

By the Committee on Banking and Insurance; and Senator Powell

597-02317-22

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1                   A bill to be entitled  
2           An act relating to estates and trusts; amending s.  
3           733.705, F.S.; providing that the requirement for a  
4           claimant to file an independent action is satisfied if  
5           specified actions are taken; specifying that  
6           claimants, not creditors, are given certain priority  
7           of claims; amending s. 736.0505, F.S.; revising the  
8           types of trusts deemed to have been contributed by a  
9           settlor's spouse and not the settlor; amending s.  
10          736.0705, F.S.; providing that a trustee may resign by  
11          specified procedure and with notice to certain  
12          parties; providing an effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16           Section 1. Subsection (5) of section 733.705, Florida  
17           Statutes, is amended to read:

18           733.705 Payment of and objection to claims.—

19           (5) The claimant is limited to a period of 30 days from the  
20           date of service of an objection within which to bring an  
21           independent action upon the claim, or a declaratory action to  
22           establish the validity and amount of an unmatured claim which is  
23           not yet due but which is certain to become due in the future, or  
24           a declaratory action to establish the validity of a contingent  
25           claim upon which no cause of action has accrued on the date of  
26           service of an objection and that may or may not become due in  
27           the future, unless an extension of this time is agreed to by the  
28           personal representative in writing before it expires.

29           (a) For good cause, the court may extend the time for

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30 filing an action or proceeding after objection is filed. No  
31 action or proceeding on the claim may be brought against the  
32 personal representative after the time limited above, and the  
33 claim is barred without court order.

34 (b) If an action or proceeding by the claimant is pending  
35 against the decedent at the time of the decedent's death, the  
36 requirement to bring an independent action is satisfied if,  
37 within 30 days after the filing of an objection to the claim:

38 1. A motion complying with all applicable rules of  
39 procedure is filed, or a similar procedure is initiated, to  
40 substitute the proper party; or

41 2. An order substituting the proper party is entered.

42 (c) If the decedent entered into a binding arbitration  
43 agreement relating to the claim during his or her lifetime, or  
44 if arbitration is required under s. 731.401, the requirement to  
45 bring an independent action is satisfied if, within 30 days  
46 after the filing of an objection to the claim, a motion to  
47 compel arbitration against the proper party is initiated, as  
48 provided for in s. 682.03.

49 (d) If arbitration was commenced before the decedent's  
50 death, the requirement to bring an independent action is  
51 satisfied if, within 30 days after the filing of an objection to  
52 the claim, notice is given to the proper party. If the  
53 arbitration was commenced by order of the court, the notice must  
54 take the form of a timely filed motion, complying with all  
55 applicable rules of procedure, to substitute the proper party.

56 (e) If an objection is filed to the claim of any claimant  
57 ~~creditor~~ and the claimant ~~creditor~~ brings an action to establish  
58 the claim, a judgment establishing the claim shall give it no

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59 priority over claims of the same class to which it belongs.

60 Section 2. Subsection (3) of section 736.0505, Florida  
61 Statutes, is amended to read:

62 736.0505 Creditors' claims against settlor.—

63 (3) Subject to the provisions of s. 726.105, for purposes  
64 of this section, the assets in:

65 (a)1. A trust described in s. 2523(e) of the Internal  
66 Revenue Code of 1986, as amended;~~—or~~

67 2. A trust for which the election described in s. 2523(f)  
68 of the Internal Revenue Code of 1986, as amended, has been made;  
69 or

70 3. An irrevocable trust not otherwise described in  
71 subparagraph 1. or subparagraph 2. in which:

72 a. The settlor's spouse is a beneficiary as described in s.  
73 736.0103(19) (a) for the lifetime of the settlor's spouse;

74 b. At no time during the lifetime of the settlor's spouse  
75 is the settlor a beneficiary as described in s. 736.0103(19) (a);  
76 and

77 c. Transfers to the trust by the settlor are completed  
78 gifts under s. 2511 of the Internal Revenue Code of 1986, as  
79 amended; and

80 (b) Another trust, to the extent that the assets in the  
81 other trust are attributable to a trust described in paragraph  
82 (a),

83  
84 shall, after the death of the settlor's spouse, be deemed to  
85 have been contributed by the settlor's spouse and not by the  
86 settlor.

87 Section 3. Subsection (1) of section 736.0705, Florida

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88 Statutes, is amended to read:

89 736.0705 Resignation of trustee.—

90 (1) A trustee may resign in accordance with the procedure  
91 set forth in the trust instrument and upon notice to the  
92 cotrustees or, if none, to the successor trustee who has  
93 accepted the appointment, or, if none, to the person or persons  
94 who have the authority to appoint a successor trustee.

95 Notwithstanding any provision of the terms of the trust, a  
96 trustee may also resign:

97 (a) Upon at least 30 days' notice to the qualified  
98 beneficiaries, the settlor, if living, and all cotrustees; or

99 (b) With the approval of the court.

100 Section 4. This act shall take effect July 1, 2022.