

## CHAPTER 2020-70

### Committee Substitute for House Bill No. 1089

An act relating to trusts; creating s. 736.08145, F.S.; authorizing trustees of certain trusts to reimburse persons being treated as the owner of the trust for specified amounts and in a specified manner; prohibiting certain policies, values, and proceeds from being used for such reimbursement; providing applicability; prohibiting certain trustees from taking specified actions relating to trusts; requiring that specified powers be granted to certain persons if the terms of the trust require a trustee to act at the direction or with the consent of such persons or that specified decisions be made directly by such persons; providing construction; providing an effective date.

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

Section 1. Section 736.08145, Florida Statutes, is created to read:

736.08145 Grantor trust reimbursement.—

(1)(a) Except as otherwise provided under the terms of a trust, if all or any portion of the trust is treated as being owned by a person under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law, the trustee may, in the trustee's sole discretion, reimburse the person being treated as the owner for any amount of the person's personal federal, state, or other income tax liability which is attributable to the inclusion of the trust's income, capital gains, deductions, or credits in the calculation of the person's taxable income. In the trustee's sole discretion, the trustee may pay such tax reimbursement amount, determined without regard to any other distribution or payment made from trust assets, to the person directly or to the appropriate taxing authority.

(b) A life insurance policy held in the trust, the cash value of any such policy, or the proceeds of any loan secured by an interest in the policy may not be used for such reimbursement or such payment if the person is an insured.

(2) This section applies to all trusts, whether created on, before, or after July 1, 2020, unless:

(a) The trustee provides written notification that the trustee intends to irrevocably elect out of the application of this section, at least 60 days before the effective date of such election, to the person treated as the owner of all or a portion of the trust under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law and to all persons who have the ability to remove and replace the trustee.

(b) Applying this section would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit, including a federal tax

exclusion or deduction, which was originally claimed or could have been claimed for the contribution, including:

1. An exclusion under s. 2503(b) or s. 2503(c) of the Internal Revenue Code;

2. A marital deduction under s. 2056, s. 2056A, or s. 2523 of the Internal Revenue Code;

3. A charitable deduction under s. 170(a), s. 642(c), s. 2055(a), or s. 2522(a) of the Internal Revenue Code; or

4. Direct skip treatment under s. 2642(c) of the Internal Revenue Code.

(3) A trustee may not exercise, or participate in the exercise of, the powers granted by this section with respect to any trust if any of the following applies:

(a) The trustee is treated as the owner of all or part of such trust under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law.

(b) The trustee is a beneficiary of such trust.

(c) The trustee is a related or subordinate party, as defined in s. 672(c) of the Internal Revenue Code, with respect to a person treated as the owner of all or part of such trust under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law or with respect to a beneficiary of such trust.

(4) If the terms of a trust require the trustee to act at the direction or with the consent of a trust advisor, a protector, or any other person, or that the decisions addressed in this section be made directly by a trust advisor, a protector, or any other person, the powers granted by this section to the trustee must instead or also be granted, as applicable under the terms of the trust, to the advisor, protector, or other person subject to the limitations set forth in subsection (3), which must be applied as if the advisor, protector, or other person were a trustee.

(5) A person may not be considered a beneficiary of a trust solely by reason of the application of this section, including for purposes of determining the elective estate.

Section 2. This act shall take effect July 1, 2020.

Approved by the Governor June 20, 2020.

Filed in Office Secretary of State June 20, 2020.