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1 A bill to be entitled
2 An act relating to wills and trusts; amending s.
3 731.201, F.S.; revising the definition of the term
4 "will" to include electronic wills; amending s.
5 732.506, F.S.; excluding electronic wills from
6 specified methods to revoke a will; creating s.
7 732.521, F.S.; providing a short title; creating s.
8 732.522, F.S.; defining terms; creating s. 732.523,
9 F.S.; specifying requirements that must be satisfied
10 in the execution of electronic wills; creating s.
11 732.524, F.S.; providing requirements for self-proof
12 of electronic wills; creating s. 732.525, F.S.;
13 specifying the circumstances under which a person is
14 deemed to be in the presence of or appearing before
15 another person; providing that an electronic record
16 satisfies the requirement that a record be in writing;
17 providing that an electronic signature satisfies the
18 requirement that a document be signed; providing
19 requirements for certain documents to be deemed
20 executed in this state; creating s. 732.526, F.S.;
21 authorizing an electronic will of a nonresident of
22 this state which is properly executed in this or
23 another state to be offered for and admitted to
24 probate in this state; providing the venue for the
25 probate of such electronic will; creating s. 732.527,
26 F.S.; specifying requirements for service as a
27 qualified custodian; requiring qualified custodians to
28 provide access to or information concerning the
29 electronic will, or the electronic record containing

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30 the electronic will, only to specified persons or as
31 directed by a court; authorizing a qualified custodian
32 to destroy the electronic record of an electronic will
33 after a certain date; providing conditions under which
34 a qualified custodian may cease serving as a qualified
35 custodian; requiring a qualified custodian to cease
36 serving in such capacity upon the written request of
37 the testator; requiring that a successor qualified
38 custodian agree in writing to serve in that capacity
39 for an electronic will before succeeding to office;
40 specifying what constitutes an affidavit of a
41 qualified custodian; requiring a qualified custodian
42 to deliver certain documents upon request from the
43 testator; prohibiting a qualified custodian from
44 charging the testator a fee for such documents under
45 certain circumstances; providing that a qualified
46 custodian is liable for certain damages under certain
47 circumstances; prohibiting a qualified custodian from
48 terminating or suspending access to, or downloads of,
49 an electronic will by the testator; requiring a
50 qualified custodian to deposit an electronic will with
51 the court upon receiving information that the testator
52 is dead; prohibiting a qualified custodian from
53 charging a fee for certain actions taken upon the
54 death of the testator; requiring a qualified custodian
55 to keep certain information confidential; amending s.
56 732.528, F.S.; requiring a qualified custodian to post
57 and maintain a blanket surety bond, subject to certain
58 requirements, or to maintain a certain liability

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59 insurance policy; authorizing the Attorney General to
60 petition a court for the appointment of a receiver to
61 manage certain records under certain conditions;
62 amending s. 732.901, F.S.; providing that an
63 electronic will that is filed electronically with the
64 clerk is deemed to have been deposited as an original
65 of the electronic will; amending s. 733.201, F.S.;
66 providing for the proof of electronic wills; providing
67 requirements for admitting an electronic will that is
68 not self-proved into probate; providing that a paper
69 copy of an electronic will constitutes an "original"
70 of the electronic will subject to certain conditions;
71 amending s. 736.0103, F.S.; redefining the term
72 "interests of the beneficiaries"; amending s.
73 736.0105, F.S.; deleting a requirement that a trust be
74 for the benefit of the trust's beneficiaries; amending
75 s. 736.0109, F.S.; revising provisions relating to
76 notice or sending of electronic trust documents;
77 providing requirements for such documents to be deemed
78 sent; requiring a certain authorization to specify
79 documents subject to electronic posting; revising
80 requirements for a recipient to electronically access
81 such documents; prohibiting the termination of a
82 recipient's electronic access to such documents from
83 invalidating certain notice or sending of electronic
84 trust documents; tolling specified limitations periods
85 under certain circumstances; providing requirements
86 for electronic access to such documents to be deemed
87 terminated by a sender; providing applicability;

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88 amending s. 736.0110, F.S.; providing that the
89 Attorney General has standing to assert certain rights
90 in certain proceedings; amending s. 736.0403, F.S.;
91 providing that, for purposes of establishing the
92 validity of the testamentary aspects of a revocable
93 trust, the qualified custodian of the trust instrument
94 may not also be a trustee of the trust; amending s.
95 736.0404, F.S.; deleting a restriction on the purpose
96 for which a trust is created; amending s. 736.04117,
97 F.S.; defining and redefining terms; authorizing an
98 authorized trustee to appoint all or part of the
99 principal of a trust to a second trust under certain
100 circumstances; providing requirements for the second
101 trust and its beneficiaries; providing that the second
102 trust may retain, omit, or create specified powers;
103 authorizing the term of the second trust to extend
104 beyond the term of the first trust; providing
105 requirements for distributions to a second trust when
106 the authorized trustee does not have absolute power;
107 providing requirements for such second trust;
108 providing requirements for grants of power by the
109 second trust; authorizing a second trust created by an
110 authorized trustee without absolute power to grant
111 absolute power to the second trust's trustee;
112 authorizing an authorized trustee to appoint the
113 principal of a first trust to a supplemental needs
114 trust under certain circumstances; providing
115 requirements for such supplemental needs trust;
116 prohibiting an authorized trustee from distributing

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117 the principal of a trust in a manner that would reduce
118 specified tax benefits; prohibiting the distribution
119 of S corporation stock from a first trust to a second
120 trust under certain circumstances; prohibiting a
121 settlor from being treated as the owner of a second
122 trust if he or she was not treated as the owner of the
123 first trust; prohibiting an authorized trustee from
124 distributing a trust's interest in property to a
125 second trust if it is subject to specified rules of
126 the Internal Revenue Code; prohibiting the exercise of
127 power to invade a trust's principal to increase an
128 authorized trustee's compensation or relieve him or
129 her from certain liability; specifying who an
130 authorized trustee must notify when he or she
131 exercises his or her power to invade the trust's
132 principal; specifying the documents that the
133 authorized trustee must provide with such notice;
134 amending s. 736.0708, F.S.; providing that a cotrustee
135 is entitled to reasonable compensation when the trust
136 does not specify compensation; providing that
137 reasonable compensation may be greater for multiple
138 trustees than for a single trustee; amending s.
139 736.08135, F.S.; revising applicability; amending s.
140 736.1008, F.S.; clarifying that certain knowledge by a
141 beneficiary does not cause a claim to accrue for
142 breach of trust or commence the running of a period of
143 limitations or laches; providing legislative intent;
144 providing for retroactive application; amending s.
145 736.1201, F.S.; defining the term "delivery of

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146 notice"; conforming a provision to changes made by the
147 act; amending s. 736.1205, F.S.; requiring an
148 authorized trustee to provide certain notice to the
149 Attorney General rather than the state attorney;
150 providing applicability; amending ss. 736.1206,
151 736.1207, 736.1208, and 736.1209, F.S.; conforming
152 provisions to changes made by the act; providing
153 effective dates.

