

1 A bill to be entitled
2 An act relating to trusts and other agency relationships;
3 amending s. 711.501, F.S.; including additional investment
4 instruments within the definition of the term "security
5 account"; amending s. 737.402, F.S.; revising the powers
6 conferred upon a trustee; amending s. 737.403, F.S.;
7 specifying circumstances in which court authorization is
8 not required for a trustee to exercise his or her power
9 when a conflict of interest exists; amending s. 738.104,
10 F.S.; removing a prohibition on a trustee's power to make
11 certain adjustments; specifying a circumstance under which
12 an adjustment shall not be deemed to benefit the trustee;
13 providing application of section to administration of
14 certain trusts; conforming cross references; amending s.
15 738.1041, F.S.; providing and revising definitions;
16 providing methods by which a trustee may make certain
17 changes to trusts; removing requirements regarding certain
18 minimum unitrust amounts; removing a spouse's right to
19 compel reconversion of certain trusts; providing remedies
20 for trustees or disinterested persons not acting in good
21 faith; expanding scope of section to trusts administered
22 either in this state or under Florida law; authorizing a
23 grantor to create an express total return unitrust;
24 requiring certain provisions to be included in an express
25 total return unitrust; amending s. 738.303, F.S.;
26 redefining the term "undistributed income"; amending s.
27 738.401, F.S., relating to character of receipts;
28 providing certain statements that a trustee may rely upon;

29 providing special rules to apply to receipts by private
 30 trustees from certain entities; providing definitions;
 31 providing an effective date.

32

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

34

35 Section 1. Subsection (10) of section 711.501, Florida
 36 Statutes, is amended to read:

37 711.501 Definitions.--In ss. 711.50-711.512, unless the
 38 context otherwise requires, the term:

39 (10) "Security account" means:

40 (a) A reinvestment account associated with a security, a
 41 securities account with a broker, a cash balance in a brokerage
 42 account, cash, interest, earnings, or dividends earned or
 43 declared on a security in an account, a reinvestment account, or
 44 a brokerage account, whether or not credited to the account
 45 before the owner's death; ~~or~~

46 (b) An investment management account, investment advisory
 47 account, investment agency account, custody account, or any
 48 other type of account with a bank or trust company, including
 49 the securities in the account, the cash balance in the account,
 50 and cash equivalents, and any interest, earnings, or dividends
 51 earned or declared on a security in the account, whether or not
 52 credited to the account before the owner's death; or

53 (c)~~(b)~~ A cash balance or other property held for or due to
 54 the owner of a security as a replacement for or product of an
 55 account security, whether or not credited to the account before
 56 the owner's death.

57 Section 2. Paragraphs (y) and (z) of subsection (2) of
58 section 737.402, Florida Statutes, are amended to read:

59 737.402 Powers of trustees conferred by this part.--

60 (2) Unless otherwise provided in the trust instrument, a
61 trustee has the power:

62 (y) To employ persons, including attorneys, auditors,
63 investment advisers, or agents, even if they are the trustee or
64 associated with the trustee, to advise or assist the trustee in
65 the performance of his or her administrative duties and to pay
66 compensation and costs incurred in connection with such
67 employment from the assets of the trust; to act without
68 independent investigation upon their recommendations; and,
69 instead of acting personally, to employ one or more agents to
70 perform any act of administration, whether or not discretionary.

71 (z)1. To prosecute or defend actions, claims, or
72 proceedings, including appeals, for the protection of trust
73 assets and of the trustee in the performance of his or her
74 duties.

75 2. To employ attorneys and other agents to advise and
76 assist the trustee in the exercise of any of the trustee's
77 powers and to pay compensation and costs incurred in connection
78 with such employment from the assets of the trust.

