

Committee Substitute for Senate Bill No. 1368

An act relating to disclaimer of property interests; creating the Florida Uniform Disclaimer of Property Interests Act; creating s. 739.101, F.S.; providing a short title; creating s. 739.102, F.S.; defining terms; creating s. 739.103, F.S.; providing the scope of the act; creating s. 739.104, F.S.; prescribing general provisions relating to persons' powers to disclaim an interest in or power over property; creating s. 739.201, F.S.; prescribing rules applicable to a disclaimer of an interest in property; creating s. 739.202, F.S.; prescribing rules applicable to a disclaimer of rights of survivorship in jointly held property; creating s. 739.203, F.S.; prescribing rules applicable to a disclaimer of interests in property held as tenancy by the entirety; creating s. 739.204, F.S.; prescribing the effect of a disclaimer of interest by a trustee; creating s. 739.205, F.S.; prescribing rules with respect to a disclaimer of the power of appointment or other power not held in a fiduciary capacity; creating s. 739.206, F.S.; prescribing rules with respect to a disclaimer by the appointee, object, or taker in default of the exercise of power of appointment; creating s. 739.207, F.S.; prescribing rules with respect to the disclaimer of power held in a fiduciary capacity; creating s. 739.301, F.S.; providing guidelines for delivering or filing a disclaimer; creating s. 739.401, F.S.; providing when a disclaimer is permitted; creating s. 739.402, F.S.; providing when a disclaimer is barred or limited; creating s. 739.501, F.S.; prescribing the effect of a tax-qualified disclaimer; creating s. 739.601, F.S.; providing for recording a disclaimer relating to real estate; creating s. 739.701, F.S.; prescribing the application to existing relationships; amending s. 731.201, F.S.; providing applicability of certain definitions to the act; amending ss. 121.091 and 710.121, F.S., to conform; repealing s. 689.21, F.S., relating to disclaimer of interests in property passing under certain nontestamentary instruments or under certain powers of appointment; repealing s. 732.801, F.S., relating to disclaimer of interests in property passing by will or intestate succession or under certain powers of appointment; providing an effective date.

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

Section 1. Chapter 739, Florida Statutes, consisting of sections 739.101, 739.102, 739.103, 739.104, 739.201, 739.202, 739.203, 739.204, 739.205, 739.206, 739.207, 739.301, 739.401, 739.402, 739.501, 739.601, and 739.701, Florida Statutes, is created to read:

739.101 Short title.—This chapter may be cited as the “Florida Uniform Disclaimer of Property Interests Act.”

739.102 Definitions.—As used in this chapter, the term:

(1) “Benefactor” means the creator of the interest that is subject to a disclaimer.

(2) “Beneficiary designation” means an instrument, other than an instrument creating or amending a trust, naming the beneficiary of:

(a) An annuity or insurance policy;

(b) An account with a designation for payment on death;

(c) A security registered in beneficiary form;

(d) A pension, profit-sharing, retirement, or other employment-related benefit plan; or

(e) Any other nonprobate transfer at death.

(3) “Disclaimant” means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

(4) “Disclaimed interest” means the interest that would have passed to the disclaimant had the disclaimer not been made.

(5) “Disclaimer” means the refusal to accept an interest in or power over property. The term includes a renunciation.

(6) “Fiduciary” means a personal representative, trustee, agent acting under a power of attorney, guardian, or other person authorized to act as a fiduciary with respect to the property of another person.

(7) “Future interest” means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(8) “Insolvent” means that the sum of a person’s debts is greater than all of the person’s assets at fair valuation. A person is presumed to be “insolvent” if the person is generally not paying his or her debts as they become due.

(9) “Jointly held property” means property held in the names of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property. Jointly held property does not include property held as tenants by the entirety.

(10) “Person” includes individuals, ascertained and unascertained, living or not living, whether entitled to an interest by right of intestacy or otherwise; a government, governmental subdivision, agency, or instrumentality; and a public corporation.