154
155 Be It Enacted by the Legislature of the State of Florida:

156
157 Section 1. Subsection (40) of section 731.201, Florida
158 Statutes, is amended to read:

159 731.201 General definitions.—Subject to additional
160 definitions in subsequent chapters that are applicable to
161 specific chapters or parts, and unless the context otherwise
162 requires, in this code, in s. 409.9101, and in chapters 736,
163 738, 739, and 744, the term:

164 (40) "Will" means an instrument, including a codicil,
165 executed by a person in the manner prescribed by this code,
166 which disposes of the person's property on or after his or her
167 death and includes an instrument which merely appoints a
168 personal representative or revokes or revises another will. The
169 term "will" includes an electronic will as defined in s.
170 732.522.

171 Section 2. Section 732.506, Florida Statutes, is amended to
172 read:

173 732.506 Revocation by act.—A will or codicil, other than an
174 electronic will, is revoked by the testator, or some other

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175 person in the testator's presence and at the testator's
176 direction, by burning, tearing, canceling, defacing,
177 obliterating, or destroying it with the intent, and for the
178 purpose, of revocation.

179 Section 3. Section 732.521, Florida Statutes, is created to
180 read:

181 732.521 Short title.—Sections 732.521-732.527 may be cited
182 as the "Florida Electronic Wills Act."

183 Section 4. Section 732.522, Florida Statutes, is created to
184 read:

185 732.522 Definitions.—As used in ss. 732.521-732.527, the
186 term:

187 (1) "Electronic record" means a record created, generated,
188 sent, communicated, received, or stored by electronic means.

189 (2) "Electronic signature" means an electronic mark visibly
190 manifested in a record as a signature and executed or adopted by
191 a person with the intent to sign the record.

192 (3) "Electronic will" means a will, including a codicil,
193 executed in accordance with s. 732.523 by a person in the manner
194 prescribed by this act, which disposes of the person's property
195 on or after his or her death and includes an instrument that
196 appoints a personal representative or revokes or revises another
197 will or electronic will.

198 (4) "Qualified custodian" means a person who meets the
199 requirements of s. 732.527(1).

200 Section 5. Section 732.523, Florida Statutes, is created to
201 read:

202 732.523 Electronic wills.—Notwithstanding s. 732.502:

203 (1) An electronic will must meet all of the following

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204 requirements:

205 (a) Exist in an electronic record that is unique and
206 identifiable.

207 (b) Be electronically signed by the testator in the
208 presence of at least two attesting witnesses.

209 (c) Be electronically signed by the attesting witnesses in
210 the presence of the testator and in the presence of each other.

211 (2) Except as otherwise provided in this act, all questions
212 as to the force, effect, validity, and interpretation of an
213 electronic will that complies with this section must be
214 determined in the same manner as in the case of a will executed
215 in accordance with s. 732.502.

216 Section 6. Section 732.524, Florida Statutes, is created to
217 read:

218 732.524 Self-proof of electronic will.—An electronic will
219 is self-proved if all of the following requirements are met:

220 (1) The electronic will is executed in conformity with this
221 act.

222 (2) The acknowledgment of the electronic will by the
223 testator and the affidavits of the witnesses are made in
224 accordance with s. 732.503 and are part of the electronic record
225 containing the electronic will, or are attached to, or are
226 logically associated with, the electronic will.

227 (3) (a) The electronic will designates a qualified
228 custodian;

229 (b) The electronic record that contains the electronic will
230 is held in the custody of a qualified custodian at all times
231 before being offered to the court for probate; and

232 (c) The qualified custodian who has custody of the

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233 electronic will at the time of the testator's death:

234 1. Certifies under oath that, to the best knowledge of the
235 qualified custodian, the electronic record that contains the
236 electronic will was at all times before being offered to the
237 court in the custody of a qualified custodian in compliance with
238 s. 732.527 and that the electronic will has not been altered in
239 any way since the date of its execution; and

240 2. If the execution of the electronic will included the use
241 of video conference under s. 732.525(1)(b), certifies under oath
242 that the audio and video recording required under s.
243 732.525(1)(b)9. is in the qualified custodian's custody in the
244 electronic record that contains the electronic will and is
245 available for inspection by the court.

246 Section 7. Section 732.525, Florida Statutes, is created to
247 read:

248 732.525 Method and place of execution.—For purposes of this
249 act, the execution and filing of a document with the court as
250 provided in this act, s. 732.503, or the Florida Probate Rules;
251 the execution of a living will under s. 765.302; and the
252 acknowledgment of any of the foregoing:

253 (1) An individual is deemed to be in the presence of or
254 appearing before another individual if the individuals are
255 either:

256 (a) In the same physical location; or

257 (b) In different physical locations, but can communicate
258 with each other by means of live video conference, if the
259 following requirements are met:

260 1. The testator or principal may not be in an end-stage
261 condition as defined in s. 765.101 or a vulnerable adult as

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262 defined in s. 415.102. The contestant of the document has the
263 burden of proving that the testator or principal was in an end-
264 stage condition or was a vulnerable adult at the time of
265 executing the document.

266 2. The signal transmission must be live and in real time.

267 3. The signal transmission must be secure from interception
268 through lawful means by anyone other than the persons
269 communicating.

270 4. The persons communicating must simultaneously see and
271 speak to one another with reasonable clarity.

272 5. In the video conference, the persons communicating must
273 establish the identity of the testator or principal by:

274 a. Personal knowledge, if the person asserting personal
275 knowledge explains how the identity of the testator or principal
276 has come to be known to, and the length of time for which it has
277 been known by, such person; or

278 b. Presentation of any of the forms of identification of
279 the testator or principal, as set forth in s. 117.05(5)(b)2.a.-
280 i.

281 6. In the video conference, the persons communicating must
282 demonstrate awareness of the events taking place, which may be
283 achieved, without limitation, by stating their names and
284 identifying any document they intend to sign.

285 7. At least one of the persons communicating must be
286 either:

287 a. An attorney licensed to practice law in this state:

288 (I) Who electronically signs the document as a witness;

289 (II) Whose status as an attorney licensed to practice law
290 in this state is indicated adjacent to his or her electronic

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291 signature; and
292 (III) Whose electronic signature is accompanied by his or
293 her statement that, to the best of his or her knowledge, the
294 execution of the document complied with the requirements of this
295 section; or

296 b. A Florida notary public:
297 (I) Who electronically signs the document;
298 (II) Whose electronic signature is accompanied by a notary
299 public seal that meets the requirements of s. 117.021(3); and
300 (III) Whose electronic signature and seal are accompanied
301 by his or her certification that, to the best of his or her
302 knowledge, the execution of the document complied with the
303 requirements of this section.

304
305 If a document is required to be witnessed or acknowledged, the
306 witness or notary fulfilling that requirement may be the same
307 witness or notary who fulfills the requirement of this
308 subparagraph. A person presented with a document containing the
309 statement or certification required under this subparagraph may
310 presume that the document was executed in compliance with this
311 paragraph, unless the person has notice that such compliance is
312 contested.

313 8. In the video conference, the testator or principal must
314 provide verbal answers to all of the following questions:
315 a. Are you over the age of 18?
316 b. Are you under the influence of any drugs or alcohol that
317 impairs your ability to make decisions?
318 c. Are you of sound mind?
319 d. Did anyone assist you in accessing this video

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320 conference? If so, who?

321 e. Has anyone forced or influenced you to include anything
322 in this document which you do not wish to include?