79 Section 3. Subsection (2) of section 737.403, Florida
80 Statutes, is amended to read:

81 737.403 Power of court to permit deviation or to approve
82 transactions involving conflict of interest.--

83 (2) If the duty of the trustee and the trustee's
84 individual interest or his or her interest as trustee of another

85 trust conflict in the exercise of a trust power, the power may
 86 be exercised only by court authorization, ~~except as provided in~~
 87 ~~s. 737.402(2)(a), (e), (g), (s) and (y)~~. Under this section,
 88 personal profit or advantage to an affiliated or subsidiary
 89 company or association is personal profit to any corporate
 90 trustee. Court authorization is not required for any of the
 91 following:

92 (a) The exercise of any power described in s.
 93 737.402(2)(a), (e), (g), (s), or (y);

94 (b) The exercise of any power for which the trust
 95 instrument acknowledges the trustee's conflict of interest and
 96 expressly authorizes the exercise of that power notwithstanding
 97 the conflict;

98 (c) The exercise of any power consented to in writing by a
 99 settlor of the trust while the settlor holds the right of
 100 revocation of the trust;

101 (d) The exercise of any power consented to in writing by
 102 each of the beneficiaries to whom the trustee is required to
 103 provide any annual or periodic accounting. Consent under this
 104 paragraph may be given by a person who represents the interest
 105 of the beneficiary under s. 731.303 or by the legal guardian of
 106 the beneficiary or, if there is no legal guardian, by the
 107 natural guardian of the beneficiary; or

108 (e) Payment of costs or attorney's fees incurred in any
 109 trust proceeding from the assets of the trust unless an action
 110 has been filed or defense asserted against the trustee based
 111 upon a breach of trust. Court authorization is not required if
 112 the action or defense is later withdrawn or dismissed by the

113 party that is alleging a breach of trust or resolved without a
 114 determination by the court that the trustee has committed a
 115 breach of trust.

116 Section 4. Subsections (3), (4), and (5) of section
 117 738.104, Florida Statutes, are amended, and subsection (11) is
 118 added to said section, to read:

119 738.104 Trustee's power to adjust.--

120 (3) A trustee may not make an adjustment:

121 ~~(a) That diminishes the income interest in a trust that~~
 122 ~~requires all of the income to be paid at least annually to a~~
 123 ~~spouse and for which an estate tax or gift tax marital deduction~~
 124 ~~would be allowed, in whole or in part, if the trustee did not~~
 125 ~~have the power to adjust;~~

126 (a)~~(b)~~ That reduces the actuarial value of the income
 127 interest in a trust to which a person transfers property with
 128 the intent to qualify for a gift tax exclusion;

129 (b)~~(e)~~ That changes the amount payable to a beneficiary as
 130 a fixed annuity or a fixed fraction of the value of the trust
 131 assets;

132 (c)~~(d)~~ From any amount that is permanently set aside for
 133 charitable purposes under a will or the terms of a trust unless
 134 both income and principal are so set aside;

135 (d)~~(e)~~ If possessing or exercising the power to adjust
 136 causes an individual to be treated as the owner of all or part
 137 of the trust for income tax purposes and the individual would
 138 not be treated as the owner if the trustee did not possess the
 139 power to adjust;

140 ~~(e)(f)~~ If possessing or exercising the power to adjust
141 causes all or part of the trust assets to be included for estate
142 tax purposes in the estate of an individual who has the power to
143 remove a trustee or appoint a trustee, or both, and the assets
144 would not be included in the estate of the individual if the
145 trustee did not possess the power to adjust;

146 ~~(f)(g)~~ If the trustee is a beneficiary of the trust; or

147 ~~(g)(h)~~ If the trustee is not a beneficiary of the trust
148 but the adjustment would benefit the trustee directly or
149 indirectly, except that in the case of a trustee whose
150 compensation for acting as trustee is based upon the value of
151 trust assets, an adjustment that affects the value of trust
152 assets shall not be deemed to benefit the trustee.

153 (4) If paragraph (3)~~(d)(e)~~, paragraph (3)~~(e)(f)~~, paragraph
154 (3)~~(f)(g)~~, or paragraph (3)~~(g)(h)~~ applies to a trustee and there
155 is more than one trustee, a cotrustee to whom the provision does
156 not apply may make the adjustment unless the exercise of the
157 power by the remaining trustee is not permitted by the terms of
158 the trust.

159 (5)(a) A trustee may release the entire power to adjust
160 conferred by subsection (1) if the trustee desires to convert an
161 income trust to a total return unitrust pursuant to s. 738.1041.

162 (b) A trustee may release the entire power to adjust
163 conferred by subsection (1) or may release only the power to
164 adjust from income to principal or the power to adjust from
165 principal to income if the trustee is uncertain about whether
166 possessing or exercising the power will cause a result described
167 in paragraphs (3)(a)-~~(e)(f)~~ or paragraph (3)~~(g)(h)~~ or if the

168 trustee determines that possessing or exercising the power will
 169 or may deprive the trust of a tax benefit or impose a tax burden
 170 not described in subsection (3).

