

Committee on Judiciary

HB 413 — Trusts

by Rep. Moraitis (SB 478 by Senators Hukill and Young)

HB 413 amends the Florida Trust Code to:

- Ensure that the intent of the trust settlor (creator) is paramount in trust interpretation;
- Increase certain trustees' authority to place the principal of the "first trust" into one or more second trusts in order to protect and maximize the beneficiaries' interests;
- Further regulate the practice of electronically providing important trust documents; and
- Counter what some regard as problematic case law relating to the time period for bringing an action based on a trustee's failure to provide an accounting.

The bill deletes statutory provisions stating that a trust must be created "for the benefit of the trust's beneficiaries." There is concern that courts may begin to use this core requirement of trusts also as a principle for interpreting trusts. Common law recognizes the settlor's intent as the "polestar" of trust interpretation, and the bill's removal of the benefit-of-the-beneficiaries language from the statutes helps ensure that a benefit-of-the-beneficiaries principle will not rival the settlor's-intent principle for judicial interpretation of trusts.

Additionally, the bill provides that a beneficiary's actual knowledge that he or she has not received a trust accounting is not sufficient to begin the running of any limitations or laches period for an action based on the failure of the trustee to provide the accounting. Thus, the bill provides a longer period during which a beneficiary may hold a trustee responsible for a past-due accounting. This change is a response to a district court of appeal opinion which addressed the issue.

Finally, the bill includes several provisions to further regulate a trustee's providing documents to a beneficiary solely by posting them to a website or electronic account. These provisions include a requirement that the authorization signed by the recipient allowing documents to be electronically delivered specifically indicate whether a trust accounting, trust disclosure statement, or limitation notice will be posted in this way. Also, the bill lengthens the timeframe during which a document provided solely through electronic posting must remain accessible to the recipient at the website or electronic account.

If approved by the Governor, these provisions take effect July 1, 2018, except where otherwise provided in the bill.

Vote: Senate 35-0; House 107-0