

Committee Substitute for Senate Bill No. 660

An act relating to assets held in benefit plans; amending s. 222.21, F.S.; exempting certain tax-exempt funds or accounts from legal process in favor of creditors; amending s. 222.22, F.S.; exempting from legal process in favor of creditors or other claimants assets held in qualified tuition programs, in certain health savings accounts and medical savings accounts, in Coverdell education savings accounts, or in hurricane savings accounts; defining the term “hurricane savings account”; amending s. 710.102, F.S.; redefining the term “benefit plan,” and defining the term “qualified minor’s trust,” as used in the Florida Uniform Transfers to Minors Act; amending s. 710.104, F.S.; including benefit plans in the types of property that a custodian may be named to receive on behalf of a minor; amending s. 710.108, F.S.; allowing a benefit plan to be transferred to a custodian of a minor who does not have a conservator by an obligor of the minor; amending s. 710.116, F.S.; allowing a minor’s custodian, without court order, to transfer custodial property to a qualified minor’s trust; providing implications of the transfer; amending s. 733.808, F.S.; providing for the disposition of benefits under a benefit plan after the death of an owner of or participant in the plan; amending s. 744.301, F.S.; providing for the parents or natural guardians of a minor child to collect, receive, manage, and dispose of and make elections regarding the proceeds of an annuity contract payable to a minor child or of a benefit plan of which the minor is a beneficiary, participant, or owner, without appointment, authority, or bond, if the proceeds equal less than a specified maximum amount; providing a conditional effective date and an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 222.21, Florida Statutes, is amended to read:

222.21 Exemption of pension money and certain tax-exempt funds or accounts ~~retirement or profit-sharing benefits~~ from legal processes.—

(1) Money received by any debtor as pensioner of the United States within 3 months next preceding the issuing of an execution, attachment, or garnishment process may not be applied to the payment of the debts of the pensioner when it is made to appear by the affidavit of the debtor or otherwise that the pension money is necessary for the maintenance of the debtor’s support or a family supported wholly or in part by the pension money. The filing of the affidavit by the debtor, or the making of such proof by the debtor, is prima facie evidence; and it is the duty of the court in which the proceeding is pending to release all pension moneys held by such attachment or garnishment process, immediately, upon the filing of such affidavit or the making of such proof.

(2)(a) Except as provided in paragraph (d) (b), any money or other assets payable to an owner, a participant, or a beneficiary from, or any interest of

any owner, participant, or beneficiary in, a fund or account retirement or profit-sharing plan that is qualified under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, or s. 409 of the Internal Revenue Code of 1986, as amended, is exempt from all claims of creditors of the owner, beneficiary, or participant if the fund or account is:-

1. Maintained in accordance with a master plan, volume submitter plan, prototype plan, or any other plan or governing instrument that has been preapproved by the Internal Revenue Service as exempt from taxation under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, unless it has been subsequently determined that the plan or governing instrument is not exempt from taxation in a proceeding that has become final and nonappealable;

2. Maintained in accordance with a plan or governing instrument that has been determined by the Internal Revenue Service to be exempt from taxation under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, unless it has been subsequently determined that the plan or governing instrument is not exempt from taxation in a proceeding that has become final and nonappealable; or

3. Not maintained in accordance with a plan or governing instrument described in subparagraph 1. or 2. if the person claiming exemption under this paragraph proves by a preponderance of the evidence that the fund or account is maintained in accordance with a plan or governing instrument that:

a. Is in substantial compliance with the applicable requirements for tax exemption under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended; or

b. Would have been in substantial compliance with the applicable requirements for tax exemption under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, but for the negligent or wrongful conduct of a person or persons other than the person who is claiming the exemption under this section.

(b) It is not necessary that a fund or account that is described in paragraph (a) be maintained in accordance with a plan or governing instrument that is covered by any part of the Employee Retirement Income Security Act for money or assets payable from or any interest in that fund or account to be exempt from claims of creditors under that paragraph.

(c) Any money or other assets that are exempt from claims of creditors under paragraph (a) do not cease to qualify for exemption by reason of a direct transfer or eligible rollover that is excluded from gross income under s. 402(c) of the Internal Revenue Code of 1986.

(d)~~(b)~~ Any fund or account plan or arrangement described in paragraph (a) is not exempt from the claims of an alternate payee under a qualified

domestic relations order. However, the interest of any alternate payee under a qualified domestic relations order is exempt from all claims of any creditor, other than the Department of Children and Family Services, of the alternate payee. As used in this paragraph, the terms "alternate payee" and "qualified domestic relations order" have the meanings ascribed to them in s. 414(p) of the Internal Revenue Code of 1986.

~~(e)(e)~~ This subsection applies ~~The provisions of paragraphs (a) and (b) apply to any proceeding that is filed on or after the effective date of this act~~ October 1, 1987.

