

By Senator Richter

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1 A bill to be entitled
 2 An act relating to the Florida Uniform Principal and
 3 Income Act; amending s. 738.602, F.S.; providing
 4 definitions; providing requirements for the
 5 determination of income from certain compensation
 6 plans, annuities, and retirement plans or accounts;
 7 providing trustee requirements with respect to payment
 8 allocations; providing criteria for the payment of
 9 certain funds to a spouse; providing applicability;
 10 providing an effective date.

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

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 14 Section 1. Section 738.602, Florida Statutes, is amended to
 15 read:

16 (Substantial rewording of section. See
 17 s. 738.602, F.S., for present text.)

18 738.602 Payments from deferred compensation plans,
 19 annuities, and retirement plans or accounts.-

20 (1) For purposes of this section:

21 (a) "Fund" means a private or commercial annuity, an
 22 individual retirement account, an individual retirement annuity,
 23 a deferred compensation plan, a pension plan, a profit-sharing
 24 plan, a stock-bonus plan, an employee stock-ownership plan, or
 25 another similar arrangement in which federal income tax is
 26 deferred.

27 (b) "Income of the fund" means income that is determined
 28 according to subsection (2) or subsection (3).

29 (c) "Nonseparate account" means a fund for which the value

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30 of the participant's or account owner's right to receive
31 benefits can be determined only by the occurrence of a date or
32 event as defined in the instrument governing the fund.

33 (d) "Payment" means a distribution from a fund that a
34 trustee may receive over a fixed number of years or during the
35 life of one or more individuals because of services rendered or
36 property transferred to the payor in exchange for future
37 payments. The term includes a distribution made in money or
38 property from the payor's general assets or from a fund created
39 by the payor or payee.

40 (e) "Separate account" means a fund holding assets
41 exclusively for the benefit of a participant or account owner
42 and:

43 1. The value of such assets or the value of the separate
44 account is ascertainable at any time; or

45 2. The administrator of the fund maintains records that
46 show receipts and disbursements associated with such assets.

47 (2) (a) For a fund that is a separate account, income of the
48 fund shall be determined:

49 1. As if the fund were a trust subject to the provisions of
50 ss. 738.401-738.706; or

51 2. As a unitrust amount calculated by multiplying the fair
52 market value of the fund as of the first day of the first
53 accounting period and, thereafter, as of the last day of the
54 accounting period that immediately precedes the accounting
55 period during which a payment is received by the percentage
56 determined in accordance with s. 738.1041(2)(b)2.a. The trustee
57 shall determine such percentage as of the first month that the
58 trustee's election to treat the income of the fund as a unitrust

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59 amount becomes effective. For purposes of this subparagraph,
60 "fair market value" means the fair market value of the assets
61 held in the fund as of the applicable valuation date determined
62 as provided in this subparagraph. The trustee is not liable for
63 good faith reliance upon any valuation supplied by the person or
64 persons in possession of the fund. If the trustee makes or
65 terminates an election under this subparagraph, the trustee
66 shall make such disclosure in a trust disclosure document that
67 satisfies the requirements of s. 736.1008(4) (a).

68 (b) The trustee shall have discretion to elect the method
69 of determining the income of the fund pursuant to this
70 subsection and may change the method of determining income of
71 the fund for any future accounting period.

72 (3) For a fund that is a nonseparate account, income of the
73 fund is a unitrust amount determined by calculating the present
74 value of the right to receive the remaining payments under 26
75 U.S.C. s. 7520 of the Internal Revenue Code as of the first day
76 of the accounting period and multiplying it by the percentage
77 determined in accordance with s. 738.1041(2) (b)2.a. The trustee
78 shall determine the unitrust amount as of the first month that
79 the trustee's election to treat the income of the fund as a
80 unitrust amount becomes effective.

81 (4) Except for those trusts described in subsection (5),
82 the trustee shall allocate a payment from a fund as follows:

83 (a) That portion of the payment the payor characterizes as
84 income shall be allocated to income, and any remaining portion
85 of the payment shall be allocated to principal.

86 (b) To the extent that the payor does not characterize any
87 portion of a payment as income or principal and the trustee can

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88 ascertain the income of the fund by the fund's account
89 statements or any other reasonable source, the trustee shall
90 allocate to income the lesser of the income of the fund or the
91 entire payment and shall allocate to principal any remaining
92 portion of the payment.

93 (c) If the trustee, acting reasonably and in good faith,
94 determines that neither paragraph (a) nor paragraph (b) applies
95 and all or part of the payment is required to be made, the
96 trustee shall allocate to income 10 percent of the portion of
97 the payment that is required to be made during the accounting
98 period and shall allocate the balance to principal. If no part
99 of a payment is required to be made or the payment received is
100 the entire amount to which the trustee is entitled, the trustee
101 shall allocate the entire payment to principal. For purposes of
102 this paragraph, a payment is not "required to be made" to the
103 extent the payment is made because the trustee exercises a right
104 of withdrawal.

105 (5) For a trust which, to qualify for the estate or gift
106 tax marital deduction under the Internal Revenue Code, entitles
107 the spouse to all of the income of the trust, and the terms of
108 the trust are silent as to the time and frequency for
109 distribution of the income of the fund, then:

110 (a) For a fund that is a separate account, unless the
111 spouse directs the trustee to leave the income of the fund in
112 the fund, the trustee shall withdraw and pay to the spouse, no
113 less frequently than annually:

114 1. All of the income of the fund determined in accordance
115 with subparagraph (2) (a) 1.; or

116 2. The income of the fund as a unitrust amount determined

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117 in accordance with subparagraph (2)(a)2.

118 (b) For a fund that is a nonseparate account, the trustee
119 shall withdraw and pay to the spouse, no less frequently than
120 annually, the income of the fund as a unitrust amount determined
121 in accordance with subsection (3).

122 (6) This section does not apply to payments to which s.
123 738.603 applies.

124 Section 2. This act shall take effect July 1, 2009.