

By the Committee on Real Property & Probate and  
 Representatives Goodlette, Gottlieb and Bilirakis

1                                   A bill to be entitled  
 2           An act relating to the rule against  
 3           perpetuities; amending s. 689.225, F.S.;  
 4           revising certain criteria for application of  
 5           the rule to certain trusts; specifying  
 6           exclusivity of application of the rule;  
 7           excluding common-law expressions; creating ss.  
 8           737.4031, 737.4032, and 737.4033, F.S.;  
 9           providing for judicial and nonjudicial  
 10          modifications of certain trusts under certain  
 11          circumstances; providing for representation of  
 12          certain persons in modification actions;  
 13          specifying nonapplication to certain trusts;  
 14          providing definitions; providing construction;  
 15          providing application relating to common law;  
 16          providing for award of costs and attorney fees  
 17          in modification proceedings; providing an  
 18          effective date.

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

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 22           Section 1. Paragraph (f) is added to subsection (2) of  
 23           section 689.225, Florida Statutes, and subsection (7) of said  
 24           section is amended, to read:

25           689.225 Statutory rule against perpetuities.--

26           (2) STATEMENT OF THE RULE.--

27           (f) As to any trust created after December 31, 2000,  
 28           this section shall apply to a nonvested property interest or  
 29           power of appointment contained in a trust by substituting  
 30           "1,000 years" in place of "90 years" in each place such term  
 31           appears in this section unless the terms of the trust require

1 that all beneficial interests in the trust vest or terminate  
2 within a lesser period.

3 (7) RULE OF CONSTRUCTION.--With respect to any matter  
4 relating to the validity of an interest within the rule  
5 against perpetuities, unless a contrary intent appears, it  
6 shall be presumed that the transferor of the interest intended  
7 that the interest be valid. This section is the sole  
8 expression of any rule against perpetuities or remoteness in  
9 vesting in this state. No common-law rule against  
10 perpetuities or remoteness in vesting shall exist with respect  
11 to any interest or power regardless of whether such interest  
12 or power is governed by this section.

13 Section 2. Sections 737.4031, 737.4032, and 737.4033,  
14 Florida Statutes, are created to read:

15 737.4031 Judicial modification of trusts.--

16 (1) If the purposes of a trust have been fulfilled or  
17 have become illegal or impossible to fulfill or, if because of  
18 circumstances not known to or anticipated by the settlor,  
19 compliance with the terms of the trust would defeat or  
20 substantially impair the accomplishment of a material purpose  
21 of the trust or, if a material purpose of the trust no longer  
22 exists, upon the application of a trustee of the trust or any  
23 beneficiary a court at any time may modify the terms of a  
24 trust which is not then revocable to:

25 (a) Amend or change the terms of the trust, including  
26 terms governing distribution of the trust income or principal,  
27 or terms governing administration of the trust;

28 (b) Terminate the trust in whole or in part;

29 (c) Direct or permit the trustee to do acts that are  
30 not authorized or that are prohibited by the terms of the  
31 trust; or

1       (d) Prohibit the trustee from performing acts that are  
2 permitted or required by the terms of the trust.

3       (2) Upon the application of a trustee of the trust or  
4 any beneficiary, a trust which is not then revocable may be  
5 modified at any time by a court as provided in subsection (1),  
6 and without regard to the reasons for modification provided in  
7 subsection (1), if compliance with the terms of the trust is  
8 not in the best interest of the persons having a beneficial  
9 interest in the trust.

10       (a) The court shall exercise its discretion to order a  
11 modification of the trust under this subsection in a manner  
12 that conforms to the extent possible with the intention of the  
13 settlor, taking into account the current circumstances and  
14 best interests of the beneficiaries.

15       (b) This subsection shall not apply to a trust created  
16 prior to January 1, 2001.

17       (c) This subsection shall not apply to a trust created  
18 after December 31, 2000, if:

19           1. Under the terms of the trust, all beneficial  
20 interests in the trust must vest or terminate within the  
21 period prescribed by the rule against perpetuities in s.  
22 689.225(2), notwithstanding s. 689.225(2)(f).

23           2. The terms of the trust expressly prohibit judicial  
24 modification.

25       (d) Modification of a trust, as authorized in this  
26 subsection, is not prohibited by a provision in the trust  
27 instrument that prohibits amendment or revocation of the trust  
28 if the provision does not expressly prohibit judicial  
29 modification.

