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1986

### Session Law 86-249

Florida Senate & House of Representatives

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## LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Year <b>1986</b>	Session Law No. <b>86-249</b>	LOF Cite <b>L, ii, 1881-1883</b>	#pp
Prime Bill# <b>SB. 536</b>	Sponsor	Comp./Sim. Bills <b>HE 462</b>	
JLMC Hist.	Senate pp.#s <b>103</b>	House pp.#s <b>265</b>	#pp
Leg. Cites			
Committee of Ref.	Senate <b>Judi Civ</b> House <b>Justice (Sub Consumer)</b>	Previous versions? <b>none</b>	

## Committee Records

H/S	Committee	Year	Record Series: Folder Title, etc.	Location Cite	#pp
H	Judi Civ	1986	bill file: HE 462	19/1492	
S	Judi Civ	1986	P.D. 9 not related	15/1555	X
			SP	15/1558	

## Senate/House Journals

Page	?	Date	#pp	Page	?	Date	#pp
55, 232		May 8, 1986					

## Tape Recordings

H/S	Floor	Committee/subcommittee	Date	# Tapes	Location Cite

## Other Documentation

Record series title, folder title, etc.	Location Cite	#pp

By Senator Scott

A bill to be entitled  
 An act relating to decedents' estates; amending  
 s. 733.705, F.S.; creating s. 733.7074, F.S.;  
 providing for the protection and preservation  
 of unmatured claims and contingent claims;  
 providing an effective date.

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

Section 1. Subsections (2) and (3) of section 733.705,  
 Florida Statutes, are amended to read:

733.705 Payment of and objection to claims.--

(2) On or before the expiration of 4 months from the  
 first publication of notice of administration or within 30  
 days from the timely filing of a claim, whichever occurs  
 later, a personal representative or other interested person  
 may file a written objection to a claim. ~~An objection filed~~  
~~to an unmatured claim matures the claim for the purpose of~~  
~~bringing an action on the claim.~~ If an objection is filed,  
 the person filing it shall serve a copy of the objection by  
 registered or certified mail to the address of the claimant as  
 shown on the claim or by delivery to the claimant to whose  
 claim the person objects or the claimant's attorney of record,  
 if any, not later than 10 days after the objection has been  
 filed, and also on the personal representative if the  
 objection is filed by any interested person other than the  
 personal representative. The failure to serve a copy of the  
 objection constitutes an abandonment of the objection.

(3) 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

This publication was produced at an av.  
 cost of 1.5 cents per page  
 for the information of members of the  
 legislature and the public.

1 to establish the validity and amount of a claim which is not  
2 yet due but which is certain to become due in the future and  
3 within which to file written notice of such action in the  
4 estate proceeding. With respect to a contingent claim upon  
5 which a cause of action has not accrued as of the date of  
6 service of an objection and which may or may not become due in  
7 the future, the claimant is limited to a period of 3 months  
8 from the date the cause of action accrues within which to  
9 bring an independent action upon the claim. For good cause,  
10 the court may extend the time for filing an objection to any  
11 claim or may extend the time for serving the objection, and  
12 may likewise extend the time for filing an action or  
13 proceeding, and filing notice of the action or proceeding,  
14 after objection is filed. The extension of time shall be  
15 granted only after notice. No action or proceeding on the  
16 claim shall be brought against the personal representative  
17 after the time limited above, and any such claim is thereafter  
18 forever barred without any court order. If an objection is  
19 filed to the claim of any creditor and an action is brought by  
20 the creditor to establish his claim, a judgment establishing  
21 the claim shall give it no priority over claims of the same  
22 class to which it belongs.

23 Section 2. Section 733.7074, Florida Statutes, is  
24 created to read:

25 "733.7074 Preservation of claims that are not mature or  
26 that are contingent.--If an unmatured claim has not become due  
27 before the time for distribution of an estate, or if a cause  
28 of action has not accrued on a contingent claim before the  
29 time for distribution of an estate, the court may not enter an  
30 order of discharge of the personal representative unless the  
31 claimant and personal representative have filed an agreement



disposing of the claim or, in the absence of such an agreement, until the court provides for payment by one of the following methods:

(1) Requiring the personal representative to reserve such assets as the court determines to be adequate to pay such claim when it becomes, or may become, due and payable. In fixing the amount to be reserved, the court may determine the value of any security or collateral to which the claimant may resort for payment of the claim and may direct the reservation, if necessary, of sufficient assets to pay the claim or to make up the difference between the value of any security or collateral and the amount necessary to pay the claim. If the estate is insolvent, the court may direct a proportionate amount to be reserved. The court shall direct that the amount to be reserved be retained by the personal representative until such time as the claim becomes, or may become, due and payable and that so much of the reserved amount as is not needed for payment when the claim has become due and payable shall be thereafter distributed according to law.

(2) Requiring that the claim be adequately secured by means of a mortgage, pledge, bond, trust, guaranty, or other security, as may be determined by the court. The court shall direct that such security remain in effect until such time as the claim becomes, or may become, due and payable and that so much of the security or collateral as is needed for payment when the claim has become due and payable shall be thereafter distributed according to law.

(3) Requiring payment of the present value of the claim, as agreed upon by the claimant and the personal representative.

(4) Making such other provisions for the disposition or satisfaction of the claim as are equitable, and in such manner as not to delay unreasonably the closing of the estate.

Section 3. This act shall take effect October 1, 1986.

\*\*\*\*\*

# SENATE SUMMARY

Limits a claimant in a decedent's estate, with respect to a claim that is not mature, to a period of 30 days from the date of service of an objection to the claim within which to bring a declaratory action to establish the validity and amount of the claim. Also limits a claimant, with respect to a contingent claim upon which a cause of action has not accrued as of the date of service of an objection to the claim, to a period of 3 months from the date the cause of action accrues within which to bring an independent action on the claim. Prohibits a court from discharging the personal representative if an unmatured claim has not yet become due, or a cause of action has not accrued on a contingent claim, before the time for distribution of the estate, unless the claimant and personal representative have filed an agreement disposing of the claim or the court has made provision for the disposition or satisfaction of the claim by one of several methods specified.

By the Committee on Judiciary-Civil and Senator Scott-

This publication was produced at an age cost of 1.5 cents per page for the information of members of the legislature and the public.

A bill to be entitled

An act relating to decedents' estates; amending s. 733.705, F.S.; providing for the payment of claims and the protection and preservation of unmatured claims and contingent claims; providing an effective date.

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

Section 1. Section 733.705, Florida Statutes, is amended to read:

733.705 Payment of and objection to claims.--

(1) The personal representative shall pay all claims within 1 year from the date of first publication of notice of administration, provided that the time shall be extended with respect to claims in litigation, unmatured claims, and contingent claims for the period necessary to dispose of such claims pursuant to subsections (3), (4), and (5). The court may extend the time for payment of any claim upon a showing of good cause. No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 4 months from the first publication of notice of administration. If any person brings an action against a personal representative within the 4 months on any claim to which the personal representative has filed no objection, the plaintiff shall not receive any costs or attorneys' fees if he prevails, nor shall the judgment change the class of the claim for payment under this code.

(2) On or before the expiration of 4 months from the first publication of notice of administration or within 30 days from the timely filing of a claim, whichever occurs

1 later, a personal representative or other interested person  
2 may file a written objection to a claim. ~~An objection filed~~  
3 ~~to an unmatured claim matures the claim for the purpose of~~  
4 ~~bringing an action on the claim.~~ If an objection is filed,  
5 the person filing it shall serve a copy of the objection by  
6 registered or certified mail to the address of the claimant as  
7 shown on the claim or by delivery to the claimant to whose  
8 claim the person objects or the claimant's attorney of record,  
9 if any, not later than 10 days after the objection has been  
10 filed, and also on the personal representative if the  
11 objection is filed by any interested person other than the  
12 personal representative. The failure to serve a copy of the  
13 objection constitutes an abandonment of the objection.

14 (3) The claimant is limited to a period of 30 days  
15 from the date of service of an objection within which to bring  
16 an independent action upon the claim, or a declaratory action  
17 to establish the validity and amount of an unmatured claim  
18 which is not yet due but which is certain to become due in the  
19 future, or a declaratory action to establish the validity of a  
20 contingent claim upon which no cause of action has accrued on  
21 the date of service of an objection and that may or may not  
22 become due in the future and within which to file written  
23 notice of such action in the estate proceeding. For good  
24 cause, the court may extend the time for filing an objection  
25 to any claim or may extend the time for serving the objection,  
26 and may likewise extend the time for filing an action or  
27 proceeding, ~~and filing notice of the action or proceeding;~~  
28 ~~after objection is filed.~~ The extension of time shall be  
29 granted only after notice. No action or proceeding on the  
30 claim shall be brought against the personal representative  
31 after the time limited above, and any such claim is thereafter

1 forever barred without any court order. If an objection is  
2 filed to the claim of any creditor and an action is brought by  
3 the creditor to establish his claim, a judgment establishing  
4 the claim shall give it no priority over claims of the same  
5 class to which it belongs.

6 (4) If an unmatured claim has not become due before  
7 the time for distribution of an estate, the personal  
8 representative may prepay the full amount of principal plus  
9 accrued interest due on the claim, without discount and  
10 without penalty, regardless of any prohibition against  
11 prepayment or provision for penalty in any instrument on which  
12 the claim is founded. If the claim is not prepaid, no order  
13 of discharge may be entered until the creditor and personal  
14 representative have filed an agreement disposing of the claim,  
15 or in the absence of an agreement until the court provides for  
16 payment by one of the following methods:

17 (a) Requiring the personal representative to reserve  
18 such assets as the court determines to be adequate to pay the  
19 claim when it becomes due, and, in fixing the amount to be  
20 reserved, the court may determine the value of any security or  
21 collateral to which the creditor may resort for payment of the  
22 claim and may direct the reservation, if necessary, of  
23 sufficient assets to pay the claim or to pay the difference  
24 between the value of any security or collateral and the amount  
25 necessary to pay the claim. If the estate is insolvent, the  
26 court may direct a proportionate amount to be reserved. The  
27 court shall direct that the amount reserved be retained by the  
28 personal representative until the time that the claim becomes  
29 due, and that so much of the reserved amount as is not used  
30 for payment, be distributed thereafter according to law; or  
31

1       **(b) Requiring that the claim be adequately secured by**  
2 **a mortgage, pledge, bond, trust, guaranty or other security,**  
3 **as may be determined by the court, the security to remain in**  
4 **effect until the time that the claim becomes due, and that so**  
5 **much of the security or collateral as is not needed for**  
6 **payment be distributed thereafter according to law; or**

7       **(c) Making such other provision for the disposition or**  
8 **satisfaction of the claim as is equitable, and in a manner so**  
9 **as not to delay unreasonably the closing of the estate.**

10       **(5) If no cause of action has accrued on a contingent**  
11 **claim before the time for distribution of an estate, no order**  
12 **of discharge may be entered until the creditor and the**  
13 **personal representative have filed an agreement disposing of**  
14 **the claim, or in the absence of such agreement until:**

15       **(a) The court determines that the claim is adequately**  
16 **secured or that it has no value;**

17       **(b) Three months from the date on which a cause of**  
18 **action accrues upon the claim, provided that no action on the**  
19 **claim is then pending;**

20       **(c) Five years from the date of first publication of**  
21 **notice of administration; or**

22       **(d) The court provides for payment of the claim upon**  
23 **the happening of the contingency by one of the methods**  
24 **described in paragraph (a), paragraph (b), or paragraph (c) of**  
25 **subsection (4).**

26  
27 **whichever occurs first. No action or proceeding may be**  
28 **brought against the personal representative on the claim after**  
29 **the time limited above, and any such claim shall thereafter be**  
30 **forever barred without order of court. If an action is**  
31 **brought within the time limited above, a judgment establishing**

1 the claim shall give it no priority over claims of the same  
2 class to which it belongs.

