

By Senator Richter

37-00833A-10

2010926

1 A bill to be entitled
2 An act relating to trusts; creating s. 736.0902, F.S.;
3 limiting the duties and liability of certain trustees
4 with respect to contracts for life insurance; defining
5 the term "qualified person"; providing for the
6 application and nonapplication of certain provisions
7 of state law; requiring that notice of such provisions
8 be given under certain circumstances; providing
9 requirements for such notice; providing that such
10 provisions do not apply if a party notified of the
11 application of certain provisions of state law objects
12 in writing; creating a rebuttable presumption of
13 delivery of notice; defining the term "affiliate" for
14 specified purposes; amending s. 518.112, F.S.;
15 expanding the list of delegable investment functions
16 for certain fiduciaries; revising requirements for the
17 provision of written notice by a trustee of an intent
18 to begin delegating investment functions; providing an
19 effective date.

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

22
23 Section 1. Section 736.0902, Florida Statutes, is created
24 to read:

25 736.0902 Nonapplication of prudent investor rule.—

26 (1) Notwithstanding the provisions of s. 518.11 or s.
27 736.0804, with respect to any contract for life insurance
28 acquired or retained on the life of a qualified person, a
29 trustee has no duty to:

37-00833A-10

2010926

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

32 (b) Determine whether any contract of life insurance is, or
33 remains, a proper investment;

34 (c) Investigate the financial strength of the life
35 insurance company;

36 (d) Determine whether to exercise any policy option
37 available under the contract for life insurance;

38 (e) Diversify any such contract for life insurance or the
39 assets of the trust with respect to the contract for life
40 insurance; or

41 (f) Inquire about or investigate the health or financial
42 condition of any insureds.

43 (2) For purposes of this section, a "qualified person" is
44 any person, or the spouse of any person, who has provided the
45 trustee with funds used to acquire or pay premiums with respect
46 to a policy of insurance on the life of that person or the
47 spouse of that person, or on the lives of that person and the
48 spouse of that person.

49 (3) The trustee is not liable to the beneficiaries of the
50 trust or any other person for any loss sustained with respect to
51 a contract for life insurance to which this section applies.

52 (4) Unless otherwise provided in the trust instrument,
53 paragraph (1)(a) applies to any contract for life insurance on
54 the life of a qualified person.

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

57 (a) The trust instrument, by reference to this section,
58 makes this section applicable to contracts for life insurance

37-00833A-10

2010926__

59 held by the trust; or

60 (b) The trustee gives notice that this section applies to a
61 contract for life insurance held by the trust.

62 1. The notice of the application of this section shall be
63 given to the qualified beneficiaries and shall contain a copy or
64 restatement of this section.

65 2. Notice given pursuant to any of the provisions of part
66 III of this chapter to a person who represents the interests of
67 any of the persons set forth in subparagraph 1. shall be treated
68 as notice to the person so represented.

69 3. Notice shall be given in the manner provided in s.
70 736.0109.

71 4. If any person notified pursuant to this paragraph
72 delivers a written objection to the application of this section
73 to the trustee within 30 days after the date on which the
74 objector received such notice, paragraphs (1)(b)-(f) shall not
75 apply until the objection is withdrawn.

76 5. There shall exist a rebuttable presumption that any
77 notice sent by United States mail is received 3 days after
78 depositing the notice in the United States mail system with
79 proper postage prepaid.

80 (6) This section does not apply to any contract for life
81 insurance purchased from any affiliate of the trustee, or with
82 respect to which the trustee or any affiliate of the trustee
83 receives any commission unless the duties have been delegated to
84 another person in accordance with s. 518.112. For purposes of
85 this subsection, an "affiliate" is any person who controls, is
86 controlled by, or is under common control with the trustee.

87 Section 2. Paragraph (b) of subsection (2) and paragraph

37-00833A-10

2010926

88 (b) of subsection (3) of section 518.112, Florida Statutes, are
89 amended to read:

90 518.112 Delegation of investment functions.—

91 (2)

92 (b) The delegable investment functions under this
93 subsection include:

94 1. A determination of whether the owner of any insurance
95 contract has an insurable interest in the life of the insured;

96 ~~2.1.~~ A determination of whether any insurance contract is
97 or remains a proper investment;

98 3. The investigation of the financial strength of the life
99 insurance company;

100 ~~4.2.~~ A determination of whether or not to exercise any
101 policy option available under any insurance ~~such~~ contracts;

102 ~~5.3.~~ A determination of whether or not to diversify such
103 contracts relative to one another or to other assets, if any,
104 administered by the fiduciary; or

105 ~~6.4.~~ An inquiry about changes in the health or financial
106 condition of the insured or insureds relative to any such
107 contract.

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

110 (b) In the case of a trust or estate, the fiduciary has
111 given written notice, of its intention to begin delegating
112 investment functions under this section, to all beneficiaries,
113 or their legal representative, eligible to receive distributions
114 from the trust or estate within 30 days of the delegation unless
115 such notice is waived by the eligible beneficiaries entitled to
116 receive such notice. This notice shall thereafter, until or

37-00833A-10

2010926

117 unless the beneficiaries eligible to receive income from the
118 trust or distributions from the estate at the time are notified
119 to the contrary, authorize the trustee or legal representative
120 to delegate investment functions pursuant to this subsection.
121 This discretion to revoke the delegation does not imply under
122 subsection (2) any continuing obligation to review the agent's
123 actions.

124 1. Notice to beneficiaries eligible to receive
125 distributions from the trust from the estate, or their legal
126 representatives shall be sufficient notice to all persons who
127 may join the eligible class of beneficiaries in the future.

128 2. Additionally, as used herein, legal representative
129 includes one described in s. 731.303, without any requirement of
130 a court order, an attorney-in-fact under a durable power of
131 attorney sufficient to grant such authority, a legally appointed
132 guardian, or equivalent under applicable law, any living,
133 natural guardian of a minor child, or a guardian ad litem.

134 3. Written notice shall be given as provided in part III of
135 chapter 731 as to an estate, and as provided in s. 736.0109 and
136 part III of chapter 736 as to a trust.÷

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

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

142 ~~e. By an elisor as may be provided in the Florida Rules of~~
143 ~~Civil Procedure.~~

144

145 ~~Notice by mail or by approved commercial delivery service is~~

37-00833A-10

2010926__

146 ~~complete on receipt of notice. Proof of notice must be by~~
147 ~~verified statement of the person mailing or sending notice, and~~
148 ~~there must be attached thereto the signed receipt or other~~
149 ~~satisfactory evidence that delivery was effected on the~~
150 ~~addressee or on the addressee's agent. Proof of notice must be~~
151 ~~maintained among the trustee's permanent records.~~

152 Section 3. This act shall take effect July 1, 2010.