

1                                   A bill to be entitled  
2           An act relating to the Florida Uniform Fiduciary  
3           Income and Principal Act; amending s. 738.101, F.S.;  
4           revising a short title; amending s. 738.102, F.S.;  
5           revising and providing definitions governing ch. 738,  
6           F.S.; amending s. 738.103, F.S.; specifying the scope  
7           of ch. 738, F.S.; amending s. 738.104, F.S.;  
8           specifying circumstances under which ch. 738, F.S.,  
9           applies to a trust; repealing s. 738.1041, F.S.,  
10          relating to total return unitrusts; repealing s.  
11          738.105, F.S., relating to judicial control of  
12          discretionary powers; amending s. 738.201, F.S.;  
13          specifying the duties of a fiduciary; providing that a  
14          fiduciary's allocation, determination, or exercise of  
15          discretion is presumed to be fair and reasonable to  
16          all beneficiaries; requiring a fiduciary to take  
17          specified actions; authorizing a fiduciary to exercise  
18          discretionary power of administration under specified  
19          circumstances; requiring the fiduciary to consider  
20          specified factors before exercising such discretionary  
21          power; providing for applicability; amending s.  
22          738.202, F.S.; defining the term "fiduciary decision";  
23          prohibiting a court from ordering a fiduciary to  
24          change his or her decision unless the decision was an  
25          abuse of discretionary power; prohibiting a court from

26 determining that a fiduciary abused its discretion  
27 under specified conditions; authorizing a court to  
28 order a specified remedy; authorizing a court to  
29 determine whether a proposed fiduciary decision will  
30 result in an abuse of discretion; providing that a  
31 beneficiary who opposes a proposed decision has the  
32 burden to establish that such decision is an abuse of  
33 discretion; requiring that any attorney fees incurred  
34 in defending an action related to the abuse of a  
35 fiduciary's discretion be paid from trust assets;  
36 creating s. 738.203, F.S.; authorizing a fiduciary to  
37 adjust between income and principal if such adjustment  
38 assists in administering the trust or estate  
39 impartially; providing construction; providing that a  
40 fiduciary is not liable to another for an adjustment,  
41 or failure to adjust, between income and principal  
42 made in good faith; requiring a fiduciary to consider  
43 certain relevant factors when considering such  
44 adjustment; prohibiting a fiduciary from exercising or  
45 considering such adjustment if certain conditions  
46 exist; revising applicability; authorizing a fiduciary  
47 to release or delegate to a cofiduciary specified  
48 powers to adjust under specified conditions; providing  
49 requirements and powers for any such releases and  
50 delegations; providing applicability; requiring that

51 the description of an exercise of the power to adjust  
52 between income and principal contain specified  
53 information; amending s. 738.301, F.S.; defining  
54 terms; amending s. 738.302, F.S.; specifying  
55 applicability of specified provisions; authorizing the  
56 conversion of an income trust to a unitrust;  
57 restricting provisions to trusts that are  
58 beneficiaries of an estate; providing construction;  
59 providing that a fiduciary acting in good faith is not  
60 liable to a person affected by a certain action or  
61 inaction; amending s. 738.303, F.S.; specifying the  
62 authority of a fiduciary with respect to the  
63 administration of certain trusts; providing the  
64 circumstances under which a fiduciary may perform such  
65 actions; authorizing a beneficiary or a fiduciary to  
66 request the court to allow the beneficiary or  
67 fiduciary to take a specified action; requiring a  
68 fiduciary to inform specified persons of a decision to  
69 take action; authorizing a beneficiary to request a  
70 court to direct the fiduciary to take the requested  
71 action under specified circumstances; requiring  
72 fiduciaries to consider specified factors before  
73 taking a certain action; authorizing a fiduciary to  
74 release or delegate the power to take certain actions;  
75 creating s. 738.304, F.S.; requiring a certain notice

76 | to be sent to specified parties; providing  
 77 | applicability; authorizing a person to consent to a  
 78 | specified action in a record; providing that such  
 79 | person does not need to be sent notice of such action;  
 80 | providing requirements for such notices; creating s.  
 81 | 738.305, F.S.; requiring a fiduciary of a unitrust to  
 82 | follow a certain policy; providing rules for a  
 83 | unitrust policy; providing additional actions a  
 84 | unitrust policy may contain; creating s. 738.306,  
 85 | F.S.; requiring a unitrust rate to be within a  
 86 | specified range; authorizing a unitrust policy to  
 87 | provide for specified limits within such range;  
 88 | requiring a fiduciary who is a non-independent person  
 89 | to use a specified unitrust rate; creating s. 738.307,  
 90 | F.S.; requiring a unitrust policy to provide a  
 91 | specified method for determining fair market value of  
 92 | an asset in determining a unitrust amount; authorizing  
 93 | specified unitrust policies to provide methods for  
 94 | determining a certain net fair market value;  
 95 | prohibiting certain property from being included in  
 96 | the determination of the value of a trust; creating s.  
 97 | 738.308, F.S.; requiring a unitrust policy to provide  
 98 | a specified period; specifying that such period must  
 99 | be a calendar year; authorizing a unitrust policy to  
 100 | provide certain standards for periods; creating s.

101 738.309, F.S.; providing applicability; authorizing a  
102 trustee of an express unitrust to determine the  
103 unitrust amount by reference to the net fair market  
104 value of the unitrust's assets in a specified  
105 timeframe; providing that distribution of a unitrust  
106 amount is considered a distribution of all the net  
107 income of an express unitrust and is considered an  
108 income interest; specifying that the unitrust amount  
109 is considered a reasonable apportionment of the total  
110 return of the express unitrust; providing that an  
111 express unitrust that allows a distribution in excess  
112 of a specified unitrust rate is considered a  
113 distribution of all of the income of the unitrust;  
114 authorizing an express unitrust to provide a mechanism  
115 for changing the unitrust rate and for conversion from  
116 a unitrust to an income trust or from an income trust  
117 to a unitrust; specifying that unless an express  
118 unitrust prohibits the power to change the rate or  
119 convert the trust, the trustee has such power;  
120 authorizing the governing instrument of an express  
121 unitrust to grant the trustee discretion to adopt a  
122 certain practice; specifying that unless an express  
123 unitrust provides otherwise, the distribution of an  
124 amount is considered a distribution from specified  
125 sources in a specified order of priority; authorizing

126 a governing instrument of an express unitrust to allow  
127 exclusion of specified assets; providing that the use  
128 of such assets may be considered equivalent to income  
129 or to the unitrust amount; creating s. 738.310, F.S.;  
130 requiring a trustee, after the conversion of an income  
131 trust to a unitrust, to consider the unitrust amount  
132 paid from certain sources in a specified order of  
133 priority; amending s. 738.401, F.S.; defining terms;  
134 specifying that an attribute or action of an entity  
135 includes an attribute or action from any other entity  
136 in which the initial entity has an ownership interest  
137 or holds another interest; requiring a fiduciary to  
138 allocate certain money and tangible personal property  
139 to income; requiring a fiduciary to allocate specified  
140 property and money to principal; providing that  
141 certain money received in an entity distribution is a  
142 capital distribution in specified circumstances;  
143 specifying that in cases of capital distribution, the  
144 amount received in an entity distribution must be  
145 reduced to the extent that cumulative distributions  
146 from the entity to the fiduciary are within certain  
147 ranges; authorizing a fiduciary to consider additional  
148 information before deciding to make or change a  
149 decision to make a payment to a beneficiary; providing  
150 that if a fiduciary receives specified additional

151 information after a distribution to a beneficiary, the  
152 fiduciary is not required to change or recover the  
153 payment; authorizing a fiduciary in such a situation  
154 to exercise other specified powers; revising  
155 definitions; requiring a fiduciary to allocate certain  
156 money and property to principal; providing the  
157 mechanism for such allocation; defining the term  
158 "public entity"; conforming provisions to changes made  
159 by the act; amending s. 738.402, F.S.; conforming  
160 provisions to changes made by the act; amending s.  
161 738.403, F.S.; providing applicability; authorizing a  
162 fiduciary to make certain determinations separately  
163 and differently from the decisions concerning  
164 distributions of income or principal; conforming  
165 provisions to changes made by the act; making  
166 technical changes; creating s. 738.404, F.S.;  
167 specifying receipts that a fiduciary must allocate to  
168 principal; creating s. 738.405, F.S.; providing for  
169 the allocation of income from rental property;  
170 creating s. 738.406, F.S.; specifying applicability;  
171 requiring a fiduciary to allocate to income certain  
172 amounts received as interest; requiring a fiduciary to  
173 allocate to income increments in value of certain  
174 bonds or other obligations; creating s. 738.407, F.S.;  
175 specifying applicability; requiring a fiduciary to

176 allocate proceeds from insurance policies or contracts  
177 to principal in a specified manner; creating s.  
178 738.408, F.S.; specifying circumstances under which a  
179 fiduciary may allocate an insubstantial allocation to  
180 principal, subject to certain conditions and  
181 limitations; creating s. 738.409, F.S.; defining  
182 terms; specifying the manner in which a fiduciary may  
183 determine incomes of separate funds; providing duties  
184 of a fiduciary of a marital trust and other trusts;  
185 requiring a fiduciary of a nonseparate fund to  
186 calculate internal income in a specified manner;  
187 providing construction; transferring, renumbering, and  
188 amending s. 738.603, F.S.; revising the definition of  
189 the term "liquidating asset"; providing applicability;  
190 requiring a fiduciary to allocate to income and  
191 principal the receipts produced by liquidating assets  
192 in a certain manner; transferring, renumbering, and  
193 amending s. 738.604, F.S.; requiring a fiduciary to  
194 allocate the receipts from interests in minerals,  
195 water, or other natural resources to income,  
196 principal, or between income and principal under  
197 specified conditions; revising applicability;  
198 providing that an allocation between income and  
199 principal from a receipt from a natural resource is  
200 presumed equitable under a specified condition;

201 providing construction; transferring, renumbering, and  
202 amending s. 738.605, F.S.; requiring a fiduciary to  
203 allocate receipts from timber to income, principal, or  
204 between income and principal under specified  
205 conditions; revising applicability; transferring,  
206 renumbering, and amending s. 738.606, F.S.;  
207 authorizing a settlor's spouse to require the trustee  
208 of a trust that receives certain property to make such  
209 property produce income under specified conditions;  
210 authorizing the trustee to take specified actions if  
211 directed by such spouse; providing that the trustee  
212 decides whether to take one or a combination of such  
213 actions; revising applicability; providing  
214 construction; transferring, renumbering, and amending  
215 s. 738.607, F.S.; revising the definition of the term  
216 "derivative"; requiring a fiduciary to allocate  
217 specified percentages of certain receipts and  
218 disbursements to income and allocate the balance to  
219 principal; providing construction; requiring certain  
220 fiduciaries to allocate a specified percentage to  
221 income and allocate the balance to principal of  
222 certain amounts; transferring, renumbering, and  
223 amending s. 738.608, F.S.; requiring a fiduciary to  
224 allocate to income a receipt from or related to asset-  
225 backed securities under a specified condition;

226 requiring a fiduciary to allocate to income a  
227 specified percentage of receipts from the transaction  
228 and the disbursement of a payment received as a result  
229 of an interest in an asset-backed security; conforming  
230 provisions to changes made by the act; creating s.  
231 738.416, F.S.; requiring a fiduciary to make specified  
232 allocations from receipts from other financial  
233 instruments or arrangements; providing construction;  
234 amending s. 738.501, F.S.; specifying the manner by  
235 which a fiduciary must make disbursements from income;  
236 amending s. 738.502, F.S.; specifying the manner by  
237 which a fiduciary must make disbursements from  
238 principal; amending s. 738.503, F.S.; defining the  
239 term "depreciation"; specifying the manner by which a  
240 fiduciary may make transfers from income to principal  
241 to account for depreciation; amending s. 738.504,  
242 F.S.; specifying the manner by which a fiduciary may  
243 make transfers from principal to income for  
244 reimbursements; transferring, renumbering, and  
245 amending s. 738.704, F.S.; providing that a fiduciary  
246 that makes or expects to make a certain principal  
247 disbursement may transfer an appropriate amount from  
248 income to principal in one or more accounting periods;  
249 providing applicability; making technical changes;  
250 deleting a provision relating to payments necessary to

251 avoid defaulting on a mortgage or security interest on  
252 certain property; transferring, renumbering, and  
253 amending s. 738.705, F.S.; revising the sources from  
254 which a fiduciary must pay a tax required by a share  
255 of an entity's taxable income; requiring a fiduciary  
256 to adjust income or principal receipts if the taxes  
257 paid are reduced due to a deduction for a payment made  
258 to a beneficiary; providing construction; making  
259 technical changes; transferring, renumbering, and  
260 amending s. 738.706, F.S.; revising the circumstances  
261 under which a fiduciary may make adjustments between  
262 income and principal to offset shifts in the economic  
263 interests or tax benefits of specified beneficiaries;  
264 requiring a fiduciary to charge a beneficiary to  
265 reimburse the principal if the beneficiary benefits  
266 from an applicable tax deduction; requiring the share  
267 of reimbursement for each fiduciary or beneficiary to  
268 be the same as its share of the decrease in income  
269 tax; authorizing such fiduciary to charge a  
270 beneficiary to offset the estate tax by obtaining  
271 payment from the beneficiary, withholding an amount  
272 from future distributions, or adopting another method  
273 or combination of methods; creating s. 738.508, F.S.;  
274 defining terms; specifying the manner by which  
275 property expenses are apportioned between a tenant and

276 remainderman; providing applicability and  
277 construction; amending s. 738.601, F.S.; providing  
278 applicability; specifying the manner by which a  
279 fiduciary determines and distributes net income;  
280 providing circumstances under which a fiduciary may  
281 not reduce certain principal or income receipts;  
282 amending s. 738.602, F.S.; providing that certain  
283 beneficiaries of non-unitrusts are entitled to receive  
284 a specified share of net income; providing that  
285 certain requirements apply in determining a  
286 beneficiary's share of net income; providing  
287 construction; amending s. 738.701, F.S.; providing  
288 that an income beneficiary is entitled to net income  
289 when an asset is subject to a certain trust or  
290 successive interest; providing that an asset becomes  
291 subject to a specified trust on certain dates;  
292 amending s. 738.702, F.S.; specifying the manner by  
293 which a fiduciary allocates certain receipts and makes  
294 disbursements when a decedent dies or income interest  
295 begins; providing construction; amending s. 738.703,  
296 F.S.; defining the term "undistributed income";  
297 specifying the manner by which a fiduciary makes  
298 allocations of undistributed income when income  
299 interest ends; amending s. 738.801, F.S.; providing  
300 for uniform application and construction of the act;

301 amending s. 738.802, F.S.; providing construction in  
 302 relation to federal law; amending s. 738.803, F.S.;  
 303 making a technical change; amending s. 738.804, F.S.;  
 304 revising application of ch. 738, F.S., to conform to  
 305 changes made by the act; providing an effective date.  
 306

307 Be It Enacted by the Legislature of the State of Florida:  
 308

309 Section 1. Section 738.101, Florida Statutes, is amended  
 310 to read:

311 738.101 Short title.—This chapter may be cited as the  
 312 "Florida Uniform Fiduciary Income and Principal ~~and Income~~ Act."

313 Section 2. Section 738.102, Florida Statutes, is amended  
 314 to read:

315 738.102 Definitions.—As used in this chapter, the term:

316 (1) "Accounting period" means a calendar year unless  
 317 ~~another 12-month period is selected by a fiduciary~~ selects  
 318 another period of 12 calendar months or approximately 12  
 319 calendar months. The term includes a part ~~portion~~ of a calendar  
 320 year or another period of 12 calendar months or approximately 12  
 321 calendar months which ~~other 12-month period that begins when an~~  
 322 ~~income interest~~ begins or ends when an income interest ends.

323 (2) "Asset-backed security," as provided in s. 738.415,  
 324 means a security that is serviced primarily by the cash flows of  
 325 a discrete pool of fixed or revolving receivables or other

326 financial assets that by their terms convert to cash within a  
 327 finite time. The term includes rights or other assets that  
 328 ensure the servicing or timely distribution of proceeds to the  
 329 holder of the asset-backed security. The term does not include  
 330 an asset to which s. 738.401, s. 738.409, or s. 738.414 applies.

331 (3) "Beneficiary" includes:

332 (a) For a trust:

333 1. A current beneficiary, including a current income  
 334 beneficiary and a beneficiary that may receive only principal;

335 2. A remainder beneficiary; and

336 3. Any other successor beneficiary;

337 (b) For an estate, an heir, and a devisee; and

338 (c) For a life estate or term interest, a person who holds  
 339 a life estate, a term interest, or a remainder or other interest  
 340 following a life estate or term interest means, in the case of a  
 341 decedent's estate, an heir or devisee and, in the case of a  
 342 trust, an income beneficiary or a remainder beneficiary.

343 (4)-(3) "Carrying value" means the fair market value at the  
 344 time the assets are received by the fiduciary. For an estate and  
 345 for a trust the estates of decedents and trusts described in s.  
 346 733.707(3), after the grantor's death, the assets are considered  
 347 received as of the date of the settlor's death. If there is a  
 348 change in fiduciaries, a majority of the continuing fiduciaries  
 349 may elect to adjust the carrying values to reflect the fair  
 350 market value of the assets at the beginning of their

351 administration. If such election is made, it must be reflected  
352 on the first accounting filed after the election. For assets  
353 acquired during the administration of the estate or trust, the  
354 carrying value is equal to the acquisition costs of the asset.  
355 Carrying value of assets should not be arbitrarily "written up"  
356 or "written down." In some circumstances, including, but not  
357 limited to, those described in ss. 738.410 and 738.602, carrying  
358 value may be adjusted with proper disclosure to reflect changes  
359 in carrying value applied in a consistent manner.

360 (5) "Court" means a circuit court of this state.

361 (6) "Current income beneficiary" means a beneficiary to  
362 which a fiduciary may distribute net income, regardless of  
363 whether the fiduciary also distributes principal to the  
364 beneficiary.

365 (7) "Distribution," "distribute," "distributed," or  
366 "distributee" means a payment or transfer by a fiduciary to a  
367 beneficiary in the beneficiary's capacity as a beneficiary,  
368 without consideration other than the beneficiary's right to  
369 receive the payment or transfer under the terms of the trust as  
370 defined in this section, or in a will, a life estate, or a term  
371 interest.

372 (8) "Estate" means a decedent's estate, including the  
373 property of the decedent as the estate is originally constituted  
374 and the property of the estate as it exists at any time during  
375 administration.

