

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

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29 appointment, authority, or bond, if the proceeds equal  
 30 less than a specified maximum amount; providing an  
 31 effective date.

32

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

34

35 Section 1. Section 222.22, Florida Statutes, is amended to  
 36 read:

37 222.22 Exemption of assets in qualified tuition programs,  
 38 medical savings accounts, Coverdell education savings accounts,  
 39 and hurricane savings accounts ~~moneys in the Prepaid College~~  
 40 ~~Trust Fund or in a Medical Savings Account~~ from legal process.--

41 (1)~~(a)~~ Moneys paid into or out of, the assets of, and the  
 42 income of any validly existing qualified tuition program  
 43 authorized by s. 529 of the Internal Revenue Code of 1986, as  
 44 amended, including, but not limited to, the Florida Prepaid  
 45 College Trust Fund advance payment contracts under s. 1009.98  
 46 and Florida Prepaid College Trust Fund participation agreements  
 47 under s. 1009.981 ~~the Florida Prepaid College Trust Fund by or~~  
 48 ~~on behalf of a purchaser or qualified beneficiary pursuant to an~~  
 49 ~~advance payment contract made under part IV of chapter 1009,~~  
 50 ~~which contract has not been terminated,~~ are not liable to  
 51 attachment, levy, garnishment, or legal process in the state in  
 52 favor of any creditor of or claimant against any program  
 53 participant, purchaser, owner or contributor, or program  
 54 beneficiary ~~the purchaser or beneficiary of such advance payment~~  
 55 ~~contract.~~

56 (2)~~(b)~~ Moneys paid into or out of, the assets of, and the

57 income of a health savings account or medical savings account  
 58 authorized under ss. 220 and 223 of the Internal Revenue Code of  
 59 1986, as amended, are not liable to attachment, levy,  
 60 garnishment, or legal process in this state in favor of any  
 61 creditor of or claimant against any account participant,  
 62 purchaser, owner or contributor, or account beneficiary.

63 (3) Moneys paid into or out of, the assets of, and the  
 64 income of any Coverdell education savings account, also known as  
 65 an educational IRA, established or existing in accordance with  
 66 s. 530 of the Internal Revenue Code of 1986, as amended, are not  
 67 liable to attachment, levy, garnishment, or legal process in  
 68 this state in favor of any creditor of or claimant against any  
 69 account participant, purchaser, owner or contributor, or account  
 70 beneficiary.

71 (4) Moneys paid into or out of, the assets of, and the  
 72 income of any hurricane savings account to cover an insurance  
 73 deductible or other uninsured portions of the risks of loss from  
 74 a hurricane, rising flood waters, or other catastrophic  
 75 windstorm events are not liable to attachment, levy,  
 76 garnishment, or legal process in this state in favor of any  
 77 creditor of or claimant against any account participant,  
 78 purchaser, owner or contributor, or account beneficiary. The  
 79 term "hurricane savings account" means an account established by  
 80 an insurance policyholder for residential property in this state  
 81 who is the owner of such property and who identifies the account  
 82 for the purpose of covering insurance deductible amounts and  
 83 other uninsured portions of risks from hurricanes, rising flood  
 84 waters, or other catastrophic windstorm events ~~the Prepaid~~

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85 ~~College Trust Fund by or on behalf of a benefactor or designated~~  
 86 ~~beneficiary pursuant to a participation agreement made under s.~~  
 87 ~~1009.981, which agreement has not been terminated, are not~~  
 88 ~~liable to attachment, garnishment, or legal process in the state~~  
 89 ~~in favor of any creditor of the purchaser or beneficiary of such~~  
 90 ~~participation agreement.~~

91 ~~(2) Moneys paid into or out of a Medical Savings Account~~  
 92 ~~by or on behalf of a person depositing money into such account~~  
 93 ~~or a qualified beneficiary are not liable to attachment,~~  
 94 ~~garnishment, or legal process in the state in favor of any~~  
 95 ~~creditor of such person or beneficiary of such Medical Savings~~  
 96 ~~Account.~~

97 Section 2. Section 710.102, Florida Statutes, is amended  
 98 to read:

99 710.102 Definitions.--As used in this act, the term:

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

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

107 (3) "Broker" means a person lawfully engaged in the  
 108 business of effecting transactions in securities or commodities  
 109 for the person's own account or for the account of others.

