

1 HB30
2 187569-3
3 By Representative Fridy
4 RFD: Judiciary
5 First Read: 09-JAN-18
6 PFD: 11/07/2017

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8 SYNOPSIS: Under existing law, the Alabama Family Trust
9 (AFT Trust) has been established to receive funds
10 used to enhance the provision of medical, social,
11 or supplemental services to life beneficiaries who
12 suffer a mental or physical disability. Existing
13 state law does not require the Alabama Family Trust
14 Corporation to comply with the federal Social
15 Security Administration laws and rules.

16 This bill would specify that the Alabama
17 Family Trust Corporation would take all steps
18 necessary to comply with all rules of the Social
19 Security Administration. The bill would delete
20 provisions providing for a successor life
21 beneficiary and would provide, upon termination of
22 the trust under certain conditions, for
23 disbursement of the remainder, including
24 reimbursement of governmental entities for medical
25 assistance. The bill would also specify that the
26 AFT Trust would not affect appropriations to the
27 Alabama Medicaid Agency.

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2 A BILL
3 TO BE ENTITLED
4 AN ACT

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6 Relating to the Alabama Family Trust (AFT Trust) and
7 the Alabama Family Trust Corporation (AFT Corporation); to
8 amend Sections 38-9B-2, 38-9B-3, and 38-9B-5 of the Code of
9 Alabama 1975; to specify that the Alabama Family Trust
10 Corporation would take all steps necessary to comply with all
11 rules of the Social Security Administration; to delete
12 provisions providing for a successor life beneficiary and
13 provide for disbursement of the trust upon termination of the
14 trust under certain conditions; and to specify that the AFT
15 Trust would not affect appropriations to the Alabama Medicaid
16 Agency.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 38-9B-2, 38-9B-3, and 38-9B-5 of
19 the Code of Alabama 1975, are amended to read as follows:

20 "§38-9B-2.

21 "As used in this chapter, the following words shall
22 have the following meanings:

23 "(1) ALABAMA FAMILY CHARITABLE TRUST (AFT CHARITABLE
24 TRUST). The trust established by the board of trustees that
25 qualifies as a tax exempt charitable entity under the United
26 States Internal Revenue Code, to provide benefits for any

1 individual who does not have a sufficient amount in his or her
2 AFT Trust to meet the individual's needs.

3 "(2) ALABAMA FAMILY TRUST (AFT TRUST). The Alabama
4 Family Trust established pursuant to this chapter.

5 "(3) ALABAMA FAMILY TRUST CORPORATION (AFT
6 CORPORATION). An Alabama not-for-profit corporation
7 established by the board of trustees pursuant to this chapter
8 that qualifies as a tax exempt charitable organization under
9 the United States Internal Revenue Code.

10 "(4) BOARD OF TRUSTEES. The Alabama Family Trust
11 Board of Trustees established pursuant to this chapter.

12 "(5) COMMISSIONER. The Commissioner of the Alabama
13 Department of Mental Health.

14 "(6) CONTRIBUTION. The balance of all amounts placed
15 in a particular account but not including any appreciation in
16 value of investments or accretions thereto resulting from any
17 source, such as dividends, interest, and capital gains. In no
18 event shall contribution mean more than the total of all
19 contributions made to a particular account.

20 "(7) CONTRIBUTOR. Any person who makes a donation
21 directly to the AFT Corporation or the AFT Charitable Trust.

22 "(8) CO-TRUSTEE. Any person named by the settlor to
23 work with the trustee in providing benefits to a life
24 beneficiary, except neither a contributor nor a contributor's
25 spouse shall be the co-trustee if the contributor or the
26 contributor's spouse is the life beneficiary.

1 "(9) DEPARTMENT. The Alabama Department of Mental
2 Health.

3 "(10) IMPAIRMENT. A mental or physical disability
4 that substantially limits one or more major life activities,
5 whether the impairment is congenital or acquired by accident,
6 injury, age, or disease, and where the impairment is verified
7 by medical findings that meet the medical-vocational
8 requirements for a finding of disability under Section 223(d)
9 of the Social Security Act, 42 U.S.C. Section 423(d), or under
10 Section 1614 of the Social Security Act, 42 U.S.C. Section
11 1382c.