323 f. Are you signing this document voluntarily?

324 9. A time-stamped recording of the entire video conference
325 must be identifiable with the document being signed and stored
326 in the electronic record containing the document by a qualified
327 custodian in the manner required pursuant to s. 732.527(1)(c)
328 for the storage of electronic records containing electronic
329 wills.

330 a. Without limitation, a recording is identifiable with a
331 document if the recording and document share an identification
332 number.

333 b. If the recording is not reasonably accessible by a
334 person presented with the document, such person may treat the
335 document as if it does not include the signature of any
336 signatory who appeared by means of live video conference;
337 however, an electronic will whose execution included the use of
338 video conference under this section may be proved as provided in
339 s. 733.201(4). Without limitation, a recording is reasonably
340 accessible if it is accessible at no charge over the Internet
341 pursuant to instructions set forth in the document.

342 (2) If a law requires a record to be in writing, an
343 electronic record satisfies such provision.

344 (3) Any requirement that a document be signed may be
345 satisfied by an electronic signature.

346 (4) A document that is signed electronically is deemed to
347 be executed in this state if all of the following requirements
348 are met:

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349 (a) The document states that the person creating the
350 document intends to execute and understands that he or she is
351 executing the document in, and pursuant to the laws of, this
352 state.

353 (b) The person creating the document is, or the attesting
354 witnesses or Florida notary public whose electronic signatures
355 are obtained in the execution of the document are, physically
356 located within this state at the time the document is executed.

357 (c) In the case of a self-proved electronic will, the
358 electronic will designates a qualified custodian who is
359 domiciled in and a resident of this state or incorporated or
360 organized in this state.

361 Section 8. Section 732.526, Florida Statutes, is created to
362 read:

363 732.526 Probate.—An electronic will, other than a
364 holographic or nuncupative will, of a nonresident of this state
365 which is executed or deemed executed in another state in
366 accordance with the laws of that state or of this state may be
367 offered for and admitted to original probate in this state and
368 is subject to the jurisdiction of the courts of this state. The
369 venue for the probate of electronic wills is as provided in s.
370 733.101(1) or, in the case of the electronic will of a
371 nonresident, may be the county in which the qualified custodian
372 or attorney for the petitioner or personal representative has
373 his or her domicile or registered office.

374 Section 9. Section 732.527, Florida Statutes, is created to
375 read:

376 732.527 Qualified custodians.—

377 (1) To serve as a qualified custodian of an electronic

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378 will, a person or entity must:

379 (a) Not be named as a fiduciary under the electronic will
380 or an heir or devisee, as defined in s. 731.201, of the
381 testator;

382 (b) Be domiciled in and a resident of this state or be
383 incorporated or organized in this state;

384 (c) In the course of maintaining custody of electronic
385 wills, regularly employ, and store electronic records containing
386 electronic wills in, a system that:

387 1. Protects electronic records from destruction,
388 alteration, or unauthorized access; and

389 2. Detects any change to an electronic record; and

390 (d) Furnish for any court hearing involving an electronic
391 will that is currently or was previously stored by the qualified
392 custodian any information requested by the court pertaining to
393 the qualified custodian's qualifications, policies, and
394 practices related to the creation, sending, communication,
395 receipt, maintenance, storage, and production of electronic
396 wills.

397 (2) The qualified custodian of an electronic will shall
398 provide access to or information concerning the electronic will,
399 or the electronic record containing the electronic will, only:

400 (a) To the testator;

401 (b) To persons authorized by the testator in the electronic
402 will or in written instructions signed by the testator in
403 accordance with s. 732.502;

404 (c) After the death of the testator, to the testator's
405 nominated personal representative; or

406 (d) At any time, as directed by a court of competent

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407 jurisdiction.

408 (3) The qualified custodian of the electronic record of an
409 electronic will may elect to destroy such record, including any
410 of the documentation required to be created and stored under
411 paragraph (1) (d), at any time after the earlier of the fifth
412 anniversary of the conclusion of the administration of the
413 estate of the testator or 20 years after the death of the
414 testator.

415 (4) A qualified custodian who at any time maintains custody
416 of the electronic record of an electronic will may elect to
417 cease serving in such capacity by:

418 (a) Delivering the electronic will or the electronic record
419 containing the electronic will to the testator, if then living,
420 or, after the death of the testator, by filing the will with the
421 court in accordance with s. 732.901; and

422 (b) If the outgoing qualified custodian intends to
423 designate a successor qualified custodian, by doing the
424 following:

425 1. Providing written notice to the testator of the name,
426 address, and qualifications of the proposed successor qualified
427 custodian. The testator must provide written consent before the
428 electronic record, including the electronic will, is delivered
429 to a successor qualified custodian;

430 2. Delivering the electronic record containing the
431 electronic will to the successor qualified custodian; and

432 3. Delivering to the successor qualified custodian an
433 affidavit of the outgoing qualified custodian stating that:

434 a. The outgoing qualified custodian is eligible to act as a
435 qualified custodian in this state;

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436 b. The outgoing qualified custodian is the qualified
437 custodian designated by the testator in the electronic will or
438 appointed to act in such capacity under this paragraph;

439 c. The electronic will has at all times been in the custody
440 of one or more qualified custodians in compliance with this
441 section since the time the electronic record was created, and
442 identifying such qualified custodians; and

443 d. To the best of the outgoing qualified custodian's
444 knowledge, the electronic will has not been altered since the
445 time it was created.

446
447 For purposes of making this affidavit, the outgoing qualified
448 custodian may rely conclusively on any affidavits delivered by a
449 predecessor qualified custodian in connection with its
450 designation or appointment as qualified custodian; however, all
451 such affidavits must be delivered to the successor qualified
452 custodian.

453 (5) Upon the request of the testator which is made in a
454 writing signed in accordance with s. 732.502, a qualified
455 custodian who at any time maintains custody of the electronic
456 record of the testator's electronic will must cease serving in
457 such capacity and must deliver to a successor qualified
458 custodian designated in writing by the testator the electronic
459 record containing the electronic will and the affidavit required
460 in subparagraph (4) (b)3.

461 (6) A qualified custodian may not succeed to office as a
462 qualified custodian of an electronic will unless he or she
463 agrees in writing to serve in such capacity.

464 (7) If a qualified custodian is an entity, an affidavit, or

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465 an appearance by the testator in the presence of a duly
466 authorized officer or agent of such entity, acting in his or her
467 own capacity as such, shall constitute an affidavit, or an
468 appearance by the testator in the presence of the qualified
469 custodian.

470 (8) A qualified custodian must provide a paper copy of an
471 electronic will and the electronic record containing the
472 electronic will to the testator immediately upon request. For
473 the first such request in any 365-day period, the testator may
474 not be charged a fee for being provided with these documents.

475 (9) The qualified custodian shall be liable for any damages
476 caused by the negligent loss or destruction of the electronic
477 record, including the electronic will, while it is in the
478 possession of the qualified custodian. A qualified custodian may
479 not limit liability for such damages.

480 (10) A qualified custodian may not terminate or suspend
481 access to, or downloads of, the electronic will by the testator.

