

By the Committee on Banking and Insurance; and Senator Richter

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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; providing that certain provisions
15 of state law do not apply under specified
16 circumstances; amending s. 518.112, F.S.; expanding
17 the list of delegable investment functions for certain
18 fiduciaries; revising requirements for the provision
19 of written notice by a trustee of an intent to begin
20 delegating investment functions; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Section 736.0902, Florida Statutes, is created
26 to read:

27 736.0902 Nonapplication of prudent investor rule.—

28 (1) Notwithstanding the provisions of s. 518.11 or s.
29 736.0804, with respect to any contract for life insurance

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30 acquired or retained on the life of a qualified person, a
31 trustee has no duty to:

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

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

36 (c) Investigate the financial strength of the life
37 insurance company;

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

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

43 (f) Inquire about or investigate the health or financial
44 condition of any insureds.

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

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

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

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

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59 (a) The trust instrument, by reference to this section,
60 makes this section applicable to contracts for life insurance
61 held by the trust; or

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

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

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

71 3. Notice shall be given in the manner provided in s.
72 736.0109.

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

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

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

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88 controlled by, or is under common control with the trustee.

89 (7) Paragraph (1)(a) does not apply if the trustee applied
90 for or accepted ownership of a contract of life insurance and
91 the trustee had knowledge that:

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

94 (b) The contract of life insurance is or was purchased with
95 resources or guarantees directly or indirectly provided by a
96 person who, at the time of the inception of such contract, did
97 not have an insurable interest in the insured as defined by s.
98 627.404, and, at the time of the inception of such contract,
99 there is a verbal or written arrangement, agreement, or plan
100 with a third party to transfer ownership of the policy or policy
101 benefits in a manner that would be in violation of state law.

102 Section 2. Paragraph (b) of subsection (2) and paragraph
103 (b) of subsection (3) of section 518.112, Florida Statutes, are
104 amended to read:

105 518.112 Delegation of investment functions.—

106 (2)

107 (b) The delegable investment functions under this
108 subsection include:

109 1. A determination of whether the insurance contract was
110 procured or effected in compliance with s. 627.404;

111 2.1. A determination of whether any insurance contract is
112 or remains a proper investment;

113 3. The investigation of the financial strength of the life
114 insurance company;

115 4.2. A determination of whether or not to exercise any
116 policy option available under any insurance ~~such~~ contracts;

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117 ~~5.3.~~ A determination of whether or not to diversify such
118 contracts relative to one another or to other assets, if any,
119 administered by the fiduciary; or

120 ~~6.4.~~ An inquiry about changes in the health or financial
121 condition of the insured or insureds relative to any such
122 contract.

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

125 (b) In the case of a trust or estate, the fiduciary has
126 given written notice, of its intention to begin delegating
127 investment functions under this section, to all beneficiaries,
128 or their legal representative, eligible to receive distributions
129 from the trust or estate within 30 days of the delegation unless
130 such notice is waived by the eligible beneficiaries entitled to
131 receive such notice. This notice shall thereafter, until or
132 unless the beneficiaries eligible to receive income from the
133 trust or distributions from the estate at the time are notified
134 to the contrary, authorize the trustee or legal representative
135 to delegate investment functions pursuant to this subsection.
136 This discretion to revoke the delegation does not imply under
137 subsection (2) any continuing obligation to review the agent's
138 actions.

139 1. Notice to beneficiaries eligible to receive
140 distributions from the trust from the estate, or their legal
141 representatives shall be sufficient notice to all persons who
142 may join the eligible class of beneficiaries in the future.

143 2. Additionally, as used herein, legal representative
144 includes one described in s. 731.303, without any requirement of
145 a court order, an attorney-in-fact under a durable power of

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146 attorney sufficient to grant such authority, a legally appointed
147 guardian, or equivalent under applicable law, any living,
148 natural guardian of a minor child, or a guardian ad litem.

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

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

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

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

159
160 ~~Notice by mail or by approved commercial delivery service is~~
161 ~~complete on receipt of notice. Proof of notice must be by~~
162 ~~verified statement of the person mailing or sending notice, and~~
163 ~~there must be attached thereto the signed receipt or other~~
164 ~~satisfactory evidence that delivery was effected on the~~
165 ~~addressee or on the addressee's agent. Proof of notice must be~~
166 ~~maintained among the trustee's permanent records.~~

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