

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to assets held in benefit plans; amending
7 s. 222.22, F.S.; exempting from legal process in favor of
8 creditors or other claimants assets held in qualified
9 tuition programs, in certain health savings accounts and
10 medical savings accounts, in Coverdell education savings
11 accounts, or in hurricane savings accounts; providing a
12 definition; amending s. 710.102, F.S.; redefining the term
13 "benefit plan" and defining the term "qualified minor's
14 trust" as used in the Florida Uniform Transfers to Minors
15 Act; amending s. 710.104, F.S.; including benefit plans in
16 the types of property that a custodian may be named to
17 receive on behalf of a minor; amending s. 710.108, F.S.;
18 allowing a benefit plan to be transferred to a custodian
19 of a minor who does not have a conservator by an obligor
20 of the minor; raising a threshold above which certain
21 obligor transfers are prohibited; amending s. 710.116,
22 F.S.; allowing a minor's custodian, without court order,
23 to transfer custodial property to a qualified minor's

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24 trust; providing implications of the transfer; amending s.
 25 733.808, F.S.; providing for the disposition of benefits
 26 under a benefit plan after the death of an owner of or
 27 participant in the plan; amending s. 744.301, F.S.;
 28 providing for the parents or natural guardians of a minor
 29 child to collect, receive, manage, and dispose of and make
 30 elections regarding the proceeds of an annuity contract
 31 payable to a minor child or of a benefit plan of which the
 32 minor is a beneficiary, participant, or owner, without
 33 appointment, authority, or bond, if the proceeds equal
 34 less than a specified maximum amount; providing an
 35 effective date.

36
 37 Be It Enacted by the Legislature of the State of Florida:

38
 39 Section 1. Section 222.22, Florida Statutes, is amended to
 40 read:

41 222.22 Exemption of assets in qualified tuition programs,
 42 medical savings accounts, Coverdell education savings accounts,
 43 and hurricane savings accounts ~~moneys in the Prepaid College~~
 44 ~~Trust Fund or in a Medical Savings Account~~ from legal process.--

45 (1)~~(a)~~ Moneys paid into or out of, the assets of, and the
 46 income of any validly existing qualified tuition program
 47 authorized by s. 529 of the Internal Revenue Code of 1986, as
 48 amended, including, but not limited to, the Florida Prepaid
 49 College Trust Fund advance payment contracts under s. 1009.98
 50 and Florida Prepaid College Trust Fund participation agreements
 51 under s. 1009.981 ~~the Florida Prepaid College Trust Fund by or~~

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52 ~~on behalf of a purchaser or qualified beneficiary pursuant to an~~
 53 ~~advance payment contract made under part IV of chapter 1009,~~
 54 ~~which contract has not been terminated,~~ are not liable to
 55 attachment, levy, garnishment, or legal process in the state in
 56 favor of any creditor of or claimant against any program
 57 participant, purchaser, owner or contributor, or program
 58 beneficiary ~~the purchaser or beneficiary of such advance payment~~
 59 ~~contract.~~

60 (2)(b) Moneys paid into or out of, the assets of, and the
 61 income of a health savings account or medical savings account
 62 authorized under ss. 220 and 223 of the Internal Revenue Code of
 63 1986, as amended, are not liable to attachment, levy,
 64 garnishment, or legal process in this state in favor of any
 65 creditor of or claimant against any account participant,
 66 purchaser, owner or contributor, or account beneficiary.

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

75 (4) Moneys paid into or out of, the assets of, and the
 76 income of any hurricane savings account established by an
 77 insurance policyholder for residential property in this state
 78 equal to twice the deductible sum of such insurance to cover an
 79 insurance deductible or other uninsured portion of the risks of

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80 loss from a hurricane, rising flood waters, or other
 81 catastrophic windstorm event are not liable to attachment, levy,
 82 garnishment, or legal process in this state in favor of any
 83 creditor of or claimant against any account participant,
 84 purchaser, owner or contributor, or account beneficiary. As used
 85 in this subsection, the term "hurricane savings account" means
 86 an account established by the owner of residential real property
 87 in this state who specifies that the purpose of the account is
 88 to cover the amount of insurance deductibles and other uninsured
 89 portions of the risks of loss from hurricanes, rising flood
 90 waters, or other catastrophic windstorm events ~~the Prepaid~~
 91 ~~College Trust Fund by or on behalf of a benefactor or designated~~
 92 ~~beneficiary pursuant to a participation agreement made under s.~~
 93 ~~1009.981, which agreement has not been terminated, are not~~
 94 ~~liable to attachment, garnishment, or legal process in the state~~
 95 ~~in favor of any creditor of the purchaser or beneficiary of such~~
 96 ~~participation agreement.~~

97 ~~(2) Moneys paid into or out of a Medical Savings Account~~
 98 ~~by or on behalf of a person depositing money into such account~~
 99 ~~or a qualified beneficiary are not liable to attachment,~~
 100 ~~garnishment, or legal process in the state in favor of any~~
 101 ~~creditor of such person or beneficiary of such Medical Savings~~
 102 ~~Account.~~

103 Section 2. Section 710.102, Florida Statutes, is amended
 104 to read:

105 710.102 Definitions.--As used in this act, the term:

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

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

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

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

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

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

124 (7) "Custodian" means a person so designated under s.
 125 710.111 or a successor or substitute custodian designated under
 126 s. 710.121.

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

130 (9) "Legal representative" means an individual's personal
 131 representative or conservator.

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

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

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

139 (13) "Personal representative" means an executor,
140 administrator, successor personal representative, or special
141 administrator of a decedent's estate or a person legally
142 authorized to perform substantially the same functions.

143 (14) "Qualified minor's trust" means a trust that meets
144 the requirements of s. 2503(c) of the Internal Revenue Code of
145 1986, as amended.