110 (4) "Conservator" means a person appointed or qualified by  
 111 a court to act as general, limited, or temporary guardian of a

112 minor's property or a person legally authorized to perform  
 113 substantially the same functions.

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

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

118 (7) "Custodian" means a person so designated under s.  
 119 710.111 or a successor or substitute custodian designated under  
 120 s. 710.121.

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

124 (9) "Legal representative" means an individual's personal  
 125 representative or conservator.

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

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

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

133 (13) "Personal representative" means an executor,  
 134 administrator, successor personal representative, or special  
 135 administrator of a decedent's estate or a person legally  
 136 authorized to perform substantially the same functions.

137 (14) "Qualified minor's trust" means a trust that meets  
 138 the requirements of s. 2503(c) of the Internal Revenue Code of  
 139 1986, as amended.

140        ~~(15)~~~~(14)~~ "State" includes any state of the United States,  
 141 the District of Columbia, the Commonwealth of Puerto Rico, and  
 142 any territory or possession subject to the legislative authority  
 143 of the United States.

144        ~~(16)~~~~(15)~~ "Transfer" means a transaction that creates  
 145 custodial property under s. 710.111.

146        ~~(17)~~~~(16)~~ "Transferor" means a person who makes a transfer  
 147 under this act.

148        ~~(18)~~~~(17)~~ "Trust company" means a financial institution,  
 149 corporation, or other legal entity, authorized to exercise  
 150 general trust powers.

151        Section 3. Subsection (1) of section 710.104, Florida  
 152 Statutes, is amended to read:

153        710.104 Nomination of custodian.--

154        (1) A person having the right to designate the recipient  
 155 of property transferable upon the occurrence of a future event  
 156 may revocably nominate a custodian to receive the property for a  
 157 minor beneficiary upon the occurrence of the event by naming the  
 158 custodian followed in substance by the words: "as custodian for  
 159        (name of minor) under the Florida Uniform Transfers to  
 160 Minors Act." The nomination may name one or more persons as  
 161 substitute custodians to whom the property must be transferred,  
 162 in the order named, if the first nominated custodian dies before  
 163 the transfer or is unable, declines, or is ineligible to serve.  
 164 The nomination may be made in a will, a trust, a deed, an  
 165 instrument exercising a power of appointment, or in a writing  
 166 designating a beneficiary of contractual rights, including, but  
 167 not limited to, the right to a benefit plan, which is registered

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168 with or delivered to the payor, issuer, or other obligor of the  
 169 contractual rights.

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

172 710.108 Transfer by obligor.--

173 (1) Subject to subsections (2) and (3), a person not  
 174 subject to s. 710.106 or s. 710.107 who holds property,  
 175 including, but not limited to, a benefit plan, of a minor not  
 176 having a conservator, or who owes a liquidated debt to, a minor  
 177 not having a conservator may make an irrevocable transfer to a  
 178 custodian for the benefit of the minor pursuant to s. 710.111.

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

182 (3) If no custodian has been nominated under s. 710.104,  
 183 or all persons so nominated as custodian die before the transfer  
 184 or are unable, decline, or are ineligible to serve, a transfer  
 185 under this section may be made to an adult member of the minor's  
 186 family or to a trust company unless the property exceeds \$15,000  
 187 ~~\$10,000~~ in value.

188 Section 5. Section 710.116, Florida Statutes, is amended  
 189 to read:

190 710.116 Use of custodial property.--

191 (1) A custodian may deliver or pay to the minor or expend  
 192 for the minor's benefit so much of the custodial property as the  
 193 custodian considers advisable for the use and benefit of the  
 194 minor, without court order and without regard to the duty or  
 195 ability of the custodian personally or of any other person to

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196 support the minor, or to any other income or property of the  
 197 minor which may be applicable or available for that purpose.