482 (11) Upon receiving information that the testator is dead,
483 a qualified custodian must deposit the electronic will with the
484 court in accordance with s. 732.901. A qualified custodian may
485 not charge a fee for depositing the electronic will with the
486 clerk, providing the affidavit is made in accordance with s.
487 732.503, or furnishing in writing any information requested by a
488 court under paragraph (1) (d).

489 (12) Except as provided in this act, a qualified custodian
490 must at all times keep information provided by the testator
491 confidential and may not disclose such information to any third
492 party.

493 Section 10. Section 732.528, Florida Statutes, is created

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494 to read:

495 732.528 Liability coverage; receivership of qualified
496 custodians.—

497 (1) A qualified custodian shall:

498 (a) Post and maintain a blanket surety bond of at least
499 \$250,000 to secure the faithful performance of all duties and
500 obligations required under this act. The bond must be made
501 payable to the Governor and his or her successors in office for
502 the benefit of all persons who store electronic records with a
503 qualified custodian and their estates, beneficiaries,
504 successors, and heirs and be conditioned on the faithful
505 performance of all duties and obligations under this act. The
506 terms of the bond must cover the acts or omissions of the
507 qualified custodian and each agent or employee of the qualified
508 custodian; or

509 (b) Maintain a liability insurance policy that covers any
510 losses sustained by any person who stores electronic records
511 with a qualified custodian and their estates, beneficiaries,
512 successors, and heirs which are caused by errors or omissions by
513 the qualified custodian and each agent or employee of the
514 qualified custodian. The policy must cover losses of up to at
515 least \$250,000 in the aggregate.

516 (2) The Attorney General may petition a court of competent
517 jurisdiction for the appointment of a receiver to manage the
518 electronic records of a qualified custodian for proper delivery
519 and safekeeping if any of the following conditions exist:

520 (a) The qualified custodian is ceasing operation.

521 (b) The qualified custodian intends to close the facility
522 and adequate arrangements have not been made for proper delivery

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523 of the electronic records in accordance with this act.

524 (c) The Attorney General determines that conditions exist
525 which present a danger that electronic records will be lost or
526 misappropriated.

527 (d) The qualified custodian fails to maintain and post a
528 surety bond or maintain insurance required by this section.

529 Section 11. Present subsection (5) of section 732.901,
530 Florida Statutes, is redesignated as subsection (6) of that
531 section, and a new subsection (5) is added to that section, to
532 read:

533 732.901 Production of wills.—

534 (5) An electronic will that is filed electronically with
535 the clerk through the Florida Courts E-Filing Portal is deemed
536 to have been deposited with the clerk as an original of the
537 electronic will.

538 Section 12. Section 733.201, Florida Statutes, is amended
539 to read:

540 733.201 Proof of wills.—

541 (1) Self-proved wills executed in accordance with this code
542 may be admitted to probate without further proof.

543 (2) A will, other than an electronic will, may be admitted
544 to probate upon the oath of any attesting witness taken before
545 any circuit judge, commissioner appointed by the court, or
546 clerk.

547 (3) If it appears to the court that the attesting witnesses
548 cannot be found or that they have become incapacitated after the
549 execution of the will or their testimony cannot be obtained
550 within a reasonable time, a will, other than an electronic will,
551 may be admitted to probate upon the oath of the personal

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552 representative nominated by the will as provided in subsection
553 (2), whether or not the nominated personal representative is
554 interested in the estate, or upon the oath of any person having
555 no interest in the estate under the will stating that the person
556 believes the writing exhibited to be the true last will of the
557 decedent.

558 (4) If an electronic will, including an electronic will
559 whose execution included the use of a video conference under s.
560 732.525(1)(b), is not self-proved, an electronic will may be
561 admitted to probate upon the oath of the two attesting witnesses
562 for the electronic will taken before any circuit judge, any
563 commissioner appointed by the court, or the clerk. If it appears
564 to the court that the attesting witnesses cannot be found, that
565 they have become incapacitated after the execution of the
566 electronic will, or that their testimony cannot be obtained
567 within a reasonable time, an electronic will may be admitted to
568 probate upon the oath of two disinterested witnesses providing
569 all of the following information:

570 (a) The date on which the electronic will was created, if
571 the date is not indicated in the electronic will itself.

572 (b) When and how the electronic will was discovered, and by
573 whom.

574 (c) All of the people who had access to the electronic
575 will.

576 (d) The method by which the electronic will was stored and
577 the safeguards that were in place to prevent alterations to the
578 electronic will.

579 (e) A statement as to whether the electronic will has been
580 altered since its creation.

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581 (f) A statement that the electronic will is a true,
582 correct, and complete tangible manifestation of the testator's
583 will.

584 (g) If the execution of an electronic will included the use
585 of a video conference under s. 732.525(1)(b), a statement as to
586 whether a recording of the video conference is available for
587 inspection by the court or cannot be found after a diligent
588 search.

589 (5) A paper copy of an electronic will which is a true and
590 correct copy of the electronic will may be offered for and
591 admitted to probate and shall constitute an "original" of the
592 electronic will.

593 Section 13. Subsection (11) of section 736.0103, Florida
594 Statutes, is amended to read:

595 736.0103 Definitions.—Unless the context otherwise
596 requires, in this code:

597 (11) "Interests of the beneficiaries" means the beneficial
598 interests intended by the settlor as provided in the terms of a
599 ~~the~~ trust.

600 Section 14. Paragraph (c) of subsection (2) of section
601 736.0105, Florida Statutes, is amended to read:

602 736.0105 Default and mandatory rules.—

603 (2) The terms of a trust prevail over any provision of this
604 code except:

605 (c) ~~The requirement that a trust and its terms be for the~~
606 ~~benefit of the trust's beneficiaries, and that the trust have a~~
607 ~~purpose that is lawful, not contrary to public policy, and~~
608 ~~possible to achieve.~~

609 Section 15. Subsections (1) and (3) of section 736.0109,

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610 Florida Statutes, are amended to read:

611 736.0109 Methods and waiver of notice.—

612 (1) Notice to a person under this code or the sending of a
613 document to a person under this code must be accomplished in a
614 manner reasonably suitable under the circumstances and likely to
615 result in receipt of the notice or document. Permissible methods
616 of notice or for sending a document include first-class mail,
617 personal delivery, delivery to the person's last known place of
618 residence or place of business, ~~or~~ a properly directed facsimile
619 or other electronic message, or posting to a secure electronic
620 account or website in accordance with subsection (3).

621 (3) A document that is sent solely by posting to an
622 electronic account or website is not deemed sent for purposes of
623 this section unless the sender complies with this subsection.
624 The sender has the burden of proving compliance with this
625 subsection ~~In addition to the methods listed in subsection (1)~~
626 ~~for sending a document, a sender may post a document to a secure~~
627 ~~electronic account or website where the document can be~~
628 ~~accessed.~~

629 (a) ~~Before a document may be posted to an electronic~~
630 ~~account or website,~~ The recipient must sign a separate written
631 authorization solely for the purpose of authorizing the sender
632 to post documents on an electronic account or website before
633 such posting. The written authorization must:

634 1. Specifically indicate whether a trust accounting, trust
635 disclosure document, or limitation notice, as those terms are
636 defined in s. 736.1008(4), will be posted in this manner, and
637 generally enumerate the other types of documents that may be
638 posted in this manner.

