

**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 Committee on Judiciary

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BILL: SB 806

INTRODUCER: Senator Yarborough

SUBJECT: Florida Trust Code

DATE: March 11, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	<b>Pre-meeting</b>
2.			ACJ	
3.			RC	

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**I. Summary:**

SB 806 provides that only the Attorney General has standing to enforce the terms of a charitable trust having its principal place of administration in this state. The term “standing” means the legal right to pursue a particular civil action. This would have the effect of setting aside 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. This will also have the effect of setting aside the historical standing afforded to the settlor of a charitable trust and that of a specific named charitable beneficiary.

The bill is effective upon becoming law.

**II. Present Situation:**

**Trust Law – In General**

A trust is an entity established by a settlor to hold, invest, and distribute moneys on behalf of one or more beneficiaries, in compliance with the terms of the trust as established by the settlor. Where the beneficiary of the trust is for a general charitable purpose, the trust is known as a “charitable trust.” An individual or entity managing the trust is known as a trustee.

In a private trust arrangement, only the settlor, or any of the individual named beneficiaries, has legal standing (i.e., the right to) file an action 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 may enforce a charitable trust.<sup>1</sup> The reason that general beneficiaries may not sue to enforce a charitable trust is that, “unlike a private trust, where there are identifiable

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<sup>1</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).

beneficiaries who are the equitable owners of the trust property, the beneficiaries of a charitable trust are the public at large.”<sup>2</sup>

Florida courts recognize an exception to rule of standing whereby a person alleging a special interest, an interest beyond the general interest possessed by the public at large, may have standing to enforce the terms of a charitable trust.<sup>3</sup> The reason for requiring a special interest is: “If it were otherwise there would be no end to potential litigation against a given [trust], whether he be a public official or otherwise, brought by individuals or residents, all possessed by the same general interest . . . .”<sup>4</sup> “Trustees have been permitted to bring suit against co-trustees, and persons or organizations having a special interest in a trust or a special status under a trust instrument are considered to have standing to enforce the trust.”<sup>5</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>6</sup>

### **The Attorney General**

The Attorney General is a statewide elected official whose office is created by the state constitution.<sup>7</sup> The Attorney General is the chief state's legal officer.

### **III. Effect of Proposed Changes:**

The bill amends s. 736.0110, F.S., to effectively set aside the common law special interest rule regarding standing to enforce the terms of a charitable trust. The bill provides that the Attorney General has the exclusive standing to assert the rights of a qualified beneficiary related to a charitable trust. Only the Attorney General may pursue an action for contract and trust law claims relating to a charitable distribution or the exercise of the powers of a trustee. 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 trust.

The bill amends s. 736.0106, F.S., to conform. 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 charitable trust as to a Florida trust.

The bill is effective upon becoming law.

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<sup>2</sup> *Id.*

<sup>3</sup> See *United States Steel Corp. v. Save Sand Key*, 303 So.2d 9 (Fla. 1974).

<sup>4</sup> *Askew v. Hold the Bulkhead-Save our Bays*, 269 So.2d 696 (Fla. 2d DCA 1972).

<sup>5</sup> *Milton v. Milligan*, No. 4:12CV384-RH/CAS, 2013 WL 828607, at \*4 (N.D. Fla. Mar. 5, 2013).

<sup>6</sup> *Jennings v. Durdan*, 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 trust that includes the condition “first consideration, in each instance, being given to beneficiaries who are residents of Delaware.”

<sup>7</sup> Article IV, s. 4(b), STATE CONST.

**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.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The bill appears to end the claims being asserted by the State of Delaware 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:**

The change to s. 736.0110(3), F.S., by the bill gives that Attorney General *exclusive* standing to assert the rights of a qualified beneficiary of a charitable trust. However, that change appears inconsistent with existing s. 736.0110(1), F.S., which recognizes that charitable organizations may also have the rights of a qualified beneficiary. Accordingly, the Legislature may wish to amend the bill reconcile the conflicting provisions.

**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 Changes:**

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

None.

**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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