376 (9)(4) "Fiduciary" ~~includes means~~ a trustee, a trust  
 377 director as defined in s. 736.0103, or a personal  
 378 representative, and a person acting under a delegation from a  
 379 fiduciary or a trustee. The term also includes a person that  
 380 holds property for a successor beneficiary whose interest may be  
 381 affected by an allocation of receipts and expenditures between  
 382 income and principal. If there are two or more cofiduciaries,  
 383 the term includes all cofiduciaries acting under the terms of  
 384 the trust and applicable law ~~an executor, administrator,~~  
 385 ~~successor personal representative, special administrator, or a~~  
 386 ~~person performing substantially the same function.~~

387 (10)(5) "Income" means money or other property ~~that~~ a  
 388 fiduciary receives as current return from ~~a~~ principal ~~asset~~. The  
 389 term includes a part ~~portion~~ of receipts from a sale, exchange,  
 390 or liquidation of a principal asset, to the extent provided in  
 391 ss. 738.401-738.416 ~~ss. 738.401-738.403 and s. 738.503.~~

392 ~~(6)~~ "Income beneficiary" ~~means a person to whom net income~~  
 393 ~~of a trust is or may be payable.~~

394 (11)(7) "Income interest" means the right of a current ~~an~~  
 395 income beneficiary to receive all or part of net income, whether  
 396 the terms of the trust require the net income to be distributed  
 397 or authorize the net income to be distributed in the fiduciary's  
 398 ~~trustee's~~ discretion. The term includes the right of a current  
 399 beneficiary to use property held by a fiduciary.

400 (12) "Independent person" means a person who is not:

401        (a) For a trust:  
 402            1. A qualified beneficiary as defined in s. 736.0103;  
 403            2. A settlor of the trust;  
 404            3. An individual whose legal obligation to support a  
 405 beneficiary may be satisfied by a distribution from the trust;  
 406 or  
 407            4. Any trustee whom an interested distributee has the  
 408 power to remove and replace with a related or subordinate party.  
 409        (b) For an estate, a beneficiary;  
 410        (c) A spouse, a parent, a brother, a sister, or an issue  
 411 of an individual described in paragraph (a) or paragraph (b);  
 412        (d) A corporation, a partnership, a limited liability  
 413 company, or another entity in which persons described in  
 414 paragraphs (a), (b), and (c), in the aggregate, have voting  
 415 control; or  
 416        (e) An employee of a person described in paragraph (a),  
 417 paragraph (b), paragraph (c), or paragraph (d).  
 418        (13) "Internal Revenue Code" means the Internal Revenue  
 419 Code of 1986, as amended.  
 420        (14)-(8) "Mandatory income interest" means the right of a  
 421 current ~~an~~ income beneficiary to receive net income that the  
 422 terms of the trust require the fiduciary to distribute.  
 423        (15)-(9) "Net income" means the total allocations ~~receipts~~  
 424 ~~allocated to income~~ during an accounting period to income under  
 425 the terms of a trust and this chapter minus the disbursements

426 ~~made from income~~ during the period, other than distributions,  
427 allocated to income under the terms of the trust and this  
428 chapter. To the extent that the trust is a unitrust under ss.  
429 738.301-738.310, the term means the unitrust amount determined  
430 under ss. 738.301-738.310. The term includes the amount of an  
431 adjustment from principal to income under s. 738.203. The term  
432 does not include the amount of an adjustment ~~plus or minus~~  
433 ~~transfers under this chapter to or~~ from income to principal  
434 under s. 738.203 during the period.

435 ~~(16)-(10)~~ "Person" means an individual, a business or a  
436 nonprofit entity, corporation, business trust, an estate, a  
437 trust, partnership, limited liability company, association,  
438 joint venture, a public corporation, or any other legal or  
439 ~~commercial entity or~~ a government or governmental subdivision,  
440 agency, or instrumentality, or other legal entity.

441 ~~(17)~~ "Personal representative" means an executor, an  
442 administrator, a successor personal representative, a special  
443 administrator, or a person that performs substantially the same  
444 function with respect to an estate under the law governing the  
445 person's status.

446 ~~(18)-(11)~~ "Principal" means property held in trust for  
447 distribution to, production of income for, or use by a current  
448 or successor ~~a remainder beneficiary when the trust terminates.~~

449 ~~(19)~~ "Record" means information inscribed on a tangible  
450 medium or stored in an electronic or other medium and is

451 retrievable in perceivable form.

452 (20) "Settlor" means a person, including a testator, who  
453 creates or contributes property to a trust. If more than one  
454 person creates or contributes property to a trust, the term  
455 includes each person, to the extent of the trust property  
456 attributable to that person's contribution, except to the extent  
457 that another person has the power to revoke or withdraw that  
458 portion.

459 (21) "Special tax benefit" means:

460 (a) Exclusion of a transfer to a trust from gifts  
461 described in s. 2503(b) of the Internal Revenue Code because of  
462 the qualification of an income interest in the trust as a  
463 present interest in property;

464 (b) Status as a qualified subchapter S trust described in  
465 s. 1361(d) (3) of the Internal Revenue Code at a time the trust  
466 holds stock of an S corporation described in s. 1361(a) (1) of  
467 the Internal Revenue Code;

468 (c) An estate or gift tax marital deduction for a transfer  
469 to a trust under s. 2056 or s. 2523 of the Internal Revenue Code  
470 which depends or depended in whole or in part on the right of  
471 the settlor's spouse to receive the net income of the trust;

472 (d) Exemption in whole or in part of a trust from the  
473 federal generation-skipping transfer tax imposed by s. 2601 of  
474 the Internal Revenue Code because the trust was irrevocable on  
475 September 25, 1985, if there is any possibility that:

476 1. A taxable distribution as defined in s. 2612(b) of the  
 477 Internal Revenue Code could be made from the trust; or

478 2. A taxable termination as defined in s. 2612(a) of the  
 479 Internal Revenue Code could occur with respect to the trust; or

480 (e) An inclusion ratio as defined in s. 2642(a) of the  
 481 Internal Revenue Code of the trust which is less than one, if  
 482 there is any possibility that:

483 1. A taxable distribution as defined in s. 2612(b) of the  
 484 Internal Revenue Code could be made from the trust; or

485 2. A taxable termination as defined in s. 2612(a) of the  
 486 Internal Revenue Code could occur with respect to the trust.

487 (22) "Successive interest" means the interest of a  
 488 successor beneficiary.

489 (23)-(12) "Successor ~~Remainder~~ beneficiary" means a person  
 490 entitled to receive income or principal or to use property when  
 491 an income interest or other current interest ends.

492 (24)-(13) "Terms of a trust" means:

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

496 1. Expressed in the will or trust instrument; or

497 2. Established by other evidence that would be admissible  
 498 in a judicial proceeding.

499 (b) The trust's provisions as established, determined, or  
 500 amended by:

501        1. A trustee or trust director in accordance with the  
 502 applicable law;  
 503        2. A court order; or  
 504        3. A nonjudicial settlement agreement under s. 736.0111.  
 505        (c) For an estate, a will; or  
 506        (d) For a life estate or term interest, the corresponding  
 507 manifestation of the rights of the beneficiaries to the extent  
 508 provided in s. 738.508 ~~the manifestation of the intent of a~~  
 509 ~~grantor or decedent with respect to the trust, expressed in a~~  
 510 ~~manner that admits of its proof in a judicial proceeding,~~  
 511 ~~whether by written or spoken words or by conduct.~~  
 512        (25) "Trust" includes an express trust, whether private or  
 513 charitable, with additions to the trust, wherever and however  
 514 created; and a trust created or determined by a judgment or  
 515 decree under which the trust is to be administered. The term  
 516 does not include a constructive trust; a resulting trust; a  
 517 conservatorship; a custodial arrangement under the Florida  
 518 Uniform Transfers to Minors Act; a business trust providing for  
 519 certificates to be issued to beneficiaries; a common trust fund;  
 520 a land trust under s. 689.071; a trust created by the form of  
 521 the account or by the deposit agreement at a financial  
 522 institution; a voting trust; a security arrangement; a  
 523 liquidation trust; a trust for the primary purpose of paying  
 524 debts, dividends, interest, salaries, wages, profits, pensions,  
 525 retirement benefits, or employee benefits of any kind; or an

526 arrangement under which a person is a nominee, an escrowee, or  
 527 an agent for another.

528 (26)-(14) "Trustee" means a person, other than a personal  
 529 representative, that owns or holds property for the benefit of a  
 530 beneficiary. The term includes an original, additional, or  
 531 successor trustee, regardless of whether they are ~~or not~~  
 532 appointed or confirmed by a court.

533 (27) "Will" means any testamentary instrument recognized  
 534 under applicable law which makes a legally effective disposition  
 535 of an individual's property, effective at the individual's  
 536 death. The term includes a codicil or other amendment to a  
 537 testamentary instrument.

538 Section 3. Section 738.103, Florida Statutes, is amended  
 539 to read:

540 (Substantial rewording of section. See  
 541 s. 738.103, F.S., for present text.)

542 738.103 Scope.—Except as otherwise provided in the terms  
 543 of a trust or this chapter, this chapter applies to all of the  
 544 following:

545 (1) A trust or an estate.

546 (2) A life estate or other term interest in which the  
 547 interest of one or more persons will be succeeded by the  
 548 interest of one or more other persons to the extent provided in  
 549 s. 738.508.

550 Section 4. Section 738.104, Florida Statutes, is amended

551 to read:

552 (Substantial rewording of section. See  
 553 s. 738.104, F.S., for present text.)

554 738.104 Governing law.—Except as otherwise provided in the  
 555 terms of a trust or this chapter, this chapter applies when this  
 556 state is the principal place of administration of a trust or  
 557 estate or the situs of property that is not held in a trust or  
 558 estate and is subject to a life estate or other term interest  
 559 described in s. 738.103(2). By accepting the trusteeship of a  
 560 trust having its principal place of administration in this state  
 561 or by moving the principal place of administration of a trust to  
 562 this state, the trustee submits to the application of this  
 563 chapter to any matter within the scope of this chapter involving  
 564 the trust.

565 Section 5. Section 738.1041, Florida Statutes, is  
 566 repealed.

567 Section 6. Section 738.105, Florida Statutes, is repealed.

568 Section 7. Section 738.201, Florida Statutes, is amended

569 to read:

570 (Substantial rewording of section. See  
 571 s. 738.201, F.S., for present text.)

572 738.201 Fiduciary duties; general principles.—

573 (1) In making an allocation or determination or exercising  
 574 discretion under this chapter, a fiduciary shall do all of the  
 575 following:

- 576        (a) Act in good faith, based on what is a fair and  
577 reasonable fee to all beneficiaries;
- 578        (b) Administer a trust or estate impartially, except to  
579 the extent that the terms of the trust manifest an intent that  
580 the fiduciary favors one or more beneficiaries;
- 581        (c) Administer the trust or estate in accordance with the  
582 terms of the trust, even if there is a different provision in  
583 this chapter.
- 584        (d) Administer the trust or estate in accordance with this  
585 chapter, except to the extent that the terms of the trust  
586 provide otherwise or authorize the fiduciary to determine  
587 otherwise.
- 588        (2) A fiduciary's allocation, determination, or exercise  
589 of discretion under this chapter is presumed to be fair and  
590 reasonable to all beneficiaries. A fiduciary may exercise a  
591 discretionary power of administration given to the fiduciary by  
592 the terms of the trust, and an exercise of the power that  
593 produces a result different from a result required or permitted  
594 by this chapter does not create an inference that the fiduciary  
595 abused the fiduciary's discretion.
- 596        (3) A fiduciary shall:
- 597        (a) Add a receipt to principal, to the extent that the  
598 terms of the trust and this chapter do not allocate the receipt  
599 between income and principal;
- 600        (b) Charge a disbursement to principal, to the extent that

601 the terms of the trust and this chapter do not allocate the  
602 disbursement between income and principal; and

603 (c) Within 65 days after the fiscal year ends, add any  
604 undistributed income to principal, unless otherwise provided by  
605 the terms of the trust.

606 (4) A fiduciary may exercise the power to adjust under s.  
607 738.203(1), convert an income trust to a unitrust under ss.  
608 738.301-738.310, change the percentage or method used to  
609 calculate a unitrust amount under ss. 738.301-738.310, or  
610 convert a unitrust to an income trust under ss. 738.301-738.310  
611 if the fiduciary determines the exercise of the power will  
612 assist the fiduciary to administer the trust or estate  
613 impartially.

614 (5) The fiduciary must consider the following factors in  
615 making the determination in subsection (4), including:

616 (a) The terms of the trust.

617 (b) The nature, distribution standards, and expected  
618 duration of the trust.

619 (c) The effect of the allocation rules, including specific  
620 adjustments between income and principal, under ss. 738.301-  
621 738.416.

622 (d) The desirability of liquidity and regularity of  
623 income.

624 (e) The desirability of the preservation and appreciation  
625 of principal.

626       (f) The extent to which an asset is used or may be used by  
627 a beneficiary.

628       (g) The increase or decrease in the value of principal  
629 assets, reasonably determined by the fiduciary.

630       (h) Whether and to what extent the terms of the trust give  
631 the fiduciary power to accumulate income or invade principal or  
632 prohibit the fiduciary from accumulating income or invading  
633 principal.

634       (i) The extent to which the fiduciary has accumulated  
635 income or invaded principal in preceding accounting periods.

636       (j) The effect of current and reasonably expected economic  
637 conditions.

638       (k) The reasonably expected tax consequences of the  
639 exercise of the power.

640       (l) The identities and circumstances of the beneficiaries.

641       (6) Except as provided in ss. 738.301-738.310, this  
642 chapter pertains to the administration of a trust and is  
643 applicable to any trust that is administered in this state or  
644 under its law. This chapter also applies to any estate that is  
645 administered in this state unless the provision is limited in  
646 application to a trustee, rather than a fiduciary.

647       Section 8. Section 738.202, Florida Statutes, is amended  
648 to read:

649       (Substantial rewording of section. See  
650 s. 738.202, F.S., for present text.)

651 738.202 Judicial review of exercise of discretionary  
652 power; request for instruction.-

653 (1) As used in this section, the term "fiduciary decision"  
654 means any of the following:

655 (a) A fiduciary's allocation between income and principal  
656 or other determination regarding income and principal required  
657 or authorized by the terms of the trust or this chapter.

658 (b) The fiduciary's exercise or nonexercise of a  
659 discretionary power regarding income and principal granted by  
660 the terms of the trust or this chapter, including the power to  
661 adjust under s. 738.203, convert an income trust to a unitrust  
662 under ss. 738.301-738.310, change the percentage of method used  
663 to calculate a unitrust amount under ss. 738.301-738.310,  
664 convert a unitrust to an income trust under ss. 738.301-738.310,  
665 or the method used to make property productive of income under  
666 s. 738.413.

667 (c) The fiduciary's implementation of a decision described  
668 in paragraph (a) or paragraph (b).

669 (2) The court may not order a fiduciary to change a  
670 fiduciary decision unless the court determines that the  
671 fiduciary decision was an abuse of the fiduciary's discretion. A  
672 court may not determine that a fiduciary abused its discretion  
673 merely because the court would have exercised the discretion in  
674 a different manner or would not have exercised the discretion.

675 (3) If the court determines that a fiduciary decision was

676 an abuse of the fiduciary's discretion, the court may order a  
677 remedy authorized by law, including those prescribed under ss.  
678 736.1001 and 736.1002. Following such a determination by the  
679 court, the remedy is to place the beneficiaries in the positions  
680 the beneficiaries would have occupied if the fiduciary had not  
681 abused its discretion, as follows:

682 (a) The court may order the fiduciary to exercise or  
683 refrain from exercising the power to adjust under s. 738.203;

684 (b) The court may order the fiduciary to exercise or  
685 refrain from exercising the power to convert an income trust to  
686 a unitrust under ss. 738.301-738.310, change the percentage or  
687 method used to calculate a unitrust amount under ss. 738.301-  
688 738.310, or convert a unitrust to an income trust under ss.  
689 738.301-738.310;

690 (c) The court may compel the fiduciary to take any of the  
691 actions listed under s. 738.413;

692 (d) To the extent that the abuse of discretion has  
693 resulted in no distribution to a beneficiary or a distribution  
694 that is too small, the court shall require the fiduciary to  
695 distribute from the trust to the beneficiary an amount the court  
696 determines will restore the beneficiary, in whole or in part, to  
697 his or her appropriate position;

698 (e) To the extent that the abuse of discretion has  
699 resulted in a distribution to a beneficiary that is too large,  
700 the court shall restore the beneficiaries, the trust, or both,

701 in whole or in part, to their appropriate positions by requiring  
 702 the fiduciary to withhold an amount from one or more future  
 703 distributions to the beneficiary who received the distribution  
 704 that was too large or requiring that beneficiary to return some  
 705 or all of the distribution to the trust; or

706 (f) To the extent that the court is unable, after applying  
 707 paragraphs (a)-(e), to restore the beneficiaries or the trust,  
 708 or both, to the positions they would have occupied if the  
 709 fiduciary had not abused its discretion, the court may require  
 710 the fiduciary to pay an appropriate amount from its own funds to  
 711 one or more of the beneficiaries or the trust or both.

712 (4) On petition by the fiduciary for instruction, the  
 713 court may determine whether a proposed fiduciary decision will  
 714 result in an abuse of the fiduciary's discretion. If the  
 715 petition describes the proposed decision, contains sufficient  
 716 information to inform the beneficiary of the reasons for making  
 717 the proposed decision and the facts on which the fiduciary  
 718 relies, and explains how the beneficiary will be affected by the  
 719 proposed decision, a beneficiary who opposes the proposed  
 720 decision has the burden to establish that it will result in an  
 721 abuse of the fiduciary's discretion.

722 (5) If an action is instituted alleging an abuse of  
 723 discretion in the exercise or nonexercise of the fiduciary's  
 724 discretion under this chapter and the court determines no abuse  
 725 of discretion has occurred, the fiduciary's costs and attorney

726 fees incurred in defending the action shall be paid from the  
727 trust assets.

728 Section 9. Section 738.203, Florida Statutes, is created  
729 to read:

730 738.203 Fiduciary's power to adjust.-

731 (1) Except as otherwise provided in the terms of a trust  
732 or this section, a fiduciary, in a record without court  
733 approval, may adjust between income and principal if the  
734 fiduciary determines that the exercise of the power to adjust  
735 will assist the fiduciary in administering the trust or estate  
736 impartially.

737 (2) This section does not create a duty to exercise or  
738 consider the power to adjust under subsection (1) or to inform a  
739 beneficiary about the applicability of this section.

740 (3) A fiduciary that in good faith exercises or fails to  
741 exercise the power to adjust under subsection (1) is not liable  
742 to a person affected by the exercise or failure to exercise.

