

1 A bill to be entitled
2 An act relating to trusts; amending s. 689.225, F.S.;
3 revising criteria for application of the rule against
4 perpetuities to trusts created on or after a specified
5 date; amending s. 736.0105, F.S.; specifying that the
6 terms of a trust do not prevail over a trustee's duty
7 to account to qualified beneficiaries upon termination
8 of the trust; providing construction; amending s.
9 736.0109, F.S.; clarifying circumstances under which
10 notice, or the sending of a document, to a person
11 under the Florida Trust Code is deemed satisfied;
12 amending s. 736.0303, F.S.; specifying circumstances
13 under which a parent may represent and bind the unborn
14 descendants of his or her unborn or minor child;
15 amending s. 736.0409, F.S.; revising the timeframe for
16 which certain noncharitable trusts may be enforced;
17 amending s. 736.08135, F.S.; providing an alternate
18 procedure for trust accountings under certain
19 circumstances; specifying requirements and
20 applicability; amending s. 736.08145, F.S.; clarifying
21 the application of law governing grantor trust
22 reimbursement; providing an effective date.

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24 Be It Enacted by the Legislature of the State of Florida:
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26 Section 1. Paragraph (f) of subsection (2) of section
 27 689.225, Florida Statutes, is amended, and paragraph (g) is
 28 added to that subsection to read:

29 689.225 Statutory rule against perpetuities.—

30 (2) STATEMENT OF THE RULE.—

31 (f) As to any trust created after December 31, 2000,
 32 through June 30, 2022, this section shall apply to a nonvested
 33 property interest or power of appointment contained in a trust
 34 by substituting 360 years in place of "90 years" in each place
 35 such term appears in this section unless the terms of the trust
 36 require that all beneficial interests in the trust vest or
 37 terminate within a lesser period.

38 (g) As to any trust created on or after July 1, 2022, this
 39 section shall apply to a nonvested property interest or power of
 40 appointment contained in a trust by substituting 1,000 years in
 41 place of "90 years" in each place such term appears in this
 42 section unless the terms of the trust require that all
 43 beneficial interests in the trust vest or terminate within a
 44 lesser period.

45 Section 2. Paragraph (s) of subsection (2) of section
 46 736.0105, Florida Statutes, is amended to read:

47 736.0105 Default and mandatory rules.—

48 (2) The terms of a trust prevail over any provision of
 49 this code except:

50 (s) The duty under s. 736.0813(1)(c) and (d) to provide a

51 complete copy of the trust instrument and to account to
 52 qualified beneficiaries on termination of the trust; provided
 53 that nothing in this paragraph shall be construed to:

54 1. Prevent a trustee from voluntarily accounting to
 55 qualified beneficiaries annually or at other times selected by
 56 the trustee; or

57 2. Relieve a trustee from the duty to account to the
 58 qualified beneficiaries upon demand of such qualified
 59 beneficiaries annually, or at less frequent intervals.

60 Section 3. Subsections (1) and (4) of section 736.0109,
 61 Florida Statutes, are amended to read:

62 736.0109 Methods and waiver of notice.—

63 (1) Notice to a person under this code or the sending of a
 64 document to a person under this code must be accomplished in a
 65 manner reasonably suitable under the circumstances and likely to
 66 result in receipt of the notice or document. Permissible methods
 67 of notice or for sending a document include first-class mail,
 68 personal delivery, delivery to the person's last known place of
 69 residence or place of business, a properly directed facsimile or
 70 other electronic message which includes, but is not limited to,
 71 e-mail, or posting on a secure electronic account or website in
 72 accordance with subsection (3). Notwithstanding subsection (3),
 73 a properly directed e-mail message with an attached notice or
 74 document or hyperlink through which the recipient can view a
 75 notice or document is a permissible method of notice under this

76 section, provided that any username, password, or other specific
 77 instructions needed to access the document or notice is
 78 communicated to the recipient either contemporaneously or on
 79 request.

80 (4) Notice to a person under this code, or the sending of
 81 a document to a person under this code by electronic message,
 82 including e-mail with an attached notice or document or an
 83 included hyperlink through which the recipient can access the
 84 notice or document, is complete when the notice or document is
 85 sent.

86 (a) An electronic message is presumed received on the date
 87 that the message is sent.

88 (b) If the sender has knowledge that an electronic message
 89 did not reach the recipient, the electronic message is deemed to
 90 have not been received. The sender has the burden to prove that
 91 another copy of the notice or document was sent by electronic
 92 message or by other means authorized by this section.

