

CHAPTER 2021-183

Committee Substitute for
Committee Substitute for Senate Bill No. 1070

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An act relating to estates and trusts; amending s. 69.031, F.S.; requiring the court to allow an officer to elect to post and maintain a certain bond; requiring the court to vacate or terminate an order under certain circumstances; making technical changes; amending s. 732.507, F.S.; providing that certain provisions of a will are void upon dissolution of marriage; specifying when dissolution of marriage occurs; providing applicability; amending s. 736.0103, F.S.; defining terms; amending the definition of the term “terms of a trust”; amending s. 736.0105, F.S.; revising the exceptions for when the terms of a trust do not prevail over provisions of the Florida Trust Code; amending s. 736.0201, F.S.; authorizing certain proceedings to determine the homestead status of real property owned by a trust to be filed in the probate proceeding for the settlor’s estate; requiring that such proceedings be governed by the Florida Probate Rules; amending s. 736.0603, F.S.; transferring provisions that authorize a trustee to follow certain directions; amending s. 736.0703, F.S.; conforming provisions to changes made by the act; repealing s. 736.0808, F.S., relating to powers to direct; amending s. 736.1008, F.S.; specifying that certain claims barred against a trustee or trust director are also barred against certain persons acting for that trustee or trust director; conforming provisions to changes made by the act; amending s. 736.1017, F.S.; revising the information required to be included in a certification of trust; amending s. 736.1105, F.S.; revising the effects that subsequent marriages, births, adoptions, or dissolutions of marriage have on a revocable trust; providing construction; providing applicability; creating s. 736.1109, F.S.; specifying how title passes for certain devises of homesteads which violate the State Constitution; specifying that certain powers do not subject an interest in a protected homestead to certain claims; providing applicability; creating part XIV of ch. 736, F.S., entitled the “Florida Uniform Directed Trust Act”; creating s. 736.1401, F.S.; providing a short title; creating s. 736.1403, F.S.; providing applicability; providing for the validity of certain terms in a directed trust which designate principal places of administration; creating s. 736.1405, F.S.; defining the term “power of appointment”; providing applicability; specifying the types of powers granted to persons other than trustees; creating s. 736.1406, F.S.; authorizing the terms of a trust to grant a power of direction to a trust director; specifying the powers included in a power of direction; creating s. 736.1407, F.S.; providing for limitations on trust directors; creating s. 736.1408, F.S.; providing duties and liabilities for trust directors; creating s. 736.1409, F.S.; providing duties and liabilities for directed trustees; creating s. 736.141, F.S.; requiring a trustee to provide certain information to a trust director; requiring a trust director to provide certain information to a trustee or another trust director and a qualified beneficiary; providing that a trustee

or a trust director acting in reliance on certain information is not liable for a breach of trust in certain circumstances; creating s. 736.1411, F.S.; specifying that trustees and trust directors do not have a duty to monitor, inform, or advise specified persons under certain circumstances; creating s. 736.1412, F.S.; transferring provisions relating to the appointment of trustees; creating s. 736.1413, F.S.; providing limitations on actions against trust directors; creating s. 736.1414, F.S.; authorizing trust directors to assert specified defenses in certain actions; creating s. 736.1415, F.S.; specifying that a trust director submits to specified personal jurisdiction by accepting appointment as a trust director; providing construction; creating s. 736.1416, F.S.; requiring trust directors to be considered a trustee for certain purposes; authorizing certain persons to make a specified written demand to accept or confirm prior acceptance of trust directorships; creating part XV of ch. 736, F.S., entitled the "Community Property Trust Act"; creating s. 736.1501, F.S.; providing a short title; creating s. 736.1502, F.S.; defining terms; creating s. 736.1503, F.S.; providing that an arrangement is a community property trust in certain circumstances; creating s. 736.1504, F.S.; authorizing settlor spouses to agree upon certain terms in an agreement establishing a community property trust; specifying when a community property trust may be amended or revoked; specifying qualified beneficiaries of community property trusts; creating s. 736.1505, F.S.; providing that settlor spouses may classify any property as community property by transferring that property to a community property trust regardless of domicile; providing for enforceability and duration of a community property trust; providing that the right to manage and control certain property is determined by the terms of the trust agreement; providing the effect of distributions from a community property trust; creating s. 736.1506, F.S.; providing for the satisfaction of obligations incurred by one or both spouses from a community property trust; creating s. 736.1507, F.S.; providing for the disposition or distribution of certain property upon the death of a spouse; creating s. 736.1508, F.S.; providing for the termination of a community property trust upon dissolution of marriage; creating s. 736.1509, F.S.; providing that a community property trust does not adversely affect certain rights of a child; creating s. 736.151, F.S.; providing that certain property held in a community property trust qualifies as homestead property; creating s. 736.1511, F.S.; providing for the application of the Internal Revenue Code to a community property trust; creating s. 736.1512, F.S.; providing that a community property trust is not enforceable in certain circumstances; amending ss. 736.0802, 736.08125, and 738.104, F.S.; conforming cross-references; amending s. 744.3679, F.S.; conforming a provision to changes made by the act; providing a directive to the Division of Law Revision; providing for severability; providing effective dates.

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

Section 1. Effective upon this act becoming a law, section 69.031, Florida Statutes, is amended to read:

69.031 Designated financial institutions for property assets in hands of guardians, curators, administrators, trustees, receivers, or other officers.

(1) When it is expedient in the judgment of any court having jurisdiction of any estate in process of administration by any guardian, curator, executor, administrator, trustee, receiver, or other officer, because the size of the bond required of the officer is burdensome or for other cause, the court may order part or all of the personal property assets of the estate placed with a bank, trust company, or savings and loan association (which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state) designated by the court, consideration being given to any bank, trust company or savings and loan association proposed by the officer. Notwithstanding the foregoing, in probate proceedings and in accordance with s. 733.402, the court shall allow the officer at any time to elect to post and maintain bond for the value of the personal property, or such other reasonable amount determined by the court, whereupon the court shall vacate or terminate any order establishing the depository. When the property is assets are placed with the designated financial institution, it shall file a receipt therefor in the name of the estate and give the officer a copy. Such receipt shall acknowledge the property assets received by the financial institution. All interest, dividends, principal and other debts collected by the financial institution on account thereof shall be held by the financial institution in safekeeping, subject to the instructions of the officer authorized by order of the court directed to the financial institution.

(2) Accountings shall be made to the officer at reasonably frequent intervals. After the receipt for the original property assets has been filed by the financial institution, the court shall waive the bond given or to be given or reduce it so that it shall apply only to the estate remaining in the hands of the officer, whichever the court deems proper.

(3) When the court has ordered any property assets of an estate to be placed with a designated financial institution, any person or corporation having possession or control of any of the property assets, or owing interest, dividends, principal or other debts on account thereof, shall pay and deliver such property assets, interest, dividends, principal and other debts to the financial institution on its demand whether the officer has duly qualified or not, and the receipt of the financial institution relieves the person or corporation from further responsibility therefor.

(4) Any bank, trust company, or savings and loan association which is designated under this section, may accept or reject the designation in any instance, and shall file its acceptance or rejection with the court making the designation within 15 days after actual knowledge of the designation comes to the attention of the financial institution, and if the financial institution accepts, it shall be allowed a reasonable amount for its services and expenses which the court may allow as a charge against the property assets placed with the financial institution.

Section 2. Effective upon this act becoming a law, section 732.507, Florida Statutes, is amended to read:

732.507 Effect of subsequent marriage, birth, adoption, or dissolution of marriage.—

(1) Neither subsequent marriage, birth, nor adoption of descendants shall revoke the prior will of any person, but the pretermitted child or spouse shall inherit as set forth in ss. 732.301 and 732.302, regardless of the prior will.

