

1 A bill to be entitled
 2 An act relating to probate; amending s. 732.2135, F.S.;
 3 revising provisions relating to time of filing or
 4 withdrawing certain estate share elections; amending s.
 5 732.402, F.S.; revising procedures relating to filing
 6 petitions for determinations of exempt property; amending
 7 s. 733.212, F.S.; revising procedures and requirements
 8 relating to notices of administration and petitions for
 9 relief; providing an effective date.

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

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13 Section 1. Subsections (1) and (3) of section 732.2135,
 14 Florida Statutes, are amended to read:

15 732.2135 Time of election; extensions; withdrawal.--

16 (1) Except as provided in subsection (2), the election
 17 must be filed on or before ~~within~~ the earlier of the date that
 18 is 6 months after ~~of~~ the date of service of a copy of the notice
 19 of administration on the surviving spouse, or an attorney in
 20 fact or guardian of the property of the surviving spouse, or the
 21 date that is 2 years after the date of the decedent's death.

22 (3) The surviving spouse or an attorney in fact, guardian
 23 of the property, or personal representative of the surviving
 24 spouse may withdraw an election on or before the earlier of the
 25 date that is ~~at any time within~~ 8 months after the date of the
 26 decedent's death or the date of a court ~~and before the court's~~
 27 order of contribution. If an election is withdrawn, the court
 28 may assess attorney's fees and costs against the surviving

29 spouse or the surviving spouse's estate.

30 Section 2. Subsection (6) of section 732.402, Florida
 31 Statutes, is amended to read:

32 732.402 Exempt property.--

33 (6) Persons entitled to exempt property shall be deemed to
 34 have waived their rights under this section unless a petition
 35 for determination of exempt property is filed by or on behalf of
 36 the persons entitled to the exempt property on or before the
 37 later of the date that is ~~within~~ 4 months after the date of
 38 service of the notice of administration or the date that is
 39 ~~within~~ 40 days after ~~from~~ the date of termination of any
 40 proceeding involving the construction, admission to probate, or
 41 validity of the will or involving any other matter affecting any
 42 part of the estate subject to this section.

43 Section 3. Section 733.212, Florida Statutes, is amended
 44 to read:

45 733.212 Notice of administration; filing of objections.--

46 (1) The personal representative shall promptly serve a
 47 copy of the notice of administration on the following persons
 48 who are known to the personal representative:

49 (a) The decedent's surviving spouse;

50 (b) Beneficiaries;

51 (c) The trustee of any trust described in s. 733.707(3)
 52 and each beneficiary of the trust as defined in s.
 53 737.303(4)(b), if each trustee is also a personal representative
 54 of the estate; and

55 (d) Persons who may be entitled to exempt property

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57 in the manner provided for service of formal notice, unless
 58 served under s. 733.2123. The personal representative may
 59 similarly serve a copy of the notice on any devisees under a
 60 known prior will or heirs or others who claim or may claim an
 61 interest in the estate.

62 (2) The notice shall state:

63 (a) The name of the decedent, the file number of the
 64 estate, the designation and address of the court in which the
 65 proceedings are pending, whether the estate is testate or
 66 intestate, and, if testate, the date of the will and any
 67 codicils.

68 (b) The name and address of the personal representative,
 69 and the name and address of the personal representative's
 70 attorney.

71 (c) ~~The notice shall state That any interested person~~
 72 ~~persons are required to file with the court any objection by an~~
 73 ~~interested person on whom a copy of the notice of administration~~
 74 ~~is the notice was served must file on or before the date that is~~
 75 ~~3 months after the date of service of a copy of the notice of~~
 76 ~~administration on that person any objection that challenges the~~
 77 ~~validity of the will, the qualifications of the personal~~
 78 ~~representative, the venue, or the jurisdiction of the court~~
 79 ~~within 3 months after the date of service of a copy of the~~
 80 ~~notice of administration on the objecting person.~~

81 (d) That persons who may be entitled to exempt property
 82 under s. 732.402 will be deemed to have waived their rights to
 83 claim that property as exempt property unless a petition for
 84 determination of exempt property is filed by or on their behalf

85 on or before the later of the date that is 4 months after the
 86 date of service of a copy of the notice of administration on
 87 such persons or the date that is 40 days after the date of
 88 termination of any proceeding involving the construction,
 89 admission to probate, or validity of the will or involving any
 90 other matter affecting any part of the exempt property.

91 (e) That an election to take an elective share must be
 92 filed on or before the earlier of the date that is 6 months
 93 after the date of service of a copy of the notice of
 94 administration on the surviving spouse, or an attorney in fact
 95 or a guardian of the property of the surviving spouse, or the
 96 date that is 2 years after the date of the decedent's death.

97 (3) Any interested person on whom a copy of the notice of
 98 administration is ~~was~~ served must object to the validity of the
 99 will, the qualifications of the personal representative, the
 100 venue, or the jurisdiction of the court by filing a petition or
 101 other pleading requesting relief in accordance with the Florida
 102 Probate Rules on or before the date that is ~~within~~ 3 months
 103 after the date of service of a copy of the notice of
 104 administration on the objecting person, or those objections are
 105 forever barred.

106 (4) The appointment of a personal representative or a
 107 successor personal representative shall not extend or renew the
 108 period for filing objections under this section, unless a new
 109 will or codicil is admitted.

110 (5)~~(4)~~ The personal representative is not individually
 111 liable to any person for giving notice under this section,
 112 regardless of whether it is later determined that notice was not

HB 521

2006

113 required by this section. The service of notice in accordance
114 with this section shall not be construed as conferring any
115 right.

116 ~~(6)~~(5) If the personal representative in good faith fails
117 to give notice required by this section, the personal
118 representative is not liable to any person for the failure.
119 Liability, if any, for the failure is on the estate.

120 ~~(7)~~(6) If a will or codicil is subsequently admitted to
121 probate, the personal representative shall promptly serve a copy
122 of a new notice of administration as required for an initial
123 will admission.

124 (8) For the purpose of determining deadlines established
125 by reference to the date of service of a copy of the notice of
126 administration in cases in which such service has been waived,
127 service shall be deemed to occur on the date the waiver is
128 filed.

129 Section 4. This act shall take effect July 1, 2006.