3 ~~(6)(4)~~ No interest shall be paid by the personal  
4 representative or allowed by the court on a claim until the  
5 expiration of 5 calendar months from the first publication of  
6 the notice of administration, unless the claim is founded on a  
7 written obligation of the decedent providing for the payment  
8 of interest. Interest shall be paid by the personal  
9 representative on written obligations of the decedent  
10 providing for the payment of interest. On all other claims,  
11 interest shall be allowed and paid beginning 5 months from the  
12 first publication of the notice of administration.

13 ~~(7)(5)~~ The court may determine all issues concerning  
14 claims or matters not requiring trial by jury.

15 Section 2. This act shall take effect on October 1,  
16 1986.

17  
18  
19  
20  
21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
22 COMMITTEE SUBSTITUTE FOR  
23 Senate Bill 536

24 Committee Substitute for Senate Bill 536 details the  
25 procedures for protecting and preserving unmatured and  
26 contingent claims.  
27  
28  
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30  
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By Representative Dudley

1 A bill to be entitled  
2 An act relating to probate; amending ss.  
3 733.705 and 733.707, F.S., providing for the  
4 protection and preservation of unmatured and  
5 contingent claims on an estate; providing an  
6 effective date.  
7

8 Be It Enacted by the Legislature of the State of Florida:  
9

10 Section 1. Subsections (2) and (3) of section 733.705,  
11 Florida Statutes, are amended to read:

12 733.705 Payment of and objection to claims.--

13 (2) On or before the expiration of 4 months from the  
14 first publication of notice of administration or within 30  
15 days from the timely filing of a claim, whichever occurs  
16 later, a personal representative or other interested person  
17 may file a written objection to a claim. ~~An objection filed~~  
18 ~~to an unmatured claim matures the claim for the purpose of~~  
19 ~~bringing an action on the claim.~~ If an objection is filed  
20 the person filing it shall serve a copy of the objection by  
21 registered or certified mail to the address of the claimant as  
22 shown on the claim or by delivery to the claimant to whose  
23 claim the person objects or the claimant's attorney of record,  
24 if any, not later than 10 days after the objection has been  
25 filed, and also on the personal representative if the  
26 objection is filed by any interested person other than the  
27 personal representative. The failure to serve a copy of the  
28 objection constitutes an abandonment of the objection.

29 (3) The claimant is limited to a period of 30 days  
30 from the date of service of an objection within which to bring  
31 an independent action upon the claim or a declaratory action

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1 to establish the validity and amount of an unmatured claim 1.28  
 2 which is not yet due but which is certain to become due in the 1.29  
 3 future and within which to file written notice of such action 1.30  
 4 in the estate proceeding. With respect to a contingent claim 1:1us  
 5 upon which no cause of action has accrued as of the date of 1.32  
 6 service of an objection and which may or may not become due in  
 7 the future, the claimant shall be limited to 3 months from the 1.33  
 8 date the cause of action accrues within which to bring an  
 9 independent action upon the claim. For good cause, the court 1.35  
 10 may extend the time for filing an objection to any claim or 1.36  
 11 may extend the time for serving the objection, and may  
 12 likewise extend the time for filing an action or proceeding, 1.37  
 13 and filing notice of the action or proceeding, after objection 1.38  
 14 is filed. The extension of time shall be granted only after 1.40  
 15 notice. No action or proceeding on the claim shall be brought 1.41  
 16 against the personal representative after the time limited 1.42  
 17 above, and any such claim shall thereafter be ~~is~~ forever 1:10s  
 18 barred without any court order. If an objection is filed to 1.44  
 19 the claim of any creditor and an action is brought by the 1.45  
 20 creditor to establish his claim, a judgment establishing the  
 21 claim shall give it no priority over claims of the same class 1.46  
 22 to which it belongs.

23 Section 2. Subsection (3) is added to section 733.707, 1.47  
 24 Florida Statutes, to read:

25 733.707 Order of payment of expenses and 1.48  
 26 obligations.--

27 (3) If an unmatured claim has not become due before 1:1us  
 28 the time for distribution of an estate, or if no cause of 1.50  
 29 action has accrued on a contingent claim before the time of  
 30 such distribution, no order of discharge of the personal 1.51  
 31 representative shall be entered unless and until the creditor 1.52

1 and personal representative have filed an agreement disposing  
2 of the claim, or in the absence of such agreement until the 1.54  
3 court shall provide for payment by one of the following  
4 methods. 1.55

5 (a) Requiring the personal representative to reserve 1.1us  
6 such assets as the court shall determine to be adequate to pay 1.56  
7 such claim when it shall, or may, become due and payable, and 1.57  
8 in fixing the amount to be reserved, the court may determine  
9 the value of any security or collateral to which the creditor 1.58  
10 may resort for payment of the claim and may direct the  
11 reservation, if necessary, of sufficient assets to pay the 1.59  
12 claim or to make up the difference between the value of any 1.60  
13 security or collateral and the amount necessary to pay the  
14 claim. In the event that the estate is insolvent, the court 1.61  
15 may direct a proportionate amount to be reserved. The court 1.63  
16 shall direct that the amount to be reserved shall be retained  
17 by the personal representative until such time as the claim 1.64  
18 shall, or may, become due and payable, and that so much of the 1.65  
19 reserved amount as is not needed for payment when the claim  
20 has become due and payable, shall be thereafter distributed 1.66  
21 according to law;

22 (b) Requiring that the claim be adequately secured by 1.1us  
23 means of a mortgage, pledge, bond, trust, guaranty, or other 1.68  
24 security, as may be determined by the court, such security to  
25 remain in effect until such time as the claim shall, or may, 1.69  
26 become due and payable, and that so much of said security or 1.70  
27 collateral as is not needed for payment when the claim has  
28 become due and payable shall be thereafter distributed 1.71  
29 according to law;  
30  
31

1	<u>(c) Requiring payment of the present value of the</u>	1.72
2	<u>claim, as agreed upon by the claimant and the personal</u>	
3	<u>representative; or</u>	1.73
4	<u>(d) Making such other provisions for the disposition</u>	1.74
5	<u>or satisfaction of the claim as shall be equitable, and in</u>	1.74
6	<u>such manner as not to delay unreasonably the closing of the</u>	1.75
7	<u>estate.</u>	
8	Section 3. This act shall take effect October 1, 1986	1.76
9		
10		
11		
12	*****	
13	HOUSE SUMMARY	
14	Provides procedures for the protection and preservation	
15	of unmatured and contingent claims on an estate.	
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By Committee on Judiciary and Representative Dudley

## A bill to be entitled

An act relating to probate; amending s.  
733.705, F.S., providing for the protection and  
preservation of unmatured and contingent claims  
on an estate; providing an effective date.

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

Section 1. Section 733.705, Florida Statutes, is  
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733.705 Payment of and objection to claims.--

(1) The personal representative shall pay all claims within 1 year from the date of first publication of notice of administration, provided that the time shall be extended with respect to claims in litigation, unmatured claims and contingent claims for the period necessary to dispose of such claims pursuant to subsections (3), (4), and (5), and for good cause the court may extend the time for payment of any claim.

No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 4 months from the first publication of notice of administration. If any person brings an action against a personal representative within the 4 months on any claim to which the personal representative has filed no objection, the plaintiff shall not receive any costs or attorneys' fees if he prevails, nor shall the judgment change the class of the claim for payment under this code.

(2) On or before the expiration of 4 months from the first publication of notice of administration or within 30 days from the timely filing of a claim, whichever occurs later, a personal representative or other interested person

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1	may file a written objection to a claim. An-objection-filed	1.10s
2	<del>to-an-unmatured-claim-matures-the-claim-for-the-purpose-of</del>	
3	<del>bringing-an-action-on-the-claim.</del> If an objection is filed,	1.29
4	the person filing it shall serve a copy of the objection by	1.30
5	registered or certified mail to the address of the claimant as	
6	shown on the claim or by delivery to the claimant to whose	1.32
7	claim the person objects or the claimant's attorney of record,	
8	if any, not later than 10 days after the objection has been	1.33
9	filed, and also on the personal representative if the	1.35
10	objection is filed by any interested person other than the	1.36
11	personal representative. The failure to serve a copy of the	1.37
12	objection constitutes an abandonment of the objection.	
13	(3) The claimant is limited to a period of 30 days	1.38
14	from the date of service of an objection within which to bring	1.39
15	an independent action upon the <u>claim, or a declaratory action</u>	1.40
16	<u>to establish the validity and amount of an unmatured claim</u>	
17	<u>which is not yet due but which is certain to become due in the</u>	1.41
18	<u>future, or a declaratory action to establish the validity of a</u>	
19	<u>contingent claim upon which no cause of action has accrued on</u>	1.42
20	<u>the date of service of an objection and that may or may not</u>	1.43
21	<u>become due in the future,</u> and within which to file written	1.44
22	notice of such action in the estate proceeding. For good	1.45
23	cause, the court may extend the time for filing an objection	
24	to any claim or may extend the time for serving the objection,	1.46
25	and may likewise extend the time for filing an action or	1.47
26	proceeding, and filing notice of the action or proceeding,	
27	after objection is filed. The extension of time shall be	1.50
28	granted only after notice. No action or proceeding on the	1.51
29	claim shall be brought against the personal representative	
30	after the time limited above, and any such claim is <u>thereafter</u>	1.52
31	forever barred without any court order. If an objection is	1.54

1 filed to the claim of any creditor and an action is brought by 1.55  
 2 the creditor to establish his claim, a judgment establishing  
 3 the claim shall give it no priority over claims of the same 1.56  
 4 class to which it belongs.

