

CHAMBER ACTION

1 The Economic Development, Trade & Banking Committee recommends  
2 the following:

3  
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to assets held in benefit plans; amending  
8 s. 222.21, F.S.; exempting certain tax-exempt funds or  
9 accounts from legal process in favor of creditors under  
10 certain circumstances; providing requirements, criteria,  
11 and limitations; providing application; amending s.  
12 222.22, F.S.; exempting from legal process in favor of  
13 creditors or other claimants assets held in qualified  
14 tuition programs, in certain health savings accounts and  
15 medical savings accounts, in Coverdell education savings  
16 accounts, or in hurricane savings accounts; providing a  
17 definition; amending s. 710.102, F.S.; redefining the term  
18 "benefit plan" and defining the term "qualified minor's  
19 trust" as used in the Florida Uniform Transfers to Minors  
20 Act; amending s. 710.104, F.S.; including benefit plans in  
21 the types of property that a custodian may be named to  
22 receive on behalf of a minor; amending s. 710.108, F.S.;  
23 allowing a benefit plan to be transferred to a custodian

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24 of a minor who does not have a conservator by an obligor  
 25 of the minor; raising a threshold above which certain  
 26 obligor transfers are prohibited; amending s. 710.116,  
 27 F.S.; allowing a minor's custodian, without court order,  
 28 to transfer custodial property to a qualified minor's  
 29 trust; providing implications of the transfer; amending s.  
 30 733.808, F.S.; providing for the disposition of benefits  
 31 under a benefit plan after the death of an owner of or  
 32 participant in the plan; amending s. 744.301, F.S.;  
 33 providing for the parents or natural guardians of a minor  
 34 child to collect, receive, manage, and dispose of and make  
 35 elections regarding the proceeds of an annuity contract  
 36 payable to a minor child or of a benefit plan of which the  
 37 minor is a beneficiary, participant, or owner, without  
 38 appointment, authority, or bond, if the proceeds equal  
 39 less than a specified maximum amount; providing an  
 40 effective date.

41  
 42 Be It Enacted by the Legislature of the State of Florida:

43  
 44 Section 1. Section 222.21, Florida Statutes, is amended to  
 45 read:

46 222.21 Exemption of pension money and certain tax-exempt  
 47 funds or accounts ~~retirement or profit-sharing benefits~~ from  
 48 legal processes.--

49 (1) Money received by any debtor as pensioner of the  
 50 United States within 3 months next preceding the issuing of an  
 51 execution, attachment, or garnishment process may not be applied

52 | to the payment of the debts of the pensioner when it is made to  
 53 | appear by the affidavit of the debtor or otherwise that the  
 54 | pension money is necessary for the maintenance of the debtor's  
 55 | support or a family supported wholly or in part by the pension  
 56 | money. The filing of the affidavit by the debtor, or the making  
 57 | of such proof by the debtor, is prima facie evidence; and it is  
 58 | the duty of the court in which the proceeding is pending to  
 59 | release all pension moneys held by such attachment or  
 60 | garnishment process, immediately, upon the filing of such  
 61 | affidavit or the making of such proof.

62 |       (2)(a) Except as provided in paragraph ~~(d)(b)~~, any money  
 63 | or other assets payable to an owner, a participant, or a  
 64 | beneficiary from, or any interest of any owner, participant, or  
 65 | beneficiary in, a fund or account ~~retirement or profit-sharing~~  
 66 | ~~plan that is qualified under s. 401(a), s. 403(a), s. 403(b), s.~~  
 67 | ~~408, s. 408A, or s. 409 of the Internal Revenue Code of 1986, as~~  
 68 | ~~amended~~, is exempt from all claims of creditors of the owner,  
 69 | beneficiary, or participant if the fund or account is:

70 |       1. Maintained in accordance with a master plan, volume  
 71 | submitter plan, prototype plan, or any other plan or governing  
 72 | instrument that has been preapproved by the Internal Revenue  
 73 | Service as exempt from taxation under s. 401(a), s. 403(a), s.  
 74 | 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a)  
 75 | of the Internal Revenue Code of 1986, as amended, unless it has  
 76 | been subsequently determined that the plan or governing  
 77 | instrument is not exempt from taxation in a proceeding that has  
 78 | become final and not subject to appeal;

79           2. Maintained in accordance with a plan or governing  
 80 instrument that has been determined by the Internal Revenue  
 81 Service to be exempt from taxation under s. 401(a), s. 403(a),  
 82 s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s.  
 83 501(a) of the Internal Revenue Code of 1986, as amended, unless  
 84 it has been subsequently determined that the plan or governing  
 85 instrument is not exempt from taxation in a proceeding that has  
 86 become final and not subject to appeal; or

