

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 720

SPONSOR: Committee on Judiciary and Senator Burt

SUBJECT: Probate & Trusts

DATE: February 19, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	Johnson	JU	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill primarily makes substantive and technical changes to the Florida Probate Code and a related provision in chapter 660, F.S. of the financial institutions codes. Most of these changes have been proposed by the Probate Law Committee of the Real Property, Probate and Trust Law Section of the Florida Bar. The changes are as follows:

- Clarifies that the doctrine of virtual representation applies to the judicial and nonjudicial administration of a trust and all of that which binds a sole- or co-holder of a power of appointment also binds those who may take by virtue of that representation
- Clarifies sources from which an elective share is payable;
- Codifies the statement of the presumption of undue influence as shifting burden of proof in will contests and provides the underlying public policy for the presumption;
- Clarifies the statute of limitations period for creditors' claims against an estate;
- Requires specified trusts to include notice to a trustee of his or her duties and responsibilities under state and federal law;
- Provides for the creation, validity, enforceability and termination of trusts for the care of animals;
- Provides for the recovery of improperly distributed assets;
- Codifies trust accounting standards for the administration of trusts;
- Revises the provisions governing the 6-month statute of limitations period for beneficiary claims against a trustee, and requires limitation notice;
- Conforms similar provisions in the banking code to the proposed changes in the probate and trust code.

This bill amends the following sections of the Florida Statutes: 660.46, 731.303, 732.2075, 733.107, 733.702, 737.303, and 737.307. Sections 737.115, 737.116, 737.209, and 737.3035 of the Florida Statutes are created.

II. Present Situation:

Chapters 731-738, F.S., encompass the Florida Probate Code (hereinafter “Code”). The Code sets forth the process for distribution of assets and payment of obligations subsequent to a person’s death and subject to the administration of a trust. The Code has recently undergone substantial change. In 1999, the Legislature substantially revised the provisions governing the elective share law in Part II of chapter 732, F.S. *See* ch. 1999-343, L.O.F. In 2001, the Legislature overhauled the entire Code for the first time since the Code was enacted in 1974.¹ *See* ch. 2001-226, L.O.F. The law facilitated the administration of probate proceedings and trust administration by clarifying the duties and rights of all interested persons including legal practitioners, by providing for uniformity and consistency in court procedural matters, and by modernizing the Code to reflect current law and practices on the state and federal level. In conjunction with other interested stakeholders, the Real Property, Probate & Trust Law Section of the Florida Bar continues its efforts and proffered changes in the following areas of law:

A. Trust Business: Substitution of Fiduciaries

Chapters 660, F.S., governs trust administration and investment conducted by financial institutes such as banks or trust companies. Specifically, s. 660.46, F.S., provides the judicial process for the transfer of fiduciary accounts (i.e., estate, trust or other fiduciary relationship created by a governing instrument) and/or substitution of a person originally acting as a fiduciary with a substitute fiduciary. There are a number trust accounting requirements similar to those found in chapter 738, F.S. Additionally, this section provides a 6-month statute of limitations period for claims arising out of an accounting against the original fiduciary by a beneficiary. This language parallels a similar provision in chapter 738, F.S., by beneficiaries against a trustee for claims arising from a trust accounting.

B. Representation in Estates and Trusts

Doctrine of virtual representation

Section 731.303, F.S., deals with the extent to which specified individuals may be bound by an order, judgment, agreement, waiver, consent, approval, account, or other statement in estate and trust matters. The virtual representation doctrine is based on the general principal that a person who enjoys privity with someone who is a party in a legal proceeding, who is represented as if a party to the proceeding or matter based on some interest, or who takes by virtue of the power of appointment of another, is as bound as if he or she were the formal or only party to the proceeding, a participant in the matter or the direct holder of the power of appointment. *See Stogniew v. McQueen* 656 So.2d 917 (Fla. 1995)(collateral estoppel applies when "the identical issue has been litigated between the same parties *or their privies.*"). Notice of the “representation” must be given to all interested persons and to all unborn or unascertained persons not otherwise covered by the first category. A court may appoint a guardian ad litem to represent incapacitated persons, unborn or unascertained persons, minors or others with legal disabilities, or persons whose identities or addresses are unknown.

¹The substantive rewrite of the Florida Probate Code was based on a three-year effort by the Probate Law Committee (a subcommittee of the Real Property, Probate, and Trust Law Section of the Florida Bar).