743 (4) In deciding whether and to what extent to exercise the  
744 power to adjust under subsection (1), a fiduciary shall consider  
745 all factors the fiduciary considers relevant, including relevant  
746 factors in s. 738.201(5) and ss. 738.408 and 738.413.

747 (5) A fiduciary may not exercise the power under  
748 subsection (1) to make an adjustment or under s. 738.408 to make  
749 a determination that an allocation is insubstantial if:

750 (a) The adjustment or determination would reduce the

751 amount payable to a current income beneficiary from a trust that  
752 qualifies for a special tax benefit, except to the extent that  
753 the adjustment is made to provide for a reasonable apportionment  
754 of the total return of the trust between the current income  
755 beneficiary and successor beneficiaries;

756 (b) The adjustment or determination would change the  
757 amount payable to a beneficiary, as a fixed annuity or a fixed  
758 fraction of the value of the trust assets, under the terms of  
759 the trust;

760 (c) The adjustment or determination would reduce an amount  
761 that is permanently set aside for a charitable purpose under the  
762 terms of the trust unless both income and principal are set  
763 aside for the charitable purpose;

764 (d) Possessing or exercising the power would cause a  
765 person to be treated as the owner of all or part of the trust  
766 for federal income tax purposes and the person would not be  
767 treated as the owner if the fiduciary did not possess the power  
768 to adjust;

769 (e) Possessing or exercising the power would cause all or  
770 part of the value of the trust assets to be included in the  
771 gross estate of an individual for federal real estate tax  
772 purposes and the assets would not be included in the gross  
773 estate of the individual if the fiduciary did not possess the  
774 power to adjust;

775 (f) Possessing or exercising the power would cause an

776 individual to be treated as making a gift for federal gift tax  
777 purposes;

778 (g) The fiduciary is not an independent person;

779 (h) The trust is irrevocable and provides for income to be  
780 paid to the settlor, and possessing or exercising the power  
781 would cause the adjusted principal or income to be considered an  
782 available resource or available income under a public-benefit  
783 program; or

784 (i) The trust is a unitrust under ss. 738.301-738.310.

785 (6) If paragraph (5)(d), paragraph (5)(e), paragraph  
786 (5)(f), or paragraph (5)(g) applies to a fiduciary:

787 (a) A cofiduciary to which paragraphs (5)(d)-(g) do not  
788 apply may exercise the power to adjust, unless the exercise of  
789 the power by the remaining cofiduciary or cofiduciaries is not  
790 permitted by the terms of the trust or law other than this  
791 chapter; or

792 (b) If there is no cofiduciary to which paragraphs (5)(d)-  
793 (g) do not apply, the fiduciary may appoint a cofiduciary to  
794 which paragraphs (5)(d)-(g) do not apply which may be a special  
795 fiduciary with limited powers, and the appointed cofiduciary may  
796 exercise the power to adjust under subsection (1), unless the  
797 appointment of a cofiduciary or the exercise of the power by a  
798 cofiduciary is not permitted by the terms of the trust or law  
799 other than this chapter.

800 (7) A fiduciary may release or delegate to a cofiduciary

801 the power to adjust under subsection (1) if the fiduciary  
802 determines that the fiduciary's possession or exercise of the  
803 power will or may:

804 (a) Cause a result described in paragraph (5)(a),  
805 paragraph (5)(b), paragraph (5)(c), paragraph (5)(d), paragraph  
806 (5)(e), paragraph (5)(f), or paragraph (5)(h); or

807 (b) Deprive the trust of a tax benefit or impose a tax  
808 burden not described in paragraph (5)(a), paragraph (5)(b),  
809 paragraph (5)(c), paragraph (5)(d), paragraph (5)(e), or  
810 paragraph (5)(f).

811 (8) A fiduciary's release or delegation to a cofiduciary  
812 under subsection (7) of the power to adjust under subsection  
813 (1):

814 (a) Must be in a record;

815 (b) Applies to the entire power, unless the release or  
816 delegation provides a limitation, which may be a limitation to  
817 the power to adjust:

818 1. From income to principal;

819 2. From principal to income;

820 3. For specified property; or

821 4. In specified circumstances.

822 (c) For a delegation, may be modified by a redelegation  
823 under this subsection by the cofiduciary to which the delegation  
824 is made; and

825 (d) Subject to paragraph (c), is permanent, unless the

826 release or delegation provides a specified period, including a  
827 period measured by the life of an individual or the lives of  
828 more than one individual.

829 (9) Terms of a trust that deny or limit the power to  
830 adjust between income and principal do not affect the  
831 application of this section, unless the terms of the trust  
832 expressly deny or limit the power to adjust under subsection  
833 (1).

834 (10) The exercise of the power to adjust under subsection  
835 (1) in any accounting period may apply to the current period,  
836 the immediately preceding period, and one or more subsequent  
837 periods.

838 (11) A description of the exercise of the power to adjust  
839 under subsection (1) must be:

840 (a) Included in a report, if any, sent to beneficiaries  
841 under s. 736.0813; or

842 (b) Communicated at least annually to the qualified  
843 beneficiaries as defined in s. 736.0103 other than the Attorney  
844 General.

845 (12) With respect to a trust in existence on January 1,  
846 2003:

847 (a) A fiduciary may not have the power to adjust under  
848 this section until the statement required in subsection (13) is  
849 provided and either no objection is made or any objection which  
850 is made has been terminated.

851 1. An objection is made if, within 60 days after the date  
852 of the statement required in subsection (13), a super majority  
853 of the eligible beneficiaries deliver to the fiduciary a written  
854 objection to the application of this section to such trust. An  
855 objection shall be deemed to be delivered to the fiduciary on  
856 the date the objection is mailed to the mailing address listed  
857 in the notice provided in subsection (13).

858 2. An objection is terminated upon the earlier of the  
859 receipt of consent from a super majority of eligible  
860 beneficiaries of the class that made the objection, or the  
861 resolution of the objection under paragraph (c).

862 (b) An objection or consent under this section may be  
863 executed by a legal representative or natural guardian of a  
864 beneficiary without the filing of any proceeding or approval of  
865 any court.

866 (c) If an objection is delivered to the fiduciary, then  
867 the fiduciary may petition the circuit court for an order  
868 quashing the objection and vesting in such fiduciary the power  
869 to adjust under this section. The burden will be on the  
870 objecting beneficiaries to prove that the power to adjust would  
871 be inequitable, illegal, or otherwise in contravention of the  
872 grantor's intent. The court may award costs and attorney fees  
873 relating to the fiduciary's petition in the same manner as in  
874 chancery actions. When costs and attorney fees are to be paid  
875 out of the trust, the court may, in its discretion, direct from

876 which part of the trust they shall be paid.

877 (d) If no timely objection is made or if the fiduciary is  
878 vested with the power to adjust by court order, the fiduciary  
879 may thereafter exercise the power to adjust without providing  
880 notice of its intent to do so unless, in vesting the fiduciary  
881 with the power to adjust, the court determines that unusual  
882 circumstances require otherwise.

883 (e)1. If a fiduciary makes a good faith effort to comply  
884 with the notice provisions of subsection (13), but fails to  
885 deliver notice to one or more beneficiaries entitled to such  
886 notice, neither the validity of the notice required under this  
887 subsection nor the fiduciary's power to adjust under this  
888 section shall be affected until the fiduciary has actual notice  
889 that one or more beneficiaries entitled to notice were not  
890 notified. Until the fiduciary has actual notice of the notice  
891 deficiency, the fiduciary shall have all of the powers and  
892 protections granted a fiduciary with the power to adjust under  
893 this chapter.

894 2. When the fiduciary has actual notice that one or more  
895 beneficiaries entitled to notice under subsection (13) were not  
896 notified, the fiduciary's power to adjust under this section  
897 shall cease until all beneficiaries who are entitled to such  
898 notice, including those who were previously provided with such  
899 notice, are notified and given the opportunity to object as  
900 provided for under this subsection.

901 (f) The objection of a super majority of eligible  
902 beneficiaries under this subsection shall be valid for a period  
903 of 1 year after the date of the notice set forth in subsection  
904 (13). Upon expiration of the objection, the fiduciary may  
905 thereafter give a new notice under subsection (13).

906 (g) This section is not intended to create or imply a duty  
907 of the fiduciary of a trust existing on January 1, 2003, to seek  
908 a power to adjust under this subsection or to give the notice  
909 described in subsection (13) if the fiduciary does not desire to  
910 have a power to adjust under this section, and no inference of  
911 impropriety shall be made as the result of a fiduciary not  
912 seeking a power to adjust under this subsection.

913 (13) (a) A fiduciary of a trust in existence on January 1,  
914 2003, that is not prohibited under subsection (5) from  
915 exercising the power to adjust shall, any time before initially  
916 exercising the power, provide to all eligible beneficiaries a  
917 statement containing the following:

918 1. The name, telephone number, street address, and mailing  
919 address of the fiduciary and of any person who may be contacted  
920 for further information;

921 2. A statement that unless a super majority of the  
922 eligible beneficiaries objects to the application of this  
923 section to the trust within 60 days after the date the statement  
924 pursuant to this subsection was served, this section shall apply  
925 to the trust; and

926 3. A statement that, if this section applies to the trust,  
927 the fiduciary will have the power to adjust between income and  
928 principal and that such a power may have an effect on the  
929 distributions to such beneficiary from the trust.

930 (b) The statement may contain information regarding a  
931 fiduciary's obligation with respect to the power to adjust  
932 between income and principal under this section.

933 (c) The statement shall be served informally, in the  
934 manner provided in the Florida Rules of Civil Procedure relating  
935 to service of pleadings subsequent to the initial pleading. The  
936 statement may be served on a legal representative or natural  
937 guardian of a beneficiary without the filing of any proceeding  
938 or approval of any court.

939 (14) For purposes of subsections (12) and (13), the term:

940 1. "Eligible beneficiaries" means:

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

944 b. If there is no beneficiary described in s.  
945 736.0103(19) (c), the beneficiaries described in s.  
946 736.0103(19) (a) and (b).

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

948 a. If at the time the determination is made there are one  
949 or more beneficiaries described in s. 736.0103(19) (c), at least  
950 two-thirds in interest of the beneficiaries described in s.

951 736.0103(19) (a) or two-thirds in interest of the beneficiaries  
 952 described in s. 736.0103(19) (c), if the interests of the  
 953 beneficiaries are reasonably ascertainable; otherwise, it means  
 954 two-thirds in number of either such class; or

955 b. If there is no beneficiary described in s.  
 956 736.0103(19) (c), at least two-thirds in interest of the  
 957 beneficiaries described in s. 736.0103(19) (a) or two-thirds in  
 958 interest of the beneficiaries described in s. 736.0103(19) (b),  
 959 if the interests of the beneficiaries are reasonably  
 960 ascertainable, otherwise, two-thirds in number of either such  
 961 class.

962 (15) A trust exists on January 1, 2003, if it is not  
 963 revocable on January 1, 2003. A trust is revocable if revocable  
 964 by the grantor alone or in conjunction with any other person. A  
 965 trust is not revocable for purposes of this section if revocable  
 966 by the grantor only with the consent of all persons having a  
 967 beneficial interest in the property.

968 Section 10. Section 738.301, Florida Statutes, is amended  
 969 to read:

970 (Substantial rewording of section. See  
 971 s. 738.301, F.S., for present text).

972 738.301 Definitions.—For purposes of this section and ss.  
 973 738.302–738.310:

974 (1) "Applicable value" means the amount of the net fair  
 975 market value of a trust taken into account under s. 738.307.

976        (2) "Express unitrust" means a trust for which, under the  
977 terms of the trust without regard to this section and ss.  
978 738.302-738.310, net income must be calculated as a unitrust  
979 amount.

980        (3) "Income trust" means a trust, created by an inter  
981 vivos or testamentary instrument, that directs or permits the  
982 trustee to distribute the net income of the trust to one or more  
983 persons, in fixed proportions or in amounts or proportions  
984 determined by the trustee and regardless of whether the trust  
985 directs or permits the trustee to distribute the principal of  
986 the trust to one or more such persons.

987        (4) "Net fair market value of a trust" means the fair  
988 market value of the assets of the trust, less the reasonably  
989 known noncontingent liabilities of the trust.

990        (5) "Unitrust" means a trust for which net income is a  
991 unitrust amount. The term includes an express unitrust.

992        (6) "Unitrust amount" means an amount computed by  
993 multiplying a determined value of a trust by a determined  
994 percentage. For a unitrust administered under a unitrust policy,  
995 the term means the applicable value multiplied by the unitrust  
996 rate.

997        (7) "Unitrust policy" means a policy described in ss.  
998 738.301-738.310 and adopted under s. 738.303.

999        (8) "Unitrust rate" means the rate used to compute the  
1000 unitrust amount for a unitrust administered under a unitrust

1001 policy.

1002 Section 11. Section 738.302, Florida Statutes, is amended

1003 to read:

1004 (Substantial rewording of section. See

1005 s. 738.302, F.S., for present text.)

1006 738.302 Applications; duties and remedies.—

1007 (1) Except as otherwise provided in subsection (2), ss.

1008 738.301-738.310 apply to all of the following:

1009 (a) An income trust, unless the terms of the trust

1010 expressly prohibit the use of ss. 738.301-738.310 by a specific

1011 reference to this paragraph or corresponding provision of prior

1012 law, or an explicit expression of intent that net income not be

1013 calculated as a unitrust amount.

1014 (b) An express unitrust, except to the extent that the

1015 terms of the trust explicitly:

1016 1. Prohibit the use of ss. 738.301-738.310 by a specific

1017 reference to this paragraph or corresponding provision of prior

1018 law;

1019 2. Prohibit conversion to an income trust; or

1020 3. Limit changes to the method of calculating the unitrust

1021 amount.

1022 (c) A unitrust that had been converted from an income

1023 trust.

1024 (2) The provisions of ss. 738.301-738.310 do not apply to

1025 a trust described in s. 170(f)(2)(B), s. 642(c)(5), s. 664(d),

1026 s. 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal  
1027 Revenue Code.

1028 (3) An income trust to which ss. 738.301-738.310 apply  
1029 under paragraph (1)(a) may be converted to a unitrust under ss.  
1030 738.301-738.310 regardless of the terms of the trust concerning  
1031 distributions. Conversion to a unitrust under ss. 738.301-  
1032 738.310 does not affect other terms of the trust concerning  
1033 distributions of income or principal.

1034 (4) Sections 738.301-738.310 apply to an estate only to  
1035 the extent that a trust is a beneficiary of the estate. To the  
1036 extent of the trust's interest in the estate, the estate may be  
1037 administered as a unitrust, the administration of the estate as  
1038 a unitrust may be discontinued, or the percentage or method used  
1039 to calculate the unitrust amount may be changed, in the same  
1040 manner as for a trust under those sections.

1041 (5) The provisions of ss. 738.301-738.310 do not create a  
1042 duty to take or consider action under ss. 738.301-738.310 or to  
1043 inform a beneficiary about the applicability of ss. 738.301-  
1044 738.310.

1045 (6) A fiduciary that in good faith takes or fails to take  
1046 an action under ss. 738.301-738.310 is not liable to a person  
1047 affected by the action or inaction.

1048 Section 12. Section 738.303, Florida Statutes, is amended  
1049 to read:

1050 (Substantial rewording of section. See

HB 1093

2024

1051 s. 738.303, F.S., for present text.)

1052 738.303 Authority of fiduciary.—

1053 (1) By complying with subsections (2) and (6), and without  
1054 court approval, a fiduciary may do any of the following:

1055 (a) Convert an income trust to a unitrust if the fiduciary  
1056 adopts in a record a unitrust policy for the trust which  
1057 provides:

1058 1. That in administering the trust, the net income of the  
1059 trust will be a unitrust amount rather than net income  
1060 determined without regard to ss. 738.301-738.310; and

1061 2. The percentage and method used to calculate the  
1062 unitrust amount.

1063 (b) Change the percentage or method used to calculate a  
1064 unitrust amount for a unitrust if the fiduciary adopts in a  
1065 record a unitrust policy or an amendment or replacement of a  
1066 unitrust policy providing charges in the percentage or method  
1067 used to calculate the unitrust amount.

1068 (c) Convert a unitrust to an income trust if the fiduciary  
1069 adopts in a record a determination that, in administering the  
1070 trust, the net income of the trust will be net income determined  
1071 without regard to ss. 738.301-738.310 rather than a unitrust  
1072 amount.

1073 (2) A fiduciary may take an action under subsection (1) if  
1074 all of the following apply:

1075 (a) The fiduciary determines that the action will assist

1076 the fiduciary to administer a trust impartially.

1077 (b) The fiduciary sends a notice in a record to the  
 1078 qualified beneficiaries determined under ss. 736.0103 and  
 1079 736.0110 in the manner required by s. 738.304, describing and  
 1080 proposing to take the action.

1081 (c) The fiduciary sends a copy of the notice under  
 1082 paragraph (b) to each settlor of the trust which is:

- 1083 1. If an individual, living; or
- 1084 2. If not an individual, in existence.

1085 (d) At least one member of each class of the qualified  
 1086 beneficiaries determined under ss. 736.0103 and 736.0110, other  
 1087 than the Attorney General, receiving the notice under paragraph  
 1088 (b) is:

- 1089 1. If an individual, legally competent;
- 1090 2. If not an individual, in existence; or
- 1091 3. Represented in the manner provided in s. 738.304(2).

1092 (e) The fiduciary does not receive, by the date specified  
 1093 in the notice under s. 738.304(4) (e), an objection in a record  
 1094 to the action proposed under paragraph (b) from a person to  
 1095 which the notice under paragraph (b) is sent.

1096 (3) If a fiduciary receives, not later than the date  
 1097 stated in the notice under s. 738.304(4) (e), an objection in a  
 1098 record described in s. 738.304(4) (d) to a proposed action, the  
 1099 fiduciary or a beneficiary may request the court to have the  
 1100 action taken as proposed, taken with modifications, or

1101 prevented. A person described in s. 738.304(1) may oppose the  
 1102 proposed action in the proceeding under this subsection  
 1103 regardless of whether the person:

1104 (a) Consented under s. 738.304(3); or

1105 (b) Objected under s. 738.304(4) (d).

1106 (4) If, after sending a notice under paragraph (2) (b), a  
 1107 fiduciary decides not to take the action proposed in the notice,  
 1108 the fiduciary must notify in a record each person described in  
 1109 s. 738.304(1) of the decision not to take the action and the  
 1110 reasons for the decision.

1111 (5) If a beneficiary requests in a record that a fiduciary  
 1112 take an action described in subsection (1) and the fiduciary  
 1113 declines to act or does not act within 60 days after receiving  
 1114 the request, the beneficiary may request the court to direct the  
 1115 fiduciary to take the action requested.

