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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  
31

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,  
20  
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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