

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WITHDRAWN	___	(Y/N)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: Judiciary Committee  
2 Representative Oliver offered the following:

3  
4 **Amendment**

5 Remove lines 58-140 and insert:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

81 (8) NOTICE.—

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