

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

1 Committee/Subcommittee hearing bill: Finance & Tax Committee  
 2 Representative Moraitis offered the following:

4 **Amendment**

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraph (c) of subsection (2) and subsection  
 7 (3) of section 733.212, Florida Statutes, are amended to read:

8 733.212 Notice of administration; filing of objections.—

9 (2) The notice shall state:

10 (c) That any interested person on whom a copy of the  
 11 notice of administration is served must file on or before the  
 12 date that is 3 months after the date of service of a copy of the  
 13 notice of administration on that person any objection that  
 14 challenges the validity of the will, ~~the qualifications of the~~  
 15 ~~personal representative,~~ the venue, ~~or~~ the jurisdiction of the  
 16 court, or as otherwise provided by subsection (3). Except for  
 17 estoppel based solely on a misstatement by the personal

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18 representative as to the period within which an objection must  
19 be filed, the 3-month period may not be extended for any reason,  
20 including affirmative representation, failure to disclose  
21 information, or misconduct by the personal representative or any  
22 other person. Unless sooner barred by subsection (3), all  
23 objections to the validity of a will, the venue, or the  
24 jurisdiction of the court must be filed no later than the  
25 earlier of 1 year after service of notice of administration or  
26 entry of an order of final discharge of the personal  
27 representative.

28 (3) Any interested person on whom a copy of the notice of  
29 administration is served must object to the validity of the  
30 will, ~~the qualifications of the personal representative,~~ the  
31 venue, or the jurisdiction of the court by filing a petition or  
32 other pleading requesting relief in accordance with the Florida  
33 Probate Rules on or before the date that is 3 months after the  
34 date of service of a copy of the notice of administration on the  
35 objecting person, or those objections are forever barred. Except  
36 for estoppel based solely on a misstatement by the personal  
37 representative as to the period within which an objection must  
38 be filed, the 3-month period may not be extended for any reason,  
39 including affirmative representation, failure to disclose  
40 information, or misconduct by the personal representative or any  
41 other person. Unless sooner barred under this subsection, all  
42 objections to the validity of a will, the venue, or the  
43 jurisdiction of the court must be filed no later than the

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44 earlier of 1 year after service of notice of administration or  
45 entry of an order of final discharge of the personal  
46 representative.

47 Section 2. Section 733.2123, Florida Statutes, is amended  
48 to read:

49 733.2123 Adjudication before issuance of letters.—A  
50 petitioner may serve formal notice of the petition for  
51 administration on interested persons. A copy of the will offered  
52 for probate must be attached to the notice. A person who is  
53 served with such notice before the issuance of letters or who  
54 has waived notice may not challenge the validity of the will,  
55 testacy of the decedent, ~~qualifications of the personal~~  
56 ~~representative,~~ venue, or jurisdiction of the court, except in  
57 the proceedings before issuance of letters.

58 Section 3. Effective upon this act becoming a law, section  
59 733.3101, Florida Statutes, is amended to read:

60 733.3101 Personal representative not qualified.—

61 (1) A personal representative shall resign immediately  
62 when the personal representative knows that he or she was not  
63 qualified to act at the time of appointment.

64 (2) Any time a personal representative who was qualified  
65 to act at the time of appointment knows or ~~should have known~~  
66 that he or she would not be qualified for appointment if  
67 application for appointment were then made, the personal  
68 representative shall promptly file and serve a notice setting  
69 forth the reasons. The notice must state that any interested

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70 person may petition to remove the personal representative. An  
71 interested person upon whom a copy of the notice is served may  
72 file a petition within 30 days after service of the notice  
73 requesting the personal representative's removal.

74 (3) A personal representative who fails to comply with  
75 this section ~~is shall be~~ personally liable for costs, including  
76 attorney attorney's fees, incurred in any removal proceeding, if  
77 the personal representative is removed. The liability extends to  
78 any personal representative who does not know but should have  
79 known of the facts that would otherwise require the personal  
80 representative to resign under subsection (1) or file and serve  
81 notice under subsection (2). This liability shall be cumulative  
82 to any other provided by law.

83 (4) As used in this section, the term "qualified" means  
84 qualified under ss. 733.302-733.305.

85 Section 4. Effective upon this act becoming a law, section  
86 733.504, Florida Statutes, is amended to read:

87 733.504 Removal of personal representative; causes for  
88 removal.-

89 (1) A personal representative shall be removed and the  
90 letters revoked if he or she was not qualified to act at the  
91 time of appointment.

92 (2) A personal representative may be removed and the  
93 letters revoked for any of the following causes, ~~and the removal~~  
94 ~~shall be in addition to any penalties prescribed by law:~~

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95        ~~(a)(1)~~ Adjudication that the personal representative is  
96 incapacitated.

97        ~~(b)(2)~~ Physical or mental incapacity rendering the  
98 personal representative incapable of the discharge of his or her  
99 duties.

100       ~~(c)(3)~~ Failure to comply with any order of the court,  
101 unless the order has been superseded on appeal.

102       ~~(d)(4)~~ Failure to account for the sale of property or to  
103 produce and exhibit the assets of the estate when so required.

104       ~~(e)(5)~~ Wasting or maladministration of the estate.

105       ~~(f)(6)~~ Failure to give bond or security for any purpose.

106       ~~(g)(7)~~ Conviction of a felony.

107       ~~(h)(8)~~ Insolvency of, or the appointment of a receiver or  
108 liquidator for, any corporate personal representative.

109       ~~(i)(9)~~ Holding or acquiring conflicting or adverse  
110 interests against the estate that will or may interfere with the  
111 administration of the estate as a whole. This cause of removal  
112 shall not apply to the surviving spouse because of the exercise  
113 of the right to the elective share, family allowance, or  
114 exemptions, as provided elsewhere in this code.

115       ~~(j)(10)~~ Revocation of the probate of the decedent's will  
116 that authorized or designated the appointment of the personal  
117 representative.