C. Intestate Succession and Wills

Payable sources under the elective share law

A surviving spouse has a right to a share of the decedent's "elective estate." See s. 732.201, F.S. Specified property assets are appropriated to satisfy the balance of the elective share according to a 3-tiered priority scheme of sources. Property as may be passing to or for the benefit of a surviving spouse through a decedent's will or a trust referenced in a will are applied first to satisfy the elective share. Thereafter, a succession of property may be drawn upon to satisfy the elective share. If those assets are still insufficient, then the unsatisfied balance is to be satisfied from the remaining assets of recipients in the 4 classes, in the order prescribed: Class 1 (probate estate and revocable trust), Class 2 (specified property interests), Class 3 (all other property), and Class 4 (protected charitable interests). See s. 732.2075, F.S.

D. Administration of an Estate

Presumption of Undue influence

In will contests, the person opposing or seeking to revoke the will, has the burden of producing evidence to support that position. See s. 733.107, F.S. The rebuttable presumption of undue influence was applied in the context of someone in a fiduciary or confidential relationship who is actively procuring a devise or gift in his or her favor or securing other personal gain under the will. Prior to 1979, this presumption was governed by common law. See *In re Estate of Carpenter*, 253 So.2d 697 (Fla. 1971). In that court case, the Court held that if a substantial beneficiary under a will is in a confidential relationship with the testator and is active in procuring the contested will, the presumption of undue influence arises." Id. at 701. That is, the presumption of undue influence shifts only the burden of producing evidence. In 1979, the Florida Evidence Code in the Florida Statutes became effective. See ch. 76-238, L.O.F. The Code superseded all existing statutes, common law and rules in conflict with its provision.

The Code categorizes rebuttable presumptions into one of two mutually exclusive categories: the presumption of affecting the burden of producing evidence and the presumption of affecting the burden of proof. See ss. 90.031-304, F.S. Both types of presumption impose a duty of producing evidence legally sufficient to rebut the presumed fact. The presumption affecting the burden of producing evidence refers to a presumption established primarily to facilitate the determination of a particular action. Once the evidence is produced, the presumption goes away. The presumption affecting the burden of proof refers to a presumption established to implement a public policy or any other purpose other than to facilitate the determination of an action. The underlying public policy interest to the presumption is to deter and defend against the abuses arising out of fiduciary and confidential relationships. The burden falls upon the person against whom the presumption operates to prove (or persuade) the nonexistence of the presumed fact.

Despite these distinctions, there remains a significant amount of uncertainty, confusion and misunderstanding among members of the bench and the bar regarding the proper application of the presumption of undue influence in will contests. See e.g., *In re Estate of Flohl*, 764 So.2d 802 (Fla. 2nd DCA 2000)(presumption only shifts burden of producing evidence); *In re Estate of Davis*, 428 So.2d 774 (Fla. 4th DCA 1983), receded from on rehearing en banc, 462 So.2d 12 (Fla. 4th DCA 1984). Clarification is sought to codify the presumption of undue influence as one

implementing public policy and as one placing the burden on the person against whom the presumption operates.

E. Administration of Estate

Statute of limitations for creditors' claims

In order to preserve a claim against a decedent's estate or otherwise be barred, a creditor must file a claim against the decedent's estate within the later of 3 months *after*² the first publication of the notice to creditors or within 30 days following required service of a copy of the Notice to Creditors upon the creditor. *See* s. 733.702, F.S. A claim may be settled without the claim being filed if all interested persons approve the settlement between the personal representative and the creditor. Although the statute of limitations is measured from *after* the date of the publication or service, it is reported that creditors frequently file claims earlier in probate cases, i.e., prior to publication or service of the notice to creditors. However, recently a Florida Supreme Court ruling has strictly construed this provision to deny a creditor's claim which was filed early, i.e., after the opening of an estate but before the Notice to Creditors was published or served. *See May v. Illinois Nat'l Ban*, 771 So.2d 1143 (Fla. 2000).

