

By the Committee on Banking and Insurance; and Senator Gruters

597-02839A-22

20221368c1

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 under certain  
8           circumstances; amending s. 736.0109, F.S.; clarifying  
9           circumstances under which notice, or the sending of a  
10          document, to a person under the Florida Trust Code is  
11          deemed satisfied; authorizing certain trust companies  
12          that are trustees to use specified methods for  
13          providing notice or sending a document; specifying  
14          when such notice or document is deemed sent; amending  
15          s. 736.0303, F.S.; specifying circumstances under  
16          which a parent may represent and bind the unborn  
17          descendants of his or her unborn child or the minor or  
18          unborn descendants of his or her minor child; amending  
19          s. 736.0409, F.S.; revising the timeframe for which  
20          certain noncharitable trusts may be enforced; amending  
21          s. 736.0813, F.S.; providing that the terms of a trust  
22          may permit for accounting to the qualified  
23          beneficiaries only under certain circumstances;  
24          providing construction; amending s. 736.08135, F.S.;  
25          providing an alternate procedure for trust accountings  
26          for specified trustees under certain circumstances;  
27          specifying requirements and applicability; amending s.  
28          736.08145, F.S.; clarifying the application of law  
29          governing grantor trust reimbursement; providing an

597-02839A-22

20221368c1

30 effective date.

31  
32 Be It Enacted by the Legislature of the State of Florida:

33  
34 Section 1. Paragraph (f) of subsection (2) of section  
35 689.225, Florida Statutes, is amended, and paragraph (g) is  
36 added to that subsection, to read:

37 689.225 Statutory rule against perpetuities.—

38 (2) STATEMENT OF THE RULE.—

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

46 (g) As to any trust created on or after July 1, 2022, this  
47 section shall apply to a nonvested property interest or power of  
48 appointment contained in a trust by substituting 1,000 years in  
49 place of "90 years" in each place such term appears in this  
50 section unless the terms of the trust require that all  
51 beneficial interests in the trust vest or terminate within a  
52 lesser period.

53 Section 2. Paragraph (s) of subsection (2) of section  
54 736.0105, Florida Statutes, is amended to read:

55 736.0105 Default and mandatory rules.—

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

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

597-02839A-22

20221368c1

59 complete copy of the trust instrument and to account to  
60 qualified beneficiaries except as otherwise provided in s.  
61 736.0813(1)(d).

62 Section 3. Present subsections (4), (5), and (6) of section  
63 736.0109, Florida Statutes, are redesignated as subsections (5),  
64 (6), and (7), respectively, a new subsection (4) is added to  
65 that section, and subsection (1) and present subsection (4) of  
66 that section are amended, to read:

67 736.0109 Methods and waiver of notice.—

68 (1) Notice to a person under this code or the sending of a  
69 document to a person under this code must be accomplished in a  
70 manner reasonably suitable under the circumstances and likely to  
71 result in receipt of the notice or document. Permissible methods  
72 of notice or for sending a document include first-class mail,  
73 personal delivery, delivery to the person's last known place of  
74 residence or place of business, a properly directed facsimile or  
75 other electronic message, including e-mail, or posting on a  
76 secure electronic account or website in accordance with  
77 subsection (3).

78 (4) Notwithstanding subsection (3), a family trust company,  
79 licensed family trust company, or foreign licensed family trust  
80 company, as defined in s. 662.111, that is a trustee of a trust  
81 may use any permissible method for providing notice or for  
82 sending a document specified in subsection (1) or may send a  
83 properly directed e-mail that contains an attached notice or  
84 document or contains a hyperlink through which the recipient can  
85 view the notice or document as a permissible method of providing  
86 notice or sending a document. For purposes of this subsection,  
87 such notice or document sent by e-mail is deemed to have been

597-02839A-22

20221368c1

88 sent if any username, password, or other specific instructions  
89 needed to access the notice or document are communicated to the  
90 recipient beforehand or contemporaneously with the sending of  
91 the e-mail message containing the notice, document, or  
92 hyperlink, or upon the request of the recipient.

93 (5) ~~(4)~~ Notice to a person under this code, or the sending  
94 of a document to a person under this code electronically ~~by~~  
95 ~~electronic message~~, is complete when ~~the document is sent~~.

96 (a) An electronic message is presumed received on the date  
97 that the message is sent.

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

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

105 736.0303 Representation by fiduciaries and parents.—To the  
106 extent there is no conflict of interest between the  
107 representative and the person represented or among those being  
108 represented with respect to a particular question or dispute:

109 (5) A parent may represent and bind the parent's unborn  
110 child and the unborn descendants of such unborn child, or the  
111 parent's minor child and the minor or unborn descendants of such  
112 minor child, if a guardian of the property for the unborn child,  
113 minor child, or such child's descendants has not been appointed.

114 Section 5. Subsection (1) of section 736.0409, Florida  
115 Statutes, is amended to read:

116 736.0409 Noncharitable trust without ascertainable

597-02839A-22

20221368c1

117 beneficiary.—Except as otherwise provided in s. 736.0408 or by  
118 another provision of law, the following rules apply:

119 (1) A trust may be created for a noncharitable purpose  
120 without a definite or definitely ascertainable beneficiary or  
121 for a noncharitable but otherwise valid purpose to be selected  
122 by the trustee. The trust may not be enforced for more than  
123 1,000 ~~21~~ years.

124 Section 6. Paragraph (d) of subsection (1) of section  
125 736.0813, Florida Statutes, is amended to read:

126 736.0813 Duty to inform and account.—The trustee shall keep  
127 the qualified beneficiaries of the trust reasonably informed of  
128 the trust and its administration.