Section 2. Section 222.22, Florida Statutes, is amended to read:

222.22 Exemption of assets in qualified tuition programs, medical savings accounts, and Coverdell education savings accounts moneys in the Prepaid College Trust Fund or in a Medical Savings Account from legal process.—

(1)(a) Moneys paid into or out of, the assets of, and the income of any validly existing qualified tuition program authorized by s. 529 of the Internal Revenue Code of 1986, as amended, including, but not limited to, the Florida Prepaid College Trust Fund advance payment contracts under s. 1009.98 and Florida Prepaid College Trust Fund participation agreements under s. 1009.981 the Florida Prepaid College Trust Fund by or on behalf of a purchaser or qualified beneficiary pursuant to an advance payment contract made under part IV of chapter 1009, which contract has not been terminated, are not liable to attachment, levy, garnishment, or legal process in the state in favor of any creditor of or claimant against any program participant, purchaser, owner or contributor, or program beneficiary the purchaser or beneficiary of such advance payment contract.

(2)(b) Moneys paid into or out of, the assets of, and the income of a health savings account or medical savings account authorized under ss. 220 and 223 of the Internal Revenue Code of 1986, as amended, are not liable to attachment, levy, garnishment, or legal process in this state in favor of any creditor of or claimant against any account participant, purchaser, owner or contributor, or account beneficiary.

(3) Moneys paid into or out of, the assets of, and the income of any Coverdell education savings account, also known as an educational IRA, established or existing in accordance with s. 530 of the Internal Revenue Code of 1986, as amended, are not liable to attachment, levy, garnishment, or legal process in this state in favor of any creditor of or claimant against any account participant, purchaser, owner or contributor, or account beneficiary. the Prepaid College Trust Fund by or on behalf of a benefactor or designated beneficiary pursuant to a participation agreement made under s. 1009.981, which agreement has not been terminated, are not liable to attachment, garnishment, or legal process in the state in favor of any creditor of the purchaser or beneficiary of such participation agreement.

(2) Moneys paid into or out of a Medical Savings Account by or on behalf of a person depositing money into such account or a qualified beneficiary are not liable to attachment, garnishment, or legal process in the state in favor

of any creditor of such person or beneficiary of such Medical Savings Account.

(4)(a) Moneys paid into or out of the assets of and the income of any hurricane savings account established by an insurance policyholder for residential property in this state equal to twice the deductible sum of such insurance to cover an insurance deductible or other uninsured portion of the risks of loss from a hurricane, rising flood waters, or other catastrophic windstorm event are not liable to attachment, levy, garnishment, or legal process in this state in favor of any creditor of or claimant against any account participant, purchaser, owner or contributor, or account beneficiary.

(b) As used in this subsection, the term "hurricane savings account" means an account established by the owner of residential real estate in this state, which meets the requirements of homestead exemption under s. 4, Art. X of the State Constitution, who specifies that the purpose of the account is to cover the amount of insurance deductibles and other uninsured portions of risks of loss from hurricanes, rising flood waters, or other catastrophic windstorm events.

(c) This subsection shall take effect only when the federal government provides tax-exempt or tax-deferred status to a hurricane savings account, disaster savings account, or other similar account created to cover an insurance deductible or other uninsured portion of the risks of loss from a hurricane, rising flood waters, or other catastrophic windstorm event.

Section 3. Section 710.102, Florida Statutes, is amended to read:

710.102 Definitions.—As used in this act, the term:

- (1) "Adult" means an individual who has attained the age of 21 years.
- (2) "Benefit plan" means a retirement plan and may include, but is not limited to, any pension, profit-sharing, stock-bonus, or stock-ownership plan or individual retirement account ~~an employer's plan for the benefit of an employee or partner.~~
- (3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
- (4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
- (5) "Court" means the circuit court.
- (6) "Custodial property" means any interest in property transferred to a custodian under this act and the income from and proceeds of that interest in property.
- (7) "Custodian" means a person so designated under s. 710.111 or a successor or substitute custodian designated under s. 710.121.

(8) “Financial institution” means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(9) “Legal representative” means an individual’s personal representative or conservator.

(10) “Member of the minor’s family” means the minor’s parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) “Minor” means an individual who has not attained the age of 21 years.

(12) “Person” means an individual, corporation, organization, or other legal entity.

(13) “Personal representative” means an executor, administrator, successor personal representative, or special administrator of a decedent’s estate or a person legally authorized to perform substantially the same functions.

(14) “Qualified minor’s trust” means a trust that meets the requirements of s. 2503(c) of the Internal Revenue Code of 1986, as amended.

~~(15)~~(14) “State” includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

~~(16)~~(15) “Transfer” means a transaction that creates custodial property under s. 710.111.

~~(17)~~(16) “Transferor” means a person who makes a transfer under this act.

~~(18)~~(17) “Trust company” means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

Section 4. Subsection (1) of section 710.104, Florida Statutes, is amended to read:

710.104 Nomination of custodian.—

(1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: “as custodian for (name of minor) under the Florida Uniform Transfers to Minors Act.” The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights, including, but not limited to, the right to a benefit plan, which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

Section 5. Section 710.108, Florida Statutes, is amended to read:

710.108 Transfer by obligor.—

(1) Subject to subsections (2) and (3), a person not subject to s. 710.106 or s. 710.107 who holds property, including, but not limited to, a benefit plan, of a minor not having a conservator, or who owes a liquidated debt to, a minor not having a conservator, may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to s. 710.111.