(11) “Time of distribution” means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(12) “Trust” means:

(a) An express trust (including an honorary trust or a trust under s. 737.116), charitable or noncharitable, with additions thereto, whenever and however created; and

(b) A trust created pursuant to a statute, judgment, or decree which requires the trust be administered in the manner of an express trust.

As used in this chapter, the term “trust” does not include a constructive trust or a resulting trust.

739.103 Scope.—This chapter applies to disclaimers of any interest in or power over property, whenever created. Except as provided in s. 739.701, this chapter is the exclusive means by which a disclaimer may be made under Florida law.

739.104 Power to disclaim; general requirements; when irrevocable.—

(1) A person may disclaim, in whole or in part, conditionally or unconditionally, any interest in or power over property, including a power or appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim. A disclaimer shall be unconditional unless the disclaimant explicitly provides otherwise in the disclaimer.

(2) With court approval, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment. Without court approval, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, if and to the extent that the instrument creating the fiduciary relationship explicitly grants the fiduciary the right to disclaim. In the absence of a court-appointed guardian, notwithstanding anything in chapter 744 to the contrary, without court approval, a natural guardian under s. 744.301 may disclaim on behalf of a minor child of the natural guardian, in whole or in part, any interest in or power over property, including a power of appointment, which the minor child is to receive solely as a result of another disclaimer, but only if the disclaimed interest or power does not pass to or for the benefit of the natural guardian as a result of the disclaimer.

(3) To be effective, a disclaimer must be in writing, declare the writing as a disclaimer, describe the interest or power disclaimed, and be signed by the person making the disclaimer and witnessed and acknowledged in the manner provided for deeds of real estate to be recorded in this state. In addition, for a disclaimer to be effective, an original of the disclaimer must be delivered or filed in the manner provided in s. 739.301.

(4) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(5) A disclaimer becomes irrevocable when any conditions to which the disclaimant has made the disclaimer subject are satisfied and when the disclaimer is delivered or filed pursuant to s. 739.301 or it becomes effective as provided in ss. 739.201-739.207, whichever occurs later.

(6) A disclaimer made under this chapter is not a transfer, assignment, or release.

739.201 Disclaimer of interest in property.—Except for a disclaimer governed by s. 739.202, s. 739.203, or s. 739.204, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing explicitly for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(3) If the instrument does not contain a provision described in subsection (2), the following rules apply:

(a) If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the interest was created, unless under the governing instrument or other applicable law the disclaimed interest is contingent on surviving to the time of distribution, in which case the disclaimed interest passes as if the disclaimant had died immediately before the time for distribution. However, if, by law or under the governing instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution. For purposes of this subsection, a disclaimed interest is created at the death of the benefactor or such earlier time, if any, that the benefactor's transfer of the interest is a completed gift for federal gift tax purposes. Also for purposes of this subsection, a disclaimed interest in a trust described in s. 733.707(3) shall pass as if the interest had been created under a will.

(b) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(c) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment as a result of the disclaimer.

739.202 Disclaimer of rights of survivorship in jointly held property.—

(1) Upon the death of a holder of jointly held property:

(a) If, during the deceased holder's lifetime, the deceased holder could have unilaterally regained a portion of the property attributable to the deceased holder's contributions without the consent of any other holder, another holder may disclaim, in whole or in part, a fractional share of that portion of the property attributable to the deceased holder's contributions determined by dividing the number one by the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates.

(b) For all other jointly held property, another holder may disclaim, in whole or in part, a fraction of the whole of the property the numerator of which is one and the denominator of which is the product of the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates multiplied by the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates.

(2) A disclaimer under subsection (1) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(3) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

739.203 Disclaimer of property held as tenancy by the entirety.—

(1) The survivorship interest in property held as a tenancy by the entirety to which the survivor succeeds by operation of law upon the death of the co-tenant may be disclaimed as provided in this chapter. For purposes of this chapter only, the deceased tenant's interest in property held as a tenancy by the entirety shall be deemed to be an undivided one-half interest.

