



508936

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Young) recommended the following:

Senate Amendment

Delete lines 216 - 395
and insert:
website is terminated by the sender before the time period set forth in sub-subparagraph 1.b., any applicable limitations period set forth in s. 736.1008(1) or (2) which is still open is tolled for any information adequately disclosed in such document as follows:

a. From the date on which the recipient's access to the electronic account or website is terminated by the sender until



508936

12 45 days after the date on which the sender provides notification
13 of such termination to the recipient by means other than
14 electronic posting, and:

15 (I) The recipient may request that any documents sent
16 during the prior 4 years solely through electronic posting be
17 provided to him or her by other means at no cost; or

18 (II) The recipient's access to the electronic account or
19 website is restored; and

20 b. From the date on which any request is made pursuant to
21 sub-sub-subparagraph 3.a.(I) until 20 days after the date on
22 which the requested documents are provided to the recipient by
23 means other than electronic posting.

24 (h) For purposes of this subsection, access to an
25 electronic account or website is terminated by the sender when
26 the sender unilaterally terminates the recipient's ability to
27 access the electronic website or account or download or print
28 any document posted on such website or account. Access is not
29 terminated by the sender when access is terminated by an action
30 of the recipient or by an action of the sender in response to
31 the recipient's request to terminate access. The recipient's
32 revocation of authorization pursuant to paragraph (f) is not
33 considered a request to terminate access ~~To be effective, the~~
34 ~~posting of a document to an electronic account or website must~~
35 ~~be done in accordance with this subsection. The sender has the~~
36 ~~burden of establishing compliance with this subsection.~~

37 (i) This subsection does not affect or alter the duties of
38 a trustee to keep clear, distinct, and accurate records pursuant
39 to s. 736.0810 or affect or alter the time periods for which the
40 trustee must maintain such records ~~preclude the sending of a~~



508936

41 ~~document by other means.~~

42 (j) This subsection governs the posting of a document
43 solely for the purpose of giving notice under this code or the
44 sending of a document to a person under this code and does not
45 prohibit or otherwise apply to the posting of a document to an
46 electronic account or website for any other purpose or preclude
47 the sending of a document by any other means.

48 Section 4. Subsection (3) of section 736.0110, Florida
49 Statutes, is amended to read:

50 736.0110 Others treated as qualified beneficiaries.—

51 (3) The Attorney General may assert the rights of a
52 qualified beneficiary with respect to a charitable trust having
53 its principal place of administration in this state. The
54 Attorney General has standing to assert such rights in any
55 judicial proceedings.

56 Section 5. Section 736.0404, Florida Statutes, is amended
57 to read:

58 736.0404 Trust purposes.—A trust may be created only to the
59 extent the purposes of the trust are lawful, not contrary to
60 public policy, and possible to achieve. ~~A trust and its terms~~
61 ~~must be for the benefit of its beneficiaries.~~

62 Section 6. Effective upon becoming a law, section
63 736.04117, Florida Statutes, is amended to read:

64 736.04117 Trustee's power to invade principal in trust.—

65 (1) DEFINITIONS.—As used in this section, the term:

66 (a) "Absolute power" means ~~Unless the trust instrument~~
67 ~~expressly provides otherwise, a trustee who has absolute power~~
68 ~~under the terms of a trust to invade the principal of the trust,~~
69 ~~referred to in this section as the "first trust," to make~~



508936

70 ~~distributions to or for the benefit of one or more persons may~~
71 ~~instead exercise the power by appointing all or part of the~~
72 ~~principal of the trust subject to the power in favor of a~~
73 ~~trustee of another trust, referred to in this section as the~~
74 ~~"second trust," for the current benefit of one or more of such~~
75 ~~persons under the same trust instrument or under a different~~
76 ~~trust instrument; provided:~~

77 ~~1. The beneficiaries of the second trust may include only~~
78 ~~beneficiaries of the first trust;~~

79 ~~2. The second trust may not reduce any fixed income,~~
80 ~~annuity, or unitrust interest in the assets of the first trust;~~
81 ~~and~~

82 ~~3. If any contribution to the first trust qualified for a~~
83 ~~marital or charitable deduction for federal income, gift, or~~
84 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
85 ~~amended, the second trust shall not contain any provision which,~~
86 ~~if included in the first trust, would have prevented the first~~
87 ~~trust from qualifying for such a deduction or would have reduced~~
88 ~~the amount of such deduction.~~

89 ~~(b) For purposes of this subsection, an absolute power to~~
90 ~~invade principal shall include a power to invade principal that~~
91 ~~is not limited to specific or ascertainable purposes, such as~~
92 ~~health, education, maintenance, and support, regardless of~~
93 ~~whether ~~or not~~ the term "absolute" is used. A power to invade~~
94 ~~principal for purposes such as best interests, welfare, comfort,~~
95 ~~or happiness constitutes ~~shall constitute~~ an absolute power not~~
96 ~~limited to specific or ascertainable purposes.~~

97 ~~(b) "Authorized trustee" means a trustee, other than the~~
98 ~~settlor or a beneficiary, who has the power to invade the~~



508936

99 principal of a trust.