118       ~~(k)(11)~~ Removal of domicile from Florida, if domicile was  
119 a requirement of initial appointment.

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120        (1) ~~(12)~~ The personal representative was qualified to act  
121 at the time of appointment but would not now be entitled to  
122 appointment.

123        (3) Removal pursuant to this section shall be in addition  
124 to any penalties prescribed by law.

125        Section 5. Section 733.817, Florida Statutes, is amended  
126 to read:

127        733.817 Apportionment of estate taxes.—

128        (1) DEFINITIONS.—For purposes of this section:

129        (a) "Fiduciary" means a person other than the personal  
130 representative in possession of property included in the measure  
131 of the tax who is liable to the applicable taxing authority for  
132 payment of the entire tax to the extent of the value of the  
133 property in possession.

134        (b) "Generation-skipping transfer tax" means the  
135 generation-skipping transfer tax on direct skips at death and  
136 excludes the generation-skipping transfer tax on taxable  
137 distributions or taxable terminations. The terms "direct skip,"  
138 "taxable distribution," and "taxable termination" have the same  
139 meanings as provided in the Internal Revenue Code.

140        (c) ~~(b)~~ "Governing instrument" means a will, trust  
141 agreement, or any other document that controls the transfer of  
142 property ~~an asset~~ on the occurrence of the event with respect to  
143 which the tax is being levied.

144        (d) ~~(e)~~ "Gross estate" means the gross estate, as  
145 determined by the Internal Revenue Code with respect to the

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146 federal estate tax and the Florida estate tax, and as that  
147 concept is otherwise determined by the estate, inheritance, or  
148 death tax laws of the particular state, country, or political  
149 subdivision whose tax is being apportioned.

150 ~~(e)-(d)~~ "Included in the measure of the tax" means that for  
151 each separate tax that an interest may incur, only interests  
152 included in the measure of that particular tax are considered.  
153 The term "included in the measure of the tax" does not include:

154 1. Any interest, whether passing under the will or not, to  
155 the extent the interest is initially deductible from the gross  
156 estate, without regard to any subsequent reduction of the  
157 deduction by reason of the charge of any part of the applicable  
158 tax to the interest. If an election is required for  
159 deductibility, an interest is not "initially deductible" unless  
160 the election for deductibility is allowed. The term "included in  
161 the measure of the tax" does not include

162 2. Interests or amounts that are not included in the gross  
163 estate but are included in the amount upon which the applicable  
164 tax is computed, such as adjusted taxable gifts pursuant to s.  
165 2001 of the Internal Revenue Code with respect to the federal  
166 estate tax. If an election is required for deductibility, an  
167 interest is not "initially deductible" unless the election for  
168 deductibility is allowed.

169 3. Gift taxes included in the gross estate pursuant to s.  
170 2035 of the Internal Revenue Code and the portion of any  
171 intervivos transfer included in the gross estate pursuant to s.

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172 529 of the Internal Revenue Code, notwithstanding inclusion in  
173 the federal gross estate.

174 (f)~~(e)~~ "Internal Revenue Code" means the Internal Revenue  
175 Code of 1986, as amended from time to time.

176 (g)~~(f)~~ "Net tax" means the net tax payable to the  
177 particular state, country, or political subdivision whose tax is  
178 being apportioned, after taking into account all credits against  
179 the applicable tax except as provided in this section. With  
180 respect to the federal estate tax, "net tax" is determined after  
181 taking into account all credits against the tax except for the  
182 credit for foreign death taxes and except for the credit or  
183 deduction for state tax taxes imposed by states other than  
184 Florida.

185 (h)~~(g)~~ "Nonresiduary devise" means any devise that is not  
186 a residuary devise.

187 (i)~~(h)~~ "Nonresiduary interest" in connection with a trust  
188 means any interest in a trust which is not a residuary interest.

189 (j)~~(i)~~ "Recipient" means, with respect to property or an  
190 interest in property included in the gross estate, an heir at  
191 law in an intestate estate, devisee in a testate estate,  
192 beneficiary of a trust, beneficiary of a life ~~an~~ insurance  
193 policy, annuity, or other contractual right, surviving tenant,  
194 taker as a result of the exercise or in default of the exercise  
195 of a general power of appointment, person who receives or is to  
196 receive the property or an interest in the property, or person  
197 in possession of the property, other than a creditor.



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198 (k)~~(j)~~ "Residuary devise" has the meaning set forth in s.  
199 731.201.

200 (l)~~(k)~~ "Residuary interest," in connection with a trust,  
201 means an interest in the assets of a trust which remain after  
202 provision for any distribution that is to be satisfied by  
203 reference to a specific property or type of property, fund, sum,  
204 or statutory amount.

205 (m)~~(l)~~ "Revocable trust" means a trust as described in s.  
206 733.707(3).

207 (n) "Section 2044 interest" means an interest included in  
208 the measure of the tax by reason of s. 2044 of the Internal  
209 Revenue Code.

210 (o)~~(m)~~ "State" means any state, territory, or possession  
211 of the United States, the District of Columbia, and the  
212 Commonwealth of Puerto Rico.

213 (p)~~(n)~~ "Tax" means any estate tax, inheritance tax,  
214 generation-skipping ~~generation-skipping~~ transfer tax, or other  
215 tax levied or assessed under the laws of this or any other  
216 state, the United States, any other country, or any political  
217 subdivision of the foregoing, as finally determined, which is  
218 imposed as a result of the death of the decedent, ~~including,~~  
219 ~~without limitation, the tax assessed pursuant to s. 4980A of the~~  
220 ~~Internal Revenue Code.~~ The term also includes any interest or  
221 ~~and~~ penalties imposed in addition to the tax. Unless the context  
222 indicates otherwise, the term "tax" means each separate tax.  
223 However, the term "tax" does not include any additional estate

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224 tax imposed by s. 2032A(c) or s. 2057(f) of the Internal Revenue  
225 Code or any corresponding state estate, inheritance, or death  
226 tax. The additional estate tax shall be apportioned as provided  
227 in s. 2032A or s. 2057 of the Internal Revenue Code.

