

By Senator Gruters

23-00531C-22

20221368__

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 child or the minor or
15 unborn descendants of his or her minor child; amending
16 s. 736.0409, F.S.; revising the timeframe for which
17 certain noncharitable trusts may be enforced; amending
18 s. 736.08135, F.S.; providing an alternate procedure
19 for trust accountings for trustees under certain
20 circumstances; specifying requirements and
21 applicability; amending s. 736.08145, F.S.; clarifying
22 the application of law governing grantor trust
23 reimbursement; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. Paragraph (f) of subsection (2) of section
28 689.225, Florida Statutes, is amended, and paragraph (g) is
29 added to that subsection, to read:

23-00531C-22

20221368__

30 689.225 Statutory rule against perpetuities.—

31 (2) STATEMENT OF THE RULE.—

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

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

46 Section 2. Paragraph (s) of subsection (2) of section
47 736.0105, Florida Statutes, is amended to read:

48 736.0105 Default and mandatory rules.—

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

51 (s) The duty under s. 736.0813(1)(c) and (d) to provide a
52 complete copy of the trust instrument and to account to
53 qualified beneficiaries on termination of the trust. However,
54 this paragraph may not be construed to:

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

58 2. Relieve a trustee from the duty to account to the

23-00531C-22

20221368__

59 qualified 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 including, but not limited to, e-mail,
71 or posting on a secure electronic account or website in
72 accordance with subsection (3). A properly directed e-mail
73 message with an attached notice or document or an included
74 hyperlink through which the recipient can view a notice or
75 document is a permissible method of notice, regardless of
76 whether compliance with subsection (3) is achieved, provided
77 that to the extent access to such attachment or hyperlink
78 requires a username, password, or other specific instructions,
79 the username, password, or other specific instructions are
80 communicated to the recipient of the notice either
81 contemporaneously or upon request.

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

23-00531C-22

20221368__

88 (a) An electronic message is presumed received on the date
89 that the message is sent.

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

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

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

101 (5) A parent may represent and bind the parent's unborn
102 child and the unborn descendants of that unborn child, or the
103 parent's minor child and the minor or unborn descendants of the
104 minor child, if a guardian of the property for the unborn child,
105 minor child, or their descendants has not been appointed.

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

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

111 (1) A trust may be created for a noncharitable purpose
112 without a definite or definitely ascertainable beneficiary or
113 for a noncharitable but otherwise valid purpose to be selected
114 by the trustee. The trust may not be enforced for more than
115 1,000 ~~21~~ years.

116 Section 6. Present subsection (3) of section 736.08135,

23-00531C-22

20221368__

117 Florida Statutes, is redesignated as subsection (4) and amended,
118 and a new subsection (3) is added to that section, to read:

119 736.08135 Trust accountings.—

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

124 (a) The information required by paragraph (2) (a) and, if
125 applicable, the information required by paragraph (2) (f); and

126 (b) A financial statement for the trust prepared by a
127 certified public accountant which summarizes the information
128 specified in paragraphs (2) (b)-(e), provided that such financial
129 statement contains sufficient information to put the beneficiary
130 on notice of the trust's comprehensive assets and liabilities as
131 well as of the transactions occurring during the accounting
132 period. For example, the financial statement may report the
133 aggregate amounts of all cash and property transactions, gains,
134 losses, receipts, expenses, disbursements, accruals, or
135 allowances occurring within the accounting period for each such
136 category rather than report each individual transaction or
137 accounting item as a separate entry.

138

139 For purposes of this chapter, a statement that a trustee
140 provides to a beneficiary of the trust pursuant to this
141 subsection is deemed to be a trust accounting that adequately
142 discloses the information required in subsection (2). Any
143 trustee that makes the election provided in this subsection
144 shall, upon request of any beneficiary of the trust within the
145 limitations period under s. 736.1008, make available the

23-00531C-22

20221368__

146 detailed information necessary for preparation of the statement
147 to the beneficiary within 30 days after such request.

148 (4)~~(3)~~ Subsections (1) and (2) govern the form and content
149 of all trust accountings rendered for any accounting periods
150 beginning on or after January 1, 2003, and all trust accountings
151 rendered on or after July 1, 2018. The election provided in
152 subsection (3) for trustees is available for any accounting
153 periods beginning on or after January 1, 2021. This subsection
154 does not affect the beginning period from which a trustee is
155 required to render a trust accounting.

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

158 736.08145 Grantor trust reimbursement.—

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

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

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

23-00531C-22

20221368__

- 175 1. An exclusion under s. 2503(b) or s. 2503(c) of the
176 Internal Revenue Code;
- 177 2. A marital deduction under s. 2056, s. 2056A, or s. 2523
178 of the Internal Revenue Code;
- 179 3. A charitable deduction under s. 170(a), s. 642(c), s.
180 2055(a), or s. 2522(a) of the Internal Revenue Code; or
- 181 4. Direct skip treatment under s. 2642(c) of the Internal
182 Revenue Code.
- 183 Section 8. This act shall take effect July 1, 2022.