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1
 2 An act relating to wills and trusts; amending s.
 3 731.201, F.S.; revising the definition of the term
 4 "will" to include electronic wills; amending s.
 5 732.506, F.S.; excluding electronic wills from
 6 specified methods to revoke a will; creating s.
 7 732.521, F.S.; providing a short title; creating s.
 8 732.522, F.S.; defining terms; creating s. 732.523,
 9 F.S.; specifying requirements that must be satisfied
 10 in the execution of electronic wills; creating s.
 11 732.524, F.S.; providing requirements for self-proof
 12 of electronic wills; creating s. 732.525, F.S.;
 13 specifying the circumstances under which a person is
 14 deemed to be in the presence of or appearing before
 15 another person; providing that an electronic record
 16 satisfies the requirement that a record be in writing;
 17 providing that an electronic signature satisfies the
 18 requirement that a document be signed; providing
 19 requirements for certain documents to be deemed
 20 executed in this state; creating s. 732.526, F.S.;
 21 authorizing an electronic will of a nonresident of
 22 this state which is properly executed in this or
 23 another state to be offered for and admitted to
 24 probate in this state; providing the venue for the
 25 probate of such electronic will; creating s. 732.527,

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26 F.S.; specifying requirements for service as a
27 qualified custodian; requiring qualified custodians to
28 provide access to or information concerning the
29 electronic will, or the electronic record containing
30 the electronic will, only to specified persons or as
31 directed by a court; authorizing a qualified custodian
32 to destroy the electronic record of an electronic will
33 after a certain date; providing conditions under which
34 a qualified custodian may cease serving as a qualified
35 custodian; requiring a qualified custodian to cease
36 serving in such capacity upon the written request of
37 the testator; requiring that a successor qualified
38 custodian agree in writing to serve in that capacity
39 for an electronic will before succeeding to office;
40 specifying what constitutes an affidavit of a
41 qualified custodian; requiring a qualified custodian
42 to deliver certain documents upon request from the
43 testator; prohibiting a qualified custodian from
44 charging the testator a fee for such documents under
45 certain circumstances; providing that a qualified
46 custodian is liable for certain damages under certain
47 circumstances; prohibiting a qualified custodian from
48 terminating or suspending access to, or downloads of,
49 an electronic will by the testator; requiring a
50 qualified custodian to deposit an electronic will with

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51 the court upon receiving information that the testator
52 is dead; prohibiting a qualified custodian from
53 charging a fee for certain actions taken upon the
54 death of the testator; requiring a qualified custodian
55 to keep certain information confidential; prohibiting
56 certain requirements regarding venue; amending s.
57 732.528, F.S.; requiring a qualified custodian to post
58 and maintain a blanket surety bond, subject to certain
59 requirements, or to maintain a certain liability
60 insurance policy; authorizing the Attorney General to
61 petition a court for the appointment of a receiver to
62 manage certain records under certain conditions;
63 amending s. 732.901, F.S.; providing that an
64 electronic will that is filed electronically with the
65 clerk is deemed to have been deposited as an original
66 of the electronic will; amending s. 733.201, F.S.;

67 providing for the proof of electronic wills; providing
68 requirements for admitting an electronic will that is
69 not self-proved into probate; providing that a paper
70 copy of an electronic will constitutes an "original"
71 of the electronic will subject to certain conditions;
72 amending s. 736.0103, F.S.; redefining the term
73 "interests of the beneficiaries"; amending s.
74 736.0105, F.S.; deleting a requirement that a trust be
75 for the benefit of the trust's beneficiaries; amending

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76 | s. 736.0109, F.S.; revising provisions relating to
77 | notice or sending of electronic trust documents;
78 | providing requirements for such documents to be deemed
79 | sent; requiring a certain authorization to specify
80 | documents subject to electronic posting; revising
81 | requirements for a recipient to electronically access
82 | such documents; prohibiting the termination of a
83 | recipient's electronic access to such documents from
84 | invalidating certain notice or sending of electronic
85 | trust documents; tolling specified limitations periods
86 | under certain circumstances; providing requirements
87 | for electronic access to such documents to be deemed
88 | terminated by a sender; providing applicability;
89 | amending s. 736.0110, F.S.; providing that the
90 | Attorney General has standing to assert certain rights
91 | in certain proceedings; amending s. 736.0403, F.S.;
92 | providing that, for purposes of establishing the
93 | validity of the testamentary aspects of a revocable
94 | trust, the qualified custodian of the trust instrument
95 | may not also be a trustee of the trust; amending s.
96 | 736.0404, F.S.; deleting a restriction on the purpose
97 | for which a trust is created; amending s. 736.04117,
98 | F.S.; defining and redefining terms; authorizing an
99 | authorized trustee to appoint all or part of the
100 | principal of a trust to a second trust under certain

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101 | circumstances; providing requirements for the second
102 | trust and its beneficiaries; providing that the second
103 | trust may retain, omit, or create specified powers;
104 | authorizing the term of the second trust to extend
105 | beyond the term of the first trust; providing
106 | requirements for distributions to a second trust when
107 | the authorized trustee does not have absolute power;
108 | providing requirements for such second trust;
109 | providing requirements for grants of power by the
110 | second trust; authorizing a second trust created by an
111 | authorized trustee without absolute power to grant
112 | absolute power to the second trust's trustee;
113 | authorizing an authorized trustee to appoint the
114 | principal of a first trust to a supplemental needs
115 | trust under certain circumstances; providing
116 | requirements for such supplemental needs trust;
117 | prohibiting an authorized trustee from distributing
118 | the principal of a trust in a manner that would reduce
119 | specified tax benefits; prohibiting the distribution
120 | of S corporation stock from a first trust to a second
121 | trust under certain circumstances; prohibiting a
122 | settlor from being treated as the owner of a second
123 | trust if he or she was not treated as the owner of the
124 | first trust; prohibiting an authorized trustee from
125 | distributing a trust's interest in property to a

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126 second trust if it is subject to specified rules of
 127 the Internal Revenue Code; prohibiting the exercise of
 128 power to invade a trust's principal to increase an
 129 authorized trustee's compensation or relieve him or
 130 her from certain liability; specifying who an
 131 authorized trustee must notify when he or she
 132 exercises his or her power to invade the trust's
 133 principal; specifying the documents that the
 134 authorized trustee must provide with such notice;
 135 amending s. 736.08135, F.S.; revising applicability;
 136 amending s. 736.1008, F.S.; clarifying that certain
 137 knowledge by a beneficiary does not cause a claim to
 138 accrue for breach of trust or commence the running of
 139 a period of limitations or laches; providing
 140 legislative intent; providing for retroactive
 141 application; amending s. 736.1201, F.S.; defining the
 142 term "delivery of notice"; conforming a provision to
 143 changes made by the act; amending s. 736.1205, F.S.;
 144 requiring an authorized trustee to provide certain
 145 notice to the Attorney General rather than the state
 146 attorney; providing applicability; amending ss.
 147 736.1206, 736.1207, 736.1208, and 736.1209, F.S.;
 148 conforming provisions to changes made by the act;
 149 providing effective dates.
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151 Be It Enacted by the Legislature of the State of Florida:

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153 Section 1. Subsection (40) of section 731.201, Florida
154 Statutes, is amended to read:

155 731.201 General definitions.—Subject to additional
156 definitions in subsequent chapters that are applicable to
157 specific chapters or parts, and unless the context otherwise
158 requires, in this code, in s. 409.9101, and in chapters 736,
159 738, 739, and 744, the term:

160 (40) "Will" means an instrument, including a codicil,
161 executed by a person in the manner prescribed by this code,
162 which disposes of the person's property on or after his or her
163 death and includes an instrument which merely appoints a
164 personal representative or revokes or revises another will. The
165 term "will" includes an electronic will as defined in s.
166 732.522.