228 (q)~~(e)~~ "Temporary interest" means an interest in income or  
229 an estate for a specific period of time or for life or for some  
230 other period controlled by reference to extrinsic events,  
231 whether or not in trust.

232 (r)~~(p)~~ "Tentative Florida tax" with respect to any  
233 property means the net Florida estate tax that would have been  
234 attributable to that property if no tax were payable to any  
235 other state in respect of that property.

236 (s)~~(q)~~ "Value" means the pecuniary worth of the interest  
237 involved as finally determined for purposes of the applicable  
238 tax after deducting any debt, expense, or other deduction  
239 chargeable to it for which a deduction was allowed in  
240 determining the amount of the applicable tax. A lien or other  
241 encumbrance is not regarded as chargeable to a particular  
242 interest to the extent that it will be paid from other  
243 interests. The value of an interest shall not be reduced by  
244 reason of the charge against it of any part of the tax, except  
245 as provided in paragraph (3) (a).

246 (2) ALLOCATION OF TAX.—Except as otherwise effectively  
247 directed by the governing instrument, ~~An interest in protected~~  
248 ~~homestead shall be exempt from the apportionment of taxes.~~

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249 ~~(3)~~ the net tax attributable to the interests included in  
250 the measure of each tax shall be determined by the proportion  
251 that the value of each interest included in the measure of the  
252 tax bears to the total value of all interests included in the  
253 measure of the tax. Notwithstanding the foregoing provisions of  
254 this subsection, except as effectively directed in the governing  
255 instrument:

256 (a) The net tax attributable to Section 2044 interests  
257 ~~included in the measure of the tax by reason of s. 2044 of the~~  
258 ~~Internal Revenue Code~~ shall be determined in the manner provided  
259 for the federal estate tax in s. 2207A of the Internal Revenue  
260 Code, and the amount so determined shall be deducted from the  
261 tax to determine the net tax attributable to all other remaining  
262 interests included in the measure of the tax.

263 (b) The foreign tax credit allowed with respect to the  
264 federal estate tax shall be allocated among the recipients of  
265 interests finally charged with the payment of the foreign tax in  
266 reduction of any federal estate tax chargeable to the recipients  
267 of the foreign interests, whether or not any federal estate tax  
268 is attributable to the foreign interests. Any excess of the  
269 foreign tax credit shall be applied to reduce proportionately  
270 the net amount of federal estate tax chargeable to the remaining  
271 recipients of the interests included in the measure of the  
272 federal estate tax.

273 (c) The reduction in the net tax attributable to the  
274 deduction for state death taxes allowed by s. 2058 of the

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275 Internal Revenue Code shall be allocated to the recipients of  
276 the interests that produced the deduction. For purposes of this  
277 paragraph, the reduction in the net tax shall be calculated in  
278 the manner provided for interests other than those described in  
279 paragraph (a).

280 (d)-(e) The reduction in the Florida tax, if one is  
281 imposed, on the estate of a Florida resident for tax paid to  
282 other states shall be allocated as follows:

283 1. If the net tax paid to another state is greater than or  
284 equal to the tentative Florida tax attributable to the property  
285 subject to tax in the other state, none of the Florida tax shall  
286 be attributable to that property.

287 2. If the net tax paid to another state is less than the  
288 tentative Florida tax attributable to the property subject to  
289 tax in the other state, the net Florida tax attributable to the  
290 property subject to tax in the other state shall be the excess  
291 of the amount of the tentative Florida tax attributable to the  
292 property over the net tax payable to the other state with  
293 respect to the property.

294 3. Any remaining net Florida tax shall be attributable to  
295 property included in the measure of the Florida tax exclusive of  
296 property subject to tax in other states.

297 4. The net federal tax attributable to the property  
298 subject to tax in the other state shall be determined as if it  
299 were located in that ~~the~~ state.

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300 ~~(e)(d)~~ The net tax attributable to a temporary interest,  
301 if any, shall be regarded as attributable to the principal that  
302 supports the temporary interest.

303 ~~(3)(4)(a)~~ APPORTIONMENT OF TAX.—Except as otherwise  
304 effectively directed by the governing instrument, the net tax  
305 attributable to each interest shall be apportioned as follows:

306 (a) Generation-skipping transfer tax.—Any federal or state  
307 generation-skipping transfer tax shall be apportioned in the  
308 manner provided in s. 2603 of the Internal Revenue Code after  
309 application of the remaining provisions of this subsection to  
310 taxes other than the generation-skipping transfer tax.

311 (b) Section 2044 interests.—The net tax attributable to  
312 Section 2044 interests shall be apportioned among the recipients  
313 of the Section 2044 interests in the proportion that the value  
314 of each Section 2044 interest bears to the total of all Section  
315 2044 interests. The net tax apportioned by this paragraph to  
316 Section 2044 interests that pass in the manner described in  
317 paragraph (c) or paragraph (d) shall be apportioned to the  
318 Section 2044 interests in the manner described in those  
319 paragraphs before the apportionment of the net tax attributable  
320 to the other interests passing as provided in those paragraphs.  
321 The net tax attributable to the interests other than the Section  
322 2044 interests which pass in the manner described in paragraph  
323 (c) or paragraph (d) shall be apportioned only to the other  
324 interests pursuant to those paragraphs ~~if the Internal Revenue~~  
325 ~~Code, including, but not limited to, ss. 2032A(c)(5), 2206,~~

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326 ~~2207, 2207A, 2207B, and 2603, applies to apportion federal tax~~  
327 ~~against recipients of certain interests, all net taxes,~~  
328 ~~including taxes levied by the state attributable to each type of~~  
329 ~~interest, shall be apportioned against the recipients of all~~  
330 ~~interests of that type in the proportion that the value of each~~  
331 ~~interest of that type included in the measure of the tax bears~~  
332 ~~to the total of all interests of that type included in the~~  
333 ~~measure of the tax.~~