171 (c) A release under this subsection may be permanent or
 172 for a specified period, including a period measured by the life
 173 of an individual. Notwithstanding anything contrary to this
 174 subsection, a release of the power to adjust pursuant to
 175 paragraph (a) shall remain effective only for as long as the
 176 trust is administered as a unitrust pursuant to s. 738.1041.

177 (11) This section shall be construed as pertaining to the
 178 administration of a trust and is applicable to any trust that is
 179 administered either in this state or under Florida law.

180 Section 5. Section 738.1041, Florida Statutes, is amended
 181 to read:

182 738.1041 Total return unitrust.--

183 (1) For purposes of this section, the term:

184 (a) "Disinterested person" means a person who is not a
 185 "related or subordinate party" as defined in s. 672(c) of the
 186 United States Internal Revenue Code, 26 U.S.C. ss. 1 et seq., or
 187 any successor provision thereof, with respect to the person then
 188 acting as trustee of the trust and excludes the grantor and any
 189 interested trustee.

190 (b) "Fair market value" means the fair market value of
 191 assets held by the trust as otherwise determined under this
 192 chapter, reduced by all known noncontingent liabilities.

193 (c)~~(b)~~ "Income trust" means a trust, created by either an
 194 inter vivos or a testamentary instrument, which directs or
 195 permits the trustee to distribute the net income of the trust to

196 one or more persons, either in fixed proportions or in amounts
 197 or proportions determined by the trustee and regardless of
 198 whether the trust directs or permits the trustee to distribute
 199 the principal of the trust to one or more such persons.

200 ~~Notwithstanding the foregoing, no trust that otherwise is an~~
 201 ~~"income trust" shall qualify hereunder, if it may be subject to~~
 202 ~~taxation under the Internal Revenue Code, 26 U.S.C. s. 2001 or~~
 203 ~~s. 2501, until the expiration of the period for filing the~~
 204 ~~return therefor, including extensions.~~

205 (d)(e) "Interested distributee" means a person to whom
 206 distributions of income or principal can currently be made who
 207 has the power to remove the existing trustee and designate as
 208 successor a person who may be a "related or subordinate party,"
 209 as defined in the Internal Revenue Code, 26 U.S.C. s. 672(c),
 210 with respect to such distributee.

211 (e)(d) "Interested trustee" means an individual trustee to
 212 whom the net income or principal of the trust can currently be
 213 distributed or would be distributed if the trust were then to
 214 terminate and be distributed, any trustee whom an interested
 215 distributee has the power to remove and replace with a related
 216 or subordinate party as defined in paragraph (d) (e), or an
 217 individual trustee whose legal obligation to support a
 218 beneficiary may be satisfied by distributions of income and
 219 principal of the trust.

220 (f) "Unitrust amount" means the amount determined by
 221 multiplying the fair market value of the assets as defined in
 222 paragraph (b) by the percentage calculated under paragraph
 223 (2)(b).

224 (2) A trustee may, without court approval, convert an
 225 income trust to a total return unitrust, reconvert a total
 226 return unitrust to an income trust, or change the percentage
 227 used to calculate the unitrust amount or the method used to
 228 determine the fair market value of the trust if:

229 (a) The trustee adopts a written statement regarding trust
 230 distributions that provides:

231 1. In the case of a trust being administered as an income
 232 trust, that future distributions from the trust will be unitrust
 233 amounts rather than net income, and indicates the manner in
 234 which the unitrust amount will be calculated and the method in
 235 which the fair market value of the trust will be determined.