167 Section 2. Section 732.506, Florida Statutes, is amended
168 to read:

169 732.506 Revocation by act.—A will or codicil, other than
170 an electronic will, is revoked by the testator, or some other
171 person in the testator's presence and at the testator's
172 direction, by burning, tearing, canceling, defacing,
173 obliterating, or destroying it with the intent, and for the
174 purpose, of revocation.

175 Section 3. Section 732.521, Florida Statutes, is created

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176 to read:

177 732.521 Short title.—Sections 732.521-732.528 may be cited
 178 as the "Florida Electronic Wills Act."

179 Section 4. Section 732.522, Florida Statutes, is created
 180 to read:

181 732.522 Definitions.—As used in ss. 732.521-732.528, the
 182 term:

183 (1) "Electronic record" means a record created, generated,
 184 sent, communicated, received, or stored by electronic means.

185 (2) "Electronic signature" means an electronic mark
 186 visibly manifested in a record as a signature and executed or
 187 adopted by a person with the intent to sign the record.

188 (3) "Electronic will" means a will, including a codicil,
 189 executed in accordance with s. 732.523 by a person in the manner
 190 prescribed by this act, which disposes of the person's property
 191 on or after his or her death and includes an instrument that
 192 appoints a personal representative or revokes or revises another
 193 will or electronic will.

194 (4) "Qualified custodian" means a person who meets the
 195 requirements of s. 732.527(1).

196 Section 5. Section 732.523, Florida Statutes, is created
 197 to read:

198 732.523 Electronic wills.—Notwithstanding s. 732.502:

199 (1) An electronic will must meet all of the following
 200 requirements:

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201 (a) Exist in an electronic record that is unique and
 202 identifiable.

203 (b) Be electronically signed by the testator in the
 204 presence of at least two attesting witnesses.

205 (c) Be electronically signed by the attesting witnesses in
 206 the presence of the testator and in the presence of each other.

207 (2) Except as otherwise provided in this act, all
 208 questions as to the force, effect, validity, and interpretation
 209 of an electronic will that complies with this section must be
 210 determined in the same manner as in the case of a will executed
 211 in accordance with s. 732.502.

212 Section 6. Section 732.524, Florida Statutes, is created
 213 to read:

214 732.524 Self-proof of electronic will.—An electronic will
 215 is self-proved if all of the following requirements are met:

216 (1) The electronic will is executed in conformity with
 217 this act.

218 (2) The acknowledgment of the electronic will by the
 219 testator and the affidavits of the witnesses are made in
 220 accordance with s. 732.503 and are part of the electronic record
 221 containing the electronic will, or are attached to, or are
 222 logically associated with, the electronic will.

223 (3) (a) The electronic will designates a qualified
 224 custodian;

225 (b) The electronic record that contains the electronic

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226 will is held in the custody of a qualified custodian at all
227 times before being offered to the court for probate; and

228 (c) The qualified custodian who has custody of the
229 electronic will at the time of the testator's death:

230 1. Certifies under oath that, to the best knowledge of the
231 qualified custodian, the electronic record that contains the
232 electronic will was at all times before being offered to the
233 court in the custody of a qualified custodian in compliance with
234 s. 732.527 and that the electronic will has not been altered in
235 any way since the date of its execution; and

236 2. If the execution of the electronic will included the
237 use of video conference under s. 732.525(1)(b), certifies under
238 oath that the audio and video recording required under s.
239 732.525(1)(b)9. is in the qualified custodian's custody in the
240 electronic record that contains the electronic will and is
241 available for inspection by the court.

242 Section 7. Effective April 1, 2018, section 732.525,
243 Florida Statutes, is created to read:

244 732.525 Method and place of execution.—For purposes of
245 this act, the execution and filing of a document with the court
246 as provided in this act, s. 732.503, or the Florida Probate
247 Rules; the execution of a living will under s. 765.302; and the
248 acknowledgment of any of the foregoing:

249 (1) An individual is deemed to be in the presence of or
250 appearing before another individual if the individuals are

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251 either:

252 (a) In the same physical location; or

253 (b) In different physical locations, but can communicate
 254 with each other by means of live video conference, and all of
 255 the following requirements are met:

256 1. The testator or principal may not be in an end-stage
 257 condition as defined in s. 765.101 or a vulnerable adult as
 258 defined in s. 415.102. The contestant of the document has the
 259 burden of proving that the testator or principal was in an end-
 260 stage condition or was a vulnerable adult at the time of
 261 executing the document.

262 2. The signal transmission must be live and in real time.

263 3. The signal transmission must be secure from
 264 interception through lawful means by anyone other than the
 265 persons communicating.

266 4. The persons communicating must simultaneously see and
 267 speak to one another with reasonable clarity.

268 5. In the video conference, the persons communicating must
 269 establish the identity of the testator or principal by:

270 a. Personal knowledge, if the person asserting personal
 271 knowledge explains how the identity of the testator or principal
 272 has come to be known to, and the length of time for which it has
 273 been known by, such person; or

274 b. Presentation of any of the forms of identification of
 275 the testator or principal, as set forth in s. 117.05(5)(b)2.a.-

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276 | i.
 277 | 6. In the video conference, the persons communicating must
 278 | demonstrate awareness of the events taking place, which may be
 279 | achieved, without limitation, by stating their names and
 280 | identifying any document they intend to sign.
 281 | 7. At least one of the persons communicating must be
 282 | either:
 283 | a. An attorney licensed to practice law in this state:
 284 | (I) Who electronically signs the document as a witness;
 285 | (II) Whose status as an attorney licensed to practice law
 286 | in this state is indicated adjacent to his or her electronic
 287 | signature; and
 288 | (III) Whose electronic signature is accompanied by his or
 289 | her statement that, to the best of his or her knowledge, the
 290 | execution of the document complied with the requirements of this
 291 | section; or
 292 | b. A Florida notary public:
 293 | (I) Who electronically signs the document;
 294 | (II) Whose electronic signature is accompanied by a notary
 295 | public seal that meets the requirements of s. 117.021(3); and
 296 | (III) Whose electronic signature and seal are accompanied
 297 | by his or her certification that, to the best of his or her
 298 | knowledge, the execution of the document complied with the
 299 | requirements of this section.
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301 If a document is required to be witnessed or acknowledged, the
 302 witness or notary fulfilling that requirement may be the same
 303 witness or notary who fulfills the requirement of this
 304 subparagraph. A person presented with a document containing the
 305 statement or certification required under this subparagraph may
 306 presume that the document was executed in compliance with this
 307 paragraph, unless the person has notice that such compliance is
 308 contested.

309 8. In the video conference, the testator or principal must
 310 provide verbal answers to all of the following questions:

311 a. Are you over the age of 18?

312 b. Are you under the influence of any drugs or alcohol
 313 that impairs your ability to make decisions?

314 c. Are you of sound mind?

315 d. Did anyone assist you in accessing this video
 316 conference? If so, who?

317 e. Has anyone forced or influenced you to include anything
 318 in this document which you do not wish to include?

319 f. Are you signing this document voluntarily?

320 9. A time-stamped recording of the entire video conference
 321 must be identifiable with the document being signed and stored
 322 in the electronic record containing the document by a qualified
 323 custodian in the manner required pursuant to s. 732.527(1)(c)
 324 for the storage of electronic records containing electronic
 325 wills.

