

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 667 CS

Assets Held in Benefit Plans

**SPONSOR(S):** Altman

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 660

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Civil Justice Committee</u>	<u>4 Y, 0 N, w/CS</u>	<u>Kruse</u>	<u>Billmeier</u>
2) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>13 Y, 0 N, w/CS</u>	<u>Sheheane</u>	<u>Carlson</u>
3) <u>Insurance Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

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

#### Assets Exempt from Creditor Claims

The bill provides that moneys paid into or out of, the assets of, and the income of certain qualified tuition programs, Coverdell Education Savings Accounts, a health or medical savings account, or a hurricane savings account are exempt from creditor claims.

#### 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 trustee designated by the owner of the benefit plan upon the death of the owner, or to a child's parents as natural guardians. 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 of 1986. 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 clarifies that "tax qualification" is sufficient to qualify for creditor exemption and strengthens the exemption from creditors' claims for Individual Retirement Accounts and employee benefit funds or accounts exempt from taxation under the Internal Revenue Code.

This bill does not appear to have any significant fiscal impact on state or local governments.

This bill will take effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0667c.EDTB.doc

**DATE:** 4/6/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Empower families – This bill provides that the natural guardian or guardians are authorized, on behalf of any of their minor children, to collect, receive, manage, dispose of, and make elections regarding the proceeds of any benefit plan of which a minor is a beneficiary, participant, or owner, without appointment, authority, or bond as long as the amount involved does not exceed \$15,000.

#### B. EFFECT OF PROPOSED CHANGES:

##### **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.<sup>1</sup> Under ch. 222, F.S., Florida has protected the following items from creditor claims:<sup>2</sup>

- 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.); and
- 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, F.S., 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 (2000). Under the prepaid program, one can lock in the cost of attending a Florida college or university today.<sup>3</sup> 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.<sup>4</sup> 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

<sup>1</sup> See 11 U.S.C. s. 522(b) (2000), and s. 222.20, F.S.

<sup>2</sup> See s. 222.01 through s. 222.05, F.S., exemption of homestead from legal process, and s. 222.061, F.S., exemption of certain personal property.

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

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

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)<sup>5</sup> and qualified prepaid education programs.<sup>6</sup> Distributions from Coverdell ESAs are generally tax free. Up to \$2,000 per year may be contributed to a person's Coverdell ESA(s).<sup>7</sup> 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.<sup>8</sup>

### **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 proceeds of those claims and property distributed from an estate, 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.<sup>9</sup>

### **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

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<sup>5</sup> See 26 U.S.C. s. 530 (2000).

<sup>6</sup> See 26 U.S.C. s. 529 (2000).

<sup>7</sup> See INTERNAL REVENUE SERVICE, PUBLICATION 970, TAX BENEFITS FOR EDUCATION, at 40 (2004).

<sup>8</sup> Section 222.22, F.S.

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

upon reaching the age of 21.<sup>10</sup> 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.

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### **Assets Exempt from Creditor Claims**

The bill provides that moneys paid into or out of, the assets of, and the income of certain qualified tuition programs, Coverdell Education Savings Accounts, a health or medical savings account, or a hurricane savings account are exempt from creditor claims. The bill defines a hurricane savings account to mean an account established by an insurance policyholder for residential property in this state who is the owner of such property and who identifies the account for the purpose of covering insurance deductible amounts and other uninsured portions of risks from hurricanes, rising flood waters, or other catastrophic windstorm events. The bill also caps the amount of a contribution to a hurricane savings account to twice the deductible sum of the insurance held by the residential property owner.

### **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 trustee designated by the owner of the benefit plan upon the death of the owner, or to a child’s parents as natural guardians. 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.

The bill clarifies that “tax qualification” is sufficient to qualify for creditor exemption and strengthens the exemption from creditors’ claims provided in s. 222.21(2) for Individual Retirement Accounts (IRAs) and employee benefit funds or accounts exempt from taxation under the Internal Revenue Code.

The bill takes effect upon becoming a law.

#### **C. SECTION DIRECTORY:**

**Section 1.** Amends s. 222.21, F.S., relating to the exemption of pension money and certain tax-exempt funds or accounts and clarifying that “tax qualification” is sufficient to qualify for creditor exemption.

**Section 2.** Amends s. 222.22, F.S., to provide that moneys paid into or out of, the assets of, and the income of certain qualified tuition programs, health or medical savings accounts, Coverdell education savings accounts, or hurricane savings accounts are exempt from creditors’ claims. This section defines a hurricane savings account to mean an account established by an insurance policyholder for residential property in this state who is the owner of such property and who identifies the account for the purpose of covering insurance deductible amounts and other uninsured portions of risks from hurricanes, rising flood waters, or other catastrophic windstorm events. The definition also caps the

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<sup>10</sup> See 26 U.S.C. s. 2503(c) (2000).

amount of a contribution to a hurricane savings account to twice the deductible sum of the insurance held by the residential property owner.

**Section 3.** Amends s. 710.102, F.S., to redefine the term “benefit plan” to mean a retirement plan which may include, but is not limited to, any pension, profit sharing, stock-bonus, or stock-ownership plan or individual retirement account. This section also defines a “qualified minor’s trust” to mean a trust that meets the requirements of s. 2503(c) of the Internal Revenue Code of 1986, as amended.

**Section 4.** Amends s. 710.104, F.S., to add that in a nomination of a custodian to receive property for a minor beneficiary, a nomination made in a writing may designate a beneficiary of contractual rights, including but not limited to, a right to a benefit plan.

**Section 5.** Amends s. 710.108, F.S., to provide that a person who holds property, including, but not limited to, a benefit plan, of a minor not having a conservator, or who owes liquidated debt to, a minor not having a conservator, may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to the provisions of s. 710.111, F.S.

**Section 6.** Amends s. 710.116, F.S., to provide that a custodian may, without court order, transfer all or part of the custodial property to a qualified minor’s trust, and that a transfer of property under this subsection terminates the custodianship to the extent of the property transferred.

**Section 7.** Amends s. 733.808, F.S., to add a benefit plan to the list of items that may be transferred to a trustee under certain circumstances.

**Section 8.** Amends s. 744.301, F.S., to provide that the natural guardian or guardians are authorized, on behalf of any of their minor children, to collect, receive, manage, dispose of, and make elections regarding the proceeds of any benefit plan of which the minor is a beneficiary, participant, or owner without appointment, authority, or bond as long as the amount involved does not exceed \$15,000.

**Section 9.** Provides that the bill takes effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 9, 2005, the Civil Justice Committee considered the bill and adopted one amendment. The amendment provided that a residential property owner may not make a contribution to a hurricane savings account in excess of twice the deductible sum of the insurance held by the residential property owner. The bill, as amended, was reported favorably as a committee substitute.

On March 31, 2005, the Economic Development, Trade and Banking Committee adopted two amendments to the bill. The first amendment clarifies that "tax qualification" is sufficient to qualify for creditor exemption and strengthens the exemption from creditors' claims provided in s. 222.21(2) for Individual Retirement Accounts (IRAs) and employee benefit funds or accounts exempt from taxation under the Internal Revenue Code. The second amendment added a comma that was inadvertently omitted.