5 (4) If an unmatured claim has not become due before 1:1us  
 6 the time for distribution of an estate, the personal 1.58  
 7 representative may prepay the full amount of principal plus  
 8 accrued interest due on the claim, without discount and 1.59  
 9 without penalty, regardless of any prohibition against 1.60  
 10 prepayment or provision for penalty in any instrument on which  
 11 the claim is founded. If the claim is not prepaid, no order 1.61  
 12 of discharge shall be entered until the creditor and personal  
 13 representative have filed an agreement disposing of the claim, 1.62  
 14 or in the absence of an agreement until the court shall 1.63  
 15 provide for payment by one of the following methods: 1.64

16 (a) Requiring the personal representative to reserve 1:1us  
 17 such assets as the court shall determine to be adequate to pay 1.65  
 18 the claim when it becomes due, and in fixing the amount to be 1.66  
 19 reserved, the court may determine the value of any security or  
 20 collateral to which the creditor may resort for payment of the 1.67  
 21 claim and may direct the reservation, if necessary, of  
 22 sufficient assets to pay the claim or to pay the difference 1.68  
 23 between the value of any security or collateral and the amount 1.69  
 24 necessary to pay the claim. If the estate is insolvent, the 1.70  
 25 court may direct a proportionate amount to be reserved. The 1.71  
 26 court shall direct that the amount reserved shall be retained  
 27 by the personal representative until the time that the claim 1.72  
 28 becomes due, and that so much of the reserved amount as is not  
 29 used for payment, shall be distributed thereafter according to 1.73  
 30 law;  
 31

1	<u>(b) Requiring that the claim be adequately secured by</u>	1.74
2	<u>a mortgage, pledge, bond, trust, guaranty or other security,</u>	
3	<u>as may be determined by the court, the security to remain in</u>	1.75
4	<u>effect until the time that the claim becomes due, and that so</u>	1.76
5	<u>much of the security or collateral as is not needed for</u>	
6	<u>payment shall be distributed thereafter according to law; or</u>	1.77
7	<u>(c) Making such other provision for the disposition or</u>	1.78
8	<u>satisfaction of the claim as shall be equitable, and in a</u>	
9	<u>manner so as not to delay unreasonably the closing of the</u>	1.79
10	<u>estate.</u>	
11	<u>(5) If no cause of action has accrued on a contingent</u>	1.80
12	<u>claim before the time for distribution of an estate, no order</u>	
13	<u>of discharge shall be entered until the creditor and the</u>	1.81
14	<u>personal representative have filed an agreement disposing of</u>	
15	<u>the claim, or in the absence of such agreement until;</u>	1.82
16	<u>(a) The court determines that the claim is adequately</u>	1.83
17	<u>secured or that it has no value;</u>	
18	<u>(b) Three months from the date on which a cause of</u>	1.84
19	<u>action accrues upon the claim, provided that no action on the</u>	
20	<u>claim is then pending;</u>	2.1
21	<u>(c) Five years from the date of first publication of</u>	1:1us
22	<u>notice of administration; or</u>	2.2
23	<u>(d) The court provides for payment of the claim upon</u>	1:1us
24	<u>the happening of the contingency by one of the methods</u>	2.3
25	<u>described in subsection (4)(a), (b) or (c); whichever occurs</u>	2.4
26	<u>first. No action or proceeding shall be brought against the</u>	2.5
27	<u>personal representative on the claim after the time limited</u>	2.6
28	<u>above, and any such claim shall thereafter be forever barred</u>	
29	<u>without order of court. If an action is brought within the</u>	2.7
30	<u>time limited above, a judgment establishing the claim shall</u>	
31		

1	<u>give it no priority over claims of the same class to which it</u>	2.8
2	<u>belongs.</u>	
3	<del>(6)</del> <del>(4)</del> No interest shall be paid by the personal	2.9
4	representative or allowed by the court on a claim until the	2.10
5	expiration of 5 calendar months from the first publication of	2.11
6	the notice of administration, unless the claim is founded on a	2.12
7	written obligation of the decedent providing for the payment	2.13
8	of interest. Interest shall be paid by the personal	2.14
9	representative on written obligations of the decedent	2.15
10	providing for the payment of interest. On all other claims,	2.16
11	interest shall be allowed and paid beginning 5 months from the	2.17
12	first publication of the notice of administration.	
13	<del>(7)</del> <del>(5)</del> The court may determine all issues concerning	1:1us
14	claims or matters not requiring trial by jury.	2.19
15	Section 2. This act shall take effect October 1, 1986.	2.20
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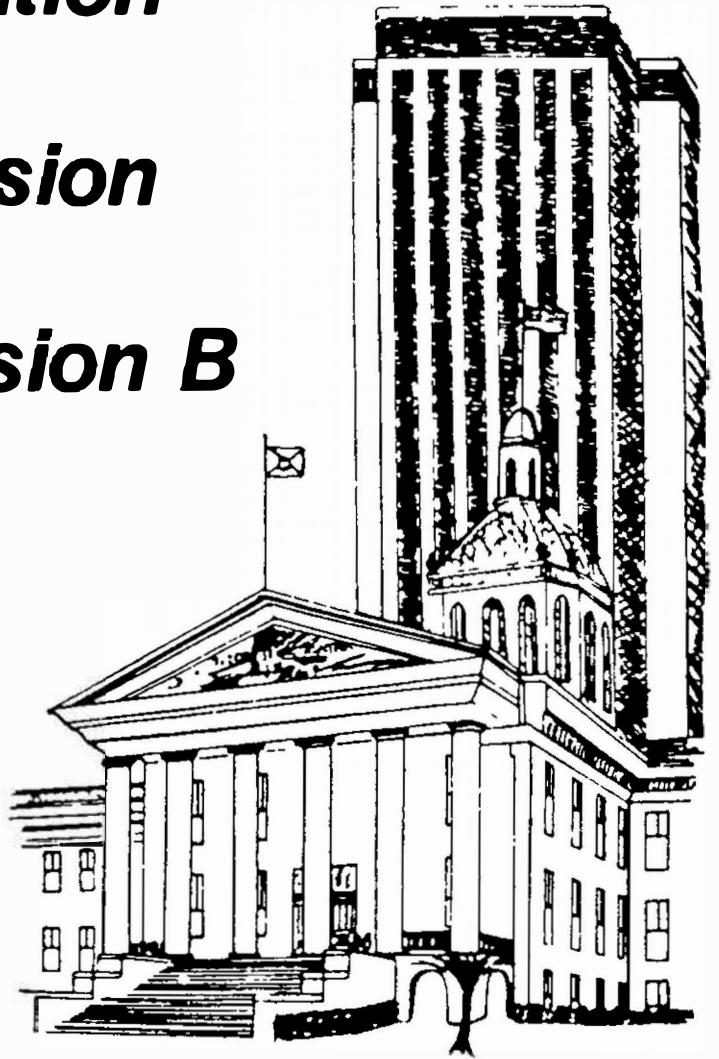


# **FLORIDA LEGISLATURE**

## ***History of Legislation***

### ***1986 Regular Session***

### ***1986 Special Session B***



**prepared by:**

***Joint Legislative Management Committee***

**Legislative Information Division**

**Capitol Building, Room 826 – 488-4371**

## HISTORY OF SENATE BILLS

**S 530 (CONTINUED)**

treated wastes into underground drinking waters or aquifers, deletes provision re direct pumping of certain wastes into Floridan & Biscayne Aquifers, provides penalties. Amends 403 859, 860 Effective Date Upon becoming law

03/17/86 SENATE Prefiled

04/10/86 SENATE Introduced, referred to Natural Resources and Conservation—SJ 73

04/25/86 SENATE Extension of time granted Committee Natural Resources and Conservation

05/12/86 SENATE Extension of time granted Committee Natural Resources and Conservation

06/07/86 SENATE Died in Committee on Natural Resources and Conservation

**S 531 GENERAL BILL by Johnson (Identical H 53, Compare S 598, S 722)**

Graduation Requirement/Speech/Debate, provides that course in speech & debate may be taken to satisfy credit requirement in performing arts. Amends 232 246 Effective Date 07/01/86

03/17/86 SENATE Prefiled

04/10/86 SENATE Introduced, referred to Education—SJ 73

04/21/86 SENATE Extension of time granted Committee Education

05/05/86 SENATE Extension of time granted Committee Education

05/19/86 SENATE Extension of time granted Committee Education

05/26/86 SENATE Extension of time granted Committee Education

06/07/86 SENATE Died in Committee on Education

**S 532 GENERAL BILL by Johnson**

Scuba Diving, creates Scuba Instruction Board & provides for its composition, provides for regulation of instructors & their assistants, provides for examination & licensure of instructors, provides for renewal of licenses, provides for adoption of rules, establishes guidelines for scuba instructor training schools & provides for licensure of such schools, etc. Amends 20 30, 861 065 Effective Date 10/01/86

03/17/86 SENATE Prefiled

04/10/86 SENATE Introduced, referred to Economic, Community and Consumer Affairs; Health and Rehabilitative Services; Natural Resources and Conservation; Appropriations—SJ 73

04/23/86 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

05/06/86 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

05/22/86 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

06/07/86 SENATE Died in Committee on Economic, Community and Consumer Affairs

**S 533 GENERAL BILL/CS by Governmental Operations; Johnson (Similar H 1318, Compare H 1388)**

Florida Artists Hall of Fame, creates Florida Artists Hall of Fame & provides for its location; provides procedures for selecting members to Hall of Fame Appropriation \$20,000 Effective Date 07/01/86, or upon becoming law, whichever occurs later

03/17/86 SENATE Prefiled

04/10/86 SENATE Introduced, referred to Governmental Operations; Rules and Calendar, Appropriations—SJ 74

04/17/86 SENATE On Committee agenda—Governmental Operations, 04/21/86, 2 00 pm, Room—H

04/21/86 SENATE Comm Report. CS by Governmental Operations—SJ 121

04/22/86 SENATE CS read first time—SJ 132, Now in Rules and Calendar—SJ 121

05/02/86 SENATE Extension of time granted Committee Rules and Calendar

05/16/86 SENATE Extension of time granted Committee Rules and Calendar

05/21/86 SENATE On Committee agenda—Rules and Calendar, 05/22/86, 12 30 pm, Room—A—Cancelled

05/27/86 SENATE On Committee agenda—Rules and Calendar, 05/28/86, 1 00 pm, Room 1—C

05/28/86 SENATE Comm Report Favorable by Rules and Calendar—SJ 512

05/30/86 SENATE Now in Appropriations—SJ 512

06/03/86 SENATE Withdrawn from Appropriations—SJ 618; Placed on Calendar

06/05/86 SENATE Placed on Special Order Calendar—SJ 710, CS passed, YEAS 29 NAYS 0—SJ 747

06/05/86 HOUSE In Messages

06/06/86 HOUSE Received, placed on Calendar—HJ 1038

06/07/86 HOUSE Died on Calendar, Iden./Sim./Compare Bill passed, refer to HB 1388 (Ch 86-169)

**S 534 GENERAL BILL by Johnson (Similar ENG/H 1287)**

Art Sales/Consignment, provides restrictions upon sale of art on consignment, requires written agreements & specifies certain provisions, creates certain warranties of authenticity, provides for construction of warranties & limitations, provides for effect of act on existing rights & liabilities, limits liability in certain circumstances, provides penalty & exemptions, etc. Effective Date 10/01/86

03/17/86 SENATE Prefiled

04/10/86 SENATE Introduced, referred to Commerce, Judiciary—Civil—SJ 74

04/15/86 SENATE On Committee agenda—Commerce, 04/17/86, 9:30 am, Room—A

**S 534 (CONTINUED)**

04/17/86 SENATE Comm Report Favorable by Commerce—SJ 120

04/18/86 SENATE Now in Judiciary—Civil—SJ 120

05/06/86 SENATE Extension of time granted Committee Judiciary—Civil

05/09/86 SENATE On Committee agenda—Judiciary—Civil, 05/13/86, 1 00 pm, Room—A

05/13/86 SENATE Comm Report Favorable by Judiciary—Civil, placed on Calendar—SJ 280

05/28/86 SENATE Placed on Special Order Calendar—SJ 400, Iden /Sim House Bill substituted, Laid on table under Rule, Iden / Sim /Compare Bill passed, refer to HB 1287 (Ch. 86-118)—SJ 464

**S 535 GENERAL BILL by D. Childers (Identical H 637)**

Palm Beach Expressway Authority, abolishes Palm Beach Expressway Authority Repeals 345 77- 779 Effective Date 10/01/86

03/18/86 SENATE Prefiled

04/10/86 SENATE Introduced, referred to Transportation—SJ 74

04/21/86 SENATE Extension of time granted Committee Transportation

05/05/86 SENATE Extension of time granted Committee Transportation

05/09/86 SENATE On Committee agenda—Transportation, 05/13/86, 2 00 pm, Room—C—Temporarily postponed

05/19/86 SENATE Extension of time granted Committee Transportation

05/23/86 SENATE On Committee agenda—Transportation, 05/27/86, 9 00 am, Room—C—Temporarily postponed

