

1 SB17
2 187569-5
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 09-JAN-18
6 PFD: 10/10/2017

1 SB17

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4 ENROLLED, An Act,

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

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

19 "§38-9B-2.

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

22 "(1) ALABAMA FAMILY CHARITABLE TRUST (AFT CHARITABLE
23 TRUST). The trust established by the board of trustees that
24 qualifies as a tax exempt charitable entity under the United
25 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

1 spouse shall be the co-trustee if the contributor or the
2 contributor's spouse is the life beneficiary.

3 "(9) DEPARTMENT. The Alabama Department of Mental
4 Health.

5 "(10) IMPAIRMENT. A mental or physical disability
6 that substantially limits one or more major life activities,
7 whether the impairment is congenital or acquired by accident,
8 injury, age, or disease, and where the impairment is verified
9 by medical findings that meet the medical-vocational
10 requirements for a finding of disability under Section 223(d)
11 of the Social Security Act, 42 U.S.C. Section 423(d), or under
12 Section 1614 of the Social Security Act, 42 U.S.C. Section
13 1382c.

14 "(11) LIFE BENEFICIARY. A beneficiary designated by
15 a settlor.

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

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

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

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

1 "~~(16) SUCCESSOR LIFE BENEFICIARY. A successor life~~
2 ~~beneficiary designated by the settlor to the AFT Trust, who is~~
3 ~~a legal sibling of the life beneficiary and who otherwise~~
4 ~~qualifies as a life beneficiary under the conditions of this~~
5 ~~chapter.~~

6 "~~(17)~~ (16) TRUSTEE. The Alabama Family Trust
7 Corporation.

8 "§38-9B-3.

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

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

1 "§38-9B-5.

2 "(a) The board of trustees shall establish and
3 administer the AFT Corporation. The board of trustees shall
4 execute all documents necessary to establish and administer
5 the AFT Corporation including, but not limited to, documents
6 to form a not-for-profit corporation and to qualify as an
7 organization pursuant to Section 501(c)(3) of the United
8 States Internal Revenue Code.

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

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

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

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

1 "(3) Every settlor shall designate a specific person
2 as the life beneficiary of the contribution made by the
3 contributor. In addition, each settlor shall name a
4 co-trustee, including a successor or successors to the
5 co-trustee, to act with the trustee on behalf of the
6 designated life beneficiary. Notwithstanding the foregoing,
7 neither a life beneficiary or his or her spouse shall be
8 eligible to be a co-trustee or a successor co-trustee.

9 "(4) If a settlor designates a contributor or the
10 contributor's spouse as the life beneficiary, then the account
11 of the life beneficiary shall, regardless of any other
12 provision of this chapter, meet the following additional
13 conditions:

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

15 "(ii) The amounts remaining in the life
16 beneficiary's account upon the death of the life beneficiary
17 shall be first dispersed to the AFT Corporation, ~~as agent for~~
18 ~~all purposes of the State of Alabama, as reimbursement for any~~
19 ~~funds owed to.~~ The amounts remaining in the life beneficiary's
20 account upon the death of the life beneficiary shall be
21 disbursed by the AFT Corporation as follows: (1) payment of
22 any taxes due from the trust to the state or any other state
23 or the federal government because of the death of the
24 beneficiary; (2) payment of reasonable fees for administration
25 of the trust such as an accounting of the trust to a court,

1 completion and filing of documents, or other required actions
2 associated with termination and wrapping up of the trust; (3)
3 retention of 10 percent to AFT Corporation for the AFT
4 Charitable Trust; (4) reimbursement to the State of Alabama,
5 or to any other state, the District of Columbia or any other
6 commonwealth, territory, or jurisdiction of the United States
7 for medical assistance paid on behalf of the life beneficiary
8 under the plan of the respective jurisdiction, and; and (5)
9 payment of the balance, if any, shall be dispersed in
10 accordance with rules and regulations adopted by the AFT
11 Corporation. All sums received by the AFT Corporation, as
12 agent for the State of Alabama, shall be distributed, as
13 appropriate, by the AFT Corporation. The AFT Corporation shall
14 determine the amount to be retained by the AFT Corporation for
15 the AFT Charitable Trust from the amounts remaining in the
16 life beneficiary's account at death and the amount shall be
17 outlined in the trust agreement established at the time of the
18 creation of the life beneficiary's account with the AFT
19 Corporation.