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639 2. Contain specific instructions for accessing the
640 electronic account or website, including the security procedures
641 required to access the electronic account or website, such as a
642 username and password.

643 3. Advise the recipient that a separate notice will be sent
644 when a document is posted to the electronic account or website
645 and the manner in which the separate notice will be sent.

646 4. Advise the recipient that the authorization to receive
647 documents by electronic posting may be amended or revoked at any
648 time and include specific instructions for revoking or amending
649 the authorization, including the address designated for the
650 purpose of receiving notice of the revocation or amendment.

651 5. Advise the recipient that posting a document on the
652 electronic account or website may commence a limitations period
653 as short as 6 months even if the recipient never actually
654 accesses the electronic account, electronic website, or ~~the~~
655 document.

656 (b) Once the recipient signs the written authorization, the
657 sender must provide a separate notice to the recipient when a
658 document is posted to the electronic account or website. As used
659 in this subsection, the term "separate notice" means a notice
660 sent to the recipient by means other than electronic posting,
661 which identifies each document posted to the electronic account
662 or website and provides instructions for accessing the ~~posted~~
663 document. The separate notice requirement is deemed satisfied if
664 the recipient accesses the document on the electronic account or
665 website.

666 (c) A document sent by electronic posting is deemed
667 received by the recipient on the earlier of the date on which

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668 ~~that~~ the separate notice is received or the date on which ~~that~~
669 the recipient accesses the document on the electronic account or
670 website.

671 (d) At least annually after a recipient signs a written
672 authorization, a sender shall send a notice advising recipients
673 who have authorized one or more documents to be posted to an
674 electronic account or website that such posting may commence a
675 limitations period as short as 6 months even if the recipient
676 never accesses the electronic account or website or the document
677 and that authority to receive documents by electronic posting
678 may be amended or revoked at any time. This notice must be given
679 by means other than electronic posting and may not be
680 accompanied by any other written communication. Failure to
681 provide such notice within 380 days after the last notice is
682 deemed to automatically revoke the authorization to receive
683 documents in the manner permitted under this subsection 380 days
684 after the last notice is sent.

685 (e) The notice required in paragraph (d) may be in
686 substantially the following form: "You have authorized the
687 receipt of documents through posting to an electronic account or
688 website on which ~~where~~ the documents can be accessed. This
689 notice is being sent to advise you that a limitations period,
690 which may be as short as 6 months, may be running as to matters
691 disclosed in a trust accounting or other written report of a
692 trustee posted to the electronic account or website even if you
693 never actually access the electronic account or website or the
694 documents. You may amend or revoke the authorization to receive
695 documents by electronic posting at any time. If you have any
696 questions, please consult your attorney."

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697 (f) A sender may rely on the recipient's authorization
698 until the recipient amends or revokes the authorization by
699 sending a notice to the address designated for that purpose in
700 the authorization or in the manner specified on the electronic
701 account or website. The recipient, at any time, may amend or
702 revoke an authorization to have documents posted on the
703 electronic account or website.

704 (g) If a document is provided to a recipient solely through
705 electronic posting pursuant to this subsection, the recipient
706 must be able to access and print or download the document until
707 the earlier of ~~remain accessible to the recipient on the~~
708 ~~electronic account or website for at least~~ 4 years after the
709 date that the document is deemed received by the recipient or
710 the date upon which the recipient's access to the electronic
711 account or website is terminated for any reason.

712 1. If the recipient's access to the electronic account or
713 website is terminated for any reason, such termination does not
714 invalidate the notice or sending of any document previously
715 posted on the electronic account or website in accordance with
716 this subsection, but may toll the applicable limitations period
717 as provided in subparagraph 2.

718 2. If the recipient's access to the electronic account or
719 website is terminated by the sender sooner than 4 years after
720 the date on which the document was received by the recipient,
721 any applicable limitations period set forth in s. 736.1008(1) or
722 (2) which is still running is tolled for any information
723 adequately disclosed in a document sent solely by electronic
724 posting, from the date on which the recipient's access to the
725 electronic account or website was terminated by the sender until

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726 45 days after the date on which the sender provides one of the
727 following to the recipient by means other than electronic
728 posting:

729 a. Notice of such termination and notification to the
730 recipient that he or she may request that any documents sent
731 during the prior 4 years solely through electronic posting be
732 provided to him or her by other means at no cost; or

733 b. Notice of such termination and notification to the
734 recipient that his or her access to the electronic account or
735 website has been restored.

736
737 Any applicable limitations period is further tolled from the
738 date on which any request is made pursuant to sub-subparagraph
739 2.a. until 20 days after the date on which the requested
740 documents are provided to the recipient by means other than
741 electronic posting ~~The electronic account or website must allow~~
742 ~~the recipient to download or print the document. This subsection~~
743 ~~does not affect or alter the duties of a trustee to keep clear,~~
744 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~
745 ~~or alter the time periods for which the trustee must maintain~~
746 ~~those records.~~

747 (h) For purposes of this subsection, access to an
748 electronic account or website is terminated by the sender when
749 the sender unilaterally terminates the recipient's ability to
750 access the electronic website or account or download or print
751 any document posted on such website or account. Access is not
752 terminated by the sender when access is terminated by an action
753 of the recipient or by an action of the sender in response to
754 the recipient's request to terminate access. The recipient's

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755 revocation of authorization pursuant to paragraph (f) is not
756 considered a request to terminate access ~~To be effective, the~~
757 ~~posting of a document to an electronic account or website must~~
758 ~~be done in accordance with this subsection. The sender has the~~
759 ~~burden of establishing compliance with this subsection.~~

760 (i) This subsection does not affect or alter the duties of
761 a trustee to keep clear, distinct, and accurate records pursuant
762 to s. 736.0810 or affect or alter the time periods for which the
763 trustee must maintain such records ~~preclude the sending of a~~
764 ~~document by other means.~~

765 (j) This subsection governs the posting of a document
766 solely for the purpose of giving notice under this code or the
767 sending of a document to a person under this code and does not
768 prohibit or otherwise apply to the posting of a document to an
769 electronic account or website for any other purpose or preclude
770 the sending of a document by any other means.

771 Section 16. Subsection (3) of section 736.0110, Florida
772 Statutes, is amended to read:

773 736.0110 Others treated as qualified beneficiaries.—

774 (3) The Attorney General may assert the rights of a
775 qualified beneficiary with respect to a charitable trust having
776 its principal place of administration in this state. The
777 Attorney General has standing to assert such rights in any
778 judicial proceedings.

779 Section 17. Paragraph (b) of subsection (2) of section
780 736.0403, Florida Statutes, is amended to read:

781 736.0403 Trusts created in other jurisdictions; formalities
782 required for revocable trusts.—

783 (2) Notwithstanding subsection (1):

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784 (b) The testamentary aspects of a revocable trust, executed
785 by a settlor who is a domiciliary of this state at the time of
786 execution, are invalid unless the trust instrument is executed
787 by the settlor with the formalities required for the execution
788 of a will under s. 732.502 or an electronic will under s.
789 732.523 which is self-proved; however, the qualified custodian
790 of the trust instrument may not also be a trustee of the trust
791 ~~in this state.~~ For purposes of this subsection, the term
792 "testamentary aspects" means those provisions of the trust
793 instrument that dispose of the trust property on or after the
794 death of the settlor other than to the settlor's estate.

