



1 parents or natural guardians of a minor child  
2 to collect, receive, manage, and dispose of and  
3 make elections regarding the proceeds of an  
4 annuity contract payable to a minor child or of  
5 a benefit plan of which the minor is a  
6 beneficiary, participant, or owner, without  
7 appointment, authority, or bond, if the  
8 proceeds equal less than a specified maximum  
9 amount; providing an effective date.

10

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

12

13 Section 1. Section 222.21, Florida Statutes, is  
14 amended to read:

15 222.21 Exemption of pension money and certain  
16 tax-exempt funds or accounts ~~retirement or profit sharing~~  
17 ~~benefits~~ from legal processes.--

18 (1) Money received by any debtor as pensioner of the  
19 United States within 3 months next preceding the issuing of an  
20 execution, attachment, or garnishment process may not be  
21 applied to the payment of the debts of the pensioner when it  
22 is made to appear by the affidavit of the debtor or otherwise  
23 that the pension money is necessary for the maintenance of the  
24 debtor's support or a family supported wholly or in part by  
25 the pension money. The filing of the affidavit by the debtor,  
26 or the making of such proof by the debtor, is prima facie  
27 evidence; and it is the duty of the court in which the  
28 proceeding is pending to release all pension moneys held by  
29 such attachment or garnishment process, immediately, upon the  
30 filing of such affidavit or the making of such proof.

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1           (2)(a) Except as provided in paragraph(d)(b), any  
2 money or other assets payable to an owner, a participant, or a  
3 beneficiary from, or any interest of any owner, participant,  
4 or beneficiary in, a fund or account ~~retirement or~~  
5 ~~profit sharing plan that is qualified under s. 401(a), s.~~  
6 ~~403(a), s. 403(b), s. 408, s. 408A, or s. 409 of the Internal~~  
7 ~~Revenue Code of 1986, as amended,~~ is exempt from all claims of  
8 creditors of the owner, beneficiary, or participant if the  
9 fund or account is:-

10           1. Maintained in accordance with a master plan, volume  
11 submitter plan, prototype plan, or any other plan or governing  
12 instrument that has been preapproved by the Internal Revenue  
13 Service as exempt from taxation under s. 401(a), s. 403(a), s.  
14 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s.  
15 501(a) of the Internal Revenue Code of 1986, as amended,  
16 unless it has been subsequently determined that the plan or  
17 governing instrument is not exempt from taxation in a  
18 proceeding that has become final and nonappealable;

19           2. Maintained in accordance with a plan or governing  
20 instrument that has been determined by the Internal Revenue  
21 Service to be exempt from taxation under s. 401(a), s. 403(a),  
22 s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s.  
23 501(a) of the Internal Revenue Code of 1986, as amended,  
24 unless it has been subsequently determined that the plan or  
25 governing instrument is not exempt from taxation in a  
26 proceeding that has become final and nonappealable; or

27           3. Not maintained in accordance with a plan or  
28 governing instrument described in subparagraph 1. or 2. if the  
29 person claiming exemption under this paragraph proves by a  
30 preponderance of the evidence that the fund or account is  
31

1 maintained in accordance with a plan or governing instrument  
2 that:

3 a. Is in substantial compliance with the applicable  
4 requirements for tax exemption under s. 401(a), s. 403(a), s.  
5 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s.  
6 501(a) of the Internal Revenue Code of 1986, as amended; or

7 b. Would have been in substantial compliance with the  
8 applicable requirements for tax exemption under s. 401(a), s.  
9 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b),  
10 or s. 501(a) of the Internal Revenue Code of 1986, as amended,  
11 but for the negligent or wrongful conduct of a person or  
12 persons other than the person who is claiming the exemption  
13 under this section.

14 (b) It is not necessary that a fund or account that is  
15 described in paragraph (a) be maintained in accordance with a  
16 plan or governing instrument that is covered by any part of  
17 the Employee Retirement Income Security Act for money or  
18 assets payable from or any interest in that fund or account to  
19 be exempt from claims of creditors under that paragraph.

20 (c) Any money or other assets that are exempt from  
21 claims of creditors under paragraph (a) do not cease to  
22 qualify for exemption by reason of a direct transfer or  
23 eligible rollover that is excluded from gross income under s.  
24 402(c) of the Internal Revenue Code of 1986 or by distribution  
25 from any such fund or account as long as such money or assets  
26 are not commingled with other money or assets that are not  
27 exempt from claims of creditors under that paragraph.