236 2. In the case of a trust being administered as a total
 237 return unitrust, that:

238 a. Future distributions from the trust will be net income
 239 rather than unitrust amounts; or

240 b. The percentage used to calculate the unitrust amount or
 241 the method used to determine the fair market value of the trust
 242 will be changed, and indicates the manner in which the new
 243 unitrust amount will be calculated and the method in which the
 244 new fair market value of the trust will be determined;

245 (b) The trustee determines the terms of the unitrust under
 246 one of the following methods:

247 1. A disinterested ~~The~~ trustee determines, or if there is
 248 no trustee other than an interested trustee, the interested
 249 trustee appoints a disinterested person who, in its sole
 250 discretion but acting in a fiduciary capacity, determines for
 251 the interested trustee:

252 a. The percentage to be used to calculate the unitrust
 253 amount, provided the percentage used is not greater than 5
 254 percent nor less than 3 percent;

255 b. The method to be used in determining the fair market
 256 value of the trust; and

257 c. Which assets, if any, are to be excluded in determining
 258 the unitrust amount; or

259 2. The interested trustee or disinterested trustee
 260 administers the trust such that:

261 a. The percentage used to calculate the unitrust amount is
 262 50 percent of the applicable federal rate as defined in the
 263 Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the
 264 month the conversion under this section becomes effective and
 265 for each January thereafter; however, if the percentage
 266 calculated exceeds 5 percent, the unitrust percentage shall be 5
 267 percent and if the percentage calculated is less than 3 percent,
 268 the unitrust percentage shall be 3 percent; and

269 b. The fair market value of the trust shall be determined
 270 at least annually on an asset-by-asset basis, reasonably and in
 271 good faith, in accordance with the provisions of s. 738.202(5),
 272 except the following property shall not be included in
 273 determining the value of the trust:

274 (I) Any residential property or any tangible personal
 275 property that, as of the first business day of the current
 276 valuation year, one or more current beneficiaries of the trust
 277 have or have had the right to occupy, or have or have had the
 278 right to possess or control (other than in his or her capacity
 279 as trustee of the trust), and instead the right of occupancy or

280 the right to possession and control shall be deemed to be the
 281 unitrust amount with respect to such property; however, the
 282 unitrust amount shall be adjusted to take into account partial
 283 distributions from or receipt into the trust of such property
 284 during the valuation year.

285 (II) Any asset specifically given to a beneficiary and the
 286 return on investment on such property, which return on
 287 investment shall be distributable to such beneficiary.

288 (III) Any asset while held in a testator's estate;

289 (c) The trustee sends written notice of its intention to
 290 take such action, along with copies of such written statement
 291 and this section, and, if applicable, the determinations of
 292 either the trustee or the disinterested person to:

293 1. The grantor of the trust, if living.

294 2. All living persons who are currently receiving or
 295 eligible to receive distributions of income of the trust.

296 3. All living persons who would receive distributions of
 297 principal of the trust if the trust were to terminate at the
 298 time of the giving of such notice (without regard to the
 299 exercise of any power of appointment) or, if the trust does not
 300 provide for its termination, all living persons who would
 301 receive or be eligible to receive distributions of income or
 302 principal of the trust if the persons identified in subparagraph
 303 2. were deceased.

304 4. All persons acting as advisers or protectors of the
 305 trust.

306

307 Notice under this paragraph shall be served informally, in the
 308 manner provided in the Florida Rules of Civil Procedure relating
 309 to service of pleadings subsequent to the initial pleading.
 310 Notice may be served on a legal representative or natural
 311 guardian of a person without the filing of any proceeding or
 312 approval of any court;

313
 314 (d) At least one person receiving notice under each of
 315 subparagraphs (c)2. and 3. is legally competent; and

316 (e) No person receiving such notice objects, by written
 317 instrument delivered to the trustee, to the proposed action of
 318 the trustee or the determinations of the disinterested person
 319 within 60 days after service ~~receipt~~ of such notice. An
 320 objection under this section may be executed by a legal
 321 representative or natural guardian of a person without the
 322 filing of any proceeding or approval of any court.

323 (3) If a trustee desires to convert an income trust to a
 324 total return unitrust, reconvert a total return unitrust to an
 325 income trust, or change the percentage used to calculate the
 326 unitrust amount or the method used to determine a fair market
 327 value of the trust but does not have the ability to or elects
 328 not to do it under subsection (2), the trustee may petition the
 329 circuit court for such order as the trustee deems appropriate.
 330 In that event, the court, in its own discretion or on the
 331 petition of such trustee or any person having an income or
 332 remainder interest in the trust, may appoint a disinterested
 333 person who, acting in a fiduciary capacity, shall present such
 334 information to the court as shall be necessary for the court to

335 make a determination hereunder.