146 (15)~~(14)~~ "State" includes any state of the United States,
147 the District of Columbia, the Commonwealth of Puerto Rico, and
148 any territory or possession subject to the legislative authority
149 of the United States.

150 (16)~~(15)~~ "Transfer" means a transaction that creates
151 custodial property under s. 710.111.

152 (17)~~(16)~~ "Transferor" means a person who makes a transfer
153 under this act.

154 (18)~~(17)~~ "Trust company" means a financial institution,
155 corporation, or other legal entity, authorized to exercise
156 general trust powers.

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

159 710.104 Nomination of custodian.--

160 (1) A person having the right to designate the recipient
161 of property transferable upon the occurrence of a future event
162 may revocably nominate a custodian to receive the property for a

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163 | minor beneficiary upon the occurrence of the event by naming the
 164 | custodian followed in substance by the words: "as custodian for
 165 | (name of minor) under the Florida Uniform Transfers to Minors
 166 | Act." The nomination may name one or more persons as substitute
 167 | custodians to whom the property must be transferred, in the
 168 | order named, if the first nominated custodian dies before the
 169 | transfer or is unable, declines, or is ineligible to serve. The
 170 | nomination may be made in a will, a trust, a deed, an instrument
 171 | exercising a power of appointment, or in a writing designating a
 172 | beneficiary of contractual rights, including, but not limited
 173 | to, the right to a benefit plan, which is registered with or
 174 | delivered to the payor, issuer, or other obligor of the
 175 | contractual rights.

176 | Section 4. Section 710.108, Florida Statutes, is amended
 177 | to read:

178 | 710.108 Transfer by obligor.--

179 | (1) Subject to subsections (2) and (3), a person not
 180 | subject to s. 710.106 or s. 710.107 who holds property,
 181 | including, but not limited to, a benefit plan, of a minor not
 182 | having a conservator, or who owes a liquidated debt to, a minor
 183 | not having a conservator may make an irrevocable transfer to a
 184 | custodian for the benefit of the minor pursuant to s. 710.111.

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

188 | (3) If no custodian has been nominated under s. 710.104,
 189 | or all persons so nominated as custodian die before the transfer
 190 | or are unable, decline, or are ineligible to serve, a transfer

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191 under this section may be made to an adult member of the minor's
192 family or to a trust company unless the property exceeds \$15,000
193 ~~\$10,000~~ in value.

194 Section 5. Section 710.116, Florida Statutes, is amended
195 to read:

196 710.116 Use of custodial property.--

197 (1) A custodian may deliver or pay to the minor or expend
198 for the minor's benefit so much of the custodial property as the
199 custodian considers advisable for the use and benefit of the
200 minor, without court order and without regard to the duty or
201 ability of the custodian personally or of any other person to
202 support the minor, or to any other income or property of the
203 minor which may be applicable or available for that purpose.

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

208 (3)(2) On petition of an interested person or the minor if
209 the minor has attained the age of 14 years, the court may order
210 the custodian to deliver or pay to the minor or expend for the
211 minor's benefit so much of the custodial property as the court
212 considers advisable for the use and benefit of the minor.

213 (4)(3) A delivery, payment, or expenditure under this
214 section is in addition to, not in substitution for, and does not
215 affect any obligation of a person to support the minor.

216 Section 6. Section 733.808, Florida Statutes, is amended
217 to read:

218 733.808 Death benefits; disposition of proceeds.--

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

221 (a) An individual life insurance policy;

222 (b) A group life insurance policy;

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

226 (d) An annuity or endowment contract; and

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

228

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

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

242 (a) An individual life insurance policy;

243 (b) A group life insurance policy;

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

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- 247 (d) An annuity or endowment contract; and
- 248 (e) A health or ~~and~~ accident policy,

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250 may be made payable to the trustee named, or to be named, in a
251 written instrument that is admitted to probate as the last will
252 of the insured, the owner of the policy, the employee, owner, or
253 participant covered by the plan or contract, or any other
254 person, whether or not the will is in existence at the time of
255 designation. Upon the admission of the will to probate, the
256 death benefits shall be paid to the trustee, to be held,
257 administered, and disposed of in accordance with the terms of
258 the trust or trusts created by the will.

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

270 (4) Death benefits payable as provided in subsection (1),
271 subsection (2), or subsection (3), unless paid to a personal
272 representative under the provisions of subsection (3), shall not
273 be deemed to be part of the decedent's estate, and shall not be
274 subject to any obligation to pay the expenses of the

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275 administration and obligations of the decedent's estate or for
 276 contribution required from a trust under s. 733.607(2) to any
 277 greater extent than if the proceeds were payable directly to the
 278 beneficiaries named in the trust.

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

281 (6) ~~Nothing in~~ This section does not ~~shall~~ affect the
 282 validity of any designation of a beneficiary of proceeds
 283 previously made that designates as beneficiary the trustee of
 284 any trust established under a trust agreement or declaration of
 285 trust or by will.

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

288 744.301 Natural guardians.--

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

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

294 (b) ~~and to~~ Collect, receive, manage, and dispose of the
 295 proceeds of any such settlement;

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

298 (d) Collect, receive, manage, and dispose of and make
 299 elections regarding the ~~or~~ proceeds from a life insurance policy
 300 or annuity contract payable to, or otherwise accruing to the
 301 benefit of, the child; and

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302 (e) Collect, receive, manage, dispose of, and make
 303 elections regarding the proceeds of any benefit plan as defined
 304 by s. 710.102, of which the minor is a beneficiary, participant,
 305 or owner,
 306
 307 without appointment, authority, or bond ~~during minority~~, when
 308 the amount involved in any instance does not exceed \$15,000,
 309 ~~without appointment, authority, or bond.~~

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