

1 A bill to be entitled
2 An act relating to assets held in benefit
3 plans; amending s. 222.21, F.S.; exempting
4 certain tax-exempt funds or accounts from legal
5 process in favor of creditors; amending s.
6 222.22, F.S.; exempting from legal process in
7 favor of creditors or other claimants assets
8 held in qualified tuition programs, in certain
9 health savings accounts and medical savings
10 accounts, in Coverdell education savings
11 accounts, or in hurricane savings accounts;
12 defining the term "hurricane savings account";
13 amending s. 710.102, F.S.; redefining the term
14 "benefit plan," and defining the term
15 "qualified minor's trust," as used in the
16 Florida Uniform Transfers to Minors Act;
17 amending s. 710.104, F.S.; including benefit
18 plans in the types of property that a custodian
19 may be named to receive on behalf of a minor;
20 amending s. 710.108, F.S.; allowing a benefit
21 plan to be transferred to a custodian of a
22 minor who does not have a conservator by an
23 obligor of the minor; amending s. 710.116,
24 F.S.; allowing a minor's custodian, without
25 court order, to transfer custodial property to
26 a qualified minor's trust; providing
27 implications of the transfer; amending s.
28 733.808, F.S.; providing for the disposition of
29 benefits under a benefit plan after the death
30 of an owner of or participant in the plan;
31 amending s. 744.301, F.S.; providing for the

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 a conditional effective date
10 | and an effective date.

11

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

13

14 Section 1. Section 222.21, Florida Statutes, is
15 amended to read:16 222.21 Exemption of pension money and certain
17 tax-exempt funds or accounts ~~retirement or profit sharing~~
18 ~~benefits~~ from legal processes.--19 (1) Money received by any debtor as pensioner of the
20 United States within 3 months next preceding the issuing of an
21 execution, attachment, or garnishment process may not be
22 applied to the payment of the debts of the pensioner when it
23 is made to appear by the affidavit of the debtor or otherwise
24 that the pension money is necessary for the maintenance of the
25 debtor's support or a family supported wholly or in part by
26 the pension money. The filing of the affidavit by the debtor,
27 or the making of such proof by the debtor, is prima facie
28 evidence; and it is the duty of the court in which the
29 proceeding is pending to release all pension moneys held by
30 such attachment or garnishment process, immediately, upon the
31 filing of such affidavit or the making of such proof.

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
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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.

25 (d)(b) Any fund or account ~~plan or arrangement~~
 26 described in paragraph (a) is not exempt from the claims of an
 27 alternate payee under a qualified domestic relations order.
 28 However, the interest of any alternate payee under a qualified
 29 domestic relations order is exempt from all claims of any
 30 creditor, other than the Department of Children and Family
 31 Services, of the alternate payee. As used in this paragraph,

1 the terms "alternate payee" and "qualified domestic relations
2 order" have the meanings ascribed to them in s. 414(p) of the
3 Internal Revenue Code of 1986.

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

7 Section 2. Section 222.22, Florida Statutes, is
8 amended to read:

9 222.22 Exemption of assets in qualified tuition
10 programs, medical savings accounts, and Coverdell education
11 savings accounts ~~moneys in the Prepaid College Trust Fund or~~
12 ~~in a Medical Savings Account~~ from legal process.--

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

28 ~~(2)(b)~~ Moneys paid into or out of, the assets of, and
29 the income of a health savings account or medical savings
30 account authorized under ss. 220 and 223 of the Internal
31 Revenue Code of 1986, as amended, are not liable to

1 attachment, levy, garnishment, or legal process in this state
2 in favor of any creditor of or claimant against any account
3 participant, purchaser, owner or contributor, or account
4 beneficiary.

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

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

25 (4)(a) Moneys paid into or out of the assets of and
26 the income of any hurricane savings account established by an
27 insurance policyholder for residential property in this state
28 equal to twice the deductible sum of such insurance to cover
29 an insurance deductible or other uninsured portion of the
30 risks of loss from a hurricane, rising flood waters, or other
31 catastrophic windstorm event are not liable to attachment,

1 levy, garnishment, or legal process in this state in favor of
2 any creditor of or claimant against any account participant,
3 purchaser, owner or contributor, or account beneficiary.