334 ~~(b) The provisions of this subsection do not affect~~  
335 ~~allocation of the reduction in the Florida tax as provided in~~  
336 ~~this section with respect to estates of Florida residents which~~  
337 ~~are also subject to tax in other states.~~

338 ~~(5) Except as provided above or as otherwise directed by~~  
339 ~~the governing instrument, the net tax attributable to each~~  
340 ~~interest shall be apportioned as follows:~~

341 ~~(c)(a) Wills.—For property passing under the decedent's~~  
342 ~~will, in the following order of priority:~~

343 1. The net tax attributable to nonresiduary devisees shall  
344 be charged to and paid from the residuary estate whether or not  
345 all interests in the residuary estate are included in the  
346 measure of the tax. If the residuary estate is insufficient to  
347 pay the net tax attributable to all nonresiduary devisees, the  
348 balance of the net tax attributable to nonresiduary devisees  
349 shall be apportioned among the recipients of the nonresiduary  
350 devisees in the proportion that the value of each nonresiduary

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351 devise included in the measure of the tax bears to the total of  
352 all nonresiduary devises included in the measure of the tax.

353 2. The net tax attributable to residuary devises shall be  
354 apportioned among the recipients of the residuary devises  
355 included in the measure of tax in the proportion that the value  
356 of each residuary devise included in the measure of the tax  
357 bears to the total of all residuary devises included in the  
358 measure of the tax. If the residuary estate is insufficient to  
359 pay the net tax attributable to all residuary devises, the  
360 balance of the net tax attributable to residuary devises shall  
361 be apportioned among the recipients of the nonresiduary devises  
362 in the proportion that the value of each nonresiduary devise  
363 included in the measure of the tax bears to the total of all  
364 nonresiduary devises included in the measure of the tax.

365 (d) ~~(b)~~ Trusts.—For property passing under the terms of any  
366 trust other than a trust created in the decedent's will, in the  
367 following order of priority:

368 1. The net tax attributable to nonresiduary interests of  
369 the trust shall be charged to and paid from the residuary  
370 portion of the trust, whether or not all interests in the  
371 residuary portion are included in the measure of the tax. If the  
372 residuary portion ~~of the trust~~ is insufficient to pay the net  
373 tax attributable to all nonresiduary interests, the balance of  
374 the net tax attributable to nonresiduary interests shall be  
375 apportioned among the recipients of the nonresiduary interests  
376 in the proportion that the value of each nonresiduary interest

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377 included in the measure of the tax bears to the total of all  
378 nonresiduary interests included in the measure of the tax.

379 2. The net tax attributable to residuary interests of the  
380 trust shall be apportioned among the recipients of the residuary  
381 interests of the trust included in the measure of the tax in the  
382 proportion that the value of each residuary interest included in  
383 the measure of the tax bears to the total of all residuary  
384 interests of the trust included in the measure of the tax. If  
385 the residuary portion is insufficient to pay the net tax  
386 attributable to all residuary interests, the balance of the net  
387 tax attributable to residuary interests shall be apportioned  
388 among the recipients of the nonresiduary interests in the  
389 proportion that the value of each nonresiduary interest included  
390 in the measure of the tax bears to the total of all nonresiduary  
391 interests included in the measure of the tax.

392  
393 Except as provided in paragraph (g), this paragraph applies  
394 separately for each trust.

395 (e)(e) Protected homestead, exempt property, and family  
396 allowance.-

397 1. The net tax attributable to an interest in protected  
398 homestead, exempt property, and the family allowance as  
399 determined under s. 732.403 shall be apportioned against the  
400 recipients of other interests in the estate or passing under any  
401 revocable trust in the following order of priority:



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402 ~~a.1.~~ Class I: Recipients of interests passing by intestacy  
403 ~~not disposed of by the decedent's will or revocable trust~~ that  
404 are included in the measure of the federal estate tax.

405 ~~b.2.~~ Class II: Recipients of residuary devises, and  
406 residuary interests, and pretermitted shares pursuant to ss.  
407 732.301 and 732.302 that are included in the measure of the  
408 federal estate tax.

409 ~~c.3.~~ Class III: Recipients of nonresiduary devises and  
410 nonresiduary interests that are included in the measure of the  
411 federal estate tax.

412 2. Any ~~The~~ net tax apportioned to a class, ~~if any,~~  
413 pursuant to this paragraph shall be apportioned among each  
414 recipient ~~the recipients~~ in the class in the proportion that the  
415 value of the interest of each bears to the total value of all  
416 interests included in that class. Tax may not be apportioned  
417 under this paragraph to the portion of any interest applied in  
418 satisfaction of the elective share whether or not included in  
419 the measure of the tax. For purposes of this paragraph, if the  
420 interests described in s. 732.2075(1) exceed the amount of the  
421 elective share, the elective share shall be treated as satisfied  
422 first from interests other than those described in classes I,  
423 II, and III and, to the extent those interests are insufficient  
424 to satisfy the elective share, from the interests passing to or  
425 for the benefit of the surviving spouse described in classes I,  
426 II, and III, beginning with those described in class I, until

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427 the elective share is satisfied. This paragraph has priority  
428 over paragraphs (a) and (h).

429 3. The balance of the net tax attributable to any interest  
430 in protected homestead, exempt property, and the family  
431 allowance as determined under s. 732.403 not apportioned under  
432 the preceding provisions of this paragraph shall be apportioned  
433 to the recipients of those interests included in the measure of  
434 the tax in the proportion that the value of each bears to the  
435 total value of those interests included in the measure of the  
436 tax.

