

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Committee on Criminal and Civil Justice

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BILL: CS/SB 806

INTRODUCER: Judiciary Committee and Senator Yarborough

SUBJECT: Florida Trust Code

DATE: March 23, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 806 provides that, where the Attorney General has asserted his or her authority to enforce the terms of a charitable trust having its principal place of administration in this state, the Attorney General has the exclusive standing to assert the interests of the general public in the trust. The term “standing” means the legal right to pursue a particular civil action. This would have the effect of limiting the common law special interest rule that gives a person having a “special interest” in a charitable trust standing to file an action to enforce the terms of the charitable trust.

The bill does not have a fiscal impact on state revenues or expenditures. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming a law.

**II. Present Situation:**

**Trust Law – In General**

A trust is an entity established by a settlor to hold, invest, and distribute property on behalf of one or more beneficiaries, in compliance with the terms of the trust as established by the settlor.<sup>1</sup>

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<sup>1</sup> The settlor is the person who created the trust. The settlor provides the funding or assets of the trust and drafts the terms of the trust.

Where the beneficiary of the trust is a charitable organization or a general charitable purpose, the trust is known as a “charitable trust.” An individual or entity managing a trust is known as a trustee.

Most trust arrangements operate privately, without oversight by the courts or any regulatory authority. However, interested parties may turn to the courts to enforce the terms of a trust. A person who has the legal right to be a party to a lawsuit regarding enforcement of a trust is known as one who has “standing” to appear in the lawsuit.<sup>2</sup> In a private trust arrangement, only the settlor, or any of the individual named beneficiaries, has legal standing to appear in the probate court to enforce the terms of the trust. As to a charitable trust, the settlor, a named charitable organization beneficiary, and the Attorney General have statutory standing to enforce a charitable trust.<sup>3</sup>

The Attorney General is not required to enforce the terms of a charitable trust. He or she simply has the option to enforce the terms of a charitable trust. The reason that the Attorney General has standing is that, “unlike a private trust, where there are identifiable beneficiaries who are the equitable owners of the trust property, the beneficiaries of a charitable trust are the public at large.”<sup>4</sup>

Florida courts recognize a common law exception to the limits of standing whereby a person alleging a special interest, an interest beyond the general interest possessed by the public at large, may be granted standing to enforce the terms of a charitable trust.<sup>5</sup> The reason for requiring a special interest is: “If it were otherwise there would be no end to potential litigation against a given [charitable trust], whether he be a public official or otherwise, brought by individuals or residents, all possessed by the same general interest . . . .”<sup>6</sup>

The common law “special interest” exception to the general rule of standing to file an action to enforce a trust provision in a charitable trust has not been codified in the Trust Code, although it is alluded to in s. 736.0405(3), F.S. In a 2024 case, a district court of appeal noted that the special interest rule had not been changed by statute, and stated that the Legislature could change or eliminate that common law rule by amending the Trust Code.<sup>7</sup>

### **The Attorney General**

The Attorney General is a statewide elected official whose office is created by the state constitution.<sup>8</sup> The Attorney General is the chief state’s legal officer, and represents the general interests of the citizens of the state.

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<sup>2</sup> The concept of standing is not unique to trust litigation. It applies to all civil litigation.

<sup>3</sup> Sections 736.0110 and 736.0405, F.S.; *State of Del. ex rel. Gebelein v. Fla. First Nat. Bank of Jacksonville*, 381 So. 2d 1075, 1077 (Fla. 1st DCA 1979).

<sup>4</sup> *Id.*

<sup>5</sup> See *United States Steel Corp. v. Save Sand Key*, 303 So.2d 9 (Fla. 1974).

<sup>6</sup> *Askew v. Hold the Bulkhead-Save our Bays*, 269 So.2d 696 (Fla. 2d DCA 1972).

<sup>7</sup> *Jennings v. Durden*, No. 5D2023-0064, 2024 WL 2788198, at \*6 (Fla. 5th DCA May 31, 2024), review denied sub nom. *Uthmeier v. Jennings*, No. SC2024-1372, 2025 WL 561329 (Fla. Feb. 20, 2025). In this case, the State of Delaware claims a special interest in enforcing the terms of a charitable trust that includes the condition “first consideration, in each instance, being given to beneficiaries who are residents of Delaware.”

<sup>8</sup> Article IV, s. 4(b), STATE CONST.

### III. Effect of Proposed Changes:

The bill amends s. 736.0110, F.S., to change the common law special interest rule regarding standing to enforce the terms of a charitable trust. The bill provides that where the Florida Attorney General has assumed the role of enforcing the terms of a charitable trust, the Attorney General has exclusive standing to assert the rights of a qualified beneficiary<sup>9</sup> related to that charitable trust. Where the Florida Attorney General has assumed the role, the Attorney General represents the interests of the general public, unnamed charitable beneficiaries, and any person with a common law special interest in the trust. The Attorney General may seek relief in all matters regarding the charitable trust, including contract and trust law claims relating to charitable distributions and the exercise of trustee powers.

The bill specifies that neither the Attorney General of another state, nor any other state official of another state, may assert the rights of a qualified beneficiary as to a Florida charitable trust.

The bill amends s. 736.0106, F.S., to conform provisions to changes made by the act. The bill also amends s. 736.0405, F.S., to reiterate that the Attorney General of any other state, or any other public official of another state, may not seek enforcement of the terms of a Florida charitable trust.

The bill is effective upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

#### E. Other Constitutional Issues:

None.

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<sup>9</sup> A "qualified beneficiary" is a beneficiary who has standing to enforce the terms of a trust.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Should the Florida Attorney General act, the bill would prohibit the Attorney General of the State of Delaware from continuing to enjoy special interest standing in the trust action regarding the trust created by the will of Alfred I. duPont, which created the Nemours Foundation. The Nemours Foundation operates children's hospitals and health care facilities in multiple states.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 736.0110, 736.0106, and 736.0405.

This bill reenacts part of section 738.303 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on March 12, 2025:**

The amendment removed the exclusive standing of the Florida Attorney General to enforce the terms of a charitable trust applicable to all charitable trusts. Instead the exclusive standing of the Attorney General applies only when he or she asserts the right to enforce the charitable trust. The amendment preserves the special interest rule when the Attorney General is not involved in litigation regarding a charitable trust.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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