(2) Any provision of a will executed by a married person that affects the testator's spouse ~~is of that person shall become void upon dissolution of the marriage of the testator and the spouse, whether the marriage occurred before or after the execution of such will. Upon dissolution of marriage the divorce of that person or upon the dissolution or annulment of the marriage. After the dissolution, divorce, or annulment, the will shall be administered and construed as if the former spouse had died at the time of the dissolution of marriage, divorce, or annulment of the marriage, unless the will or the dissolution or divorce judgment expressly provides otherwise.~~

(a) Dissolution of marriage occurs at the time the decedent's marriage is judicially dissolved or declared invalid by court order.

(b) This subsection does not invalidate a provision of a will:

1. Executed by the testator after the dissolution of the marriage;
2. If there is a specific intention to the contrary stated in the will; or
3. If the dissolution of marriage judgment expressly provides otherwise.

(3) This section applies to wills of decedents who die on or after the effective date of this section.

Section 3. Present subsections (6) through (13), (14) through (21), and (22) and (23) of section 736.0103, Florida Statutes, are redesignated as subsections (8) through (15), (17) through (24), and (26) and (27), respectively, new subsections (6), (7), and (16) and subsection (25) are added to that section, and present subsection (21) of that section is amended, to read:

736.0103 Definitions.—Unless the context otherwise requires, in this code:

(6) "Directed trust" means a trust for which the terms of the trust grant a power of direction.

(7) "Directed trustee" means a trustee that is subject to a trust director's power of direction.

(16) “Power of direction” means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, management, or distribution of trust property, a power to amend a trust instrument or terminate a trust, or a power over other matters of trust administration. The term excludes the powers excluded from part XIV of this chapter under s. 736.1405(2).

(24)(21) “Terms of a trust” means:

(a) Except as otherwise provided in paragraph (b), the manifestation of the settlor’s intent regarding a trust’s provisions as:

1. Expressed in the trust instrument; or

2. Established by other evidence that would be admissible in a judicial proceeding; or

(b) The trust’s provisions as established, determined, or amended by:

1. A trustee or trust director in accordance with applicable law;

2. Court order; or

3. A nonjudicial settlement agreement under s. 736.0111, relating to nonjudicial settlement agreements the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(25) “Trust director” means a person who is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

Section 4. Paragraph (b) of subsection (2) of section 736.0105, Florida Statutes, is amended to read:

736.0105 Default and mandatory rules.—

(2) The terms of a trust prevail over any provision of this code except:

(b) Subject to s. 736.1409, relating to the duties and liabilities of a directed trustee; s. 736.1411, relating to limitations on duties of a trustee or trust director to monitor, inform, or advise on matters involving the other; and s. 736.1412, relating to the allocation of powers among cotrustees, requirements for excluded cotrustees to act as a directed trustee, and liability and related obligations of directing cotrustees, the duty of the trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

Section 5. Subsection (1) of section 736.0201, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

736.0201 Role of court in trust proceedings.—

(1) Except as provided in subsections (5), ~~and (6), and (7)~~ and s. 736.0206, judicial proceedings concerning trusts shall be commenced by filing a complaint and shall be governed by the Florida Rules of Civil Procedure.

(7) A proceeding to determine the homestead status of real property owned by a trust may be filed in the probate proceeding for the settlor's estate if the settlor was treated as the owner of the interest held in the trust under s. 732.4015. The proceeding shall be governed by the Florida Probate Rules.

Section 6. Subsection (3) is added to section 736.0603, Florida Statutes, to read:

736.0603 Settlor's powers; powers of withdrawal.—

(3) Subject to ss. 736.0403(2) and 736.0602(3)(a), the trustee may follow a direction of the settlor that is contrary to the terms of the trust while a trust is revocable.

Section 7. Subsections (3), (7), and (9) of section 736.0703, Florida Statutes, are amended to read:

736.0703 Cotrustees.—

(3) Subject to s. 736.1412, relating to the allocation of powers among cotrustees, requirements for excluded cotrustees to act as a directed trustee, and liability and related obligations of directing cotrustees, a cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other provision of law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another cotrustee.

(7) Except as otherwise provided in s. 736.1412, relating to the allocation of powers among cotrustees, requirements for excluded cotrustees to act as a directed trustee, and liability and related obligations of directing cotrustees ~~subsection (9),~~ each cotrustee shall exercise reasonable care to:

- (a) Prevent a cotrustee from committing a breach of trust.
- (b) Compel a cotrustee to redress a breach of trust.

~~(9) If the terms of a trust provide for the appointment of more than one trustee but confer upon one or more of the trustees, to the exclusion of the others, the power to direct or prevent specified actions of the trustees, the excluded trustees shall act in accordance with the exercise of the power.~~

~~Except in cases of willful misconduct on the part of the excluded trustee, an excluded trustee is not liable, individually or as a fiduciary, for any consequence that results from compliance with the exercise of the power. An excluded trustee does not have a duty or an obligation to review, inquire, investigate, or make recommendations or evaluations with respect to the exercise of the power. The trustee or trustees having the power to direct or prevent actions of the excluded trustees shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustees were not in office and shall have the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the exercise of the power. The provisions of s. 736.0808(2) do not apply if the person entrusted with the power to direct the actions of the excluded trustee is also a cotrustee.~~

Section 8. Section 736.0808, Florida Statutes, is repealed.

Section 9. Present subsection (7) of section 736.1008, Florida Statutes, is redesignated as subsection (8), a new subsection (7) is added to that section, and paragraph (a) of subsection (1), subsection (2), and paragraphs (a) and (c) of subsection (4) of that section are amended, to read:

736.1008 Limitations on proceedings against trustees.—

(1) Except as provided in subsection (2), all claims by a beneficiary against a trustee for breach of trust are barred as provided in chapter 95 as to:

(a) All matters adequately disclosed in a trust disclosure document issued by the trustee or a trust director, with the limitations period beginning on the date of receipt of adequate disclosure.

(2) Unless sooner barred by adjudication, consent, or limitations, a beneficiary is barred from bringing an action against a trustee for breach of trust with respect to a matter that was adequately disclosed in a trust disclosure document unless a proceeding to assert the claim is commenced within 6 months after receipt from the trustee or a trust director of the trust disclosure document or a limitation notice that applies to that disclosure document, whichever is received later.

(4) As used in this section, the term:

(a) “Trust disclosure document” means a trust accounting or any other written report of the trustee or a trust director. A trust disclosure document adequately discloses a matter if the document provides sufficient information so that a beneficiary knows of a claim or reasonably should have inquired into the existence of a claim with respect to that matter.

(c) “Limitation notice” means a written statement of the trustee or a trust director that an action by a beneficiary ~~against the trustee~~ for breach of trust based on any matter adequately disclosed in a trust disclosure document may be barred unless the action is commenced within 6 months

after receipt of the trust disclosure document or receipt of a limitation notice that applies to that trust disclosure document, whichever is later. A limitation notice may but is not required to be in the following form: “An action for breach of trust based on matters disclosed in a trust accounting or other written report of the trustee or a trust director may be subject to a 6-month statute of limitations from the receipt of the trust accounting or other written report. If you have questions, please consult your attorney.”

(7) Any claim barred against a trustee or trust director under this section is also barred against the directors, officers, and employees acting for the trustee or trust director.

Section 10. Present paragraphs (e), (f), and (g) of subsection (1) of section 736.1017, Florida Statutes, are redesignated as paragraphs (f), (g), and (h), respectively, and a new paragraph (e) is added to that subsection, to read:

736.1017 Certification of trust.—

(1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(e) Whether the trust contains any powers of direction, and if so, the identity of the current trust directors, the trustee powers subject to a power of direction, and whether the trust directors have directed or authorized the trustee to engage in the proposed transaction for which the certification of trust was issued.