28 (d)(b) Any fund or account ~~plan or arrangement~~  
29 described in paragraph (a) is not exempt from the claims of an  
30 alternate payee under a qualified domestic relations order.  
31 However, the interest of any alternate payee under a qualified

1 domestic relations order is exempt from all claims of any  
2 creditor, other than the Department of Children and Family  
3 Services, of the alternate payee. As used in this paragraph,  
4 the terms "alternate payee" and "qualified domestic relations  
5 order" have the meanings ascribed to them in s. 414(p) of the  
6 Internal Revenue Code of 1986.

7 ~~(e)(c)~~ This subsection applies ~~The provisions of~~  
8 ~~paragraphs (a) and (b) apply~~ to any proceeding that is filed  
9 on or after the effective date of this act ~~October 1, 1987~~.

10 Section 2. Section 222.22, Florida Statutes, is  
11 amended to read:

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

16 ~~(1)(a)~~ Moneys paid into or out of, the assets of, and  
17 the income of any validly existing qualified tuition program  
18 authorized by s. 529 of the Internal Revenue Code of 1986, as  
19 amended, including, but not limited to, the Florida Prepaid  
20 College Trust Fund advance payment contracts under s. 1009.98  
21 and Florida Prepaid College Trust Fund participation  
22 agreements under s. 1009.981 ~~the Florida Prepaid College Trust~~  
23 ~~Fund by or on behalf of a purchaser or qualified beneficiary~~  
24 ~~pursuant to an advance payment contract made under part IV of~~  
25 ~~chapter 1009, which contract has not been terminated, are not~~  
26 liable to attachment, levy, garnishment, or legal process in  
27 the state in favor of any creditor of or claimant against any  
28 program participant, purchaser, owner or contributor, or  
29 program beneficiary ~~the purchaser or beneficiary of such~~  
30 ~~advance payment contract~~.

1           ~~(2)(b)~~ Moneys paid into or out of, the assets of, and  
2 the income of a health savings account or medical savings  
3 account authorized under ss. 220 and 223 of the Internal  
4 Revenue Code of 1986, as amended, are not liable to  
5 attachment, levy, garnishment, or legal process in this state  
6 in favor of any creditor of or claimant against any account  
7 participant, purchaser, owner or contributor, or account  
8 beneficiary.

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

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

29           (4)(a) Moneys paid into or out of, the assets of, and  
30 the income of any hurricane savings account established by an  
31 insurance policyholder for residential property in this state

1 equal to twice the deductible sum of such insurance to cover  
2 an insurance deductible or other uninsured portion of the  
3 risks of loss from a hurricane, rising floodwaters, or other  
4 catastrophic windstorm event are not liable to attachment,  
5 levy, garnishment, or legal process in this state in favor of  
6 any creditor of or claimant against any account participant,  
7 purchaser, owner or contributor, or account beneficiary. As  
8 used in this subsection, the term "hurricane savings account"  
9 means an account established by the owner of residential real  
10 estate in this state who specifies that the purpose of the  
11 account is to cover the amount of insurance deductibles and  
12 other uninsured portions of the risks of loss from hurricanes,  
13 rising floodwaters, or other catastrophic windstorm events.

14 (b) For purposes of this subsection, the term  
15 "hurricane savings account" means a trust created or organized  
16 in the United States exclusively for the purpose of paying an  
17 insurance deductible or other uninsured portion of the risk of  
18 loss on residential property from a hurricane, rising  
19 floodwaters, or other catastrophic windstorm event, but only  
20 if the written governing instrument creating the trust meets  
21 the following requirements:

22 1. No contribution will be accepted unless such  
23 contribution, when added to previous contributions to the  
24 trust, does not exceed twice the windstorm deductible amount  
25 on residential property.

26 2. The trustee is a bank, as defined by s. 658.12,  
27 which will administer the trust consistent with the  
28 requirements of this subsection.

29 3. The assets of the trust may not be commingled with  
30 other property except in a common trust fund or common  
31 investment fund.

1           (c) The term "residential property" as used in this  
2 subsection means property that meets the requirements of a  
3 homestead exemption under s. 4, Art. X of the Florida  
4 Constitution.

5           Section 3. Section 710.102, Florida Statutes, is  
6 amended to read:

7           710.102 Definitions.--As used in this act, the term:

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

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

15           (3) "Broker" means a person lawfully engaged in the  
16 business of effecting transactions in securities or  
17 commodities for the person's own account or for the account of  
18 others.

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

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

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

27           (7) "Custodian" means a person so designated under s.  
28 710.111 or a successor or substitute custodian designated  
29 under s. 710.121.

