

## **CS/CS/SB 998 — Trust Administration**

by Banking and Insurance Committee; Judiciary Committee; and Senator Thrasher

The bill clarifies current law that specific gifts under both the will and trust are to be appropriated proportionately to pay expenses of administering the estate and other obligations if the residue of the will or trust is insufficient to pay them.

The bill also clarifies that when spouses contributing to an irrevocable trust make a “split gift election,” two annual exclusion amounts for gift tax purposes are exempt from claims by creditors of a beneficiary who has the right to withdraw the contributions to the trust when the power to withdraw lapses. The bill provides that, as to trusts under 26 U.S.C. s. 2523(e) and 26 U.S.C. s. 2523(f), upon the death of the settlor’s spouse, the assets are considered to have been contributed by the settlor’s spouse and not by the settlor. As the form of such trusts make them non-revocable as of the death of a spouse, this appears to have the effect of allowing certain self-settled trusts to protect assets from creditors upon the death of a spouse. The bill further provides, however, that this protection does not apply if the funding of the trust was a fraudulent transfer under s. 726.105, F.S.

It deletes certain duplicative and unnecessary provisions concerning proceedings to determine reasonable compensation for the attorney for the trustee and notice in proceedings to determine reasonable compensation of trustees and persons employed by trustees. It provides that the court in such proceedings has the discretion to award a reasonable expert witness fee from the assets of the trust unless it finds that the expert testimony did not assist the court.

The bill creates a new statutory section to address the suspension of federal estate and generation-skipping transfer taxes for 2010 as a result of the federal Economic Growth and Tax Relief Reconciliation Act of 2001. The bill permits a trustee or any qualified beneficiary of a trust to request the court to construe the terms of a trust that is not revocable at the time of the request. The qualified beneficiary may request the court to define the respective shares or determine beneficiaries in accordance with the settlor’s intention, if the trust contains provisions that include specific formulas and other tax related provisions.

Lastly, the bill creates a new statutory section, s. 736.1211, F.S., which provides that neither state government nor local government may require charitable organizations and trusts to disclose the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration of their employees, officers, directors, trustees, members, or owners.

If approved by the Governor, these provisions take effect July 1, 2010, except as otherwise expressly provided in the bill.

*Vote: Senate 36-0; House 119-0*