437 (f) Construction.—For purposes of this subsection:

438 1. If the decedent's estate is the beneficiary of a life  
439 insurance policy, annuity, or contractual right included in the  
440 decedent's gross estate or is the taker as a result of the  
441 exercise or default in exercise of a general power of  
442 appointment held by the decedent, that interest shall be  
443 regarded as passing under the terms of the decedent's will for  
444 the purposes of paragraph (c) or by intestacy if not disposed of  
445 by will. Additionally, any interest included in the measure of  
446 the tax by reason of s. 2041 of the Internal Revenue Code  
447 passing to the decedent's creditors or the creditors of the  
448 decedent's estate shall be regarded as passing to the decedent's  
449 estate for purposes of this subparagraph.

450 2. If a trust is the beneficiary of a life insurance  
451 policy, annuity, or contractual right included in the decedent's  
452 gross estate or is the taker as a result of the exercise or

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453 default in exercise of a general power of appointment held by  
454 the decedent, that interest shall be regarded as passing under  
455 the trust for purposes of paragraph (d).

456 (g)-(d) Common instrument construction.-In the application  
457 of this subsection, paragraphs (b)-(f) ~~(a), (b), and (c)~~ shall  
458 be applied to apportion the net tax to the recipients under  
459 certain governing instruments of the estate and the recipients  
460 of the decedent's revocable trust as if all recipients under  
461 those instruments, other than the estate or revocable trust  
462 itself trusts themselves, were taking under a common instrument.  
463 This construction applies to:

464 1. The decedent's will and revocable trust if either the  
465 estate or the revocable trust is a beneficiary of the other.

466 2. The decedent's revocable trust and any other revocable  
467 trust of the decedent if the revocable trust is a beneficiary of  
468 the other trust.

469 ~~(e) The net tax imposed under s. 4980A of the Internal~~  
470 ~~Revenue Code shall be apportioned among the recipients of the~~  
471 ~~interests included in the measure of that tax in the proportion~~  
472 ~~that the value of the interest of each bears to the total value~~  
473 ~~of all interests included in the measure of that tax.~~

474 (h)-(f) Other interests.-The net tax that is not  
475 apportioned to interests under paragraphs (b)-(g) ~~(a), (b), and~~  
476 ~~(e)~~, including, but not limited to, the net tax attributable to  
477 interests passing by intestacy, interests applied in  
478 satisfaction of the elective share pursuant to s. 732.2075(2),

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479 interests passing by reason of the exercise or nonexercise of a  
480 general power of appointment, jointly held interests passing by  
481 survivorship, life insurance, properties in which the decedent  
482 held a reversionary or revocable interest, ~~and~~ annuities and  
483 contractual rights, shall be apportioned among the recipients of  
484 the remaining interests that are included in the measure of the  
485 tax in the proportion that the value of each such interest bears  
486 to the total value of all the remaining interests included in  
487 the measure of the tax.

488 (i)-(g) Liability for payment of interest or penalties.-If  
489 the court finds that it is inequitable to apportion interest,  
490 penalties, or both, in the manner provided in paragraphs (a)-(h)  
491 ~~(a)-(f)~~, the court may assess liability for the payment thereof  
492 in the manner it finds equitable.

493 (j) Liability for payment of tax.-If the court finds that  
494 this section does not apportion any tax that was not effectively  
495 directed by the governing instrument, the court may assess  
496 liability for the payment of the tax in the manner it finds  
497 equitable.

498 (4) DIRECTION AGAINST APPORTIONMENT.-

499 (a) Except as provided in this subsection, a governing  
500 instrument may not direct that taxes be paid from property other  
501 than that passing under the governing instrument.

502 (b)-(h)1. For To be effective as a direction in a governing  
503 instrument to be effective to direct payment of taxes  
504 attributable to property passing under the governing instrument

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505 ~~for payment of tax~~ in a manner different from that provided in  
506 this section, the direction must be express governing instrument  
507 ~~must direct that the tax be paid from assets that pass pursuant~~  
508 ~~to that governing instrument, except as provided in this~~  
509 ~~section.~~

510 ~~2. If the decedent's will provides that the tax shall be~~  
511 ~~apportioned as provided in the decedent's revocable trust by~~  
512 ~~specific reference to the trust, the direction in the revocable~~  
513 ~~trust shall be deemed to be a direction contained in the will~~  
514 ~~and shall control with respect to payment of taxes from assets~~  
515 ~~passing under both the will and the revocable trust.~~

516 ~~3. A direction in the decedent's will to pay tax from the~~  
517 ~~decedent's revocable trust is effective if a contrary direction~~  
518 ~~is not contained in the trust agreement.~~

519 (c)4. For a direction in a governing instrument to be  
520 effective to direct payment of taxes attributable to property  
521 not passing under the governing instrument from property passing  
522 under the governing instrument, the governing instrument must  
523 expressly direct ~~refer to this section, or expressly indicate~~  
524 that the property passing under the governing instrument is to  
525 bear the burden of taxation for property not passing under the  
526 governing instrument. Except as provided in paragraph (d), a  
527 direction in the governing instrument to the effect that all  
528 taxes are to be paid from property passing under the governing  
529 instrument whether attributable to property passing under the  
530 governing instrument or otherwise shall be effective to direct

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531 the payment from property passing under the governing instrument  
532 of taxes attributable to property not passing under the  
533 governing instrument.

534 (d) In addition to satisfying the other provisions of this  
535 subsection:

536 1.a. For a direction in the decedent's will or revocable  
537 trust to be effective to waive the right of recovery provided in  
538 s. 2207A of the Internal Revenue Code for tax imposed by reason  
539 of s. 2044 of the Internal Revenue Code and any other tax  
540 imposed by Florida based on that provision of the Internal  
541 Revenue Code, the direction must expressly waive the right of  
542 recovery. An express direction that property passing under the  
543 will or revocable trust bear the tax imposed by s. 2044 of the  
544 Internal Revenue Code is an express waiver of the right of  
545 recovery provided in s. 2207A of the Internal Revenue Code. A  
546 reference to "qualified terminable interest property" or "QTIP"  
547 or property in which the decedent had a "qualifying income  
548 interest for life" is deemed to be a reference to property upon  
549 which tax is imposed by s. 2044 of the Internal Revenue Code and  
550 which is subject to the right of recovery provided in s. 2207A  
551 of the Internal Revenue Code.