Statute of limitations for beneficiaries' claims

Section 737.307, F.S., governs the specific statute of limitations period for claims brought against a trustee arising from a *final, annual or periodic* account or other statement received by a beneficiary. Unless already barred by adjudication, consent, or limitations, and if the account or other statement fully discloses the matter upon which a claim could be asserted, the beneficiary has 6 months from the date of receipt to assert the claim or be barred. The statute does not state specifically what constitutes full disclosure but it has been determined case-by-case as to what information is reasonably necessary for the beneficiary to be able to assert his or her rights under a trust. *See Nayee v. Nayee*, 705 So.2d 961 (Fla. 5th DCA 1998)(factual question as to whether beneficiary had knowledge of facts so as to trigger 6-month statute of limitations). In any case, a general statute of limitations period of 4 years under s. 95.11, F.S., exists for all claims arising from a *final* account or statement received by the beneficiary.

Notice of trustee duties

Under current law, a trustee has specified duties and responsibilities governing the administration of the trust. These duties and responsibilities arise under both the trust instrument and federal and state law. *See e.g.*, Part III of chapter 737, F.S. Concern has been raised that some trustees, particularly individual trustees, may not be aware that their duties and responsibilities extend beyond that which is contained in the trust document. There is currently no requirement to include such general notice in a trust document.

²The Legislature substituted the word "from" with "after" in 1988. *See* ch.88-340, L.O.F.

Trusts for the care of animals

In Florida, trust administration is governed by chapter 737, F.S. A trust is typically created by the transfer of property to another person as trustee during the grantor's lifetime, by will or other disposition, by declaration that the property owner holds property as a trustee or through the exercise of a power of appointment. With few exceptions, a valid trust generally requires the intent of the grantor to create a trust, a trustee and a beneficiary who are not one and the same, and one or more definite or reasonably ascertainable beneficiary within the applicable perpetuities period³.

Under common law, will bequests or transfer of property to trusts for the continued care and maintenance of a companion animal generally have been considered voidable and unenforceable. These trusts have been called honorary trusts because they are not dependent on the trustee deciding on whether to honor the grantor's wishes. However, the increasing presence, attention on the health benefit, and consideration of companion animals as part of the family unit in many households⁴ has generated attention on various planning options for a companion animal's care in the event of the human care giver's unexpected illness, accident or death. Alternatives have included giving up the companion animal to a local animal shelter, requesting euthanasia, identifying a family or friend to care for the companion animal under specified instructions, establishing a contract for companion animal care or establishing a trust (where legally recognized) for the benefit of the companion animal. At least 8 states have enacted laws to recognize legally these trusts for the perpetual care of a designated companion animal during its lifetime.⁵ In addition, a 1998 proposed draft of a uniform trust act by the National Conference of Commissioners on Uniform State Laws (NCCUSL) included provisions for the creation, validity, enforceability and termination of honorary trusts for the benefit of the perpetual care of a companion animal. *See* s. 2-105 (entitled "Trust for Valid Noncharitable Purpose; Trust for Pets").

Accountings

Under current law, there is no uniform trust accounting standards for the administration of trusts.⁶ Frequently, disputes arise regarding what constitutes an accounting and what should be contained in an accounting under the administration of a trust. Notably, Florida Probate Rule 5.346, F.S., provides fiduciary accounting standards and a model format for accounting by

³Florida's statutory Rule Against Perpetuities was revised in 2000 to extend the 90-year time period within which a property interest in a trust must either vest or terminate to a 360-year time period as measured from the date the trust was created. *See* ch. 2000-245, L.O.F.; s. 689.225, F.S. (2000).

⁴Cats and dogs constitute the greatest number of companion animals in the United States. *See* The 1995 AAHA (American Animal Hospital Association) Report: *A Study of the Companion Animal Veterinary Services Market* 13 (1995). Nearly four in ten (or 39,000,000) households have at least one dog and three in ten (or 32,128,000) households has at least one cat. *See* American Pet Products Manufacturing Association (APPMA) *1999-2000 National Pet Owners Survey*. Households tend to have more pet animals when there are less children. *Id.* There are more cats per household (3.2 cats) in the south than any other geographic region in the United States (2.4 or less). *Id.*

⁵*See* Alaska Stat. 13.12.907 (Michie 1997); Ariz. Rev. Stat. 14-2907; Cal. Prob Code 15212; Colo. Rev. Stat. 15-11-901; Mont.Code Ann. 72-2-1017 (1997); N.M Stat. Ann. 45-2-907(1995); N.Y. Est. Powers & Trusts 7-6.1; and N.C. Gen. Stat. 36A-145- 36A-147 (1995).