Section 11. Effective upon this act becoming a law, section 736.1105, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 736.1105, F.S., for present text.)

736.1105 Effect of subsequent marriage, birth, adoption, or dissolution of marriage.—

(1) Neither subsequent marriage, birth, nor adoption of descendants shall revoke the revocable trust of any person.

(2) Any provision of a revocable trust that affects the settlor’s spouse is void upon dissolution of the marriage of the settlor and the spouse, whether the marriage occurred before or after the execution of such revocable trust. Upon dissolution of marriage, the revocable trust shall be construed as if the spouse had died at the time of the dissolution of marriage.

(a) Dissolution of marriage occurs at the time the decedent’s marriage is judicially dissolved or declared invalid by court order.

(b) This subsection does not invalidate a provision of a revocable trust:

- 1. Executed by the settlor after the dissolution of the marriage;
 - 2. If there is a specific intention to the contrary stated in the revocable trust; or
 - 3. If the dissolution of marriage judgment expressly provides otherwise.
- (3) This section applies to revocable trusts of decedents who die on or after the effective date of this section.

Section 12. Section 736.1109, Florida Statutes, is created to read:

736.1109 Testamentary and revocable trusts; homestead protections.—

(1) If a devise of homestead under a trust violates the limitations on the devise of homestead in s. 4(c), Art. X of the State Constitution, title shall pass as provided in s. 732.401 at the moment of death.

(2) A power of sale or general direction to pay debts, expenses and claims within the trust instrument does not subject an interest in the protected homestead to the claims of decedent’s creditors, expenses of administration, and obligations of the decedent’s estate as provided in s. 736.05053.

(3) If a trust directs the sale of property that would otherwise qualify as protected homestead, and the property is not subject to the constitutional limitations on the devise of homestead under the State Constitution, title shall remain vested in the trustee and subject to the provisions of the trust.

(4) This section applies only to trusts described in s. 733.707(3) and to testamentary trusts.

(5) This section is intended to clarify existing law and applies to the administration of trusts and estates of decedents who die before, on, or after July 1, 2021.

Section 13. Part XIV of chapter 736, Florida Statutes, consisting of ss. 736.1401-736.1416, Florida Statutes, is created and entitled the “Florida Uniform Directed Trust Act.”

Section 14. Section 736.1401, Florida Statutes, is created to read:

736.1401 Short title.—This part may be cited as the “Florida Uniform Directed Trust Act.”

Section 15. Section 736.1403, Florida Statutes, is created to read:

736.1403 Application; principal place of administration.—

(1) This part applies to a trust subject to this chapter, whenever created, that has its principal place of administration in the state, subject to the following rules:

(a) If the trust was created before July 1, 2021, this part applies only to a decision or action occurring on or after July 1, 2021.

(b) If the principal place of administration of the trust is changed to the state on or after July 1, 2021, this part applies only to a decision or action occurring on or after the date of the change.

(2) In addition to s. 736.0108, relating to a trust's principal place of administration, in a directed trust, terms of the trust that designate the principal place of administration of the trust in the state are valid and controlling if a trust director's principal place of business is located in or a trust director is a resident of the state.

Section 16. Section 736.1405, Florida Statutes, is created to read:

736.1405 Exclusions.—

(1) As used in this section, the term “power of appointment” means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(2) Unless the terms of a trust expressly provide otherwise by specific reference to this part, section, or paragraph, this part does not apply to:

(a) A power of appointment;

(b) A power to appoint or remove a trustee or trust director;

(c) A power of a settlor over a trust while the trust is revocable by that settlor;

(d) A power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

1. The beneficiary; or

2. Another beneficiary represented by the beneficiary under ss. 736.0301-736.0305 with respect to the exercise or nonexercise of the power;

(e) A power over a trust if the terms of the trust provide that the power is held in a nonfiduciary capacity; and

1. The power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the United States Internal Revenue Code of 1986, as amended, and regulations issued thereunder, as amended; or

2. It is a power to reimburse the settlor for all or a part of the settlor's income tax liabilities attributable to the income of the trust; or

(f) A power to add or to release a power under the trust instrument if the power subject to addition or release causes the settlor to be treated as the owner of all or any portion of the trust for federal income tax purposes.

(3) Unless the terms of a trust provide otherwise, a power granted to a person other than a trustee:

(a) To designate a recipient of an ownership interest in trust property, including a power to terminate a trust, is a power of appointment and not a power of direction.

(b) To create, modify, or terminate a power of appointment is a power of direction and not a power of appointment, except a power to create a power of appointment that is an element of a broader power to affect an ownership interest in trust property beyond the mere creation of a power of appointment, such as a power to appoint trust property in further trust, is a power of appointment and not a power of direction.

Section 17. Section 736.1406, Florida Statutes, is created to read:

736.1406 Power of trust director.—

(1) Subject to s. 736.1407, relating to trust directors being subject to the same rules as a trustee regarding Social Security Act reimbursement requirements and charitable trust instruments, the terms of a trust may grant a power of direction to a trust director.

(2) A power of direction includes only those powers granted by the terms of the trust.

(3) Unless the terms of a trust provide otherwise:

(a) A trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the trust director under subsection (1); and

(b) Trust directors with joint powers must act by majority decision.

Section 18. Section 736.1407, Florida Statutes, is created to read:

736.1407 Limitations on trust director.—A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under s. 736.1406(3)(a), relating to additional power granted to a trust director in furtherance of an express power of direction, regarding:

(1) A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of s. 1917 of the Social Security Act, 42 U.S.C. s. 1396p(d)(4)(A), as amended, and regulations issued thereunder, as amended.

(2) A charitable interest in the trust, including notice regarding the interest to the Attorney General.

Section 19. Section 736.1408, Florida Statutes, is created to read:

736.1408 Duty and liability of trust director.—

(1) Subject to subsection (2), with respect to a power of direction or further power under s. 736.1406(3)(a), relating to additional power granted to a trust director in furtherance of an express power of direction:

(a) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

1. If the power is held individually, as a sole trustee in a like position and under similar circumstances; or

2. If the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances.

(b) The terms of the trust may vary the trust director's duty or liability to the same extent the terms of the trust may vary the duty or liability of a trustee in a like position and under similar circumstances.

(2) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than this part to provide health care in the ordinary course of the trust director's business or practice of a profession, to the extent the trust director acts in that capacity the trust director has no duty or liability under this part.

(3) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

Section 20. Section 736.1409, Florida Statutes, is created to read:

736.1409 Duty and liability of directed trustee.—

(1) Subject to subsection (2), a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under s. 736.1406(3)(a), relating to additional power granted to a trust director in furtherance of an express power of direction, and the trustee is not liable for such reasonable action.

(2) A directed trustee may not comply with a trust director's exercise or nonexercise of a power of direction or further power under s. 736.1406(3)(a), relating to additional power granted to a trust director in furtherance of an express power of direction, to the extent that by complying the trustee would engage in willful misconduct.

(3) Before complying with a trust director's exercise of a power of direction, the directed trustee shall determine whether or not the exercise is within the scope of the trust director's power of direction. The exercise of a

power of direction is not outside the scope of a trust director's power of direction merely because the exercise constitutes or may constitute a breach of trust.

(4) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

(a) The breach involved the trustee's or other director's willful misconduct;

(b) The release was induced by improper conduct of the trustee or other director in procuring the release; or

(c) At the time of the release, the trust director did not know the material facts relating to the breach.