1116 (6) In deciding whether and how to take an action  
 1117 authorized in subsection (1), or whether and how to respond to a  
 1118 request by a beneficiary under subsection (5), a fiduciary must  
 1119 consider all factors relevant to the trust and beneficiaries,  
 1120 including the relevant factors listed in s. 738.201(5).

1121 (7) A fiduciary may release or delegate the power to  
 1122 convert an income trust to a unitrust under paragraph (1) (a),  
 1123 change the percentage or method used to calculate a unitrust  
 1124 amount under paragraph (1) (b), or convert a unitrust to an  
 1125 income trust under paragraph (1) (c), for a reason described in

1126 s. 738.203(7) and in the manner described in s. 738.203(8).

1127 Section 13. Section 738.304, Florida Statutes, is created  
1128 to read:

1129 738.304 Notice.—

1130 (1) A notice required by s. 738.303(2)(b) must be sent in  
1131 a manner authorized under s. 736.0109 to all of the following:

1132 (a) The qualified beneficiaries as defined in s. 736.0103,  
1133 other than the Attorney General.

1134 (b) Each person that is granted a power over the trust by  
1135 the terms of the trust, to the extent that the power is  
1136 exercisable when the person is not then serving as a trustee:

1137 1. Including all of the following:

1138 a. Power over the investment, management, or distribution  
1139 of trust property or other matters of trust administration.

1140 b. Power to appoint or remove a trustee or person  
1141 described in this paragraph.

1142 2. Excluding all of the following:

1143 a. Power of appointment.

1144 b. Power of a beneficiary over the trust, to the extent  
1145 that the exercise or nonexercise of the power affects the  
1146 beneficial interest of the beneficiary or another beneficiary  
1147 represented by the beneficiary under ss. 736.0301-736.0306 with  
1148 respect to the exercise or nonexercise of the power.

1149 c. Power over the trust if the terms of the trust provide  
1150 that the power is held in a nonfiduciary capacity and the power

1151 must be held in a nonfiduciary capacity to achieve a tax  
1152 objective under the Internal Revenue Code.

1153 (c) Each person that is granted a power by the terms of  
1154 the trust to appoint or remove a trustee or person described in  
1155 paragraph (b) to the extent that the power is exercisable when  
1156 the person that exercises the power is not serving as a trustee  
1157 or person described in paragraph (b).

1158 (2) The representation provisions of ss. 736.0301-736.0306  
1159 apply to notice under this section.

1160 (3) A person may consent in a record at any time to action  
1161 proposed under s. 738.303(2)(b). A notice required by s.  
1162 738.303(2)(b) need not be sent to a person that consents under  
1163 this subsection.

1164 (4) A notice required under s. 738.303(2)(b) must include  
1165 all of the following:

1166 (a) The action proposed under s. 738.303(2)(b).

1167 (b) For a conversion of an income trust to a unitrust, a  
1168 copy of the unitrust policy adopted under s. 738.303(1)(a).

1169 (c) For a change in the percentage or method used to  
1170 calculate the unitrust amount, a copy of the unitrust policy or  
1171 amendment or replacement of the unitrust policy adopted under s.  
1172 738.303(1)(b).

1173 (d) A statement that the person to which the notice is  
1174 sent may object to the proposed action by stating in a record  
1175 the basis for the objection and sending or delivering the record

HB 1093

2024

1176 to the fiduciary.

1177 (e) The date by which an objection under paragraph (d)  
1178 must be received by the fiduciary, which must be at least 30  
1179 days after the date the notice is sent.

1180 (f) The date on which the action is proposed to be taken  
1181 and the date on which the action is proposed to take effect.

1182 (g) The name and contact information of the fiduciary.

1183 (h) The name and contact information of a person that may  
1184 be contacted for additional information.

1185 Section 14. Section 738.305, Florida Statutes, is created  
1186 to read:

1187 738.305 Unitrust policy.—

1188 (1) In administering a unitrust under ss. 738.301-738.310,  
1189 a fiduciary shall follow a unitrust policy adopted under s.  
1190 738.303(1) (a) or (b) or amended or replaced under s.  
1191 738.303(1) (b).

1192 (2) A unitrust policy must provide all of the following:

1193 (a) The unitrust rate or method for determining the  
1194 unitrust rate under s. 738.306.

1195 (b) The method for determining the applicable value under  
1196 s. 738.307.

1197 (c) The rules described in ss. 738.306-738.310 which apply  
1198 in the administration of the unitrust, whether the rules are:

1199 1. Mandatory as provided in ss. 738.307(1) and (3),  
1200 738.308(1), and 738.310; or

1201        2. Optional as provided in ss. 738.306, 738.307(2), and  
 1202 738.308(2), to the extent that the fiduciary elects to adopt  
 1203 those rules.

1204        (3) A unitrust policy may do any of the following:

1205        (a) Provide methods and standards for:

1206        1. Determining the timing of the distributions;

1207        2. Making distributions in cash or in kind or partly in  
 1208 cash and partly in kind; or

1209        3. Correcting an underpayment or overpayment to a  
 1210 beneficiary based on the unitrust amount if there is an error in  
 1211 calculating the unitrust amount.

1212        (b) Specify sources and the order of sources, including  
 1213 categories of income for federal income tax purposes, from which  
 1214 distributions of a unitrust amount are paid.

1215        (c) Provide other standards and rules that the fiduciary  
 1216 determines serve the interests of the beneficiaries.

1217        Section 15. Section 738.306, Florida Statutes, is created  
 1218 to read:

1219        738.306 Unitrust rate.—

1220        (1) A unitrust rate must be at least 3 percent and not  
 1221 more than 5 percent. Within those limits, the unitrust rate may  
 1222 be:

1223        (a) A fixed unitrust rate; or

1224        (b)1. A unitrust rate that is determined for each period  
 1225 using:

HB 1093

2024

1226 a. A market index or other published data; or

1227 b. A mathematical blend of market indices or other  
1228 published data over a stated number of preceding periods.

1229 2. If the rate calculated under this paragraph would be  
1230 less than 3, the rate is 3; and if the rate calculated would be  
1231 more than 5, the rate is 5.

1232 (2) Within the limits of subsection (1), a unitrust policy  
1233 may provide for any of the following:

1234 (a) A limit on how much the unitrust rate determined under  
1235 paragraph (1)(b) may increase over the unitrust rate for the  
1236 preceding period or a mathematical blend of unitrust rates over  
1237 a stated number of preceding periods.

1238 (b) A limit on how much the unitrust rate determined under  
1239 paragraph (1)(b) may decrease below the unitrust rate for the  
1240 preceding period or a mathematical blend of unitrust rates over  
1241 a stated number of preceding periods.

1242 (c) A mathematical blend of any of the unitrust rates  
1243 determined under paragraph (1)(b) and paragraphs (a) and (b).

1244 (3) If the fiduciary is not an independent person, the  
1245 percentage used to calculate the unitrust amount is the rate  
1246 determined under s. 7520(a)(2) of the Internal Revenue Code in  
1247 effect for the month the conversion under this section becomes  
1248 effective and for each January thereafter; however, if the rate  
1249 determined under s. 7520(a)(2) of the Internal Revenue Code  
1250 exceeds 5 percent, the unitrust rate is 5 percent, and if the

1251 rate determined under s. 7520(a)(2) of the Internal Revenue Code  
1252 is less than 3 percent, the unitrust rate is 3 percent.

1253 Section 16. Section 738.307, Florida Statutes, is created  
1254 to read:

1255 738.307 Applicable value.-

1256 (1) A unitrust policy must provide the method for  
1257 determining the fair market value of an asset for the purpose of  
1258 determining the unitrust amount, including all of the following:

1259 (a) The frequency of valuing the asset, which need not  
1260 require a valuation in every period.

1261 (b) The date for valuing the asset in each period in which  
1262 the asset is valued.

1263 (2) Except as otherwise provided in s. 738.309, a unitrust  
1264 policy may provide methods for determining the amount of the net  
1265 fair market value of the trust to take into account in  
1266 determining the applicable value, including any of the  
1267 following:

1268 (a) Obtaining an appraisal of an asset for which fair  
1269 market value is not readily available.

1270 (b) Excluding specific assets or groups or types of assets  
1271 in addition to those described in subsection (3).

1272 (c) Making other exceptions or modifications of the  
1273 treatment of specific assets or groups or types of assets.

1274 (d) Including identification and treatment of cash or  
1275 property held for distribution.

1276 (e) Using an average of fair market values over a stated  
 1277 number of preceding periods, not to exceed 3 calendar years.

1278 (f) Determining the reasonable known liabilities of the  
 1279 trust, including treatment of liabilities to conform with the  
 1280 treatment of assets under paragraphs (a)-(e).

1281 (3) The following property may not be included in  
 1282 determining the value of the trust:

1283 (a) Any residential property or any tangible personal  
 1284 property that, as of the first business day of the current  
 1285 valuation year, one or more current beneficiaries of the trust  
 1286 have or have had the right to occupy or have or have had the  
 1287 right to possess or control, other than in his or her capacity  
 1288 as trustee of the trust. Instead, the right of occupancy or the  
 1289 right to possession and control is the unitrust amount with  
 1290 respect to such property; however, the unitrust amount must be  
 1291 adjusted to take into account partial distributions from or  
 1292 receipt into the trust of such property during the valuation  
 1293 year;

1294 (b) Any asset specifically given to a beneficiary and the  
 1295 return on investment on such property, which return on  
 1296 investment must be distributable to the beneficiary; and

1297 (c) Any asset while held in an estate.

1298 Section 17. Section 738.308, Florida Statutes, is created  
 1299 to read:

1300 738.308 Period.-

1301 (1) A unitrust policy must provide the period used under  
 1302 ss. 738.306 and 738.307. The period must be the calendar year.

1303 (2) A unitrust policy may provide standards for:

1304 (a) Using fewer preceding periods under s. 738.306(1)(b)1.  
 1305 or (2)(a) or (b) if:

1306 1. The trust was not in existence in a preceding period;

1307 or

1308 2. Market indices or other published data are not  
 1309 available for a preceding period;

1310 (b) Using fewer preceding periods under 738.307(2)(e) if:

1311 1. The trust was not in existence in a preceding period;

1312 or

1313 2. Fair market values are not available for a preceding  
 1314 period; and

1315 (c) Prorating a unitrust amount on a daily basis for a  
 1316 part of a period in which the trust or the administration of the  
 1317 trust as a unitrust or the interest of any beneficiary commences  
 1318 or terminates.

1319 Section 18. Section 738.309, Florida Statutes, is created  
 1320 to read:

1321 738.309 Express unitrust.—

1322 (1) This section applies to a trust that, by its governing  
 1323 instrument, requires or allows income or net income to be  
 1324 calculated as a unitrust amount.

1325 (2) The trustee of an express unitrust may determine the

1326 unitrust amount by reference to the net fair market value of the  
1327 unitrust's assets in 1 or more years.

1328 (3) Distribution of a unitrust amount is considered a  
1329 distribution of all of the net income of an express unitrust and  
1330 is considered to be an income interest.

1331 (4) The unitrust amount is considered to be a reasonable  
1332 apportionment of the total return of an express unitrust.

1333 (5) An express unitrust that provides or allows a  
1334 distribution based on a unitrust rate in excess of 5 percent per  
1335 year of the net fair market value of the unitrust assets is  
1336 considered a distribution of all of the income of the unitrust  
1337 to the extent that the distribution exceeds 5 percent per year  
1338 and a distribution of principal of the unitrust.

1339 (6) An express unitrust may provide a mechanism for  
1340 changing the unitrust rate, similar to the mechanism provided  
1341 under s. 738.306, based upon the factors noted in that section,  
1342 and may provide for a conversion from a unitrust to an income  
1343 trust or a reconversion of an income trust to a unitrust under  
1344 s. 738.303.

1345 (7) If an express unitrust does not specifically or by  
1346 reference to s. 738.306 prohibit a power to change the unitrust  
1347 rate or to convert to an income trust under s. 738.303, the  
1348 trustee must have such power.

1349 (8) The governing instrument of an express unitrust may  
1350 grant the trustee discretion to adopt a consistent practice of

HB 1093

2024

1351 treating capital gains as part of the unitrust amount to the  
1352 extent that the unitrust amount exceeds the income determined as  
1353 if the trust were not an express unitrust, or the governing  
1354 instrument may specify the ordering of classes of income.

1355 (9) Unless the terms of the express unitrust specifically  
1356 provide otherwise as provided in subsection (8), the  
1357 distribution of a unitrust amount is considered a distribution  
1358 made from the following sources, which are listed in order of  
1359 priority:

1360 (a) Net accounting income determined under this chapter as  
1361 if the trust were not a unitrust;

1362 (b) Ordinary income not allocable to net accounting  
1363 income;

1364 (c) Net realized short-term capital gains;

1365 (d) Net realized long-term capital gains; and

1366 (e) The principal of the trust.

1367 (10) The governing instrument of an express unitrust may  
1368 provide that the trustee may exclude assets used by the  
1369 unitrust's beneficiary, including, but not limited to, a  
1370 residence property or tangible personal property, from the net  
1371 fair market value of the unitrust's assets for the purposes of  
1372 computing the unitrust amount. The use of these assets may be  
1373 considered equivalent to income or to the unitrust amount.

1374 Section 19. Section 738.310, Florida Statutes, is created  
1375 to read:

1376           738.310 Other rules.—Following the conversion of an income  
 1377 trust to a unitrust, the trustee shall consider the unitrust  
 1378 amount as paid from the following sources, which are listed in  
 1379 order of priority:

1380           (1) Net accounting income determined under this chapter as  
 1381 if the trust were not a unitrust;

1382           (2) Ordinary income not allocable to net accounting  
 1383 income;

1384           (3) Net realized short-term capital gains;

1385           (4) Net realized long-term capital gains; and

1386           (5) The principal of the trust.

1387           Section 20. Section 738.401, Florida Statutes, is amended  
 1388 to read:

1389           738.401 Character of receipts from entity.—

1390           (1) For purposes of this section, the term:

1391           (a) "Capital distribution" means an entity distribution of  
 1392 money which is a:

1393           1. Return of capital; or

1394           2. Distribution in total or partial liquidation of the  
 1395 entity.

1396           (b) "Entity":

1397           1. Means a corporation, partnership, limited liability  
 1398 company, regulated investment company, real estate investment  
 1399 trust, common trust fund, or any other organization or  
 1400 arrangement in which a fiduciary owns or holds ~~has~~ an interest,

1401 regardless of whether the entity is a taxpayer for federal  
1402 income tax purposes; and

1403 2. Does not include:

1404 a. A trust or estate to which s. 738.402 applies;

1405 b. A business or other activity to which s. 738.403  
1406 applies which is not conducted by an entity described in  
1407 subparagraph 1.;

1408 c. An asset-backed security; or

1409 d. An instrument or arrangement to which s. 738.416  
1410 applies ~~other than a trust or estate to which s. 738.402~~  
1411 ~~applies, a business or activity to which s. 738.403 applies, or~~  
1412 ~~an asset-backed security to which s. 738.608 applies.~~

1413 (c) "Entity distribution" means a payment or transfer by  
1414 an entity to a person in the person's capacity as an owner or  
1415 holder of an interest in the entity.

1416 (d) "Lookback period" means the accounting period and the  
1417 preceding two accounting periods or, if less, the number of  
1418 accounting periods, or portion of accounting periods, that the  
1419 interest in the entity has been held by the fiduciary.

1420 (2) In this section, an attribute or action of an entity  
1421 includes an attribute or action of any other entity in which the  
1422 initial entity owns or holds an interest, including an interest  
1423 owned or held indirectly through another entity.

1424 (3) Except as otherwise provided in paragraphs (4) (b),  
1425 (c), and (d) this section, a fiduciary shall allocate to income:

1426 (a) Money received in an entity distribution; and  
 1427 (b) Tangible personal property of nominal value received  
 1428 from the money received from an entity.

1429 ~~(4)-(3) Except as otherwise provided in this section, A~~  
 1430 ~~fiduciary shall allocate the following receipts from an entity~~  
 1431 ~~to principal:~~

1432 (a) Property received in an entity distribution which is  
 1433 not:

- 1434 1. other than Money; or
- 1435 2. Tangible personal property of nominal value.

1436 (b) Money received in an entity ~~one~~ distribution ~~or a~~  
 1437 ~~series of related distributions in an~~ exchange for part or all  
 1438 of the fiduciary's ~~a trust's or estate's~~ interest in the entity  
 1439 to the extent that the entity distribution reduces the  
 1440 fiduciary's interest in the entity relative to the interest of  
 1441 other persons that own or hold interests in the entity.

1442 (c) Money received in an entity distribution that is a  
 1443 capital distribution, to the extent not allocated to income  
 1444 ~~total or partial liquidation of the entity.~~

1445 (d) Money received in an entity distribution from an  
 1446 entity that is a regulated investment company or a real estate  
 1447 investment trust if the money received represents short-term or  
 1448 long-term capital gain realized within the entity.

1449 ~~(e) Money received from an entity listed on a public stock~~  
 1450 ~~exchange during any year of the trust or estate which exceeds 10~~

1451 ~~percent of the fair market value of the trust's or estate's~~  
1452 ~~interest in the entity on the first day of that year. The amount~~  
1453 ~~to be allocated to principal must be reduced to the extent that~~  
1454 ~~the cumulative distributions from the entity to the trust or~~  
1455 ~~estate allocated to income do not exceed a cumulative annual~~  
1456 ~~return of 3 percent of the fair market value of the interest in~~  
1457 ~~the entity at the beginning of each year or portion of a year~~  
1458 ~~for the number of years or portion of years in the period that~~  
1459 ~~the interest in the entity has been held by the trust or estate.~~  
1460 ~~If a trustee has exercised a power to adjust under s. 738.104~~  
1461 ~~during any period the interest in the entity has been held by~~  
1462 ~~the trust, the trustee, in determining the total income~~  
1463 ~~distributions from that entity, must take into account the~~  
1464 ~~extent to which the exercise of that power resulted in income to~~  
1465 ~~the trust from that entity for that period. If the income of the~~  
1466 ~~trust for any period has been computed under s. 738.1041, the~~  
1467 ~~trustee, in determining the total income distributions from that~~  
1468 ~~entity for that period, must take into account the portion of~~  
1469 ~~the unitrust amount paid as a result of the ownership of the~~  
1470 ~~trust's interest in the entity for that period.~~

1471 (5)~~(4)~~ If a fiduciary elects, or continues an election  
1472 made by its predecessor, to reinvest dividends in shares of  
1473 stock of a distributing corporation or fund, whether evidenced  
1474 by new certificates or entries on the books of the distributing  
1475 entity, the new shares retain their character as income.

