

Florida State University College of Law

## Scholarship Repository

---

Staff Analysis

Florida Legislative Documents

---

1989

### Session Law 89-039

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the [Legislation Commons](#)

---

#### Recommended Citation

House of Representatives, Florida Senate &, "Session Law 89-039" (1989). *Staff Analysis*. 827.  
<https://ir.law.fsu.edu/staff-analysis/827>

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact [efarrell@law.fsu.edu](mailto:efarrell@law.fsu.edu).

B  
I  
L  
L  
  
H  
I  
S  
T  
O  
R  
Y

**H 1486 GENERAL BILL/1ST ENG by Rush (Similar S 556)**

Divorce/Revocable Trust/Termination; provides for voidness of revocable trust executed by spouse prior to dissolution of marriage, upon such dissolution; authorizes termination by business trustee of trust valued under \$50,000. Creates 737.106; amends 737.402. Effective Date: 06/01/89 except s. 2 takes effect 10/01/89.

03/27/89 HOUSE Prefiled

03/29/89 HOUSE Referred to Judiciary

03/30/89 HOUSE Subreferred to Subcommittee on Court Systems, Probate and Consumer Law

04/04/89 HOUSE Introduced, referred to Judiciary -HJ 141; Subreferred to Subcommittee on Court Systems, Probate and Consumer Law; On Committee agenda—Judiciary, 04/06/89, 3:30 pm, 413-C—For ratification of referral to subcommittee

04/06/89 HOUSE On subcommittee agenda—Judiciary, 04/10/89, 3:30 pm, 413-C

04/10/89 HOUSE Subcommittee Recommendation: Favorable

04/14/89 HOUSE On Committee agenda—Judiciary, 04/18/89, 8:30 am, 413-C

04/18/89 HOUSE Preliminary Committee Action by Judiciary: Favorable; Comm. Report: Favorable by Judiciary, placed on Calendar -HJ 232

04/25/89 HOUSE Placed on Special Order Calendar; Read second time -HJ 270

04/27/89 HOUSE Read third time -HJ 282; Passed; YEAS 114 NAYS 0 -HJ 283

04/28/89 SENATE In Messages

05/05/89 SENATE Received, referred to Judiciary-Civil -SJ 271

05/12/89 SENATE Extension of time granted Committee Judiciary-Civil

05/16/89 SENATE Withdrawn from Judiciary-Civil; Substituted for SB 556; Passed as amended; YEAS 34 NAYS 2 -SJ 378

05/18/89 HOUSE In Messages

05/22/89 HOUSE Concurred; Passed as amended; YEAS 110 NAYS 0 -HJ 555

05/22/89 Ordered engrossed, then enrolled

05/25/89 Signed by Officers and presented to Governor -HJ 657

06/01/89 Approved by Governor; Chapter No. 89-39 -HJ 1123

**NOTES:** Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h1486-f.jud  
DATE: June 14, 1989

HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY  
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 1486

RELATING TO: Trust administration

SPONSOR(S): Representative Rush

EFFECTIVE DATE: Upon becoming a law

DATE BECAME LAW: June 1, 1989

CHAPTER #: 89-39, Laws of Florida

COMPANION BILL(S): SB 556

OTHER COMMITTEES OF REFERENCE: (1)

(2)

\*\*\*\*\*

I. SUMMARY:

A. PRESENT SITUATION:

Currently, under section 737.402, Florida Statutes, an institutional trustee may, at his discretion, terminate a small trust and distribute the proceeds when the market value of the remaining trust assets is less than \$25,000, and he determines that the costs of administration use so much of the income as to defeat the purpose of the trust. This right to terminate applies to all trusts, including spendthrift trusts, unless the trusts specifically prohibits the termination.

Unless otherwise provided for in a trust document, the right of a spouse to receive the benefits of a trust established by the other spouse is not affected by divorce.

B. EFFECT OF PROPOSED CHANGES:

House Bill 1486 causes the rights of one spouse, under a revocable trust established by the other spouse, to terminate upon dissolution of the marriage. The bill will also raise the threshold level of trust assets, from \$25,000 to \$50,000, under which a trustee is empowered to terminate a small trust.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 of the bill creates section 737.106, Florida Statutes, to provide that the rights of a spouse under a trust established by the other spouse, terminate upon dissolution of marriage, as if the spouse beneficiary had died on the date of dissolution.

STORAGE NAME: h1486-f.jud

DATE: June 14, 1989

PAGE: 2

This provision is limited to revocable trusts and may be avoided if the trust expressly provides otherwise.

Section 2 amends section 737.402, Florida Statutes, to raise the threshold level of trust assets from \$25,000 to \$50,000, under which a trustee, at his sole discretion, may terminate the trust. In addition, the right to terminate a trust is no longer limited to institutional trustees, but can be exercised by an individual person appointed as trustee, which could include in some instances the settlor of an irrevocable trust.

Section 3 provides that the bill shall be effective upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

#### 1. Non-recurring or First Year Start-Up Effects:

None.

#### 2. Recurring or Annualized Continuation Effects:

None.

