

064414340

**HOUSE BILL NO. 1026**

Offered January 11, 2006

Prefiled January 11, 2006

*A BILL to amend and reenact § 55-544.11 of the Code of Virginia, relating to the modification or termination of noncharitable irrevocable trusts.*

Patron—Hurt

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 55-544.11 of the Code of Virginia is amended and reenacted as follows:**

§ 55-544.11. (Effective July 1, 2006) Modification or termination of noncharitable irrevocable trust by consent.

A. If upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed. *The provisions of this subsection shall apply only to irrevocable trusts created on or after July 1, 2006, and to revocable trusts that become irrevocable on or after July 1, 2006.*

B. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

C. Upon termination of a trust under subsection A or B, the trustee shall distribute the trust property as agreed by the beneficiaries.

D. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection A or B, the modification or termination may be approved by the court if the court is satisfied that:

1. If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

2. The interests of a beneficiary who does not consent will be adequately protected.

INTRODUCED

HB1026