1476 (6)-(5) Except as otherwise provided in subsections (10)  
 1477 and (11), money received in an entity distribution is a capital  
 1478 distribution ~~Money is received in partial liquidation:~~

1479 (a) To the extent that the entity, at or near the time of  
 1480 the entity a distribution, indicates that such money is a  
 1481 capital distribution ~~in partial liquidation; or~~

1482 (b) To the extent that the total amount of money and  
 1483 property received by the fiduciary in the entity ~~in a~~  
 1484 distribution or a series of related entity distributions is or  
 1485 will be greater than ~~from an entity that is not listed on a~~  
 1486 ~~public stock exchange exceeds~~ 20 percent of the fiduciary's  
 1487 ~~trust's or estate's~~ pro rata share of the entity's gross assets,  
 1488 as shown by the entity's year-end financial statements  
 1489 immediately preceding the initial receipt.

1490  
 1491 ~~This subsection does not apply to an entity to which subsection~~  
 1492 ~~(7) applies.~~

1493 (7)-(6) In the case of a capital distribution, the amount  
 1494 received in an entity distribution allocated to principal must  
 1495 be reduced to the extent that the cumulative distributions from  
 1496 the entity to the fiduciary ~~Money may not be taken into account~~  
 1497 ~~in determining any excess under paragraph (5) (b), to the extent~~  
 1498 ~~that the cumulative distributions from the entity to the trust~~  
 1499 ~~or the estate~~ allocated to income do not exceed the greater of:

1500 (a) A cumulative annual return of 3 percent of the

1501 entity's carrying value computed at the beginning of each  
1502 accounting period, or portion of an accounting period, during  
1503 the lookback period ~~for the number of years or portion of years~~  
1504 ~~that the entity was held by the fiduciary.~~ If a fiduciary  
1505 ~~trustee~~ has exercised a power to adjust under s. 738.203 during  
1506 the lookback period, the fiduciary ~~s. 738.104~~ during any period  
1507 ~~the interest in the entity has been held by the trust, the~~  
1508 ~~trustee,~~ in determining the total income distributions from that  
1509 entity, must take into account the extent to which the exercise  
1510 of the power resulted in income to the fiduciary ~~trust~~ from that  
1511 entity for that period. If the income of a fiduciary during the  
1512 lookback ~~trust for any period~~ has been computed under ss.  
1513 738.301-738.310, the fiduciary ~~pursuant to s. 738.1041, the~~  
1514 ~~trustee,~~ in determining the total income distributions from the  
1515 entity for that period, must take into account the portion of  
1516 the unitrust amount paid as a result of the ownership of the  
1517 trust's interest in the entity for that period; or

1518 (b) In ~~If~~ the case of an entity ~~is~~ treated as a  
1519 partnership, subchapter S corporation, or ~~a~~ disregarded entity  
1520 under ~~pursuant to~~ the Internal Revenue Code ~~of 1986, as amended,~~  
1521 the amount of income tax attributable to the fiduciary's ~~trust's~~  
1522 ~~or estate's~~ ownership share of the entity, based on its pro rata  
1523 share of the taxable income of the entity that distributes the  
1524 money, during the lookback period ~~for the number of years or~~  
1525 ~~portion of years that the interest in the entity was held by the~~

HB 1093

2024

1526 ~~fiduciary~~, calculated as if all of ~~the~~ that tax was incurred by  
1527 the fiduciary.

1528 (8) If a fiduciary receives additional information about  
1529 the application of this section to an entity distribution before  
1530 the fiduciary has paid part of the entity distribution to a  
1531 beneficiary, the fiduciary may consider the additional  
1532 information before making the payment to the beneficiary and may  
1533 change a decision to make the payment to the beneficiary.

1534 (9) If a fiduciary receives additional information about  
1535 the application of this section to an entity distribution after  
1536 the fiduciary has paid part of the entity distribution to a  
1537 beneficiary, the fiduciary is not required to change or recover  
1538 the payment to the beneficiary but may consider that information  
1539 in determining whether to exercise its other powers, including  
1540 but not limited to the power to adjust under s. 738.203.

1541 ~~(10)-(7)~~ The following applies to money or property  
1542 received by a private trustee as a distribution from an  
1543 investment entity described in this subsection:

1544 (a) The trustee shall first treat as income of the trust  
1545 all of the money or property received from the investment entity  
1546 in the current accounting period ~~year~~ which would be considered  
1547 income under this chapter if the trustee had directly held the  
1548 trust's pro rata share of the assets of the investment entity.  
1549 For this purpose, all distributions received in the current  
1550 accounting period ~~year~~ must be aggregated.

1551 (b) The trustee shall next treat as income of the trust  
 1552 any additional money or property received in the current  
 1553 accounting period ~~year~~ which would have been considered income  
 1554 in the prior 2 accounting periods ~~years~~ under paragraph (a) if  
 1555 additional money or property had been received from the  
 1556 investment entity in any of those prior 2 accounting periods  
 1557 ~~years~~. The amount to be treated as income must ~~shall~~ be reduced  
 1558 by any distributions of money or property made by the investment  
 1559 entity to the trust during the current and the prior 2  
 1560 accounting periods ~~years~~ which were treated as income under this  
 1561 paragraph.

1562 (c) The remainder of the distribution, if any, is treated  
 1563 as principal.

1564 (d) As used in this subsection, the term:

1565 1. "Investment entity" means an entity, other than a  
 1566 business activity conducted by the trustee described in s.  
 1567 738.403 or an entity that is listed on a public stock exchange,  
 1568 which is treated as a partnership, subchapter S corporation, or  
 1569 disregarded entity under ~~pursuant to~~ the Internal Revenue Code  
 1570 ~~of 1986, as amended,~~ and which normally derives 50 percent or  
 1571 more of its annual cumulative net income from interest,  
 1572 dividends, annuities, royalties, rental activity, or other  
 1573 passive investments, including income from the sale or exchange  
 1574 of such passive investments.

1575 2. "Private trustee" means a trustee who is a natural

1576 person, but is not an independent person as set forth in s.  
1577 738.102 ~~only if the trustee is unable to use the power to adjust~~  
1578 ~~between income and principal with respect to receipts from~~  
1579 ~~entities described in this subsection pursuant to s. 738.104. A~~  
1580 ~~bank, trust company, or other commercial trustee is not~~  
1581 ~~considered a private trustee.~~

1582 (11) A fiduciary shall allocate to principal any money and  
1583 property the fiduciary receives in a distribution or series of  
1584 related distributions from a public entity which are greater  
1585 than 10 percent of the fair market value of the fiduciary's  
1586 interest in the public entity on the first day of the accounting  
1587 period. The amount to be allocated to principal must be reduced  
1588 to the extent that the cumulative distributions from the entity  
1589 to the fiduciary allocated to income do not exceed a cumulative  
1590 annual return of 3 percent of the fair market value of the  
1591 interest in the entity at the beginning of each accounting  
1592 period, or portion of an accounting period, during the lookback  
1593 period. If a fiduciary has exercised a power to adjust under s.  
1594 738.203 during the lookback period, the fiduciary, in  
1595 determining the total income distributions from that entity,  
1596 must take into account the extent to which the exercise of that  
1597 power resulted in income to the fiduciary from that entity for  
1598 that period. If the income of the fiduciary during the lookback  
1599 period has been computed under ss. 738.301-738.310, the  
1600 fiduciary, in determining the total income distribution from

1601 that entity for that period, must take into account the portion  
 1602 of the unitrust amount paid as a result of the ownership of the  
 1603 trust's interest in the entity for that period. As used in this  
 1604 subsection, the term "public entity" means an entity listed on a  
 1605 public stock exchange.

1606 (12)(8) This section must ~~shall~~ be applied before ss.  
 1607 738.506 and 738.507 ~~ss. 738.705 and 738.706~~ and does not modify  
 1608 or change any of the provisions of those sections.

1609 Section 21. Section 738.402, Florida Statutes, is amended  
 1610 to read:

1611 738.402 Distribution from trust or estate.—A fiduciary  
 1612 shall allocate to income an amount received as a distribution of  
 1613 income, including a unitrust distribution under ss. 738.301-  
 1614 738.310, from a trust or an estate in which the fiduciary trust  
 1615 has an interest, other than an interest a purchased in a trust  
 1616 that is an investment entity, and shall ~~interest and~~ allocate to  
 1617 principal an amount received as a distribution of principal from  
 1618 the such a trust or estate. If a fiduciary purchases, or  
 1619 receives from a settlor, an interest in a trust that is an  
 1620 investment entity, ~~or a decedent or donor transfers an interest~~  
 1621 ~~in such a trust to a fiduciary,~~ s. 738.401, s. 738.415, or s.  
 1622 738.416 ~~or s. 738.608~~ applies to a receipt from the trust.

1623 Section 22. Section 738.403, Florida Statutes, is amended  
 1624 to read:

1625 738.403 Business and other activity ~~activities~~ conducted

1626 | by fiduciary.—

1627 |       (1) This section applies to ~~If a fiduciary who conducts a~~  
 1628 | business or other activity conducted by a fiduciary if the  
 1629 | fiduciary determines that it is in the best interests of  
 1630 | ~~interest of all~~ the beneficiaries to account separately for the  
 1631 | business or other activity instead of:

1632 |       (a) Accounting for the business or other activity as part  
 1633 | of the fiduciary's ~~trust's or estate's~~ general accounting  
 1634 | records; or

1635 |       (b) Conducting the business or other activity through an  
 1636 | entity described in s. 738.401(1)(b). ~~the~~

1637 |       (2) A fiduciary may account separately under this section  
 1638 | ~~maintain separate accounting records~~ for the transactions of a  
 1639 | ~~the~~ business or another ~~other~~ activity, regardless of whether ~~or~~  
 1640 | ~~not the~~ assets of the ~~such~~ business or other activity are  
 1641 | segregated from other ~~trust or estate~~ assets held by the  
 1642 | fiduciary.

1643 |       (3)-(2) A fiduciary who accounts separately under this  
 1644 | section for a business or other activity:

1645 |       (a) May determine:

1646 |       1. The extent to which the net cash receipts of the  
 1647 | business or other activity must be retained for:

1648 |       a. Working capital;

1649 |       b. The acquisition or replacement of fixed assets; and

1650 |       c. Other reasonably foreseeable needs of the business or

1651 other activity; and working capital, the acquisition or  
1652 replacement of fixed assets, and other reasonably foreseeable  
1653 needs of the business or activity, and

1654 2. The extent to which the remaining net cash receipts are  
1655 accounted for as principal or income in the fiduciary's trust's  
1656 or estate's general accounting records for the trust.

1657 (b) May make a determination under paragraph (a)  
1658 separately and differently from the fiduciary's decisions  
1659 concerning distributions of income or principal; and

1660 (c) Shall account for the net amount received from the  
1661 sale of an asset of ~~If a fiduciary sells assets of~~ the business  
1662 or other activity, other than a sale in the ordinary course of  
1663 the business or other activity, ~~the fiduciary must account for~~  
1664 ~~the net amount received~~ as principal in the fiduciary's trust's  
1665 or estate's general accounting records for the trust, to the  
1666 extent the fiduciary determines that the net amount received is  
1667 no longer required in the conduct of the business or other  
1668 activity.

1669 (4)(3) Activities for which a fiduciary may account  
1670 separately under this section ~~maintain separate accounting~~  
1671 ~~records~~ include:

1672 (a) Retail, manufacturing, service, and other traditional  
1673 business activities.

1674 (b) Farming.

1675 (c) Raising and selling livestock and other animals.

1676 (d) Managing ~~Management~~ of rental properties.

1677 (e) Extracting ~~Extraction~~ of minerals and other natural  
 1678 resources.

1679 (f) Growing and cutting timber ~~operations~~.

1680 (g) An activity ~~Activities~~ to which s. 738.414, s.  
 1681 738.415, or s. 738.416 ~~s. 738.607~~ applies.

1682 (h) Any other business conducted by the fiduciary.

1683 Section 23. Section 738.404, Florida Statutes, is created  
 1684 to read:

1685 738.404 Principal receipts.—A fiduciary shall allocate to  
 1686 principal:

1687 (1) To the extent not allocated to income under this  
 1688 chapter, an asset received from any of the following:

1689 (a) An individual during the individual's lifetime.

1690 (b) An estate.

1691 (c) A trust on termination of an income interest.

1692 (d) A payor under a contract naming the fiduciary as  
 1693 beneficiary.

1694 (2) Except as otherwise provided in ss. 738.401-738.416,  
 1695 money or other property received from the sale, exchange,  
 1696 liquidation, or change in the form of a principal asset.

1697 (3) An amount recovered from a third party to reimburse  
 1698 the fiduciary because of a disbursement described in s.  
 1699 738.502(1) or for another reason to the extent not based on the  
 1700 loss of income.

1701           (4) Proceeds of property taken by eminent domain except  
 1702 that proceeds awarded for loss of income in an accounting period  
 1703 are income if a current income beneficiary had a mandatory  
 1704 income interest during the period.

1705           (5) Net income received in an accounting period during  
 1706 which there is no beneficiary to which a fiduciary may or must  
 1707 distribute income.

1708           (6) Other receipts as provided in ss. 738.408-738.416.

1709           Section 24. Section 738.405, Florida Statutes, is created  
 1710 to read:

1711           738.405 Rental property.—To the extent that a fiduciary  
 1712 does not account for the management of rental property as a  
 1713 business under s. 738.403, the fiduciary shall allocate to  
 1714 income an amount received as rent of real or personal property,  
 1715 including an amount received for cancellation or renewal of a  
 1716 lease. An amount received as a refundable deposit, including a  
 1717 security deposit or a deposit that is to be applied as rent for  
 1718 future periods:

1719           (1) Must be added to principal and held subject to the  
 1720 terms of the lease, except as otherwise provided by law other  
 1721 than this chapter; and

1722           (2) Is not allocated to income or available for  
 1723 distribution to a beneficiary until the fiduciary's contractual  
 1724 obligations have been satisfied with respect to that amount.

1725           Section 25. Section 738.406, Florida Statutes, is created

HB 1093

2024

1726 to read:

1727 738.406 Receipt on obligation to be paid in money.-

1728 (1) This section does not apply to an obligation to which  
1729 s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s.  
1730 738.415, or s. 738.416 applies.

1731 (2) A fiduciary shall allocate to income, without  
1732 provision for amortization of premium, an amount received as  
1733 interest on an obligation to pay money to the fiduciary,  
1734 including an amount received as consideration for prepaying  
1735 principal.

1736 (3) A fiduciary shall allocate to principal an amount  
1737 received from the sale, redemption, or other disposition of an  
1738 obligation to pay money to the fiduciary.

1739 (4) A fiduciary shall allocate to income the increment in  
1740 value of a bond or other obligation for the payment of money  
1741 bearing no stated interest but payable or redeemable, at  
1742 maturity or another future time, in an amount that exceeds the  
1743 amount in consideration of which it was issued. If the increment  
1744 in value accrues and becomes payable pursuant to a fixed  
1745 schedule of appreciation, it may be distributed to the  
1746 beneficiary who was the income beneficiary at the time of  
1747 increment from the first principal cash available or, if none is  
1748 available, when the increment is realized by sale, redemption,  
1749 or other disposition. If unrealized increment is distributed as  
1750 income but out of principal, the principal must be reimbursed

1751 for the increment when realized. If, in the reasonable judgment  
1752 of the fiduciary, exercised in good faith, the ultimate payment  
1753 of the bond principal is in doubt, the fiduciary may withhold  
1754 the payment of incremental interest to the income beneficiary.

1755 Section 26. Section 738.407, Florida Statutes, is created  
1756 to read:

1757 738.407 Insurance policy or contract.—

1758 (1) This section does not apply to a contract to which s.  
1759 738.409 applies.

1760 (2) Except as otherwise provided in subsection (3), a  
1761 fiduciary shall allocate to principal the proceeds of a life  
1762 insurance policy or other contract received by the fiduciary as  
1763 beneficiary, including a contract that insures against damage  
1764 to, destruction of, or loss of title to an asset. The fiduciary  
1765 shall allocate dividends on an insurance policy to income to the  
1766 extent that premiums on the policy are paid from income and to  
1767 principal to the extent premiums on the policy are paid from  
1768 principal.

1769 (3) A fiduciary shall allocate to income proceeds of a  
1770 contract that insures the fiduciary against loss of:

1771 (a) Occupancy or other use by a current income  
1772 beneficiary;

1773 (b) Income; or

1774 (c) Subject to s. 738.403, profits from a business.

1775 Section 27. Section 738.408, Florida Statutes, is created

HB 1093

2024

1776 to read:

1777 738.408 Insubstantial allocation not required.-

1778 (1) If a fiduciary determines that an allocation between  
1779 income and principal required by s. 738.409, s. 738.410, s.  
1780 738.411, s. 738.412, or s. 738.415 is insubstantial, the  
1781 fiduciary may allocate the entire amount to principal, unless s.  
1782 738.203(5) applies to the allocation.

1783 (2) A fiduciary may presume an allocation is insubstantial  
1784 under subsection (1) if:

1785 (a) The amount of the allocation would increase or  
1786 decrease net income in an accounting period, as determined  
1787 before the allocation, by less than 10 percent; and

1788 (b) The asset producing the receipt to be allocated has a  
1789 carrying value less than 10 percent of the total carrying value  
1790 of the assets owned or held by the fiduciary at the beginning of  
1791 the accounting period.

1792 (3) The power to make a determination under subsection (1)  
1793 may be:

1794 (a) Exercised by a cofiduciary in the manner described in  
1795 s. 738.203(6); or

1796 (b) Released or delegated for a reason described in s.  
1797 738.203(7) and in the manner described in s. 738.203(8).

1798 Section 28. Section 738.409, Florida Statutes, is created  
1799 to read:

1800 738.409 Deferred compensation, annuity, or similar

1801 payment.—

1802 (1) As used in this section, the term:

1803 (a) "Internal income of the separate fund" means the

1804 amount determined under subsection (2).

1805 (b) "Marital trust" means a trust:

1806 1. Of which the settlor's surviving spouse is the only

1807 current income beneficiary and is entitled to a distribution of

1808 all the current net income of the trust; and

1809 2. That qualifies for a marital deduction with respect to

1810 the settlor's estate under the Internal Revenue Code or

1811 comparable law of any state because:

1812 a. An election to qualify for a marital deduction under s.

1813 2056(b) (7) of the Internal Revenue Code has been made;

1814 b. The trust qualified for a marital deduction under s.