06/02/86 SENATE Extension of time granted Committee Transportation

06/07/86 SENATE Died in Committee on Transportation

**S 536 GENERAL BILL/CS/ENG by Judiciary—Civil; Scott (Similar CS/H 462)**

Decedents' Estates/Claims Protection, provides for payment of claims & protection & preservation of unmatured & contingent claims Amends 733 705 Effective Date 10/01/86

03/19/86 SENATE Prefiled

04/10/86 SENATE Introduced, referred to Judiciary—Civil—SJ 74

04/24/86 SENATE On Committee agenda—Judiciary—Civil, 04/28/86, 2 00 pm, Room—B

04/28/86 SENATE Comm Report: CS by Judiciary—Civil, placed on Calendar—SJ 179

05/01/86 SENATE CS read first time—SJ 180

05/08/86 SENATE Placed on Consent Calendar—SJ 223, CS passed as amended, YEAS 39 NAYS 0—SJ 232

05/13/86 HOUSE In Messages

05/19/86 HOUSE Received, referred to Appropriations—HJ 420

06/02/86 HOUSE Withdrawn from Appropriations—HJ 712, Placed on Calendar

06/03/86 HOUSE Placed on Special Order Calendar

06/04/86 HOUSE Substituted for CS/HB 462, Read second time, Read third time; CS passed, YEAS 110 NAYS 0—HJ 902

06/04/86 Ordered enrolled—SJ 626

06/25/86 Signed by Officers and presented to Governor

07/09/86 Approved by Governor, Chapter No 86-249

**S 537 GENERAL BILL by Scott (Identical H 1098)**

Liability Insurance/Condo Property, provides for prior approval by Insurance Dept of rates for liability insurance covering common elements of condominium property; specifies content of filings & when filing becomes effective, provides that certain rating organization meetings are open to public, provides for review, public examination & hearings, provides that certain rates may remain in effect, etc. Creates 627 162- 167 Effective Date 10/01/86

03/19/86 SENATE Prefiled

04/10/86 SENATE Introduced, referred to Commerce—SJ 74

04/28/86 SENATE Extension of time granted Committee Commerce, On Committee agenda—Commerce, 04/30/86, 9:00 am, Room—A—Not considered

05/01/86 SENATE On Committee agenda—Commerce, 05/05/86, 2 00 pm, Room—A—Temporarily postponed

05/13/86 SENATE Extension of time granted Committee Commerce

06/07/86 SENATE Died in Committee on Commerce

**S 538 GENERAL BILL/CS by Economic, Community and Consumer Affairs; Stuart (Similar CS/CS/H 742, H 11-B, Compare S 1131)**

Psychological Services, removes provisions re regulation of clinical social workers, marriage & family therapists & mental health counselors from Psychological Services chapter & creates "Counseling & Clinical Therapy Act" which provides for their licensure by examination & endorsement & for license renewal, creates Bd of Counseling & Clinical Therapy; corrects cross references, provides for review & repeal, etc. Amends Ch 490, 232 02, 394 455, creates Ch 491 Effective Date 10/01/86

03/19/86 SENATE Prefiled

04/10/86 SENATE Introduced, referred to Economic, Community and Consumer Affairs, Appropriations—SJ 74

04/23/86 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

05/06/86 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

05/15/86 SENATE On Committee agenda—Economic, Community and Consumer Affairs, 05/19/86, 1 00 pm, Room—H

(CONTINUED ON NEXT PAGE)

## HISTORY OF HOUSE BILLS

**H 456 (CONTINUED)**

06/03/86 SENATE In Messages  
06/04/86 SENATE Received, referred to Health and Rehabilitative Services, Judiciary-Civil -SJ 622  
06/07/86 SENATE Died in Committee on Health and Rehabilitative Services

**H 457**

02/25/86 HOUSE Withdrawn -HJ 50

**H 458 GENERAL BILL by Locke (Identical S 995)**

Retirement/Enrollment Period; provides for additional optional period of enrollment in FRS for certain officers or employees of other retirement systems. Amends 121 051 Effective Date: 07/01/86

02/20/86 HOUSE Prefiled  
02/27/86 HOUSE Referred to Retirement, Personnel & Collective Bargaining; Appropriations  
04/08/86 HOUSE Introduced, referred to Retirement, Personnel & Collective Bargaining; Appropriations -HJ 51  
04/14/86 HOUSE On subcommittee agenda—Retirement, Personnel & Collective Bargaining, 04/16/86, upon adjournment of full committee, 317 HOB—Temporarily passed  
06/07/86 HOUSE Died in Committee on Retirement, Personnel & Collective Bargaining

**H 459 GENERAL BILL by Hill and others**

Yacht & Shipbuilders; provides definitions; provides for rule making, administration, & registration; provides for suspension or revocation of registration; provides for fees & for review & repeal. Effective Date: 10/01/86

02/20/86 HOUSE Prefiled  
02/27/86 HOUSE Referred to Regulatory Reform; Appropriations  
04/07/86 HOUSE Subreferred to Subcommittee on Business Regulation  
04/08/86 HOUSE Introduced, referred to Regulatory Reform, Appropriations -HJ 51, Subreferred to Subcommittee on Business Regulation  
06/07/86 HOUSE Died in Committee on Regulatory Reform

**H 460 GENERAL BILL by Grindle and others (Similar CS/CS/S 294, Compare H 7, H 128, CS/H 220, H 842, H 8-B, S 36, CS/S 126, S 184, S 251, S 647, S 662)**

DUI or DWI/Driver's License; provides for revocation or nonissuance of drivers' licenses for persons under specified ages who have been found guilty of certain alcohol or drug-related offenses; authorizes restricted driving privileges, provides felony penalties for 4th or subsequent DUI or DWI conviction; requires substance abuse course for issuance of driver's license to person who has certain previous convictions, etc. Amends Chs 39, 316, 322, creates 322.055. Effective Date: 10/01/86

02/20/86 HOUSE Prefiled  
02/27/86 HOUSE Referred to Criminal Justice, Appropriations  
04/08/86 HOUSE Introduced, referred to Criminal Justice; Appropriations -HJ 51  
04/17/86 HOUSE On Committee agenda—Criminal Justice, 04/21/86, 1:15 pm, 314 HOB—Workshop  
06/07/86 HOUSE Died in Committee on Criminal Justice, Iden./Sim / Compare bill passed, refer to HB 8-B (Ch. 86-296)

**H 461 LOCAL BILL by Shackelford**

Ellenton Fire Control District; (Manatee Co.) increases Ellenton Fire Control District rates in schedule of special assessment. Effective Date 07/13/86.

02/20/86 HOUSE Prefiled  
02/27/86 HOUSE Referred to Community Affairs; Finance & Taxation  
04/08/86 HOUSE Introduced, referred to Community Affairs, Finance & Taxation -HJ 51  
04/14/86 HOUSE On Committee agenda—Community Affairs, 04/16/86, 3:30 pm, 314 HOB  
04/16/86 HOUSE Preliminary Committee Action by Community Affairs. Favorable  
04/17/86 HOUSE Comm Report. Favorable by Community Affairs -HJ 159; Now in Finance & Taxation  
04/28/86 HOUSE Withdrawn from Finance & Taxation -HJ 195; Placed on Calendar  
05/14/86 HOUSE Placed on Local Calendar, Read second and third times; Passed, YEAS 119 NAYS 0 -HJ 393; Immediately certified  
05/14/86 SENATE In Messages  
06/02/86 SENATE Received, referred to Rules and Calendar -SJ 535  
06/05/86 SENATE Considered by Rules and Calendar, placed on Local Calendar -SJ 00618 -SJ 657, Passed, YEAS 40 NAYS 0 -SJ 684  
06/05/86 Ordered enrolled  
06/27/86 Signed by Officers and presented to Governor  
07/13/86 Became Law without Governor's Signature, Chapter No 86-383

**H 462 GENERAL BILL/CS by Judiciary; Dudley (Similar CS/ENG/S 536)**

Probate/Estate Claims Protection, provides for protection & preservation of un-matured & contingent claims on an estate Amends 733.705. Effective Date 10/01/86

02/21/86 HOUSE Prefiled  
02/27/86 HOUSE Referred to Judiciary; Appropriations  
04/08/86 HOUSE Introduced, referred to Judiciary; Appropriations -HJ 51

**H 462 (CONTINUED)**

04/25/86 HOUSE Subreferred to Subcommittee on Consumer, Probate and Family Law, On subcommittee agenda—Judiciary, 04/29/86, 1:15 pm, 212 HOB

04/29/86 HOUSE Subcommittee Recommendation pending ratification by full Committee: Favorable, with amendment(s)

05/05/86 HOUSE On Committee agenda—Judiciary, 05/07/86, 3:30 pm, 214C  
05/07/86 HOUSE Preliminary Committee Action by Judiciary: Favorable, as a Committee Substitute

05/12/86 HOUSE Comm Report. CS by Judiciary -HJ 351, Now in Appropriations

05/22/86 HOUSE Withdrawn from Appropriations -HJ 500; Placed on Calendar

06/02/86 HOUSE Placed on Special Order Calendar

06/04/86 HOUSE Iden/Sim Senate Bill substituted, Laid on table under Rule, Iden/Sim /Compare Bill passed, refer to CS/SB 536 (Ch 86-249) -HJ 901

**H 463 GENERAL BILL by Press (Compare CS/H 220, CS/CS/S 294)**

DUI/DWI/Driver's License Suspension; provides minimum mandatory terms of imprisonment for certain persons who unlawfully operate a motor vehicle while their license is suspended or revoked for DUI/DWI violations. Amends 322 34 Effective Date 10/01/86

02/21/86 HOUSE Prefiled  
02/27/86 HOUSE Referred to Criminal Justice; Appropriations  
04/08/86 HOUSE Introduced, referred to Criminal Justice; Appropriations -HJ 51  
04/17/86 HOUSE On Committee agenda—Criminal Justice, 04/21/86, 1:15 pm, 314 HOB—Workshop  
06/07/86 HOUSE Died in Committee on Criminal Justice

**H 464 GENERAL BILL by Press and others**

DUI or DWI Repeat Offenses/Jail Time, removes restrictions upon penalties & driver's license revocations for repeat DUI/DWI offenses. Amends 316 193, 322 28. Effective Date 10/01/86

02/21/86 HOUSE Prefiled  
02/27/86 HOUSE Referred to Criminal Justice; Appropriations  
04/08/86 HOUSE Introduced, referred to Criminal Justice; Appropriations -HJ 51  
04/17/86 HOUSE On Committee agenda—Criminal Justice, 04/21/86, 1:15 pm, 314 HOB—Workshop  
06/07/86 HOUSE Died in Committee on Criminal Justice

**H 465 GENERAL BILL/CS/ENG by Criminal Justice; Hanson (Compare CS/ENG/S 60)**

Trespass & Larceny/Utility Fixtures; includes political subdivisions within term "utility" for purposes of provisions prohibiting trespass & larceny re utility or cable TV fixtures. Amends 812.14. Effective Date: 10/01/86.

