

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 607 w/CS Assets Held in Benefit Plans

SPONSOR(S): Rep. Altman

TIED BILLS: IDEN./SIM. BILLS: SB 1486

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	17 Y, 0 N w/CS	Thomas	Havlicak
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill addresses several areas relating to assets held in benefit plans to:

- Expand upon an existing exemption from legal process for money paid into the Prepaid College Trust Fund or Medical Savings Accounts. The bill expands the exemption to include assets in qualified tuition programs, medical savings accounts, and Coverdell education savings accounts.
- Revise provisions in the Florida Uniform Transfers to Minors Act to expand the definition of “benefit plan;” create a definition of “qualified minor’s trust;” include benefit plans in the types of property that a custodian may be named to receive on behalf of a minor; allow a benefit plan to be transferred to a custodian of a minor who does not have a conservator; increase the monetary limitation, from \$10,000 to \$15,000, whereby property can be transferred to an adult member of the minor’s family or to a trust company, when there is no conservator; and allow a minor’s custodian, without a court order, to transfer custodial property to a qualified minor’s trust.
- Provide for the disposition of death benefits under a benefit plan.
- Revise provisions relating to the powers of natural guardians on behalf of their minor children.

The bill does not appear to have a fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0607a.ju.doc

DATE: March 4, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

The bill addresses several areas relating to assets held in benefit plans. These areas are:

- Expansion upon an existing exemption from legal process for money paid into the Prepaid College Trust Fund or Medical Savings Accounts;
- Revision of provisions in the Florida Uniform Transfers to Minors Act;
- Disposition of death benefits under a benefit plan; and
- Powers of natural guardians on behalf of their minor children.

Section 1 – Relating to Exemption of Certain Assets from Legal Process

The bill expands upon an existing exemption from legal process for money paid into the Prepaid College Trust Fund or Medical Savings Accounts. The bill expands the exemption to include assets in qualified tuition programs, medical savings accounts, and Coverdell education savings accounts. Specifically, Floridians will be allowed to contribute to an educational savings account sponsored by any other state, and prepay a tuition contract offered by any other state, and still receive the benefit of the exemption from legal process. Legal process includes attachment and garnishment in favor of any creditor of the purchaser or the beneficiary of the account.¹

The exemption is broadened under the bill to prohibit both creditors and claimants from effectuating legal process against these educational or medical savings accounts and protects a program participant, purchaser, owner, contributor, or beneficiary. Presently, the exemption is limited to any creditor of the purchaser or beneficiary. The list of types of legal process is expanded to include levy, in addition to attachment and garnishment.

Florida, as many other states, has opted out of exemptions from legal process provided in the federal Bankruptcy Code.² Therefore, the Florida law on exemptions from creditor’s actions applies and

¹ Section 222.22(1), F.S.

² Section 222.20, F.S.

operates independently of bankruptcy provisions. Chapter 222, F.S., currently exempts, without limitation, from garnishment, attachment, and other legal process by creditors the following:

- Certain disposable earnings of a head of family (s. 222.11, F.S.).
- The proceeds of a life insurance policy (s. 222.13, F.S.).
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract (s. 222.14, F.S.).
- Disability benefits payable from any insurance (s. 222.18, F.S.).
- Pension, retirement, or profit sharing benefits (s. 222.21, F.S.).
- Prepaid College Trust Fund moneys and medical savings account funds (s. 222.22, F.S.).
- A debtor's interest in a motor vehicle, up to \$1,000 in value (s. 222.25, F.S.).
- The debtor's interest in any professionally prescribed health aids (s. 222.25, F.S.).
- Social security benefits, unemployment compensation or public assistance benefits (e.g., AFDC, WIC, and food stamps); veterans' benefits; disability, illness or unemployment benefits; alimony, support or separate maintenance; and stock or pension plans under specified circumstances (s. 222.201, F.S., recognizing a subclass of property for federal exemptions under 11 U.S.C. s. 522(d)(10)).