(5) A directed trustee that has reasonable doubt about its duty under this section may apply to the court for instructions, with attorney fees and costs to be paid from assets of the trust as provided in this code.

(6) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this part.

Section 21. Section 736.141, Florida Statutes, is created to read:

736.141 Duty to provide information.—

(1) Subject to s. 736.1411, relating to limitations on the duties of trustees or trust directors to monitor, inform, or advise on matters involving the other, a trustee shall provide information to a trust director to the extent the information is reasonably related to the powers or duties of the trust director.

(2) Subject to s. 736.1411, relating to limitations on the duties of trustees or trust directors to monitor, inform, or advise on matters involving the other, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related to the powers or duties of the trustee or other trust director.

(3) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(4) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

(5) A trust director shall provide information within the trust director's knowledge or control to a qualified beneficiary upon a written request of a qualified beneficiary to the extent the information is reasonably related to the powers or duties of the trust director.

Section 22. Section 736.1411, Florida Statutes, is created to read:

736.1411 No duty to monitor, inform, or advise.—

(1) Notwithstanding s. 736.1409(1), relating to the duty of a directed trustee to take reasonable action when directed and to the release of liability for such action, unless the terms of a trust provide otherwise:

(a) A trustee does not have a duty to:

1. Monitor a trust director; or

2. Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the trust director.

(b) By taking an action described in paragraph (a), a trustee does not assume the duty excluded by paragraph (a).

(2) Notwithstanding s. 736.1408(1), relating to the fiduciary duty of a trust director, unless the terms of a trust provide otherwise:

(a) A trust director does not have a duty to:

1. Monitor a trustee or another trust director; or

2. Inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the trust director might have acted differently than a trustee or another trust director.

(b) By taking an action described in paragraph (a), a trust director does not assume the duty excluded by paragraph (a).

Section 23. Section 736.1412, Florida Statutes, is created to read:

736.1412 Application to cotrustee.—

(1) The terms of a trust may provide for the appointment of more than one trustee but confer upon one or more of the trustees, to the exclusion of the others, the power to direct or prevent specified actions of the trustees.

(2) The excluded trustees shall act in accordance with the exercise of the power in the manner, and with the same duty and liability, as directed trustees with respect to a trust director's power of direction under s. 736.1409, relating to the duties and liabilities of a directed trustee; s. 736.141, relating to the duties of a trustee and trust director to provide and rely on information; and s. 736.1411, relating to limitations on the duties of

trustees or trust directors to monitor, inform, or advise on matters involving the other.

(3) The trustee or trustees having the power to direct or prevent actions of the excluded trustees shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustees were not in office and shall have the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the exercise of the power.

Section 24. Section 736.1413, Florida Statutes, is created to read:

736.1413 Limitation of action against trust director.—

(1) An action against a trust director for breach of trust must be commenced within the same limitation period for an action for breach of trust against a trustee in a like position and under similar circumstances under s. 736.1008, relating to limitations on proceedings against trustees.

(2) A trust accounting or any other written report of a trustee or a trust director has the same effect on the limitation period for an action against a trust director for breach of trust that such trust accounting or written report would have under s. 736.1008, relating to limitations on proceedings against trustees, in an action for breach of trust against a trustee in a like position and under similar circumstances.

Section 25. Section 736.1414, Florida Statutes, is created to read:

736.1414 Defenses in action against trust director.—In an action against a trust director for breach of trust, the trust director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

Section 26. Section 736.1415, Florida Statutes, is created to read:

736.1415 Jurisdiction over trust director.—

(1) By accepting appointment as a trust director of a trust subject to this part, the trust director submits to the personal jurisdiction of the courts of the state regarding any matter related to a power or duty of the trust director.

(2) This section does not preclude other methods of obtaining jurisdiction over a trust director.

Section 27. Section 736.1416, Florida Statutes, is created to read:

736.1416 Office of trust director.—

(1) Unless the terms of a trust provide otherwise, a trust director shall be considered a trustee for purposes of the following:

(a) Role of court in trust proceedings under s. 736.0201.

(b) Proceedings for review of employment of agents and review of compensation of trustee and employees of a trust under s. 736.0206.

(c) Representation by holder of power of appointment under s. 736.0302(4), relating to how trustees with discretionary power to make trust distributions do not have a power of appointment for purposes of representing persons affected by such power.

(d) Prohibition on a trustee acting as a designated representative under s. 736.0306(2).

(e) Validation of power to select a beneficiary from an indefinite class under s. 736.0402(3).

(f) As to allowing application by the trust director for judicial modification of a trust when such modification is not inconsistent with the settlor's purpose under s. 736.04113, for judicial construction of provisions relating to federal taxes under s. 736.04114, for judicial modification of a trust when such modification is in the best interest of the beneficiaries under s. 736.04115, or for judicial modification or termination of an uneconomic trust under s. 736.0414(2), if the trust director is so authorized by the terms of the trust.

(g) Discretionary trusts and the effect of a standard under s. 736.0504, relating to special provisions regarding discretionary trusts.

(h) Trust assets not being subject to creditor claims by reason of discretionary powers granted to a trustee under s. 736.0505(1)(c).

(i) A trustee's duty to pay trust obligations and expenses before paying obligations and expenses of the settlor's estate under s. 736.0505(4).

(j) Acceptance or declination of a trusteeship under s. 736.0701.

(k) Requirement to give bond to secure performance under certain circumstances and court discretions relating to such bonds under s. 736.0702.

(l) Filling trustee vacancies and court appointment of an additional trustee or special fiduciary under s. 736.0704.

(m) Resignation of a trustee under s. 736.0705, including requirements, court authorizations, and remaining liabilities.

(n) Court removal of a trustee, including who may request a removal, under s. 736.0706, but not to give the trust director the power to request removal of a trustee.

(o) Reasonable compensation of a trustee or professional acting as a trustee under s. 736.0708.

(p) Entitlement of a trustee to reimbursement of expenses and liens to secure advances under s. 736.0709.

(q) Authority to pay costs or attorney fees without approval under s. 736.0802(10), if the trust director has a power of direction or, if the trust director has a further power to direct, the payment of such costs or attorney fees under s. 736.1406(2), relating to the explicit power of direction granted to a trust director, or s. 736.1406(3)(a), relating to the implied additional power of a director in furtherance of an express power of direction.

(r) Limitations on a trustee's discretionary powers under s. 736.0814.

(s) Administration of trusts by trustees without regard to pending contests or proceedings, except as the court directs, under s. 736.08165.

(t) A trustee's obligation to invest in accordance with chapter 518 under s. 736.0901.

(u) The exception to the prudent investor rule for life insurance under s. 736.0902.

(v) Remedies available for a trustee breach of trust under s. 736.1001.

(w) Damages against a trustee for breach of trust under s. 736.1002.

(x) A trustee's immunity from liability for loss or no profit under s. 736.1003 if there is no breach of trust.

(y) Court-awarded attorney fees and costs under s. 736.1004 for breach of trust challenges.

(z) Fees available to a trustee's attorney for extraordinary service under s. 736.1007(5), court variance of compensation for a trustee's attorney under s. 736.1007(6), and agreements between a settlor and an attorney for fees to be provided to a trustee under s. 736.1007(7).

(aa) A trustee's immunity from liability for a breach of trust under s. 736.1009 if the trustee relied on the trust instrument terms.

(bb) Limitations on a trustee's liability for acting without knowledge of relevant events under s. 736.1010.

(cc) Limitations on a trustee's exculpation of liability under the terms of a trust under s. 736.1011.

(dd) The release of a trustee from liability with consent, the release or ratification of a beneficiary, and the limitations on such actions under s. 736.1012.

(ee) Limitations on imposing liability on a trustee for obligations of a settlor under s. 736.1014.

