

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

19
 20 Be It Enacted by the Legislature of the State of Florida:

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

25 518.112 Delegation of investment functions.—

26 (2)

27 (b) The delegable investment functions under this
 28 subsection include:

29 | 1. A determination of whether any insurance contract is or
30 | remains a proper investment;

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

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

36 | 4. An inquiry about changes in the health or financial
37 | condition of the insured or insureds relative to any such
38 | contract; ~~-~~

39 | 5. A determination of whether the insurance contract was
40 | procured or effected in compliance with s. 627.404; or

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

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

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

57 subsection (2) any continuing obligation to review the agent's
58 actions.

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

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

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

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

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

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

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

85 ~~addressee or on the addressee's agent. Proof of notice must be~~
 86 ~~maintained among the trustee's permanent records.~~

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

89 736.0902 Nonapplication of prudent investor rule.—

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

94 (a) Determine whether the contract of life insurance is or
 95 was procured or effected in compliance with s. 627.404;

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

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

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

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

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

107 (2) As used in this section, the term "qualified person"
 108 means a person who is insured or is a proposed insured, or the
 109 spouse of that person, who has provided the trustee with the
 110 funds that are used to acquire or pay premiums with respect to a
 111 policy of insurance on the life of that person or the spouse of
 112 that person, or on the lives of that person and the spouse of

113 that person.

114 (3) In all cases in which this section applies, the
115 trustee is not liable to the beneficiaries of the trust or any
116 other person for any loss sustained with respect to such
117 contract of life insurance.

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

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

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

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

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

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

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

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

141 the objection is withdrawn.

142 5. There is a rebuttable presumption that any notice sent
143 by United States mail is received 3 days after placing the
144 notice in the United States mail with proper postage paid.

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

153 (7) Paragraph (1) (a) shall not apply if the trustee
154 applied for or accepted ownership of a contract of life
155 insurance and the trustee had knowledge that:

156 (a) The benefits were not payable to a person specified in
157 s. 627.404 when the contract of life insurance was issued; or

158 (b) The contract of life insurance is or was purchased
159 with resources or guarantees directly or indirectly provided by
160 a person who, at the time of the inception of the contract of
161 life insurance, did not have an insurable interest in the
162 insured as defined by s. 627.404, and, at the time of the
163 inception of the contract of life insurance, there is a verbal
164 or written arrangement, agreement, or plan with a third party to
165 transfer ownership of the policy or policy benefits in a manner
166 that would be in violation of the laws of this state.

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