

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 660

SPONSOR: Senator Carlton

SUBJECT: Assets Held in Benefit Plans

DATE: February 8, 2005

REVISED: 02/10/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	JU	Fav/2 amendments
2.			BI	
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill revises several provisions of law related to estate and tax planning.

Assets Exempt from Creditor Claims

Funds held in the Florida Prepaid College Program and the Florida College Savings Program are exempt from creditor claims under existing Florida law. The bill provides that Coverdell Education Savings Accounts, which are tax-advantaged accounts used to save for education expenses, are accorded the same treatment.

Benefit Plans

The bill broadens the definition of the term “benefit plan” to mean a retirement plan that may include, but is not limited to, any pension, profit-sharing, stock bonus, or stock-ownership plan or individual retirement account. The bill then provides that these benefit plans may be delivered to a custodian for the benefit of a minor, to a child’s parents as natural guardians, or to a trustee designated by the owner of the benefit plan upon the death of the owner. The bill also raises from \$10,000 to \$15,000 the amount that may be given to a custodian by certain persons without court involvement.

Additionally, the bill defines the term “qualified minor’s trust” as a trust that complies with s. 2503(c) of the Internal Revenue Code. That code provision requires that trusts for the benefit of persons under the age of 21 distribute their assets to the beneficiary when the beneficiary reaches the age of 21. The bill further provides that an adult custodian of property for a minor may transfer the custodial property into a qualified minor’s trust.

This bill substantially amends the following sections of the Florida Statutes: 222.22, 710.102, 710.104, 710.108, 710.116, 733.808, and 744.301.

II. Present Situation:

Assets Exempted from Legal Process

Under the federal Bankruptcy Code, a state may specify assets of a debtor in a bankruptcy proceeding which are exempt from creditor claims.¹ Under ch. 222, F.S., Florida has protected the following items from creditor claims:²

- Certain disposable earnings of a head of family (s. 222.11, F.S.).
- The proceeds of a life insurance policy (s. 222.13, F.S.).
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract (s. 222.14, F.S.).
- Disability benefits payable from any insurance (s. 222.18, F.S.).
- Certain pension, retirement, or profit sharing benefits (s. 222.21, F.S.).
- Prepaid College Trust Fund moneys and Medical Savings Account funds (s. 222.22, F.S.).
- A debtor’s interest in a motor vehicle, up to \$1,000 in value (s. 222.25, F.S.).
- The debtor’s interest in any professionally prescribed health aids (s. 222.25, F.S.).
- Social security benefits, unemployment compensation, or public assistance benefits; veterans’ benefits; disability, illness, or unemployment benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances (s. 222.201, F.S., recognizing a subclass of property for federal exemptions under 11 U.S.C. s. 522(d)(10)).

Fraudulent transfers, conveyances, or other fraudulent asset conversions are not exempt from legal process under s. 222.29 and s. 222.30, F.S.

Assets In Qualified Tuition Programs and Education Savings Accounts

The Legislature established the Florida Prepaid College Program (prepaid program) and the Florida College Savings Program (savings program) as qualified tuition programs under 26 U.S.C. s. 529. Under the prepaid program, one can lock in the cost of attending a Florida college

¹ See 11 U.S.C. s. 522(b) and s. 222.20, F.S.

² See s. 222.01 through s. 222.05, F.S., exemption of homestead from legal process; s. 222.061, F.S., exemption of certain personal property; s. 222.11, F.S., exemption of wages from garnishment; s. 222.13 through s. 222.14, F.S., exemption of life insurance policy proceeds; s. 222.18, F.S., exemption of disability income payments; s. 222.21, F.S., exemption of pension money, retirement, and profit-sharing benefits; s. 222.25, F.S., exemption of up to a certain value in a motor vehicle, prescribed health aids, or I.R.S. refunds.

or university today.³ Under the savings program, one may make investments in a small range of investment options to fund the costs of attending undergraduate and graduate schools across the nation.⁴ Distributions from either program are generally tax free.

The Legislature specifically exempted the prepaid program and the savings program from legal process under s. 222.22, F.S., and from claims of probate creditors under s. 732.402(2)(c), F.S. Since the creation of the programs, Congress has expanded the tax benefits under the Internal Revenue Code to allow for the creation of other education savings accounts such as the Coverdell Education Savings Account (Coverdell ESA)⁵ and qualified prepaid education programs.⁶ Distributions from Coverdell ESAs are generally tax free. Up to \$2,000 per year may be contributed to a person's Coverdell ESA(s).⁷ Coverdell ESAs may be invested in a broader range of investments than those authorized under the savings program described above.

Assets in Health Savings Accounts and Medical Savings Accounts

Health Savings Accounts (HSAs) and Archer Medical Savings Accounts (MSAs) provide tax benefits to account owners with high deductible health plans. Moneys in the accounts must be used for medical expenses not covered by the health plans. Contributions to HSAs and MSAs are generally tax-deductible. Additionally, the interest and earnings on the account are generally tax-free. The accounts differ in the size of the deductibles required and the amount that may be contributed to the accounts annually. Further, MSAs are limited to the self-employed and small employers. Moneys paid into a Medical Savings Account are exempt from legal process.⁸

Assets Derived from Death Benefit Proceeds

Under s. 733.808, F.S., death benefits from certain insurance contracts or certain employee benefit plans may be payable to a trustee of a trust created by the decedent. If the trustee does not claim the death benefits within six months after the decedent's death, then the insurance company or obligor must pay the benefits to the personal representative of the estate unless otherwise provided by agreement with the insurer. Such death benefits are not a part of the probate estate. Thus, they are not subject to taxes, debts, or other creditor claims, nor are they used to compute the commission to a personal representative or the fees owed to the personal representative's attorney. Death benefits are also exempt from liability for the payment of expenses of administration, obligations of the estate, or contributions required under s. 733.607(2), F.S.

