

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

598

By: Senator S. Bell

For An Act To Be Entitled

"AN ACT TO PROVIDE FOR THE REVOCATION, MODIFICATION, AND
TERMINATION OF CERTAIN TRUSTS; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. (a) By written consent of the settlor and all named beneficiaries of a trust or any part thereof, regardless of any spendthrift or similar protective provisions, such trust or part thereof may be revoked, modified, or terminated upon a finding by the court having jurisdiction over such trust, or otherwise being of competent jurisdiction, that the trust's purposes, as expressed in or implied by the circumstances surrounding the trust, as a result of circumstances not foreseen to the settlor are not effectively being fulfilled or are frustrated.

(b) For purposes of this section, consent to such revocation, modification, or termination may be given by the court on behalf of unnamed, legally incapacitated, unascertained, or unborn beneficiaries after a hearing in which the interests of such beneficiaries are represented by a guardian ad litem. A guardian ad litem for any such beneficiaries may rely on general family benefit accruing to the living named beneficiaries and their families as a basis for approving, or not objecting to, any such revocation, modification, or termination, and, in so doing, shall be immune from liability to future claims of any unnamed, legally incapacitated, unascertained, or unborn beneficiaries. In circumstances where objection is made by a guardian ad litem for beneficiaries who are not, by name or category, mentioned in a trust that is sought to be terminated, modified, or revoked, upon a finding that there is general family benefit to the living named beneficiaries and their families, the Court shall allow the termination, modification or revocation sought.

(c) For purposes of this section, consent may be given on behalf of the

estate of a deceased settlor by the court on a finding that there is general family benefit to the living named beneficiaries and their families. A personal representative of a settlor's estate may rely on general family benefit accruing to the living named beneficiaries and their families as a basis for approving, or not objecting to, any such revocation, modification, or termination, and, in so doing, shall be immune from liability to future claims of any unnamed, legally incapacitated, unascertained, or unborn beneficiaries.

SECTION 2. A trustee of a trust that is sought to be terminated, modified, or revoked, in whole or in part, pursuant to the terms of this Act, may rely on general family benefit accruing to the living named beneficiaries and their families as a basis for approving, or not objecting to, any such revocation, modification, or termination, and, in so doing, shall be immune from liability to future claims of any unnamed, legally incapacitated, unascertained, or unborn beneficiaries.

SECTION 3. Nothing in this Act shall prevent revocation, modification, or termination of a trust pursuant to its terms, or otherwise in accordance with applicable law.

SECTION 4. This Act shall apply to all trusts now existing or hereafter created, irrespective of existing or prior litigation in which revocation, modification, or termination is or has been sought.

SECTION 5. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 6. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 7. It is hereby found and determined by the General Assembly that courts of competent jurisdiction need statutory authority to allow for the termination, modification, or revocation of trusts in circumstances where the purposes of such trusts are not being fulfilled or are frustrated by

circumstances not foreseen by the settlers. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.