CS/HB 625 2022

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.; providing that 8 certain trust assets are deemed to have been 9 contributed by a specified party upon death; amending s. 736.0705, F.S.; providing that a trustee may resign 10 11 by specified procedure and with notice to certain 12 parties; providing an effective date.

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

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

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733.705 Payment of and objection to claims.

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(5) The claimant is limited to a period of 30 days from the date of service of an objection within which to bring an independent action upon the claim, or a declaratory action to establish the validity and amount of an unmatured claim which is not yet due but which is certain to become due in the future, or a declaratory action to establish the validity of a contingent claim upon which no cause of action has accrued on the date of

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service of an objection and that may or may not become due in the future, unless an extension of this time is agreed to by the personal representative in writing before it expires.

- (a) For good cause, the court may extend the time for filing an action or proceeding after objection is filed. No action or proceeding on the claim may be brought against the personal representative after the time limited above, and the claim is barred without court order.
- (b) If an action or proceeding by the claimant is pending against the decedent at the time of the decedent's death, the requirement to bring an independent action is satisfied if, within 30 days after the filing of an objection to the claim:
- 1. A motion complying with all applicable rules of procedure is filed, or a similar procedure is initiated, to substitute the proper party; or
 - 2. An order substituting the proper party is entered.
- (c) If the decedent entered into a binding arbitration agreement relating to the claim during his or her lifetime, or if arbitration is required under s. 731.401, the requirement to bring an independent action is satisfied if, within 30 days after the filing of an objection to the claim, a motion to compel arbitration against the proper party is initiated, as provided for in s. 682.03.
- (d) If arbitration was commenced before the decedent's death, the requirement to bring an independent action is

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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
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 <u>;</u> , 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	<u>or</u>
70	3. An irrevocable trust in which:
71	a. The settlor's spouse is a qualified beneficiary as
72	defined in s. 736.0103(19)(a) for the lifetime of the settlor's
73	spouse;
74	b. The settlor has never been a qualified beneficiary as
75	defined in s. 736.0103(19)(a) during the lifetime of the

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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),
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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
88	Statutes, is amended to read:

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settlor's spouse; and

- (1) A trustee may resign in accordance with the procedure set forth in the trust instrument and upon notice to the cotrustees or, if none, to the successor trustee who has accepted the appointment, or, if none, to the person or persons who have the authority to appoint a successor trustee. Notwithstanding any provision of the terms of the trust, a trustee may also resign:
- Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or
 - With the approval of the court.

736.0705 Resignation of trustee.-

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

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