12 "(11) LIFE BENEFICIARY. A beneficiary designated by
13 a settlor.

14 "(12) NET INCOME. The earnings received on
15 investments less expenses and fees for administration.

16 "(13) REQUESTING PARTY. The party requesting
17 arbitration of a dispute regarding benefits to be provided by
18 the AFT Trust.

19 "(14) RESPONDING PARTY. The party not requesting
20 arbitration of a dispute regarding benefits to be provided by
21 the AFT Trust.

22 "(15) SETTLOR. A person who establishes an AFT Trust
23 account for a life beneficiary.

24 ~~"(16) SUCCESSOR LIFE BENEFICIARY. A successor life~~
25 ~~beneficiary designated by the settlor to the AFT Trust, who is~~
26 ~~a legal sibling of the life beneficiary and who otherwise~~

1 ~~qualifies as a life beneficiary under the conditions of this~~
2 ~~chapter.~~

3 "~~(17)~~ (16) TRUSTEE. The Alabama Family Trust
4 Corporation.

5 "§38-9B-3.

6 "(a) Contributors may supplement the care, support,
7 habilitation, and treatment of impaired persons pursuant to
8 this chapter. Neither the contribution to the AFT Trust for
9 the benefit of a life beneficiary nor the use of AFT Trust
10 assets to provide benefits shall in any way reduce, impair, or
11 diminish the benefits to which a person is otherwise entitled
12 by law. The establishment and administration of the AFT Trust
13 shall not be taken into consideration in appropriations for
14 the department or the Alabama Medicaid Agency to render
15 services required by law.

16 "(b) The assets held by the trustee and assets held
17 in the AFT Trust and the AFT Charitable Trust pursuant to this
18 chapter shall not be considered state money, assets of the
19 state, or revenue for any purpose of the Constitution of
20 Alabama of 1901, or statute or any other state's constitution
21 or statute. The assets held by the trustee and its income and
22 operations shall be exempt from all state and local taxation.

23 "§38-9B-5.

24 "(a) The board of trustees shall establish and
25 administer the AFT Corporation. The board of trustees shall
26 execute all documents necessary to establish and administer
27 the AFT Corporation including, but not limited to, documents

1 to form a not-for-profit corporation and to qualify as an
2 organization pursuant to Section 501(c)(3) of the United
3 States Internal Revenue Code.

4 "(b) The AFT Corporation shall establish the AFT
5 Trust and the AFT Charitable Trust, and the board of trustees
6 shall administer the AFT Trust and the AFT Charitable Trust
7 through the AFT Corporation. The board of trustees and the AFT
8 Corporation shall take all steps necessary to satisfy all
9 federal and state laws, and all regulations, rules, and
10 policies established by the federal Social Security
11 Administration to ensure that the AFT Trust and the AFT
12 Charitable Trust are qualified to supplement the provision of
13 government entitlement funding and, where necessary, are
14 qualified as tax exempt entities under the United States
15 Internal Revenue Code, including, but not limited to,
16 amending any master or joinder trust agreements or other
17 corporation documents to comply with all relevant federal and
18 state laws, rules, regulations, and policies. Any such
19 amendments shall apply to all existing and future trust
20 agreements for the benefit of life beneficiaries.

21 "(c) The documents establishing the AFT Trust shall
22 include and be limited by the following:

23 "(1) To be eligible to participate in the AFT Trust,
24 a life beneficiary must suffer from an impairment as defined
25 in this chapter.