(2) A disclaimer under subsection (1) takes effect as of the death of the deceased tenant to whose death the disclaimer relates.

(3) The survivorship interest in property held as a tenancy by the entirety disclaimed by the surviving tenant passes as if the disclaimant had predeceased the tenant to whose death the disclaimer relates.

(4) A disclaimer of an interest in real property held as tenants by the entirety does not cause the disclaimed interest to be homestead property for purposes of descent and distribution under ss. 732.401 and 732.4015.

739.204 Disclaimer of interest by trustee.—If a trustee having the power to disclaim under the instrument creating the fiduciary relationship or pursuant to court order disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

739.205 Disclaimer of power of appointment or other power not held in a fiduciary capacity.—If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

739.206 Disclaimer by appointee, object, or taker in default of exercise of power of appointment.—

(1) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(2) A disclaimer of an interest in property by an object, or taker in default of an exercise of a power of appointment, takes effect as of the time the instrument creating the power becomes irrevocable.

739.207 Disclaimer of power held in fiduciary capacity.—

(1) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(3) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

739.301 Delivery or filing.—

(1) Subject to subsections (2) through (12), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method that results in its receipt. A disclaimer sent by first-class mail shall be deemed to have been delivered on the date it is postmarked. Delivery by any other method shall be effective upon receipt by the person to whom the disclaimer is to be delivered under this section.

(2) In the case of a disclaimer of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(a) The disclaimer must be delivered to the personal representative of the decedent's estate; or

(b) If no personal representative is serving when the disclaimer is sought to be delivered, the disclaimer must be filed with the clerk of the court in any county where venue of administration would be proper.

(3) In the case of a disclaimer of an interest in a testamentary trust:

(a) The disclaimer must be delivered to the trustee serving when the disclaimer is delivered or, if no trustee is then serving, to the personal representative of the decedent's estate; or

(b) If no personal representative is serving when the disclaimer is sought to be delivered, the disclaimer must be filed with the clerk of the court in any county where venue of administration of the decedent's estate would be proper.

(4) In the case of a disclaimer of an interest in an inter vivos trust:

(a) The disclaimer must be delivered to the trustee serving when the disclaimer is delivered;

(b) If no trustee is then serving, it must be filed with the clerk of the court in any county where the filing of a notice of trust would be proper; or

(c) If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, the disclaimer must be delivered to the grantor of the revocable trust or the transferor of the interest or to such person's legal representative.

(5) In the case of a disclaimer of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation or to such person's legal representative.

(6) In the case of a disclaimer of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, the disclaimer must be delivered to the person obligated to distribute the interest.

(7) In the case of a disclaimer by a surviving holder of jointly held property, or by the surviving tenant in property held as a tenancy by the entirety, the disclaimer must be delivered to the person to whom the disclaimed interest passes or, if such person cannot reasonably be located by the disclaimant, the disclaimer must be delivered as provided in subsection (2).

(8) In the case of a disclaimer by an object, or taker in default of exercise, of a power of appointment at any time after the power was created:

(a) The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(b) If no fiduciary is serving when the disclaimer is sought to be delivered, the disclaimer must be filed with a court having authority to appoint the fiduciary.

(9) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(a) The disclaimer must be delivered to the holder, the personal representative of the holder's estate, or the fiduciary under the instrument that created the power; or

(b) If no fiduciary is serving when the disclaimer is sought to be delivered, the disclaimer must be filed with a court having authority to appoint the fiduciary.

(10) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (2), subsection (3), or subsection (4) as if the power disclaimed were an interest in property.

(11) In the case of a disclaimer of a power exercisable by an agent, other than a power exercisable by a fiduciary over a trust or estate, the disclaimer must be delivered to the principal or the principal's representative.

