

CHAMBER ACTION

1 The Justice Council 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. 222.21, F.S.; exempting certain tax-exempt funds or
8 accounts from legal process in favor of creditors under
9 certain circumstances; providing requirements, criteria,
10 and limitations; providing application; amending s.

11 222.22, F.S.; exempting from legal process in favor of
12 creditors or other claimants assets held in qualified
13 tuition programs, in certain health savings accounts and
14 medical savings accounts, in Coverdell education savings
15 accounts, or in hurricane savings accounts; providing a
16 definition; providing for contingent effect; amending s.
17 710.102, F.S.; redefining the term "benefit plan" and
18 defining the term "qualified minor's trust" as used in the
19 Florida Uniform Transfers to Minors Act; amending s.

20 710.104, F.S.; including benefit plans in the types of
21 property that a custodian may be named to receive on
22 behalf of a minor; amending s. 710.108, F.S.; allowing a
23 benefit plan to be transferred to a custodian of a minor

24 | who does not have a conservator by an obligor of the
 25 | minor; raising a threshold above which certain obligor
 26 | transfers are prohibited; amending s. 710.116, F.S.;
 27 | allowing a minor's custodian, without court order, to
 28 | transfer custodial property to a qualified minor's trust;
 29 | 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.

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

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

128 Section 2. Section 222.22, Florida Statutes, is amended to
 129 read:

130 222.22 Exemption of assets in qualified tuition programs,
 131 medical savings accounts, Coverdell education savings accounts,
 132 and hurricane savings accounts ~~moneys in the Prepaid College~~
 133 ~~Trust Fund or in a Medical Savings Account~~ from legal process.--

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

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

156 (3) Moneys paid into or out of, the assets of, and the
 157 income of any Coverdell education savings account, also known as
 158 an educational IRA, established or existing in accordance with
 159 s. 530 of the Internal Revenue Code of 1986, as amended, are not
 160 liable to attachment, levy, garnishment, or legal process in
 161 this state in favor of any creditor of or claimant against any

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162 account participant, purchaser, owner or contributor, or account
 163 beneficiary.

164 (4)(a) Moneys paid into or out of, the assets of, and the
 165 income of any hurricane savings account established by an
 166 insurance policyholder for residential property in this state
 167 equal to twice the deductible sum of such insurance to cover an
 168 insurance deductible or other uninsured portion of the risks of
 169 loss from a hurricane, rising flood waters, or other
 170 catastrophic windstorm event are not liable to attachment, levy,
 171 garnishment, or legal process in this state in favor of any
 172 creditor of or claimant against any account participant,
 173 purchaser, owner or contributor, or account beneficiary.

174 (b) As used in this subsection, the term "hurricane
 175 savings account" means an account established by the owner of
 176 residential real property in this state, which meets the
 177 requirements of homestead exemption under s. 4, Art. X of the
 178 State Constitution, who specifies that the purpose of the
 179 account is to cover the amount of insurance deductibles and
 180 other uninsured portions of the risks of loss from hurricanes,
 181 rising flood waters, or other catastrophic windstorm events.

182 (c) This subsection shall take effect only when the
 183 Federal Government provides tax-exempt or tax-deferred status to
 184 a hurricane savings account, disaster savings account, or other
 185 similar account created to cover an insurance deductible or
 186 other uninsured portion of the risks of loss from a hurricane,
 187 rising flood waters, or other catastrophic windstorm event ~~the~~
 188 ~~Prepaid College Trust Fund by or on behalf of a benefactor or~~
 189 ~~designated beneficiary pursuant to a participation agreement~~

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190 ~~made under s. 1009.981, which agreement has not been terminated,~~
 191 ~~are not liable to attachment, garnishment, or legal process in~~
 192 ~~the state in favor of any creditor of the purchaser or~~
 193 ~~beneficiary of such participation agreement.~~

194 ~~(2) Moneys paid into or out of a Medical Savings Account~~
 195 ~~by or on behalf of a person depositing money into such account~~
 196 ~~or a qualified beneficiary are not liable to attachment,~~
 197 ~~garnishment, or legal process in the state in favor of any~~
 198 ~~creditor of such person or beneficiary of such Medical Savings~~
 199 ~~Account.~~

200 Section 3. Section 710.102, Florida Statutes, is amended
 201 to read:

202 710.102 Definitions.--As used in this act, the term:

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

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

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

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

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

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

221 (7) "Custodian" means a person so designated under s.
222 710.111 or a successor or substitute custodian designated under
223 s. 710.121.

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

227 (9) "Legal representative" means an individual's personal
228 representative or conservator.

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

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

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

236 (13) "Personal representative" means an executor,
237 administrator, successor personal representative, or special
238 administrator of a decedent's estate or a person legally
239 authorized to perform substantially the same functions.