795 Section 18. Section 736.0404, Florida Statutes, is amended
796 to read:

797 736.0404 Trust purposes.—A trust may be created only to the
798 extent the purposes of the trust are lawful, not contrary to
799 public policy, and possible to achieve. ~~A trust and its terms~~
800 ~~must be for the benefit of its beneficiaries.~~

801 Section 19. Effective upon becoming a law, section
802 736.04117, Florida Statutes, is amended to read:

803 736.04117 Trustee's power to invade principal in trust.—

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

805 (a) "Absolute power" means ~~Unless the trust instrument~~
806 ~~expressly provides otherwise, a trustee who has absolute power~~
807 ~~under the terms of a trust to invade the principal of the trust,~~
808 ~~referred to in this section as the "first trust," to make~~
809 ~~distributions to or for the benefit of one or more persons may~~
810 ~~instead exercise the power by appointing all or part of the~~
811 ~~principal of the trust subject to the power in favor of a~~
812 ~~trustee of another trust, referred to in this section as the~~

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813 ~~"second trust," for the current benefit of one or more of such~~
814 ~~persons under the same trust instrument or under a different~~
815 ~~trust instrument; provided:~~

816 ~~1. The beneficiaries of the second trust may include only~~
817 ~~beneficiaries of the first trust;~~

818 ~~2. The second trust may not reduce any fixed income,~~
819 ~~annuity, or unitrust interest in the assets of the first trust,~~
820 ~~and~~

821 ~~3. If any contribution to the first trust qualified for a~~
822 ~~marital or charitable deduction for federal income, gift, or~~
823 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
824 ~~amended, the second trust shall not contain any provision which,~~
825 ~~if included in the first trust, would have prevented the first~~
826 ~~trust from qualifying for such a deduction or would have reduced~~
827 ~~the amount of such deduction.~~

828 ~~(b) For purposes of this subsection, an absolute power to~~
829 ~~invade principal shall include a power to invade principal that~~
830 ~~is not limited to specific or ascertainable purposes, such as~~
831 ~~health, education, maintenance, and support, regardless of~~
832 ~~whether ~~or not~~ the term "absolute" is used. A power to invade~~
833 ~~principal for purposes such as best interests, welfare, comfort,~~
834 ~~or happiness constitutes shall constitute an absolute power not~~
835 ~~limited to specific or ascertainable purposes.~~

836 ~~(b) "Authorized trustee" means a trustee, other than the~~
837 ~~settlor or a beneficiary, who has the power to invade the~~
838 ~~principal of a trust.~~

839 ~~(c) "Beneficiary with a disability" means a beneficiary of~~
840 ~~the first trust who the authorized trustee believes may qualify~~
841 ~~for governmental benefits based on disability, regardless of~~

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842 whether the beneficiary currently receives those benefits or has
843 been adjudicated incapacitated.

844 (d) "Current beneficiary" means a beneficiary who, on the
845 date his or her qualification is determined, is a distributee or
846 permissible distributee of trust income or principal. The term
847 includes the holder of a presently exercisable general power of
848 appointment but does not include a person who is a beneficiary
849 only because he or she holds another power of appointment.

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

852 (f) "Internal Revenue Code" means the Internal Revenue Code
853 of 1986, as amended.

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

856 (h) "Presently exercisable general power of appointment"
857 means a power of appointment exercisable by the powerholder at
858 the relevant time. The term:

859 1. Includes a power of appointment that is exercisable only
860 after the occurrence of a specified event or that is subject to
861 a specified restriction, but only after the event has occurred
862 or the restriction has been satisfied.

863 2. Does not include a power exercisable only upon the
864 powerholder's death.

865 (i) "Substantially similar" means that there is no material
866 change in a beneficiary's beneficial interests or in the power
867 to make distributions and that the power to make a distribution
868 under a second trust for the benefit of a beneficiary who is an
869 individual is substantially similar to the power under the first
870 trust to make a distribution directly to the beneficiary. A

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871 distribution is deemed to be for the benefit of a beneficiary
872 if:

873 1. The distribution is applied for the benefit of a
874 beneficiary;

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

878 3. The distribution is made as permitted under the terms of
879 the first trust instrument and the second trust instrument for
880 the benefit of the beneficiary.

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

885 (k) "Vested interest" means a current unconditional right
886 to receive a mandatory distribution of income, a specified
887 dollar amount, or a percentage of value of a trust, or a current
888 unconditional right to withdraw income, a specified dollar
889 amount, or a percentage of value of a trust, which right is not
890 subject to the occurrence of a specified event, the passage of a
891 specified time, or the exercise of discretion.

892 1. The term includes a presently exercisable general power
893 of appointment.

894 2. The term does not include a beneficiary's interest in a
895 trust if the trustee has discretion to make a distribution of
896 trust property to a person other than such beneficiary.

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

899 (a) Unless a trust instrument expressly provides otherwise,

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900 an authorized trustee who has absolute power under the terms of
901 the trust to invade its principal, referred to in this section
902 as the "first trust," to make current distributions to or for
903 the benefit of one or more beneficiaries may instead exercise
904 such power by appointing all or part of the principal of the
905 trust subject to such power in favor of a trustee of one or more
906 other trusts, whether created under the same trust instrument as
907 the first trust or a different trust instrument, including a
908 trust instrument created for the purposes of exercising the
909 power granted by this section, each referred to in this section
910 as the "second trust," for the current benefit of one or more of
911 such beneficiaries only if:

912 1. The beneficiaries of the second trust include only
913 beneficiaries of the first trust; and

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

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

916 1. Retain a power of appointment granted in the first
917 trust;

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

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

922 4. Create or modify a power of appointment if the
923 powerholder is a beneficiary of the first trust who is not a
924 current beneficiary, but the exercise of the power of
925 appointment may take effect only after the powerholder becomes,
926 or would have become if then living, a current beneficiary of
927 the first trust; and

928 5. Extend the term of the second trust beyond the term of

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929 the first trust.

930 (c) The class of permissible appointees in favor of which a
931 created or modified power of appointment may be exercised may
932 differ from the class identified in the first trust.

933 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
934 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—
935 Unless the trust instrument expressly provides otherwise, an
936 authorized trustee who has a power, other than an absolute
937 power, under the terms of a first trust to invade principal to
938 make current distributions to or for the benefit of one or more
939 beneficiaries may instead exercise such power by appointing all
940 or part of the principal of the first trust subject to such
941 power in favor of a trustee of one or more second trusts. If the
942 authorized trustee exercises such power:

943 (a) The second trusts, in the aggregate, shall grant each
944 beneficiary of the first trust beneficial interests in the
945 second trusts which are substantially similar to the beneficial
946 interests of the beneficiary in the first trust.

947 (b) If the first trust grants a power of appointment to a
948 beneficiary of the first trust, the second trust shall grant
949 such power of appointment in the second trust to such
950 beneficiary, and the class of permissible appointees shall be
951 the same as in the first trust.

952 (c) If the first trust does not grant a power of
953 appointment to a beneficiary of the first trust, then the second
954 trust may not grant a power of appointment in the second trust
955 to such beneficiary.

