

Committee on Banking and Insurance

CS/SB 1502 — Estates and Trusts

by Banking and Insurance Committee and Senator Powell

The bill codifies an existing procedure presently used in Florida courts regarding a creditor's pending action against a decedent at the time of the decedent's death. Specifically, the bill provides that if an action or proceeding by the claimant is pending against a decedent at the time of the decedent's death, the requirement to bring an independent action under present s. 733.705(5), F.S., is satisfied if, within 30 days after the filing of an objection to the claim, one of the following conditions are met:

- A motion complying with all applicable rules of procedure is filed, or a similar procedure is initiated, to substitute the proper party (i.e. the decedent's estate instead of the decedent).
- An order substituting the proper party is entered.

The bill also provides a similar procedure for circumstances where the decedent entered into a binding arbitration agreement relating to the claim during that person's lifetime, or if arbitration is required under s. 731.401, F.S., (regarding arbitration of disputes when arbitration provisions are included in the will or trust instrument). The bill, in this circumstance, requires a motion to compel arbitration against the decedent's estate (instead of the decedent). If voluntary arbitration had already commenced at the time of the decedent's death, the bill requires notice of the substitution consistent with the arbitration agreement. If the arbitration was court ordered, a motion for substitution is required.

The bill amends current law regarding creditor claims against settlors. Currently, if a settlor-spouse creates a lifetime trust for a beneficiary-spouse and names themselves as a subsequent beneficiary if the beneficiary-spouse dies, assets in the trust may be available to the settlor-spouse's creditors, during the lifetime of beneficiary-spouse. Under the bill, creditors of a settlor may not attach assets that the settlor previously transferred to an irrevocable trust where the beneficiary of the trust is the settlor's spouse for that spouse's lifetime and the transfers to the trust are completed gifts pursuant to s. 2511 of the Internal Revenue Code of 1986.

Finally, the bill provides a trustee may resign pursuant to whatever procedure is set forth in the terms of the trust. In part, this allows a trustee to resign with less than 30 days' notice if the trust instrument allows. A trustee resigning under the terms of a trust must give notice of the resignation to cotrustees. If there are no cotrustees, notice must be given to the successor trustee who has accepted the appointment. If there are no cotrustees or successor trustee, notice must be given to whomever has the authority to appoint a successor trustee. These notice provisions are mandatory.

If approved by the Governor, these provisions take effect July 1, 2022.

Vote: Senate 39-0; House 113-0