02/21/86 HOUSE Prefiled  
02/27/86 HOUSE Referred to Criminal Justice; Appropriations  
04/03/86 HOUSE Subreferred to Subcommittee on Crimes and Penalties  
04/08/86 HOUSE Introduced, referred to Criminal Justice; Appropriations -HJ 51, Subreferred to Subcommittee on Crimes and Penalties, On subcommittee agenda—Criminal Justice, 04/09/86, 3:30 pm, 314 HOB

04/10/86 HOUSE On Committee agenda—Criminal Justice, 04/14/86, 1:15 pm, 314 HOB

04/14/86 HOUSE Preliminary Committee Action by Criminal Justice: Favorable, as a Committee Substitute

04/18/86 HOUSE Comm. Report. CS by Criminal Justice -HJ 170, Now in Appropriations

06/01/86 HOUSE Withdrawn from Appropriations -HJ 234, Placed on Calendar

05/21/86 HOUSE Placed on Special Order Calendar

05/27/86 HOUSE CS read first and second times, Amendments adopted -HJ 549

05/28/86 HOUSE Read third time, CS passed as amended, YEAS 110 NAYS 0 -HJ 567

05/28/86 SENATE In Messages

06/02/86 SENATE Received, referred to Judiciary-Criminal -SJ 538

06/07/86 SENATE Died in Committee on Judiciary-Criminal, Iden/Sim./ Compare bill passed, refer to CS/SB 60 (Ch 86-173)

**H 466 GENERAL BILL/CS by Education, K - 12; Stewart (Similar CS/S 1211, Compare H 1235)**

Educational Fundings/Handicapped; specifies funding for certain adult handicapped students; includes instruction for exceptional adult students in adult general education program. Amends 236 081, 228 072 Effective Date 07/01/86

02/21/86 HOUSE Prefiled  
02/27/86 HOUSE Referred to Education, K - 12, Appropriations  
04/08/86 HOUSE Introduced, referred to Education, K - 12, Appropriations -HJ 51, On subcommittee agenda—Education, K - 12, 04/09/86, 2:15 pm, 214C

04/09/86 HOUSE Subcommittee Recommendation pending ratification by full Committee. Favorable, with 4 amendments

04/10/86 HOUSE On Committee agenda—Education, K - 12, 04/14/86, 3:30 pm, 214C

(CONTINUED ON NEXT PAGE)

EXHIBIT 1

LEGISLATION REGARDING CONTINGENT  
AND UNMATURED CLAIMS PROPOSED BY THE  
PROBATE LAW COMMITTEE

18 1556

The Probate Law Committee has approved a proposed amendment to the Florida Probate Code to be submitted to the Real Property, Probate and Trust Law Section Executive Council for its consideration. The purpose of the amendment is to provide for a means of protecting and preserving contingent and unmatured claims, while at the same time allowing for the prompt closing of estates. The proposal includes a definition of each of these claims as follows:

(a) An unmatured claim is one which is not yet due but which is certain to become due in the future (Example: A claim on a promissory note signed by decedent to be paid on or before a date which falls after the decedent's death).

(b) A contingent claim is one upon which no cause of action has accrued, and which may or may not accrue after the decedent's death. (Example: A claim on a guaranty agreement signed by the decedent when the obligation of the principal is not in default at the time of decedent's death).

1. The Status of Present Law and the  
Object of the Proposed Legislation.

Present law clearly requires the holder of an unmatured or  
v contingent claim, as above defined, to file a written statement of the claim within 3 months from the time of the first publication of notice of administration. Section 733.702, Florida Statutes, provides that unless so filed, no claim, including unmatured and contingent claims, shall be binding on the estate, on the personal representative, or on any beneficiary.

The Supreme Court held in Furlong v. Leybourne, 171 So.2d 1 (Fla. 1965) that if a contingent claim for the right of subrogation in that case had not been filed, "it would have been barred." (page 5). Also, see Simpson v. First National Bank & Trust Co., 318 So.2d 209 (Fla. 4th DCA, 1975) which quoted the above statement from Furlong in connection with a contingent claim which had been filed for the right of contribution.

Once an unmatured or contingent claim is filed, the Personal Representative or other interested person may file an objection to it before the expiration of 4 months from the first publication of notice of administration. Whether an objection is filed or not, the claimant, the Personal Representative and the Court have no clearcut statutory guidelines to follow in disposing of such a claim, and the Florida decisions have not shed any light on the subject.

Although Furlong and Simpson recognized that contingent claims had to be filed, or else they would be barred, neither opinion suggested how the claimant's rights would be preserved or protected after it was filed. In Furlong the court said that by filing, the claimants had done all that was within their power for them to do to protect their interest. In Simpson, the court said in reference to a contingent claim for contribution,

"True it cannot be collected, but it can be recognized before statute runs."

When Furlong and Simpson were decided, and until May 3, 1984, the holder of an unmatured or contingent claim found himself in a hopeless situation. Under former Section 733.709, when a claim had not been paid, settled or otherwise disposed of and no proceeding was pending for the enforcement of it at the expiration of one year (formerly 3 years) from the date the claim was filed, the claim was barred forever. If an unmatured claim did not mature, or if a contingent claim did not become fixed, within that year (or 3 year) period, the creditor could never bring an action on it. This provision was repealed by Laws of Florida, Ch. 84-10, which in effect preserved creditors' rights on these types of claims until they mature or give rise to a cause of action. However, since an estate cannot be closed until all claims have been paid, settled or otherwise disposed of (Sec. 733.901), the repeal of Section 733.709 may result in a lengthy prolongation of the administration of an estate.

The intent of the proposed legislation is to continue to preserve the right to collect on such claims, and also allow for the prompt closing of estates.

(a) Effect of Filing an Objection  
to an Unmatured Claim

Under present law, the filing of an objection to an unmatured claim "matures it for the purpose of bringing an action on it." Section 733.705(2). It has uniformly been held that when a claim matures, the holder has an unconditional right to

immediate payment, and to bring an action and enforce payment. Therefore, if the statute is followed literally, an objection filed to a claim on a note which is not due until several years after the decedent's death will mature the note, and make it immediately due and payable. The Probate Law Committee feels that this is an unreasonable penalty to impose upon an estate for filing an objection to an unmatured claim. The Committee's proposed amendment would repeal that clause, and substitute a provision fashioned after former Section 733.18 that would give the holder of an unmatured claim which has been objected to, thirty days within which to bring an independent action solely to establish the validity and amount of the claim. If the validity and amount of the claim should be established, the creditor's right to enforce the claim at maturity would be preserved, which would also be true if no objection had been filed. In either case, the estate could not be closed until the claim had been paid, settled or otherwise disposed of. Section 733.901. The Committee's proposal would offer several methods, which are discussed below, of avoiding unduly prolonging the administration of the estate.

(b) Effect of Filing an Objection  
to a Contingent Claim

Under present law if a contingent claim is objected to, the claimant must bring an independent action on the claim within 30 days after service of the objection, and, unless the time is extended by the Court, no action may be brought upon the claim after that time. However, in most cases, the claimant will be unable to bring an action to recover upon the claim, because no cause of action will accrue until the contingency fixing the claim occurs. The only available cause of action might be a suit for declaratory judgment to determine its validity. If its validity is established, the creditor's right to enforce the claim when the contingency occurred in the future would be preserved, which would also be true if no objection had been filed. In either case, unless the claim were settled, the estate would have to remain open until the time when the contingency either occurred or did not occur. Without further legislation, the creditor would have the right to bring an action within the period of the applicable statute of limitations after the cause of action accrued. As in the case of an unmatured claim, the estate could not be closed until the contingent claim was paid, settled or otherwise disposed of. Section 733.901. The Committee proposal would limit the period for filing an action on a contingent claim to three months after the date on which the cause of action accrues. To avoid prolonging the administration of an estate, the Committee proposal offers several methods,

which are discussed below, of avoiding an unduly long administration in these estates while still preserving and protecting unmaturred and contingent claims.

### (c) Various Methods of Disposing of Unmature and Contingent Claims

As pointed out above, under present law, the Personal Representative can not be discharged, and the estate cannot be closed until the Personal Representative has made payment, settlement or other disposition of all claims. Section 733.901. Thus, if an unmaturred or contingent claim has not been paid, settled or otherwise disposed of, the estate must remain open until this requirement is met. The proposal of the Probate Law Committee authorizes the Court to provide for payment, settlement or other disposition of these claims in several ways in order that it will not be necessary to hold the estate open indefinitely. The Court may require the personal representative to reserve sufficient assets to satisfy the claim when it becomes due and payable; or, it may require that the estate, or the beneficiaries, secure the claim by a mortgage, guaranty, pledge, bond or other security; or, with the agreement of the claimant and the Personal Representative, it may require payment of the present value of the claim; or, it may make such other provision for its disposition as shall be equitable and will not unreasonably delay the closing of the estate. These provisions are based upon similar provisions found in Section 3-810 of the Uniform Probate Code; Surrogate's Court Procedure Act of New York, Section 1804; Purn's Pennsylvania Statutes (1976), Section 3387, 3388, and Kansas Statutes (1976), Section 59-2241.

### 2. Miscellaneous Amendment

The Committee's proposal would omit the statutory requirement presently in Section 733.705(3) that the claimant who brings an independent action on a claim within 30 days after an objection must file notice of such action in the estate proceedings. This is already required of the Personal Representative by Fla. Probate Rule 5.065. It is a matter of procedure and the Committee feels that it should be deleted from the statute.

### 3. Anticipated Opposition

The Probate Law Committee is not aware of any opposition to the proposed legislation from any organized group. It is likely, however, that some members of the bar may voice one or more of the following objections to it:

(a) The proposed amendment will prolong the administration of estates, which is contrary to the public policy of closing them as soon as possible. As pointed out above, under present law, an estate may be held open indefinitely to dispose of an unmatured or contingent claim. The proposed amendment will allow the Court to dispose of these claims and close an estate sooner than may be done under existing law.

(b) Persons who enter into contingent obligations are presumed to know that the law will bar their right to recover on them if the contingent obligor dies, and such persons should provide for themselves rather than have the law provide for them. This may be a valid comment with respect to a loan guaranty taken by a sophisticated institutional lender. However, not all contingent claims are acquired under formal contractual arrangements by sophisticated institutional lenders. Furthermore, subrogation and contribution claims (as in the Furlong and Simpson cases, supra), and other contingent claims may arise by operation of law with no opportunity for the holders of such claims to provide for themselves.

(c) If a contingent claim does not become fixed during the period of administration, it should be barred as a matter of public policy. The Committee does not agree with that position. It feels that death should not release a person from his obligation on a contingent claim, any more than it releases him from his obligation on a fixed claim.

(d) Everyone contracts with the knowledge that a bankruptcy court can modify contracts, and reduce or even eliminate obligations, and there is no reason why the probate court should not be able to do the same. The Committee does not feel that this is a sound analogy. The bankruptcy court is dealing with an insolvent debtor. When the probate court has an insolvent estate before it, creditors'



claims likewise may be reduced and sometimes even eliminated. However, even in bankruptcy, a contingent claim is allowable. Under the Bankruptcy Reform Act of 1978, the court is required to estimate a contingent claim for the purpose of allowance and fixing its right to share in the assets of the debtor. 11 U.S.C. §502(c). The Probate Law Committee's proposal is predicated upon its belief that public policy requires a decedent's estate, as well as a bankrupt's estate, to satisfy all claims filed, even those that are unmatured or contingent, to the extent of its financial ability.

#### 4. Impact

The Committee does not believe that the proposed legislation will have any fiscal impact on the State of Florida.

The Committee believes that the proposed legislation will have a beneficial impact upon the administration of estates in that it will facilitate the disposition of unmatured and contingent claims and thereby allow the prompt closing of estates. This would not only be of benefit to creditors who file claims of this type, but also to the beneficiaries who are interested in early distribution.

September 16, 1985.