⁶ Prior to 1980, the Florida Rules of Civil Procedure governed all trust accounting requirements *See* Fla.R. Civ. P. 1.627 (repealed October 9, 1980).

personal representatives under probate and guardianship proceedings but these standards do not apply to the administration of trusts.

Overpayments to Beneficiaries

This provision is intended to codify existing common law regarding mistaken overpayments to a beneficiary. Generally a beneficiary is obligated to return an overpayment unless the trustee dishonestly overpaid or the trustee overpaid in good faith but the beneficiary has detrimentally relied upon the overpayment such that it would be inequitable to recover the overpayment. *See In re: Will of Samson*, 684 So.2d 845 (Fla. 1st DCA 1996); *Brent v. Smathers*, 547 So.2d 683 (Fla. 3d DCA 1989). Notably, the Florida Probate Code already contains a provision allowing for the recovery of overpayments by a personal representative to a beneficiary in the administration of an estate. *See* s. 733.812, F.S.⁷ No similar statutory protection exists for a trustee who mistakenly overpays.

III. Effect of Proposed Changes:

Section 1 amends s. 660.46, F.S., relating to substitution of fiduciaries, conforms similar provision affected by other changes made to the Probate Code and includes cross-reference to s. 737.307, F.S., providing notice to beneficiaries regarding 6-month statute of limitations period.

Section 12 preserves s. 660.46., as it existed prior to this bill in order to continue to be available and applicable to trust accounting periods beginning before January 1, 2003, and to other statements disclosing the matter fully received by the beneficiaries before January 1, 2003.

Section 2 amends s. 731.303, F.S., relating to representation. The amendment attempts to clarify existing law which provides that the doctrine of virtual representation applies to the administration of a trust regardless of whether there is an existing court proceeding. Furthermore, it is specified that notice requirements for interested persons in judicial proceedings involving the administration of estates or trusts. It makes a conforming statutory change regarding the extent to which a person, who takes by virtue of an exercised or nonexercised power of appointment, may be bound by the same agreements, waivers, consents or approvals or reports adequately disclosing matter thereunder. **Section 12** of the bill provides that this section as amended will be given retroactive application.

Section 3 amends s. 732.2075, F.S., relating to sources payable to satisfy elective share. The amendment validates those interests which are contingent upon the exercise of the elective share. That is, it recognizes that these contingent interests can be used to satisfy an elective share amount but only to the extent that such interests do not diminish other property interests used to satisfy the elective share.

Section 4 amends s. 733.107, F.S., relating to the burden of proof in will contests. The bill creates a rebuttable statutory presumption of undue influence in those will contests cases under specified circumstances. If someone in a fiduciary or confidential relationship with a testator is active in procuring a devise or gift in his or her favor, the statutory presumption will apply to

⁷In 2001, this provision was amended to require not only the recovery of improper distributions or payments from the estate but also recovery of earned income from the distribution or payments. *See* ch.2001-226, L.O.F.

shift the burden of proof to such person to rebut the presumption and persuade otherwise. The bill also provides that the statutory presumption implements public policy against such potential abuses that arise in these circumstances.

Section 5 amends s. 733.702, F.S., relating to the statute of limitations period on claims against a decedent's estate. This section clarifies that claims filed by creditors in probate cases before the Notice to Creditors is published and served are still valid to overrule Florida Supreme Court opinion.

Section 6 creates s. 737.115, F.S., to provide notice to trustees of their duties and responsibilities beyond that which is reflected in their trust instrument. This section is applicable solely to trusts as described in the existing s. 733.707(3), F.S. A trust as described under s. 733.703(3), F.S., involves a trust in which the decedent retains the right of revocation. Under this bill, such trust instrument must include a notice to a trustee that he or she has duties and responsibilities that may also be contained in state and federal statutory and common law. However, the failure to include such notice in a trust instrument will not negate the validity of the trust instrument itself. Such failure to include the notice will also not relieve the trustee of his duties and responsibilities nor create liability against any person for failing to include the notice in the instrument. A statutorily suggested version of a notice is provided. This provision as amended will apply to all trusts and amendments thereto executed on or after January 1, 2003..