198 (2) A custodian may, without court order, transfer all or  
 199 part of the custodial property to a qualified minor's trust. A  
 200 transfer of property pursuant to this subsection terminates the  
 201 custodianship to the extent of the property transferred.

202 (3)+(2) On petition of an interested person or the minor if  
 203 the minor has attained the age of 14 years, the court may order  
 204 the custodian to deliver or pay to the minor or expend for the  
 205 minor's benefit so much of the custodial property as the court  
 206 considers advisable for the use and benefit of the minor.

207 (4)+(3) A delivery, payment, or expenditure under this  
 208 section is in addition to, not in substitution for, and does not  
 209 affect any obligation of a person to support the minor.

210 Section 6. Section 733.808, Florida Statutes, is amended  
 211 to read:

212 733.808 Death benefits; disposition of proceeds.--

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

215 (a) An individual life insurance policy;

216 (b) A group life insurance policy;

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

220 (d) An annuity or endowment contract; and

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

222



223 may be made payable to the trustee under a trust agreement or  
 224 declaration of trust in existence at the time of the death of  
 225 the insured, employee, or annuitant or the owner of or  
 226 participant in the benefit plan. The death benefits shall be  
 227 held and disposed of by the trustee in accordance with the terms  
 228 of the trust as they appear in writing on the date of the death  
 229 of the insured, employee, ~~or~~ annuitant, owner, or participant.  
 230 It shall not be necessary to the validity of the trust agreement  
 231 or declaration of trust, whether revocable or irrevocable, that  
 232 it have a trust corpus other than the right of the trustee to  
 233 receive death benefits.

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

236 (a) An individual life insurance policy;

237 (b) A group life insurance policy;

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

241 (d) An annuity or endowment contract; and

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

243  
 244 may be made payable to the trustee named, or to be named, in a  
 245 written instrument that is admitted to probate as the last will  
 246 of the insured, the owner of the policy, the employee, owner, or  
 247 participant covered by the plan or contract, or any other  
 248 person, whether or not the will is in existence at the time of  
 249 designation. Upon the admission of the will to probate, the  
 250 death benefits shall be paid to the trustee, to be held,

251 administered, and disposed of in accordance with the terms of  
 252 the trust or trusts created by the will.

253 (3) In the event no trustee makes proper claim to the  
 254 proceeds from the insurance company or other obligor within a  
 255 period of 6 months after the date of the death of the insured,  
 256 employee, ~~or annuitant~~, owner, or participant, or if  
 257 satisfactory evidence is furnished to the insurance company or  
 258 obligor within that period that there is, or will be, no trustee  
 259 to receive the proceeds, payment shall be made by the insurance  
 260 company or obligor to the personal representative of the person  
 261 making the designation, unless otherwise provided by agreement  
 262 with the insurer or obligor during the lifetime of the insured,  
 263 employee, ~~or annuitant~~, owner, or participant.

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

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

275 (6) ~~Nothing in~~ This section does not ~~shall~~ affect the  
 276 validity of any designation of a beneficiary of proceeds  
 277 previously made that designates as beneficiary the trustee of

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278 any trust established under a trust agreement or declaration of  
 279 trust or by will.

280 Section 7. Subsection (2) of section 744.301, Florida  
 281 Statutes, is amended to read:

282 744.301 Natural guardians.--

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

285 (a) Settle and consummate a settlement of any claim or  
 286 cause of action accruing to any of their minor children for  
 287 damages to the person or property of any of said minor children;

288 (b) and to Collect, receive, manage, and dispose of the  
 289 proceeds of any such settlement;

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

292 (d) Collect, receive, manage, and dispose of and make  
 293 elections regarding the ~~or~~ proceeds from a life insurance policy  
 294 or annuity contract payable to, or otherwise accruing to the  
 295 benefit of, the child; and

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

300  
 301 without appointment, authority, or bond during minority, when  
 302 the amount involved in any instance does not exceed \$15,000,  
 303 without appointment, authority, or bond.

304 Section 8. This act shall take effect upon becoming a law.