1815 2056(b) (5) of the Internal Revenue Code; or

1816 c. The trust otherwise qualifies for a marital deduction.

1817 (c) "Nonseparate fund" means an annuity, a deferred

1818 compensation plan, a pension plan, or other fund for which the

1819 value of the participant's or account owner's right to receive

1820 benefits can be determined only by the occurrence of a date or

1821 event as defined in the instrument governing the fund.

1822 (d) "Payment" means an amount a fiduciary may receive over

1823 a fixed number of years or during the life of one or more

1824 individuals because of services rendered or property transferred

1825 to the payor in exchange for future amounts the fiduciary may

1826 receive. The term includes an amount received in money or  
1827 property from the payor's general assets or from a separate fund  
1828 created by the payor.

1829 (e) "Percent calculated" means a percent equal to the rate  
1830 determined under s. 7520 of the Internal Revenue Code in effect  
1831 for the month preceding the beginning of the accounting period;  
1832 however, if the percent calculated exceeds 5 percent, it must be  
1833 reduced to 5 percent, and if the percent calculated is less than  
1834 3 percent, it must be increased to 3 percent. Notwithstanding  
1835 the preceding sentence, a fiduciary who is an independent person  
1836 as defined in s. 738.102 may set the percent calculated at a  
1837 percentage no less than 3 percent and no greater than 5 percent.

1838 (f) "Separate fund" includes a private or commercial  
1839 annuity, an individual retirement account, and a pension,  
1840 profit-sharing, stock-bonus, stock ownership plan, or other  
1841 deferred compensation fund holding assets exclusively for the  
1842 benefit of a participant or account owner.

1843 (2) For each accounting period, the following rules apply  
1844 to a separate fund:

1845 (a) The fiduciary may determine the internal income of the  
1846 separate fund as if the separate fund were a trust subject to  
1847 this chapter.

1848 (b) Alternatively, the fiduciary may deem the internal  
1849 income of the separate fund to equal the percent calculated of  
1850 the value of the separate fund according to the most recent

1851 statement of value preceding the beginning of the accounting  
1852 period. The fiduciary is not liable for good faith reliance upon  
1853 any valuation supplied by the person or persons in possession of  
1854 the fund. If the fiduciary makes or terminates an election under  
1855 this paragraph, the fiduciary must make such disclosure in a  
1856 trust disclosure document that satisfies the requirements of s.  
1857 736.1008(4)(c).

1858 (c) If the fiduciary cannot determine the value of the  
1859 separate fund under paragraph (b), the value of the separate  
1860 fund is deemed to equal the present value of s. 7520 of the  
1861 Internal Revenue Code for the month preceding the beginning of  
1862 the accounting period for which the computation is made.

1863 (d) The fiduciary may elect the method of determining the  
1864 income of the fund pursuant to this subsection and may change  
1865 the method of determining income of the fund for any future  
1866 accounting period.

1867 (3) A fiduciary shall allocate a payment received from a  
1868 separate fund during an accounting period to income, to the  
1869 extent of the internal income of the separate fund during the  
1870 period, and allocate the balance to principal.

1871 (4) The fiduciary of a marital trust shall:

1872 (a) Withdraw from a separate fund the amount the current  
1873 income beneficiary of the trust requests the fiduciary to  
1874 withdraw, not greater than the amount by which the internal  
1875 income of the separate fund during the accounting period exceeds

1876 the amount the fiduciary otherwise receives from the separate  
1877 fund during the period.

1878 (b) Transfer from principal to income the amount the  
1879 current income beneficiary requests the fiduciary to transfer,  
1880 but not greater than the amount by which the internal income of  
1881 the separate fund during the period exceeds the amount the  
1882 fiduciary receives from the separate fund during the period  
1883 after the application of paragraph (a).

1884 (c) Distribute to the current income beneficiary as  
1885 income:

1886 1. The amount of the internal income of the separate fund  
1887 received or withdrawn during the period; and

1888 2. The amount transferred from principal to income under  
1889 paragraph (b).

1890 (5) For a trust, other than a marital trust, of which one  
1891 or more current income beneficiaries are entitled to a  
1892 distribution of all the current net income, the fiduciary shall  
1893 transfer from principal to income the amount by which the  
1894 internal income of the separate fund during the accounting  
1895 period exceeds the amount the fiduciary receives from the  
1896 separate fund during the period.

1897 (6) The fiduciary of a nonseparate fund shall calculate  
1898 internal income of the fund as the percent calculated of the  
1899 present value of the right to receive the remaining payments as  
1900 determined under s. 7520(a)(2) of the Internal Revenue Code for

1901 the month preceding the beginning of the accounting period.

1902 (7) If a fiduciary owns a separate fund or a nonseparate  
 1903 fund before January 1, 2025, the fiduciary may determine  
 1904 internal income, allocate payments, and account for unwithdrawn  
 1905 internal income as provided in this section or in the manner  
 1906 used by the fiduciary before January 1, 2025. Such fiduciary is  
 1907 not required to consider subsection (5). If the fiduciary  
 1908 acquires a separate fund or a nonseparate fund on or after  
 1909 January 1, 2025, the fiduciary must calculate internal income,  
 1910 allocate payments, and account for unwithdrawn internal income  
 1911 as provided in this section.

1912 Section 29. Section 738.603, Florida Statutes, is  
 1913 transferred, renumbered as section 738.410, Florida Statutes,  
 1914 and amended to read:

1915 738.410 ~~738.603~~ Liquidating asset.—

1916 (1) As used in ~~For purposes of~~ this section, the term  
 1917 "liquidating asset" means an asset whose value ~~the value of~~  
 1918 ~~which~~ will diminish or terminate because the asset is expected  
 1919 to produce receipts for a ~~period of~~ limited time duration. The  
 1920 term includes a leasehold, patent, copyright, royalty right, and  
 1921 right to receive payments during a period of ~~for~~ more than 1  
 1922 year under an arrangement that does not provide for the payment  
 1923 of interest on the unpaid balance. ~~The term does not include a~~  
 1924 ~~payment subject to s. 738.602, resources subject to s. 738.604,~~  
 1925 ~~timber subject to s. 738.605, an activity subject to s. 738.607,~~

1926 ~~an asset subject to s. 738.608, or any asset for which the~~  
 1927 ~~fiduciary establishes a reserve for depreciation under s.~~  
 1928 ~~738.703.~~

1929 (2) This section does not apply to a receipt that is  
 1930 subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.  
 1931 738.414, s. 738.415, s. 738.416, or s. 738.503.

1932 (3) A fiduciary shall allocate to income a receipt  
 1933 produced by a liquidating asset to the extent that the receipt  
 1934 does not exceed 5 percent of the receipts from the carrying  
 1935 value of the asset at the beginning of the accounting period and  
 1936 allocate a liquidating asset and the balance to principal the  
 1937 balance of the receipt.

1938 (4) The amount ~~Amounts~~ allocated to principal shall reduce  
 1939 the carrying value of the liquidating asset, but not below zero.  
 1940 Amounts received in excess of the remaining carrying value must  
 1941 be allocated to principal.

1942 Section 30. Section 738.604, Florida Statutes, is  
 1943 transferred, renumbered as section 738.411, Florida Statutes,  
 1944 and amended to read:

1945 738.411 ~~738.604~~ Minerals, water, and other natural  
 1946 resources.-

1947 (1) To the extent that ~~If~~ a fiduciary does not account for  
 1948 a receipt ~~accounts for receipts~~ from an interest in minerals,  
 1949 water, or other natural resources as a business under s. 738.403  
 1950 ~~pursuant to this section,~~ the fiduciary shall allocate the

1951 receipt such receipts as follows:

1952       (a) To income, to the extent received:

1953       1. ~~If received~~ As ~~nominal~~ delay rental or ~~nominal~~ annual

1954 rent on a lease;

1955       2. As a factor for interest or the equivalent of interest

1956 under an agreement creating a production payment; or

1957       3. On account of an interest in renewable water; ~~a~~

1958 ~~receipt shall be allocated to income.~~

1959       (b) To principal, if received from a production payment, a

1960 ~~receipt shall be allocated to income if and to the extent that~~

1961 subparagraph (a)2. does not apply; or the agreement creating the

1962 production payment provides a factor for interest or its

1963 equivalent. The balance shall be allocated to principal.

1964       (c) Between income and principal equitably, to the extent

1965 received:

1966       1. On account of an interest in nonrenewable water;

1967       2. ~~If an amount received~~ As a royalty, shut-in-well

1968 payment, take-or-pay payment, or bonus; or, ~~or delay rental is~~

1969 ~~more than nominal, 90 percent shall be allocated to principal~~

1970 ~~and the balance to income.~~

1971       3. ~~(d) If an amount is received~~ From a working interest or

1972 any other interest not provided for in paragraph (a) or,

1973 paragraph (b) or subparagraph 1. or subparagraph 2., ~~or~~

1974 ~~paragraph (c), 90 percent of the net amount received shall be~~

1975 ~~allocated to principal and the balance to income.~~

1976           (2) ~~An amount received on account of an interest in water~~  
 1977 ~~that is renewable shall be allocated to income. If the water is~~  
 1978 ~~not renewable, 90 percent of the amount shall be allocated to~~  
 1979 ~~principal and the balance to income.~~

1980           ~~(3) This section chapter applies to an interest owned or~~  
 1981 ~~held by a fiduciary regardless of whether ~~or not~~ a settlor~~  
 1982 ~~decedent or donor was extracting minerals, water, or other~~  
 1983 ~~natural resources before the fiduciary owned or held the~~  
 1984 ~~interest became subject to the trust or estate.~~

1985           (3) An allocation of a receipt under paragraph (1)(c) is  
 1986 presumed to be equitable if the amount allocated to principal is  
 1987 equal to the amount allowed by the Internal Revenue Code as a  
 1988 deduction for depletion of the interest.

1989           (4) If a fiduciary ~~trust or estate~~ owns or holds an  
 1990 interest in minerals, water, or other natural resources before  
 1991 January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate  
 1992 receipts from the interest as provided in this section ~~chapter~~  
 1993 or in the manner used by the fiduciary before January 1, 2025  
 1994 ~~January 1, 2003~~. If the fiduciary ~~trust or estate~~ acquires an  
 1995 interest in minerals, water, or other natural resources on or  
 1996 after January 1, 2025 ~~January 1, 2003~~, the fiduciary must ~~shall~~  
 1997 allocate receipts from the interest as provided in this section  
 1998 ~~chapter~~.

1999           Section 31. Section 738.605, Florida Statutes, is  
 2000 transferred, renumbered as section 738.412, Florida Statutes,

2001 and amended to read:

2002 738.412 ~~738.605~~ Timber.—

2003 (1) To the extent that ~~If~~ a fiduciary does not account  
 2004 ~~accounts~~ for receipts from the sale of timber and related  
 2005 products as a business under s. 738.403 ~~pursuant to this~~  
 2006 ~~section,~~ the fiduciary shall allocate the ~~such~~ net receipts ~~as~~  
 2007 ~~follows:~~

2008 (a) To income, to the extent that the amount of timber cut  
 2009 ~~removed~~ from the land does not exceed the rate of growth of the  
 2010 timber ~~during the accounting periods in which a beneficiary has~~  
 2011 ~~a mandatory income interest;~~

2012 (b) To principal, to the extent that the amount of timber  
 2013 cut ~~removed~~ from the land exceeds the rate of growth of the  
 2014 timber or the net receipts are from the sale of standing timber;

2015 (c) ~~To or~~ Between income and principal if the net receipts  
 2016 are from the lease of land used for growing and cutting timber  
 2017 ~~timberland~~ or from a contract to cut timber from land ~~owned by a~~  
 2018 ~~trust or estate~~ by determining the amount of timber cut ~~removed~~  
 2019 from the land under the lease or contract and applying the rules  
 2020 in paragraphs (a) and (b); or

2021 (d) To principal, to the extent that advance payments,  
 2022 bonuses, and other payments are not allocated under ~~pursuant to~~  
 2023 paragraph (a), paragraph (b), or paragraph (c).

2024 (2) In determining net receipts to be allocated under  
 2025 ~~pursuant to~~ subsection (1), a fiduciary shall deduct and

2026 transfer to principal a reasonable amount for depletion.

2027 (3) This section ~~chapter~~ applies to land owned or held by  
 2028 a fiduciary regardless of whether ~~or not~~ a settlor decedent or  
 2029 ~~donor~~ was cutting ~~harvesting~~ timber from the land property  
 2030 before the fiduciary owned or held the property ~~became subject~~  
 2031 ~~to the trust or estate.~~

2032 (4) If a fiduciary ~~trust or estate~~ owns or holds an  
 2033 interest in land used for growing and cutting timber before  
 2034 January 1, 2025 ~~timberland on January 1, 2003~~, the fiduciary may  
 2035 allocate net receipts from the sale of timber and related  
 2036 products as provided in this section ~~chapter~~ or in the manner  
 2037 used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If  
 2038 the fiduciary ~~trust or estate~~ acquires an interest in land used  
 2039 for growing and cutting timber on or after January 1, 2025  
 2040 ~~timberland after January 1, 2003~~, the fiduciary must ~~shall~~  
 2041 allocate net receipts from the sale of timber and related  
 2042 products as provided in this section ~~chapter~~.

2043 Section 32. Section 738.606, Florida Statutes, is  
 2044 transferred, renumbered as section 738.413, Florida Statutes,  
 2045 and amended to read:

2046 738.413 ~~738.606~~ Marital deduction property not productive  
 2047 of income.—

2048 (1) If a trust received property for which a gift or  
 2049 estate tax marital deduction was under the Internal Revenue Code  
 2050 ~~or comparable law of any state is allowed,~~ for all or if part of

2051 a trust ~~received property satisfying, or if assets are~~  
 2052 ~~transferred to a trust that satisfies~~ the requirements of s.  
 2053 732.2025(2)(a) and (c), and such property has ~~assets have~~ been  
 2054 used in whole or in part to satisfy an election by a surviving  
 2055 spouse under s. 732.2125, and the settlor's spouse holds a  
 2056 mandatory income interest in the trust, the spouse may require  
 2057 the trustee, to the extent that the trust assets otherwise do  
 2058 ~~consist of property that, in the aggregate, does not provide the~~  
 2059 spouse with sufficient income from or use of the trust assets to  
 2060 qualify for the deduction, or to satisfy an election by a  
 2061 surviving spouse under s. 732.2125, to make the property  
 2062 productive of income within a reasonable time. The trustee may:  
 2063 (a) Convert property to property productive of income  
 2064 within a reasonable time;  
 2065 (b) Exercise the power to adjust under s. 738.203;  
 2066 (c) Exercise the power to convert to or from a unitrust  
 2067 under s. 738.303; or  
 2068 (d) Exercise the fiduciary's authority under the terms of  
 2069 the trust to otherwise provide the surviving spouse with  
 2070 sufficient income from the trust assets, or the use of the trust  
 2071 assets, to qualify for the marital deduction, or to satisfy an  
 2072 election by a surviving spouse under s. 732.2125.  
 2073 (2) The trustee may decide which action or combination of  
 2074 actions listed in subsection (1) to take.  
 2075 (3) Subsection (1) shall apply, ~~and if amounts the trustee~~

2076 ~~transfers from principal to income under s. 738.104 and~~  
 2077 ~~distributes to the spouse from principal pursuant to the terms~~  
 2078 ~~of the trust are insufficient to provide the spouse with the~~  
 2079 ~~beneficial enjoyment required to obtain the marital deduction,~~  
 2080 ~~even though, in the case of an elective share trust under s.~~  
 2081 ~~732.2025(2), a marital deduction is not made or is only~~  
 2082 ~~partially made, the spouse may require the trustee of such~~  
 2083 ~~marital trust or elective share trust to make property~~  
 2084 ~~productive of income, convert property within a reasonable time,~~  
 2085 ~~or exercise the power conferred by ss. 738.104 and 738.1041.~~

2086 (4) The terms of a trust as defined in s. 738.102 may not  
 2087 supersede this section unless such terms explicitly reference  
 2088 this section ~~The trustee may decide which action or combination~~  
 2089 ~~of actions to take.~~

2090 ~~(2) In cases not governed by subsection (1), proceeds from~~  
 2091 ~~the sale or other disposition of an asset are principal without~~  
 2092 ~~regard to the amount of income the asset produces during any~~  
 2093 ~~accounting period.~~

2094 Section 33. Section 738.607, Florida Statutes, is  
 2095 transferred, renumbered as section 738.414, Florida Statutes,  
 2096 and amended to read:

2097 738.414 ~~738.607~~ Derivatives or ~~and~~ options.—

2098 (1) As used in ~~For purposes of~~ this section, the term  
 2099 "derivative" means a contract, an ~~or~~ financial instrument, or  
 2100 other arrangement, or a combination of contracts, and ~~financial~~

2101 instruments, or other arrangements, of which the value, rights,  
 2102 and obligations are, in whole or in part, dependent on or  
 2103 derived from an underlying ~~which gives a trust the right or~~  
 2104 ~~obligation to participate in some or all changes in the price of~~  
 2105 ~~a tangible or intangible asset, a~~ ~~or~~ group of tangible or  
 2106 intangible assets, an index, or an occurrence of an event. The  
 2107 term includes stocks, fixed income securities, and financial  
 2108 instruments and arrangements based on indices, commodities,  
 2109 interest rates, weather-related events, and credit-default  
 2110 events ~~assets, or changes in a rate, an index of prices or~~  
 2111 ~~rates, or other market indicator for an asset or a group of~~  
 2112 ~~assets.~~

2113 (2) To the extent that a fiduciary does not account for a  
 2114 transaction in derivatives as a business under s. 738.403 ~~for~~  
 2115 ~~transactions in derivatives,~~ the fiduciary shall allocate 10  
 2116 percent of ~~to principal~~ receipts from the transaction and 10  
 2117 percent of ~~and~~ disbursements made in connection with the  
 2118 transaction to income and allocate the balance to principal  
 2119 ~~those transactions.~~

2120 (3) Subsection (4) applies if:

2121 (a) A fiduciary:

2122 1. If a fiduciary Grants an option to buy property from a  
 2123 ~~the trust,~~ regardless of ~~or estate~~ whether ~~or not~~ the trust ~~or~~  
 2124 ~~estate~~ owns the property when the option is granted;;

2125 2. Grants an option that permits another person to sell

2126 | property to the trust; or  
 2127 |       3. ~~estate, or~~ Acquires an option to buy property for the  
 2128 | trust or ~~estate or~~ an option to sell an asset owned by the trust  
 2129 | ~~or estate;~~ and

2130 |       (b) The fiduciary or other owner of the asset is required  
 2131 | to deliver the asset if the option is exercised, ~~an amount~~  
 2132 | ~~received for granting the option shall be allocated to~~  
 2133 | ~~principal. An amount paid to acquire the option shall be paid~~  
 2134 | ~~from principal.~~

2135 |       (4) If this subsection applies, the fiduciary must  
 2136 | allocate 10 percent to income and allocate the balance to  
 2137 | principal of the following amounts:

2138 |       (a) An amount received for granting the option;

2139 |       (b) An amount paid to acquire the option; and

2140 |       (c) A Gain or loss realized on ~~upon~~ the exercise,  
 2141 | exchange, settlement, offset, closing, or expiration of the  
 2142 | option of an option, including an option granted to a grantor of  
 2143 | the trust or estate for services rendered, shall be allocated to  
 2144 | principal.