(2) If a person having the right to do so under s. 710.104 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under s. 710.104, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$15,000 \$10,000 in value.

Section 6. Section 710.116, Florida Statutes, is amended to read:

710.116 Use of custodial property.—

(1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to the duty or ability of the custodian personally or of any other person to support the minor, or to any other income or property of the minor which may be applicable or available for that purpose.

(2) A custodian may, without court order, transfer all or part of the custodial property to a qualified minor's trust. A transfer of property pursuant to this subsection terminates the custodianship to the extent of the property transferred.

~~(3)~~(2) On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

~~(4)~~(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

Section 7. Section 733.808, Florida Statutes, is amended to read:

733.808 Death benefits; disposition of proceeds.—

(1) Death benefits of any kind, including, but not limited to, proceeds of:

(a) An individual life insurance policy;

(b) A group life insurance policy;

(c) A benefit plan as defined by s. 710.102 ~~An employees' trust or under a contract purchased by an employees' trust forming part of a pension, stock bonus, or profit-sharing plan;~~

(d) An annuity or endowment contract; and

(e) A health or ~~and~~ accident policy,

may be made payable to the trustee under a trust agreement or declaration of trust in existence at the time of the death of the insured, employee, or annuitant or the owner of or participant in the benefit plan. The death benefits shall be held and disposed of by the trustee in accordance with the terms of the trust as they appear in writing on the date of the death of the insured, employee, ~~or annuitant,~~ owner, or participant. It shall not be necessary to the validity of the trust agreement or declaration of trust, whether revocable or irrevocable, that it have a trust corpus other than the right of the trustee to receive death benefits.

(2) Death benefits of any kind, including, but not limited to, proceeds of:

(a) An individual life insurance policy;

(b) A group life insurance policy;

(c) A benefit plan as defined in s. 710.102 ~~An employees' trust, or under a contract purchased by an employees' trust, forming part of a pension, stock bonus, or profit-sharing plan;~~

(d) An annuity or endowment contract; and

(e) A health or ~~and~~ accident policy,

may be made payable to the trustee named, or to be named, in a written instrument that is admitted to probate as the last will of the insured, the owner of the policy, the employee, owner, or participant covered by the plan or contract, or any other person, whether or not the will is in existence at the time of designation. Upon the admission of the will to probate, the death benefits shall be paid to the trustee, to be held, administered, and disposed of in accordance with the terms of the trust or trusts created by the will.

(3) In the event no trustee makes proper claim to the proceeds from the insurance company or other obligor within a period of 6 months after the date of the death of the insured, employee, ~~or annuitant,~~ owner, or participant, or if satisfactory evidence is furnished to the insurance company or obligor within that period that there is, or will be, no trustee to receive the proceeds, payment shall be made by the insurance company or obligor to the personal representative of the person making the designation, unless otherwise provided by agreement with the insurer or obligor during the lifetime of the insured, employee, ~~or annuitant,~~ owner, or participant.

(4) Death benefits payable as provided in subsection (1), subsection (2), or subsection (3), unless paid to a personal representative under the provisions of subsection (3), shall not be deemed to be part of the decedent's estate, and shall not be subject to any obligation to pay the expenses of the administration and obligations of the decedent's estate or for contribution required from a trust under s. 733.607(2) to any greater extent than if the proceeds were payable directly to the beneficiaries named in the trust.

(5) The death benefits held in trust may be commingled with any other assets that may properly come into the trust.

(6) ~~Nothing in~~ This section does not ~~shall~~ affect the validity of any designation of a beneficiary of proceeds previously made that designates as beneficiary the trustee of any trust established under a trust agreement or declaration of trust or by will.

Section 8. Subsection (2) of section 744.301, Florida Statutes, is amended to read:

744.301 Natural guardians.—

(2) The natural guardian or guardians are authorized, on behalf of any of their minor children, to:

(a) Settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any of said minor children; ~~and to~~

(b) Collect, receive, manage, and dispose of the proceeds of any such settlement; ~~and~~

(c) Collect, receive, manage, and dispose of any ~~other~~ real or personal property distributed from an estate or trust; ~~or~~

(d) Collect, receive, manage, and dispose of and make elections regarding the proceeds from a life insurance policy or annuity contract payable to, or otherwise accruing to the benefit of, the child; and

(e) Collect, receive, manage, dispose of, and make elections regarding the proceeds of any benefit plan as defined by s. 710.102, of which the minor is a beneficiary, participant, or owner,

~~without appointment, authority, or bond during minority,~~ when the amount involved in any instance does not exceed \$15,000, ~~without appointment, authority, or bond.~~

Section 9. This act shall take effect upon becoming a law.

Approved by the Governor June 1, 2005.

Filed in Office Secretary of State June 1, 2005.