

By Representatives Bilirakis and Crow

1 A bill to be entitled
2 An act relating to trusts; amending s. 689.225,
3 F.S.; excluding interests or powers from the
4 statutory rule against perpetuities; providing
5 legislative intent; creating s. 737.2035, F.S.;
6 providing for costs and attorney's fees in
7 trust proceedings; amending s. 737.306, F.S.;
8 revising language with respect to the personal
9 liability of the trustee; providing
10 requirements with respect to successor
11 trustees; providing effective dates.

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13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Effective July 1, 2000, subsection (5) of
16 section 689.225, Florida Statutes, is amended to read:

17 689.225 Statutory rule against perpetuities.--

18 (2) STATEMENT OF THE RULE.--

19 (a) A nonvested property interest in real or personal
20 property is invalid unless:

21 1. When the interest is created, it is certain to vest
22 or terminate no later than 21 years after the death of an
23 individual then alive; or

24 2. The interest either vests or terminates within 90
25 years after its creation.

26 (b) A general power of appointment not presently
27 exercisable because of a condition precedent is invalid
28 unless:

29 1. When the power is created, the condition precedent
30 is certain to be satisfied or become impossible to satisfy no
31

1 later than 21 years after the death of an individual then
2 alive; or

3 2. The condition precedent either is satisfied or
4 becomes impossible to satisfy within 90 years after its
5 creation.

6 (c) A nongeneral power of appointment or a general
7 testamentary power of appointment is invalid unless:

8 1. When the power is created, it is certain to be
9 irrevocably exercised or otherwise to terminate no later than
10 21 years after the death of an individual then alive; or

11 2. The power is irrevocably exercised or otherwise
12 terminates within 90 years after its creation.

13 (d) In determining whether a nonvested property
14 interest or a power of appointment is valid under subparagraph
15 (a)1., subparagraph (b)1., or subparagraph (c)1., the
16 possibility that a child will be born to an individual after
17 the individual's death is disregarded.

18 (e) If, in measuring a period from the creation of a
19 trust or other property arrangement, language in a governing
20 instrument (i) seeks to disallow the vesting or termination of
21 any interest or trust beyond, (ii) seeks to postpone the
22 vesting or termination of any interest or trust until, or
23 (iii) seeks to operate in effect in any similar fashion upon,
24 the later of:

25 1. The expiration of a period of time not exceeding 21
26 years after the death of a specified life or the survivor of
27 specified lives, or upon the death of a specified life or the
28 death of the survivor of specified lives in being at the
29 creation of the trust or other property arrangement, or

30 2. The expiration of a period of time that exceeds or
31 might exceed 21 years after the death of the survivor of lives

1 in being at the creation of the trust or other property
2 arrangement,

3
4 that language is inoperative to the extent it produces a
5 period of time that exceeds 21 years after the death of the
6 survivor of the specified lives.

7 (5) EXCLUSIONS FROM STATUTORY RULE AGAINST
8 PERPETUITIES.--Subsection (2) does not apply to:

9 (a) A nonvested property interest or a power of
10 appointment arising out of a nondonative transfer, except a
11 nonvested property interest or a power of appointment arising
12 out of:

- 13 1. A premarital or postmarital agreement;
- 14 2. A separation or divorce settlement;
- 15 3. A spouse's election;
- 16 4. A similar arrangement arising out of a prospective,
17 existing, or previous marital relationship between the
18 parties;
- 19 5. A contract to make or not to revoke a will or
20 trust;
- 21 6. A contract to exercise or not to exercise a power
22 of appointment;
- 23 7. A transfer in satisfaction of a duty of support; or
- 24 8. A reciprocal transfer;

25 (b) A fiduciary's power relating to the administration
26 or management of assets, including the power of a fiduciary to
27 sell, lease, or mortgage property, and the power of a
28 fiduciary to determine principal and income;

29 (c) A power to appoint a fiduciary;

30 (d) A discretionary power of a trustee to distribute
31 principal before termination of a trust to a beneficiary

1 having an indefeasibly vested interest in the income and
2 principal;

3 (e) A nonvested property interest held by a charity,
4 government, or governmental agency or subdivision, if the
5 nonvested property interest is preceded by an interest held by
6 another charity, government, or governmental agency or
7 subdivision;

8 (f) A nonvested property interest in, or a power of
9 appointment with respect to, a trust or other property
10 arrangement forming part of a pension, profit-sharing, stock
11 bonus, health, disability, death benefit, income deferral, or
12 other current or deferred benefit plan for one or more
13 employees, independent contractors, or their beneficiaries or
14 spouses, to which contributions are made for the purpose of
15 distributing to or for the benefit of the participants, or
16 their beneficiaries or spouses, the property, income, or
17 principal in the trust or other property arrangement, except a
18 nonvested property interest or a power of appointment that is
19 created by an election of a participant or a beneficiary or
20 spouse; ~~or~~