Section 7 creates s. 737.116, F.S., to allow for the creation, validity, enforceability and termination of trusts established for the perpetual care of a designated companion animal. This section is patterned largely on language in the NCCUSL's 1998 proposed draft of a uniform trust act. Specifically, s. 737. 116, F.S., provides that:

- C A trust established for the care of a designated animal is deemed valid.
- C A trust for an animal will be subject to the laws governing the creation and administration of express trusts, including accounting responsibilities.
- C The court may appoint a person to enforce the trust upon request of a person having an interest in the welfare of the animal and such person has the same rights as trust beneficiary to enforce the trust, receive accountings, and provide consent.
- C The property of the trust can only be applied for its intended use, except to the extent that the court determines the value of the trust exceeds the amount required for the care of the pet animal.
- C Excess property or trust property remaining upon the trust's termination, is to be distributed as follows in order of priority: 1) As directed by the terms of the trust, 2) To the settlor, if living; 3)As directed in the residuary clause of the will, 4) As directed in the residuary clause in the inter vivos trust, or 5) To the settlor's heirs.

This section will apply to trusts created on or after January 1, 2003.

Section 8 creates s. 737.209, F.S., to provide for the recovery of improperly distributed assets. This provision is intended to codify existing common law regarding mistaken overpayments to a beneficiary. It is patterned largely after a similar provision in chapter 733, F.S., governing the administration of estates.

Section 9 amends s. 737.303, F.S., regarding the duty to inform and account to beneficiaries, and makes technical changes to conform with other provisions in the bill relating to trust accountings as defined in s. 737.3035, F.S. **Section 12** preserves this section as it existed prior to this bill in order to continue to apply to accounting periods before January 1, 2003.

Section 10 creates s. 737.3035, F.S., to codify essentially trust accounting standards. The provision is patterned after Florida Probate Rule 5.346, F.S., which applies to probate and guardianship proceedings but does not apply to the administration of trusts. Specifically, a trust accounting must:

- Be a reasonably understandable report which adequately discloses the required statutory information.
- Identify the trust, the trustee and the time period covered by the accounting.
- Show all cash and property transactions and other significant transactions.
- Identify and value trust assets including the asset acquisition value (or carrying value) and the estimated current value and each known noncontingent liability
- Show significant transactions that do not affect the amount for which the trustee is accountable
- Reflect the allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the trust or the trust beneficiary.

Section 11 substantially amends s. 737.307, F.S., relating to the statute of limitations on claims against trustees. This section attempts to place trust beneficiaries on better notice of the short 6-month statute of limitations for claims against a trustee arising from matters in the trust disclosure document. The 6-month statute of limitations period begins from the time of the receipt of the trust disclosure document or the limitation notice that applies to that trust disclosure document, whichever is later. The matters that may give rise to a claim must be adequately disclosed in the trust disclosure document in order to place the beneficiary on notice as opposed to fully disclosed as is required by current law in accounts or statements. “Adequately disclosed” is defined to mean if the document provides sufficient information so that a beneficiary knows of a claim or reasonably should have inquired into the existence of a claim with respect to that matter.

The term “trust disclosure document” is defined to mean a trust accounting or other written report of the trustee. A trust disclosure document will have adequately disclosed a matter if it sufficiently informs the beneficiary as to a claim or prompts reasonable inquiry into the existence of a claim. An accounting that adequately discloses the information required and substantially conforms with the standards in s. 737.3035, F.S., is a trust accounting for purposes of this section.

In addition, unlike current law, a notice regarding the 6-month statute of limitations must be provided. A limitation notice is defined to mean a written statement by the trustee notifying the beneficiary of the 6-month statute of limitations period after which a beneficiary’s claim on any matter adequately disclosed in a trust disclosure. Such limitation notice must also state further that the beneficiary will be barred from asserting any claim if the action is not begun within 6 months after receipt of the trust disclosure document or the receipt of the limitation notice that applies to that trust disclosure document, whichever is later. A statutorily suggested form for a limitation notice is provided.