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326 a. Without limitation, a recording is identifiable with a
 327 document if the recording and document share an identification
 328 number.

329 b. If the recording is not reasonably accessible by a
 330 person presented with the document, such person may treat the
 331 document as if it does not include the signature of any
 332 signatory who appeared by means of live video conference;
 333 however, an electronic will whose execution included the use of
 334 video conference under this section may be proved as provided in
 335 s. 733.201(4). Without limitation, a recording is reasonably
 336 accessible if it is accessible at no charge over the Internet
 337 pursuant to instructions set forth in the document.

338 (2) If a law requires a record to be in writing, an
 339 electronic record satisfies such provision.

340 (3) Any requirement that a document be signed may be
 341 satisfied by an electronic signature.

342 (4) A document that is signed electronically is deemed to
 343 be executed in this state if all of the following requirements
 344 are met:

345 (a) The document states that the person creating the
 346 document intends to execute and understands that he or she is
 347 executing the document in, and pursuant to the laws of, this
 348 state.

349 (b) The person creating the document is, or the attesting
 350 witnesses or Florida notary public whose electronic signatures

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351 are obtained in the execution of the document are, physically
 352 located within this state at the time the document is executed.

353 (c) In the case of a self-proved electronic will, the
 354 electronic will designates a qualified custodian who is
 355 domiciled in and a resident of this state or incorporated or
 356 organized in this state.

357 Section 8. Effective April 1, 2018, section 732.526,
 358 Florida Statutes, is created to read:

359 732.526 Probate.—An electronic will, other than a
 360 holographic or nuncupative will, of a nonresident of this state
 361 which is executed or deemed executed in another state in
 362 accordance with the laws of that state or of this state may be
 363 offered for and admitted to original probate in this state and
 364 is subject to the jurisdiction of the courts of this state. The
 365 venue for the probate of electronic wills is as provided in s.
 366 733.101(1) or, in the case of the electronic will of a
 367 nonresident, may be the county in which the qualified custodian
 368 or attorney for the petitioner or personal representative has
 369 his or her domicile or registered office.

370 Section 9. Section 732.527, Florida Statutes, is created
 371 to read:

372 732.527 Qualified custodians.—

373 (1) To serve as a qualified custodian of an electronic
 374 will, a person or entity must:

375 (a) Not be named as a fiduciary under the electronic will

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376 or an heir or devisee, as defined in s. 731.201, of the
 377 testator;

378 (b) Be domiciled in and a resident of this state or be
 379 incorporated or organized in this state;

380 (c) In the course of maintaining custody of electronic
 381 wills, regularly employ, and store electronic records containing
 382 electronic wills in, a system that:

383 1. Protects electronic records from destruction,
 384 alteration, or unauthorized access; and

385 2. Detects any change to an electronic record; and

386 (d) Furnish for any court hearing involving an electronic
 387 will that is currently or was previously stored by the qualified
 388 custodian any information requested by the court pertaining to
 389 the qualified custodian's qualifications, policies, and
 390 practices related to the creation, sending, communication,
 391 receipt, maintenance, storage, and production of electronic
 392 wills.

393 (2) The qualified custodian of an electronic will shall
 394 provide access to or information concerning the electronic will,
 395 or the electronic record containing the electronic will, only:

396 (a) To the testator;

397 (b) To persons authorized by the testator in the
 398 electronic will or in written instructions signed by the
 399 testator in accordance with s. 732.502;

400 (c) After the death of the testator, to the testator's

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401 nominated personal representative; or

402 (d) At any time, as directed by a court of competent
403 jurisdiction.

404 (3) The qualified custodian of the electronic record of an
405 electronic will may elect to destroy such record, including any
406 of the documentation required to be created and stored under
407 paragraph (1)(d), at any time after the earlier of the fifth
408 anniversary of the conclusion of the administration of the
409 estate of the testator or 20 years after the death of the
410 testator.

411 (4) A qualified custodian who at any time maintains
412 custody of the electronic record of an electronic will may elect
413 to cease serving in such capacity by:

414 (a) Delivering the electronic will or the electronic
415 record containing the electronic will to the testator, if then
416 living, or, after the death of the testator, by filing the will
417 with the court in accordance with s. 732.901; and

418 (b) If the outgoing qualified custodian intends to
419 designate a successor qualified custodian, by doing the
420 following:

421 1. Providing written notice to the testator of the name,
422 address, and qualifications of the proposed successor qualified
423 custodian. The testator must provide written consent before the
424 electronic record, including the electronic will, is delivered
425 to a successor qualified custodian;

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426 2. Delivering the electronic record containing the
427 electronic will to the successor qualified custodian; and

428 3. Delivering to the successor qualified custodian an
429 affidavit of the outgoing qualified custodian stating that:

430 a. The outgoing qualified custodian is eligible to act as
431 a qualified custodian in this state;

432 b. The outgoing qualified custodian is the qualified
433 custodian designated by the testator in the electronic will or
434 appointed to act in such capacity under this paragraph;

435 c. The electronic will has at all times been in the
436 custody of one or more qualified custodians in compliance with
437 this section since the time the electronic record was created,
438 and identifying such qualified custodians; and

439 d. To the best of the outgoing qualified custodian's
440 knowledge, the electronic will has not been altered since the
441 time it was created.

442
443 For purposes of making this affidavit, the outgoing qualified
444 custodian may rely conclusively on any affidavits delivered by a
445 predecessor qualified custodian in connection with its
446 designation or appointment as qualified custodian; however, all
447 such affidavits must be delivered to the successor qualified
448 custodian.

449 (5) Upon the request of the testator which is made in a
450 writing signed in accordance with s. 732.502 or s. 732.523, a

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451 qualified custodian who at any time maintains custody of the
 452 electronic record of the testator's electronic will must cease
 453 servicing in such capacity and must deliver to a successor
 454 qualified custodian designated in writing by the testator the
 455 electronic record containing the electronic will and the
 456 affidavit required in subparagraph (4) (b)3.

457 (6) A qualified custodian may not succeed to office as a
 458 qualified custodian of an electronic will unless he or she
 459 agrees in writing to serve in such capacity.

460 (7) If a qualified custodian is an entity, an affidavit,
 461 or an appearance by the testator in the presence of a duly
 462 authorized officer or agent of such entity, acting in his or her
 463 own capacity as such, shall constitute an affidavit, or an
 464 appearance by the testator in the presence of the qualified
 465 custodian.

466 (8) A qualified custodian must provide a paper copy of an
 467 electronic will and the electronic record containing the
 468 electronic will to the testator immediately upon request. For
 469 the first such request in any 365-day period, the testator may
 470 not be charged a fee for being provided with these documents.

471 (9) The qualified custodian shall be liable for any
 472 damages caused by the negligent loss or destruction of the
 473 electronic record, including the electronic will, while it is in
 474 the possession of the qualified custodian. A qualified custodian
 475 may not limit liability for such damages.

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476 (10) A qualified custodian may not terminate or suspend
 477 access to, or downloads of, the electronic will by the testator.

478 (11) Upon receiving information that the testator is dead,
 479 a qualified custodian must deposit the electronic will with the
 480 court in accordance with s. 732.901. A qualified custodian may
 481 not charge a fee for depositing the electronic will with the
 482 clerk, providing the affidavit is made in accordance with s.
 483 732.503, or furnishing in writing any information requested by a
 484 court under paragraph (1) (d).

485 (12) Except as provided in this act, a qualified custodian
 486 must at all times keep information provided by the testator
 487 confidential and may not disclose such information to any third
 488 party.