21 (g) A property interest, power of appointment, or
22 arrangement that was not subject to the common-law rule
23 against perpetuities or is excluded by another statute of this
24 state;

25 (h) A nonvested property interest or a power of
26 appointment when the grantor or creator of such interest or
27 power expresses his or her intention in the written instrument
28 creating such interest or power that the provisions of this
29 section shall not apply. An election under this paragraph
30 shall be made by a statement in the written instrument
31 identifying the interest or interests to which the election

1 applies coupled with an expression of the grantor or creator's
2 intention the rule against perpetuities shall not apply to the
3 interest or interests identified. An election shall not be
4 deemed to have been made by implication merely because
5 provisions of the written instrument violate this section; or
6 (i) This section is the sole expression of any rule
7 against perpetuities, remoteness in vesting, or restraint upon
8 the power of alienation or accumulations in Florida. No
9 common law rule against perpetuities, remoteness in vesting,
10 or restraint upon the power of alienation or accumulations
11 shall exist with respect to interests or powers which are
12 governed by or excluded from this section.

13 Section 2. Section 737.2035, Florida Statutes, is
14 created to read:

15 737.2035 Costs and attorney's fees in trust
16 proceedings.--

17 (1) In all trust proceedings, costs may be awarded as
18 in chancery actions.

19 (2) Any attorney who has rendered services to a trust
20 may apply to the court for an order awarding attorney's fees,
21 and after notice and service upon the trustee and all
22 beneficiaries entitled to an accounting under s. 737.303 the
23 court shall enter its order on the fee application.

24 (3) When costs and attorney's fees are to be paid out
25 of the trust, the court may in its discretion direct from what
26 part of the trust they shall be paid.

27 (4) The provisions of this section shall apply only to
28 services of an attorney rendered on or after July 1, 1999.

29 Section 3. Subsection (3) of section 737.306, Florida
30 Statutes, is amended and subsection (5) is added to said
31 section to read:

1 737.306 Personal liability of trustee.--
2 (3) A ~~successor trustee succeeding a trustee who was~~
3 ~~also the grantor of the trust~~ is not personally liable for any
4 action taken or omitted to be taken by any such prior trustee;
5 nor does any such successor trustee have a duty to institute
6 any action against any such prior trustee, or file any claim
7 against any such prior trustee's estate, for any of the prior
8 trustee's acts or omissions as trustee under any of the
9 following circumstances:
10 (a) The successor trustee succeeds a trustee who was
11 also the grantor of a trust that was revocable during the time
12 that the grantor served as trustee;
13 (b) As to any beneficiary who has received or waived
14 any accounting required by the provisions of s. 737.303, but
15 only as to the periods included in such waiver;
16 (c) As to any beneficiary who has released the
17 successor trustee from such duty to institute any action or
18 file any claim;
19 (d) As to any person who is not a beneficiary within
20 the meaning of s. 737.303(4)(b); or
21 (e) As to any beneficiary described in s.
22 737.303(4)(b):
23 1. If a super majority of the reasonably ascertainable
24 current income or principal beneficiaries described in s.
25 737.303(4)(b)1. and a super majority of the reasonably
26 ascertainable remainder beneficiaries described in s.
27 737.303(4)(b)2. have released the successor trustee;
28 2. If the beneficiary has not delivered a written
29 request to the successor trustee to institute an action or
30 file a claim against the prior trustee within 6 months of the
31 date the successor trustee's acceptance of the trust, provided

1 the successor trustee has notified the beneficiary in writing
2 of its acceptance in accordance with s. 737.303(1), and such
3 writing advises the beneficiary that unless the beneficiary
4 delivers the foregoing written request within 6 months of the
5 date of acceptance his or her right to proceed against the
6 successor trustee will be barred pursuant to this section; or

7 3. For any action or claim which the beneficiary is
8 barred from bringing against the prior trustee.~~This~~
9 ~~subsection applies only with respect to a trust that is~~
10 ~~revocable during the time that the grantor serves as trustee.~~

11 (5) For purposes of this section a "super majority of
12 beneficiaries" means at least two-thirds in interest of the
13 beneficiaries if the interests of the beneficiaries are
14 reasonably ascertainable, otherwise it means at least
15 two-thirds in number of the beneficiaries. A release or waiver
16 under this section may be exercised by a legal representative
17 or natural guardian of the beneficiary without the filing of
18 any proceeding or approval of any court. Nothing in subsection
19 (3) shall affect any liability of the prior trustee, or the
20 right of the successor trustee or any beneficiary to pursue an
21 action or claim against the prior trustee.

22 Section 4. Except as otherwise provided herein, this
23 act shall take effect July 1, 1999.

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26 HOUSE SUMMARY

27 Provides an additional interest or power which is not
28 subject to the statutory rule against perpetuities.
29 Provides for costs and attorney's fees in trust
30 proceedings. Revises language with respect to the
31 personal liability of a successor trustee. See bill for
details.