552 b. If property is included in the gross estate pursuant to  
553 both ss. 2044 and 2041 of the Internal Revenue Code, the  
554 property is deemed to be included under s. 2044 but not s. 2041  
555 for purposes of allocation and apportionment of the tax.

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556       2. For a direction in the decedent's will or revocable  
557 trust to be effective to waive the right of recovery provided in  
558 s. 2207B of the Internal Revenue Code for tax imposed by reason  
559 of s. 2036 of the Internal Revenue Code and any other tax  
560 imposed by Florida based on that provision of the Internal  
561 Revenue Code, the direction must expressly waive the right of  
562 recovery. An express direction that property passing under the  
563 will or revocable trust bear the tax imposed by s. 2036 of the  
564 Internal Revenue Code is deemed to be an express waiver of the  
565 right of recovery provided in s. 2207B. If property is included  
566 in the gross estate pursuant to both ss. 2038 and 2036 of the  
567 Internal Revenue Code, the property is deemed to be included  
568 under s. 2038 but not s. 2036 for purposes of allocation and  
569 apportionment of the tax, and there is no right of recovery  
570 under s. 2207B of the Internal Revenue Code.

571       3. A general statement in the decedent's will or revocable  
572 trust waiving all rights of reimbursement or recovery under the  
573 Internal Revenue Code is not an express waiver of the rights of  
574 recovery provided in s. 2207A or s. 2207B of the Internal  
575 Revenue Code.

576       4. For a direction in a governing instrument to be  
577 effective to direct the payment of the generation-skipping  
578 transfer tax in a manner other than as provided in s. 2603 of  
579 the Internal Revenue Code and any other tax imposed by Florida  
580 based on that provision of the Internal Revenue Code, the  
581 direction must specifically reference the tax imposed by s. 2601

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582 of the Internal Revenue Code. A reference to the "generation-  
583 skipping transfer tax" or s. 2603 of the Internal Revenue Code  
584 is deemed to be a reference to property upon which tax is  
585 imposed by reason of s. 2601 of the Internal Revenue Code.

586 (e) If the decedent expressly directs by will, the net tax  
587 attributable to property over which the decedent held a general  
588 power of appointment may be determined in a manner different  
589 from that provided in subsection (2); however, the net tax  
590 attributable to that property may not exceed the difference  
591 between the total net tax determined pursuant to subsection (2)  
592 without regard to this paragraph and the total net tax that  
593 would have been payable if the value of the property subject to  
594 such power of appointment had not been included in the  
595 decedent's gross estate. If tax is attributable to one or more  
596 Section 2044 interests pursuant to subsection (2), the net tax  
597 attributable to the Section 2044 interests shall be calculated  
598 before the application of this paragraph unless the decedent  
599 expressly directs otherwise by will.

600 (f) If the decedent's will expressly provides that the tax  
601 is to be apportioned as provided in the decedent's revocable  
602 trust by specific reference to the revocable trust, an express  
603 direction in the revocable trust is deemed to be a direction  
604 contained in the will as well as the revocable trust.

605 (g) An express direction in the decedent's will to pay tax  
606 from the decedent's revocable trust by specific reference to the



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607 revocable trust is effective unless a contrary express direction  
608 is contained in the revocable trust.

609 (h) If governing instruments contain effective directions  
610 that conflict as to payment of taxes, the most recently executed  
611 tax apportionment provision controls to the extent of the  
612 conflict. For the purpose of this subsection, if a will or other  
613 governing instrument is amended, the date of the codicil to the  
614 will or amendment to the governing instrument is regarded as the  
615 date of the will or other governing instrument only if the  
616 codicil or amendment contains an express tax apportionment  
617 provision or an express modification of the tax apportionment  
618 provision. A general statement ratifying or republishing all  
619 provisions not otherwise amended does not meet this condition.  
620 If the decedent's will and another governing instrument were  
621 executed on the same date, the will is deemed to be executed  
622 after the other governing instrument. The earlier conflicting  
623 governing instrument shall control as to any tax remaining  
624 unpaid after the application of the later conflicting governing  
625 instrument.

626 (i) A grant of permission or authority in a governing  
627 instrument to request payment of tax from property passing under  
628 another governing instrument is not a direction apportioning the  
629 tax to the property passing under the other governing  
630 instrument. A grant of permission or authority in a governing  
631 instrument to pay tax attributable to property not passing under

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632 the governing instrument is not a direction apportioning the tax  
633 to property passing under the governing instrument.

634 (j) This section applies to any tax remaining to be paid  
635 after the application of any effective express directions. An  
636 effective express direction for the payment of tax on certain  
637 interests in a manner different from that provided in this  
638 section is not effective as an express direction for payment of  
639 tax on other interests included in the measure of the tax.

640 ~~5. If there is a conflict as to payment of taxes between~~  
641 ~~the decedent's will and the governing instrument, the decedent's~~  
642 ~~will controls, except as follows:~~

643 ~~a. The governing instrument shall be given effect with~~  
644 ~~respect to any tax remaining unpaid after the application of the~~  
645 ~~decedent's will.~~

646 ~~b. A direction in a governing instrument to pay the tax~~  
647 ~~attributable to assets that pass pursuant to the governing~~  
648 ~~instrument from assets that pass pursuant to that governing~~  
649 ~~instrument shall be effective notwithstanding any conflict with~~  
650 ~~the decedent's will, unless the tax provision in the decedent's~~  
651 ~~will expressly overrides the conflicting provision in the~~  
652 ~~governing instrument.~~

653 (5)-(6) TRANSFER OF PROPERTY.—The personal representative  
654 or fiduciary shall not be required to transfer to a recipient  
655 any property reasonably anticipated to be necessary for the  
656 payment of taxes. Further, the personal representative or  
657 fiduciary shall not be required to transfer any property to the

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658 recipient until the amount of the tax due from the recipient is  
659 paid by the recipient. If property is transferred before final  
660 apportionment of the tax, the recipient shall provide a bond or  
661 other security for his or her apportioned liability in the  
662 amount and form prescribed by the personal representative or  
663 fiduciary.

