative or natural guardian of a person
12 without the filing of any proceeding or approval of any court.

13 (3) If a trustee desires to convert an income trust to
14 a total return unitrust, reconvert a total return unitrust to
15 an income trust, or change the percentage used to calculate
16 the unitrust amount or the method used to determine a fair
17 market value of the trust but does not have the ability to or
18 elects not to do it under subsection (2), the trustee may
19 petition the circuit court for such order as the trustee deems
20 appropriate. In that event, the court, in its own discretion
21 or on the petition of such trustee or any person having an
22 income or remainder interest in the trust, may appoint a
23 disinterested person who, acting in a fiduciary capacity,
24 shall present such information to the court as shall be
25 necessary for the court to make a determination hereunder.

26 (4) All determinations made pursuant to
27 sub-subparagraph (2)(b)2.b. shall be conclusive if reasonable
28 and made in good faith. Such determination shall be
29 conclusively presumed to have been made reasonably and in good
30 faith unless proven otherwise in a proceeding commenced by or
31 on behalf of a person interested in the trust within the time

1 provided in s. 737.307. The burden will be on the objecting
2 interested party to prove that the determinations were not
3 made reasonably and in good faith.

4 ~~(5) The unitrust amount shall not be less than the net~~
5 ~~income of the trust, determined without regard to the~~
6 ~~provisions of subsection (6), for:~~

7 ~~(a) A trust for which a marital deduction has been~~
8 ~~taken for federal tax purposes under the Internal Revenue~~
9 ~~Code, 26 U.S.C. s. 2056 or s. 2523, during the lifetime of the~~
10 ~~spouse for whom the trust was created; or~~

11 ~~(b) A trust to which the generation skipping transfer~~
12 ~~tax due under the Internal Revenue Code, 26 U.S.C. s. 2601~~
13 ~~does not apply by reason of any effective date or transition~~
14 ~~rule.~~

15
16 ~~Paragraph (a) will not apply to any trust to the extent that~~
17 ~~the use of a total return unitrust is recognized for federal~~
18 ~~tax purposes under the Internal Revenue Code, 26 U.S.C. s.~~
19 ~~2056 or s. 2523. Paragraph (b) will not apply to any trust to~~
20 ~~the extent that the use of a total return unitrust is~~
21 ~~recognized for federal tax purposes under the Internal Revenue~~
22 ~~Code, 26 U.S.C. s. 2601.~~

23 (5)(6) Following the conversion of an income trust to
24 a total return unitrust, the trustee:

25 (a) Shall treat the unitrust amount as if it were net
26 income of the trust for purposes of determining the amount
27 available, from time to time, for distribution from the trust.

28 (b) May allocate to trust income for each taxable year
29 of the trust, or portion thereof:

30 1. Net short-term capital gain described in the
31 Internal Revenue Code, 26 U.S.C. s. 1222(5), for such year, or

1 | portion thereof, but only to the extent that the amount so
2 | allocated together with all other amounts allocated to trust
3 | income, as determined under the provisions of this chapter
4 | without regard to this section and s. 738.104, for such year,
5 | or portion thereof, does not exceed the unitrust amount for
6 | such year, or portion thereof.

7 | 2. Net long-term capital gain described in the
8 | Internal Revenue Code, 26 U.S.C. s. 1222(7), for such year, or
9 | portion thereof, but only to the extent that the amount so
10 | allocated together with all other amounts, including amounts
11 | described in subparagraph 1., allocated to trust income for
12 | such year, or portion thereof, does not exceed the unitrust
13 | amount for such year, or portion thereof.

14 | ~~(6)(7)~~ In administering a total return unitrust, the
15 | trustee may, in its sole discretion but subject to the
16 | provisions of the governing instrument, determine:

17 | (a) The effective date of the conversion.

18 | (b) The timing of distributions, including provisions
19 | for prorating a distribution for a short year in which a
20 | beneficiary's right to payments commences or ceases.

21 | (c) Whether distributions are to be made in cash or in
22 | kind or partly in cash and partly in kind.

23 | (d) If the trust is reconverted to an income trust,
24 | the effective date of such reconversion.

25 | (e) Such other administrative issues as may be
26 | necessary or appropriate to carry out the purposes of this
27 | section.

28 | ~~(7)(8)~~ Conversion to a total return unitrust under the
29 | provisions of this section shall not affect any other
30 | provision of the governing instrument, if any, regarding
31 | distributions of principal.