489 (13) A contractual venue provision between a qualified
 490 custodian and a testator is not valid or enforceable to the
 491 extent that it requires a specific jurisdiction or venue for any
 492 proceeding relating to the probate of an estate or the contest
 493 of a will.

494 Section 10. Section 732.528, Florida Statutes, is created
 495 to read:

496 732.528 Liability coverage; receivership of qualified
 497 custodians.—

498 (1) A qualified custodian shall:

499 (a) Post and maintain a blanket surety bond of at least
 500 \$250,000 to secure the faithful performance of all duties and

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501 obligations required under this act. The bond must be made
502 payable to the Governor and his or her successors in office for
503 the benefit of all persons who store electronic records with a
504 qualified custodian and their estates, beneficiaries,
505 successors, and heirs and be conditioned on the faithful
506 performance of all duties and obligations under this act. The
507 terms of the bond must cover the acts or omissions of the
508 qualified custodian and each agent or employee of the qualified
509 custodian; or

510 (b) Maintain a liability insurance policy that covers any
511 losses sustained by any person who stores electronic records
512 with a qualified custodian and their estates, beneficiaries,
513 successors, and heirs which are caused by errors or omissions by
514 the qualified custodian and each agent or employee of the
515 qualified custodian. The policy must cover losses of up to at
516 least \$250,000 in the aggregate.

517 (2) The Attorney General may petition a court of competent
518 jurisdiction for the appointment of a receiver to manage the
519 electronic records of a qualified custodian for proper delivery
520 and safekeeping if any of the following conditions exist:

521 (a) The qualified custodian is ceasing operation.

522 (b) The qualified custodian intends to close the facility
523 and adequate arrangements have not been made for proper delivery
524 of the electronic records in accordance with this act.

525 (c) The Attorney General determines that conditions exist

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526 | which present a danger that electronic records will be lost or
527 | misappropriated.

528 | (d) The qualified custodian fails to maintain and post a
529 | surety bond or maintain insurance required by this section.

530 | Section 11. Present subsection (5) of section 732.901,
531 | Florida Statutes, is redesignated as subsection (6) of that
532 | section, and a new subsection (5) is added to that section, to
533 | read:

534 | 732.901 Production of wills.—

535 | (5) An electronic will that is filed electronically with
536 | the clerk through the Florida Courts E-Filing Portal is deemed
537 | to have been deposited with the clerk as an original of the
538 | electronic will.

539 | Section 12. Section 733.201, Florida Statutes, is amended
540 | to read:

541 | 733.201 Proof of wills.—

542 | (1) Self-proved wills executed in accordance with this
543 | code may be admitted to probate without further proof.

544 | (2) A will, other than an electronic will, may be admitted
545 | to probate upon the oath of any attesting witness taken before
546 | any circuit judge, commissioner appointed by the court, or
547 | clerk.

548 | (3) If it appears to the court that the attesting
549 | witnesses cannot be found or that they have become incapacitated
550 | after the execution of the will or their testimony cannot be

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551 | obtained within a reasonable time, a will, other than an
552 | electronic will, may be admitted to probate upon the oath of the
553 | personal representative nominated by the will as provided in
554 | subsection (2), whether or not the nominated personal
555 | representative is interested in the estate, or upon the oath of
556 | any person having no interest in the estate under the will
557 | stating that the person believes the writing exhibited to be the
558 | true last will of the decedent.

559 | (4) If an electronic will, including an electronic will
560 | whose execution included the use of a video conference under s.
561 | 732.525(1)(b), is not self-proved, an electronic will may be
562 | admitted to probate upon the oath of the two attesting witnesses
563 | for the electronic will taken before any circuit judge, any
564 | commissioner appointed by the court, or the clerk. If it appears
565 | to the court that the attesting witnesses cannot be found, that
566 | they have become incapacitated after the execution of the
567 | electronic will, or that their testimony cannot be obtained
568 | within a reasonable time, an electronic will may be admitted to
569 | probate upon the oath of two disinterested witnesses providing
570 | all of the following information:

571 | (a) The date on which the electronic will was created, if
572 | the date is not indicated in the electronic will itself.

573 | (b) When and how the electronic will was discovered, and
574 | by whom.

575 | (c) All of the people who had access to the electronic

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576 will.

577 (d) The method by which the electronic will was stored and
 578 the safeguards that were in place to prevent alterations to the
 579 electronic will.

580 (e) A statement as to whether the electronic will has been
 581 altered since its creation.

582 (f) A statement that the electronic will is a true,
 583 correct, and complete tangible manifestation of the testator's
 584 true last will.

585 (g) If the execution of an electronic will included the
 586 use of a video conference under s. 732.525(1) (b), a statement as
 587 to whether a recording of the video conference is available for
 588 inspection by the court or cannot be found after a diligent
 589 search.

590 (5) A paper copy of an electronic will which is a true and
 591 correct copy of the electronic will may be offered for and
 592 admitted to probate and shall constitute an "original" of the
 593 electronic will.

594 Section 13. Subsection (11) of section 736.0103, Florida
 595 Statutes, is amended to read:

596 736.0103 Definitions.—Unless the context otherwise
 597 requires, in this code:

598 (11) "Interests of the beneficiaries" means the beneficial
 599 interests intended by the settlor as provided in the terms of a
 600 ~~the~~ trust.

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601 Section 14. Paragraph (c) of subsection (2) of section
602 736.0105, Florida Statutes, is amended to read:

603 736.0105 Default and mandatory rules.—

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

606 (c) The requirement that a trust ~~and its terms be for the~~
607 ~~benefit of the trust's beneficiaries, and that the trust~~ have a
608 purpose that is lawful, not contrary to public policy, and
609 possible to achieve.

610 Section 15. Subsections (1) and (3) of section 736.0109,
611 Florida Statutes, are amended to read:

612 736.0109 Methods and waiver of notice.—

613 (1) Notice to a person under this code or the sending of a
614 document to a person under this code must be accomplished in a
615 manner reasonably suitable under the circumstances and likely to
616 result in receipt of the notice or document. Permissible methods
617 of notice or for sending a document include first-class mail,
618 personal delivery, delivery to the person's last known place of
619 residence or place of business, ~~or~~ a properly directed facsimile
620 or other electronic message, or posting to a secure electronic
621 account or website in accordance with subsection (3).

622 (3) A document that is sent solely by posting to an
623 electronic account or website is not deemed sent for purposes of
624 this section unless the sender complies with this subsection.
625 The sender has the burden of proving compliance with this

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626 | subsection ~~In addition to the methods listed in subsection (1)~~
 627 | ~~for sending a document, a sender may post a document to a secure~~
 628 | ~~electronic account or website where the document can be~~
 629 | ~~accessed.~~

630 | (a) ~~Before a document may be posted to an electronic~~
 631 | ~~account or website,~~ The recipient must sign a separate written
 632 | authorization solely for the purpose of authorizing the sender
 633 | to post documents on an electronic account or website before
 634 | such posting. The written authorization must:

635 | 1. Specifically indicate whether a trust accounting, trust
 636 | disclosure document, or limitation notice, as those terms are
 637 | defined in s. 736.1008(4), will be posted in this manner, and
 638 | generally enumerate the other types of documents that may be
 639 | posted in this manner.

640 | 2. Contain specific instructions for accessing the
 641 | electronic account or website, including the security procedures
 642 | required to access the electronic account or website, such as a
 643 | username and password.

644 | 3. Advise the recipient that a separate notice will be
 645 | sent when a document is posted to the electronic account or
 646 | website and the manner in which the separate notice will be
 647 | sent.