#### 3. Long Run Effects Other Than Normal Growth:

None.

#### 4. Appropriations Consequences:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

#### 1. Non-recurring or First Year Start-Up Effects:

None.

#### 2. Recurring or Annualized Continuation Effects:

None.

#### 3. Long Run Effects Other Than Normal Growth:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

#### 1. Direct Private Sector Costs:

None.

STORAGE NAME: h1486-f.jud

DATE: June 14, 1989

PAGE: 3

2. Direct Private Sector Benefits:

This legislation will save settlors of revocable trusts whatever costs are associated with revoking a trust upon dissolution of marriage in which the divorced spouse is the only beneficiary, or the cost of revoking and reestablishing a trust in which there were other beneficiaries, e.g., children. In addition, the bill will provide greater flexibility for trustees to terminate small trusts when income from the trust is not sufficient to cover the costs of administration and have enough funds left over to accomplish the purpose of the trust.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

III. LONG RANGE CONSEQUENCES:

House Bill 1486 has no direct impact on the State Comprehensive Plan.

IV. COMMENTS:

This bill has no direct impact on the Mission Statement of the House Judiciary Committee or on the Policy Statement of the Florida House of Representatives.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

David K. Sigerson, Jr.

Staff Director:

Richard Hixson

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

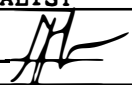

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: April 19, 1989BILL NO. SB 556DATE: April 17, 1989Page 1

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Lang</u> 	<u>Smawley</u> 	1. <u>JCI</u>	<u>Fav/1 amend.</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

<b>SUBJECT:</b>	<b>BILL NO. AND SPONSOR:</b>
Divorce/Revocable Trust/ Termination	SB 556 by Senator Dudley

**I. SUMMARY:****A. Present Situation:**

Chapter 737, F.S., provides for trust administration. Currently, the chapter has no provision governing the disposition of a revocable trust upon the dissolution of the settlor's marriage or upon his divorce.

Section 737.402(3), F.S., provides that a trustee which is a business organization authorized to engage in trust business under chs. 658, 660 or 665, F.S., may terminate a trust, in its sole discretion, under certain circumstances. Before terminating the trust, the trustee must determine that the market value of the trust is less the \$25,000 and that the continuing costs of administration of the trust will substantially impair the accomplishment of the trust purposes. Id.

**B. Effect of Proposed Changes:**

The bill would create a new section providing that a revocable trust executed by a married settlor becomes void with respect to the interest in the trust of the settlor's spouse upon the dissolution of the settlor's marriage or upon his divorce. This result can be avoided by an express provision to the contrary in the trust instrument or the judgment. When there is no such express provision to the contrary, the trust is to be administered as if the settlor's spouse died on the date of the dissolution or divorce.

Section 737.402(3), F.S., would raise the market value of a trust which may be terminated by a trustee. Trusts with a market value of less than \$50,000 could be so terminated. The right to terminate a trust would no longer be limited to a trustee which is a business organization.

**II. ECONOMIC IMPACT AND FISCAL NOTE:****A. Public:**

None.

**B. Government:**

None.

**III. COMMENTS:**

Confusion may arise as to what trusts are affected by the provision of the bill which would make void a spouse's interest in a revocable trust which does not contain language providing for continuation of the interest upon the divorce of the settlor spouse and the beneficiary spouse. The general rule is that legislation

applies prospectively unless it specifically provides for retroactive effect.

Under the rule of prospective application, the bill clearly would apply to revocable trusts executed after the bill became a law. Such trusts would become void upon the divorce of the settlor spouse and the beneficiary spouse.

Despite the rule of prospective application, confusion may arise in two situations. First, confusion may arise when the trust was executed before the bill became a law, but the divorce was not final until after the bill became a law. Similarly, confusion may arise when both execution of the trust and the final judgment of divorce occurred before the bill becomes a law.

Any possibility for confusion could be eliminated by providing in the bill that only revocable trusts executed after a certain date, by a settlor spouse for the benefit of his spouse, would be void upon their divorce. Both spouses would be put on notice as to the effect of their divorce on a trust set up by one for the benefit of the other. Thus, litigation of the issue would be avoided.

Additionally, providing that only trusts executed after a certain date would be affected would preclude any constitutional challenge to the statute that could be raised on the basis of retroactive application.

#### IV. AMENDMENTS:

#1 by Judiciary-Civil:

Changes to October 1, 1989 the effective date of the provision raising the market value of a trust which may be terminated by a trustee.

SENATE COMMITTEE AMENDMENT

SB 556

No. \_\_\_\_\_

(reported favorably)

HB \_\_\_\_\_

The Committee on...Judiciary-Civil....recommended the following  
amendment which was moved by Senator.....and adopted:  
and failed:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

Senate Amendment

On page 1....., line 20.....,  
after the word "executed"

If amendment is text from another bill insert:

Bill No.	Draft No.	With Changes?	No <u>-</u> Yes
----------	-----------	---------------	--------------------

insert:

after December 31, 1989

JUDICIARY CIVIL  
DATE: 4-18-89  
TIME: 2:35