87           3. Not maintained in accordance with a plan or governing  
 88 instrument described in subparagraph 1. or 2. if the person  
 89 claiming exemption under this paragraph proves by a  
 90 preponderance of the evidence that the fund or account is  
 91 maintained in accordance with a plan or governing instrument  
 92 that:

93           a. Is in substantial compliance with the applicable  
 94 requirements for tax exemption under s. 401(a), s. 403(a), s.  
 95 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a)  
 96 of the Internal Revenue Code of 1986, as amended; or

97           b. Would have been in substantial compliance with the  
 98 applicable requirements for tax exemption under s. 401(a), s.  
 99 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b),  
 100 or s. 501(a) of the Internal Revenue Code of 1986, as amended,  
 101 but for the negligent or wrongful conduct of a person or persons  
 102 other than the person who is claiming the exemption under this  
 103 section.

104           (b) It is not necessary that a fund or account described  
 105 in paragraph (a) be maintained in accordance with a plan or  
 106 governing instrument that is covered by any part of the Employee

107 Retirement Income Security Act of 1974 for money or assets  
 108 payable from or any interest in that fund or account to be  
 109 exempt from claims of creditors under that paragraph.

110 (c) Any money or other assets that are exempt from claims  
 111 of creditors under paragraph (a) do not cease to qualify for  
 112 exemption by reason of a direct transfer or eligible rollover  
 113 that is excluded from gross income under s. 402(c) of the  
 114 Internal Revenue Code of 1986 or by distribution from any such  
 115 fund or account as long as such money or assets are not  
 116 commingled with other money or assets that are not exempt from  
 117 claims of creditors under that paragraph.

118 (d)(b) Any fund or account ~~plan or arrangement~~ described  
 119 in paragraph (a) is not exempt from the claims of an alternate  
 120 payee under a qualified domestic relations order. However, the  
 121 interest of any alternate payee under a qualified domestic  
 122 relations order is exempt from all claims of any creditor, other  
 123 than the Department of Children and Family Services, of the  
 124 alternate payee. As used in this paragraph, the terms "alternate  
 125 payee" and "qualified domestic relations order" have the  
 126 meanings ascribed to them in s. 414(p) of the Internal Revenue  
 127 Code of 1986.

128 (e)(e) This subsection applies ~~The provisions of~~  
 129 ~~paragraphs (a) and (b) apply~~ to any proceeding that is filed on  
 130 or after July October 1, 2005 1987.

131 Section 2. Section 222.22, Florida Statutes, is amended to  
 132 read:

133 222.22 Exemption of assets in qualified tuition programs,  
 134 medical savings accounts, Coverdell education savings accounts,

135 ~~and hurricane savings accounts moneys in the Prepaid College~~  
 136 ~~Trust Fund or in a Medical Savings Account~~ from legal process.--

137 (1)(a) Moneys paid into or out of, the assets of, and the  
 138 income of any validly existing qualified tuition program  
 139 authorized by s. 529 of the Internal Revenue Code of 1986, as  
 140 amended, including, but not limited to, the Florida Prepaid  
 141 College Trust Fund advance payment contracts under s. 1009.98  
 142 and Florida Prepaid College Trust Fund participation agreements  
 143 under s. 1009.981 ~~the Florida Prepaid College Trust Fund by or~~  
 144 ~~on behalf of a purchaser or qualified beneficiary pursuant to an~~  
 145 ~~advance payment contract made under part IV of chapter 1009,~~  
 146 ~~which contract has not been terminated,~~ are not liable to  
 147 attachment, levy, garnishment, or legal process in the state in  
 148 favor of any creditor of or claimant against any program  
 149 participant, purchaser, owner or contributor, or program  
 150 beneficiary ~~the purchaser or beneficiary of such advance payment~~  
 151 ~~contract.~~

152 (2)(b) Moneys paid into or out of, the assets of, and the  
 153 income of a health savings account or medical savings account  
 154 authorized under ss. 220 and 223 of the Internal Revenue Code of  
 155 1986, as amended, are not liable to attachment, levy,  
 156 garnishment, or legal process in this state in favor of any  
 157 creditor of or claimant against any account participant,  
 158 purchaser, owner or contributor, or account beneficiary.

159 (3) Moneys paid into or out of, the assets of, and the  
 160 income of any Coverdell education savings account, also known as  
 161 an educational IRA, established or existing in accordance with  
 162 s. 530 of the Internal Revenue Code of 1986, as amended, are not

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163 liable to attachment, levy, garnishment, or legal process in  
 164 this state in favor of any creditor of or claimant against any  
 165 account participant, purchaser, owner or contributor, or account  
 166 beneficiary.

