

By Senator Grant

13-673-00

See HB

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, 737.4033, F.S.; providing  
9           for judicial and nonjudicial modifications of  
10          certain trusts under certain circumstances;  
11          providing for representation of certain persons  
12          in modification actions; specifying  
13          nonapplication to certain trusts; providing  
14          definitions; providing construction; providing  
15          application relating to common law; providing  
16          for award of costs and attorney's fees in  
17          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 that  
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, remoteness in  
9 vesting, or restraint upon the power of alienation or  
10 accumulations in this state. No common-law rule against  
11 perpetuities, remoteness in vesting, or restraint upon the  
12 power of alienation or accumulations shall exist with respect  
13 to any interest or power regardless of whether such interest  
14 or power is governed by this section.

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

17 737.4031 Judicial modification of trusts.--

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

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

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

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1           (c) Direct or permit the trustee to do acts that are  
2 not authorized or that are prohibited by the terms of the  
3 trust; or

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

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

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

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

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

22           1. Under the terms of the trust, all beneficial  
23 interests in the trust must vest or terminate within the  
24 period prescribed by the rule against perpetuities in s.  
25 689.225(2), notwithstanding s. 689.225(2)(f); and

26           2. The terms of the trust expressly prohibit  
27 modification.

28           (d) Modification of a trust, as authorized in this  
29 subsection, is not prohibited by a provision in the trust  
30 instrument which prohibits amendment or revocation of the  
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1 trust if the provision does not expressly prohibit judicial  
2 modification pursuant to this subsection.

3 (3) In exercising its discretion to order a  
4 modification of a trust under this section, the court shall  
5 consider the terms and purposes of the trust, the facts and  
6 circumstances surrounding the creation of the trust, and  
7 extrinsic evidence relevant to the proposed modification.

8 (4) To the extent the interests of any person with a  
9 beneficial interest in the trust who is unborn or  
10 unascertained, whose identity is not then known for any  
11 reason, or who is a minor or under a legal disability are not  
12 represented by another beneficiary, such person shall be  
13 represented by the person's legal guardian, if any, or, if  
14 none, by a guardian ad litem appointed by the court upon the  
15 court's own motion or upon application by the trustee or any  
16 beneficiary.

17 (5) The court shall consider spendthrift provisions as  
18 a factor in making a decision whether to modify a trust under  
19 this section, but the court is not precluded from exercising  
20 authority to modify the trust because the trust contains  
21 spendthrift provisions.

22 (6) For purposes of this section:

23 (a) "Beneficiary" means:

24 1. All current income or principal beneficiaries,  
25 whether the beneficiaries' beneficial interests are  
26 discretionary or mandatory.

27 2. All reasonably ascertainable beneficiaries if all  
28 current income interests immediately terminated, determined as  
29 if any power of appointment over the trust assets were not  
30 exercised.

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

1           (c) A trust is revocable if revocable by the settlor  
2 alone or in conjunction with any other person. A trust is not  
3 revocable for purposes of this section if revocable by the  
4 settlor only with the consent of all persons having a  
5 beneficial interest in the property.

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

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

11           737.4032 Nonjudicial modification of trusts.--

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

16           (a) Amend or change the terms of the trust, including  
17 terms governing distribution of the trust income or principal  
18 or terms governing administration of the trust;

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

20           (c) Direct or permit the trustee to do acts that are  
21 not authorized or that are prohibited by the terms of the  
22 trust; or

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

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

29           (3) An agreement to modify a trust under this section  
30 shall be binding upon a person with a beneficial interest in  
31 the trust who is unborn or unascertained, whose identity is

1 not then known for any reason, or who is a minor or under a  
2 legal disability, to the extent that his or her interest is  
3 represented by another beneficiary having the same or greater  
4 quality of beneficial interest in the trust, but only to the  
5 extent there is no conflict of interest between such person  
6 and such beneficiary or among the persons represented.

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

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

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

29 (7) Modification of a trust as authorized in this  
30 section is not prohibited by a spendthrift clause, or by a  
31 provision in the trust instrument that prohibits amendment or

1 revocation of the trust but that does not expressly refer to  
2 modification under this section.

3 (8) For purposes of this section:

4 (a) "Beneficiary" means:

5 1. All current income or principal beneficiaries,  
6 whether the beneficiaries' beneficial interests are  
7 discretionary or mandatory.

8 2. All reasonably ascertainable beneficiaries if all  
9 current income interests immediately terminated, determined as  
10 if any power of appointment over the trust assets were not  
11 exercised.

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

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

18 (d) A trust that is revocable shall be treated as  
19 created when the right of revocation terminates.

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

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

28 Section 3. This act shall take effect December 31,  
29 2000.

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LEGISLATIVE SUMMARY

Revises time limit criteria in applying the statutory rule against perpetuities to trusts created after December 31, 2000. Specifies exclusivity of application of the rule and excludes common-law expressions of the rule. Provides for judicial and nonjudicial modifications of trusts under specified circumstances, specifies nonapplication to specified trusts, and provides for award of costs and attorney's fees in modification proceedings. (See bill for details.)