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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 ss. 736.04115 and 736.0412, F.S.; conforming
22 provisions to changes made by the act; amending s.
23 736.0813, F.S.; providing that the terms of a trust
24 may permit for accounting to the qualified
25 beneficiaries only under certain circumstances;
26 providing construction; amending s. 736.08135, F.S.;
27 providing an alternate procedure for trust accountings
28 for specified trustees under certain circumstances;
29 specifying requirements and applicability; amending s.

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30 736.08145, F.S.; clarifying the application of law
31 governing grantor trust reimbursement; providing an
32 effective date.

33
34 Be It Enacted by the Legislature of the State of Florida:

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36 Section 1. Paragraph (f) of subsection (2) of section
37 689.225, Florida Statutes, is amended, and paragraph (g) is
38 added to that subsection, to read:

39 689.225 Statutory rule against perpetuities.—

40 (2) STATEMENT OF THE RULE.—

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

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

55 Section 2. Paragraph (s) of subsection (2) of section
56 736.0105, Florida Statutes, is amended to read:

57 736.0105 Default and mandatory rules.—

58 (2) The terms of a trust prevail over any provision of this

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59 code except:

60 (s) The duty under s. 736.0813(1)(c) and (d) to provide a
61 complete copy of the trust instrument and to account to
62 qualified beneficiaries except as otherwise provided in s.
63 736.0813(1)(d).

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

69 736.0109 Methods and waiver of notice.—

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

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

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88 notice or sending a document. For purposes of this subsection,
89 such notice or document sent by e-mail is deemed to have been
90 sent if any username, password, or other specific instructions
91 needed to access the notice or document are communicated to the
92 recipient beforehand or contemporaneously with the sending of
93 the e-mail message containing the notice, document, or
94 hyperlink, or upon the request of the recipient.

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

98 (a) An electronic message is presumed received on the date
99 that the message is sent.

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

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

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

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

116 Section 5. Subsection (1) of section 736.0409, Florida

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117 Statutes, is amended to read:

118 736.0409 Noncharitable trust without ascertainable
119 beneficiary.—Except as otherwise provided in s. 736.0408 or by
120 another provision of law, the following rules apply:

121 (1) A trust may be created for a noncharitable purpose
122 without a definite or definitely ascertainable beneficiary or
123 for a noncharitable but otherwise valid purpose to be selected
124 by the trustee. The trust may not be enforced for more than
125 1,000 ~~21~~ years.

126 Section 6. Paragraph (b) of subsection (3) of section
127 736.04115, Florida Statutes, is amended to read:

128 736.04115 Judicial modification of irrevocable trust when
129 modification is in best interests of beneficiaries.—

130 (3) This section shall not apply to:

131 (b) Any trust created after December 31, 2000, if:

132 1. Under the terms of the trust, all beneficial interests
133 in the trust must vest or terminate within the period prescribed
134 by the rule against perpetuities in s. 689.225(2),
135 notwithstanding s. 689.225(2) (f) and (g).

136 2. The terms of the trust expressly prohibit judicial
137 modification.

138 Section 7. Paragraph (b) of subsection (4) of section
139 736.0412, Florida Statutes, is amended to read:

140 736.0412 Nonjudicial modification of irrevocable trust.—

141 (4) This section shall not apply to:

142 (b) Any trust created after December 31, 2000, if, under
143 the terms of the trust, all beneficial interests in the trust
144 must vest or terminate within the period prescribed by the rule
145 against perpetuities in s. 689.225(2), notwithstanding s.

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146 689.225(2)(f) and (g), unless the terms of the trust expressly
147 authorize nonjudicial modification.

148 Section 8. Paragraph (d) of subsection (1) of section
149 736.0813, Florida Statutes, is amended to read:

150 736.0813 Duty to inform and account.—The trustee shall keep
151 the qualified beneficiaries of the trust reasonably informed of
152 the trust and its administration.