---

Herman Ulmer, Jr.  
Member, Probate Law Committee



---

Wayne A. Wolf  
Chairman, Probate Law Committee

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April 8, 1986

18 1556

HAND-DELIVERED

The Honorable Edgar M. Dunn, Jr.  
Chairman, Senate Judiciary-Civil Committee  
Room 313, Senate Office Building  
Tallahassee, Florida 32301

Re: SB 536 by Langley re: Probate

Dear Mr. Chairman:

Senate Bill 536 is a product of the Probate Law Committee of the Real Property, Probate and Trust Law Section of The Florida Bar. It addresses the issue of handling contingent and unmatured claims. I am enclosing some background information concerning the proposal which should be of assistance to you and your staff.

I would appreciate this bill being agendaed for consideration as soon as possible. We would like to move this along rapidly.

Thank you for your consideration.

Sincerely yours,



William B. Wiley

WBW:ja  
Enclosure  
cc: James Scott  
Richard Langley

APR 10 1986

P.S. Senator Langley will have two additional bills that are products of the Section. They relate to technical title issues in conveying real property. They do not have bill numbers yet. When I receive them, I will pass the numbers along to you. We would also appreciate early consideration of these matters. Thanks again.

LAW OFFICES  
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DAVID W SPICER  
CHARLES A STAMPELOS  
GERALD B STERNSTEIN  
WILLIAM B WILEY

April 18, 1986

Senator James Scott  
346 Senate Office Building  
Tallahassee, Florida 32301

18 1556

Re: Senate Bill 536 re Contingent and Unmatured  
Claims Under Florida Probate Code

Dear Jim:

Since the prefiling of SB 536, Henry Trawick has suggested a number of changes to the Section's Probate Law Committee. All of those recommendations for amendment have been agreed to, and the bill that we wish to pass is much improved. I am enclosing a copy of the language that we wish to move. Because of the number of changes to the original proposed language, I suggest an amendment striking everything after the enacting clause and inserting the new bill as you see it.

The conceptual substance of the bill has not changed, and the explanatory matter that I previously sent to you is still applicable.

By copy of this letter, I am providing the revised language to Senator Dunn and Bob Lester of the Judiciary-Civil Committee. I would request that, with agreement on the proposed legislation as it now stands, that the bill be agendaed for early consideration by the Judiciary-Civil Committee. I will plan to have Bill Belcher from St. Petersburg appear before the Committee to explain what the bill does.

As always, call me if you have any questions. With best regards, I am

Very truly yours,

*William B. Wiley*  
William B. Wiley  
(Signed in Mr. Wiley's presence  
to avoid delay)

Enclosure

cc: ✓ Senator Edgar Dunn  
Mr. Bob Lester  
Representative Fred Dudley

RECEIVED

APR 19 1986

JUDICIARY CIVIL

A bill to be entitled

An act relating to the Probate Code; amending Section 733.705, Florida Statutes, 1985; providing for the payment of claims and the protection and preservation of unmatured and contingent claims, and providing an effective date.

Section 1. Section 733.705, Florida Statutes, 1985, is amended to read:

(1) The Personal Representative shall pay all claims within 1 year from the date of first publication of notice of administration, provided that the time shall be extended with respect to claims in litigation, unmatured claims and contingent claims for the period necessary to dispose of such claims pursuant to subsections (3), (4), and (5), and for good cause the court may extend the time for payment of any claim. No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 4 months from the first publication of notice of administration. If any person brings an action against a personal representative within the 4 months on any claim to which the personal representative has filed no objection, the plaintiff shall not receive any costs or attorneys' fees if he prevails, nor shall the judgment change the class of the claim for payment under this code.

(2) On or before the expiration of 4 months from the first publication of notice of administration or within 30 days from the timely filing of a claim, whichever occurs later, a personal representative or other interested person may file a written objection to a claim. An objection to an unmatured claim matures the claim for the purpose of bringing an action on the claim. If an objection is filed, the person filing it shall serve a copy of the objection by registered or

certified mail to the address of the claimant as shown on the claim or by delivery to the claimant to whose claim he objects or the claimant's attorney of record, if any, not later than 10 days after the objection has been filed, and also on the personal representative if the objection is filed by any interested person other than the personal representative. Failure to serve a copy of the objection constitutes an abandonment of the objection.

(3) 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 service of an objection and that may or may not become due in the future, and within which to file written notice of such action in the estate proceeding. For good cause, the court may extend the time for filing an objection to any claim or may extend the time for serving the objection, and may likewise extend the time for filing an action or proceeding, and filing notice of the action or proceeding after objection is filed. The extension of time shall be granted only after notice. No action or proceeding on the claim shall be brought against the personal representative after the time limited above, and any such claim is thereafter forever barred without any court order. If an objection is filed to the claim of any creditor and an action is brought by the creditor to establish his claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

(4) If an unmatured claim has not become due before the time for distribution of an estate, the personal representative may prepay the full amount of principal plus accrued interest due on the claim, without discount and without penalty, regardless of any prohibition against prepayment or provision for penalty in any instrument on which the claim is founded. If the claim is not prepaid, no order of discharge shall be entered until the creditor and personal representative have filed an agreement disposing of the claim, or in the absence of an agreement until the court shall provide for payment by one of the following methods:

(a) Requiring the personal representative to reserve such assets as the court shall determine to be adequate to pay the claim when it becomes due, and in fixing the amount to be reserved, the court may determine the value of any security or collateral to which the creditor may resort for payment of the claim and may direct the reservation, if necessary, of sufficient assets to pay the claim or to pay the difference between the value of any security or collateral and the amount necessary to pay the claim. If the estate is insolvent, the court may direct a proportionate amount to be reserved. The court shall direct that the amount reserved shall be retained by the personal representative until the time that the claim becomes due, and that so much of the reserved amount as is not used for payment, shall be distributed thereafter according to law; or

(b) Requiring that the claim be adequately secured by a mortgage, pledge, bond, trust, guaranty or other security, as may be determined by the court, the security to remain in effect until

the time that the claim becomes due, and that so much of the security or collateral as is not needed for payment shall be distributed thereafter according to law; or

(c) Making such other provision for the disposition or satisfaction of the claim as shall be equitable, and in a manner so as not to delay unreasonably the closing of the estate.

(5) If no cause of action has accrued on a contingent claim before the time for distribution of an estate, no order of discharge shall be entered until the creditor and the personal representative have filed an agreement disposing of the claim, or in the absence of such agreement until.

(a) The court determines that the claim is adequately secured or that it has no value, or

(b) Three (3) months from the date on which a cause of action accrues upon the claim, provided that no action on the claim is then pending, or

(c) Five (5) years from the date of first publication of notice of administration, or

(d) The Court provides for payment of the claim upon the happening of the contingency by one of the methods described in subsection (4)(a), (b) or (c),

whichever occurs first. No action or proceeding shall be brought against the personal representative on the claim after the time limited above, and any such claim shall thereafter be forever barred without order of court. If an action is brought within the time limited above, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

(6) (4) No interest shall be paid by the personal representative or allowed by the court on a claim until the expiration of 5 calendar months from the first publication of the notice of administration, unless the claim is founded on a written obligation of the decedent providing for the payment of interest. Interest shall be paid by the personal representative on written obligations of the decedent providing for the payment of interest. On all other claims, except contingent claims on which no cause of action has accrued, interest shall be allowed and paid beginning 5 months from the first publication of the notice of administration.

(7) (5) The court may determine all issues concerning claims or matters not requiring trial by jury.

Section 2. This act shall take effect on October 1, 1986.



## BILL ACTION REPORT

(XX-85: File with Secretary of Senate)

BILL NO. SB 536

COMMITTEE ON Judiciary-Civil

Scott  
Decedents' Estates/  
Claims Protection  
4/29/86

DATE April 28, 1986

DATE REPORTED 4/29/86

TIME 2:00 - 5:00 pm

FINAL ACTION:

PLACE Rm. B, S.O.B.

Favorably with \_\_\_\_\_ amendments

OTHER COMMITTEE REFERENCES:  
(In order shown)

  X   Favorably with Committee Substitute

No other reference

Unfavorably

OTHER:           Temporarily Passed

Reconsidered

Not Considered

THE VOTE WAS: Sen. Langley moved as a CS

FINAL BILL VOTE		SENATORS	TITLE AMENDMENT #A  moved by Langley		TITLE AMENDMENT #B  moved by Langley		AMENDMENT #C  moved by Langley					
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		Fox	FAVORABLE		FAVORABLE		FAVORABLE					
X		Frank										
X		Hair										
		Kiser										
X		Langley										
X		VICE CHAIRMAN Gersten										
		CHAIRMAN Dunn										
5	0	TOTAL										
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared ( )  
 A Senator appeared ( )  
 Sponsor's aide appeared ( )

# PROPOSED AMENDMENT A

## SENATE COMMITTEE AMENDMENT

SB 536

No. \_\_\_\_\_  
(reported favorably)

HB \_\_\_\_\_

The Committee on...Judiciary-Civil....recommended the following  
amendment which was moved by Senator.....and adopted:  
and failed:

1 Title Amendment

2

3 In title, on page 1....., line 3....., strike

4

5

6

7 "creating s. 733.7074, F.S.;"

8

9 If amendment is text from another bill insert:

10 Bill No.	Draft No.	With Changes?	No Yes
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CODING: Words stricken are deletions; words underlined are additions.

\*\*\*\*\*

\* Amendment No. \_\_, taken up by committee: Adopted \_ \*

\* Offered by \_\_\_\_\_ Failed \_ \*

\*\*\*\*\*

(Amendment No. \_\_\_\_ Adopted \_\_\_\_ Failed \_\_\_\_ Date \_\_/\_\_/\_\_)

18

1556

# PROPOSED AMENDMENT B

SENATE COMMITTEE AMENDMENT

SB 536

No. \_\_\_\_\_  
(reported favorably)

HB \_\_\_\_\_

The Committee on...Judiciary-Civil....recommended the following  
amendment which was moved by Senator.....and adopted:  
and failed:

1 Title Amendment

2

3 In title, on page 1....., line 4.....,

4

5

6

7 after the word "the"

8

9 If amendment is text from another bill insert:

Bill No.	Draft No.	With Changes?	No	Yes

11 insert:

12 payment of claims and the

13

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18 1556

CODING: Words stricken are deletions; words underlined are additions.

\*\*\*\*\*

\* Amendment No. \_\_, taken up by committee: Adopted \_ \*

\* Offered by \_\_\_\_\_ Failed \_ \*

\*\*\*\*\*

(Amendment No. \_\_\_\_ Adopted \_\_\_\_ Failed \_\_\_\_ Date \_\_/\_\_/\_\_)

# PROPOSED AMENDMENT C

SENATE COMMITTEE AMENDMENT

SB 536

No.

(reported favorably)

HB \_\_\_\_\_

The Committee on...Judiciary-Civil....recommended the following amendment which was moved by Senator.....and adopted: and failed:

1 Amendment

2

3 On page 1, lines 10 - to the end of the bill, strike

4

5

6

7 all of said lines

8

9 If amendment is text from another bill insert:

10 Bill No. Draft No. With Changes? No Yes

11 and insert:

12 Section 1. Section 733.705, Florida Statutes, is amended to  
13 read:

14 733.705 Payment of and objection to claims.--

15 (1) The personal representative shall pay all claims  
16 within 1 year from the date of first publication of notice of  
17 administration, provided that the time shall be extended with  
18 respect to claims in litigation, unmatured claims and  
19 contingent claims for the period necessary to dispose of such  
20 claims pursuant to subsections (3), (4), and (5). The court  
21 may extend the time for payment of any claim upon a showing of  
22 good cause. No personal representative shall be compelled to  
23 pay the debts of the decedent until after the expiration of 4  
24 months from the first publication of notice of administration.  
25 If any person brings an action against a personal  
26 representative within the 4 months on any claim to which the  
27 personal representative has filed no objection, the plaintiff  
28 shall not receive any costs or attorneys' fees if he prevails,  
29 nor shall the judgment change the class of the claim for  
30 payment under this code.