(12) Notwithstanding subsection (1), delivery of a disclaimer of an interest in or relating to real estate shall be presumed upon the recording of the disclaimer in the office of the clerk of the court of the county or counties where the real estate is located.

(13) A fiduciary or other person having custody of the disclaimed interest is not liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer or, if the disclaimer is barred under s. 739.402, for any otherwise proper distribution or other disposition made in reliance on the disclaimer, if the distribution or disposition is made without actual knowledge of the facts constituting the bar of the right to disclaim.

739.401 When disclaimer is permitted.—A disclaimer may be made at any time unless barred under s. 739.402.

739.402 When disclaimer is barred or limited.—

(1) A disclaimer is barred by a written waiver of the right to disclaim.

(2) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(a) The disclaimer accepts the interest sought to be disclaimed;

(b) The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so;

(c) The interest sought to be disclaimed is sold pursuant to a judicial sale;
or

(d) The disclaimant is insolvent when the disclaimer becomes irrevocable.

(3) A disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(4) A disclaimer, in whole or in part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(5) A disclaimer of an interest in, or a power over, property which is barred by this section is ineffective.

739.501 Tax-qualified disclaimer.—Notwithstanding any other provision of this chapter, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated pursuant to the provisions of s. 2518 of the Internal Revenue Code of 1986 as never having been transferred to the disclaimant, the disclaimer or transfer is effective as a disclaimer under this chapter.

739.601 Recording of disclaimer relating to real estate.—

(1) A disclaimer of an interest in or relating to real estate does not provide constructive notice to all persons unless the disclaimer contains a legal description of the real estate to which the disclaimer relates and unless the disclaimer is filed for recording in the office of the clerk of the court in the county or counties where the real estate is located.

(2) An effective disclaimer meeting the requirements of subsection (1) constitutes constructive notice to all persons from the time of filing. Failure to record the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

739.701 Application to existing relationships.—Except as otherwise provided in s. 739.402, an interest in or power over property existing on July 1, 2005, as to which the time for delivering or filing a disclaimer under laws superseded by this chapter has not expired, may be disclaimed after July 1, 2005.

Section 2. Section 731.201, Florida Statutes, is amended to read:

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 737, 738, 739, and 744, the term:

(1) “Authenticated,” when referring to copies of documents or judicial proceedings required to be filed with the court under this code, ~~means shall mean~~ a certified copy or a copy authenticated according to the Federal Rules of Civil Procedure.

(2) “Beneficiary” means heir at law in an intestate estate and devisee in a testate estate. The term “beneficiary” does not apply to an heir at law or a devisee after that person’s interest in the estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, the trustee is a beneficiary of the estate. Except as otherwise provided in this subsection, the beneficiary of the trust is not a beneficiary of the estate of which that trust or the trustee of that trust is a beneficiary. However, if each trustee is also a personal representative of the estate, the beneficiary or beneficiaries of the trust as defined in s. 737.303(4)(b) shall be regarded as a beneficiary of the estate.

(3) “Child” includes a person entitled to take as a child under this code by intestate succession from the parent whose relationship is involved, and excludes any person who is only a stepchild, a foster child, a grandchild, or a more remote descendant.

(4) “Claim” means a liability of the decedent, whether arising in contract, tort, or otherwise, and funeral expense. The term does not include an expense of administration or estate, inheritance, succession, or other death taxes.