648 | 4. Advise the recipient that the authorization to receive
 649 | documents by electronic posting may be amended or revoked at any
 650 | time and include specific instructions for revoking or amending

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651 the authorization, including the address designated for the
652 purpose of receiving notice of the revocation or amendment.

653 5. Advise the recipient that posting a document on the
654 electronic account or website may commence a limitations period
655 as short as 6 months even if the recipient never actually
656 accesses the electronic account, electronic website, or ~~the~~
657 document.

658 (b) Once the recipient signs the written authorization,
659 the sender must provide a separate notice to the recipient when
660 a document is posted to the electronic account or website. As
661 used in this subsection, the term "separate notice" means a
662 notice sent to the recipient by means other than electronic
663 posting, which identifies each document posted to the electronic
664 account or website and provides instructions for accessing the
665 ~~posted~~ document. The separate notice requirement is deemed
666 satisfied if the recipient accesses the document on the
667 electronic account or website.

668 (c) A document sent by electronic posting is deemed
669 received by the recipient on the earlier of the date on which
670 ~~that~~ the separate notice is received or the date on which ~~that~~
671 the recipient accesses the document on the electronic account or
672 website.

673 (d) At least annually after a recipient signs a written
674 authorization, a sender shall send a notice advising recipients
675 who have authorized one or more documents to be posted to an

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676 | electronic account or website that such posting may commence a
677 | limitations period as short as 6 months even if the recipient
678 | never accesses the electronic account or website or the document
679 | and that authority to receive documents by electronic posting
680 | may be amended or revoked at any time. This notice must be given
681 | by means other than electronic posting and may not be
682 | accompanied by any other written communication. Failure to
683 | provide such notice within 380 days after the last notice is
684 | deemed to automatically revoke the authorization to receive
685 | documents in the manner permitted under this subsection 380 days
686 | after the last notice is sent.

687 | (e) The notice required in paragraph (d) may be in
688 | substantially the following form: "You have authorized the
689 | receipt of documents through posting to an electronic account or
690 | website on which ~~where~~ the documents can be accessed. This
691 | notice is being sent to advise you that a limitations period,
692 | which may be as short as 6 months, may be running as to matters
693 | disclosed in a trust accounting or other written report of a
694 | trustee posted to the electronic account or website even if you
695 | never actually access the electronic account or website or the
696 | documents. You may amend or revoke the authorization to receive
697 | documents by electronic posting at any time. If you have any
698 | questions, please consult your attorney."

699 | (f) A sender may rely on the recipient's authorization
700 | until the recipient amends or revokes the authorization by

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701 sending a notice to the address designated for that purpose in
 702 the authorization or in the manner specified on the electronic
 703 account or website. The recipient, at any time, may amend or
 704 revoke an authorization to have documents posted on the
 705 electronic account or website.

706 (g) If a document is provided to a recipient solely
 707 through electronic posting pursuant to this subsection, the
 708 recipient must be able to access and print or download the
 709 document until the earlier of ~~remain accessible to the recipient~~
 710 ~~on the electronic account or website for at least 4 years after~~
 711 ~~the date that the document is deemed received by the recipient~~
 712 ~~or the date upon which the recipient's access to the electronic~~
 713 ~~account or website is terminated for any reason.~~

714 1. If the recipient's access to the electronic account or
 715 website is terminated for any reason, such termination does not
 716 invalidate the notice or sending of any document previously
 717 posted on the electronic account or website in accordance with
 718 this subsection, but may toll the applicable limitations period
 719 as provided in subparagraph 2.

720 2. If the recipient's access to the electronic account or
 721 website is terminated by the sender sooner than 4 years after
 722 the date on which the document was received by the recipient,
 723 any applicable limitations period set forth in s. 736.1008(1) or
 724 (2) which is still running is tolled for any information
 725 adequately disclosed in a document sent solely by electronic

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726 posting, from the date on which the recipient's access to the
 727 electronic account or website was terminated by the sender until
 728 45 days after the date on which the sender provides one of the
 729 following to the recipient by means other than electronic
 730 posting:

731 a. Notice of such termination and notification to the
 732 recipient that he or she may request that any documents sent
 733 during the prior 4 years solely through electronic posting be
 734 provided to him or her by other means at no cost; or

735 b. Notice of such termination and notification to the
 736 recipient that his or her access to the electronic account or
 737 website has been restored.

738
 739 Any applicable limitations period is further tolled from the
 740 date on which any request is made pursuant to sub-subparagraph
 741 2.a. until 20 days after the date on which the requested
 742 documents are provided to the recipient by means other than
 743 electronic posting ~~The electronic account or website must allow~~
 744 ~~the recipient to download or print the document. This subsection~~
 745 ~~does not affect or alter the duties of a trustee to keep clear,~~
 746 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~
 747 ~~or alter the time periods for which the trustee must maintain~~
 748 ~~those records.~~

749 (h) For purposes of this subsection, access to an
 750 electronic account or website is terminated by the sender when

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751 the sender unilaterally terminates the recipient's ability to
752 access the electronic website or account or download or print
753 any document posted on such website or account. Access is not
754 terminated by the sender when access is terminated by an action
755 of the recipient or by an action of the sender in response to
756 the recipient's request to terminate access. The recipient's
757 revocation of authorization pursuant to paragraph (f) is not
758 considered a request to terminate access ~~To be effective, the~~
759 ~~posting of a document to an electronic account or website must~~
760 ~~be done in accordance with this subsection. The sender has the~~
761 ~~burden of establishing compliance with this subsection.~~

762 (i) This subsection does not affect or alter the duties of
763 a trustee to keep clear, distinct, and accurate records pursuant
764 to s. 736.0810 or affect or alter the time periods for which the
765 trustee must maintain such records ~~preclude the sending of a~~
766 ~~document by other means.~~

767 (j) This subsection governs the posting of a document
768 solely for the purpose of giving notice under this code or the
769 sending of a document to a person under this code and does not
770 prohibit or otherwise apply to the posting of a document to an
771 electronic account or website for any other purpose or preclude
772 the sending of a document by any other means.

773 Section 16. Subsection (3) of section 736.0110, Florida
774 Statutes, is amended to read:

775 736.0110 Others treated as qualified beneficiaries.-

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776 (3) The Attorney General may assert the rights of a
 777 qualified beneficiary with respect to a charitable trust having
 778 its principal place of administration in this state. The
 779 Attorney General has standing to assert such rights in any
 780 judicial proceedings.

781 Section 17. Effective April 1, 2018, paragraph (b) of
 782 subsection (2) of section 736.0403, Florida Statutes, is amended
 783 to read:

784 736.0403 Trusts created in other jurisdictions;
 785 formalities required for revocable trusts.—

786 (2) Notwithstanding subsection (1):

787 (b) The testamentary aspects of a revocable trust,
 788 executed by a settlor who is a domiciliary of this state at the
 789 time of execution, are invalid unless the trust instrument is
 790 executed by the settlor with the formalities required for the
 791 execution of a will under s. 732.502 or an electronic will under
 792 s. 732.523 which is self-proved; however, the qualified
 793 custodian of the trust instrument may not also be a trustee of
 794 the trust in this state. For purposes of this subsection, the
 795 term "testamentary aspects" means those provisions of the trust
 796 instrument that dispose of the trust property on or after the
 797 death of the settlor other than to the settlor's estate.

