

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; specifying
 18 certain activities for which a trustee may not be
 19 compensated; providing an effective date.

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

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

26 518.112 Delegation of investment functions.—

27 (2)

28 (b) The delegable investment functions under this

29 subsection include:

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

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

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

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

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

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

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

46 (b) In the case of a trust or estate, the fiduciary has
47 given written notice, of its intention to begin delegating
48 investment functions under this section, to all beneficiaries,
49 or their legal representative, eligible to receive distributions
50 from the trust or estate within 30 days of the delegation unless
51 such notice is waived by the eligible beneficiaries entitled to
52 receive such notice. This notice shall thereafter, until or
53 unless the beneficiaries eligible to receive income from the
54 trust or distributions from the estate at the time are notified
55 to the contrary, authorize the trustee or legal representative
56 to delegate investment functions pursuant to this subsection.

57 | This discretion to revoke the delegation does not imply under
 58 | subsection (2) any continuing obligation to review the agent's
 59 | actions.

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

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

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

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

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

78 | ~~e. By an elisor as may be provided in the Florida Rules of~~
 79 | ~~Civil Procedure.~~

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

85 ~~satisfactory evidence that delivery was effected on the~~
 86 ~~addressee or on the addressee's agent. Proof of notice must be~~
 87 ~~maintained among the trustee's permanent records.~~

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

90 736.0902 Nonapplication of prudent investor rule.-

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

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

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

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

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

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

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

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

113 that person, or on the lives of that person and the spouse of
114 that person.

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

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

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

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

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

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

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

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

138 4. If any person notified pursuant to this paragraph
139 objects to the application of this section in a writing
140 delivered to the trustee within 30 days after the date such

141 notice was received, paragraphs (1)(b)-(f) shall not apply until
 142 the objection is withdrawn.

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

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

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

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

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

168 (8) A trustee who performs fiduciary or advisory services

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169 related to a policy of life insurance to which subsection (1)
170 applies may not be compensated for performing the applicable
171 service to which subsection (1) applies.

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