



488748

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2025	.	
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The Committee on Community Affairs (Berman) recommended the following:

Senate Amendment

Delete lines 58 - 140
and insert:
a settlor of the second trust, and the authorized trustee may be considered.

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

(a) Unless a trust instrument expressly provides otherwise,
an authorized trustee who has absolute power under the terms of



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11 the trust to invade its principal, referred to in this section
12 as the "first trust," to make current distributions to or for
13 the benefit of one or more beneficiaries may instead exercise
14 such power by modifying the terms of the first trust or by
15 appointing all or part of the principal of the trust subject to
16 such power in favor of a trustee of one or more other trusts,
17 whether created under the same trust instrument as the first
18 trust or a different trust instrument, including a trust
19 instrument created for the purposes of exercising the power
20 granted by this section, each referred to in this section as the
21 "second trust," for the current benefit of one or more of such
22 beneficiaries only if:

23 1. The beneficiaries of the second trust include only
24 beneficiaries of the first trust; and

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

26 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
27 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.-

28 Unless the trust instrument expressly provides otherwise, an
29 authorized trustee who has a power, other than an absolute
30 power, under the terms of a first trust to invade principal to
31 make current distributions to or for the benefit of one or more
32 beneficiaries may instead exercise such power by modifying the
33 terms of the first trust or by appointing all or part of the
34 principal of the first trust subject to such power in favor of a
35 trustee of one or more second trusts. If the authorized trustee
36 exercises such power:

37 (a) The second trusts, in the aggregate, must ~~shall~~ grant
38 each beneficiary of the first trust beneficial interests in the
39 second trusts which are substantially similar to the beneficial



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40 interests of the beneficiary in the first trust.

41 (b) If the first trust grants a power of appointment to a
42 beneficiary of the first trust, the second trust must ~~shall~~
43 grant such power of appointment in the second trust to such
44 beneficiary, and the class of permissible appointees must ~~shall~~
45 be the same as in the first trust.

46 (c) If the first trust does not grant a power of
47 appointment to a beneficiary of the first trust, the second
48 trust may not grant a power of appointment in the second trust
49 to such beneficiary.

50 (d) Notwithstanding paragraphs (a), (b), and (c), the term
51 of the second trust may extend beyond the term of the first
52 trust, and, for any period after the first trust would have
53 otherwise terminated, in whole or in part, under the provisions
54 of the first trust, the trust instrument of the second trust
55 may, with respect to property subject to such extended term:

56 1. Include language providing the trustee with the absolute
57 power to invade the principal of the second trust during such
58 extended term; and

59 2. Create a power of appointment, if the power holder is a
60 current beneficiary of the first trust, or expand the class of
61 permissible appointees in favor of which a power of appointment
62 may be exercised.

63 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
64 TRUST.—

65 (a) Notwithstanding subsections (2) and (3), unless the
66 trust instrument expressly provides otherwise, an authorized
67 trustee who has the power under the terms of a first trust to
68 invade the principal of the first trust to make current



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69 distributions to or for the benefit of a beneficiary with a
70 disability may instead exercise such power by modifying the
71 terms of the first trust or by appointing all or part of the
72 principal of the first trust in favor of a trustee of a second
73 trust that is a supplemental needs trust if:

74 1. The supplemental needs trust benefits the beneficiary
75 with a disability;

76 2. The beneficiaries of the second trust include only
77 beneficiaries of the first trust; and

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

80 (8) NOTICE.—

81 (d) The authorized trustee's notice under this subsection
82 is not a trust disclosure document as defined in s. 736.1008(4)
83 and does not limit the right of any beneficiary to object to the
84 exercise of the authorized trustee's power to invade principal
85 except as otherwise provided in other applicable provisions of
86 this code. With respect to the exercise of the authorized
87 trustee's power to invade principal, a trust disclosure