26 "(2) The AFT Trust may accept contributions from any
27 source, so long as basic eligibility requirements are

1 satisfied, to be held, administered, managed, invested, and
2 distributed ~~in order to facilitate the coordination and~~
3 ~~integration of private financing for individuals who have an~~
4 ~~impairment, while maintaining the eligibility of those~~
5 ~~individuals for government entitlement funding~~ so that life
6 beneficiaries remain eligible for means-tested government
7 benefits. Contributions and earnings of the AFT Trust may be
8 administered as one trust for purposes of investment and
9 management of funds. Notwithstanding the foregoing, separate
10 accounts shall be established for each designated life
11 beneficiary. The net income earned shall be credited to the
12 accounts of the life beneficiaries in proportion to the fair
13 market value that each account has to the total fair market
14 value of all accounts. Administrative fees and administrative
15 expenses may be charged directly to an account of a life
16 beneficiary, except that administrative fees shall not exceed
17 the income allocated to that account.

18 "(3) Every settlor shall designate a specific person
19 as the life beneficiary of the contribution made by the
20 contributor. In addition, each settlor shall name a
21 co-trustee, including a successor or successors to the
22 co-trustee, to act with the trustee on behalf of the
23 designated life beneficiary. Notwithstanding the foregoing,
24 neither a life beneficiary or his or her spouse shall be
25 eligible to be a co-trustee or a successor co-trustee.

26 "(4) If a settlor designates a contributor or the
27 contributor's spouse as the life beneficiary, then the account

1 of the life beneficiary shall, regardless of any other
2 provision of this chapter, meet the following additional
3 conditions:

4 "(i) The AFT Trust shall be irrevocable.

5 "(ii) The amounts remaining in the life
6 beneficiary's account upon the death of the life beneficiary
7 shall be first dispersed to the AFT Corporation, ~~as agent for~~
8 ~~all purposes of the State of Alabama, as reimbursement for any~~
9 ~~funds owed to.~~ The amounts remaining in the life beneficiary's
10 account upon the death of the life beneficiary shall be
11 disbursed by the AFT Corporation as follows: (1) payment of
12 any taxes due from the trust to the state or any other state
13 or the federal government because of the death of the
14 beneficiary; (2) payment of reasonable fees for administration
15 of the trust such as an accounting of the trust to a court,
16 completion and filing of documents, or other required actions
17 associated with termination and wrapping up of the trust; (3)
18 retention of 10 percent to AFT Corporation for the AFT
19 Charitable Trust; (4) reimbursement to the State of Alabama,
20 or to any other state, the District of Columbia or any other
21 commonwealth, territory, or jurisdiction of the United States
22 for medical assistance paid on behalf of the life beneficiary
23 under the plan of the respective jurisdiction, ~~and;~~ and (5)
24 payment of the balance, if any, shall be dispersed in
25 accordance with rules and regulations adopted by the AFT
26 Corporation. ~~All sums received by the AFT Corporation, as~~
27 ~~agent for the State of Alabama, shall be distributed, as~~

1 ~~appropriate, by the AFT Corporation.~~ The AFT Corporation shall
2 determine the amount to be retained by the AFT Corporation for
3 the AFT Charitable Trust from the amounts remaining in the
4 life beneficiary's account at death and the amount shall be
5 outlined in the trust agreement established at the time of the
6 creation of the life beneficiary's account with the AFT
7 Corporation.

8 "(iii) Neither a contributor nor the contributor's
9 spouse shall serve as co-trustee.

10 "(5) During his or her lifetime, any contributor or
11 contributor's spouse who has not been designated as the life
12 beneficiary, may revoke his or her contribution made to the
13 AFT Trust. Notwithstanding the foregoing, any contributor may,
14 at any time, voluntarily waive the right to revoke by written
15 notice. If the life beneficiary has not received any benefits
16 provided by the use of the AFT Trust income or principal at
17 the time the contributor revokes the contribution to the AFT
18 Trust, then, subject to the payment of any administrative fees
19 and expenses as established by the AFT Corporation, an amount
20 equal to the current fair market value of the balance of the
21 life beneficiary's account in the AFT Trust as determined on
22 the date of distribution shall be returned to the contributor.
23 If at the time a contributor revokes the contribution to the
24 AFT Trust the life beneficiary has received any benefits
25 provided by the use of the AFT Trust income or principal,
26 then, subject to the payment of any administrative fees and
27 expenses as established by the AFT Corporation, an amount

1 equal to 95 percent of the current fair market value of the
2 principal balance of the life beneficiary account in the AFT
3 Trust as determined on the date of distribution shall be
4 returned to the contributor. The remaining balance of the life
5 beneficiary account shall be distributed to the AFT Charitable
6 Trust.