798 Section 18. Section 736.0404, Florida Statutes, is amended
 799 to read:

800 736.0404 Trust purposes.—A trust may be created only to

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801 the extent the purposes of the trust are lawful, not contrary to
 802 public policy, and possible to achieve. ~~A trust and its terms~~
 803 ~~must be for the benefit of its beneficiaries.~~

804 Section 19. Effective upon becoming a law, section
 805 736.04117, Florida Statutes, is amended to read:

806 736.04117 Trustee's power to invade principal in trust.—

807 (1) DEFINITIONS.—As used in this section, the term:

808 (a) "Absolute power" means ~~Unless the trust instrument~~
 809 ~~expressly provides otherwise, a trustee who has absolute power~~
 810 ~~under the terms of a trust to invade the principal of the trust,~~
 811 ~~referred to in this section as the "first trust," to make~~
 812 ~~distributions to or for the benefit of one or more persons may~~
 813 ~~instead exercise the power by appointing all or part of the~~
 814 ~~principal of the trust subject to the power in favor of a~~
 815 ~~trustee of another trust, referred to in this section as the~~
 816 ~~"second trust," for the current benefit of one or more of such~~
 817 ~~persons under the same trust instrument or under a different~~
 818 ~~trust instrument; provided:~~

819 1. ~~The beneficiaries of the second trust may include only~~
 820 ~~beneficiaries of the first trust;~~

821 2. ~~The second trust may not reduce any fixed income,~~
 822 ~~annuity, or unitrust interest in the assets of the first trust,~~
 823 ~~and~~

824 3. ~~If any contribution to the first trust qualified for a~~
 825 ~~marital or charitable deduction for federal income, gift, or~~

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826 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
 827 ~~amended, the second trust shall not contain any provision which,~~
 828 ~~if included in the first trust, would have prevented the first~~
 829 ~~trust from qualifying for such a deduction or would have reduced~~
 830 ~~the amount of such deduction.~~

831 ~~(b) For purposes of this subsection, an absolute power to~~
 832 ~~invade principal shall include a power to invade principal that~~
 833 ~~is not limited to specific or ascertainable purposes, such as~~
 834 ~~health, education, maintenance, and support, regardless of~~
 835 ~~whether ~~or not~~ the term "absolute" is used. A power to invade~~
 836 ~~principal for purposes such as best interests, welfare, comfort,~~
 837 ~~or happiness constitutes shall constitute an absolute power not~~
 838 ~~limited to specific or ascertainable purposes.~~

839 (b) "Authorized trustee" means a trustee, other than the
 840 settlor or a beneficiary, who has the power to invade the
 841 principal of a trust.

842 (c) "Beneficiary with a disability" means a beneficiary of
 843 the first trust who the authorized trustee believes may qualify
 844 for governmental benefits based on disability, regardless of
 845 whether the beneficiary currently receives those benefits or has
 846 been adjudicated incapacitated.

847 (d) "Current beneficiary" means a beneficiary who, on the
 848 date his or her qualification is determined, is a distributee or
 849 permissible distributee of trust income or principal. The term
 850 includes the holder of a presently exercisable general power of

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851 appointment but does not include a person who is a beneficiary
852 only because he or she holds another power of appointment.

853 (e) "Governmental benefits" means financial aid or
854 services from any state, federal, or other public agency.

855 (f) "Internal Revenue Code" means the Internal Revenue
856 Code of 1986, as amended.

857 (g) "Power of appointment" has the same meaning as
858 provided in s. 731.201(30).

859 (h) "Presently exercisable general power of appointment"
860 means a power of appointment exercisable by the powerholder at
861 the relevant time. The term:

862 1. Includes a power of appointment that is exercisable
863 only after the occurrence of a specified event or that is
864 subject to a specified restriction, but only after the event has
865 occurred or the restriction has been satisfied.

866 2. Does not include a power exercisable only upon the
867 powerholder's death.

868 (i) "Substantially similar" means that there is no
869 material change in a beneficiary's beneficial interests or in
870 the power to make distributions and that the power to make a
871 distribution under a second trust for the benefit of a
872 beneficiary who is an individual is substantially similar to the
873 power under the first trust to make a distribution directly to
874 the beneficiary. A distribution is deemed to be for the benefit
875 of a beneficiary if:

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- 876 1. The distribution is applied for the benefit of a
 877 beneficiary;
- 878 2. The beneficiary is under a legal disability or the
 879 trustee reasonably believes the beneficiary is incapacitated,
 880 and the distribution is made as permitted under this code; or
- 881 3. The distribution is made as permitted under the terms
 882 of the first trust instrument and the second trust instrument
 883 for the benefit of the beneficiary.
- 884 (j) "Supplemental needs trust" means a trust that the
 885 authorized trustee believes would not be considered a resource
 886 for purposes of determining whether the beneficiary who has a
 887 disability is eligible for governmental benefits.
- 888 (k) "Vested interest" means a current unconditional right
 889 to receive a mandatory distribution of income, a specified
 890 dollar amount, or a percentage of value of a trust, or a current
 891 unconditional right to withdraw income, a specified dollar
 892 amount, or a percentage of value of a trust, which right is not
 893 subject to the occurrence of a specified event, the passage of a
 894 specified time, or the exercise of discretion.
- 895 1. The term includes a presently exercisable general power
 896 of appointment.
- 897 2. The term does not include a beneficiary's interest in a
 898 trust if the trustee has discretion to make a distribution of
 899 trust property to a person other than such beneficiary.
- 900 (2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN

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901 AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.—

902 (a) Unless a trust instrument expressly provides
 903 otherwise, an authorized trustee who has absolute power under
 904 the terms of the trust to invade its principal, referred to in
 905 this section as the "first trust," to make current distributions
 906 to or for the benefit of one or more beneficiaries may instead
 907 exercise such power by appointing all or part of the principal
 908 of the trust subject to such power in favor of a trustee of one
 909 or more other trusts, whether created under the same trust
 910 instrument as the first trust or a different trust instrument,
 911 including a trust instrument created for the purposes of
 912 exercising the power granted by this section, each referred to
 913 in this section as the "second trust," for the current benefit
 914 of one or more of such beneficiaries only if:

915 1. The beneficiaries of the second trust include only
 916 beneficiaries of the first trust; and

917 2. The second trust does not reduce any vested interest.

918 (b) In an exercise of absolute power, the second trust
 919 may:

920 1. Retain a power of appointment granted in the first
 921 trust;

922 2. Omit a power of appointment granted in the first trust,
 923 other than a presently exercisable general power of appointment;

924 3. Create or modify a power of appointment if the
 925 powerholder is a current beneficiary of the first trust;

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926 4. Create or modify a power of appointment if the
927 powerholder is a beneficiary of the first trust who is not a
928 current beneficiary, but the exercise of the power of
929 appointment may take effect only after the powerholder becomes,
930 or would have become if then living, a current beneficiary of
931 the first trust; and

932 5. Extend the term of the second trust beyond the term of
933 the first trust.

934 (c) The class of permissible appointees in favor of which
935 a created or modified power of appointment may be exercised may
936 differ from the class identified in the first trust.

937 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
938 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—
939 Unless the trust instrument expressly provides otherwise, an
940 authorized trustee who has a power, other than an absolute
941 power, under the terms of a first trust to invade principal to
942 make current distributions to or for the benefit of one or more
943 beneficiaries may instead exercise such power by appointing all
944 or part of the principal of the first trust subject to such
945 power in favor of a trustee of one or more second trusts. If the
946 authorized trustee exercises such power:

947 (a) The second trusts, in the aggregate, shall grant each
948 beneficiary of the first trust beneficial interests in the
949 second trusts which are substantially similar to the beneficial
950 interests of the beneficiary in the first trust.