100 (c) "Beneficiary with a disability" means a beneficiary of
101 the first trust who the authorized trustee believes may qualify
102 for governmental benefits based on disability, regardless of
103 whether the beneficiary currently receives those benefits or has
104 been adjudicated incapacitated.

105 (d) "Current beneficiary" means a beneficiary who, on the
106 date his or her qualification is determined, is a distributee or
107 permissible distributee of trust income or principal. The term
108 includes the holder of a presently exercisable general power of
109 appointment but does not include a person who is a beneficiary
110 only because he or she holds another power of appointment.

111 (e) "Governmental benefits" means financial aid or services
112 from any state, federal, or other public agency.

113 (f) "Internal Revenue Code" means the Internal Revenue Code
114 of 1986, as amended.

115 (g) "Power of appointment" has the same meaning as provided
116 in s. 731.201(30).

117 (h) "Presently exercisable general power of appointment"
118 means a power of appointment exercisable by the powerholder at
119 the relevant time. The term:

120 1. Includes a power of appointment that is exercisable only
121 after the occurrence of a specified event or that is subject to
122 a specified restriction, but only after the event has occurred
123 or the restriction has been satisfied.

124 2. Does not include a power exercisable only upon the
125 powerholder's death.

126 (i) "Substantially similar" means that there is no material
127 change in a beneficiary's beneficial interests or in the power



508936

128 to make distributions and that the power to make a distribution
129 under a second trust for the benefit of a beneficiary who is an
130 individual is substantially similar to the power under the first
131 trust to make a distribution directly to the beneficiary. A
132 distribution is deemed to be for the benefit of a beneficiary
133 if:

134 1. The distribution is applied for the benefit of a
135 beneficiary;

136 2. The beneficiary is under a legal disability or the
137 trustee reasonably believes the beneficiary is incapacitated,
138 and the distribution is made as permitted under this code; or

139 3. The distribution is made as permitted under the terms of
140 the first trust instrument and the second trust instrument for
141 the benefit of the beneficiary.

142 (j) "Supplemental needs trust" means a trust that the
143 authorized trustee believes would not be considered a resource
144 for purposes of determining whether the beneficiary who has a
145 disability is eligible for governmental benefits.

146 (k) "Vested interest" means a current unconditional right
147 to receive a mandatory distribution of income, a specified
148 dollar amount, or a percentage of value of a trust, or a current
149 unconditional right to withdraw income, a specified dollar
150 amount, or a percentage of value of a trust, which right is not
151 subject to the occurrence of a specified event, the passage of a
152 specified time, or the exercise of discretion.

153 1. The term includes a presently exercisable general power
154 of appointment.

155 2. The term does not include a beneficiary's interest in a
156 trust if the trustee has discretion to make a distribution of



508936

157 trust property to a person other than such beneficiary.

158 (2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
159 AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.—

160 (a) Unless a trust instrument expressly provides otherwise,
161 an authorized trustee who has absolute power under the terms of
162 the trust to invade its principal, referred to in this section
163 as the "first trust," to make current distributions to or for
164 the benefit of one or more beneficiaries may instead exercise
165 such power by appointing all or part of the principal of the
166 trust subject to such power in favor of a trustee of one or more
167 other trusts, whether created under the same trust instrument as
168 the first trust or a different trust instrument, including a
169 trust instrument created for the purposes of exercising the
170 power granted by this section, each referred to in this section
171 as the "second trust," for the current benefit of one or more of
172 such beneficiaries only if:

173 1. The beneficiaries of the second trust include only
174 beneficiaries of the first trust; and

175 2. The second trust does not reduce any vested interest.

176 (b) In an exercise of absolute power, the second trust may:

177 1. Retain a power of appointment granted in the first
178 trust;

179 2. Omit a power of appointment granted in the first trust,
180 other than a presently exercisable general power of appointment;

181 3. Create or modify a power of appointment if the
182 powerholder is a current beneficiary of the first trust;

183 4. Create or modify a power of appointment if the
184 powerholder is a beneficiary of the first trust who is not a