1 ~~(9) In the case of a trust for which a marital~~
2 ~~deduction has been taken for federal tax purposes under the~~
3 ~~Internal Revenue Code, 26 U.S.C. s. 2056 or s. 2523, the~~
4 ~~spouse otherwise entitled to receive the net income of the~~
5 ~~trust shall have the right, by written instrument delivered to~~
6 ~~the trustee, to compel the reconversion during his or her~~
7 ~~lifetime of the trust from a total return unitrust to an~~
8 ~~income trust, notwithstanding anything in this section to the~~
9 ~~contrary, unless the use of a total return unitrust is~~
10 ~~recognized for federal tax purposes under the Internal Revenue~~
11 ~~Code, 26 U.S.C. s. 2056 or s. 2523.~~

12 ~~(8)(10)~~ Any trustee or disinterested person who in
13 good faith takes or fails to take any action under this
14 section shall not be liable to any person affected by such
15 action or inaction, regardless of whether such person received
16 written notice as provided in this section and regardless of
17 whether such person was under a legal disability at the time
18 of the delivery of such notice. Such person's exclusive remedy
19 shall be to obtain, under subsection~~(9)(11)~~, an order of the
20 court directing the trustee to convert an income trust to a
21 total return unitrust, to reconvert from a total return
22 unitrust to an income trust, or to change the percentage used
23 to calculate the unitrust amount. If a court determines that
24 the trustee or disinterested person has not acted in good
25 faith in taking or failing to take any action under this
26 section, s. 738.105(3) applies.

27 ~~(9)(11)~~ If a majority in interest of either the income
28 or remainder beneficiaries of an income trust has delivered to
29 the trustee a written objection to the amount of the income
30 distributions of the trust, and, if the trustee has failed to
31 resolve the objection to the satisfaction of the objecting

1 beneficiaries within 6 months from the receipt of such written
2 objection, then the objecting beneficiaries may petition the
3 court in accordance with subsection (3).

4 ~~(10)(12)~~ This section shall be construed as pertaining
5 to the administration of a trust and shall be available to any
6 trust that is administered either in this state or under
7 Florida law unless:

8 (a) The governing instrument reflects an intention
9 that the current beneficiary or beneficiaries are to receive
10 an amount other than a reasonable current return from the
11 trust;

12 (b) The trust is a trust described in the Internal
13 Revenue Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s.
14 664(d), ~~s. 1361(d)~~, s. 2702(a)(3), or s. 2702(b);

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

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

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

24 (d) The governing instrument expressly prohibits use
25 of this section by specific reference to the section. A
26 provision in the governing instrument that, "The provisions of
27 section 738.1041, Florida Statutes, as amended, or any
28 corresponding provision of future law, shall not be used in
29 the administration of this trust," or similar words reflecting
30 such intent shall be sufficient to preclude the use of this
31 section; or

1 (e) The trust is a trust with respect to which a
2 trustee currently possesses the power to adjust under s.
3 738.104.

4 (11) The grantor of a trust may create an express
5 total return unitrust that will become effective as provided
6 in the trust document without requiring a conversion under
7 this section. An express total return unitrust created by the
8 grantor of the trust shall be treated as a unitrust under this
9 section only if the terms of the trust document contain all of
10 the following provisions:

11 (a) That distributions from the trust will be unitrust
12 amounts and the trust documents indicate the manner in which
13 the unitrust amount will be calculated and the method in which
14 the fair market value of the trust will be determined;

15 (b) The percentage to be used to calculate the
16 unitrust amount, provided the percentage used is not greater
17 than 5 percent or less than 3 percent;

18 (c) The method to be used in determining the fair
19 market value of the trust; and

20 (d) Which assets, if any, are to be excluded in
21 determining the unitrust amount.

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

24 738.303 Apportionment when income interest ends.--

25 (1) For purposes of this section, the term
26 "undistributed income" means net income received on or before
27 the date on which an income interest ends. The term does not
28 include an item of income or expense that is due or accrued or
29 net income that has been added or is required to be added to
30 principal under the terms of the trust. In the case of a trust
31 being administered as a unitrust under s. 738.1041, the term

1 "undistributed income" means the prorated unitrust amount
2 computed on a daily basis through the date on which the income
3 interest ends.

4 Section 7. Section 738.401, Florida Statutes, is
5 amended to read:

6 738.401 Character of receipts.--

7 (1) For purposes of this section, "entity" means a
8 corporation, partnership, limited liability company, regulated
9 investment company, real estate investment trust, common trust
10 fund, or any other organization in which a trustee has an
11 interest other than a trust or estate to which s. 738.402
12 applies, a business or activity to which s. 738.403 applies,
13 or an asset-backed security to which s. 738.608 applies.

14 (2) Except as otherwise provided in this section, a
15 trustee shall allocate to income money received from an
16 entity.

17 (3) Except as otherwise provided in this section, a
18 trustee shall allocate the following receipts from an entity
19 to principal:

20 (a) Property other than money.

21 (b) Money received in one distribution or a series of
22 related distributions in exchange for part or all of a trust's
23 interest in the entity.

24 (c) Money received in total or partial liquidation of
25 the entity.

26 (d) Money received from an entity that is a regulated
27 investment company or a real estate investment trust if the
28 money distributed represents short-term or long-term capital
29 gain realized within the entity.