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951 (b) If the first trust grants a power of appointment to a
 952 beneficiary of the first trust, the second trust shall grant
 953 such power of appointment in the second trust to such
 954 beneficiary, and the class of permissible appointees shall be
 955 the same as in the first trust.

956 (c) If the first trust does not grant a power of
 957 appointment to a beneficiary of the first trust, then the second
 958 trust may not grant a power of appointment in the second trust
 959 to such beneficiary.

960 (d) Notwithstanding paragraphs (a), (b), and (c), the term
 961 of the second trust may extend beyond the term of the first
 962 trust, and, for any period after the first trust would have
 963 otherwise terminated, in whole or in part, under the provisions
 964 of the first trust, the trust instrument of the second trust
 965 may, with respect to property subject to such extended term:

966 1. Include language providing the trustee with the
 967 absolute power to invade the principal of the second trust
 968 during such extended term; and

969 2. Create a power of appointment, if the powerholder is a
 970 current beneficiary of the first trust, or expand the class of
 971 permissible appointees in favor of which a power of appointment
 972 may be exercised.

973 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
 974 TRUST.—

975 (a) Notwithstanding subsections (2) and (3), unless the

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976 | trust instrument expressly provides otherwise, an authorized
 977 | trustee who has the power under the terms of a first trust to
 978 | invade the principal of the first trust to make current
 979 | distributions to or for the benefit of a beneficiary with a
 980 | disability may instead exercise such power by appointing all or
 981 | part of the principal of the first trust in favor of a trustee
 982 | of a second trust that is a supplemental needs trust if:

983 | 1. The supplemental needs trust benefits the beneficiary
 984 | with a disability;

985 | 2. The beneficiaries of the second trust include only
 986 | beneficiaries of the first trust; and

987 | 3. The authorized trustee determines that the exercise of
 988 | such power will further the purposes of the first trust.

989 | (b) Except as affected by any change to the interests of
 990 | the beneficiary with a disability, the second trusts, in the
 991 | aggregate, shall grant each other beneficiary of the first trust
 992 | beneficial interests in the second trusts which are
 993 | substantially similar to such beneficiary's beneficial interests
 994 | in the first trust.

995 | (5) PROHIBITED DISTRIBUTIONS.—

996 | (a) An authorized trustee may not distribute the principal
 997 | of a trust under this section in a manner that would prevent a
 998 | contribution to that trust from qualifying for, or that would
 999 | reduce the exclusion, deduction, or other federal tax benefit
 1000 | that was originally claimed or could have been claimed for, that

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1001 contribution, including:

1002 1. The exclusions under s. 2503(b) or s. 2503(c) of the

1003 Internal Revenue Code;

1004 2. A marital deduction under s. 2056, s. 2056A, or s. 2523

1005 of the Internal Revenue Code;

1006 3. A charitable deduction under s. 170(a), s. 642(c), s.

1007 2055(a), or s. 2522(a) of the Internal Revenue Code;

1008 4. Direct skip treatment under s. 2642(c) of the Internal

1009 Revenue Code; or

1010 5. Any other tax benefit for income, gift, estate, or

1011 generation-skipping transfer tax purposes under the Internal

1012 Revenue Code.

1013 (b) If S corporation stock is held in the first trust, an

1014 authorized trustee may not distribute all or part of that stock

1015 to a second trust that is not a permitted shareholder under s.

1016 1361(c)(2) of the Internal Revenue Code. If the first trust

1017 holds stock in an S corporation and is, or but for provisions of

1018 paragraphs (a), (c), and (d) would be, a qualified subchapter S

1019 trust within the meaning of s. 1361(d) of the Internal Revenue

1020 Code, the second trust instrument may not include or omit a term

1021 that prevents it from qualifying as a qualified subchapter S

1022 trust.

1023 (c) Except as provided in paragraphs (a), (b), and (d), an

1024 authorized trustee may distribute the principal of a first trust

1025 to a second trust regardless of whether the settlor is treated

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1026 as the owner of either trust under ss. 671-679 of the Internal
 1027 Revenue Code; however, if the settlor is not treated as the
 1028 owner of the first trust, he or she may not be treated as the
 1029 owner of the second trust unless he or she at all times has the
 1030 power to cause the second trust to cease being treated as if it
 1031 were owned by the settlor.

1032 (d) If an interest in property which is subject to the
 1033 minimum distribution rules of s. 401(a)(9) of the Internal
 1034 Revenue Code is held in trust, an authorized trustee may not
 1035 distribute such an interest to a second trust under subsection
 1036 (2), subsection (3), or subsection (4) if the distribution would
 1037 shorten the otherwise applicable maximum distribution period.

1038 (6) EXERCISE BY WRITING.—The exercise of a power to invade
 1039 principal under subsection (2), subsection (3), or subsection
 1040 (4) must ~~The exercise of a power to invade principal under~~
 1041 ~~subsection (1) shall~~ be by a written an instrument in writing,
 1042 signed and acknowledged by the authorized trustee, and filed
 1043 with the records of the first trust.

1044 (7)-(3) RESTRICTIONS ON EXERCISE OF POWER.—The exercise of
 1045 a power to invade principal under subsection (2), subsection
 1046 (3), or subsection (4):

1047 (a) Is ~~(1) shall~~ be considered the exercise of a power of
 1048 appointment, excluding other than a power to appoint to the
 1049 authorized trustee, the authorized trustee's creditors, the
 1050 authorized trustee's estate, or the creditors of the authorized

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1051 trustee's estate.

1052 (b) Is, ~~and Shall be~~ subject to the provisions of s.
 1053 689.225 covering the time at which the permissible period of the
 1054 rule against perpetuities begins and the law that determines the
 1055 permissible period of the rule against perpetuities of the first
 1056 trust.

1057 (c) May be to a second trust created or administered under
 1058 the law of any jurisdiction.

1059 (d) May not:

1060 1. Increase the authorized trustee's compensation beyond
 1061 the compensation specified in the first trust instrument; or

1062 2. Relieve the authorized trustee from liability for
 1063 breach of trust or provide for indemnification of the authorized
 1064 trustee for any liability or claim to a greater extent than the
 1065 first trust instrument; however, the exercise of the power may
 1066 divide and reallocate fiduciary powers among fiduciaries and
 1067 relieve a fiduciary from liability for an act or failure to act
 1068 of another fiduciary as otherwise allowed under law or common
 1069 law.

1070 (8) NOTICE.-

1071 (a)(4) The authorized trustee shall provide written
 1072 notification of the manner in which he or she intends to
 1073 exercise his or her power to invade principal to notify all
 1074 qualified beneficiaries of the following parties first trust, in
 1075 writing, at least 60 days before prior to the effective date of

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1076 | the authorized trustee's exercise of such power ~~the trustee's~~
 1077 | ~~power to invade principal~~ pursuant to subsection (2), subsection
 1078 | (3), or subsection (4): ~~(1)~~, ~~of the manner in which the trustee~~
 1079 | ~~intends to exercise the power.~~

- 1080 | 1. All qualified beneficiaries of the first trust;
- 1081 | 2. If paragraph (5)(c) applies, the settlor of the first
 1082 | trust;
- 1083 | 3. All trustees of the first trust; and
- 1084 | 4. Any person who has the power to remove or replace the
 1085 | authorized trustee of the first trust.

1086 | (b) The authorized ~~A copy of the proposed instrument~~
 1087 | ~~exercising the power shall satisfy the trustee's notice~~
 1088 | ~~obligation to provide notice~~ under this subsection is satisfied
 1089 | when he or she provides copies of the proposed instrument
 1090 | exercising the power, the trust instrument of the first trust,
 1091 | and the proposed trust instrument of the second trust.