31

1

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CODING: Words stricken are deletions; words underlined are additions.

\*\*\*\*\*

\* Amendment No. \_\_, taken up by committee: Adopted \_ \*

\* Offered by \_\_\_\_\_ Failed \_ \*

\*\*\*\*\*

(Amendment No. \_\_ Adopted \_ Failed \_ Date \_\_/\_\_/\_\_)

18

1556

## SENATE COMMITTEE AMENDMENT

SB 536

HB \_\_\_\_\_

1           (2) On or before the expiration of 4 months from the  
2 first publication of notice of administration or within 30  
3 days from the timely filing of a claim, whichever occurs  
4 later, a personal representative or other interested person  
5 may file a written objection to a claim. ~~An objection filed~~  
6 ~~to an unmatured claim matures the claim for the purpose of~~  
7 ~~bringing an action on the claim.~~ If an objection is filed,  
8 the person filing it shall serve a copy of the objection by  
9 registered or certified mail to the address of the claimant as  
10 shown on the claim or by delivery to the claimant to whose  
11 claim the person objects or the claimant's attorney of record,  
12 if any, not later than 10 days after the objection has been  
13 filed, and also on the personal representative if the  
14 objection is filed by any interested person other than the  
15 personal representative. The failure to serve a copy of the  
16 objection constitutes an abandonment of the objection.

17           (3) The claimant is limited to a period of 30 days  
18 from the date of service of an objection within which to bring  
19 an independent action upon the claim, or a declaratory action  
20 to establish the validity and amount of an unmatured claim  
21 which is not yet due but which is certain to become due in the  
22 future, or a declaratory action to establish the validity of a  
23 contingent claim upon which no cause of action has accrued on  
24 the date of service of an objection and that may or may not  
25 become due in the future ~~and within which to file written~~  
26 ~~notice of such action in the estate proceeding.~~ For good  
27 cause, the court may extend the time for filing an objection  
28 to any claim or may extend the time for serving the objection,  
29 and may likewise extend the time for filing an action or  
30 ~~proceeding, and filing notice of the action or proceeding,~~  
31 ~~after objection is filed.~~ The extension of time shall be

1 granted only after notice. No action or proceeding on the  
2 claim shall be brought against the personal representative  
3 after the time limited above, and any such claim is thereafter  
4 forever barred without any court order. If an objection is  
5 filed to the claim of any creditor and an action is brought by  
6 the creditor to establish his claim, a judgment establishing  
7 the claim shall give it no priority over claims of the same  
8 class to which it belongs.

9 (4) If an unmatured claim has not become due before  
10 the time for distribution of an estate, the personal  
11 representative may prepay the full amount of principal plus  
12 accrued interest due on the claim, without discount and  
13 without penalty, regardless of any prohibition against  
14 prepayment or provision for penalty in any instrument on which  
15 the claim is founded. If the claim is not prepaid, no order  
16 of discharge shall be entered until the creditor and personal  
17 representative have filed an agreement disposing of the claim,  
18 or in the absence of an agreement until the court provides for  
19 payment by one of the following methods:

20 (a) Requiring the personal representative to reserve  
21 such assets as the court shall determine to be adequate to pay  
22 the claim when it becomes due, and in fixing the amount to be  
23 reserved, the court may determine the value of any security or  
24 collateral to which the creditor may resort for payment of the  
25 claim and may direct the reservation, if necessary, of  
26 sufficient assets to pay the claim or to pay the difference  
27 between the value of any security or collateral and the amount  
28 necessary to pay the claim. If the estate is insolvent, the  
29 court may direct a proportionate amount to be reserved. The  
30 court shall direct that the amount reserved shall be retained  
31 by the personal representative until the time that the claim

## SENATE COMMITTEE AMENDMENT

SB 536

HB \_\_\_\_\_

1 becomes due, and that so much of the reserved amount as is not  
2 used for payment, shall be distributed thereafter according to  
3 law; or

4 (b) Requiring that the claim be adequately secured by  
5 a mortgage, pledge, bond, trust, guaranty or other security,  
6 as may be determined by the court, the security to remain in  
7 effect until the time that the claim becomes due, and that so  
8 much of the security or collateral as is not needed for  
9 payment shall be distributed thereafter according to law; or

10 (c) Making such other provision for the disposition or  
11 satisfaction of the claim as shall be equitable, and in a  
12 manner so as not to delay unreasonably the closing of the  
13 estate.

14 (5) If no cause of action has accrued on a contingent  
15 claim before the time for distribution of an estate, no order  
16 of discharge shall be entered until the creditor and the  
17 personal representative have filed an agreement disposing of  
18 the claim, or in the absence of such agreement until:

19 (a) The court determines that the claim is adequately  
20 secured or that it has no value, or

21 (b) Three months from the date on which a cause of  
22 action accrues upon the claim, provided that no action on the  
23 claim is then pending, or

24 (c) Five years from the date of first publication of  
25 notice of administration, or

26 (d) The Court provides for payment of the claim upon  
27 the happening of the contingency by one of the methods  
28 described in subsection (4)(a), (b) or (c),

29

30 whichever occurs first. No action or proceeding shall be  
31 brought against the personal representative on the claim after

## SENATE COMMITTEE AMENDMENT

SB 536

HB

1 | the time limited above, and any such claim shall thereafter be  
2 | forever barred without order of court. If an action is  
3 | brought within the time limited above, a judgment establishing  
4 | the claim shall give it no priority over claims of the same  
5 | class to which it belongs.

6 |       ~~(6)~~(4) No interest shall be paid by the personal  
7 | representative or allowed by the court on a claim until the  
8 | expiration of 5 calendar months from the first publication of  
9 | the notice of administration, unless the claim is founded on a  
10 | written obligation of the decedent providing for the payment  
11 | of interest. Interest shall be paid by the personal  
12 | representative on written obligations of the decedent  
13 | providing for the payment of interest. On all other claims,  
14 | interest shall be allowed and paid beginning 5 months from the  
15 | first publication of the notice of administration.

16 |       ~~(7)~~(5) The court may determine all issues concerning  
17 | claims or matters not requiring trial by jury.

18 |       Section 2. This act shall take effect on October 1,  
19 | 1986.  
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CODING: Words ~~stricken~~ are deletions; words underlined are additions.



## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Plante</u> <u>VR</u>	<u>Lester</u> <u>BL</u>	1. <u>JCI</u>	<u>FAV/CS</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT: Decedents' Estates/  
Claims Protection

BILL NO. AND SPONSOR:  
CSSB 536 by  
Judiciary-Civil Committee  
and Senator Scott

I. SUMMARY:

## A. Present Situation:

In order for an unmatured or contingent claim against a decedent to be binding on the estate, the personal representative, or any beneficiary of the decedent, s. 733.702, F.S., requires the holder of the claim to file a claim against the estate within 3 months from the date of the first publication of the notice of administration.

Once an unmatured or contingent claim has been filed, s. 733.705, F.S., provides that the personal representative or any other interested person may file a written objection to the claim. An objection filed on an unmatured claim matures the claim for the purpose of bringing an action on the claim. The claimant has 30 days from the date of service of the objection in which to bring an independent action upon the claim. This time period may be extended by the court for good cause. Once the time for filing the claim has expired, the claim is forever barred without a court order.

## B. Effect of Proposed Changes:

Committee Substitute for Senate Bill 536 would amend s. 733.705, F.S., to delete the provision that an objection filed against an unmatured claim would mature the claim for the purpose of bringing an action on the claim, and in its stead, would provide that, with respect to a claim which is not due but is certain to become due in the future, the claimant would have 30 days from the date of service of the objection to the claim in which to file a declaratory action to establish the validity and amount of the claim. With respect to a contingent claim upon which a cause of action has not accrued as of the date of service of the objection and which may or may not become due in the future, the claimant would be limited to a period of 3 months from the date the cause of action accrues within which to bring an independent action on the claim.

For unmatured claims that have not become due before the time of distribution of the estate, and for contingent claims whose cause of actions have not accrued, the bill would preclude the court from discharging the personal representative unless the claimant and personal representative file an agreement disposing of the claim or the court makes provisions for the disposition or satisfaction of the claim.

II. ECONOMIC IMPACT AND FISCAL NOTE:

## A. Public:

None.

B. Government:

None.

III. COMMENTS:

Similar to HB 462.

Under present law, the filing of an objection to an unmatured claim matures it for the purpose of bringing an action on it. It has uniformly been held that when a claim matures, the holder has an unconditional right to immediate payment, and to bring an action and enforce payment. Therefore, if the statute is followed literally, an objection filed to a claim on a note which is not due until several years after the decedent's death matures the note, and makes it immediately due and payable. Senate Bill 536 would repeal that clause, and substitute a provision that would give the holder of an unmatured claim which has been objected to, 30 days within which to bring an independent action solely to establish the validity and amount of the claim. If the validity and amount of the claim is established, the creditor's right to enforce the claim at maturity would be preserved. The estate could not be closed until the claim is paid, settled or otherwise disposed of.

With regard to a contingent claim, if an objection is filed, the claimant must bring an independent action on the claim within 30 days after service of the objection, and, unless the time is extended by the court, no action may be brought upon the claim after that time. However, in most cases, the claimant is unable to bring an action to recover upon the claim, because no cause of action will accrue until the contingency fixing the claim has occurred. The only available cause of action might be a suit for declaratory judgment to determine its validity. If its validity is established, the creditor's right to enforce the claim when the contingency occurs would be preserved, which would also be true if no objection had been filed. In either case, unless the claim is settled, the estate has to remain open until the time when the contingency either occurs or does not occur. Without further legislation, the creditor has the right to bring an action within the period of the applicable statute of limitations after the cause of action accrues. As in the case of an unmatured claim, the estate can not be closed until the contingent claim is paid, settled or otherwise disposed of. The bill would limit the period for filing an action on a contingent claim to three months after the date on which the cause of action accrues.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 536

Committee Substitute for Senate Bill 536 details the  
procedures for protecting and preserving unmatured and  
contingent claims.

Committee on Judiciary-Civil

  
Staff Director

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

STORAGE NAME: 86 SS HB 0462

Date: April 11, 1986  
Revised: \_\_\_\_\_  
Final: \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY  
STAFF ANALYSIS

19 1492

BILL #: HB 462  
RELATING TO: Probate claims  
SPONSOR(S): Dudley  
EFFECTIVE DATE: October 1, 1986  
COMPANION BILL(S): \_\_\_\_\_  
OTHER COMMITTEES OF REFERENCE: (1) Appropriations  
(2) \_\_\_\_\_

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I. SUMMARY:

A. Present Situation:

Section 733.703, Florida Statutes, provides that a creditor of a decedent or his estate must file a written claim with the clerk of the circuit court, which shall state whether the claim is due, contingent, or unliquidated.