664 ~~(6)-(7)~~ ORDER OF APPORTIONMENT.-

665 (a) The personal representative may petition at any time  
666 for an order of apportionment. If no administration has been  
667 commenced at any time after 90 days from the decedent's death,  
668 any fiduciary may petition for an order of apportionment in the  
669 court in which venue would be proper for administration of the  
670 decedent's estate. ~~Formal~~ Notice of the petition for an order of  
671 apportionment must be served on ~~shall be given to~~ all interested  
672 persons in the same manner as required for service of formal  
673 notice. At any time after 6 months from the decedent's death,  
674 any recipient may petition the court for an order of  
675 apportionment.

676 (b) The court shall determine all issues concerning  
677 apportionment. If the tax to be apportioned has not been finally  
678 determined, the court shall determine the probable tax due or to  
679 become due from all interested persons, apportion the probable  
680 tax, and retain jurisdiction over the parties and issues to  
681 modify the order of apportionment as appropriate until after the  
682 tax is finally determined.

683 ~~(7)-(8)~~ DEFICIENCY.-

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684 (a) If the personal representative or fiduciary does not  
685 have possession of sufficient property otherwise distributable  
686 to the recipient to pay the tax apportioned to the recipient,  
687 whether under this section, the Internal Revenue Code, or the  
688 governing instrument, if applicable, the personal representative  
689 or fiduciary shall recover the deficiency in tax so apportioned  
690 to the recipient:

691 1. From the fiduciary in possession of the property to  
692 which the tax is apportioned, if any; and

693 2. To the extent of any deficiency in collection from the  
694 fiduciary, or to the extent collection from the fiduciary is  
695 excused pursuant to subsection (8) ~~(9)~~ and in all other cases,  
696 from the recipient of the property to which the tax is  
697 apportioned, unless relieved of this duty as provided in  
698 subsection (8) ~~(9)~~.

699 (b) In any action to recover the tax apportioned, the  
700 order of apportionment shall be prima facie correct.

701 (c) In any action for the enforcement of an order of  
702 apportionment, the court shall award taxable costs as in  
703 chancery actions, including reasonable attorney ~~attorney's~~ fees,  
704 and may award penalties and interest on the unpaid tax in  
705 accordance with equitable principles.

706 (d) This subsection does ~~shall~~ not authorize the recovery  
707 of any tax from any company issuing life insurance included in  
708 the gross estate, or from any bank, trust company, savings and  
709 loan association, or similar institution with respect to any

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710 account in the name of the decedent and any other person which  
711 passed by operation of law on the decedent's death.

712 ~~(8)-(9)~~ RELIEF FROM DUTY.—

713 (a) A personal representative or fiduciary who has the  
714 duty under this section of collecting the apportioned tax from  
715 recipients may be relieved of the duty to collect the tax by an  
716 order of the court finding:

717 1. That the estimated court costs and attorney ~~attorney's~~  
718 fees in collecting the apportioned tax from a person against  
719 whom the tax has been apportioned will approximate or exceed the  
720 amount of the recovery;

721 2. That the person against whom the tax has been  
722 apportioned is a resident of a foreign country other than Canada  
723 and refuses to pay the apportioned tax on demand; or

724 3. That it is impracticable to enforce contribution of the  
725 apportioned tax against a person against whom the tax has been  
726 apportioned in view of the improbability of obtaining a judgment  
727 or the improbability of collection under any judgment that might  
728 be obtained, or otherwise.

729 (b) A personal representative or fiduciary shall not be  
730 liable for failure to attempt to enforce collection if the  
731 personal representative or fiduciary reasonably believes it  
732 would have been economically impracticable.

733 ~~(9)-(10)~~ UNCOLLECTED TAX.—Any apportioned tax that is not  
734 collected shall be reapportioned in accordance with this section

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735 as if the portion of the property to which the uncollected tax  
736 had been apportioned had been exempt.

737 ~~(10)-(11)~~ CONTRIBUTION. ~~Nothing in~~ This section does not  
738 ~~shall~~ limit the right of any person who has paid more than the  
739 amount of the tax apportionable to that person, calculated as if  
740 all apportioned amounts would be collected, to obtain  
741 contribution from those who have not paid the full amount of the  
742 tax apportionable to them, calculated as if all apportioned  
743 amounts would be collected, and that right is hereby conferred.  
744 In any action to enforce contribution, the court shall award  
745 taxable costs as in chancery actions, including reasonable  
746 attorney ~~attorney's~~ fees.

747 ~~(11)-(12)~~ FOREIGN TAX. ~~Nothing herein contained shall be~~  
748 construed to require the personal representative or fiduciary to  
749 pay any tax levied or assessed by any foreign country, unless  
750 specific directions to that effect are contained in the will or  
751 other instrument under which the personal representative or  
752 fiduciary is acting.

753 Section 6. Subsection (4) of section 733.106, Florida  
754 Statutes, is amended to read:

755 733.106 Costs and attorney ~~attorney's~~ fees.—

756 (4) (a) When costs and attorney ~~attorney's~~ fees are to be  
757 paid from the estate pursuant to subsections (1)-(3), s.  
758 733.6171(4), s. 736.1005, or s. 736.1006, the court, in its  
759 discretion, may direct from what part of the estate they shall  
760 be paid. If the court directs an assessment against a person's

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761 part of the estate and that part is insufficient to fully pay  
762 the assessment, the court may direct payment from the person's  
763 part of a trust, if any, if a pourover will is involved and the  
764 matter is interrelated with the trust. All or any part of costs  
765 and attorney fees to be paid from the estate may be assessed  
766 against one or more persons' part of the estate in such  
767 proportions as the court finds to be just and proper.