956 (d) Notwithstanding paragraphs (a), (b), and (c), the term
957 of the second trust may extend beyond the term of the first

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958 trust, and, for any period after the first trust would have
959 otherwise terminated, in whole or in part, under the provisions
960 of the first trust, the trust instrument of the second trust
961 may, with respect to property subject to such extended term:

962 1. Include language providing the trustee with the absolute
963 power to invade the principal of the second trust during such
964 extended term; and

965 2. Create a power of appointment, if the powerholder is a
966 current beneficiary of the first trust, or expand the class of
967 permissible appointees in favor of which a power of appointment
968 may be exercised.

969 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
970 TRUST.-

971 (a) Notwithstanding subsections (2) and (3), unless the
972 trust instrument expressly provides otherwise, an authorized
973 trustee who has the power under the terms of a first trust to
974 invade the principal of the first trust to make current
975 distributions to or for the benefit of a beneficiary with a
976 disability may instead exercise such power by appointing all or
977 part of the principal of the first trust in favor of a trustee
978 of a second trust that is a supplemental needs trust if:

979 1. The supplemental needs trust benefits the beneficiary
980 with a disability;

981 2. The beneficiaries of the second trust include only
982 beneficiaries of the first trust; and

983 3. The authorized trustee determines that the exercise of
984 such power will further the purposes of the first trust.

985 (b) Except as affected by any change to the interests of
986 the beneficiary with a disability, the second trusts, in the

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987 aggregate, shall grant each other beneficiary of the first trust
988 beneficial interests in the second trusts which are
989 substantially similar to such beneficiary's beneficial interests
990 in the first trust.

991 (5) PROHIBITED DISTRIBUTIONS.—

992 (a) An authorized trustee may not distribute the principal
993 of a trust under this section in a manner that would prevent a
994 contribution to that trust from qualifying for, or that would
995 reduce the exclusion, deduction, or other federal tax benefit
996 that was originally claimed or could have been claimed for, that
997 contribution, including:

998 1. The exclusions under s. 2503(b) or s. 2503(c) of the
999 Internal Revenue Code;

1000 2. A marital deduction under s. 2056, s. 2056A, or s. 2523
1001 of the Internal Revenue Code;

1002 3. A charitable deduction under s. 170(a), s. 642(c), s.
1003 2055(a), or s. 2522(a) of the Internal Revenue Code;

1004 4. Direct skip treatment under s. 2642(c) of the Internal
1005 Revenue Code; or

1006 5. Any other tax benefit for income, gift, estate, or
1007 generation-skipping transfer tax purposes under the Internal
1008 Revenue Code.

1009 (b) If S corporation stock is held in the first trust, an
1010 authorized trustee may not distribute all or part of that stock
1011 to a second trust that is not a permitted shareholder under s.
1012 1361(c)(2) of the Internal Revenue Code. If the first trust
1013 holds stock in an S corporation and is, or but for provisions of
1014 paragraphs (a), (c), and (d) would be, a qualified subchapter S
1015 trust within the meaning of s. 1361(d) of the Internal Revenue

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1016 Code, the second trust instrument may not include or omit a term
1017 that prevents it from qualifying as a qualified subchapter S
1018 trust.

1019 (c) Except as provided in paragraphs (a), (b), and (d), an
1020 authorized trustee may distribute the principal of a first trust
1021 to a second trust regardless of whether the settlor is treated
1022 as the owner of either trust under ss. 671-679 of the Internal
1023 Revenue Code; however, if the settlor is not treated as the
1024 owner of the first trust, he or she may not be treated as the
1025 owner of the second trust unless he or she at all times has the
1026 power to cause the second trust to cease being treated as if it
1027 were owned by the settlor.

1028 (d) If an interest in property which is subject to the
1029 minimum distribution rules of s. 401(a)(9) of the Internal
1030 Revenue Code is held in trust, an authorized trustee may not
1031 distribute such an interest to a second trust under subsection
1032 (2), subsection (3), or subsection (4) if the distribution would
1033 shorten the otherwise applicable maximum distribution period.

1034 (6) EXERCISE BY WRITING.—The exercise of a power to invade
1035 principal under subsection (2), subsection (3), or subsection
1036 (4) must ~~The exercise of a power to invade principal under~~
1037 ~~subsection (1) shall be by a written an instrument in writing,~~
1038 signed and acknowledged by the authorized trustee, and filed
1039 with the records of the first trust.

1040 (7)(3) RESTRICTIONS ON EXERCISE OF POWER.—The exercise of a
1041 power to invade principal under subsection (2), subsection (3),
1042 or subsection (4):

1043 (a) Is ~~(1) shall be~~ considered the exercise of a power of
1044 appointment, excluding other than a power to appoint to the

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1045 authorized trustee, the authorized trustee's creditors, the
1046 authorized trustee's estate, or the creditors of the authorized
1047 trustee's estate.

1048 (b) Is, and shall be subject to the provisions of s.
1049 689.225 covering the time at which the permissible period of the
1050 rule against perpetuities begins and the law that determines the
1051 permissible period of the rule against perpetuities of the first
1052 trust.

1053 (c) May be to a second trust created or administered under
1054 the law of any jurisdiction.

1055 (d) May not:

1056 1. Increase the authorized trustee's compensation beyond
1057 the compensation specified in the first trust instrument; or

1058 2. Relieve the authorized trustee from liability for breach
1059 of trust or provide for indemnification of the authorized
1060 trustee for any liability or claim to a greater extent than the
1061 first trust instrument; however, the exercise of the power may
1062 divide and reallocate fiduciary powers among fiduciaries and
1063 relieve a fiduciary from liability for an act or failure to act
1064 of another fiduciary as otherwise allowed under law or common
1065 law.

1066 (8) NOTICE.-

1067 (a) ~~(4)~~ The authorized trustee shall provide written
1068 notification of the manner in which he or she intends to
1069 exercise his or her power to invade principal to ~~notify~~ all
1070 ~~qualified beneficiaries~~ of the following parties ~~first trust, in~~
1071 ~~writing,~~ at least 60 days before ~~prior to~~ the effective date of
1072 the authorized trustee's exercise of such power ~~the trustee's~~
1073 ~~power to invade principal~~ pursuant to subsection (2), subsection

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1074 (3), or subsection (4): ~~(1), of the manner in which the trustee~~
1075 ~~intends to exercise the power.~~

1076 1. All qualified beneficiaries of the first trust;

1077 2. If paragraph (5)(c) applies, the settlor of the first
1078 trust;

1079 3. All trustees of the first trust; and

1080 4. Any person who has the power to remove or replace the
1081 authorized trustee of the first trust.

1082 (b) The authorized ~~A copy of the proposed instrument~~
1083 ~~exercising the power shall satisfy the trustee's notice~~
1084 obligation to provide notice under this subsection is satisfied
1085 when he or she provides copies of the proposed instrument
1086 exercising the power, the trust instrument of the first trust,
1087 and the proposed trust instrument of the second trust.

1088 (c) If all of those required to be notified ~~qualified~~
1089 ~~beneficiaries~~ waive the notice period by signed written
1090 instrument delivered to the authorized trustee, the authorized
1091 trustee's power to invade principal shall be exercisable
1092 immediately.

1093 (d) The authorized trustee's notice under this subsection
1094 does ~~shall~~ not limit the right of any beneficiary to object to
1095 the exercise of the authorized trustee's power to invade
1096 principal except as otherwise provided in other applicable
1097 provisions of this code.