Exemption for Education Accounts

The Legislature established the Florida Prepaid College Program in 1987³ and the Florida College Savings Program in 1999⁴ for the purpose of promoting educational opportunities at postsecondary institutions. The Legislature has exempted these programs from legal process⁵ and from claims of probate creditors.⁶ Since the inception of these two programs, Congress has expanded the tax benefits under the Internal Revenue Code to allow for the creation of other qualified prepaid education programs and education savings accounts such as the Coverdell Education Savings Account.⁷ A Coverdell Education Account, formerly known as an education individual retirement account (IRA), is an established account to which a maximum of \$2000 may be contributed annually for the funding of education expenses of a designated beneficiary through subsequent tax-free earnings.⁸ The benefit applies to elementary, secondary, and higher education expenses.

Congress also amended the federal tax law to exclude from income a distribution from a qualified tuition program.⁹ This benefit is effective beginning in the tax year 2004.¹⁰ Both states and eligible education institutions can establish and maintain qualified tuition programs to which a person can prepay or contribute for purposes of a qualified student's education. An eligible education institution includes a college, university, vocational school, or other postsecondary institution eligible to participate in a student aid program administered by the Department of Education. This also includes all accredited public, nonprofit, and proprietary (private profit-making) post secondary schools.

³ See ch. 87-132, L.O.F.; s. 240.551, F.S. (now s. 1009.98, F.S.). Under the Florida Prepaid College Program, a purchaser or a person who agrees to make or is obligated to advance registration or dormitory housing payments enters into an advance payment contract with the Florida Prepaid College Board.

⁴ See ch. 99-220, L.O.F.; s. 240.553, F.S. (now s. 1009.981, F.S.). Under the Florida College Savings Program, a benefactor enters into a participation agreement for a savings program for a designated beneficiary.

⁵ Section 222.22, F.S.

⁶ Section 731.402, F.S.

⁷ See s. 530, Internal Revenue Code of 1986, as amended.

⁸ See Tax Benefits for Education, ch. 7, Pub 970, Department of Treasury (2003).

⁹ See s. 529, Internal Revenue Code of 1986, as amended.

¹⁰ See Tax Benefits for Education, ch. 8, Pub 970, Department of Treasury (2003).

Exemptions for Medical Savings Accounts

Federal law allows a taxable income deduction for the aggregate amount a person pays into an Archer Medical Savings Account during the taxable year.¹¹ The term “Archer MSA” is defined as a trust created or organized in the United States as a medical savings account exclusively for the purpose of paying the qualified medical expenses of the account holder, but only if the written governing instrument creating the trust meets certain criteria. Only self-employed persons or employers with less than 50 employees could contribute to these accounts. Florida law currently exempts from legal process moneys paid into a medical savings account.¹²

Sections 2, 3, 4, and 5 – Relating to Florida’s Uniform Transfers to Minors Act

Chapter 710, F.S., is the Florida Uniform Transfers to Minors Act (UTMA).¹³ Custodianships, guardianships and trusts are three different ways under Florida law to make gifts to minors. Accounts under the Florida Uniform Transfers to Minors Act are set up as custodianships.¹⁴ The Act allows the transfer of property during the donor’s lifetime or by will to a custodian for the benefit of a person under age 21.¹⁵ The donor may transfer all types of property under the Act.¹⁶ Examples of the types of property that can be transferred include stocks, bonds, money held by a financial institution, life insurance policies, endowment policies, annuity contracts, and interests in real estate, automobiles or other tangible personal property.

A custodial gift to a person under age 21 is irrevocable and the custodian has the right to invest the custodial property.¹⁷ The custodian has the discretion to pay the custodial property to the minor or to spend it for the benefit of the minor to the extent the custodian deems advisable.¹⁸ If the custodian does not use the property for the minor, the minor, if at least 14 years of age, or the minor’s guardian, or an interested party may ask a court to order the custodian to use so much of the property as the court considers advisable for the use and benefit of the minor.¹⁹ When the minor reaches age 21, the custodian must give that person the custodial property.²⁰

The custodian has a duty to invest the custodial property wisely.²¹ A custodian must also keep detailed and accurate records of all investments, income and expenses.²² A custodian of property is entitled to reimbursement for the custodian’s expenses and may also be paid for his, her or its time and services.²³

Chapter 710, F.S., does not include a definition of “qualified minor’s trust.” It has been reported that this is a term with specific meaning under the Internal Revenue Code and an express definition of “qualified minor’s trust” is necessary to compliment the proposed changes made by the bill to s.