167 (4) Moneys paid into or out of, the assets of, and the  
 168 income of any hurricane savings account established by an  
 169 insurance policyholder for residential property in this state  
 170 equal to twice the deductible sum of such insurance to cover an  
 171 insurance deductible or other uninsured portion of the risks of  
 172 loss from a hurricane, rising flood waters, or other  
 173 catastrophic windstorm event are not liable to attachment, levy,  
 174 garnishment, or legal process in this state in favor of any  
 175 creditor of or claimant against any account participant,  
 176 purchaser, owner or contributor, or account beneficiary. As used  
 177 in this subsection, the term "hurricane savings account" means  
 178 an account established by the owner of residential real property  
 179 in this state who specifies that the purpose of the account is  
 180 to cover the amount of insurance deductibles and other uninsured  
 181 portions of the risks of loss from hurricanes, rising flood  
 182 waters, or other catastrophic windstorm events ~~the Prepaid~~  
 183 ~~College Trust Fund by or on behalf of a benefactor or designated~~  
 184 ~~beneficiary pursuant to a participation agreement made under s.~~  
 185 ~~1009.981, which agreement has not been terminated, are not~~  
 186 ~~liable to attachment, garnishment, or legal process in the state~~  
 187 ~~in favor of any creditor of the purchaser or beneficiary of such~~  
 188 ~~participation agreement.~~

189 ~~(2) Moneys paid into or out of a Medical Savings Account~~  
 190 ~~by or on behalf of a person depositing money into such account~~

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191 ~~or a qualified beneficiary are not liable to attachment,~~  
 192 ~~garnishment, or legal process in the state in favor of any~~  
 193 ~~creditor of such person or beneficiary of such Medical Savings~~  
 194 ~~Account.~~

195 Section 3. Section 710.102, Florida Statutes, is amended  
 196 to read:

197 710.102 Definitions.--As used in this act, the term:

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

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

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

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

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

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

216 (7) "Custodian" means a person so designated under s.  
 217 710.111 or a successor or substitute custodian designated under  
 218 s. 710.121.



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

222 (9) "Legal representative" means an individual's personal  
223 representative or conservator.

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

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

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

231 (13) "Personal representative" means an executor,  
232 administrator, successor personal representative, or special  
233 administrator of a decedent's estate or a person legally  
234 authorized to perform substantially the same functions.

235 (14) "Qualified minor's trust" means a trust that meets  
236 the requirements of s. 2503(c) of the Internal Revenue Code of  
237 1986, as amended.

238 (15)~~(14)~~ "State" includes any state of the United States,  
239 the District of Columbia, the Commonwealth of Puerto Rico, and  
240 any territory or possession subject to the legislative authority  
241 of the United States.

242 (16)~~(15)~~ "Transfer" means a transaction that creates  
243 custodial property under s. 710.111.

244 (17)~~(16)~~ "Transferor" means a person who makes a transfer  
245 under this act.

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246            ~~(18)~~~~(17)~~ "Trust company" means a financial institution,  
247 corporation, or other legal entity, authorized to exercise  
248 general trust powers.

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

251            710.104 Nomination of custodian.--

252            (1) A person having the right to designate the recipient  
253 of property transferable upon the occurrence of a future event  
254 may revocably nominate a custodian to receive the property for a  
255 minor beneficiary upon the occurrence of the event by naming the  
256 custodian followed in substance by the words: "as custodian for  
257 (name of minor) under the Florida Uniform Transfers to Minors  
258 Act." The nomination may name one or more persons as substitute  
259 custodians to whom the property must be transferred, in the  
260 order named, if the first nominated custodian dies before the  
261 transfer or is unable, declines, or is ineligible to serve. The  
262 nomination may be made in a will, a trust, a deed, an instrument  
263 exercising a power of appointment, or in a writing designating a  
264 beneficiary of contractual rights, including, but not limited  
265 to, the right to a benefit plan, which is registered with or  
266 delivered to the payor, issuer, or other obligor of the  
267 contractual rights.

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

270            710.108 Transfer by obligor.--

271            (1) Subject to subsections (2) and (3), a person not  
272 subject to s. 710.106 or s. 710.107 who holds property,  
273 including, but not limited to, a benefit plan, of a minor not

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274 having a conservator, or who owes a liquidated debt to, a minor  
 275 not having a conservator, may make an irrevocable transfer to a  
 276 custodian for the benefit of the minor pursuant to s. 710.111.

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

280 (3) If no custodian has been nominated under s. 710.104,  
 281 or all persons so nominated as custodian die before the transfer  
 282 or are unable, decline, or are ineligible to serve, a transfer  
 283 under this section may be made to an adult member of the minor's  
 284 family or to a trust company unless the property exceeds \$15,000  
 285 ~~\$10,000~~ in value.