- (5) “Clerk” means the clerk or deputy clerk of the court.
- (6) “Court” means the circuit court.
- (7) “Curator” means a person appointed by the court to take charge of the estate of a decedent until letters are issued.
- (8) “Devise,” when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will or trust. The term includes “gift,” “give,” “bequeath,” “bequest,” and “legacy.” A devise is subject to charges for debts, expenses, and taxes as provided in this code, the will, or the trust.
- (9) “Devisee” means a person designated in a will or trust to receive a devise. Except as otherwise provided in this subsection, in the case of a devise to an existing trust or trustee, or to a trust or trustee of a trust described by will, the trust or trustee, rather than the beneficiaries of the trust, is the devisee. However, if each trustee is also a personal representative of the estate, the beneficiary or beneficiaries of the trust as defined in s. 737.303(4)(b) shall be regarded as a devisee.
- (10) “Distributee” means a person who has received estate property from a personal representative or other fiduciary other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increments to them remaining in the trustee’s hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee. For purposes of this provision, “testamentary trustee” includes a trustee to whom assets are transferred by will, to the extent of the devised assets.
- (11) “Domicile” means a person’s usual place of dwelling and shall be synonymous with residence.
- (12) “Estate” means the property of a decedent that is the subject of administration.
- (13) “Exempt property” means the property of a decedent’s estate which is described in s. 732.402.
- (14) “File” means to file with the court or clerk.
- (15) “Foreign personal representative” means a personal representative of another state or a foreign country.
- (16) “Formal notice” means formal notice under the Florida Probate Rules.
- (17) “Grantor” means one who creates or adds to a trust and includes “settlor” or “trustor” and a testator who creates or adds to a trust.
- (18) “Heirs” or “heirs at law” means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) “Incompetent” means a minor or a person adjudicated incompetent.

(20) “Informal notice” or “notice” means informal notice under the Florida Probate Rules.

(21) “Interested person” means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent’s estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor’s estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

(22) “Letters” means authority granted by the court to the personal representative to act on behalf of the estate of the decedent and refers to what has been known as letters testamentary and letters of administration. All letters shall be designated “letters of administration.”

(23) “Other state” means any state of the United States other than Florida and includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(24) “Parent” excludes any person who is only a stepparent, foster parent, or grandparent.

(25) “Personal representative” means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

(26) “Petition” means a written request to the court for an order.

(27) “Probate of will” means all steps necessary to establish the validity of a will and to admit a will to probate.

(28) “Property” means both real and personal property or any interest in it and anything that may be the subject of ownership.

(29) “Protected homestead” means the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner’s surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned as tenants by the entirety is not protected homestead.

(30) “Residence” means a person’s place of dwelling.

(31) “Residuary devise” means a devise of the assets of the estate which remain after the provision for any devise which is to be satisfied by reference

to a specific property or type of property, fund, sum, or statutory amount. If the will contains no devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount, “residuary devise” or “residue” means a devise of all assets remaining after satisfying the obligations of the estate.

(32) “Security” means a security as defined in s. 517.021.

(33) “Security interest” means a security interest as defined in s. 671.201.

(34) “Trust” means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. “Trust” excludes other constructive trusts, and it excludes resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.05; trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(35) “Trustee” includes an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court.

(36) “Will” means an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person’s property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.

Section 3. Paragraph (b) of subsection (8) of section 121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department’s rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(8) DESIGNATION OF BENEFICIARIES.—

(b) A designated beneficiary of a retirement account for whom there is a monetary interest may disclaim his or her monetary interest as provided in chapter 739 s. 689.21, and in accordance with division rules governing such disclaimers. Such disclaimer must be filed within 24 months after the event that created the interest, that is, the death of the member or annuitant.

Section 4. Subsection (1) of section 710.121, Florida Statutes, is amended to read:

710.121 Renunciation, resignation, death, or removal of custodian; designation of successor custodian.—

(1) A person nominated under s. 710.104 or designated under s. 710.111 as custodian may decline to serve by delivering a valid disclaimer under chapter 739 ~~s. 689.21~~ to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under s. 710.104, the person who made the nomination may nominate a substitute custodian under s. 710.104; otherwise, the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under s. 710.111(1). The custodian so designated has the rights of a successor custodian.

Section 5. Sections 689.21 and 732.801, Florida Statutes, are repealed.

Section 6. This act shall take effect July 1, 2005.

Approved by the Governor June 1, 2005.

Filed in Office Secretary of State June 1, 2005.