336 (4) All determinations made pursuant to sub-subparagraph
 337 (2)(b)2.b. shall be conclusive if reasonable and made in good
 338 faith. Such determination shall be conclusively presumed to have
 339 been made reasonably and in good faith unless proven otherwise
 340 in a proceeding commenced by or on behalf of a person interested
 341 in the trust within the time provided in s. 737.307. The burden
 342 will be on the objecting interested party to prove that the
 343 determinations were not made reasonably and in good faith.

344 ~~(5) The unitrust amount shall not be less than the net~~
 345 ~~income of the trust, determined without regard to the provisions~~
 346 ~~of subsection (6), for:~~

347 ~~(a) A trust for which a marital deduction has been taken~~
 348 ~~for federal tax purposes under the Internal Revenue Code, 26~~
 349 ~~U.S.C. s. 2056 or s. 2523, during the lifetime of the spouse for~~
 350 ~~whom the trust was created; or~~

351 ~~(b) A trust to which the generation-skipping transfer tax~~
 352 ~~due under the Internal Revenue Code, 26 U.S.C. s. 2601 does not~~
 353 ~~apply by reason of any effective date or transition rule.~~

354
 355 ~~Paragraph (a) will not apply to any trust to the extent that the~~
 356 ~~use of a total return unitrust is recognized for federal tax~~
 357 ~~purposes under the Internal Revenue Code, 26 U.S.C. s. 2056 or~~
 358 ~~s. 2523. Paragraph (b) will not apply to any trust to the extent~~
 359 ~~that the use of a total return unitrust is recognized for~~
 360 ~~federal tax purposes under the Internal Revenue Code, 26 U.S.C.~~
 361 ~~s. 2601.~~

362 (5)~~(6)~~ Following the conversion of an income trust to a

363 total return unitrust, the trustee:

364 (a) Shall treat the unitrust amount as if it were net
 365 income of the trust for purposes of determining the amount
 366 available, from time to time, for distribution from the trust.

367 (b) May allocate to trust income for each taxable year of
 368 the trust, or portion thereof:

369 1. Net short-term capital gain described in the Internal
 370 Revenue Code, 26 U.S.C. s. 1222(5), for such year, or portion
 371 thereof, but only to the extent that the amount so allocated
 372 together with all other amounts allocated to trust income, as
 373 determined under the provisions of this chapter without regard
 374 to this section and s. 738.104, for such year, or portion
 375 thereof, does not exceed the unitrust amount for such year, or
 376 portion thereof.

377 2. Net long-term capital gain described in the Internal
 378 Revenue Code, 26 U.S.C. s. 1222(7), for such year, or portion
 379 thereof, but only to the extent that the amount so allocated
 380 together with all other amounts, including amounts described in
 381 subparagraph 1., allocated to trust income for such year, or
 382 portion thereof, does not exceed the unitrust amount for such
 383 year, or portion thereof.

384 ~~(6)~~(7) In administering a total return unitrust, the
 385 trustee may, in its sole discretion but subject to the
 386 provisions of the governing instrument, determine:

387 (a) The effective date of the conversion.

388 (b) The timing of distributions, including provisions for
 389 prorating a distribution for a short year in which a
 390 beneficiary's right to payments commences or ceases.

391 (c) Whether distributions are to be made in cash or in
 392 kind or partly in cash and partly in kind.

393 (d) If the trust is reconverted to an income trust, the
 394 effective date of such reconversion.

395 (e) Such other administrative issues as may be necessary
 396 or appropriate to carry out the purposes of this section.

397 (7)~~(8)~~ Conversion to a total return unitrust under the
 398 provisions of this section shall not affect any other provision
 399 of the governing instrument, if any, regarding distributions of
 400 principal.