¹¹ See s. 220, I.R.C. 1986, as amended

¹² Section 222.22, F.S.

¹³ The Act was created in 1985 and replaced Florida’s Gifts to Minors Act. Chapter 85-95, L.O.F.

¹⁴ Section 710.111, F.S.

¹⁵ “Minor” is defined as anyone under the age of 21. Section 710.102(11), F.S.

¹⁶ “Custodial property” is defined as any interest in property and any proceeds derived from that interest in property.

Section 710.102(6), F.S.

¹⁷ Section 710.113(2), F.S.

¹⁸ Section 710.116, F.S.

¹⁹ Section 710.116(2), F.S.

²⁰ Section 710.123, F.S.

²¹ Section 710.114, F.S.

²² Section 710.114(5), F.S.

²³ Section 710.117, F.S.

710.116, F.S., authorizing a custodian, without court order, to transfer all or part of the minor's custodial property to a "qualified minor's trust."²⁴

"Benefit plan" is presently defined as "an employer's plan for the benefit of an employee or partner."²⁵ The definition of "benefit plan" does not expressly refer to individual retirement accounts (IRA) and other types of benefit plans. It has been reported that changes to UTMA are necessary to provide an appropriate definition of "benefit plan" to include all available types of plans.²⁶

Current law does not authorize the custodian under a UTMA account to transfer, without court order, all or part of the minor's custodial property to a qualified minor's trust. It has been reported that a qualified minor's trust is an appropriate alternative use of the minor's custodial property and will enable additional estate and tax planning alternatives for the benefit of the minor.²⁷

Proposed Changes

Section 2 of the bill amends s. 710.102, F.S., to revise the existing definition of "benefit plan" to include a retirement plan which includes, but is not limited to, any pension, profit sharing, stock-bonus, stock-ownership plan, or individual retirement accounts. Section 2 of the bill also provides a definition of the term "qualified minor's trust." to mean a trust that meets the requirements of s. 2503(c) of the Internal Revenue Code.²⁸

Section 3 and section 4 of the bill amend s. 710.104(1), F.S., and s. 710.108, F.S., to clarify and confirm that a benefit plan may be transferred to a custodian for the benefit of a minor pursuant to s. 710.111, F.S. The change provides that a person having the right to designate the recipient of property transferable upon the occurrence of a future event may nominate a custodian to receive the property in a benefit plan. Section 4 of the bill also amends s. 710.108(3), F.S., to increase the monetary limitation, from \$10,000 to \$15,000, whereby property can be transferred to an adult member of the minor's family or to a trust company, when there is no conservator.

Section 5 of the bill amends s. 710.116, F.S., to enable the custodian, without court order, to transfer all or part of the minor's custodial property to a qualified minor's trust for the benefit of the minor. This change is intended to enable additional estate and tax planning alternatives for the benefit of the minor.

Section 6 – Relating to Disposition of Death Benefits Under a Benefit Plan

Chapter 733, F.S., provides for the administration of estates. Part VIII of ch. 733, F.S., provides special provisions for distribution. Section 733.808, F.S., provides for the distribution of death benefits and authorizes naming a living trust or testamentary trust as beneficiary to receive proceeds from any life insurance policy, pension, stock bonus or profit sharing plan, annuity or endowment contract and health

²⁴ Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper on Proposed Bill for Chapter 710* (on file with the Committee on Judiciary).

²⁵ Section 710.102(2), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 2503(c) of the Code provides:

Transfer for the Benefit of a Minor.--No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom--

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended--

(A) pass to the donee on his attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c).

and accident policy. Section 733.808, F.S., does not allow for a trust to be named as a beneficiary of a stock ownership plan or individual retirement account.

Proposed Changes

Section 6 of the bill amends s. 733.808, F.S., to expand the category of retirement plan proceeds which may be made payable to trusts to include stock ownership plans and individual retirement accounts. The change is consistent with the change being made by the bill to s. 710.102, F.S. which amends the definition of "benefit plan" to include any pension, profit-sharing, stock-bonus, stock ownership plan or individual retirement account.

