

ENROLLED  
HB 379

2009 Legislature

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 determination  
5           of income from certain compensation plans, annuities, and  
6           retirement plans or accounts; providing trustee  
7           requirements with respect to payment allocations;  
8           providing criteria for the payment of certain funds to a  
9           spouse; providing applicability; providing an effective  
10          date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14           Section 1.   Section 738.602, Florida Statutes, is amended  
15 to 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).

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29           (c) "Nonseparate account" means a fund for which the value  
 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  
 48 the fund shall be determined:

49           1. As if the fund were a trust subject to the provisions  
 50 of 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

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

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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  
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:

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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  
 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.