

By the Committee on Judiciary and Senator Grant

308-1667-00

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 "360
30 years" in place of "90 years" in each place such term appears
31 in this section unless the terms of the trust require that all

1 beneficial interests in the trust vest or terminate within a
2 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); and

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 which prohibits amendment or revocation of the
28 trust 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 as to 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 that 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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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 830

- Reduces the proposed time period from 1,000 years to 360 years in which a property interest in a trust must either vest or terminate in accordance with the proposed revision of the statutory Rule Against Perpetuities.
- Removes the provisions repealing the common law rule against accumulations and the common law rule on restraints against alienation.
- Removes the requirement for a trust instrument to expressly reference the statutory provisions regarding judicial or non-judicial modification of a trust in order to prohibit such modifications.
- Clarifies that it is the trustee of a trust being modified who may seek judicial modification of that trust.