Subsection (2) of Section 733.705, Florida Statutes, provides that the personal representative or other interested person must file his objection to a claim within 30 days of the filing of the claim or within four months of the publication of notice of publication. Service of the objection must be made upon the claimant. The claimant, if he wishes to pursue a claim to which an objection has been made must institute an action within 30 days of service of the objection. The court may, for good cause, extend the time period for instituting the action or for filing an objection to the original claim. If the action has not been brought within the time permitted, the claim is barred without the requirement of a court order. An unmatured claim is treated in the same manner as a matured claim where an objection is made, i.e., a person may proceed against the estate on a claim even though the claim is not in reality ripe for a judicial determination.

B. Effect of Proposed Changes:

Subsection (2) of Section 733.705, Florida Statutes, has been amended to require that an objection need only be filed to a timely filed claim. Additionally, the language which permits a court to entertain an action on an unmatured claim against an estate has been deleted.

Subsection (3) of Section 733.705, Florida Statutes, has been amended to permit a person with an unmatured claim to establish through a declaratory action the validity of the amount of such claim. The action on the claim, itself, however, would not be brought until the claim has matured, but must be brought within three months of such date.

The creation of Subsection (3) of Section 733.707, Florida Statutes, has been proposed, which would permit an estate to be closed, notwithstanding the fact that an unmatured claim has not yet been paid. The estate may be closed if the personal representative places funds sufficient to pay the claim in reserve, if the claim is adequately secured, if the present value of the claim is paid, or if other steps are taken to protect the rights of the claimant as approved by the court.

II. ECONOMIC IMPACT:

A. Public:

None

B. Government:

None

III. STATE COMPREHENSIVE PLAN IMPACT:


None

IV. COMMENTS:

Under present law, an action on a claim must be brought by the claimant within thirty days of the filing of an objection by the personal representative. While Florida law now provides that an unmatured claim (such as one for contribution in an action which is not yet final) is to be treated as a matured claim where an objection to the claim is filed, thus permitting the filing of the independent action required, the courts cannot actually dispose of the unmatured claim until it has matured. Thus, the filing of an action on an unmatured claim could result in an estate having to remain open for an extended period of time. This legislation, therefore, is designed to permit the personal representative, by providing a method for the payment of the unmatured claim in the event it later becomes due, to close an estate in a timely manner.

V. AMENDMENTS:

None

VI. PREPARED BY: Thomas R. Tedcastle 

VII. STAFF DIRECTOR: Richard Hixson 

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April 8, 1986

HAND-DELIVERED

The Honorable Hamilton D. Upchurch  
Chairman, House Judiciary Committee  
Room 208, House Office Building  
Tallahassee, Florida 32301

19 / 492

Re: Legislative Proposals of Real Property, Probate  
and Trust Law Section of The Florida Bar Referred  
to House Judiciary Committee For Consideration,  
i.e., HB 462 by Dudley re: Probate, HB 629 by  
Garcia and Drage re: Mortgages/Estates, and HB 762  
by Gutman and Drage re: Trustees of Unincorporated  
Churches

Dear Mr. Chairman:

The above bills have been referred to your Committee for consideration. They are products of the Real Property, Probate and Trust Law Section of The Florida Bar. The purpose of this letter is to request that they be agendaed for consideration at the earliest possible opportunity.

HB 462 by Representative Dudley is the Section's probate proposal for 1986. It addresses the issue of unmatured and contingent claims in the probate process. It should be non-controversial.

HB 629 and HB 762 are two proposals from the Real Property Problems Study Committee of the Section which is co-chaired by Mandell Glicksburg at the University of Florida and Harold Drees of the Attorneys' Title Insurance Fund. Both are technical and address issues related to title to real property. They, too, should be non-controversial.

Linda McMullen has prepared brief analyses of each piece of legislation. Copies are enclosed for you and your staff. If you have any questions concerning these bills, please do not hesitate to call me or Linda.

The Honorable Hamilton D. Upchurch  
April 8, 1986  
Page Two

Thank you for your consideration.

Sincerely yours,



William B. Wiley

WBW:jfa  
Enclosure

cc: Richard Hixson (w/ enclosures)  
Fred Dudley  
Thomas Drage, Jr.  
Rodolpho Garcia, Jr.  
Alberto Gutman

Bill No. HB 462

Place 214C

VOTE:

YEA	MEMBER	WAY
	CARLTON, FRAN	
X	DANTZLER, RICK	
X	DRAGE, TOM	
X	DUDLEY, FRED	
X	DUNBAR, PETER	
X	FIGG, MARY	
X	GRANT, JOHN	
X	GUSTAFSON, TOM	
	PEEPLES, VERNON	
X	PRESS, STEVE	
X	SOUTO, JAVIER	
X	THOMAS, JOHN	
	TITONE, JOE	
X	WEBSTER, DANIEL	
X	BURKE, JAMES.V.CH.	
X	UPCHURCH, H., Chmn.	

Total	
Nays	0

## COMMITTEE APPEARANCE RECORD

**Address**

File 2 comes with Clerk



## SUBCOMMITTEE REPORT

File with Parent CommitteeTo: Chairman, Committee on JudiciaryThe Subcommittee on Consumer, Probate & Family Lawmet at 1:15 p.m. o'clock on April 29, 19 86,in Room 212 H, and considered HB 462.On motion to report the bill ☐ FAVORABLEthe vote was: ☒ FAVORABLE WITH 2 AMENDMENTS  
(number)

YEA	MEMBER	NAY
X	DANTZLER	
X	DUDLEY	
	FIGG	
X	PRESS	
X	SOUTO	
X	THOMAS, J.	

Total  
Yeas 7

YEA	MEMBER	NAY
X	BITONE	
X	DUNBAR, CHAIRMAN	

Total  
Nays 0
  
 Subcommittee Chairman

## SUBCOMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during consideration of this bill:

<u>Name</u>	<u>Representing</u>	<u>Address</u>

(If additional persons, enter on reverse side and check here ☐)

Received by Parent Committee:

Date \_\_\_\_\_

Received by \_\_\_\_\_

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April 21, 1986

Representative Fred Dudley  
Room 325  
The Capitol  
Tallahassee, Florida 32301

19 1492

Re: House Bill 462 re Contingent and Unmatured Claims  
Under the Florida Probate Code

Dear Fred:

As I recently advised, Henry Trawick suggested a number of changes to the above bill drafted by the Probate Law Committee and prefiled by you. Enclosed is a copy of the proposed legislation as now agreed to by the Probate Law Committee and Henry. As you can see, there are a number of changes.

One issue in the new proposal that you need to again look at is the deletion in Subsection (3) of 733.705 of the language "and within which to file written notice of such action in the estate proceeding." You will recall that in the original draft of the bill that I asked you to file, that language was stricken. You did not want that to happen, and the House Bill, as prefiled, does not strike this language. I wrote Bill Belcher and Wayne Wolf concerning this issue to obtain their input. I was advised that the reason the Probate Law Committee recommends striking this language is because of the existing rule 5.065 of the Probate and Guardianship Rules which requires a Personal Representative to file a notice when a civil action has been instituted by or against the Personal Representative. A copy of the Rule is enclosed. The Committee feels that the requirement that a notice of an independent action be filed is duplicative. As an aside, the Committee feels that this is a procedural issue which should be controlled by the rules. As it stands now, there appears to be conflict between the rule and the statute.

Representative Fred Dudley  
April 21, 1986  
Page Two

So that we can hopefully move forward with this bill in the Judiciary Committee, I am providing a copy of the new proposed language to Hamilton Upchurch, Richard Hixson and Debby Kaveney. I would hope that we can get the bill agendaed in Subcommittee at the earliest possible date.

Again, thanks for your help on this. I will get with you early this week. With best regards, I am

Very truly yours,



William B. Wiley

WBW:jfa  
Enclosure

cc: Representative Hamilton D. Upchurch  
Richard Hixson  
Debby Kaveney  
Senator James A. Scott

STORAGE NAME: 86 SS CS/HB 462

Date: April 11, 1986

Revised: May 9, 1986

Final: \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY  
STAFF ANALYSIS

19 1492

BILL #: CS/HB 462

RELATING TO: Probate claims

SPONSOR(S): Comm. on Judiciary & Dudley

EFFECTIVE DATE: October 1, 1986

COMPANION BILL(S): CS/SB 536

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) \_\_\_\_\_

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I. SUMMARY:

A. Present Situation:

Section 733.703, Florida Statutes, provides that a creditor of a decedent or his estate must file a written claim with the clerk of the circuit court, which shall state whether the claim is due, contingent, or unliquidated.

Subsection (1) of Section 733.705 provides that a personal representative shall not be compelled to pay the debts of a decedent within the four months of the publication of notice of administration but does not provide a limit of time in which the personal representative must pay the claims.

Subsection (2) of Section 733.705, Florida Statutes, provides that the personal representative or other interested person must file his objection to a claim within 30 days of the filing of the claim or within four months of the publication of notice of publication. Service of the objection must be made upon the claimant. The claimant, if he wishes to pursue a claim to which an objection has been made must institute an action within 30 days of service of the objection. The court may, for good cause, extend the time period for instituting the action or for filing an objection to the original claim. If the action has not been brought within the time permitted, the claim is barred without the requirement of a court order. An unmatured claim or a contingent claim is treated in the same manner as a matured claim where an objection is made, i.e., a person may proceed against the estate on a claim even though the claim is not in reality ripe for a judicial determination.

B. Effect of Proposed Changes:

Subsection (1) of Section 733.705 is amended to require that the personal representative pay all claims of the decedent within one year from the date of first publication of notice of administration except claims in litigation, and unmatured and contingent claims pursuant to subsections (3), (4), and (5). The court may extend the time for good cause.

Subsection (2) of Section 733.705, Florida Statutes, has been amended to require that an objection need only be filed to a timely filed claim. Additionally, the language which permits a court to entertain an action on an unmatured claim against an estate has been deleted.

Subsection (3) of Section 733.705, Florida Statutes, has been amended to permit a person with an unmatured claim or contingent claim to establish through a declaratory action the validity of the amount of such claim. The action on the claim, itself, however, would not be brought until the claim has matured or the cause of action has accrued on a contingent claim, but must be brought within three months of such date.

The creation of Subsection (4) of Section 733.705, Florida Statutes, has been proposed, which would permit an estate to be closed, notwithstanding the fact that an unmatured claim has not yet been paid. The estate may be closed if the personal representative places funds sufficient to pay the claim in reserve, if the claim is adequately secured, if the present value of the claim is paid, or if other steps are taken to protect the rights of the claimant as approved by the court.

Subsection (5) of Section 733.705 is created to provide that an order of discharge shall not be entered until the creditor and personal representative have filed an agreement disposing of a contingent claim or under specified circumstances.

II. ECONOMIC IMPACT:

A. Public:

None

B. Government:

None

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

Under present law, an action on a claim must be brought by the claimant within thirty days of the filing of an objection by the

personal representative. While Florida law now provides that an unmatured claim (such as one for contribution in an action which is not yet final) is to be treated as a matured claim where an objection to the claim is filed, thus permitting the filing of the independent action required, the courts cannot actually dispose of the unmatured claim until it has matured. Thus, the filing of an action on an unmatured claim could result in an estate having to remain open for an extended period of time. This legislation, therefore, is designed to permit the personal representative, by providing a method for the payment of the unmatured claim in the event it later becomes due, to close an estate in a timely manner. It also provides for the timely closing of an estate with contingent claims under specified circumstances where this was not previously possible.

V. AMENDMENTS:

None

VI. PREPARED BY: Robert Schreiber *RS*

VII. STAFF DIRECTOR: Richard Hixson *RH*