Assets Derived from Settlement of Claims or Causes of Action on Behalf of a Minor.

Under s. 744.301, F.S., parents as natural guardians are authorized to settle claims on behalf of their children and manage the proceed of those claims and property distributed from an estate,

³ FLORIDA PREPAID COLLEGE BOARD, THE EARLIER, THE BETTER: FLORIDA PREPAID COLLEGE PLAN, *at* <http://www.florida529plans.com/prepaid/index.html>.

⁴ FLORIDA PREPAID COLLEGE BOARD, A NEW WAY TO SAVE: FLORIDA COLLEGE INVESTMENT PLAN, *at* <http://www.florida529plans.com/savings/index.html>.

⁵ *See* 26 U.S.C. s. 530.

⁶ *See* 26 U.S.C. s. 529

⁷ *See* INTERNAL REVENUE SERVICE, PUBLICATION 970, TAX BENEFITS FOR EDUCATION, at 1 (2004).

⁸ Section 222.2(2), F.S.

trust, or life insurance policy for amounts that do not exceed \$15,000. Courts may appoint a guardian *ad litem* or legal guardian to represent the interests of a minor for legal claims exceeding \$15,000.

Assets Transferred to a Minor

Under the Florida Uniform Transfers to Minor Act under ch. 710, F.S., a person may transfer property to an adult as custodian for a minor. Court authorization or a guardianship may be required for certain transfers of property valued in excess of \$10,000. A custodian is authorized to use the custodial property for the benefit of the minor without a court order as required in guardianships. Additionally, complex governing documents as needed in trusts are unnecessary. Funds, however, may be subject to estate taxes if the donor of the funds is the custodian of the account.⁹

Assets in Qualified Minor's Trusts

A transfer of assets to a trust for the benefit of a person younger than 21 years old is exempt from gift taxes if the trust may be expended by or for the benefit of the beneficiary and passes to the beneficiary upon reaching the age of 21.¹⁰ According to the Real Property, Probate, and Trust Law Section of The Florida Bar, these trusts provide for the continued management of the funds with the consent of the beneficiary when the beneficiary turns 21.

III. Effect of Proposed Changes:

This bill revises several provisions of law related to estate and tax planning.

Assets Exempt from Creditor Claims

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Benefit Plans

The bill broadens the definition of the term "benefit plan" to mean a retirement plan that may include, but is not limited to, any pension, profit-sharing, stock bonus, or stock-ownership plan or individual retirement account. The bill then provides that these benefit plans may be delivered to a custodian for the benefit of a minor, to a child's parents as natural guardians, or to a trustee designated by the owner of the benefit plan upon the death of the owner. The bill also raises from \$10,000 to \$15,000 the amount that may be given to a custodian by certain persons without court involvement.

⁹ Jani Maurer, *Uniform Transfers to Minors Act Accounts--Progress, Potential, and Pitfalls*, 28 Nova L. Rev. 745, 761 (2004).

¹⁰ See 26 U.S.C. s. 2503(c).

Additionally, the bill defines the term “qualified minor’s trust” as a trust that complies with s. 2503(c) of the Internal Revenue Code. That code provision requires that trusts for the benefit of persons under the age of 21 distribute their assets to the beneficiary when the beneficiary reaches the age of 21. The bill further provides that an adult custodian of property for a minor may transfer the custodial property into a qualified minor’s trust. The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will make additional types of a debtor’s assets exempt from creditors’ claims. The bill also clarifies that the proceeds of benefit plans may be paid to an adult custodian for the benefit of a minor and that the property of a custodian may be placed in a qualified minor’s trust.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 853710 by Judiciary:

Adds health savings accounts to the types of assets protected from creditors by the bill and existing law. (WITH TITLE AMENDMENT)

Barcode 780130 by Judiciary:

Adds hurricane savings accounts to the types of assets protected from creditors by the bill and existing law. The amount that may be protected from creditors is limited to twice the deductible of a person's homeowners' insurance. (WITH TITLE AMENDMENT)

The amendment does not state how a person specifies an account is a hurricane savings account or whether a person must record on the records of a financial institution that a particular account is a hurricane savings account. Further, the amendment does not address whether or how funds in a hurricane savings account lose their protected status if they are used for a purpose other than storm reconstruction. The Legislature may wish to address these issues.

Unlike health savings accounts and medical savings accounts and other assets protected from creditors under s. 222.22, F.S., hurricane savings accounts have not been accorded preferential tax treatment under federal tax law. Staff of the Department of Financial Services, however, report that the Chief Financial Officer intends to ask Florida's congressional delegation to file legislation in Congress which would give hurricane savings accounts preferential tax treatment.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