30       (3) In exercising its discretion to order a  
31 modification of a trust under this section, the court shall

1 consider the terms and purposes of the trust, the facts and  
2 circumstances surrounding the creation of the trust, and  
3 extrinsic evidence relevant to the proposed modification.  
4 (4) To the extent the interests of any person with a  
5 beneficial interest in the trust who is unborn or  
6 unascertained, whose identity is not then known for any  
7 reason, or who is a minor or under a legal disability are not  
8 represented by another beneficiary, such person shall be  
9 represented by the person's legal guardian, if any, or, if  
10 none, by a guardian ad litem appointed by the court upon the  
11 court's own motion or upon application by the trustee or any  
12 beneficiary.  
13 (5) The court shall consider spendthrift provisions as  
14 a factor in making a decision whether to modify a trust under  
15 this section, but the court is not precluded from exercising  
16 authority to modify the trust because the trust contains  
17 spendthrift provisions.  
18 (6) For purposes of this section:  
19 (a) "Beneficiary" means:  
20 1. All current income or principal beneficiaries,  
21 whether the beneficiaries' beneficial interests are  
22 discretionary or mandatory.  
23 2. All reasonably ascertainable beneficiaries if all  
24 current income interests immediately terminated, determined as  
25 if any power of appointment over the trust assets were not  
26 exercised.  
27 (b) "Trust" means trust as defined in s. 731.201.  
28 (c) A trust is revocable if revocable by the settlor  
29 alone or in conjunction with any other person. A trust is not  
30 revocable for purposes of this section if revocable by the  
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1 settlor only with the consent of all persons having a  
2 beneficial interest in the property.

3 (d) A trust which is revocable shall be treated as  
4 created when the right of revocation terminates.

5 (7) The provisions of this section are in addition to,  
6 and not in derogation of, rights under the common law to  
7 modify, amend, or revoke trusts.

8 737.4032 Nonjudicial modification of trusts.--

9 (1) A trust which is not revocable may be modified at  
10 any time after the settlor's death, upon the unanimous  
11 agreement of the trustee and all beneficiaries of the trust,  
12 to:

13 (a) Amend or change the terms of the trust, including  
14 terms governing distribution of the trust income or principal  
15 or terms governing administration of the trust;

16 (b) Terminate the trust in whole or in part;

17 (c) Direct or permit the trustee to do acts that are  
18 not authorized or that are prohibited by the terms of the  
19 trust; or

20 (d) Prohibit the trustee from performing acts that are  
21 permitted or required by the terms of the trust.

22 (2) This section shall not apply to any trust for  
23 which a charitable deduction is allowed or allowable under the  
24 Internal Revenue Code until the termination of all charitable  
25 interests in the trust.

26 (3) An agreement to modify a trust under this section  
27 shall be binding upon a person with a beneficial interest in  
28 the trust who is unborn or unascertained, whose identity is  
29 not then known for any reason, or who is a minor or under a  
30 legal disability, to the extent that his or her interest is  
31 represented by another beneficiary having the same or greater

1 quality of beneficial interest in the trust, but only to the  
2 extent there is no conflict of interest between such person  
3 and such beneficiary or among the persons represented.

4 (4) To the extent the interests of any person having a  
5 beneficial interest in a trust who is unborn or unascertained,  
6 whose identity is not then known for any reason, or who is a  
7 minor or under a legal disability are not represented by a  
8 beneficiary under subsection (3), such person shall be  
9 represented by the person's legal guardian if there is one or,  
10 if the person does not have a legal guardian, such person  
11 shall be represented by a guardian ad litem appointed by the  
12 court upon application by the trustee or any beneficiary.  
13 Unless the court requires otherwise, the guardian ad litem's  
14 decision whether to consent to modify the trust shall be  
15 binding upon any person represented by the guardian ad litem  
16 without seeking court approval.

17 (5) This section shall not apply to a trust created  
18 prior to January 1, 2001.

19 (6) This section shall not apply to a trust created  
20 after December 31, 2000, if, under the terms of the trust, all  
21 beneficial interests in the trust must vest or terminate  
22 within the period prescribed by the rule against perpetuities  
23 in s. 689.225(2), notwithstanding s. 689.225(2)(f), unless the  
24 terms of the trust expressly permit modification under this  
25 section.

26 (7) Modification of a trust as authorized in this  
27 section is not prohibited by a spendthrift clause, or by a  
28 provision in the trust instrument that prohibits amendment or  
29 revocation of the trust.

30 (8) For purposes of this section:

31 (a) "Beneficiary" means:

1           1. All current income or principal beneficiaries,  
2 whether the beneficiaries' beneficial interests are  
3 discretionary or mandatory.

4           2. All reasonably ascertainable beneficiaries if all  
5 current income interests immediately terminated, determined as  
6 if any power of appointment over the trust assets were not  
7 exercised.

8           (b) "Trust" means trust as defined in s. 731.201.

9           (c) A trust is revocable if revocable by the settlor  
10 alone or in conjunction with any other person. A trust is not  
11 revocable for purposes of this section if revocable by the  
12 settlor only with the consent of all persons having a  
13 beneficial interest in the property.

14           (d) A trust which is revocable shall be treated as  
15 created when the right of revocation terminates.

16           (9) The provisions of this section are in addition to,  
17 and not in derogation of, rights under the common law to  
18 modify, amend, or revoke trusts.

19           737.4033 Costs and attorney's fees.--In all  
20 proceedings under s. 737.4031 or s. 737.4032, the court shall  
21 award taxable costs as in chancery actions, including  
22 attorney's fees and guardian ad litem fees, and such costs may  
23 be paid from the trust or as otherwise directed by the court.

24           Section 3. This act shall take effect December 31,  
25 2000.

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