A limitation notice may be contained as a part of the trust disclosure document, may accompany concurrently the trust disclosure document, or may be delivered separately from the trust disclosure document. This section provides 8 different ways to determine when a limitation notice applies to a particular trust disclosure document. A limitation notice applies to a trust disclosure document when the limitation notice:

1. Is contained as a part of the trust disclosure document;
2. Is accompanied concurrently by the trust disclosure document;
3. Is delivered separately within 10 days of the delivery of the trust disclosure document;
4. Is contained as a part of another trust disclosure document received within 1 year prior to the receipt of the latter trust disclosure document;
5. Is accompanied concurrently by another trust disclosure document that was received within 1 year prior to the receipt of the latter trust disclosure document;
6. Is accompanied concurrently by another trust disclosure document that was delivered separately within 10 days of the earlier trust disclosure document to the beneficiary;
7. Is received after the trust disclosure document but only if the limitation references that trust disclosure document and offers to provide to the beneficiary upon request another copy of that trust disclosure document if it was received by the beneficiary within 1 year prior to receipt of the limitation notice;
8. Is received after the trust disclosure document but only if the limitation references that trust disclosure document and is accompanied by another copy of that trust disclosure document if the trust disclosure document was received by the beneficiary 1 year or more prior to the receipt of the limitation notice;

A limitation notice is considered delivered separately if it is accompanied by another written communication unless the written communication refers only to the limitation notice.

Conforming changes are made to the subsection governing when a beneficiary is deemed to have received an accounting or statement. **Section 12** preserves s. 737.307, F.S., as it existed prior to this bill in order to continue to be available and applicable to trust accounting periods beginning before January 1, 2003, and to other statements disclosing the matter fully received by the beneficiaries before January 1, 2003.

Section 13 provides that except as otherwise provided in the bill, the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

To the extent some provisions of the bill may constitute matters of court practice and procedure, these provisions may be construed as an infringement on judicial authority or jurisdiction under the doctrine of separation of powers. *See* Art. II, Sect. 3, Fla. Const. The Florida Supreme Court has the constitutional prerogative to “adopt rules for the practice and procedure in all courts, including the time for seeking appellate review.” Whereas, the Legislature has the exclusive power to enact substantive laws.

Generally substantive laws create, define and regulate rights. Court rules of practice and procedure prescribe the method or process by which a party seeks to enforce or obtain redress. *See Haven Federal Savings & Loan Assoc.*, 579 So.2d 730 (Fla. 1991). While the Legislature can not create or modify court rules, it can repeal a court rule by 2/3 vote. *See* art. V, s.2(a), Fla. Const.

When a statute is procedural in nature versus substantive has been decided on a case-by-case basis. The courts, however, have acquiesced on occasions and adopted a law as a court rule, either in part or in its entirety or expanded upon or harmonized conflicting statutory provisions relating to court procedural matters as needed. Based on a review of current law, the courts tend to find certain provisions unconstitutional such as those regarding timing and sequence of court procedures, creating expedited proceedings, issuing mandates to the courts to perform certain functions, and attempting to supersede or modify existing rules of court or intrude in areas of practice and procedure within the province of the court. *See Cort v. Broward County Sheriff, et al.*, Case No. 4D00-3883 (February 13, 2002)(provision regarding recovery of expert witness fee in s. 57.071(2), F.S., is procedural in nature and unconstitutionally intrudes on judicial powers).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill may facilitate the administration of probate proceedings and trusts by clarifying various governing provisions including clarifying the duties and responsibilities of all interested persons including the legal practitioner.

The bill also clarifies the existing right of a creditor to file an early claim with risk to the statutory limitations period.

This bill provides persons with a new option for valid estate planning for the care of a beloved companion animal in the event of the person’s unexpected death.

Setting forth standards for what constitutes a trust accounting and what should be contained in a trust accounting may help reduce the number and nature of disputes arising from trust accountings and may guide trustees, beneficiaries and the court regarding proper trust accountings.

Beneficiaries may be better informed of the short 6-month statute of limitations period in which they have to file claims arising from matters adequately disclosed in trust disclosure documents. However, other than for those limitation notices that are contained as a part of the trust disclosure document or received concurrently, the complicated provisions under s. 737.307, F.S., may confound some beneficiaries who may find it difficult to determine which limitation notice applies to which trust disclosure and which will trigger the 6-month limitation notice period will be triggered.

C. Government Sector Impact:

To the extent this bill does not conflict with the court's authority over matters of practice and procedure or to the extent this bill repeals specified court rules, the Florida Probate Rules may have to be revised to implement, conform or reflect the statutory changes. It is unknown what the precise fiscal impact, if any, will be.

There may be an indeterminate impact on the judicial branch due to any proceedings arising from the construction or enforcement of trusts for the care of animals and is dependent on the number of these trusts created and challenged.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.