30 (4) If a trustee elects, or continues an election made
31 by its predecessor, to reinvest dividends in shares of stock

1 of a distributing corporation or fund, whether evidenced by
2 new certificates or entries on the books of the distributing
3 entity, the new shares shall retain their character as income.

4 (5) Money is received in partial liquidation:

5 (a) To the extent the entity, at or near the time of a
6 distribution, indicates that such money is a distribution in
7 partial liquidation; or

8 (b) If the total amount of money and property received
9 in a distribution or series of related distributions is
10 greater than 20 percent of the entity's gross assets, as shown
11 by the entity's year-end financial statements immediately
12 preceding the initial receipt.

13 (6) Money is not received in partial liquidation, nor
14 may money be taken into account under paragraph (5)(b), to the
15 extent such money does not exceed the amount of income tax a
16 trustee or beneficiary must pay on taxable income of the
17 entity that distributes the money.

18 (7) The following special rules apply to moneys or
19 property received by a private trustee from entities described
20 in this subsection:

21 (a) Moneys or property received from a targeted entity
22 that is not an investment entity which do not exceed the
23 trust's pro rata share of the undistributed cumulative net
24 income of the targeted entity during the time an ownership
25 interest in the targeted entity was held by the trust shall be
26 allocated to income. The balance of moneys or property
27 received from a targeted entity shall be allocated to
28 principal.

29 (b) If trust assets include any interest in an
30 investment entity, the designated amount of money or property
31 received from the investment entity shall be treated by the

1 trustee in the same manner as if the trustee had directly held
2 the trust's pro rata share of the assets of the investment
3 entity attributable to the distribution of such designated
4 amount. Thereafter, distributions shall be treated as
5 principal.

6 (c) For purposes of this subsection and subsection
7 (8), the following definitions apply:

8 1. "Cumulative net income" means the targeted entity's
9 net income as determined using the method of accounting
10 regularly used by the targeted entity in preparing its
11 financial statements or, if no financial statements are
12 prepared, the net book income computed for federal income tax
13 purposes, for every year an ownership interest in the entity
14 is held by the trust. The trust's pro rata share shall be the
15 cumulative net income, multiplied by the percentage ownership
16 of the trust.

17 2. "Undistributed cumulative net income" means the
18 trust's pro rata share of cumulative net income less all prior
19 distributions from the targeted entity to the trust which have
20 been allocated to income.

21 3. A "targeted entity" includes any entity that is
22 treated as a partnership, subchapter S corporation, or
23 disregarded entity pursuant to the Internal Revenue Code of
24 1986, as amended, other than an entity described in s.
25 738.403.

26 4. An "investment entity" is a targeted entity that
27 normally derives 50 percent or more of its annual cumulative
28 net income from interest, dividends, annuities, royalties,
29 rental activity, or other passive investments, including
30 income from the sale or exchange of such passive investments.

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1 5. The "designated amount" of moneys or property
2 received from an investment entity during any year shall be
3 equal to the amount of the distribution which does not exceed
4 the greater of:

5 a. The amount of income of the investment entity for
6 the current year, as reported to the trustee by the investment
7 entity for federal income tax purposes; or

8 b. The amount of income of the investment entity for
9 the current year and the prior 2 years, as reported to the
10 trustee by the investment entity for federal income tax
11 purposes, less any distributions of money or property made by
12 the investment entity to the trustee during the prior 2 years.

13 6. A "private trustee" is a trustee who is an
14 individual, but only if the trustee is unable to use the power
15 to adjust between income and principal with respect to
16 receipts from entities described in this subsection pursuant
17 to s. 738.104. A bank, trust company, or other commercial
18 trustee is not a private trustee.

19 (d) This subsection does not modify or change any
20 provisions of ss. 738.705 and 738.706 relating to income
21 taxes.

22 (8)(7) A trustee may rely upon a statement made by an
23 entity about the source or character of a distribution, about
24 the amount of profits of a targeted entity, or absent the
25 nature and value of assets of an investment entity if the
26 statement is made at or near the time of distribution by the
27 entity's board of directors or other person or group of
28 persons authorized to exercise powers to pay money or transfer
29 property comparable to those of a corporation's board of
30 directors.

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

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5 SENATE SUMMARY

6 Revises various laws governing the administration of
7 trusts and trust accounts. Revises the powers conferred
8 upon a trustee. Specifies circumstances in which court
9 authorization is not required for a trustee to exercise
10 his or her power when a conflict of interest exists.
11 Revises the circumstances in which a trustee may not make
12 an adjustment when such adjustment would benefit him or
13 her. Provides for consequences when a court determines
14 that a fiduciary has not acted in good faith. Revises the
15 definition of the term "undistributed income" when a
16 trust is being administered as a unitrust. Prescribes
17 rules for determining allocation of moneys or property
18 received from targeted entities and from investment
19 entities. (See bill for details.)
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