(2) If a person has not accepted a trust directorship under the terms of the trust or has accepted or declined a trusteeship under s. 736.0701 or a trustee, settlor, or a qualified beneficiary of the trust is uncertain whether such acceptance has occurred, a trustee, settlor, or a qualified beneficiary of the trust may make a written demand on a person designated to serve as a trust director, with a written copy to the trustees, to accept or confirm prior acceptance of the trust directorship in writing. A written acceptance, written acknowledgment of prior acceptance, or written declination of the trust directorship shall be delivered by the designated trust director within 60 days after receipt of such demand to all trustees, qualified beneficiaries, and the settlor if living.

Section 28. Part XV of chapter 736, Florida Statutes, consisting of ss. 736.1501-736.1512, Florida Statutes, is created and entitled the “Community Property Trust Act.”

Section 29. Section 736.1501, Florida Statutes, is created to read:

736.1501 Short title.—This part may be cited as the “Community Property Trust Act.”

Section 30. Section 736.1502, Florida Statutes, is created to read:

736.1502 Definitions.—Unless the context otherwise requires, as used in this part:

(1) “Community property” means the property and the appreciation of and income from the property owned by a qualified trustee of a community property trust during the marriage of the settlor spouses. The property owned by a community property trust pursuant to this part and the appreciation of and income from such property shall be deemed to be community property for purposes of general law.

(2) “Community property trust” means an express trust that complies with s. 736.1503 and is created on or after July 1, 2021.

(3) “Decree” means a judgment or other order of a court of competent jurisdiction.

(4) “Dissolution” means either:

(a) Termination of a marriage by a decree of dissolution, divorce, annulment, or declaration of invalidity; or

(b) Entry of a decree of legal separation maintenance by a court of competent jurisdiction in another state that recognizes legal separation or maintenance under its laws.

(5) “During marriage” means a period that begins at marriage and ends upon the dissolution of marriage or upon the death of a spouse.

(6) “Qualified trustee” means either:

- (a) A natural person who is a resident of the state; or
- (b) A company authorized to act as a trustee in the state.

A qualified trustee’s powers include, but are not limited to, maintaining records for the trust on an exclusive or a nonexclusive basis and preparing or arranging for the preparation of, on an exclusive or a nonexclusive basis, any income tax returns that must be filed by the trust.

(7) “Settlor spouses” means a married couple who establishes a community property trust pursuant to this part.

Section 31. Section 736.1503, Florida Statutes, is created to read:

736.1503 Requirements for community property trust.—An arrangement is a community property trust if one or both settlor spouses transfer property to a trust that:

(1) Expressly declares that the trust is a community property trust within the meaning of this part.

(2) Has at least one trustee who is a qualified trustee, provided that both spouses or either spouse also may be a trustee.

(3) Is signed by both settlor spouses consistent with the formalities required for the execution of a trust under this chapter.

(4) Contains substantially the following language in capital letters at the beginning of the community property trust agreement:

THE CONSEQUENCES OF THIS COMMUNITY PROPERTY TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY, THIS TRUST AGREEMENT SHOULD BE SIGNED ONLY AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS TRUST AGREEMENT, YOU SHOULD SEEK COMPETENT AND INDEPENDENT LEGAL ADVICE. ALTHOUGH NOT A REQUIREMENT, IT IS STRONGLY ADVISABLE THAT EACH SPOUSE OBTAIN THEIR OWN SEPARATE LEGAL COUNSEL PRIOR TO THE EXECUTION OF THIS TRUST.

Section 32. Section 736.1504, Florida Statutes, is created to read:

736.1504 Agreement establishing community property trust; amendments and revocation.—

(1) In the agreement establishing a community property trust, the settlor spouses may agree upon:

(a) The rights and obligations in the property transferred to the trust, notwithstanding when and where the property is acquired or located.

(b) The management and control of the property transferred into the trust.

(c) The disposition of the property transferred to the trust on dissolution, death, or the occurrence or nonoccurrence of another event, subject to ss. 736.1507 and 736.1508.

(d) Whether the trust is revocable or irrevocable.

(e) Any other matter that affects the property transferred to the trust and does not violate public policy or general law imposing a criminal penalty, or result in the property not being treated as community property under the laws of a relevant jurisdiction.

(2) In the event of the death of a settlor spouse, the surviving spouse may amend a community property trust regarding the disposition of that spouse's one-half share of the community property, regardless of whether the agreement provides that the community property trust is irrevocable.

(3) A community property trust may be amended or revoked by the settlor spouses unless the agreement itself specifically provides that the community property trust is irrevocable.

(4) Notwithstanding any other provision of this code, the settlor spouses shall be deemed to be the only qualified beneficiaries of a community property trust until the death of one of the settlor spouses, regardless of whether the trust is revocable or irrevocable. After the death of one of the settlor spouses, the surviving spouse shall be deemed to be the only qualified beneficiary as to his or her share of the community property trust.

Section 33. Section 736.1505, Florida Statutes, is created to read:

736.1505 Classification of property as community property; enforcement; duration; management and control; effect of distributions.—

(1) Whether both, one, or neither is domiciled in the state, settlor spouses may classify any or all of their property as community property by transferring that property to a community property trust and providing in the trust that the property is community property pursuant to this part.

(2) A community property trust is enforceable without consideration.

(3) All property owned by a community property trust is community property under the laws of the state during the marriage of the settlor spouses.

(4) The right to manage and control property that is transferred to a community property trust is determined by the terms of the trust agreement.

(5) When property is distributed from a community property trust, the property shall no longer constitute community property within the meaning of this part, provided that community property as classified by a jurisdiction other than the state retains its character as community property to the extent otherwise provided by ss. 732.216-732.228.

Section 34. Section 736.1506, Florida Statutes, is created to read:

736.1506 Satisfaction of obligations.—Except as provided in s. 4, Art. X of the State Constitution:

(1) An obligation solely incurred by one settlor spouse before or during the marriage may be satisfied from that settlor spouse's one-half share of a community property trust, unless a greater amount is otherwise provided in the community property trust agreement.

(2) An obligation incurred by both spouses during the marriage may be satisfied from a community property trust of the settlor spouses.

Section 35. Section 736.1507, Florida Statutes, is created to read:

736.1507 Death of a spouse.—Upon the death of a spouse, one-half of the aggregate value of the property held in a community property trust established by the settlor spouses reflects the share of the surviving spouse and is not subject to testamentary disposition by the decedent spouse or distribution under the laws of succession of the state. The other one-half of the value of that property reflects the share of the decedent spouse and is subject to testamentary disposition or distribution under the laws of succession of the state. Unless provided otherwise in the community property trust agreement, the trustee has the power to distribute assets of the trust in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made on the basis of a non-pro rata division of the aggregate value of the trust assets, on the basis of a pro rata division of each individual asset, or by using both methods. The decedent's spouse's one-half share shall not be included in the elective estate.

Section 36. Section 736.1508, Florida Statutes, is created to read:

736.1508 Dissolution of marriage.—

(1) Upon the dissolution of the marriage of the settlor spouses, the community property trust shall terminate and the trustee shall distribute one-half of the trust assets to each spouse in accordance with subsection (3). For purposes of this act, s. 61.075 does not apply to the disposition of the assets and liabilities held in a community property trust.

(2) The initiation of an action to dissolve the settlor spouses' marriage does not automatically terminate the community property trust unless otherwise agreed to by the settlor spouses in writing or otherwise ordered by the court having jurisdiction over the dissolution proceedings between the settlor spouses. However, if an action to dissolve the settlor spouses' marriage remains pending for 180 days, the trust automatically terminates and the trustee must distribute one-half of the trust assets to each spouse in accordance with subsection (3), unless any of the following apply:

(a) A settlor spouse objects to the termination within 180 days following the filing of the dissolution action. At which time, either party may request that the court having jurisdiction over the dissolution proceedings between the settlor spouses determine if good cause exists to terminate the community property trust during the pendency of the dissolution of marriage action.

