

A bill to be entitled

An act relating to estates; amending s. 733.107, F.S.; clarifying circumstances under which a burden of proof shifts in cases involving undue influence; amending s. 733.808, F.S.; requiring that a directive to apply certain death benefits for the payment of claims and administration expenses be specified in certain instruments; providing for retroactive application; amending s. 736.0207, F.S.; establishing which party bears the burden of proof in an action to contest the validity or revocation of a trust; amending s. 736.05053, F.S.; requiring a specific directive for certain assets and death benefits to be used to pay estate expenses; providing for retroactive application; amending s. 736.1106, F.S.; providing for the vesting of outright devises in certain trust documents; providing for applicability; providing an effective date.

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

Section 1. Section 733.107, Florida Statutes, is amended to read:

733.107 Burden of proof in contests; presumption of undue influence.—

(1) In all proceedings contesting the validity of a will,

27 the burden shall be upon the proponent of the will to establish
 28 prima facie its formal execution and attestation. A self-proving
 29 affidavit executed in accordance with s. 732.503 or an oath of
 30 an attesting witness executed as required in s. 733.201(2) is
 31 admissible and establishes prima facie the formal execution and
 32 attestation of the will. Thereafter, the contestant shall have
 33 the burden of establishing the grounds on which the probate of
 34 the will is opposed or revocation is sought.

35 (2) In any transaction or event to which the presumption
 36 of undue influence applies, the presumption ~~of undue influence~~
 37 implements public policy against abuse of fiduciary or
 38 confidential relationships and is therefore a presumption
 39 shifting the burden of proof under ss. 90.301-90.304.

40 Section 2. Subsection (4) of section 733.808, Florida
 41 Statutes, is amended to read:

42 733.808 Death benefits; disposition of proceeds.—

43 (4) Unless the trust agreement, declaration of trust, or
 44 will expressly refers to this subsection and directs that it
 45 does not apply, death benefits payable as provided in subsection
 46 (1), subsection (2), or subsection (3), unless paid to a
 47 personal representative under the provisions of subsection (3),
 48 shall not be deemed to be part of the decedent's estate, and
 49 shall not be subject to any obligation to pay the expenses of
 50 the administration and obligations of the decedent's estate or
 51 for contribution required from a trust under s. 733.607(2) to
 52 any greater extent than if the proceeds were payable directly to

53 the beneficiaries named in the trust.

54 Section 3. The changes made by this act to s. 733.808,
55 Florida Statutes, are intended to clarify existing law, are
56 remedial in nature, and apply retroactively without regard to
57 the date of the decedent's death.

58 Section 4. Section 736.0207, Florida Statutes, is amended
59 to read:

60 736.0207 Trust contests.—

61 (1) In an action to contest the validity or revocation of
62 all or part of a trust, the contestant has the burden of
63 establishing the grounds for invalidity.

64 (2) An action to contest the validity of all or part of a
65 revocable trust, or the revocation of part of a revocable trust,
66 may not be commenced until the trust becomes irrevocable by its
67 terms or by the settlor's death. If all of a revocable trust has
68 been revoked, an action to contest the revocation may not be
69 commenced until after the settlor's death. This section does not
70 prohibit such action by the guardian of the property of an
71 incapacitated settlor.

72 Section 5. Subsection (1) of section 736.05053, Florida
73 Statutes, is amended to read:

74 736.05053 Trustee's duty to pay expenses and obligations
75 of settlor's estate.—

76 (1) A trustee of a trust described in s. 733.707(3) shall
77 pay to the personal representative of a settlor's estate any
78 amounts that the personal representative certifies in writing to

79 the trustee are required to pay the expenses of the
 80 administration and obligations of the settlor's estate. Payments
 81 made by a trustee, unless otherwise provided in the trust
 82 instrument, must be charged as expenses of the trust without a
 83 contribution from anyone. The interests of all beneficiaries of
 84 such a trust are subject to the provisions of this subsection;
 85 however, the payments must be made from assets, property, or the
 86 proceeds of the assets or property that are included in the
 87 settlor's gross estate for federal estate tax purposes and may
 88 not be made from, other than assets proscribed in s. 733.707(3)
 89 or death benefits described in s. 733.808(4) unless the trust
 90 instrument expressly refers to s. 733.808(4) and directs that it
 91 does not apply, that are included in the settlor's gross estate
 92 for federal estate tax purposes.

93 Section 6. The changes made by this act to s. 736.05053,
 94 Florida Statutes, are intended to clarify existing law, are
 95 remedial in nature, and apply retroactively without regard to
 96 the date of the settlor's death.

97 Section 7. Subsection (5) of section 736.1106, Florida
 98 Statutes, is renumbered as subsection (6) and amended, and a new
 99 subsection (5) is added to that section, to read:

100 736.1106 Antilapse; survivorship with respect to future
 101 interests under terms of inter vivos and testamentary trusts;
 102 substitute takers.-

103 (5) Unless a contrary intent appears in the trust
 104 instrument, subsections (2)-(4) do not apply to an outright

105 devise that vests upon the death of the settlor unless the
 106 beneficiary is a grandparent, or a lineal descendant of a
 107 grandparent, of the settlor or testator and the beneficiary:

108 (a) Is dead at the time of the execution of the revocable
 109 trust or will;

110 (b) Fails to survive the settlor or testator; or

111 (c) Is required by the inter vivos trust or by operation
 112 of law to be treated as having predeceased the settlor or
 113 testator.

114
 115 A devise in a revocable trust or a testamentary trust that is to
 116 take effect at the death of the settlor or testator does not
 117 vest until the death of the settlor or testator.

118 (6)~~(5)~~ Subsections (1)-(4) apply to all trusts other than
 119 trusts that were irrevocable before the effective date of this
 120 code. Sections 732.603, 732.604, and 737.6035, as they exist on
 121 June 30, 2007, continue to apply to other trusts executed on or
 122 after June 12, 2003. Subsection (5) applies to those trusts that
 123 become irrevocable after June 30, 2014.

124 Section 8. This act shall take effect July 1, 2014.