401 ~~(9) In the case of a trust for which a marital deduction~~
 402 ~~has been taken for federal tax purposes under the Internal~~
 403 ~~Revenue Code, 26 U.S.C. s. 2056 or s. 2523, the spouse otherwise~~
 404 ~~entitled to receive the net income of the trust shall have the~~
 405 ~~right, by written instrument delivered to the trustee, to compel~~
 406 ~~the reconversion during his or her lifetime of the trust from a~~
 407 ~~total return unitrust to an income trust, notwithstanding~~
 408 ~~anything in this section to the contrary, unless the use of a~~
 409 ~~total return unitrust is recognized for federal tax purposes~~
 410 ~~under the Internal Revenue Code, 26 U.S.C. s. 2056 or s. 2523.~~

411 (8)~~(10)~~ Any trustee or disinterested person who in good
 412 faith takes or fails to take any action under this section shall
 413 not be liable to any person affected by such action or inaction,
 414 regardless of whether such person received written notice as
 415 provided in this section and regardless of whether such person
 416 was under a legal disability at the time of the delivery of such
 417 notice. Such person's exclusive remedy shall be to obtain, under
 418 subsection (9) ~~(11)~~, an order of the court directing the trustee

419 to convert an income trust to a total return unitrust, to
 420 reconvert from a total return unitrust to an income trust, or to
 421 change the percentage used to calculate the unitrust amount. If
 422 a court determines that the trustee or disinterested person has
 423 not acted in good faith in taking or failing to take any action
 424 under this section, the provisions of s. 738.105(3) apply.

425 (9)~~(11)~~ If a majority in interest of either the income or
 426 remainder beneficiaries of an income trust has delivered to the
 427 trustee a written objection to the amount of the income
 428 distributions of the trust, and, if the trustee has failed to
 429 resolve the objection to the satisfaction of the objecting
 430 beneficiaries within 6 months from the receipt of such written
 431 objection, then the objecting beneficiaries may petition the
 432 court in accordance with subsection (3).

433 (10)~~(12)~~ This section shall be construed as pertaining to
 434 the administration of a trust and is applicable ~~shall be~~
 435 ~~available~~ to any trust that is administered either in this state
 436 or under Florida law unless:

437 (a) The governing instrument reflects an intention that
 438 the current beneficiary or beneficiaries are to receive an
 439 amount other than a reasonable current return from the trust;

440 (b) The trust is a trust described in the Internal Revenue
 441 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), ~~s.~~
 442 ~~1361(d)~~, s. 2702(a)(3), or s. 2702(b);

443 (c) One or more persons to whom the trustee could
 444 distribute income have a power of withdrawal over the trust:

445 1. That is not subject to an ascertainable standard under
 446 the Internal Revenue Code, 26 U.S.C. s. 2041 or s. 2514, and

447 exceeds in any calendar year the amount set forth in the
 448 Internal Revenue Code, 26 U.S.C. s. 2041(b)(2) or s. 2514(e); or

449 2. A power of withdrawal over the trust that can be
 450 exercised to discharge a duty of support he or she possesses;

451 (d) The governing instrument expressly prohibits use of
 452 this section by specific reference to the section. A provision
 453 in the governing instrument that, "The provisions of section
 454 738.1041, Florida Statutes, as amended, or any corresponding
 455 provision of future law, shall not be used in the administration
 456 of this trust," or similar words reflecting such intent shall be
 457 sufficient to preclude the use of this section; or

458 (e) The trust is a trust with respect to which a trustee
 459 currently possesses the power to adjust under s. 738.104.

460 (11) The grantor of a trust may create an express total
 461 return unitrust which will become effective as provided in the
 462 trust document without requiring a conversion under this
 463 section. An express total return unitrust created by the grantor
 464 of the trust shall be treated as a unitrust under this section
 465 only if the terms of the trust document contain all of the
 466 following provisions:

467 (a) That distributions from the trust will be unitrust
 468 amounts and the manner in which the unitrust amount will be
 469 calculated and the method in which the fair market value of the
 470 trust will be determined.

471 (b) The percentage to be used to calculate the unitrust
 472 amount, provided the percentage used is not greater than 5
 473 percent nor less than 3 percent.

474 (c) The method to be used in determining the fair market
 475 value of the trust.

476 (d) Which assets, if any, are to be excluded in
 477 determining the unitrust amount.

478 Section 6. Subsection (1) of section 738.303, Florida
 479 Statutes, is amended to read:

480 738.303 Apportionment when income interest ends.--

481 (1) For purposes of this section, "undistributed income"
 482 means net income received on or before the date on which an
 483 income interest ends. The term does not include an item of
 484 income or expense that is due or accrued or net income that has
 485 been added or is required to be added to principal under the
 486 terms of the trust. In the case of a trust being administered as
 487 a unitrust under s. 738.1041, the term "undistributed income"
 488 means the prorated unitrust amount computed on a daily basis
 489 through the date on which the income interest ends.