Section 7 – Relating to Powers of Natural Guardians on Behalf of Their Minor Children

Chapter 744, F.S., provides for Florida's guardianship laws. Part III of ch. 744, F.S., provides for the different types of guardianships. Section 744.301, F.S., provides for the authority of natural guardians on behalf of their minor children.²⁹ Natural guardians are authorized, on behalf of their minor children, to settle any claim for damages to a minor child or their property and to receive and manage the proceeds of any such settlement and any other real or personal property distributed from an estate, trust, or life insurance policy accruing to the benefit of the child during minority when the amount involved does not exceed \$15,000, without needing to be appointed as custodian or without having to post a bond.³⁰ All instruments executed by a natural guardian are binding on the minor child.³¹ In cases where a claim is for more than \$15,000, a court may appoint a guardian ad litem to represent the minor's interests.³² In cases where the settlement exceeds \$25,000 the court must appoint a guardian ad litem to represent the minor's interests.³³

Proposed Changes

Section 7 of the bill amends s. 744.301(2), F.S., to make changes similar to those made to the Uniform Transfers to Minors Act by this bill (ss. 710.102, 710.104, and 710.108, F.S.). The changes authorize a natural custodian to collect, receive, manage, dispose of, and make elections regarding property distributed from the trust, proceeds from a life insurance policy or annuity contract, and proceeds from a benefit plan on behalf of their minor child. The change will authorize a natural guardian to receive IRA's either created for the benefit of a minor or of which the minor is a beneficiary.

C. SECTION DIRECTORY:

Section 1: Amends s. 222.22, F.S., relating to the protection of funds in the Prepaid College Trust Fund or in Medical Savings Accounts from legal process.

Section 2: Amends s. 710.102, F.S., relating to definitions pertaining to the Florida Uniform Transfers to Minors Act.

²⁹ Section 744.301(1), F.S., provides that the "mother and father jointly are natural guardians of their own children and of their adopted children, during minority. If one parent dies, the natural guardianship shall pass to the surviving parent, and the right shall continue even though the surviving parent remarries. If the marriage between the parents is dissolved, the natural guardianship shall belong to the parent to whom the custody of the child is awarded. If the parents are given joint custody, then both shall continue as natural guardians. If the marriage is dissolved and neither the father nor the mother is given custody of the child, neither shall act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise."

³⁰ Section 744.301(2), F.S.

³¹ Section 744.301(3), F.S.

³² Section 744.301(4)(a), F.S.

³³ *Id.*

Section 3: Amends s. 710.104, F.S., relating to the nomination of a custodian to receive property on behalf of a minor.

Section 4: Amends s. 710.108, F.S., relating to the transfer of property by an obligor to a minor not having a conservator.

Section 5: Amends s. 710.116, F.S., relating to the use of property held by a custodian on behalf of a minor.

Section 6: Amends s. 733.808, F.S., relating to the distribution of death benefits on behalf of a minor.

Section 7: Amends s. 744.301, F.S., relating to the authority of a natural guardian on behalf of a minor.

Section 8: Provides that the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local governments' revenues.

2. Expenditures:

The bill does not appear to have any impact on local governments' expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides greater protection for savings accounts which have been created for important public policy purposes – education and medical care. It is anticipated that the bill will create expanded opportunities for the beneficiaries of these accounts to take advantage of their intended purposes. The ability to take advantage of more flexible trust and benefit plan provisions on behalf of minors could result in better distributions and tax situations for beneficiaries.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create the need for rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

An amendment was adopted in the Committee on Judiciary on March 3, 2004, which substantially revised the bill. The amendment did not affect the provisions of the bill as filed, but added several additional provisions to the bill. These provisions, which are discussed in detail in the body of this analysis, are:

- Revising the Florida Uniform Transfers to Minors Act to expand the definition of "benefit plan;" create a definition of "qualified minor's trust;" include benefit plans in the types of property that a custodian may be named to receive on behalf of a minor; allow a benefit plan to be transferred to a custodian of a minor who does not have a conservator; increase the monetary limitation, from \$10,000 to \$15,000, whereby property can be transferred to an adult member of the minor's family or to a trust company, when there is no conservator; and allow a minor's custodian, without a court order, to transfer custodial property to a qualified minor's trust.
- Providing for the disposition of death benefits under a benefit plan.
- Revising provisions relating to the powers of natural guardians on behalf of their minor children.