

## Committee Substitute for House Bill No. 599

An act relating to trusts; amending s. 689.225, F.S.; revising certain criteria for application of the rule against perpetuities to certain trusts; specifying exclusivity of application of the rule; excluding common-law expressions of the rule; amending s. 737.206, F.S.; removing provision governing timing for contesting validity of a trust; creating s. 737.2065, F.S.; providing timing for contesting validity of a trust; amending s. 737.303, F.S.; revising duty of trustee to inform or account to beneficiaries of a trust; amending s. 737.625, F.S.; revising prohibition against a killer's entitlement to benefits from a trust; creating s. 737.626, F.S.; creating a provision to govern evidence as to death or status in trust proceedings; creating ss. 737.4031, 737.4032, and 737.4033, F.S.; providing for judicial and nonjudicial modifications of certain trusts under certain circumstances; providing for representation of certain persons in modification actions; specifying nonapplication to certain trusts; providing definitions; providing construction; providing application relating to common law; providing for award of costs and attorney fees in modification proceedings; providing an effective date.

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

Section 1. Paragraph (f) is added to subsection (2) of section 689.225, Florida Statutes, and subsection (7) of said section is amended, to read:

689.225 Statutory rule against perpetuities.—

(2) STATEMENT OF THE RULE.—

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

(7) RULE OF CONSTRUCTION.—With respect to any matter relating to the validity of an interest within the rule against perpetuities, unless a contrary intent appears, it shall be presumed that the transferor of the interest intended that the interest be valid. This section is the sole expression of any rule against perpetuities or remoteness in vesting in this state. No common-law rule against perpetuities or remoteness in vesting shall exist with respect to any interest or power regardless of whether such interest or power is governed by this section.

Section 2. Section 737.206, Florida Statutes, is amended to read:

737.206 Effect of fraud, duress, mistake, and undue influence.—A trust is void if the execution is procured by fraud, duress, mistake, or undue influence. Any part of the trust is void if so procured, but the remainder of the trust not so procured is valid if it is not invalid for other reasons. ~~And~~

~~action to contest the validity of all or part of a trust may not be commenced until the trust becomes irrevocable.~~

Section 3. Section 737.2065, Florida Statutes, is created to read:

737.2065 Trust contests.—An action to contest the validity of all or part of a trust may not be commenced until the trust becomes irrevocable.

Section 4. Section 737.303, Florida Statutes, is amended to read:

737.303 Duty to inform and account to beneficiaries.—The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration. The trustee's duty to inform and account includes, but is not limited to, the following:

(1) Within 30 days after acceptance of the trust, the trustee shall inform the beneficiaries in writing of the acceptance of the trust and the full name and address of the trustee.

(2) Upon reasonable request, the trustee shall provide a beneficiary with a complete copy of the trust instrument, including amendments.

(3) Upon reasonable request, the trustee shall provide a beneficiary with relevant information about the assets of the trust and the particulars relating to administration.

(4)(a) A beneficiary is entitled to a statement of the accounts of the trust annually and upon termination of the trust or upon change of the trustee except as provided under paragraph (c).

(b) For purposes of this section, the term "beneficiary" means:

1. All current income or principal beneficiaries, whether discretionary or mandatory; and

2. All reasonably ascertainable remainder beneficiaries who would take if all income interests immediately terminated.

(c) In the case of a trust described in s. 733.707(3), during the grantor's lifetime, the trustee's duties under this section paragraph (a) extend only to the grantor or the legal representative of the grantor ~~during the grantor's lifetime~~.

(d) A beneficiary or the beneficiary's representative, as defined in s. 731.303, may waive, in writing, the trustee's duty to account under paragraph (a).

(e) All rights provided a beneficiary under this section may be asserted by a legal representative or natural guardian of the beneficiary. Notice under subsection (1) and a statement of accounts under paragraph (a) provided to a representative of the beneficiary as defined in s. 731.303 shall bind the beneficiary, and the trustee shall not be required to provide such notice or statement of accounts to any beneficiary who would be bound by an order binding on a representative of the beneficiary under s. 731.303, if

such notice or statement of accounts, respectively, is provided to that representative.

Section 5. Section 737.625, Florida Statutes, is amended to read:

737.625 Killer not entitled to receive property or other benefits by reason of victim's death.—

(1) A beneficiary of a trust who unlawfully and intentionally kills or unlawfully and intentionally participates in procuring the death of the grantor or another person upon whose death such beneficiary's interest depends, shall not be entitled to any trust interest, including homestead, dependent upon the victim's death, and such interest shall devolve as though the killer had predeceased the victim.

(2) A final judgment of conviction of murder in any degree is conclusive for the purposes of this section. In the absence of a murder conviction in any degree, the court may determine by the greater weight of the evidence whether the killing was unlawful and intentional for purposes of this section.

Section 6. Section 737.626, Florida Statutes, is created to read:

737.626 Evidence as to death or status.—In proceedings concerning trusts, this section relating to determination of death and status is applicable:

(1) An authenticated copy of a death certificate issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

(2) A copy of any record or report of a governmental agency, domestic or foreign, that a person is alive, missing, detained, or, from the facts related, presumed dead is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report.

(3) A person who is absent from the place of his or her last known domicile for a continuous period of five years and whose absence is not satisfactorily explained after diligent search and inquiry is presumed to be dead. The person's death is presumed to have occurred at the end of the period unless there is evidence establishing that death occurred earlier.

(4) This section does not preclude the establishment of death by direct or circumstantial evidence prior to expiration of the five year time period set forth in subsection (3).

Section 7. Sections 737.4031, 737.4032, and 737.4033, Florida Statutes, are created to read:

737.4031 Judicial modification of trusts.—

(1) If the purposes of a trust have been fulfilled or have become illegal or impossible to fulfill or, if because of circumstances not known to or antici-

pated by the settlor, compliance with the terms of the trust would defeat or substantially impair the accomplishment of a material purpose of the trust or, if a material purpose of the trust no longer exists, upon the application of a trustee of the trust or any beneficiary a court at any time may modify the terms of a trust which is not then revocable to:

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

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

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

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

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

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

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

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

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

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

(d) Modification of a trust, as authorized in this subsection, is not prohibited by a provision in the trust instrument that prohibits amendment or revocation of the trust if the provision does not expressly prohibit judicial modification.

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

(4) To the extent the interests of any person with a beneficial interest in the trust who is unborn or unascertained, whose identity is not then known

for any reason, or who is a minor or under a legal disability are not represented by another beneficiary, such person shall be represented by the person's legal guardian, if any, or, if none, by a guardian ad litem appointed by the court upon the court's own motion or upon application by the trustee or any beneficiary.

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

(6) For purposes of this section:

(a) "Beneficiary" means:

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

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

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

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

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

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

737.4032 Nonjudicial modification of trusts.—

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

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

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

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

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

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

(3) An agreement to modify a trust under this section shall be binding upon a person with a beneficial interest in the trust who is unborn or unascertained, whose identity is not then known for any reason, or who is a minor or under a legal disability, to the extent that his or her interest is represented by another beneficiary having the same or greater quality of beneficial interest in the trust, but only to the extent there is no conflict of interest between such person and such beneficiary or among the persons represented.

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

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

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

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

(8) For purposes of this section:

(a) "Beneficiary" means:

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

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

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

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

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

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

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

Section 8. This act shall take effect December 31, 2000.

Approved by the Governor June 7, 2000.

Filed in Office Secretary of State June 7, 2000.