

House Bill No. 379

An act relating to the Florida Uniform Principal and Income Act; amending s. 738.602, F.S.; providing definitions; providing requirements for the determination of income from certain compensation plans, annuities, and retirement plans or accounts; providing trustee requirements with respect to payment allocations; providing criteria for the payment of certain funds to a spouse; providing applicability; providing an effective date.

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

Section 1. Section 738.602, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.602, F.S., for present text.)

738.602 Payments from deferred compensation plans, annuities, and retirement plans or accounts.—

(1) For purposes of this section:

(a) “Fund” means a private or commercial annuity, an individual retirement account, an individual retirement annuity, a deferred compensation plan, a pension plan, a profit-sharing plan, a stock-bonus plan, an employee stock-ownership plan, or another similar arrangement in which federal income tax is deferred.

(b) “Income of the fund” means income that is determined according to subsection (2) or subsection (3).

(c) “Nonseparate account” means a fund for which the value of the participant’s or account owner’s right to receive benefits can be determined only by the occurrence of a date or event as defined in the instrument governing the fund.

(d) “Payment” means a distribution from a fund that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The term includes a distribution made in money or property from the payor’s general assets or from a fund created by the payor or payee.

(e) “Separate account” means a fund holding assets exclusively for the benefit of a participant or account owner and:

1. The value of such assets or the value of the separate account is ascertainable at any time; or

2. The administrator of the fund maintains records that show receipts and disbursements associated with such assets.

(2)(a) For a fund that is a separate account, income of the fund shall be determined:

1. As if the fund were a trust subject to the provisions of ss. 738.401-738.706; or

2. As a unitrust amount calculated by multiplying the fair market value of the fund as of the first day of the first accounting period and, thereafter, as of the last day of the accounting period that immediately precedes the accounting period during which a payment is received by the percentage determined in accordance with s. 738.1041(2)(b)2.a. The trustee shall determine such percentage as of the first month that the trustee's election to treat the income of the fund as a unitrust amount becomes effective. For purposes of this subparagraph, "fair market value" means the fair market value of the assets held in the fund as of the applicable valuation date determined as provided in this subparagraph. The trustee is not liable for good faith reliance upon any valuation supplied by the person or persons in possession of the fund. If the trustee makes or terminates an election under this subparagraph, the trustee shall make such disclosure in a trust disclosure document that satisfies the requirements of s. 736.1008(4)(a).

(b) The trustee shall have discretion to elect the method of determining the income of the fund pursuant to this subsection and may change the method of determining income of the fund for any future accounting period.

(3) For a fund that is a nonseparate account, income of the fund is a unitrust amount determined by calculating the present value of the right to receive the remaining payments under 26 U.S.C. s. 7520 of the Internal Revenue Code as of the first day of the accounting period and multiplying it by the percentage determined in accordance with s. 738.1041(2)(b)2.a. The trustee shall determine the unitrust amount as of the first month that the trustee's election to treat the income of the fund as a unitrust amount becomes effective.

(4) Except for those trusts described in subsection (5), the trustee shall allocate a payment from a fund as follows:

(a) That portion of the payment the payor characterizes as income shall be allocated to income, and any remaining portion of the payment shall be allocated to principal.

(b) To the extent that the payor does not characterize any portion of a payment as income or principal and the trustee can ascertain the income of the fund by the fund's account statements or any other reasonable source, the trustee shall allocate to income the lesser of the income of the fund or the entire payment and shall allocate to principal any remaining portion of the payment.

(c) If the trustee, acting reasonably and in good faith, determines that neither paragraph (a) nor paragraph (b) applies and all or part of the payment is required to be made, the trustee shall allocate to income 10 percent of the portion of the payment that is required to be made during the accounting period and shall allocate the balance to principal. If no part of a payment

is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this paragraph, a payment is not "required to be made" to the extent the payment is made because the trustee exercises a right of withdrawal.

(5) For a trust which, to qualify for the estate or gift tax marital deduction under the Internal Revenue Code, entitles the spouse to all of the income of the trust, and the terms of the trust are silent as to the time and frequency for distribution of the income of the fund, then:

(a) For a fund that is a separate account, unless the spouse directs the trustee to leave the income of the fund in the fund, the trustee shall withdraw and pay to the spouse, no less frequently than annually:

1. All of the income of the fund determined in accordance with subparagraph (2)(a)1.; or

2. The income of the fund as a unitrust amount determined in accordance with subparagraph (2)(a)2.

(b) For a fund that is a nonseparate account, the trustee shall withdraw and pay to the spouse, no less frequently than annually, the income of the fund as a unitrust amount determined in accordance with subsection (3).

(6) This section does not apply to payments to which s. 738.603 applies.

Section 2. This act shall take effect July 1, 2009.

Approved by the Governor June 18, 2009.

Filed in Office Secretary of State June 18, 2009.