768 (b) The court, in the exercise of its discretion, may  
769 consider the following factors:

770 1. The relative impact of an assessment on the estimated  
771 value of each person's part of the estate;

772 2. The amount of costs and attorney fees to be assessed  
773 against a person's part of the estate;

774 3. The extent to which a person whose part of the estate  
775 is to be assessed, individually or through counsel, actively  
776 participated in the proceeding;

777 4. The potential benefit or detriment to a person's part  
778 of the estate expected from the outcome of the proceeding;

779 5. The relative strength or weakness of the merits of the  
780 claims, defenses, or objections, if any, asserted by a person  
781 whose part of the estate is to be assessed;

782 6. Whether a person whose part of the estate is to be  
783 assessed was a prevailing party with respect to one or more  
784 claims, defenses, or objections;

785 7. Whether a person whose part of the estate is to be  
786 assessed unjustly caused an increase in the amount of attorney

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787 fees and costs incurred by the personal representative or other  
788 interested persons in connection with the proceeding; and

789 8. Any other relevant fact, circumstance, or equity.

790 (c) The court may assess attorney fees and costs against a  
791 person's part of the estate without finding that the person  
792 engaged in bad faith, wrongdoing, or frivolousness.

793 Section 7. Subsection (2) of section 736.1005, Florida  
794 Statutes, is amended to read:

795 736.1005 Attorney ~~Attorney's~~ fees for services to the  
796 trust.-

797 (2) (a) When attorney ~~Whenever attorney's~~ fees are to be  
798 paid from out of the trust pursuant to subsection (1) or s.  
799 736.1007(5) (a), or when the court assesses attorney fees against  
800 a person's part of an estate under s. 733.106(4) involving a  
801 pourover will and the matter is interrelated with the trust but  
802 the person's part of the estate is insufficient to fully pay the  
803 assessment, the court, in its discretion, may direct from what  
804 part of the trust the fees shall be paid. All or any part of  
805 attorney fees to be paid from the trust may be assessed against  
806 one or more persons' part of the trust in such proportions as  
807 the court finds to be just and proper.

808 (b) The court, in the exercise of its discretion, may  
809 consider the following factors:

810 1. The relative impact of an assessment on the estimated  
811 value of each person's part of the trust;



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812 2. The amount of attorney fees to be assessed against a  
813 person's part of the trust;

814 3. The extent to which a person whose part of the trust is  
815 to be assessed, individually or through counsel, actively  
816 participated in the proceeding;

817 4. The potential benefit or detriment to a person's part  
818 of the trust expected from the outcome of the proceeding;

819 5. The relative strength or weakness of the merits of the  
820 claims, defenses, or objections, if any, asserted by a person  
821 whose part of the trust is to be assessed;

822 6. Whether a person whose part of the trust is to be  
823 assessed was a prevailing party with respect to one or more  
824 claims, defenses, or objections;

825 7. Whether a person whose part of the trust is to be  
826 assessed unjustly caused an increase in the amount of attorney  
827 fees incurred by the trustee or other persons in connection with  
828 the proceeding; and

829 8. Any other relevant fact, circumstance, or equity.

830 (c) The court may assess attorney fees and costs against a  
831 person's part of the trust without finding that the person  
832 engaged in bad faith, wrongdoing, or frivolousness.

833 Section 8. Subsection (2) of section 736.1006, Florida  
834 Statutes, is amended to read:

835 736.1006 Costs in trust proceedings.—

836 (2) When ~~Whenever~~ costs are to be paid from ~~out of~~ the  
837 trust pursuant to subsection (1) or when the court assesses

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838 costs against a person's part of an estate under s. 733.106(4)  
839 involving a pourover will and the matter is interrelated with  
840 the trust but that person's part of the estate is insufficient  
841 to fully pay the assessment, the court, in its discretion, may  
842 direct from what part of the trust the costs shall be paid. All  
843 or any part of the costs to be paid from the trust may be  
844 assessed against one or more persons' part of the trust in such  
845 proportions as the court finds to be just and proper. The court,  
846 in the exercise of its discretion, may consider the factors set  
847 forth in s. 736.1005(2) as they relate to costs to be paid from  
848 the trust.

849 Section 9. (1) The amendments made by this act to ss.  
850 733.212, 733.2123, 733.3101, and 733.504, Florida Statutes, are  
851 remedial in nature, are intended to clarify existing law, and  
852 apply retroactively to all proceedings filed or commenced on or  
853 after July 1, 2015.

854 Section 10. (1) Section 733.817(1)(g) and (2)(c), Florida  
855 Statutes, as amended by this act, is intended to clarify  
856 existing law and applies retroactively to all proceedings  
857 pending or commenced on or after July 1, 2015, in which the  
858 apportionment of taxes has not been finally determined or agreed  
859 for estates of decedents dying on or after January 1, 2005.

860 (2) Section 733.817(1)(e)3., (3)(e), (3)(g), (4)(b),  
861 (4)(c), (4)(d)1.b., (4)(e), (4)(h), and (6), Florida Statutes,  
862 as amended by this act, applies to the estates of decedents  
863 dying on or after July 1, 2015.

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864       (3) Except as otherwise provided in this section, the  
865 amendments made by this act to s. 733.817, Florida Statutes, are  
866 intended to clarify existing law and apply retroactively to all  
867 proceedings pending or commenced on or after July 1, 2015, in  
868 which the apportionment of taxes has not been finally determined  
869 or agreed, and without regard to the decedent's death.

870       Section 11. The amendments made by this act to ss.  
871 733.106, 736.1005, and 736.1006, Florida Statutes, apply to  
872 proceedings commenced on or after July 1, 2015. The law in  
873 effect before July 1, 2015, applies to proceedings commenced  
874 before that date.

875       Section 12. Except as otherwise expressly provided in this  
876 act and except for this section, which shall take effect upon  
877 this act becoming a law, this act shall take effect July 1,  
878 2015.