4 (b) As used in this subsection, the term "hurricane
5 savings account" means an account established by the owner of
6 residential real estate in this state, which meets the
7 requirements of homestead exemption under s. 4, Art. X of the
8 State Constitution, who specifies that the purpose of the
9 account is to cover the amount of insurance deductibles and
10 other uninsured portions of risks of loss from hurricanes,
11 rising flood waters, or other catastrophic windstorm events.

12 (c) This subsection shall take effect only when the
13 federal government provides tax-exempt or tax-deferred status
14 to a hurricane savings account, disaster savings account, or
15 other similar account created to cover an insurance deductible
16 or other uninsured portion of the risks of loss from a
17 hurricane, rising flood waters, or other catastrophic
18 windstorm event.

19 Section 3. Section 710.102, Florida Statutes, is
20 amended to read:

21 710.102 Definitions.--As used in this act, the term:

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

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

29 (3) "Broker" means a person lawfully engaged in the
30 business of effecting transactions in securities or
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1 commodities for the person's own account or for the account of
2 others.

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

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

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

11 (7) "Custodian" means a person so designated under s.
12 710.111 or a successor or substitute custodian designated
13 under s. 710.121.

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

17 (9) "Legal representative" means an individual's
18 personal representative or conservator.

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

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

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

27 (13) "Personal representative" means an executor,
28 administrator, successor personal representative, or special
29 administrator of a decedent's estate or a person legally
30 authorized to perform substantially the same functions.

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

4 ~~(15)~~~~(14)~~ "State" includes any state of the United
5 States, the District of Columbia, the Commonwealth of Puerto
6 Rico, and any territory or possession subject to the
7 legislative authority of the United States.

8 ~~(16)~~~~(15)~~ "Transfer" means a transaction that creates
9 custodial property under s. 710.111.

10 ~~(17)~~~~(16)~~ "Transferor" means a person who makes a
11 transfer under this act.

12 ~~(18)~~~~(17)~~ "Trust company" means a financial
13 institution, corporation, or other legal entity, authorized to
14 exercise general trust powers.

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

17 710.104 Nomination of custodian.--

18 (1) A person having the right to designate the
19 recipient of property transferable upon the occurrence of a
20 future event may revocably nominate a custodian to receive the
21 property for a minor beneficiary upon the occurrence of the
22 event by naming the custodian followed in substance by the
23 words: "as custodian for (name of minor) under the Florida
24 Uniform Transfers to Minors Act." The nomination may name one
25 or more persons as substitute custodians to whom the property
26 must be transferred, in the order named, if the first
27 nominated custodian dies before the transfer or is unable,
28 declines, or is ineligible to serve. The nomination may be
29 made in a will, a trust, a deed, an instrument exercising a
30 power of appointment, or in a writing designating a
31 beneficiary of contractual rights, including, but not limited

1 to, the right to a benefit plan, which is registered with or
 2 delivered to the payor, issuer, or other obligor of the
 3 contractual rights.

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

6 710.108 Transfer by obligor.--

7 (1) Subject to subsections (2) and (3), a person not
 8 subject to s. 710.106 or s. 710.107 who holds property,
 9 including, but not limited to, a benefit plan, of a minor not
 10 having a conservator, or who owes a liquidated debt to, a
 11 minor not having a conservator,
 12 may make an irrevocable transfer to a custodian for the benefit of the minor pursuant
 13 to s. 710.111.

14 (2) If a person having the right to do so under s.
 15 710.104 has nominated a custodian under that section to
 16 receive the custodial property, the transfer must be made to
 17 that person.

18 (3) If no custodian has been nominated under s.
 19 710.104, or all persons so nominated as custodian die before
 20 the transfer or are unable, decline, or are ineligible to
 21 serve, a transfer under this section may be made to an adult
 22 member of the minor's family or to a trust company unless the
 23 property exceeds ~~\$15,000~~\$10,000 in value.

24 Section 6. Section 710.116, Florida Statutes, is
 25 amended to read:

26 710.116 Use of custodial property.--

27 (1) A custodian may deliver or pay to the minor or
 28 expend for the minor's benefit so much of the custodial
 29 property as the custodian considers advisable for the use and
 30 benefit of the minor, without court order and without regard
 31 to the duty or ability of the custodian personally or of any

1 other person to support the minor, or to any other income or
 2 property of the minor which may be applicable or available for
 3 that purpose.

