

By Senator Gruters

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1                   A bill to be entitled  
2       An act relating to trusts; creating s. 736.08145,  
3       F.S.; authorizing trustees of certain trusts to  
4       reimburse persons being treated as the owner of the  
5       trust for specified amounts and in a specified manner;  
6       prohibiting certain policies, values, and proceeds  
7       from being used for such reimbursement; providing  
8       applicability; prohibiting certain trustees from  
9       taking specified actions relating to trusts; requiring  
10      that specified powers be granted to certain persons if  
11      the terms of the trust require a trustee to act at the  
12      direction or with the consent of such persons;  
13      providing construction; providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

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17       Section 1. Section 736.08145, Florida Statutes, is created  
18 to read:

19       736.08145 Grantor trust reimbursement.-

20       (1) (a) Except as otherwise provided under the terms of a  
21 trust, if all or any portion of the trust is treated as being  
22 owned by a person under s. 671 of the Internal Revenue Code or  
23 any similar federal, state, or other tax law, the trustee may,  
24 in the trustee's sole discretion, reimburse the person being  
25 treated as the owner for any amount of the person's personal  
26 federal, state, or other income tax liability which is  
27 attributable to the inclusion of the trust's income, capital  
28 gains, deductions, or credits in the calculation of the person's  
29 taxable income. In the trustee's sole discretion, the trustee

23-01273A-20

20201366\_\_

30 may pay such tax reimbursement amount, determined without regard  
31 to any other distribution or payment made from trust assets, to  
32 the person directly or to the appropriate taxing authority.

33 (b) A life insurance policy held in the trust, the cash  
34 value of any such policy, or the proceeds of any loan secured by  
35 an interest in the policy may not be used for such reimbursement  
36 or such payment if the person is an insured.

37 (2) This section applies to all trusts, whether created on,  
38 before, or after July 1, 2020, unless:

39 (a) The trustee provides written notification that the  
40 trustee intends to irrevocably elect out of the application of  
41 this section, at least 60 days before the effective date of such  
42 election, to the person treated as the owner of all or a portion  
43 of the trust under s. 671 of the Internal Revenue Code or any  
44 similar federal, state, or other tax law and to all persons who  
45 have the ability to remove and replace the trustee.

46 (b) Applying this section would prevent a contribution to  
47 the trust from qualifying for, or would reduce, a federal tax  
48 benefit, including a federal tax exclusion or deduction, which  
49 was originally claimed or could have been claimed for the  
50 contribution, including:

51 1. An exclusion under s. 2503(b) or s. 2503(c) of the  
52 Internal Revenue Code;

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

55 3. A charitable deduction under s. 170(a), s. 642(c), s.  
56 2055(a), or s. 2522(a) of the Internal Revenue Code; or

57 4. Direct skip treatment under s. 2642(c) of the Internal  
58 Revenue Code.

23-01273A-20

20201366\_\_

59       (3) A trustee may not exercise, or participate in the  
60 exercise of, the powers granted by this section with respect to  
61 any trust if any of the following applies:

62       (a) The trustee is treated as the owner of all or part of  
63 such trust under s. 671 of the Internal Revenue Code or any  
64 similar federal, state, or other tax law.

65       (b) The trustee is a qualified beneficiary of such trust.

66       (c) The trustee is a related or subordinate party, as  
67 defined in s. 672(c) of the Internal Revenue Code, with respect  
68 to a person treated as the owner of all or part of such trust  
69 under s. 671 of the Internal Revenue Code or any similar  
70 federal, state, or other tax law or with respect to a qualified  
71 beneficiary of such trust.

72       (4) If the terms of a trust require the trustee to act at  
73 the direction or with the consent of a trust advisor, a  
74 protector, or any other person, the powers granted by this  
75 section to the trustee must instead or also be granted, as  
76 applicable under the terms of the trust, to the advisor,  
77 protector, or other person subject to the limitations set forth  
78 in subsection (3), which must be applied as if the advisor,  
79 protector, or other person were a trustee.

80       (5) A person may not be considered a qualified beneficiary  
81 of a trust solely by reason of the application of this section.

82       Section 2. This act shall take effect July 1, 2020.