1092 | (c) If all of those required to be notified ~~qualified~~
 1093 | ~~beneficiaries~~ waive the notice period by signed written
 1094 | instrument delivered to the authorized trustee, the authorized
 1095 | trustee's power to invade principal shall be exercisable
 1096 | immediately.

1097 | (d) The authorized trustee's notice under this subsection
 1098 | does ~~shall~~ not limit the right of any beneficiary to object to
 1099 | the exercise of the authorized trustee's power to invade
 1100 | principal except as otherwise provided in other applicable

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1101 provisions of this code.

1102 (9)-(5) INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER
 1103 PROHIBITION.—The exercise of the power to invade principal under
 1104 subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not
 1105 prohibited by a spendthrift clause or by a provision in the
 1106 trust instrument that prohibits amendment or revocation of the
 1107 trust.

1108 (10)-(6) NO DUTY TO EXERCISE.—Nothing in this section is
 1109 intended to create or imply a duty to exercise a power to invade
 1110 principal, and no inference of impropriety may ~~shall~~ be made as
 1111 a result of an authorized trustee's failure to exercise a
 1112 ~~trustee not exercising~~ the power to invade principal conferred
 1113 under subsections (2), (3), and (4) ~~subsection (1)~~.

1114 (11)-(7) NO ABRIDGEMENT OF COMMON LAW RIGHTS.—~~The~~
 1115 ~~provisions of~~ This section may ~~shall~~ not be construed to abridge
 1116 the right of any trustee who has a power of invasion to appoint
 1117 property in further trust that arises under the terms of the
 1118 first trust or under any other section of this code or under
 1119 another provision of law or under common law.

1120 Section 20. Subsection (3) of section 736.08135, Florida
 1121 Statutes, is amended to read:

1122 736.08135 Trust accountings.—

1123 (3) Subsections (1) and (2) govern the form and content of
 1124 ~~This section applies to~~ all trust accountings rendered for any
 1125 accounting periods beginning on or after January 1, 2003, and

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1126 all trust accountings rendered on or after July 1, 2017. This
 1127 subsection does not affect the beginning period from which a
 1128 trustee is required to render a trust accounting.

1129 Section 21. Subsection (3) of section 736.1008, Florida
 1130 Statutes, is amended to read:

1131 736.1008 Limitations on proceedings against trustees.—

1132 (3) When a trustee has not issued a final trust accounting
 1133 or has not given written notice to the beneficiary of the
 1134 availability of the trust records for examination and that
 1135 claims with respect to matters not adequately disclosed may be
 1136 barred, a claim against the trustee for breach of trust based on
 1137 a matter not adequately disclosed in a trust disclosure document
 1138 is barred as provided in chapter 95 and accrues when the
 1139 beneficiary has actual knowledge of:

1140 (a) The facts upon which the claim is based, if such
 1141 actual knowledge is established by clear and convincing
 1142 evidence; or

1143 (b) The trustee's repudiation of the trust or adverse
 1144 possession of trust assets.

1145
 1146 Paragraph (a) applies to claims based upon acts or omissions
 1147 occurring on or after July 1, 2008. A beneficiary's actual
 1148 knowledge that he or she has not received a trust accounting
 1149 does not cause a claim to accrue against the trustee for breach
 1150 of trust based upon the failure to provide a trust accounting

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1151 required by s. 736.0813 or former s. 737.303 and does not
 1152 commence the running of any period of limitations or laches for
 1153 such a claim, and paragraph (a) and chapter 95 do not bar any
 1154 such claim.

1155 Section 22. The changes to ss. 736.08135 and 736.1008,
 1156 Florida Statutes, made by this act are intended to clarify
 1157 existing law, are remedial in nature, and apply retroactively to
 1158 all cases pending or commenced on or after July 1, 2017.

1159 Section 23. Present subsections (2), (3), and (4) of
 1160 section 736.1201, Florida Statutes, are redesignated as
 1161 subsections (3), (4), and (5), respectively, present subsection
 1162 (5) of that section is amended, and a new subsection (2) is
 1163 added to that section, to read:

1164 736.1201 Definitions.—As used in this part:

1165 (2) "Delivery of notice" means delivery of a written
 1166 notice required under this part using any commercial delivery
 1167 service requiring a signed receipt or by any form of mail
 1168 requiring a signed receipt.

1169 ~~(5) "State attorney" means the state attorney for the~~
 1170 ~~judicial circuit of the principal place of administration of the~~
 1171 ~~trust pursuant to s. 736.0108.~~

1172 Section 24. Section 736.1205, Florida Statutes, is amended
 1173 to read:

1174 736.1205 Notice that this part does not apply.—In the case
 1175 of a power to make distributions, if the trustee determines that

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1176 the governing instrument contains provisions that are more
 1177 restrictive than s. 736.1204(2), or if the trust contains other
 1178 powers, inconsistent with the provisions of s. 736.1204(3) that
 1179 specifically direct acts by the trustee, the trustee shall
 1180 notify the ~~state~~ Attorney General by delivery of notice when the
 1181 trust becomes subject to this part. Section 736.1204 does not
 1182 apply to any trust for which notice has been given pursuant to
 1183 this section unless the trust is amended to comply with the
 1184 terms of this part.

1185 Section 25. Sections 1 through 12 and section 17 of this
 1186 act apply to electronic wills executed on or after July 1, 2017.

1187 Section 26. Subsection (2) of section 736.1206, Florida
 1188 Statutes, is amended to read:

1189 736.1206 Power to amend trust instrument.—

1190 (2) In the case of a charitable trust that is not subject
 1191 to ~~the provisions of~~ subsection (1), the trustee may amend the
 1192 governing instrument to comply with ~~the provisions of~~ s.
 1193 736.1204(2) after delivery of notice to, and with the consent
 1194 of, the state Attorney General.

1195 Section 27. Section 736.1207, Florida Statutes, is amended
 1196 to read:

1197 736.1207 Power of court to permit deviation.—This part
 1198 does not affect the power of a court to relieve a trustee from
 1199 any restrictions on the powers and duties that are placed on the
 1200 trustee by the governing instrument or applicable law for cause

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1201 shown and on complaint of the trustee, the ~~state~~ Attorney
 1202 General, or an affected beneficiary and notice to the affected
 1203 parties.

1204 Section 28. Paragraph (b) of subsection (4) of section
 1205 736.1208, Florida Statutes, is amended to read:

1206 736.1208 Release; property and persons affected; manner of
 1207 effecting.—

1208 (4) Delivery of a release shall be accomplished as
 1209 follows:

1210 (b) If the release is accomplished by reducing the class
 1211 of permissible charitable organizations, by delivery of notice ~~a~~
 1212 ~~copy~~ of the release to the ~~state~~ Attorney General, including a
 1213 copy of the release.

1214 Section 29. Section 736.1209, Florida Statutes, is amended
 1215 to read:

1216 736.1209 Election to come under this part.—With the
 1217 consent of that organization or organizations, a trustee of a
 1218 trust for the benefit of a public charitable organization or
 1219 organizations may come under s. 736.1208(5) by delivery of
 1220 notice to ~~filing with~~ the ~~state~~ Attorney General ~~of the~~ ~~an~~
 1221 election, accompanied by the proof of required consent.
 1222 Thereafter the trust shall be subject to s. 736.1208(5).

1223 Section 30. Except as otherwise provided in this act and
 1224 except for this section, which shall take effect upon becoming a
 1225 law, this act shall take effect July 1, 2017.