2145 |       Section 34. Section 738.608, Florida Statutes, is  
 2146 | transferred, renumbered as section 738.415, Florida Statutes,  
 2147 | and amended to read:

2148 |       738.415 738.608 Asset-backed securities.-

2149 |       (1) Except as otherwise provided in subsection (2), a  
 2150 | fiduciary shall allocate to income a receipt from or related to

2151 an asset-backed security, as defined in s. 738.102, to the  
2152 extent that the payor identifies the payment as being from ~~For~~  
2153 ~~purposes of this section, "asset-backed security" means an asset~~  
2154 ~~the value of which is based upon the right given the owner to~~  
2155 ~~receive distributions from the proceeds of financial assets that~~  
2156 ~~provide collateral for the security. The term includes an asset~~  
2157 ~~that gives the owner the right to receive from the collateral~~  
2158 ~~financial assets only the interest or other current return and~~  
2159 allocate to principal the balance of the receipt ~~or only the~~  
2160 ~~proceeds other than interest or current return. The term does~~  
2161 ~~not include an asset to which s. 738.401 or s. 738.602 applies.~~

2162 (2) If a fiduciary receives one or more payments in  
2163 exchange for part or all of the fiduciary's interest in an  
2164 asset-backed security, including a liquidation or redemption of  
2165 the fiduciary's interest in the security ~~trust or estate~~  
2166 ~~receives a payment from interest or other current return and~~  
2167 ~~from other proceeds of the collateral financial assets, the~~  
2168 ~~fiduciary must shall~~ allocate to income 10 percent of receipts  
2169 from the transaction and 10 percent of disbursements made in  
2170 connection with the transaction, and allocate to principal the  
2171 ~~portion of the payment which the payor identifies as being from~~  
2172 ~~interest or other current return and allocate the balance of the~~  
2173 receipts and disbursements ~~payment to principal.~~

2174 ~~(3) If a trust or estate receives one or more payments in~~  
2175 ~~exchange for the trust's or estate's entire interest in an~~

2176 ~~asset-backed security during a single accounting period, the~~  
 2177 ~~fiduciary shall allocate the payments to principal. If a payment~~  
 2178 ~~is one of a series of payments that will result in the~~  
 2179 ~~liquidation of the trust's or estate's interest in the security~~  
 2180 ~~over more than a single accounting period, the fiduciary shall~~  
 2181 ~~allocate 10 percent of the payment to income and the balance to~~  
 2182 ~~principal.~~

2183 Section 35. Section 738.416, Florida Statutes, is created  
 2184 to read:

2185 738.416 Other financial instrument or arrangement.—A  
 2186 fiduciary shall allocate receipts from or related to a financial  
 2187 instrument or arrangement not otherwise addressed by this  
 2188 chapter. The allocation must be consistent with ss. 738.414 and  
 2189 738.415.

2190 Section 36. Section 738.501, Florida Statutes, is amended  
 2191 to read:

2192 (Substantial rewording of section. See  
 2193 s. 738.501, F.S., for present text.)

2194 738.501 Disbursement from income.—Subject to s. 738.504,  
 2195 and except as otherwise provided in s. 738.601(3)(b) or (c), a  
 2196 fiduciary shall disburse from income:

2197 (1) One-half of:

2198 (a) The regular compensation of the fiduciary and of any  
 2199 person providing investment advisory, custodial, or other  
 2200 services to the fiduciary to the extent that income is

2201 sufficient; and

2202 (b) An expense for an accounting, judicial or nonjudicial  
 2203 proceeding, or other matter that involves both income and  
 2204 successive interests to the extent income is sufficient.

2205 (2) The balance of the disbursements described in  
 2206 subsection (1), to the extent that a fiduciary who is an  
 2207 independent person determines that making those disbursements  
 2208 from income would be in the interests of the beneficiaries.

2209 (3) Any other ordinary expense incurred in connection with  
 2210 administration, management, or preservation of property and  
 2211 distribution of income, including interest, an ordinary repair,  
 2212 a regularly recurring tax assessed against principal, and an  
 2213 expense of an accounting, judicial or nonjudicial proceeding, or  
 2214 other matter that involves primarily an income interest, to the  
 2215 extent that income is sufficient.

2216 (4) A premium on insurance covering loss of a principal  
 2217 asset or income from or use of the asset.

2218 Section 37. Section 738.502, Florida Statutes, is amended  
 2219 to read:

2220 (Substantial rewording of section. See  
 2221 s. 738.502, F.S., for present text.)

2222 738.502 Disbursement from principal.-

2223 (1) Subject to s. 738.505, and except as otherwise  
 2224 provided in s. 738.601(3)(b), a fiduciary shall disburse all of  
 2225 the following from principal:

- 2226        (a) The balance of the disbursements described in s.  
 2227 738.501(1) and (3), after application of s. 738.501(2).
- 2228        (b) The fiduciary's compensation calculated on principal  
 2229 as a fee for acceptance, distribution, or termination.
- 2230        (c) A payment of an expense to prepare for or execute a  
 2231 sale or other disposition of property.
- 2232        (d) A payment on the principal of a trust debt.
- 2233        (e) A payment of an expense of an accounting, judicial or  
 2234 nonjudicial proceeding, or other matter that involves primarily  
 2235 principal, including a proceeding to construe the terms of the  
 2236 trust or protect property.
- 2237        (f) A payment of a premium for insurance, including title  
 2238 insurance, not described in s. 738.501(4) of which the fiduciary  
 2239 is the owner and beneficiary.
- 2240        (g) A payment of estate, inheritance, and other transfer  
 2241 taxes, including penalties, apportioned to the trust.
- 2242        (h) A payment related to environmental matters including:  
 2243        1. Reclamation;  
 2244        2. Assessing environmental conditions;  
 2245        3. Remedying and removing environmental contamination;  
 2246        4. Monitoring remedial activities and the release of  
 2247 substances;  
 2248        5. Preventing future releases of substances;  
 2249        6. Collecting amounts from persons liable or potentially  
 2250 liable for the costs of the activities described in

2251 subparagraphs 1.-5.;

2252 7. Penalties imposed under environmental laws or  
 2253 regulations;

2254 8. Other actions to comply with environmental laws or  
 2255 regulations;

2256 9. Statutory or common law claims by third parties; and

2257 10 Defending claims based on environmental matters.

2258 (i) A payment of a premium for insurance for matters  
 2259 described in paragraph (h).

2260 (2) If a principal asset is encumbered with an obligation  
 2261 that requires income from the asset to be paid directly to a  
 2262 creditor, the fiduciary must transfer from principal to income  
 2263 an amount equal to the income paid to the creditor in reduction  
 2264 of the principal balance of the obligation.

2265 Section 38. Section 738.503, Florida Statutes, is amended  
 2266 to read:

2267 (Substantial rewording of section. See  
 2268 s. 738.503, F.S., for present text.)

2269 738.503 Transfers from income to principal for  
 2270 depreciation.—

2271 (1) For purposes of this section, "depreciation" means a  
 2272 reduction in value due to wear, tear, decay, corrosion, or  
 2273 gradual obsolescence of a tangible asset having a useful life of  
 2274 more than 1 year.

2275 (2) A fiduciary may transfer to principal a reasonable

2276 amount of the net cash receipts from a principal asset that is  
 2277 subject to depreciation but may not transfer any amount for  
 2278 depreciation:

2279 (a) Of the part of real property used or available for use  
 2280 by a beneficiary as a residence;

2281 (b) Of tangible personal property held or made available  
 2282 for the personal use or enjoyment of a beneficiary; or

2283 (c) Under this section, to the extent that the fiduciary  
 2284 accounts:

2285 1. Under s. 738.410 for the asset; or

2286 2. Under s. 738.403 for the business or other activity in  
 2287 which the asset is used.

2288 (3) An amount transferred to principal under this section  
 2289 need not be separately held.

2290 Section 39. Section 738.504, Florida Statutes, is amended  
 2291 to read:

2292 (Substantial rewording of section. See  
 2293 s. 738.504, F.S., for present text.)

2294 738.504 Reimbursement of income from principal.—

2295 (1) If a fiduciary makes or expects to make an income  
 2296 disbursement described in subsection (2), the fiduciary may  
 2297 transfer an appropriate amount from principal to income in one  
 2298 or more accounting periods to reimburse income.

2299 (2) To the extent that the fiduciary has not been and does  
 2300 not expect to be reimbursed by a third party, income

2301 disbursements to which subsection (1) applies include:  
 2302 (a) An amount chargeable to principal but paid from income  
 2303 because principal is illiquid;  
 2304 (b) A disbursement made to prepare property for sale,  
 2305 including improvements and commissions; and  
 2306 (c) A disbursement described in s. 738.502(1).  
 2307 (3) If an asset whose ownership gives rise to an income  
 2308 disbursement becomes subject to a successive interest after an  
 2309 income interest ends, the fiduciary may continue to make  
 2310 transfers under subsection (1).

2311 Section 40. Section 738.704, is transferred, renumbered as  
 2312 section 738.505, Florida Statutes, and amended to read:

2313 738.505 ~~738.704~~ Reimbursement of principal from income  
 2314 ~~Transfers from income to reimburse principal.-~~

2315 (1) If a fiduciary makes or expects to make a principal a  
 2316 ~~principal~~ disbursement described in subsection (2) ~~this section~~,  
 2317 the fiduciary may transfer an appropriate amount from income to  
 2318 principal in one or more accounting periods to reimburse  
 2319 principal or to provide a reserve for future principal  
 2320 disbursements.

2321 (2) ~~Principal disbursements to which subsection (1)~~  
 2322 ~~applies include the following, but only~~ To the extent that a the  
 2323 fiduciary has not been and does not expect to be reimbursed by a  
 2324 third party, principal disbursements to which subsection (1)  
 2325 applies include:

2326 (a) An amount chargeable to income but paid from principal  
 2327 because income is not sufficient; ~~the amount is unusually large.~~

2328 (b) The cost of an improvement to principal, whether a  
 2329 change to an existing asset or the construction of a new asset,  
 2330 including a special assessment; ~~Disbursements made to prepare~~  
 2331 ~~property for rental, including tenant allowances, leasehold~~  
 2332 ~~improvements, and broker's commissions.~~

2333 (c) A disbursement made to prepare property for rental,  
 2334 including tenant allowances, leasehold improvements, and  
 2335 commissions; ~~Disbursements described in s. 738.702(1)(g).~~

2336 (d) A periodic payment on an obligation secured by a  
 2337 principal asset, to the extent the amount transferred from  
 2338 income to principal for depreciation is less than the periodic  
 2339 payment; and

2340 (e) A disbursement described in s. 738.502(1).

2341 (3) If an ~~the~~ asset whose ~~the~~ ownership ~~of which~~ gives  
 2342 rise to a principal disbursement ~~the disbursements~~ becomes  
 2343 subject to a successive ~~income~~ interest after an income interest  
 2344 ends, the ~~a~~ fiduciary may continue to make transfers under  
 2345 ~~transfer amounts from income to principal as provided in~~  
 2346 ~~subsection (1).~~

2347 (4) ~~To the extent principal cash is not sufficient to pay~~  
 2348 ~~the principal balance of payments due on mortgaged property,~~  
 2349 ~~income may be applied to such payment in order to avoid a~~  
 2350 ~~default on any mortgage or security interest securing the~~

2351 ~~property. Income shall be reimbursed for such payments out of~~  
 2352 ~~the first available principal cash. If the asset the ownership~~  
 2353 ~~of which gives rise to the disbursements described in this~~  
 2354 ~~subsection becomes subject to a successive income interest after~~  
 2355 ~~an income interest ends, all rights of the initial income~~  
 2356 ~~interest shall lapse, and amounts remaining due from principal~~  
 2357 ~~shall not be a lien on the assets of the trust.~~

2358 Section 41. Section 738.705, Florida Statutes, is  
 2359 transferred, renumbered as section 738.506, Florida Statutes,  
 2360 and amended to read:

2361 738.506 ~~738.705~~ Income taxes.—

2362 (1) A tax required to be paid by a fiduciary which is  
 2363 based on receipts allocated to income must ~~shall~~ be paid from  
 2364 income.

2365 (2) A tax required to be paid by a fiduciary which is  
 2366 based on receipts allocated to principal must ~~shall~~ be paid from  
 2367 principal, even if the tax is called an income tax by the taxing  
 2368 authority.

2369 (3) Subject to subsection (4) and ss. 738.504, 738.505,  
 2370 and 738.507, a tax required to be paid by a fiduciary on a the  
 2371 ~~trust's or estate's~~ share of an entity's taxable income in an  
 2372 accounting period must ~~shall~~ be paid from ~~proportionately~~:

2373 (a) ~~From~~ Income and principal proportionately to the  
 2374 allocation between income and principal of ~~to the extent~~  
 2375 receipts from the entity in the period ~~are allocated to~~ income.

2376 (b) ~~From principal to the extent receipts from the entity~~  
 2377 ~~are allocated to principal.~~

2378 ~~(c) From Principal to the extent that the tax exceeds the~~  
 2379 ~~income taxes payable by the trust or estate exceed the total~~  
 2380 ~~receipts from the entity in the period.~~

2381 (4) After applying subsections (1), (2), and (3), a  
 2382 fiduciary shall adjust income or principal receipts, to the  
 2383 extent the taxes that the fiduciary pays are reduced because of  
 2384 a deduction for a payment made to a beneficiary.

2385 (5) Subject to the limitations and excluded assets  
 2386 provided under s. 736.08145, a reimbursement of state or federal  
 2387 income tax elected to be made by a fiduciary pursuant to s.  
 2388 736.08145 must be allocated and paid under paragraphs (3)(a) and  
 2389 ~~(b) After applying subsections (1)-(3), the fiduciary shall~~  
 2390 ~~adjust income or principal receipts to the extent that the~~  
 2391 ~~trust's or estate's income taxes are reduced, but not~~  
 2392 ~~eliminated, because the trust or estate receives a deduction for~~  
 2393 ~~payments made to a beneficiary. The amount distributable to that~~  
 2394 ~~beneficiary as income as a result of this adjustment shall be~~  
 2395 ~~equal to the cash received by the trust or estate, reduced, but~~  
 2396 ~~not below zero, by the entity's taxable income allocable to the~~  
 2397 ~~trust or estate multiplied by the trust's or estate's income tax~~  
 2398 ~~rate. The reduced amount shall be divided by the difference~~  
 2399 ~~between 1 and the trust's or estate's income tax rate in order~~  
 2400 ~~to determine the amount distributable to that beneficiary as~~

2401 ~~income before giving effect to other receipts or disbursements~~  
 2402 ~~allocable to that beneficiary's interest.~~

2403 Section 42. Section 738.706, Florida Statutes, is  
 2404 transferred, renumbered as section 738.507, Florida Statutes,  
 2405 and amended to read:

2406 738.507 ~~738.706~~ Adjustment ~~Adjustments~~ between principal  
 2407 and income because of taxes.—

2408 (1) A fiduciary may make an adjustment ~~adjustments~~ between  
 2409 ~~principal and income~~ and principal to offset the shifting of  
 2410 economic interests or tax benefits between current income  
 2411 beneficiaries and successor ~~remainder~~ beneficiaries which arises  
 2412 ~~arise~~ from:

2413 (a) An election or decision ~~Elections and decisions, other~~  
 2414 ~~than those described in paragraph (b), that~~ the fiduciary makes  
 2415 ~~from time to time~~ regarding a tax matter, other than a decision  
 2416 to claim an income tax deduction to which subsection (2) applies  
 2417 ~~matters;~~

2418 (b) An income tax or ~~any~~ other tax ~~that is imposed on~~ upon  
 2419 the fiduciary or a beneficiary as a result of a transaction  
 2420 involving the fiduciary or a distribution by ~~from~~ the fiduciary  
 2421 ~~estate or trust; or~~

2422 (c) ~~The~~ Ownership by the fiduciary ~~an estate or trust~~ of  
 2423 an interest in an entity a part of whose taxable income,  
 2424 regardless of whether ~~or not~~ distributed, is includable in the  
 2425 taxable income of the fiduciary ~~estate, trust,~~ or a beneficiary;

2426 or  
 2427 (d) An election or decision a fiduciary makes to reimburse  
 2428 any tax under s. 736.08145.

2429 (2) If the amount of an estate tax marital ~~deduction~~ or  
 2430 charitable ~~contribution~~ deduction is reduced because a fiduciary  
 2431 deducts an amount paid from principal for income tax purposes  
 2432 instead of deducting it ~~such amount~~ for estate tax purposes,  
 2433 and, as a result, estate taxes paid from principal are increased  
 2434 and income taxes paid by a fiduciary or a ~~an estate, trust, or~~  
 2435 beneficiary are decreased, the fiduciary shall charge each  
 2436 ~~estate, trust, or~~ beneficiary that benefits from the decrease in  
 2437 income tax to ~~shall~~ reimburse the principal from which the  
 2438 increase in estate tax is paid. The total reimbursement must  
 2439 ~~shall~~ equal the increase in the estate tax, to the extent that  
 2440 the principal used to pay the increase would have qualified for  
 2441 a marital ~~deduction~~ or charitable ~~contribution~~ deduction but for  
 2442 the payment. The ~~proportionate~~ share of the reimbursement for  
 2443 each fiduciary estate, trust, or beneficiary whose income taxes  
 2444 are reduced must ~~shall~~ be the same as its ~~such estate's,~~  
 2445 ~~trust's, or beneficiary's~~ ~~proportionate~~ share of the total  
 2446 decrease in income tax. ~~An estate or trust shall reimburse~~  
 2447 ~~principal from income.~~

2448 (3) A fiduciary that charges a beneficiary under  
 2449 subsection (2) may offset the charge by obtaining payment from  
 2450 the beneficiary, withholding an amount from future distributions

2451 to the beneficiary, or adopting another method or combination of  
2452 methods.