7 "(6) The co-trustee, with the consent of the
8 trustee, shall agree on the amount of income or principal, or
9 both, to be used to provide non-cash benefits in the best
10 interest of the life beneficiary. Any net income which is not
11 used shall be added annually to the principal.

12 "(7) In the event that the ~~trustees~~ trustee and the
13 co-trustee shall be unable to agree either on the amount of
14 income or principal, or income and principal, to be used or
15 the benefits to be provided, then either the ~~trustees~~ trustee
16 or the co-trustee may request that the matter be resolved by
17 arbitration. The requesting party shall send a written request
18 for arbitration to the responding party and shall in the
19 request set forth the name, address, and telephone number of
20 the requesting party's arbitrator. The responding party shall,
21 within 10 days, after receipt of the request for arbitration,
22 set forth in writing to the requesting party the name,
23 address, and telephone number of the responding party's
24 arbitrator. Copies of the request for arbitration and response
25 shall be sent to the commissioner of the department. If the
26 two designated arbitrators are unable to agree upon a third
27 arbitrator within 10 days after the responding party has

1 identified the responding party's arbitrator, then the
2 commissioner shall designate the third arbitrator by written
3 notice to the requesting and responding parties' arbitrators.
4 The three arbitrators shall meet and render a decision within
5 30 calendar days after the appointment of the third
6 arbitrator. A decision of a majority of the arbitrators shall
7 be binding upon the requesting and responding parties. Each
8 party shall pay the fees and expenses of the party's
9 arbitrator and the fees and expenses of the third arbitrator
10 shall be borne equally by the parties.

11 ~~"(8) If a life beneficiary for whose benefit a~~
12 ~~contribution has been made to the AFT Trust ceases to be~~
13 ~~eligible to participate in the AFT Trust, and the contributor~~
14 ~~does not revoke or withdraw the applicable balance of the life~~
15 ~~beneficiary's account in the AFT Trust, then the trustee may,~~
16 ~~by written notice to the contributor or acting co-trustee,~~
17 ~~terminate the AFT Trust as to such life beneficiary.~~

18 ~~"(9) At the time of termination pursuant to~~
19 ~~subdivision (8) of this subsection of a life beneficiary's~~
20 ~~account from the AFT Trust, if the life beneficiary has not~~
21 ~~received any benefits provided by the use of AFT Trust income~~
22 ~~or principal, or the life beneficiary has received benefits~~
23 ~~provided by the use of AFT Trust income or principal for a~~
24 ~~period of not more than five years from the date a~~
25 ~~contribution has first been made to the AFT Trust for the life~~
26 ~~beneficiary, then an amount equal to 95 percent of the current~~
27 ~~fair market value of the principal balance of the life~~

1 beneficiary's account in the AFT Trust as determined on the
2 date of distribution shall be distributed to the account of
3 the successor life beneficiary, and the balance of the life
4 beneficiary's account in the AFT Trust shall be distributed to
5 the AFT Charitable Trust. At the time of withdrawal by the
6 co-trustee or termination as provided above, if the life
7 beneficiary has received any benefits provided by the use of
8 AFT Trust income or principal for a period of more than five
9 years from the date a contribution has first been made to an
10 account in the AFT Trust for the life beneficiary, then an
11 amount equal to 90 percent of the current fair market value of
12 the balance of the life beneficiary's account in the AFT Trust
13 as determined on the date of distribution shall be distributed
14 to the account of the successor life beneficiary, and the
15 balance of the life beneficiary's account in the AFT Trust
16 shall be distributed to the AFT Charitable Trust.

