

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED      (Y/N)  
ADOPTED AS AMENDED      (Y/N)  
ADOPTED W/O OBJECTION      (Y/N)  
FAILED TO ADOPT      (Y/N)  
WITHDRAWN      (Y/N)  
OTHER           

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1 Committee/Subcommittee hearing bill: Insurance & Banking  
2 Subcommittee

3 Representative Oliver offered the following:

4

5 **Amendment**

6 Remove lines 58-140 and insert:

7 a settlor of the second trust, and the authorized trustee may be  
8 considered.

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

11 (a) Unless a trust instrument expressly provides  
12 otherwise, an authorized trustee who has absolute power under  
13 the terms of the trust to invade its principal, referred to in  
14 this section as the "first trust," to make current distributions  
15 to or for the benefit of one or more beneficiaries may instead  
16 exercise such power by modifying the terms of the first trust or

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17 by appointing all or part of the principal of the trust subject  
18 to such power in favor of a trustee of one or more other trusts,  
19 whether created under the same trust instrument as the first  
20 trust or a different trust instrument, including a trust  
21 instrument created for the purposes of exercising the power  
22 granted by this section, each referred to in this section as the  
23 "second trust," for the current benefit of one or more of such  
24 beneficiaries only if:

25 1. The beneficiaries of the second trust include only  
26 beneficiaries of the first trust; and

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

28 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN  
29 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—  
30 Unless the trust instrument expressly provides otherwise, an  
31 authorized trustee who has a power, other than an absolute  
32 power, under the terms of a first trust to invade principal to  
33 make current distributions to or for the benefit of one or more  
34 beneficiaries may instead exercise such power by modifying the  
35 terms of the first trust or by appointing all or part of the  
36 principal of the first trust subject to such power in favor of a  
37 trustee of one or more second trusts. If the authorized trustee  
38 exercises such power:

39 (a) The second trusts, in the aggregate, must ~~shall~~ grant  
40 each beneficiary of the first trust beneficial interests in the

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41 second trusts which are substantially similar to the beneficial  
42 interests of the beneficiary in the first trust.

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

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

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

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

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

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65 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS  
66 TRUST.—

67 (a) Notwithstanding subsections (2) and (3), unless the  
68 trust instrument expressly provides otherwise, an authorized  
69 trustee who has the power under the terms of a first trust to  
70 invade the principal of the first trust to make current  
71 distributions to or for the benefit of a beneficiary with a  
72 disability may instead exercise such power by modifying the  
73 terms of the first trust or by appointing all or part of the  
74 principal of the first trust in favor of a trustee of a second  
75 trust that is a supplemental needs trust if:

76 1. The supplemental needs trust benefits the beneficiary  
77 with a disability;

78 2. The beneficiaries of the second trust include only  
79 beneficiaries of the first trust; and

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

82 (8) NOTICE.—

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

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