(b) The court having jurisdiction over the dissolution proceedings between the settlor spouses enters an order directing otherwise.

(c) The settlor spouses otherwise agree, in writing, while the dissolution of marriage action is pending.

(d) The community property trust agreement provides otherwise.

(3) Unless provided otherwise in the community property trust agreement, the trustee has the power to distribute assets of the trust in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made on the basis of a non-pro rata division of the aggregate value of the trust assets, on the basis of a pro rata division of each individual asset, or by using both methods. A trustee may not distribute real property or business interests in a manner that would leave the settlor spouses as co-owners of such assets post dissolution of the settlor spouses' marriage or termination of the community property trust, unless otherwise agreed to by the settlor spouses in a separate written agreement executed during the dissolution of marriage action. Notwithstanding any other provision of this section, the community property trust agreement cannot be terminated, and the assets cannot be distributed, in a manner that could cause the trust assets to not be treated as community property.

(4) The court having jurisdiction over the dissolution proceedings between the settlor spouses has personal and subject matter jurisdiction over the settlor spouses and the trustee of the community property trust for the purpose of effectuating the distribution of the community property trust assets consistent with the terms of the community property trust agreement, in a manner ensuring that the trust assets retain their community property character.

Section 37. Section 736.1509, Florida Statutes, is created to read:

736.1509 Right of child to support.—A community property trust does not adversely affect the right of a child of the settlor spouses to support, pursuant to s. 61.30 or the applicable law of another jurisdiction, that either spouse would be required to give under the applicable laws of the settlor spouses' state of domicile.

Section 38. Section 736.151, Florida Statutes, is created to read:

736.151 Homestead property.—

(1) Property that is transferred to or acquired subject to a community property trust may continue to qualify or may initially qualify as the settlor spouses' homestead within the meaning of s. 4(a)(1), Art. X of the State Constitution and for all purposes of general law, provided that the property would qualify as the settlor spouses' homestead if title was held in one or both of the settlor spouses' individual names.

(2) The settlor spouses shall be deemed to have beneficial title in equity to the homestead property held subject to a community property trust for all purposes, including for purposes of s. 196.031.

Section 39. Section 736.1511, Florida Statutes, is created to read:

736.1511 Application of Internal Revenue Code; community property classified by another jurisdiction.—For purposes of the application of s. 1014(b)(6) of the Internal Revenue Code of 1986, 26 U.S.C. s. 1014(b)(6), as of January 1, 2021, a community property trust is considered a trust established under the community property laws of the state. Community property, as classified by a jurisdiction other than this state, which is transferred to a community property trust retains its character as community property while in the trust. If the trust is revoked and property is transferred on revocation of the trust, the community property as classified by a jurisdiction other than the state retains its character as community property to the extent otherwise provided by ss. 732.216-732.228.

Section 40. Section 736.1512, Florida Statutes, is created to read:

736.1512 Unenforceable trusts.—

(1) A community property trust executed during marriage is not enforceable if the spouse against whom enforcement is sought proves that:

(a) The trust was unconscionable when made;

(b) The spouse against whom enforcement is sought did not execute the community property trust agreement voluntarily;

(c) The community property trust agreement was the product of fraud, duress, coercion, or overreaching; or

(d) Before execution of the community property trust agreement, the spouse against whom enforcement is sought:

1. Was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse.

2. Did not voluntarily sign a written waiver expressly waiving right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided.

3. Did not have notice of the property or financial obligations of the other spouse.

(2) Whether a community property trust is unconscionable shall be determined by a court as a matter of law.

(3) A community property trust may not be deemed unenforceable solely on the fact that the settlor spouses did not have separate legal representation when executing the community property trust agreement.

Section 41. Paragraph (f) of subsection (5) of section 736.0802, Florida Statutes, is amended to read:

736.0802 Duty of loyalty.—

(5)

(f1). The trustee of a trust as defined in s. 731.201 may request authority to invest in investment instruments described in this subsection other than a qualified investment instrument, by providing to all qualified beneficiaries a written request containing the following:

a. The name, telephone number, street address, and mailing address of the trustee and of any individuals who may be contacted for further information.

b. A statement that the investment or investments cannot be made without the consent of a majority of each class of the qualified beneficiaries.

c. A statement that, if a majority of each class of qualified beneficiaries consent, the trustee will have the right to make investments in investment instruments, as defined in s. 660.25(6), which are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee, that such investment instruments may include investment instruments sold primarily to trust accounts, and that the trustee or its affiliate may receive fees in addition to the trustee's compensation for administering the trust.

d. A statement that the consent may be withdrawn prospectively at any time by written notice given by a majority of any class of the qualified beneficiaries.

A statement by the trustee is not delivered if the statement is accompanied by another written communication other than a written communication by the trustee that refers only to the statement.

2. For purposes of paragraph (e) and this paragraph:

a. "Majority of the qualified beneficiaries" means:

(I) If at the time the determination is made there are one or more beneficiaries as described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, and at least a majority in interest of the beneficiaries described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, a majority in number of each such class; or

(II) If there is no beneficiary as described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~ and at least a majority in interest of the beneficiaries described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, a majority in number of each such class.

b. "Qualified investment instrument" means a mutual fund, common trust fund, or money market fund described in and governed by s. 736.0816(3).

c. An irrevocable trust is created upon execution of the trust instrument. If a trust that was revocable when created thereafter becomes irrevocable, the irrevocable trust is created when the right of revocation terminates.

Section 42. Paragraph (a) of subsection (2) of section 736.08125, Florida Statutes, is amended to read:

736.08125 Protection of successor trustees.—

(2) For the purposes of this section, the term:

(a) "Eligible beneficiaries" means:

1. At the time the determination is made, if there are one or more beneficiaries as described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described in s. 736.0103(19)(a) and (c) ~~s. 736.0103(16)(a) and (e)~~; or

2. If there is no beneficiary as described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described in s. 736.0103(19)(a) and (b) ~~s. 736.0103(16)(a) and (b)~~.

Section 43. Paragraph (d) of subsection (9) of section 738.104, Florida Statutes, is amended to read:

738.104 Trustee's power to adjust.—

(9)

(d) For purposes of subsection (8) and this subsection, the term:

1. "Eligible beneficiaries" means:

a. If at the time the determination is made there are one or more beneficiaries described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described in s. 736.0103(19)(a) and (c) ~~s. 736.0103(16)(a) and (e)~~; or

b. If there is no beneficiary described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described in s. 736.0103(19)(a) and (b) ~~s. 736.0103(16)(a) and (b)~~.

2. "Super majority of the eligible beneficiaries" means:

a. If at the time the determination is made there are one or more beneficiaries described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, at least two-thirds in interest of the beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~ or two-thirds in interest of the beneficiaries described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, it means two-thirds in number of either such class; or

b. If there is no beneficiary described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, at least two-thirds in interest of the beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~ or two-thirds in interest of the beneficiaries described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, if the interests of the beneficiaries are reasonably ascertainable, otherwise, two-thirds in number of either such class.

Section 44. Subsection (1) of section 744.3679, Florida Statutes, is amended to read:

744.3679 Simplified accounting procedures in certain cases.—

(1) In a guardianship of property, when all property assets of the estate is are in designated depositories under s. 69.031 and the only transactions that occur in that account are interest accrual, deposits from a settlement, or financial institution service charges, the guardian may elect to file an accounting consisting of:

(a) The original or a certified copy of the year-end statement of the ward's account from the financial institution; and

(b) A statement by the guardian under penalty of perjury that the guardian has custody and control of the ward’s property as shown in the year-end statement.