17 "(10) If the life beneficiary dies before receiving
18 any benefits provided by the use of AFT Trust income or
19 principal, all amounts remaining in the account of such life
20 beneficiary shall be transferred to the account of a successor
21 life beneficiary, if any. If there is no successor life
22 beneficiary, then an amount equal to the current fair market
23 value of the principal balance of the life beneficiary's
24 account in the AFT Trust as determined on the date of
25 distribution shall be distributed to the person or persons as
26 the settlor has designated. If at the time of death of the
27 life beneficiary, the life beneficiary has received benefits

1 provided by the use of AFT Trust income or principal, or both,
2 then all amounts remaining in the account of such life
3 beneficiary shall be transferred to the account of a successor
4 life beneficiary, if any. If there is no successor life
5 beneficiary, an amount equal to 90 percent of the current fair
6 market value of the balance of the life beneficiary's account
7 in the AFT Trust, as determined on the date of distribution,
8 shall be distributed to the person or persons as the settlor
9 has designated, and the remaining balance of the life
10 beneficiary's account in the AFT Trust, shall be distributed
11 to the AFT Charitable Trust.

12 ~~"(11) Upon receipt of a notice of the death of a~~
13 ~~life beneficiary where there is a successor life beneficiary,~~
14 ~~the applicable portion of the current fair market value of the~~
15 ~~life beneficiary's account in the AFT Trust shall be~~
16 ~~transferred to the account of the successor life beneficiary,~~
17 ~~and the co-trustee for the successor life beneficiary, with~~
18 ~~the consent of the trustee, shall agree on the amount of~~
19 ~~income or principal, or both, to be used to provide non-cash~~
20 ~~benefits in the best interest of the successor life~~
21 ~~beneficiary. After the death of a life beneficiary, an amount~~
22 ~~equal to 90 percent of the current fair market value of the~~
23 ~~balance of the successor life beneficiary's account in the AFT~~
24 ~~Trust, as determined on the date of distribution, shall be~~
25 ~~distributed to the person or persons as the settlor has~~
26 ~~designated, and the remaining balance of the successor life~~

1 ~~beneficiary's account in the AFT Trust shall be distributed to~~
2 ~~the AFT Charitable Trust.~~

3 "(8) If a settlor designates a contributor or the
4 contributor's spouse as the life beneficiary and the trustee
5 terminates the individual trust agreement for any lawful
6 reason other than the death of the life beneficiary, the
7 amounts remaining in the life beneficiary's account upon the
8 termination shall be dispersed as follows:

9 "a. Payment of reasonable fees for administration of
10 the trust such as an accounting of the trust to a court,
11 completion and filing of documents, or other required actions
12 associated with termination and wrapping up of the trust;

13 "b. Reimbursement to the State of Alabama, or to any
14 other state, the District of Columbia, or any other
15 commonwealth, territory, or jurisdiction of the United States,
16 for medical assistance paid on behalf of the life beneficiary
17 under the plan of the respective jurisdiction; and

18 "c. Payment of the balance, if any, to the life
19 beneficiary.

20 "(d) The documents establishing the AFT Charitable
21 Trust shall include and be limited to the following:

22 "(1) The AFT Charitable Trust shall be a charitable
23 trust under the United States Internal Revenue Code and shall
24 be administered as part of the AFT Trust, but as a separate
25 account. The income attributable to the AFT Charitable Trust
26 shall be used for the benefit of beneficiaries of AFT
27 individual trusts who have needs that cannot be met from funds

1 available to such life beneficiaries from their AFT individual
2 trusts. The board of trustees shall determine annually the
3 amount of AFT Charitable Trust income to be used to provide
4 benefits and the nature and type of benefits to be provided
5 for each AFT life beneficiary while taking into account the
6 individual's eligibility for government benefits. Any income
7 of the AFT Charitable Trust not used shall be added annually
8 to the principal.

9 "(2) The board of trustees shall accept
10 contributions to the AFT Charitable Trust from any source and
11 shall comply with all rules and regulations under the United
12 States Internal Revenue Code that govern the acceptance of
13 charitable contributions."

14 Section 2. This act shall become effective
15 immediately following its passage and approval by the
16 Governor, or its otherwise becoming law.