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

4           (9) "Legal representative" means an individual's  
5 personal representative or conservator.

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

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

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

14          (13) "Personal representative" means an executor,  
15 administrator, successor personal representative, or special  
16 administrator of a decedent's estate or a person legally  
17 authorized to perform substantially the same functions.

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

21          ~~(15)~~~~(14)~~ "State" includes any state of the United  
22 States, the District of Columbia, the Commonwealth of Puerto  
23 Rico, and any territory or possession subject to the  
24 legislative authority of the United States.

25          ~~(16)~~~~(15)~~ "Transfer" means a transaction that creates  
26 custodial property under s. 710.111.

27          ~~(17)~~~~(16)~~ "Transferor" means a person who makes a  
28 transfer under this act.

29          ~~(18)~~~~(17)~~ "Trust company" means a financial  
30 institution, corporation, or other legal entity, authorized to  
31 exercise general trust powers.

1           Section 4. Subsection (1) of section 710.104, Florida  
2 Statutes, is amended to read:

3           710.104 Nomination of custodian.--

4           (1) A person having the right to designate the  
5 recipient of property transferable upon the occurrence of a  
6 future event may revocably nominate a custodian to receive the  
7 property for a minor beneficiary upon the occurrence of the  
8 event by naming the custodian followed in substance by the  
9 words: "as custodian for (name of minor) under the Florida  
10 Uniform Transfers to Minors Act." The nomination may name one  
11 or more persons as substitute custodians to whom the property  
12 must be transferred, in the order named, if the first  
13 nominated custodian dies before the transfer or is unable,  
14 declines, or is ineligible to serve. The nomination may be  
15 made in a will, a trust, a deed, an instrument exercising a  
16 power of appointment, or in a writing designating a  
17 beneficiary of contractual rights, including, but not limited  
18 to, the right to a benefit plan, which is registered with or  
19 delivered to the payor, issuer, or other obligor of the  
20 contractual rights.

21           Section 5. Section 710.108, Florida Statutes, is  
22 amended to read:

23           710.108 Transfer by obligor.--

24           (1) Subject to subsections (2) and (3), a person not  
25 subject to s. 710.106 or s. 710.107 who holds property,    
26 including, but not limited to, a benefit plan, of a minor not  
27 having a conservator, or who owes a liquidated debt to, a  
28 minor not having a conservator,   may make an irrevocable  
29 transfer to a custodian for the benefit of the minor pursuant  
30 to s. 710.111.  
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1           (2) If a person having the right to do so under s.  
2 710.104 has nominated a custodian under that section to  
3 receive the custodial property, the transfer must be made to  
4 that person.

5           (3) If no custodian has been nominated under s.  
6 710.104, or all persons so nominated as custodian die before  
7 the transfer or are unable, decline, or are ineligible to  
8 serve, a transfer under this section may be made to an adult  
9 member of the minor's family or to a trust company unless the  
10 property exceeds ~~\$15,000~~\$10,000 in value.

11           Section 6. Section 710.116, Florida Statutes, is  
12 amended to read:

13           710.116 Use of custodial property.--

14           (1) A custodian may deliver or pay to the minor or  
15 expend for the minor's benefit so much of the custodial  
16 property as the custodian considers advisable for the use and  
17 benefit of the minor, without court order and without regard  
18 to the duty or ability of the custodian personally or of any  
19 other person to support the minor, or to any other income or  
20 property of the minor which may be applicable or available for  
21 that purpose.

22           (2) A custodian may, without court order, transfer all  
23 or part of the custodial property to a qualified minor's  
24 trust. A transfer of property pursuant to this subsection  
25 terminates the custodianship to the extent of the property  
26 transferred.

27           ~~(3)~~(2) On petition of an interested person or the  
28 minor if the minor has attained the age of 14 years, the court  
29 may order the custodian to deliver or pay to the minor or  
30 expend for the minor's benefit so much of the custodial  
31

1 | property as the court considers advisable for the use and  
2 | benefit of the minor.