4 (2) A custodian may, without court order, transfer all
 5 or part of the custodial property to a qualified minor's
 6 trust. A transfer of property pursuant to this subsection
 7 terminates the custodianship to the extent of the property
 8 transferred.

9 ~~(3)(2)~~ On petition of an interested person or the
 10 minor if the minor has attained the age of 14 years, the court
 11 may order the custodian to deliver or pay to the minor or
 12 expend for the minor's benefit so much of the custodial
 13 property as the court considers advisable for the use and
 14 benefit of the minor.

15 ~~(4)(3)~~ A delivery, payment, or expenditure under this
 16 section is in addition to, not in substitution for, and does
 17 not affect any obligation of a person to support the minor.

18 Section 7. Section 733.808, Florida Statutes, is
 19 amended to read:

20 733.808 Death benefits; disposition of proceeds.--

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

23 (a) An individual life insurance policy;

24 (b) A group life insurance policy;

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

29 (d) An annuity or endowment contract; and

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

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1 may be made payable to the trustee under a trust agreement or
 2 declaration of trust in existence at the time of the death of
 3 the insured, employee, or annuitant or the owner of or
 4 participant in the benefit plan. The death benefits shall be
 5 held and disposed of by the trustee in accordance with the
 6 terms of the trust as they appear in writing on the date of
 7 the death of the insured, employee, ~~or~~ annuitant, owner, or
 8 participant. It shall not be necessary to the validity of the
 9 trust agreement or declaration of trust, whether revocable or
 10 irrevocable, that it have a trust corpus other than the right
 11 of the trustee to receive death benefits.

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

14 (a) An individual life insurance policy;

15 (b) A group life insurance policy;

16 (c) A benefit plan as defined in s. 710.102 An

17 ~~employees' trust, or under a contract purchased by an~~
 18 ~~employees' trust, forming part of a pension, stock bonus, or~~
 19 ~~profit sharing plan;~~

20 (d) An annuity or endowment contract; and

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

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 23 may be made payable to the trustee named, or to be named, in a
 24 written instrument that is admitted to probate as the last
 25 will of the insured, the owner of the policy, the employee,
 26 owner, or participant covered by the plan or contract, or any
 27 other person, whether or not the will is in existence at the
 28 time of designation. Upon the admission of the will to
 29 probate, the death benefits shall be paid to the trustee, to
 30 be held, administered, and disposed of in accordance with the
 31 terms of the trust or trusts created by the will.

1 (3) In the event no trustee makes proper claim to the
2 proceeds from the insurance company or other obligor within a
3 period of 6 months after the date of the death of the insured,
4 employee, ~~or annuitant,~~ owner, or participant, or if
5 satisfactory evidence is furnished to the insurance company or
6 obligor within that period that there is, or will be, no
7 trustee to receive the proceeds, payment shall be made by the
8 insurance company or obligor to the personal representative of
9 the person making the designation, unless otherwise provided
10 by agreement with the insurer or obligor during the lifetime
11 of the insured, employee, ~~or annuitant,~~ owner, or participant.

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

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

23 (6) ~~Nothing in~~ This section does not shall affect the
24 validity of any designation of a beneficiary of proceeds
25 previously made that designates as beneficiary the trustee of
26 any trust established under a trust agreement or declaration
27 of trust or by will.

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

30 744.301 Natural guardians.--

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

3 (a) Settle and consummate a settlement of any claim or
4 cause of action accruing to any of their minor children for
5 damages to the person or property of any of said minor
6 children; ~~and to~~

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

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

12 (d) Collect, receive, manage, and dispose of and make
13 elections regarding the proceeds from a life insurance policy
14 or annuity contract payable to, or otherwise accruing to the
15 benefit of, the child; and

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

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21 without appointment, authority, or bond ~~during minority,~~ when
22 the amount involved in any instance does not exceed \$15,000,
23 ~~without appointment, authority, or bond.~~

24 Section 9. This act shall take effect upon becoming a
25 law.

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