Section 45. The Division of Law Revision is directed to replace the phrase “the effective date of this section” wherever it occurs in this act with the date those sections become law.

Section 46. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 47. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2021.

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.

CHAPTER 2021-221

Committee Substitute for House Bill No. 1041

An act relating to protection of elderly persons and disabled adults; amending s. 16.56, F.S.; adding offenses concerning elderly persons and disabled adults to the authority of the Office of Statewide Prosecution; amending s. 733.303, F.S.; providing that a person who has been convicted of abuse, neglect, or exploitation of an elderly person or a disabled adult is not qualified to act as a personal representative; creating s. 732.8031, F.S.; providing for forfeiture of specified benefits of persons who have been convicted of certain offenses involving elderly persons or disabled adults; providing that certain persons who have been convicted of certain offenses involving elderly persons or disabled adults may still retain an inheritance, survivorship rights, other rights, or a trust interest if the victim executes a specified instrument; amending s. 736.1104, F.S.; providing that a beneficiary of a trust may not benefit under the trust if the person was convicted of certain offenses involving elderly persons or disabled adults; amending s. 825.101, F.S.; defining terms; amending s. 825.102, F.S.; specifying additional conduct that constitutes abuse of an elderly person or a disabled adult; providing a defense to certain violations; providing criminal penalties; amending s. 825.103, F.S.; specifying additional conduct that constitutes exploitation of an elderly person or a disabled adult; providing criminal penalties; amending s. 825.1035, F.S.; revising provisions concerning injunctions for protection against exploitation of a vulnerable adult; providing for extension of ex parte temporary injunctions; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is amended to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate “budget entity” as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, home-invasion robbery, and patient brokering;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(8)(a), providing such listed offense is

investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the Florida Anti-Fencing Act;
5. Any violation of the Florida Antitrust Act of 1980, as amended;
6. Any crime involving, or resulting in, fraud or deceit upon any person;
7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;
8. Any violation of chapter 815;
9. Any violation of chapter 825;
- ~~10.9.~~ Any criminal violation of part I of chapter 499;
- ~~11.10.~~ Any violation of the Florida Motor Fuel Tax Relief Act of 2004;
- ~~12.11.~~ Any criminal violation of s. 409.920 or s. 409.9201;
- ~~13.12.~~ Any crime involving voter registration, voting, or candidate or issue petition activities;
- ~~14.13.~~ Any criminal violation of the Florida Money Laundering Act;
- ~~15.14.~~ Any criminal violation of the Florida Securities and Investor Protection Act; or
- ~~16.15.~~ Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 2. Subsection (1) of section 733.303, Florida Statutes, is amended to read:

733.303 Persons not qualified.—

(1) A person is not qualified to act as a personal representative if the person:

(a) Has been convicted of a felony.

(b) Has been convicted in any state or foreign jurisdiction of abuse, neglect, or exploitation of an elderly person or a disabled adult, as those terms are defined in s. 825.101.

~~(c)~~(b) Is mentally or physically unable to perform the duties.

~~(d)~~(e) Is under the age of 18 years.

Section 3. Section 732.8031, Florida Statutes, is created to read:

732.8031 Forfeiture for abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult.—

(1) A surviving person who is convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against the decedent or another person on whose death such beneficiary's interest depends is not entitled to any benefits under the will of the decedent or the Florida Probate Code, and the estate of the decedent passes as if the abuser, neglector, exploiter, or killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the abuser, neglector, exploiter, or killer passes as if the abuser, neglector, exploiter, or killer had predeceased the decedent.

(a) A final judgment of conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies.

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglector's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section.

(2) A joint tenant who is convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against another joint tenant decedent thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's sole property and as if the abuser, neglector, exploiter, or killer has no rights by survivorship. This subsection applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan

associations, credit unions, and other financial institutions; and any other form of coownership with survivorship interests.

(a) A final judgment of conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies.

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglector's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who is convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against the owner or principal obligee of the bond, life insurance policy, or other contractual arrangement or the person upon whose life such policy was issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and the bond, policy, or other contractual arrangement becomes payable as though the abuser, neglector, exploiter, or killer had predeceased the decedent.

(a) A final judgment of conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies.

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglector's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section.

(4) Any other property or interest acquired as a result of the abuse, neglect, exploitation, or manslaughter must be returned in accordance with this section.

(5)(a) This section does not affect the rights of any person who purchases property for value and without notice from the abuser, neglector, exploiter, or killer before rights have been adjudicated in accordance with this section.

(b) The abuser, neglector, exploiter, or killer is liable for the amount of the proceeds or the value of the property under paragraph (a).

(6) Any insurance company, financial institution, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless more than 2 business days before payment it receives at its home office or principal address written notice, or in the case of a financial institution it receives notice in accordance with s. 655.0201, of a claim under this section.

(7) This section does not apply if it can be proven by clear and convincing evidence that, after the conviction of abuse, neglect, or exploitation, the victim of the offense, if capacitated, ratifies an intent that the person so convicted of abuse, neglect, or exploitation retain his or her inheritance, survivorship rights, or any other right that might otherwise be removed by this section by executing a valid written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the convicted person to retain his or her inheritance, survivorship rights, or any other right that might otherwise be removed by this section.

Section 4. Subsection (3) is added to section 736.1104, Florida Statutes, to read:

736.1104 Person Killer not entitled to receive property or other benefits by reason of victim's death.—

(3) A beneficiary of a trust who was convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against a settlor or another person on whose death such beneficiary's interest depends is not entitled to any trust interest, including a homestead dependent on the victim's death, and such interest shall devolve as though the abuser, neglector, exploiter, or killer had predeceased the victim.

(a) A final judgment of conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies.

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglector's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section.

(c) This subsection does not apply if it can be proven by clear and convincing evidence that, after the conviction of abuse, neglect, or exploitation, the victim of the offense, if capacitated, ratifies an intent that the person so convicted of abuse, neglect, or exploitation retain a trust interest by executing a valid written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the convicted person to retain a trust interest.

Section 5. Subsections (8) through (14) of section 825.101, Florida Statutes, are renumbered as subsections (10) through (16), respectively, and new subsections (8) and (9) are added to that section, to read:

825.101 Definitions.—As used in this chapter:

(8) “Improper benefit” means any remuneration or payment, by or on behalf of any service provider or merchant of goods, to any person as an incentive or inducement to refer customers or patrons for past or future services or goods.

(9) “Kickback” has the same meaning as in s. 456.054(1).

Section 6. Paragraphs (b) and (c) of subsection (1) of section 825.102, Florida Statutes, are amended, and paragraph (d) is added to that subsection, to read:

825.102 Abuse, aggravated abuse, and neglect of an elderly person or disabled adult; penalties.—

(1) “Abuse of an elderly person or disabled adult” means:

(b) An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; ~~or~~

(c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or

(d) Intentionally, and without lawful authority, isolating or restricting access of an elderly person or a disabled adult to family members for any length of time which could reasonably be expected to result in physical or psychological injury to the elderly person or disabled adult, or with the intent to promote, facilitate, conceal, or disguise some form of criminal activity involving the person or property of the elderly person or disabled adult. It is a defense to a violation of this paragraph that the defendant had reasonable cause to believe that his or her action was necessary to protect the elderly person or disabled adult from danger to his or her welfare.