286 Section 6. Section 710.116, Florida Statutes, is amended  
 287 to read:

288 710.116 Use of custodial property.--

289 (1) A custodian may deliver or pay to the minor or expend  
 290 for the minor's benefit so much of the custodial property as the  
 291 custodian considers advisable for the use and benefit of the  
 292 minor, without court order and without regard to the duty or  
 293 ability of the custodian personally or of any other person to  
 294 support the minor, or to any other income or property of the  
 295 minor which may be applicable or available for that purpose.

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

300 ~~(3)~~(2) On petition of an interested person or the minor if  
 301 the minor has attained the age of 14 years, the court may order

302 the custodian to deliver or pay to the minor or expend for the  
 303 minor's benefit so much of the custodial property as the court  
 304 considers advisable for the use and benefit of the minor.

305 ~~(4)(3)~~ A delivery, payment, or expenditure under this  
 306 section is in addition to, not in substitution for, and does not  
 307 affect any obligation of a person to support the minor.

308 Section 7. Section 733.808, Florida Statutes, is amended  
 309 to read:

310 733.808 Death benefits; disposition of proceeds.--

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

313 (a) An individual life insurance policy;

314 (b) A group life insurance policy;

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

318 (d) An annuity or endowment contract; and

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

320  
 321 may be made payable to the trustee under a trust agreement or  
 322 declaration of trust in existence at the time of the death of  
 323 the insured, employee, or annuitant or the owner of or  
 324 participant in the benefit plan. The death benefits shall be  
 325 held and disposed of by the trustee in accordance with the terms  
 326 of the trust as they appear in writing on the date of the death  
 327 of the insured, employee, ~~or~~ annuitant, owner, or participant.

328 It shall not be necessary to the validity of the trust agreement  
 329 or declaration of trust, whether revocable or irrevocable, that

330 | it have a trust corpus other than the right of the trustee to  
331 | receive death benefits.

332 |       (2) Death benefits of any kind, including, but not limited  
333 | to, proceeds of:

334 |       (a) An individual life insurance policy;

335 |       (b) A group life insurance policy;

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

339 |       (d) An annuity or endowment contract; and

340 |       (e) A health or ~~and~~ accident policy,

341 |  
342 | may be made payable to the trustee named, or to be named, in a  
343 | written instrument that is admitted to probate as the last will  
344 | of the insured, the owner of the policy, the employee, owner, or  
345 | participant covered by the plan or contract, or any other  
346 | person, whether or not the will is in existence at the time of  
347 | designation. Upon the admission of the will to probate, the  
348 | death benefits shall be paid to the trustee, to be held,  
349 | administered, and disposed of in accordance with the terms of  
350 | the trust or trusts created by the will.

351 |       (3) In the event no trustee makes proper claim to the  
352 | proceeds from the insurance company or other obligor within a  
353 | period of 6 months after the date of the death of the insured,  
354 | employee, ~~or~~ annuitant, owner, or participant, or if  
355 | satisfactory evidence is furnished to the insurance company or  
356 | obligor within that period that there is, or will be, no trustee  
357 | to receive the proceeds, payment shall be made by the insurance

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358 | company or obligor to the personal representative of the person  
 359 | making the designation, unless otherwise provided by agreement  
 360 | with the insurer or obligor during the lifetime of the insured,  
 361 | employee, ~~or annuitant~~, owner, or participant.

362 | (4) Death benefits payable as provided in subsection (1),  
 363 | subsection (2), or subsection (3), unless paid to a personal  
 364 | representative under the provisions of subsection (3), shall not  
 365 | be deemed to be part of the decedent's estate, and shall not be  
 366 | subject to any obligation to pay the expenses of the  
 367 | administration and obligations of the decedent's estate or for  
 368 | contribution required from a trust under s. 733.607(2) to any  
 369 | greater extent than if the proceeds were payable directly to the  
 370 | beneficiaries named in the trust.

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

373 | (6) ~~Nothing in~~ This section does not ~~shall~~ affect the  
 374 | validity of any designation of a beneficiary of proceeds  
 375 | previously made that designates as beneficiary the trustee of  
 376 | any trust established under a trust agreement or declaration of  
 377 | trust or by will.

378 | Section 8. Subsection (2) of section 744.301, Florida  
 379 | Statutes, is amended to read:

380 | 744.301 Natural guardians.--

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

383 | (a) Settle and consummate a settlement of any claim or  
 384 | cause of action accruing to any of their minor children for  
 385 | damages to the person or property of any of said minor children;

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

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

390        (d) Collect, receive, manage, and dispose of and make  
391 elections regarding the ~~or~~ proceeds from a life insurance policy  
392 or annuity contract payable to, or otherwise accruing to the  
393 benefit of, the child; and

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

398  
399 without appointment, authority, or bond ~~during minority~~, when  
400 the amount involved in any instance does not exceed \$15,000,  
401 ~~without appointment, authority, or bond.~~

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