2453 Section 43. Section 738.508, Florida Statutes, is created  
2454 to read:

2455 738.508 Apportionment of property expenses between tenant  
2456 and remainderman.—

2457 (1) For purposes of this section, the term:

2458 (a) "Remainderman" means the holder of the remainder  
2459 interests after the expiration of a tenant's estate in property.

2460 (b) "Tenant" means the holder of an estate for life or  
2461 term of years in real property or personal property, or both.

2462 (2) If a trust has not been created, expenses shall be  
2463 apportioned between the tenant and remainderman as follows:

2464 (a) The following expenses are allocated to and shall be  
2465 paid by the tenant:

2466 1. All ordinary expenses incurred in connection with the  
2467 administration, management, or preservation of the property,  
2468 including interest, ordinary repairs, regularly recurring taxes  
2469 assessed against the property, and expenses of a proceeding or  
2470 other matter that concerns primarily the tenant's estate or use  
2471 of the property.

2472 2. Recurring premiums on insurance covering the loss of  
2473 the property or the loss of income from or use of the property.

2474 3. Any of the expenses described in subparagraph (b) 3.  
2475 which are attributable to the use of the property by the tenant.

2476 (b) The following expenses are allocated to and shall be  
2477 paid by the remainderman:

2478 1. Payments on the principal of a debt secured by the  
2479 property, except to the extent that the debt is for expenses  
2480 allocated to the tenant.

2481 2. Expenses of a proceeding or other matter that concerns  
2482 primarily the title to the property, other than title to the  
2483 tenant's estate.

2484 3. Except as provided in subparagraph (a)3., expenses  
2485 related to environmental matters, including reclamation,  
2486 assessing environmental conditions, remedying and removing  
2487 environmental contamination, monitoring remedial activities and  
2488 the release of substances, preventing future releases of  
2489 substances, collecting amounts from persons liable or  
2490 potentially liable for the costs of such activities, penalties  
2491 imposed under environmental laws or regulations and other  
2492 payments made to comply with those laws or regulations,  
2493 statutory or common law claims by third parties, and defending  
2494 claims based on environmental matters.

2495 4. Extraordinary repairs.

2496 (c) If the tenant or remainderman incurred an expense for  
2497 the benefit of his or her own estate without consent or  
2498 agreement of the other, he or she must pay such expense in full.

2499 (d) Except as provided in paragraph (c), the cost of, or  
2500 special taxes or assessments for, an improvement representing an

2501 addition of value to property forming part of the principal  
2502 shall be paid by the tenant if the improvement is not reasonably  
2503 expected to outlast the estate of the tenant. In all other  
2504 cases, only a part shall be paid by the tenant while the  
2505 remainder shall be paid by the remainderman. The part payable by  
2506 the tenant is ascertainable by taking that percentage of the  
2507 total that is found by dividing the present value of the  
2508 tenant's estate by the present value of an estate of the same  
2509 form as that of the tenant, except that it is limited for a  
2510 period corresponding to the reasonably expected duration of the  
2511 improvement. The computation of present values of the estates  
2512 shall be made by using the rate determined under s. 7520(a)(2)  
2513 of the Internal Revenue Code then in effect and, in the case of  
2514 an estate for life, the official mortality tables then in effect  
2515 under s. 7520 of the Internal Revenue Code. Other evidence of  
2516 duration or expectancy may not be considered.

2517 (3) This section does not apply to the extent that it is  
2518 inconsistent with the instrument creating the estates, the  
2519 agreement of the parties, or the specific direction of the  
2520 Internal Revenue Code taxing or other applicable law.

2521 (4) The common law applicable to tenants and remaindermen  
2522 supplements this section, except as modified by this section or  
2523 other laws.

2524 Section 44. Section 738.601, Florida Statutes, is amended  
2525 to read:

2526 (Substantial rewording of section. See  
2527 s. 738.601, F.S., for present text.)  
2528 738.601 Determination and distribution of net income.—  
2529 (1) This section applies when:  
2530 (a) The death of an individual results in the creation of  
2531 an estate or trust; or  
2532 (b) An income interest in a trust terminates, whether the  
2533 trust continues or is distributed.  
2534 (2) A fiduciary of an estate or trust with an income  
2535 interest that terminates shall determine, under subsection (6)  
2536 and ss. 738.401-738.508 and 738.701-738.703, the amount of net  
2537 income and net principal receipts received from property  
2538 specifically given to a beneficiary. The fiduciary shall  
2539 distribute the net income and net principal receipts to the  
2540 beneficiary who is to receive the specific property.  
2541 (3) A fiduciary shall determine the income and net income  
2542 of an estate or income interest in a trust which terminates,  
2543 other than the amount of net income determined under subsection  
2544 (2), under ss. 738.401-738.508 and 738.701-738.703, and by:  
2545 (a) Including in net income all income from property used  
2546 or sold to discharge liabilities.  
2547 (b) Paying from income or principal, in the fiduciary's  
2548 discretion, fees of attorneys, accountants, and fiduciaries;  
2549 court costs and other expenses of administration; and interest  
2550 on estate and inheritance taxes and other taxes imposed because

2551 of the decedent's death, but the fiduciary may pay the expenses  
 2552 from income of property passing to a trust for which the  
 2553 fiduciary claims an estate tax marital or charitable deduction  
 2554 under the Internal Revenue Code or comparable law of any state  
 2555 only to the extent that:

2556 1. The payment of the those expenses from income will not  
 2557 cause the reduction or loss of the deduction; or

2558 2. The fiduciary makes an adjustment under s. 738.507(2);  
 2559 and

2560 (c) Paying from principal other disbursements made or  
 2561 incurred in connection with the settlement of the estate or the  
 2562 winding up of an income interest that terminates, including:

2563 1. To the extent authorized by the decedent's will, the  
 2564 terms of the trust, or applicable law, debts, funeral expenses,  
 2565 disposition of remains, family allowances, estate and  
 2566 inheritance taxes, and other taxes imposed because of the  
 2567 decedent's death; and

2568 2. Related penalties apportioned by the decedent's will,  
 2569 the terms of the trust, or applicable law to the estate or  
 2570 income interest that terminates.

2571 (4) If a decedent's will or the terms of a trust provide  
 2572 for the payment of interest or the equivalent of interest to a  
 2573 beneficiary who receives a pecuniary amount outright, the  
 2574 fiduciary shall make the payment from net income determined  
 2575 under subsection (3) or from principal to the extent that net

2576 income is insufficient.

2577 (5) A fiduciary shall distribute net income remaining  
2578 after payments required by subsection (4) in the manner  
2579 described in s. 738.602 to all other beneficiaries, including a  
2580 beneficiary who receives a pecuniary amount in trust, even if  
2581 the beneficiary holds an unqualified power to withdraw assets  
2582 from the trust or other presently exercisable general power of  
2583 appointment over the trust.

2584 (6) A fiduciary may not reduce principal or income  
2585 receipts from property described in subsection (2) because of a  
2586 payment described in s. 738.501 or s. 738.502 to the extent that  
2587 the decedent's will, the terms of the trust, or applicable law  
2588 requires the fiduciary to make the payment from assets other  
2589 than the property or that the fiduciary recovers or expects to  
2590 recover the payment from a third party. The net income and  
2591 principal receipts from the property must be determined by  
2592 including the amount the fiduciary receives or pays regarding  
2593 the property, whether the amount accrued or became due before,  
2594 on, or after the date of the decedent's death or an income  
2595 interest's terminating event, and making a reasonable provision  
2596 for an amount the estate or income interest may become obligated  
2597 to pay after the property is distributed.

2598 Section 45. Section 738.602, Florida Statutes, is amended  
2599 to read:

2600 (Substantial rewording of section. See

2601 s. 738.602, F.S., for present text.)  
 2602 738.602 Distribution to successor beneficiary.—  
 2603 (1) Except to the extent that ss. 738.301-738.310 apply  
 2604 for a beneficiary that is a trust, each beneficiary described in  
 2605 s. 738.601(5) is entitled to receive a share of the net income  
 2606 equal to the beneficiary's fractional interest in undistributed  
 2607 principal assets, using carrying values as of the distribution  
 2608 date. If a fiduciary makes more than one distribution of assets  
 2609 to beneficiaries to which this section applies, each  
 2610 beneficiary, including a beneficiary who does not receive part  
 2611 of the distribution, is entitled, as of each distribution date,  
 2612 to a share of the net income the fiduciary received after the  
 2613 decedent's death, an income interest's other terminating event,  
 2614 or the preceding distribution by the fiduciary.  
 2615 (2) In determining a beneficiary's share of net income  
 2616 under subsection (1), the following rules apply:  
 2617 (a) The beneficiary is entitled to receive a share of the  
 2618 net income equal to the beneficiary's fractional interest in the  
 2619 undistributed principal assets immediately before the  
 2620 distribution date.  
 2621 (b) The beneficiary's fractional interest under paragraph  
 2622 (a) must be calculated:  
 2623 1. On the aggregate carrying value of the assets as of the  
 2624 distribution date; and  
 2625 2. Reduced by:

HB 1093

2024

- 2626 a. Any liabilities of the estate or trust;  
2627 b. Property specifically given to a beneficiary under the  
2628 decedent's will or the terms of the trust; and  
2629 c. Property required to pay pecuniary amounts not in  
2630 trust.
- 2631 (c) If a disproportionate distribution of principal is  
2632 made to any beneficiary, the respective fractional interests of  
2633 all beneficiaries in the undistributed principal assets must be  
2634 recomputed by:
- 2635 1. Adjusting the carrying value of the principal assets to  
2636 their fair market value before the distribution;  
2637 2. Reducing the fractional interest of the recipient of  
2638 the disproportionate distribution in the remaining principal  
2639 assets by the fair market value of the principal distribution;  
2640 and
- 2641 3. Recomputing the fractional interests of all  
2642 beneficiaries in the remaining principal assets based upon the  
2643 now restated carrying values.
- 2644 (d) The distribution date under paragraph (a) may be the  
2645 date as of which the fiduciary calculates the value of the  
2646 assets if that date is reasonably near the date on which the  
2647 assets are distributed. All distributions to a beneficiary must  
2648 be valued based on the assets' fair market value on the date of  
2649 the distribution.
- 2650 (3) To the extent that a fiduciary does not distribute

HB 1093

2024

2651 under this section all the collected but undistributed net  
2652 income to each beneficiary as of a distribution date, the  
2653 fiduciary shall maintain records showing the interest of each  
2654 beneficiary in the net income.

2655 (4) If this section applies to income from an asset, a  
2656 fiduciary may apply the requirements in this section to net gain  
2657 or loss realized from the disposition of the asset after the  
2658 decedent's date of death, an income interest's terminating  
2659 event, or the preceding distribution by the fiduciary.

2660 (5) The carrying value or fair market value of trust  
2661 assets shall be determined on an asset-by-asset basis and is  
2662 conclusive if reasonable and determined in good faith.  
2663 Determinations of fair market value based on appraisals  
2664 performed within 2 years before or after the valuation date are  
2665 presumed reasonable. The values of trust assets are conclusively  
2666 presumed to be reasonable and determined in good faith unless  
2667 proven otherwise in a proceeding commenced by or on behalf of a  
2668 person interested in the trust within the time provided in s.  
2669 736.1008.

2670 Section 46. Section 738.701, Florida Statutes, is amended  
2671 to read:

2672 (Substantial rewording of section. See  
2673 s. 738.701, F.S., for present text.)

2674 738.701 When right to income begins and ends.—

2675 (1) An income beneficiary is entitled to net income in

2676 accordance with the terms of the trust from the date an income  
2677 interest begins. The income interest begins on the date  
2678 specified in the terms of the trust or, if no date is specified,  
2679 on the date an asset becomes subject to:

2680 (a) The trust for the current income beneficiary; or

2681 (b) A successive interest for a successor beneficiary.

2682 (2) An asset becomes subject to a trust under paragraph

2683 (1) (a):

2684 (a) For an asset that is transferred to the trust during  
2685 the settlor's life, on the date the asset is transferred;

2686 (b) For an asset that becomes subject to the trust because  
2687 of a decedent's death, on the date of the decedent's death, even  
2688 if there is an intervening period of administration of the  
2689 decedent's estate; or

2690 (c) For an asset that is transferred to a fiduciary by a  
2691 third party because of a decedent's death, on the date of the  
2692 decedent's death.

2693 (3) An asset becomes subject to a successive interest  
2694 under paragraph (1) (b) on the day after the preceding income  
2695 interest ends, as determined under subsection (4), even if there  
2696 is an intervening period of administration to wind up the  
2697 preceding income interest.

2698 (4) An income interest ends on the day before an income  
2699 beneficiary dies or another terminating event occurs, or on the  
2700 last day of a period during which there is no beneficiary to

2701 which a fiduciary may or must distribute income.

2702 Section 47. Section 738.702, Florida Statutes, is amended  
2703 to read:

2704 (Substantial rewording of section. See  
2705 s. 738.702, F.S., for present text.)

2706 738.702 Apportionment of receipts and disbursements when  
2707 decedent dies or income interest begins.—

2708 (1) A fiduciary shall allocate an income receipt or  
2709 disbursement, other than a receipt to which s. 738.601(2)  
2710 applies, to principal if its due date occurs before the date on  
2711 which:

2712 (a) For an estate, the decedent died; or

2713 (b) For a trust or successive interest, an income interest  
2714 begins.

2715 (2) If the due date of a periodic income receipt or  
2716 disbursement occurs on or after the date on which a decedent  
2717 died or an income interest begins, a fiduciary must allocate the  
2718 receipt or disbursement to income.

2719 (3) If an income receipt or disbursement is not periodic  
2720 or has no due date, a fiduciary must treat the receipt or  
2721 disbursement under this section as accruing from day to day. The  
2722 fiduciary shall allocate to principal the portion of the receipt  
2723 or disbursement accruing before the date on which a decedent  
2724 died or an income interest begins, and shall allocate to income  
2725 the balance.

2726        (4) A receipt or disbursement is periodic under  
2727 subsections (2) and (3) if:

2728        (a) The receipt or disbursement must be paid at regular  
2729 intervals under an obligation to make payments; or

2730        (b) The payor customarily makes payments at regular  
2731 intervals.

2732        (5) An item of income or an obligation is due under this  
2733 section on the date the payor is required to make a payment. If  
2734 a payment date is not stated, there is no due date.

2735        (6) Distributions to shareholders or other owners from an  
2736 entity to which s. 738.401 applies are due:

2737        (a) On the date fixed by or on behalf of the entity for  
2738 determining the persons entitled to receive the distribution;

2739        (b) If no date is fixed, on the date of the decision by or  
2740 on behalf of the entity to make the distribution; or

2741        (c) If no date is fixed and the fiduciary does not know  
2742 the date of the decision by or on behalf of the entity to make  
2743 the distribution, on the date the fiduciary learns of the  
2744 decision.

2745        (7) Section 733.817 controls over any provision of this  
2746 chapter to the contrary.

2747        Section 48. Section 738.703, Florida Statutes, is amended  
2748 to read:

2749        (Substantial rewording of section. See  
2750 s. 738.703, F.S., for present text.)

2751 738.703 Apportionment when income interest ends.—

2752 (1) As used in this section, the term "undistributed  
2753 income" means net income received on or before the date on which  
2754 an income interest ends. The term does not include an item of  
2755 income or expense which is due or accrued or net income that has  
2756 been added or is required to be added to principal under the  
2757 terms of the trust.

2758 (2) Except as otherwise provided in subsection (3), when a  
2759 mandatory income interest of a beneficiary ends, the fiduciary  
2760 shall pay the beneficiary's share of the undistributed income  
2761 that is not disposed of under the terms of the trust to the  
2762 beneficiary or, if the beneficiary does not survive the date the  
2763 interest ends, to the beneficiary's estate.

2764 (3) If a beneficiary has an unqualified power to withdraw  
2765 more than 5 percent of the value of a trust immediately before  
2766 an income interest ends:

2767 (a) The fiduciary shall allocate to principal the  
2768 undistributed income from the portion of the trust which may be  
2769 withdrawn; and

2770 (b) Subsection (2) applies only to the balance of the  
2771 undistributed income.

2772 (4) When a fiduciary's obligation to pay a fixed annuity  
2773 or a fixed fraction of the value of assets ends, the fiduciary  
2774 shall prorate the final payment as required to preserve income  
2775 tax, gift tax, estate tax, or other tax benefits.

2776 Section 49. Section 738.801, Florida Statutes, is amended  
 2777 to read:

2778 (Substantial rewording of section. See  
 2779 s. 738.801, F.S., for present text.)

2780 738.801 Uniformity of application and construction.—In  
 2781 applying and construing this act, consideration shall be given  
 2782 to the need to promote uniformity of the law with respect to its  
 2783 subject matter among states that enact it.

2784 Section 50. Section 738.802, Florida Statutes, is amended  
 2785 to read:

2786 (Substantial rewording of section. See  
 2787 s. 738.802, F.S., for present text.)

2788 738.802 Relation to Electronic Signatures in Global and  
 2789 National Commerce Act.—This chapter modifies, limits, or  
 2790 supersedes the Electronic Signatures in Global and National  
 2791 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,  
 2792 limit, or supersede section 101(c) of that act, 15 U.S.C. s.  
 2793 7001(c), or authorize electronic delivery of any of the notices  
 2794 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b). This  
 2795 chapter does not modify, limit, or supersede s. 117.285.

2796 Section 51. Section 738.803, Florida Statutes, is amended  
 2797 to read:

2798 738.803 Severability.—If any provision of this chapter or  
 2799 its application to any person or circumstance is held invalid,  
 2800 the invalidity does ~~shall~~ not affect other provisions or

HB 1093

2024

2801 applications of this chapter which can be given effect without  
2802 the invalid provision or application, and to this end the  
2803 provisions of this chapter are severable.

2804 Section 52. Section 738.804, Florida Statutes, is amended  
2805 to read:

2806 738.804 Application.—Except as provided in the terms of  
2807 the trust ~~instrument, the will,~~ or this chapter, this chapter  
2808 shall apply to any receipt or expense received or incurred and  
2809 any disbursement made after January 1, 2025 ~~January 1, 2003,~~ by  
2810 any trust or ~~decedent's~~ estate, whether established before or  
2811 after January 1, 2025 ~~January 1, 2003,~~ and whether the asset  
2812 involved was acquired by the trustee or personal representative  
2813 before or after January 1, 2025 ~~January 1, 2003.~~ Receipts or  
2814 expenses received or incurred and disbursements made before  
2815 January 1, 2025, ~~must January 1, 2003,~~ shall be governed by the  
2816 law of this state in effect at the time of the event, except as  
2817 otherwise expressly provided in the ~~will or~~ terms of the trust  
2818 or in this chapter.

2819 Section 53. This act shall take effect January 1, 2025.