1098 (9)(5) INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER
1099 PROHIBITION.—The exercise of the power to invade principal under
1100 subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not
1101 prohibited by a spendthrift clause or by a provision in the
1102 trust instrument that prohibits amendment or revocation of the

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1103 trust.

1104 ~~(10)(6) NO DUTY TO EXERCISE.~~ Nothing in this section is
1105 intended to create or imply a duty to exercise a power to invade
1106 principal, and no inference of impropriety may ~~shall~~ be made as
1107 a result of an authorized trustee's failure to exercise a
1108 ~~trustee not exercising~~ the power to invade principal conferred
1109 under subsections (2), (3), and (4) ~~subsection (1)~~.

1110 ~~(11)(7) NO ABRIDGEMENT OF COMMON LAW RIGHTS.~~ ~~The provisions~~
1111 ~~of~~ This section may ~~shall~~ not be construed to abridge the right
1112 of any trustee who has a power of invasion to appoint property
1113 in further trust that arises under the terms of the first trust
1114 or under any other section of this code or under another
1115 provision of law or under common law.

1116 Section 20. Subsection (1) of section 736.0708, Florida
1117 Statutes, is amended to read:

1118 736.0708 Compensation of trustee.—

1119 (1) If the terms of a trust do not specify a ~~the~~ trustee's
1120 compensation, the a trustee, including each cotrustee, is
1121 entitled to compensation that is reasonable under the
1122 circumstances. In the aggregate, the reasonable compensation for
1123 multiple trustees may be greater than for a single trustee.

1124 Section 21. Subsection (3) of section 736.08135, Florida
1125 Statutes, is amended to read:

1126 736.08135 Trust accountings.—

1127 (3) Subsections (1) and (2) govern the form and content of
1128 ~~This section applies to~~ all trust accountings rendered for any
1129 accounting periods beginning on or after January 1, 2003, and
1130 all trust accountings rendered on or after July 1, 2017. This
1131 subsection does not affect the beginning period from which a

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1132 trustee is required to render a trust accounting.

1133 Section 22. Subsection (3) of section 736.1008, Florida
1134 Statutes, is amended to read:

1135 736.1008 Limitations on proceedings against trustees.—

1136 (3) When a trustee has not issued a final trust accounting
1137 or has not given written notice to the beneficiary of the
1138 availability of the trust records for examination and that
1139 claims with respect to matters not adequately disclosed may be
1140 barred, a claim against the trustee for breach of trust based on
1141 a matter not adequately disclosed in a trust disclosure document
1142 is barred as provided in chapter 95 and accrues when the
1143 beneficiary has actual knowledge of:

1144 (a) The facts upon which the claim is based, if such actual
1145 knowledge is established by clear and convincing evidence; or

1146 (b) The trustee's repudiation of the trust or adverse
1147 possession of trust assets.

1148
1149 Paragraph (a) applies to claims based upon acts or omissions
1150 occurring on or after July 1, 2008. A beneficiary's actual
1151 knowledge that he or she has not received a trust accounting
1152 does not cause a claim to accrue against the trustee for breach
1153 of trust based upon the failure to provide a trust accounting
1154 required by s. 736.0813 or former s. 737.303 and does not
1155 commence the running of any period of limitations or laches for
1156 such a claim, and paragraph (a) and chapter 95 do not bar any
1157 such claim.

1158 Section 23. The changes to ss. 736.08135 and 736.1008,
1159 Florida Statutes, made by this act are intended to clarify
1160 existing law, are remedial in nature, and apply retroactively to

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1161 all cases pending or commenced on or after July 1, 2017.

1162 Section 24. Present subsections (2), (3), and (4) of
1163 section 736.1201, Florida Statutes, are redesignated as
1164 subsections (3), (4), and (5), respectively, present subsection
1165 (5) of that section is amended, and a new subsection (2) is
1166 added to that section, to read:

1167 736.1201 Definitions.—As used in this part:

1168 (2) "Delivery of notice" means delivery of a written notice
1169 required under this part using any commercial delivery service
1170 requiring a signed receipt or by any form of mail requiring a
1171 signed receipt.

1172 ~~(5) "State attorney" means the state attorney for the~~
1173 ~~judicial circuit of the principal place of administration of the~~
1174 ~~trust pursuant to s. 736.0108.~~

1175 Section 25. Section 736.1205, Florida Statutes, is amended
1176 to read:

1177 736.1205 Notice that this part does not apply.—In the case
1178 of a power to make distributions, if the trustee determines that
1179 the governing instrument contains provisions that are more
1180 restrictive than s. 736.1204(2), or if the trust contains other
1181 powers, inconsistent with the provisions of s. 736.1204(3) that
1182 specifically direct acts by the trustee, the trustee shall
1183 notify the ~~state~~ Attorney General by delivery of notice when the
1184 trust becomes subject to this part. Section 736.1204 does not
1185 apply to any trust for which notice has been given pursuant to
1186 this section unless the trust is amended to comply with the
1187 terms of this part.

1188 Section 26. Sections 1 through 12 and section 17 of this
1189 act apply to electronic wills executed on or after July 1, 2017.

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1190 Section 27. Subsection (2) of section 736.1206, Florida
1191 Statutes, is amended to read:

1192 736.1206 Power to amend trust instrument.—

1193 (2) In the case of a charitable trust that is not subject
1194 to ~~the provisions of~~ subsection (1), the trustee may amend the
1195 governing instrument to comply with ~~the provisions of~~ s.
1196 736.1204(2) after delivery of notice to, and with the consent
1197 of, ~~the state~~ Attorney General.

1198 Section 28. Section 736.1207, Florida Statutes, is amended
1199 to read:

1200 736.1207 Power of court to permit deviation.—This part does
1201 not affect the power of a court to relieve a trustee from any
1202 restrictions on the powers and duties that are placed on the
1203 trustee by the governing instrument or applicable law for cause
1204 shown and on complaint of the trustee, the state ~~state~~ Attorney
1205 General, or an affected beneficiary and notice to the affected
1206 parties.

1207 Section 29. Paragraph (b) of subsection (4) of section
1208 736.1208, Florida Statutes, is amended to read:

1209 736.1208 Release; property and persons affected; manner of
1210 effecting.—

1211 (4) Delivery of a release shall be accomplished as follows:

1212 (b) If the release is accomplished by reducing the class of
1213 permissible charitable organizations, by delivery of notice a
1214 copy of the release to the ~~state~~ Attorney General, including a
1215 copy of the release.

1216 Section 30. Section 736.1209, Florida Statutes, is amended
1217 to read:

1218 736.1209 Election to come under this part.—With the consent

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1219 of that organization or organizations, a trustee of a trust for
1220 the benefit of a public charitable organization or organizations
1221 may come under s. 736.1208(5) by delivery of notice to filing
1222 ~~with~~ the ~~state~~ Attorney General of the ~~an~~ election, accompanied
1223 by the proof of required consent. Thereafter the trust shall be
1224 subject to s. 736.1208(5).

1225 Section 31. Except as otherwise provided in this act and
1226 except for this section, which shall take effect upon becoming a
1227 law, this act shall take effect July 1, 2017.