

1 A bill to be entitled
 2 An act relating to administration of life insurance
 3 contracts; amending s. 518.112, F.S.; providing additional
 4 delegable investment functions for fiduciaries relating to
 5 life insurance contract administration; revising notice
 6 requirements and criteria for delegation by a fiduciary of
 7 investment functions to an investment agent; creating s.
 8 736.0902, F.S.; specifying certain activities trustees are
 9 under no duty to undertake relating to administration of
 10 certain contracts for life insurance; specifying absence
 11 of liability of trustees to trust beneficiaries for
 12 certain losses; specifying criteria for application of
 13 certain provisions; providing for certain notice
 14 requirements; specifying nonapplication to certain
 15 contracts of life insurance; providing definitions;
 16 providing an effective date.

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

19
 20 Section 1. Paragraph (b) of subsection (2) and paragraph
 21 (b) of subsection (3) of section 518.112, Florida Statutes, are
 22 amended to read:

23 518.112 Delegation of investment functions.—

24 (2)

25 (b) The delegable investment functions under this
 26 subsection include:

27 1. A determination of whether any insurance contract is or
 28 remains a proper investment;

29 2. A determination of whether or not to exercise any
30 policy option available under any insurance ~~such~~ contracts;

31 3. A determination of whether or not to diversify such
32 contracts relative to one another or to other assets, if any,
33 administered by the fiduciary; ~~or~~

34 4. An inquiry about changes in the health or financial
35 condition of the insured or insureds relative to any such
36 contract;~~;~~

37 5. A determination of whether the owner of any insurance
38 contract has an insurable interest in the life of the insured;

39 or

40 6. An investigation of the financial strength of the life
41 insurance company.

42 (3) A fiduciary may delegate investment functions to an
43 investment agent under subsection (1) or subsection (2), if:

44 (b) In the case of a trust or estate, the fiduciary has
45 given written notice, of its intention to begin delegating
46 investment functions under this section, to all beneficiaries,
47 or their legal representative, eligible to receive distributions
48 from the trust or estate within 30 days of the delegation unless
49 such notice is waived by the eligible beneficiaries entitled to
50 receive such notice. This notice shall thereafter, until or
51 unless the beneficiaries eligible to receive income from the
52 trust or distributions from the estate at the time are notified
53 to the contrary, authorize the trustee or legal representative
54 to delegate investment functions pursuant to this subsection.
55 This discretion to revoke the delegation does not imply under
56 subsection (2) any continuing obligation to review the agent's

57 actions.

58 1. Notice to beneficiaries eligible to receive
 59 distributions from the trust from the estate, or their legal
 60 representatives shall be sufficient notice to all persons who
 61 may join the eligible class of beneficiaries in the future.

62 2. Additionally, as used herein, legal representative
 63 includes one described in s. 731.303, without any requirement of
 64 a court order, an attorney-in-fact under a durable power of
 65 attorney sufficient to grant such authority, a legally appointed
 66 guardian, or equivalent under applicable law, any living,
 67 natural guardian of a minor child, or a guardian ad litem.

68 3. Written notice shall be given as provided in part III
 69 of chapter 731 as to an estate and as provided in s. 736.0109
 70 and part III of chapter 736 as to a trust.‡

71 ~~a. By any form of mail or by any commercial delivery~~
 72 ~~service, approved for service of process by the chief judge of~~
 73 ~~the judicial circuit in which the trust has its principal place~~
 74 ~~of business at the date of notice, requiring a signed receipt;~~

75 ~~b. As provided by law for service of process; or~~

76 ~~c. By an elisor as may be provided in the Florida Rules of~~
 77 ~~Civil Procedure.~~

78
 79 ~~Notice by mail or by approved commercial delivery service is~~
 80 ~~complete on receipt of notice. Proof of notice must be by~~
 81 ~~verified statement of the person mailing or sending notice, and~~
 82 ~~there must be attached thereto the signed receipt or other~~
 83 ~~satisfactory evidence that delivery was effected on the~~
 84 ~~addressee or on the addressee's agent. Proof of notice must be~~

85 ~~maintained among the trustee's permanent records.~~

86 Section 2. Section 736.0902, Florida Statutes, is created
87 to read:

88 736.0902 Nonapplication of prudent investor rule.—

89 (1) Notwithstanding the provisions of s. 518.11 or s.
90 736.0804, with respect to any contract of life insurance
91 acquired or retained on the life of a qualified person, a
92 trustee has no duty to:

93 (a) Determine whether the trust has an insurable interest
94 in the life of the insured;

95 (b) Determine whether any contract of life insurance is or
96 remains a proper investment;

97 (c) Investigate the financial strength of the life
98 insurance company;

99 (d) Determine whether to exercise any policy option
100 available under the contract of life insurance;

101 (e) Diversify any such contract of life insurance or
102 diversify the assets of the trust with respect to the contract
103 of life insurance; or

104 (f) Inquire about or investigate the health or financial
105 condition of any insured or insureds.

106 (2) For purposes of this section, the term "qualified
107 person" means any person, or the spouse of any person, who has
108 provided the trustee with funds that are used to acquire or pay
109 premiums with respect to a policy of insurance on the life of
110 that person, on the life of the spouse of that person, or on the
111 lives of that person and the spouse of that person.

112 (3) In all cases in which this section applies, the

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113 trustee is not liable to the beneficiaries of the trust or any
114 other person for any loss sustained with respect to such
115 contract of life insurance.

116 (4) Unless otherwise provided in the trust instrument,
117 paragraph (1)(a) applies to any contract of life insurance on
118 the life of a qualified person.

119 (5) Unless otherwise provided in the trust instrument,
120 paragraphs (1)(b)-(f) apply if:

121 (a) The trust instrument, by reference to this section,
122 makes this section applicable to contracts of life insurance
123 held by the trust; or

124 (b) The trustee has provided notice that this section
125 applies to a contract of life insurance held by the trust. For
126 any notice provided under this paragraph:

127 1. The notice shall be given to the qualified
128 beneficiaries and shall contain a copy or restatement of this
129 section.

130 2. A notice given to a person who represents the interests
131 of any of the persons set forth in subparagraph 1., pursuant to
132 any of the provisions of part III of this chapter, shall be
133 treated as notice to the person so represented.

134 3. The notice shall be provided pursuant to s. 736.0109.

135 4. If any person notified pursuant to this paragraph
136 objects to the application of this section in a writing
137 delivered to the trustee within 30 days after the date such
138 notice was received, paragraphs (1)(b)-(f) shall not apply until
139 the objection is withdrawn.

140 5. There is a rebuttable presumption that any notice sent

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141 by United States mail is received 3 days after placing the
142 notice in the United States mail with proper postage paid.

143 (6) This section does not apply to any contract of life
144 insurance purchased from any affiliate of the trustee or with
145 respect to which the trustee or any affiliate of the trustee
146 receives any commission unless the trustee's duties have been
147 delegated to another person in accordance with s. 518.112. For
148 purposes of this subsection, the term "affiliate" of the trustee
149 means any person who controls, is controlled by, or is under
150 common control with the trustee.

151 Section 3. This act shall take effect upon becoming a law.