129 (1) The trustee's duty to inform and account includes, but  
130 is not limited to, the following:

131 (d) A trustee of an irrevocable trust shall provide a trust  
132 accounting, as set forth in s. 736.08135, from the date of the  
133 last accounting or, if none, from the date on which the trustee  
134 became accountable, to each qualified beneficiary at least  
135 annually and on termination of the trust or on change of the  
136 trustee. Notwithstanding s. 736.0105 or the duties under this  
137 paragraph, if a family trust company, licensed family trust  
138 company, or foreign licensed family trust company, as defined in  
139 s. 662.111, is a trustee of an irrevocable trust, the terms of  
140 the trust may permit for accounting to the qualified  
141 beneficiaries only at the termination of the trust; upon the  
142 removal, resignation, or other event resulting in a trustee  
143 ceasing to serve as a trustee; or upon demand of a qualified  
144 beneficiary or the representative of a qualified beneficiary.  
145 This paragraph may not be construed to prohibit a trustee that

597-02839A-22

20221368c1

146 is a family trust company, licensed family trust company, or  
147 foreign licensed family trust company from voluntarily  
148 accounting to the qualified beneficiaries annually or at other  
149 times selected by such trustee.

150

151 Paragraphs (a) and (b) do not apply to an irrevocable trust  
152 created before the effective date of this code, or to a  
153 revocable trust that becomes irrevocable before the effective  
154 date of this code. Paragraph (a) does not apply to a trustee who  
155 accepts a trusteeship before the effective date of this code.

156 Section 7. Present subsection (3) of section 736.08135,  
157 Florida Statutes, is redesignated as subsection (4) and amended,  
158 and a new subsection (3) is added to that section, to read:

159 736.08135 Trust accountings.—

160 (3) Notwithstanding subsections (1) and (2), if a family  
161 trust company, licensed family trust company, or foreign  
162 licensed family trust company, as defined in s. 662.111, is a  
163 trustee of the trust, such trustee may elect, for any accounting  
164 period, to provide the qualified beneficiaries with all of the  
165 following information:

166 (a) A notice stating that the trustee has made an election  
167 to provide the information described in this subsection.

168 (b) The information required by paragraph (2) (a) and, if  
169 applicable, the information required by paragraph (2) (f).

170 (c) A financial statement for the trust which summarizes  
171 the information provided pursuant to paragraphs (2) (b)-(e). The  
172 financial statement must contain sufficient information to put  
173 the beneficiary on notice of the trust's comprehensive assets  
174 and liabilities as well as of the transactions occurring during

597-02839A-22

20221368c1

175 the accounting period. A financial statement that reports a  
176 summary of the comprehensive assets and liabilities at the  
177 beginning and end of the accounting period and the aggregate  
178 amounts of all cash and property transactions, gains, losses,  
179 receipts, expenses, disbursements, distributions, accruals, or  
180 allowances occurring within the accounting period for each  
181 category of assets and liabilities meets the requirements of  
182 this paragraph.

183  
184 For the purposes of this chapter, a financial statement that a  
185 trustee provides to a beneficiary of a trust under this  
186 subsection is deemed to be a trust accounting. Any trustee that  
187 makes the election provided in this subsection shall, upon  
188 request of any beneficiary made within the limitations period  
189 under s. 736.1008, make available the detailed information  
190 necessary for preparation of the financial statement to the  
191 beneficiary within 30 days after the date of such request,  
192 including providing copies of the requested information. A  
193 request by a beneficiary for the detailed information necessary  
194 for the preparation of the financial statement tolls the running  
195 of any applicable limitations period until the detailed  
196 information is made available to the beneficiary.

197 (4) ~~(3)~~ Subsections (1) and (2) govern the form and content  
198 of all trust accountings rendered for any accounting periods  
199 beginning on or after January 1, 2003, and all trust accountings  
200 rendered on or after July 1, 2018. The election provided in  
201 subsection (3) for trusts for which a family trust company,  
202 licensed family trust company, or foreign licensed family trust  
203 company, as defined in s. 662.111, is a trustee is available for

597-02839A-22

20221368c1

204 any accounting periods beginning on or after July 1, 2022. This  
205 subsection does not affect the beginning period from which a  
206 trustee is required to render a trust accounting.

207 Section 8. Subsection (2) of section 736.08145, Florida  
208 Statutes, is amended to read:

209 736.08145 Grantor trust reimbursement.—

210 (2) This section applies to all trusts that are governed by  
211 the laws of this state or that have a principal place of  
212 administration within this state, whether created on, before, or  
213 after July 1, 2020, unless:

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

221 (b) Applying this section would prevent a contribution to  
222 the trust from qualifying for, or would reduce, a federal tax  
223 benefit, including a federal tax exclusion or deduction, which  
224 was originally claimed or could have been claimed for the  
225 contribution, including:

226 1. An exclusion under s. 2503(b) or s. 2503(c) of the  
227 Internal Revenue Code;

228 2. A marital deduction under s. 2056, s. 2056A, or s. 2523  
229 of the Internal Revenue Code;

230 3. A charitable deduction under s. 170(a), s. 642(c), s.  
231 2055(a), or s. 2522(a) of the Internal Revenue Code; or

232 4. Direct skip treatment under s. 2642(c) of the Internal



597-02839A-22

20221368c1

233 Revenue Code.

234 Section 9. This act shall take effect July 1, 2022.