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

155 (d) A trustee of an irrevocable trust shall provide a trust
156 accounting, as set forth in s. 736.08135, from the date of the
157 last accounting or, if none, from the date on which the trustee
158 became accountable, to each qualified beneficiary at least
159 annually and on termination of the trust or on change of the
160 trustee. Notwithstanding s. 736.0105(2)(s) or the duties under
161 this paragraph, if a family trust company, licensed family trust
162 company, or foreign licensed family trust company, as defined in
163 s. 662.111, is a trustee of an irrevocable trust, the terms of
164 the trust may permit for accounting to the qualified
165 beneficiaries only at the termination of the trust; upon the
166 removal, resignation, or other event resulting in a trustee
167 ceasing to serve as a trustee; or upon demand of a qualified
168 beneficiary or the representative of a qualified beneficiary.
169 This paragraph may not be construed to prohibit a trustee that
170 is a family trust company, licensed family trust company, or
171 foreign licensed family trust company from voluntarily
172 accounting to the qualified beneficiaries annually or at other
173 times selected by such trustee.

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175 Paragraphs (a) and (b) do not apply to an irrevocable trust
176 created before the effective date of this code, or to a
177 revocable trust that becomes irrevocable before the effective
178 date of this code. Paragraph (a) does not apply to a trustee who
179 accepts a trusteeship before the effective date of this code.

180 Section 9. Present subsection (3) of section 736.08135,
181 Florida Statutes, is redesignated as subsection (4) and amended,
182 and a new subsection (3) is added to that section, to read:

183 736.08135 Trust accountings.—

184 (3) Notwithstanding subsections (1) and (2), if a family
185 trust company, licensed family trust company, or foreign
186 licensed family trust company, as defined in s. 662.111, is a
187 trustee of the trust, such trustee may elect, for any accounting
188 period, to provide the qualified beneficiaries with all of the
189 following information:

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

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

194 (c) A financial statement for the trust which summarizes
195 the information provided pursuant to paragraphs (2)(b)-(e). The
196 financial statement must contain sufficient information to put
197 the beneficiary on notice of the trust's comprehensive assets
198 and liabilities as well as of the transactions occurring during
199 the accounting period. A financial statement that reports a
200 summary of the comprehensive assets and liabilities at the
201 beginning and end of the accounting period and the aggregate
202 amounts of all cash and property transactions, gains, losses,
203 receipts, expenses, disbursements, distributions, accruals, or

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204 allowances occurring within the accounting period for each
205 category of assets and liabilities meets the requirements of
206 this paragraph.

207
208 For the purposes of this chapter, a financial statement that a
209 trustee provides to a beneficiary of a trust under this
210 subsection is deemed to be a trust accounting. Any trustee that
211 makes the election provided in this subsection shall, upon
212 request of any beneficiary made within the limitations period
213 under s. 736.1008, make available the detailed information
214 necessary for preparation of the financial statement to the
215 beneficiary within 30 days after the date of such request,
216 including providing copies of the requested information. A
217 request by a beneficiary for the detailed information necessary
218 for the preparation of the financial statement tolls the running
219 of any applicable limitations period until the detailed
220 information is made available to the beneficiary.

221 (4)~~(3)~~ Subsections (1) and (2) govern the form and content
222 of all trust accountings rendered for any accounting periods
223 beginning on or after January 1, 2003, and all trust accountings
224 rendered on or after July 1, 2018. The election provided in
225 subsection (3) for trusts for which a family trust company,
226 licensed family trust company, or foreign licensed family trust
227 company, as defined in s. 662.111, is a trustee is available for
228 any accounting periods beginning on or after July 1, 2022. This
229 subsection does not affect the beginning period from which a
230 trustee is required to render a trust accounting.

231 Section 10. Subsection (2) of section 736.08145, Florida
232 Statutes, is amended to read:

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233 736.08145 Grantor trust reimbursement.—

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

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

245 (b) Applying this section would prevent a contribution to
246 the trust from qualifying for, or would reduce, a federal tax
247 benefit, including a federal tax exclusion or deduction, which
248 was originally claimed or could have been claimed for the
249 contribution, including:

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

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

254 3. A charitable deduction under s. 170(a), s. 642(c), s.
255 2055(a), or s. 2522(a) of the Internal Revenue Code; or

256 4. Direct skip treatment under s. 2642(c) of the Internal
257 Revenue Code.

258 Section 11. This act shall take effect July 1, 2022.