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

6 |       Section 7. Section 733.808, Florida Statutes, is  
7 | amended to read:

8 |       733.808 Death benefits; disposition of proceeds.--

9 |       (1) Death benefits of any kind, including, but not  
10 | limited to, proceeds of:

11 |       (a) An individual life insurance policy;

12 |       (b) A group life insurance policy;

13 |       (c) A benefit plan as defined by s. 710.102 ~~An~~

14 | ~~employees' trust or under a contract purchased by an~~  
15 | ~~employees' trust forming part of a pension, stock bonus, or~~  
16 | ~~profit sharing plan;~~

17 |       (d) An annuity or endowment contract; and

18 |       (e) A health or ~~and~~ accident policy,

19 |

20 | may be made payable to the trustee under a trust agreement or  
21 | declaration of trust in existence at the time of the death of  
22 | the insured, employee, or annuitant or the owner of or

23 | participant in the benefit plan. The death benefits shall be

24 | held and disposed of by the trustee in accordance with the  
25 | terms of the trust as they appear in writing on the date of

26 | the death of the insured, employee, ~~or~~ annuitant, owner, or

27 | participant. It shall not be necessary to the validity of the

28 | trust agreement or declaration of trust, whether revocable or  
29 | irrevocable, that it have a trust corpus other than the right

30 | of the trustee to receive death benefits.

31 |

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

3           (a) An individual life insurance policy;

4           (b) A group life insurance policy;

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

9           (d) An annuity or endowment contract; and

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

11  
12 may be made payable to the trustee named, or to be named, in a  
13 written instrument that is admitted to probate as the last  
14 will of the insured, the owner of the policy, the employee,  
15 owner, or participant covered by the plan or contract, or any  
16 other person, whether or not the will is in existence at the  
17 time of designation. Upon the admission of the will to  
18 probate, the death benefits shall be paid to the trustee, to  
19 be held, administered, and disposed of in accordance with the  
20 terms of the trust or trusts created by the will.

21          (3) In the event no trustee makes proper claim to the  
22 proceeds from the insurance company or other obligor within a  
23 period of 6 months after the date of the death of the insured,  
24 employee, ~~or~~ annuitant, owner, or participant, or if  
25 satisfactory evidence is furnished to the insurance company or  
26 obligor within that period that there is, or will be, no  
27 trustee to receive the proceeds, payment shall be made by the  
28 insurance company or obligor to the personal representative of  
29 the person making the designation, unless otherwise provided  
30 by agreement with the insurer or obligor during the lifetime  
31 of the insured, employee, ~~or~~ annuitant, owner, or participant.

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

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

12           (6) ~~Nothing in~~ This section does not shall affect the  
13 validity of any designation of a beneficiary of proceeds  
14 previously made that designates as beneficiary the trustee of  
15 any trust established under a trust agreement or declaration  
16 of trust or by will.

17           Section 8. Subsection (2) of section 744.301, Florida  
18 Statutes, is amended to read:

19           744.301 Natural guardians.--

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

22           (a) Settle and consummate a settlement of any claim or  
23 cause of action accruing to any of their minor children for  
24 damages to the person or property of any of said minor  
25 children; ~~and to~~

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

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

30 ~~or~~

31

1           (d) Collect, receive, manage, and dispose of and make  
2 elections regarding the proceeds from a life insurance policy  
3 or annuity contract payable to, or otherwise accruing to the  
4 benefit of, the child; and

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

9  
10 without appointment, authority, or bond during minority, when  
11 the amount involved in any instance does not exceed \$15,000,  
12 without appointment, authority, or bond.

13           Section 9. This act shall take effect upon becoming a  
14 law.

15  
16                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
17   COMMITTEE SUBSTITUTE FOR  
18   Senate Bill 660

19 The committee substitute increases the creditor protection  
20 afforded individual retirement accounts and tax-qualified  
21 employee benefit plans. Tax-exempt status is sufficient to  
22 qualify for protection from creditors and the fund or account  
23 need not be ERISA qualified to receive the creditor exemption.  
24 The committee substitute also included governmental and church  
25 plans that are tax-exempt to the exemption from creditor  
26 claims.

27 The committee substitute also provides that the moneys or  
28 assets contained in a hurricane savings account are exempt  
29 from creditor's claims. The hurricane savings account must be  
30 created by the owner of residential real estate in Florida in  
31 trust form exclusively for the purpose of paying an insurance  
deductible or other uninsured portion of the risk of loss on  
homestead residential property resulting from a hurricane,  
rising floodwater, or other catastrophic windstorm event. The  
trust account can only be created to cover the insurance  
deductible on a person's homestead property. The amount of  
contributions into the hurricane savings trust account cannot  
exceed twice the windstorm deductible on the homestead  
property. The trustee must be a bank as defined by s. 658.12,  
F.S., which will administer the trust consistent with  
requirements of this section. The assets of the trust cannot  
be commingled with other property except in a common trust  
fund or common investment fund.