A person who knowingly or willfully abuses an elderly person or disabled adult without causing great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Paragraphs (c), (d), and (e) of subsection (1) of section 825.103, Florida Statutes, are amended, and paragraph (f) is added to that subsection, to read:

825.103 Exploitation of an elderly person or disabled adult; penalties.

(1) “Exploitation of an elderly person or disabled adult” means:

(c) Breach of a fiduciary duty to an elderly person or disabled adult by the person’s guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, ~~or~~ transfer of property, kickback, or receipt of an improper benefit. An unauthorized

appropriation under this paragraph occurs when the elderly person or disabled adult does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates any of these duties:

1. For agents appointed under chapter 709:

a. Committing fraud in obtaining their appointments;

b. Obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary;

~~c.b.~~ Abusing their powers;

d.e. Wasting, embezzling, or intentionally mismanaging the assets of the principal or beneficiary; or

~~e.d.~~ Acting contrary to the principal’s sole benefit or best interest; or

2. For guardians and trustees who are individuals and who are appointed under chapter 736 or chapter 744:

a. Committing fraud in obtaining their appointments;

b. Obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary;

~~c.b.~~ Abusing their powers; or

d.e. Wasting, embezzling, or intentionally mismanaging the assets of the ward or beneficiary of the trust;

(d) Misappropriating, misusing, or transferring without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer. This paragraph only applies to the following types of accounts:

1. Personal accounts;

2. Joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to moneys deposited into such account; or

3. Convenience accounts created in accordance with s. 655.80; ~~or~~

(e) Intentionally or negligently failing to effectively use an elderly person’s or disabled adult’s income and assets for the necessities required for that person’s support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the elderly person or disabled adult; or

(f) Knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or a disabled adult's funds, assets, property, or estate through intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the elderly person or disabled adult without:

1. A court order, from a court having jurisdiction over the elderly person or disabled adult, which authorizes the modification or alteration;

2. A written instrument executed by the elderly person or disabled adult, sworn to and witnessed by two persons who would be competent as witnesses to a will, which authorizes the modification or alteration; or

3. Action of an agent under a valid power of attorney executed by the elderly person or disabled adult which authorizes the modification or alteration.

Section 8. Paragraph (a) of subsection (2), paragraph (a) of subsection (3), and paragraph (d) of subsection (5) of section 825.1035, Florida Statutes, are amended to read:

825.1035 Injunction for protection against exploitation of a vulnerable adult.—

(2) WHO MAY FILE; VENUE; RECORDING.—

(a) The cause of action may be sought in an adversary proceeding by:

1. A vulnerable adult in imminent danger of being exploited;
2. The guardian of a vulnerable adult in imminent danger of being exploited;
3. A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; or

4. An agent under a valid durable power of attorney with the authority specifically granted in the power of attorney; or

5.4. A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.

(3) FORM OF PETITION.—

(a) A sworn petition filed under this section must allege the existence of exploitation, or the imminent exploitation, of the vulnerable adult and must include the specific facts and circumstances for which relief is sought. The sworn petition must be in substantially the following form:

PETITION FOR INJUNCTION FOR PROTECTION AGAINST EXPLOITATION OF A VULNERABLE ADULT

Before me, the undersigned authority, personally appeared Petitioner ... (Name)..., who has been sworn and says that the following statements are true:

- 1. The petitioner's name is:
2. The petitioner's address is:
3. The petitioner's relationship to the vulnerable adult is:
4. How long has the petitioner known the vulnerable adult:
5. The vulnerable adult's name is:
6. Aliases of the vulnerable adult are:
7. The vulnerable adult's date of birth is:

8.1. The vulnerable adult's address is adult resides at: ... (address)...

9. Does the vulnerable adult have one or more impairments that impact his or her ability to perform normal activities of daily living or to provide for his or her own care or protection?

Yes..... No.....

If so, what are this person's impairments? (check all that apply)

- Long-term physical disability
..... Sensory disability (e.g., hearing or vision impaired)
..... Cognitive disability
..... Mental or emotional disability
..... Developmental disability
..... Infirmary of aging
..... Other (explain)

10.2. The respondent's last known address is respondent resides at: ... (last known address)...

11.3. The respondent's last known place of employment is: ... (name of business and address)...

12.4. Physical description of the respondent:

Race.....

Sex.....

Date of birth.....

Height.....

Weight.....

Eye color.....

Hair color.....

Distinguishing marks or scars.....

13.5. Aliases of the respondent:

14.6. The respondent is associated with the vulnerable adult as follows:

15.7. The following describes any other cause of action currently pending between the petitioner and the respondent, any proceeding under chapter 744 concerning the vulnerable adult, and any previous or pending attempts by the petitioner to obtain an injunction for protection against exploitation of the vulnerable adult in this or any other circuit; related case numbers, if available; and the results of any such attempts:
.....

16.8. The following describes the petitioner’s knowledge of any reports made to a government agency, including, but not limited to, the Department of Elderly Affairs, the Department of Children and Families, and the adult protective services program relating to the abuse, neglect, or exploitation of the vulnerable adult; any investigations performed by a government agency relating to abuse, neglect, or exploitation of the vulnerable adult; and the results of any such reports or investigations:

17.9. The petitioner knows the vulnerable adult is either a victim of exploitation or the petitioner has reasonable cause to believe the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation because the respondent has: ...(describe in the spaces below the incidents or threats of exploitation)....

18.10. The following describes the petitioner’s knowledge of the vulnerable adult’s dependence on the respondent for care; alternative provisions for the vulnerable adult’s care in the absence of the respondent, if necessary; available resources the vulnerable adult has to access such alternative provisions; and the vulnerable adult’s willingness to use such alternative provisions:

19.11. The petitioner knows the vulnerable adult maintains assets, accounts, or lines of credit at the following financial institution(s): ...(list name, address, and account number of each)....

20.12. The petitioner believes that the vulnerable adult’s assets to be frozen are: ...(mark one)....

.....Worth less than \$1500;

.....Worth between \$1500 and \$5000; or

.....Worth more than \$5000.

21.13. The petitioner genuinely fears imminent exploitation of the vulnerable adult by the respondent.

22.14. The petitioner seeks an injunction for the protection of the vulnerable adult, including: ...(mark appropriate section or sections)....

.....Prohibiting the respondent from having any direct or indirect contact with the vulnerable adult.

.....Immediately restraining the respondent from committing any acts of exploitation against the vulnerable adult.

.....Freezing the assets of the vulnerable adult held at ...(name and address of depository or financial institution)... even if titled jointly with the respondent, or in the respondent’s name only, in the court’s discretion.

.....Freezing the credit lines of the vulnerable adult at ...(name and address of financial institution)... even if jointly with the respondent, in the court’s discretion.

.....Providing any terms the court deems necessary for the protection of the vulnerable adult or his or her assets, including any injunctions or directives to law enforcement agencies.

23.15. Should the court enter an injunction freezing assets and credit lines, the petitioner believes that the critical expenses of the vulnerable adult will be paid for or provided by the following persons or entities, or the petitioner requests that the following expenses be paid notwithstanding the freeze: ...(for each expense, list the name of the payee, address, account number if known, amount, and a brief explanation of why payment is critical)....

(5) TEMPORARY INJUNCTION; SERVICE; HEARING.—

(d) An ex parte temporary injunction may be effective for a fixed period not to exceed 15 days unless good cause is shown to extend the injunction. The ex parte temporary injunction may be extended one time for up to an additional 30 days. A full hearing, as provided by this section, must be set for a date no later than the date when the ex parte temporary injunction ceases

~~to be effective. The court may grant a continuance of the hearing, before or during the hearing, for good cause shown by any party, which good cause may include a continuance to obtain service of process. An ex parte injunction is not extended beyond the initial 15 days as a result of a continuance.~~

Section 9. This act shall take effect July 1, 2021.

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.