490 Section 7. Subsection (3) of section 738.401, Florida
 491 Statutes, is amended, subsection (7) is renumbered as subsection
 492 (8) and amended, and a new subsection (7) is added to said
 493 section, to read:

494 738.401 Character of receipts.--

495 (3) Except as otherwise provided in this section, a
 496 trustee shall allocate the following receipts from an entity to
 497 principal:

498 (a) Property other than money.

499 (b) Money received in one distribution or a series of
 500 related distributions in exchange for part or all of a trust's
 501 interest in the entity.

502 (c) Money received in total or partial liquidation of the
 503 entity.

504 (d) Money received from an entity that is a regulated
 505 investment company or a real estate investment trust if the
 506 money distributed represents short-term or long-term capital
 507 gain realized within the entity.

508 (7) The following special rules shall apply to moneys or
 509 property received by a private trustee from entities described
 510 in this subsection:

511 (a) Moneys or property received from a targeted entity
 512 that is not an investment entity which do not exceed the trust's
 513 pro rata share of the undistributed cumulative net income of the
 514 targeted entity during the time an ownership interest in the
 515 targeted entity was held by the trust shall be allocated to
 516 income. The balance of moneys or property received from a
 517 targeted entity shall be allocated to principal.

518 (b) If trust assets include any interest in an investment
 519 entity, the designated amount of moneys or property received
 520 from the investment entity shall be treated by the trustee in
 521 the same manner as if the trustee had directly held the trust's
 522 pro rata share of the assets of the investment entity
 523 attributable to the distribution of such designated amount.
 524 Thereafter, distributions shall be treated as principal.

525 (c) For purposes of this subsection, the following
 526 definitions shall apply:

527 1. "Cumulative net income" means the targeted entity's net
 528 income as determined using the method of accounting regularly
 529 used by the targeted entity in preparing its financial

530 statements, or if no financial statements are prepared, the net
531 book income computed for federal income tax purposes, for every
532 year an ownership interest in the entity is held by the trust.
533 The trust's pro rata share shall be the cumulative net income
534 multiplied by the percentage ownership of the trust.

535 2. "Designated amount" means moneys or property received
536 from an investment entity during any year that is equal to the
537 amount of the distribution that does not exceed the greater of:

538 a. The amount of income of the investment entity for the
539 current year, as reported to the trustee by the investment
540 entity for federal income tax purposes; or

541 b. The amount of income of the investment entity for the
542 current year and the prior 2 years, as reported to the trustee
543 by the investment entity for federal income tax purposes, less
544 any distributions of moneys or property made by the investment
545 entity to the trustee during the prior 2 years.

546 3. "Investment entity" means a targeted entity that
547 normally derives 50 percent or more of its annual cumulative net
548 income from interest, dividends, annuities, royalties, rental
549 activity, or other passive investments, including income from
550 the sale or exchange of such passive investments.

551 4. "Private trustee" means a trustee who is an individual,
552 but only if the trustee is unable to utilize the power to adjust
553 between income and principal with respect to receipts from
554 entities described in this subsection pursuant to s. 738.104. A
555 bank, trust company, or other commercial trustee shall not be
556 considered to be a private trustee.

557 5. "Targeted entity" means any entity that is treated as a
 558 partnership, subchapter S corporation, or disregarded entity
 559 pursuant to the Internal Revenue Code of 1986, as amended, other
 560 than an entity described in s. 738.403.

561 6. "Undistributed cumulative net income" means the trust's
 562 pro rata share of cumulative net income, less all prior
 563 distributions from the targeted entity to the trust that have
 564 been allocated to income.

565 (d) This subsection shall not be construed to modify or
 566 change any of the provisions of ss. 738.705 and 738.706 relating
 567 to income taxes.

568 (8)(7) A trustee may rely upon a statement made by an
 569 entity about the source or character of a distribution, about
 570 the amount of profits of a targeted entity, or about the nature
 571 and value of assets of an investment entity if the statement is
 572 made at or near the time of distribution by the entity's board
 573 of directors or other person or group of persons authorized to
 574 exercise powers to pay money or transfer property comparable to
 575 those of a corporation's board of directors.

576 Section 8. This act shall take effect July 1, 2005.