240 (14) "Qualified minor's trust" means a trust that meets
241 the requirements of s. 2503(c) of the Internal Revenue Code of
242 1986, as amended.

243 (15)~~(14)~~ "State" includes any state of the United States,
244 the District of Columbia, the Commonwealth of Puerto Rico, and

245 any territory or possession subject to the legislative authority
246 of the United States.

247 (16)~~(15)~~ "Transfer" means a transaction that creates
248 custodial property under s. 710.111.

249 (17)~~(16)~~ "Transferor" means a person who makes a transfer
250 under this act.

251 (18)~~(17)~~ "Trust company" means a financial institution,
252 corporation, or other legal entity, authorized to exercise
253 general trust powers.

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

256 710.104 Nomination of custodian.--

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

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273 Section 5. Section 710.108, Florida Statutes, is amended
274 to read:

275 710.108 Transfer by obligor.--

276 (1) Subject to subsections (2) and (3), a person not
277 subject to s. 710.106 or s. 710.107 who holds property,
278 including, but not limited to, a benefit plan, of a minor not
279 having a conservator, or who owes a liquidated debt to, a minor
280 not having a conservator, may make an irrevocable transfer to a
281 custodian for the benefit of the minor pursuant to s. 710.111.

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

285 (3) If no custodian has been nominated under s. 710.104,
286 or all persons so nominated as custodian die before the transfer
287 or are unable, decline, or are ineligible to serve, a transfer
288 under this section may be made to an adult member of the minor's
289 family or to a trust company unless the property exceeds \$15,000
290 ~~\$10,000~~ in value.

291 Section 6. Section 710.116, Florida Statutes, is amended
292 to read:

293 710.116 Use of custodial property.--

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

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

305 (3)(2) On petition of an interested person or the minor if
 306 the minor has attained the age of 14 years, the court may order
 307 the custodian to deliver or pay to the minor or expend for the
 308 minor's benefit so much of the custodial property as the court
 309 considers advisable for the use and benefit of the minor.

310 (4)(3) A delivery, payment, or expenditure under this
 311 section is in addition to, not in substitution for, and does not
 312 affect any obligation of a person to support the minor.

313 Section 7. Section 733.808, Florida Statutes, is amended
 314 to read:

315 733.808 Death benefits; disposition of proceeds.--

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

318 (a) An individual life insurance policy;

319 (b) A group life insurance policy;

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

323 (d) An annuity or endowment contract; and

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

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326 may be made payable to the trustee under a trust agreement or
 327 declaration of trust in existence at the time of the death of
 328 the insured, employee, or annuitant or the owner of or

329 participant in the benefit plan. The death benefits shall be
 330 held and disposed of by the trustee in accordance with the terms
 331 of the trust as they appear in writing on the date of the death
 332 of the insured, employee, ~~or annuitant,~~ owner, or participant.
 333 It shall not be necessary to the validity of the trust agreement
 334 or declaration of trust, whether revocable or irrevocable, that
 335 it have a trust corpus other than the right of the trustee to
 336 receive death benefits.

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

339 (a) An individual life insurance policy;

340 (b) A group life insurance policy;

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

344 (d) An annuity or endowment contract; and

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

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

356 (3) In the event no trustee makes proper claim to the
 357 proceeds from the insurance company or other obligor within a
 358 period of 6 months after the date of the death of the insured,
 359 employee, ~~or annuitant~~, owner, or participant, or if
 360 satisfactory evidence is furnished to the insurance company or
 361 obligor within that period that there is, or will be, no trustee
 362 to receive the proceeds, payment shall be made by the insurance
 363 company or obligor to the personal representative of the person
 364 making the designation, unless otherwise provided by agreement
 365 with the insurer or obligor during the lifetime of the insured,
 366 employee, ~~or annuitant~~, owner, or participant.

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

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

378 (6) ~~Nothing in~~ This section does not ~~shall~~ affect the
 379 validity of any designation of a beneficiary of proceeds
 380 previously made that designates as beneficiary the trustee of
 381 any trust established under a trust agreement or declaration of
 382 trust or by will.

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383 Section 8. Subsection (2) of section 744.301, Florida
384 Statutes, is amended to read:

385 744.301 Natural guardians.--

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

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

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

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

395 (d) Collect, receive, manage, and dispose of and make
396 elections regarding the ~~ex~~ proceeds from a life insurance policy
397 or annuity contract payable to, or otherwise accruing to the
398 benefit of, the child; and

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

403
404 without appointment, authority, or bond ~~during minority~~, when
405 the amount involved in any instance does not exceed \$15,000,
406 ~~without appointment, authority, or bond.~~

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