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

22 "(5) During his or her lifetime, any contributor or
23 contributor's spouse who has not been designated as the life
24 beneficiary, may revoke his or her contribution made to the
25 AFT Trust. Notwithstanding the foregoing, any contributor may,

1 at any time, voluntarily waive the right to revoke by written
2 notice. If the life beneficiary has not received any benefits
3 provided by the use of the AFT Trust income or principal at
4 the time the contributor revokes the contribution to the AFT
5 Trust, then, subject to the payment of any administrative fees
6 and expenses as established by the AFT Corporation, an amount
7 equal to the current fair market value of the balance of the
8 life beneficiary's account in the AFT Trust as determined on
9 the date of distribution shall be returned to the contributor.
10 If at the time a contributor revokes the contribution to the
11 AFT Trust the life beneficiary has received any benefits
12 provided by the use of the AFT Trust income or principal,
13 then, subject to the payment of any administrative fees and
14 expenses as established by the AFT Corporation, an amount
15 equal to 95 percent of the current fair market value of the
16 principal balance of the life beneficiary account in the AFT
17 Trust as determined on the date of distribution shall be
18 returned to the contributor. The remaining balance of the life
19 beneficiary account shall be distributed to the AFT Charitable
20 Trust.

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

1 "(7) In the event that the ~~trustees~~ trustee and the
2 co-trustee shall be unable to agree either on the amount of
3 income or principal, or income and principal, to be used or
4 the benefits to be provided, then either the ~~trustees~~ trustee
5 or the co-trustee may request that the matter be resolved by
6 arbitration. The requesting party shall send a written request
7 for arbitration to the responding party and shall in the
8 request set forth the name, address, and telephone number of
9 the requesting party's arbitrator. The responding party shall,
10 within 10 days, after receipt of the request for arbitration,
11 set forth in writing to the requesting party the name,
12 address, and telephone number of the responding party's
13 arbitrator. Copies of the request for arbitration and response
14 shall be sent to the commissioner of the department. If the
15 two designated arbitrators are unable to agree upon a third
16 arbitrator within 10 days after the responding party has
17 identified the responding party's arbitrator, then the
18 commissioner shall designate the third arbitrator by written
19 notice to the requesting and responding parties' arbitrators.
20 The three arbitrators shall meet and render a decision within
21 30 calendar days after the appointment of the third
22 arbitrator. A decision of a majority of the arbitrators shall
23 be binding upon the requesting and responding parties. Each
24 party shall pay the fees and expenses of the party's

1 arbitrator and the fees and expenses of the third arbitrator
2 shall be borne equally by the parties.

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

10 ~~"(9) At the time of termination pursuant to
11 subdivision (8) of this subsection of a life beneficiary's
12 account from the AFT Trust, if the life beneficiary has not
13 received any benefits provided by the use of AFT Trust income
14 or principal, or the life beneficiary has received benefits
15 provided by the use of AFT Trust income or principal for a
16 period of not more than five years from the date a
17 contribution has first been made to the AFT Trust for the life
18 beneficiary, then an amount equal to 95 percent of the current
19 fair market value of the principal balance of the life
20 beneficiary's account in the AFT Trust as determined on the
21 date of distribution shall be distributed to the account of
22 the successor life beneficiary, and the balance of the life
23 beneficiary's account in the AFT Trust shall be distributed to
24 the AFT Charitable Trust. At the time of withdrawal by the
25 co-trustee or termination as provided above, if the life~~

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

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

1 beneficiary, an amount equal to 90 percent of the current fair
2 market value of the balance of the life beneficiary's account
3 in the AFT Trust, as determined on the date of distribution,
4 shall be distributed to the person or persons as the settlor
5 has designated, and the remaining balance of the life
6 beneficiary's account in the AFT Trust, shall be distributed
7 to the AFT Charitable Trust.

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

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

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

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

16 "c. Payment of the balance, if any, to the life
17 beneficiary.

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

20 "(1) The AFT Charitable Trust shall be a charitable
21 trust under the United States Internal Revenue Code and shall
22 be administered as part of the AFT Trust, but as a separate
23 account. The income attributable to the AFT Charitable Trust
24 shall be used for the benefit of beneficiaries of AFT
25 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.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB17
Senate 16-JAN-18
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 30-JAN-18

By: Senator Ward