93 Section 4. Subsection (5) of section 736.0303, Florida
 94 Statutes, is amended to read:

95 736.0303 Representation by fiduciaries and parents.—To the
 96 extent there is no conflict of interest between the
 97 representative and the person represented or among those being
 98 represented with respect to a particular question or dispute:

99 (5) A parent may represent and bind the parent's unborn
 100 child and the unborn descendants of such unborn child, or the

101 | parent's minor child and the minor or unborn descendants of such
 102 | minor child, if a guardian of the property for the unborn child,
 103 | minor child, or such child's descendants has not been appointed.

104 | Section 5. Subsection (1) of section 736.0409, Florida
 105 | Statutes, is amended to read:

106 | 736.0409 Noncharitable trust without ascertainable
 107 | beneficiary.—Except as otherwise provided in s. 736.0408 or by
 108 | another provision of law, the following rules apply:

109 | (1) A trust may be created for a noncharitable purpose
 110 | without a definite or definitely ascertainable beneficiary or
 111 | for a noncharitable but otherwise valid purpose to be selected
 112 | by the trustee. The trust may not be enforced for more than
 113 | 1,000 ~~21~~ years.

114 | Section 6. Subsection (3) of section 736.08135, is
 115 | renumbered as subsection (4) and amended, and a new subsection
 116 | (3) is added to that section, to read:

117 | 736.08135 Trust accountings.—

118 | (3) Notwithstanding subsections (1) and (2), a trustee may
 119 | elect, for any accounting period, to provide a statement to any
 120 | beneficiary which indicates that the trustee has made such
 121 | election for that period and which includes all of the
 122 | following:

123 | (a) The information required by paragraph (2)(a) and, if
 124 | applicable, the information required by paragraph (2)(f).

125 | (b) A financial statement for the trust prepared by a

126 certified public accountant which summarizes the information
127 specified in paragraphs (2) (b) - (e), provided that such financial
128 statement shall contain sufficient information to put the
129 beneficiary on notice of the trust's comprehensive assets and
130 liabilities as well as the transactions occurring during the
131 accounting period. A financial statement that reports the
132 aggregate amounts of all cash and property transactions, gains,
133 losses, receipts, expenses, disbursements, accruals, or
134 allowances occurring within the accounting period for each
135 category would be authorized under this paragraph.

136
137 For purposes of this chapter, a statement that a trustee
138 provides to a beneficiary of the trust under this subsection is
139 deemed to be a trust accounting that adequately discloses the
140 information required in subsection (2). Any trustee that makes
141 the election provided in this subsection shall, upon a request
142 of any beneficiary of the trust made within the limitations
143 period prescribed by s. 736.1008, make available the detailed
144 information necessary for preparation of the statement within 30
145 days after such request.

146 (4)-(3) Subsections (1) and (2) govern the form and content
147 of all trust accountings rendered for any accounting periods
148 beginning on or after January 1, 2003, and all trust accountings
149 rendered on or after July 1, 2018. The election provided in
150 subsection (3) for trustees is available for any accounting

151 periods beginning on or after January 1, 2021. This subsection
 152 does not affect the beginning period from which a trustee is
 153 required to render a trust accounting.

154 Section 7. Subsection (2) of section 736.08145, Florida
 155 Statutes, is amended to read:

156 736.08145 Grantor trust reimbursement.—

157 (2) This section applies to all trusts that are governed
 158 by the laws of the state or that have a principal place of
 159 administration within the state, whether created on, before, or
 160 after July 1, 2020, unless:

161 (a) The trustee provides written notification that the
 162 trustee intends to irrevocably elect out of the application of
 163 this section, at least 60 days before the effective date of such
 164 election, to the person treated as the owner of all or a portion
 165 of the trust under s. 671 of the Internal Revenue Code or any
 166 similar federal, state, or other tax law and to all persons who
 167 have the ability to remove and replace the trustee.

168 (b) Applying this section would prevent a contribution to
 169 the trust from qualifying for, or would reduce, a federal tax
 170 benefit, including a federal tax exclusion or deduction, which
 171 was originally claimed or could have been claimed for the
 172 contribution, including:

- 173 1. An exclusion under s. 2503(b) or s. 2503(c) of the
- 174 Internal Revenue Code;
- 175 2. A marital deduction under s. 2056, s. 2056A, or s. 2523

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176 | of the Internal Revenue Code;

177 | 3. A charitable deduction under s. 170(a), s. 642(c), s.
178 | 2055(a), or s. 2522(a) of the Internal Revenue Code; or

179 | 4. Direct skip treatment under s. 2642(c) of the Internal
180 | Revenue Code.

181 | Section 8. This act shall take effect July 1, 2022.