

By Representative Crow

1                                   A bill to be entitled  
2           An act relating to probate; amending s.  
3           732.201, F.S.; revising language with respect  
4           to the right to elective share; creating s.  
5           732.2025, F.S.; providing definitions; creating  
6           s. 732.2035, F.S.; providing for property  
7           entering into the elective estate; creating s.  
8           732.2045, F.S.; providing for exclusions and  
9           overlapping application; amending s. 732.205,  
10          F.S.; providing for the valuation of the  
11          elective estate; amending s. 732.206, F.S.;  
12          providing for the elective share amount;  
13          amending s. 732.207, F.S.; providing for the  
14          sources from which the elective share is  
15          payable; providing for abatement; amending s.  
16          732.208, F.S.; providing for the liability of  
17          direct recipients and beneficiaries; amending  
18          s. 732.209, F.S.; providing for the valuation  
19          of the property used to satisfy the elective  
20          share; amending s. 732.210, F.S.; providing for  
21          the effect of the election on other interests;  
22          amending s. 732.211, F.S.; providing for the  
23          protection of payors and other third parties;  
24          amending s. 732.212, F.S.; providing who may  
25          exercise the right of election; amending s.  
26          732.213, F.S.; providing for the time of  
27          election; providing for extensions and for  
28          withdrawal; amending s. 732.214, F.S.;  
29          providing for the order of contribution;  
30          providing for the personal representative's  
31          duty to collect contributions; amending s.

1           732.215, F.S.; providing for the effective  
2           date, the effect of prior waivers, and  
3           transition rules; providing an effective date.  
4

5 Be It Enacted by the Legislature of the State of Florida:  
6

7           Section 1. Section 732.201, Florida Statutes, is  
8 amended to read:

9           732.201 Right to elective share.--The surviving spouse  
10 of a person who dies domiciled in Florida has ~~shall have~~ the  
11 right to a share of the elective estate of the decedent  
12 ~~deceased spouse~~ as provided in this part, to be designated the  
13 elective share.

14           Section 2. Section 732.2025, Florida Statutes, is  
15 created to read:

16           732.2025 Definitions.--As used in sections  
17 732.2025-732.215, the term:

18           (1) "Direct recipient" means the decedent's probate  
19 estate and any other person who receives property included in  
20 the elective estate by transfer from the decedent, including  
21 transfers described in subsection (8) of s. 732.2035, by right  
22 of survivorship, or by beneficiary designation under a  
23 governing instrument. For this purpose, a beneficiary of an  
24 insurance policy on the decedent's life, the net cash  
25 surrender value of which is included in the elective estate,  
26 is treated as having received property included in the  
27 elective estate. In the case of property held in trust,  
28 "direct recipient" includes the trustee but excludes the  
29 beneficiaries of the trust.

30           (2) "Elective share trust" means a trust where:  
31

1           (a) The surviving spouse is entitled for life to the  
2 use of the property or to all of the income payable at least  
3 as often as annually;

4           (b) The trust is subject to the provisions of s.  
5 738.12 or the surviving spouse has the right under the terms  
6 of the trust or state law to require the trustee either to  
7 make the property productive or to convert it within a  
8 reasonable time; and

9           (c) During the spouse's life, no person other than the  
10 spouse has the power to distribute income or principal to  
11 anyone other than the spouse.

12           (3) "General power of appointment" means a power of  
13 appointment under which the holder of the power, whether or  
14 not the holder has the capacity to exercise it, has the power  
15 to create a present or future interest in the holder, the  
16 holder's estate, or the creditors of either. The term includes  
17 a power to consume or invade the principal of a trust, but  
18 only if the power is not limited by an ascertainable standard  
19 relating to the holder's health, education, support, or  
20 maintenance.

21           (4) "Governing instrument" means a deed, will, trust,  
22 insurance or annuity policy, account with payable-on-death  
23 designation, security registered in beneficiary form (TOD),  
24 pension, profit-sharing, retirement, or similar benefit plan,  
25 instrument creating or exercising a power of appointment or a  
26 power of attorney, or a dispositive, appointive, or nominative  
27 instrument of any similar type.

28           (5) "Payor" means an insurer, business entity,  
29 employer, government, governmental agency or subdivision, or  
30 any other person, other than the decedent's personal  
31 representative or a trustee of a trust created by the

1 decedent, authorized or obligated by law or a governing  
2 instrument to make payments.

3 (6) "Person" includes an individual, trust, estate,  
4 partnership, association, company, or corporation.

5 (7) "Probate estate" means all property wherever  
6 located that is subject to estate administration in any state  
7 of the United States or in the District of Columbia.

8 (8) "Revocable trust" means a trust that is includable  
9 in the elective estate under subsection (4) of s. 732.2035.

10 (9) "Transfer in satisfaction of the elective share"  
11 means an irrevocable transfer by the decedent to an elective  
12 share trust.

13 (10) "Transfer tax value" means the value the interest  
14 would have for purposes of the United States estate and gift  
15 tax laws if it passed without consideration to an unrelated  
16 person on the date on which the valuation is to be determined.

17 Section 3. Section 732.2035, Florida Statutes, is  
18 created to read:

19 732.2035 Property entering into elective  
20 estate.--Except as provided in s. 732.2045, the elective  
21 estate consists of the sum of the values as determined under  
22 s. 732.205 of the property interests described in this  
23 section.

24 (1) The decedent's probate estate.

25 (2) The decedent's ownership interest in accounts or  
26 securities registered in POD, TOD, ITF, or coownership with  
27 right of survivorship form. For this purpose, "decedent's  
28 ownership interest" means that portion of the accounts or  
29 securities which the decedent had, immediately before death,  
30 the right to withdraw or use without the duty to account to  
31 any person.

1       (3) The decedent's fractional interest in property,  
2 other than property described in subsection (2) or subsection  
3 (7), held by the decedent in joint tenancy with right of  
4 survivorship or in tenancy by the entirety. For this purpose,  
5 "decedent's fractional interest in property" means the value  
6 of the property divided by the number of tenants.

7       (4) That portion of property, other than property  
8 described in subsection (2), transferred by the decedent to  
9 the extent that at the time of the decedent's death the  
10 transfer was revocable by the decedent alone or in conjunction  
11 with any other person. This subsection does not apply to a  
12 transfer that is revocable by the decedent only with the  
13 consent of all persons having a beneficial interest in the  
14 property.

15       (5)(a) That portion of property, other than property  
16 described in subsection (3), subsection (4), or subsection  
17 (7), transferred by the decedent to the extent that at the  
18 time of the decedent's death:

19           1. The decedent possessed the right to, or in fact  
20 enjoyed the possession or use of, the income or principal of  
21 the property; or

22           2. The principal of the property could, in the  
23 discretion of any person other than the spouse of the  
24 decedent, be distributed or appointed to or for the benefit of  
25 the decedent.

26

27 In the application of this subsection, a right to payments  
28 from an annuity or under a similar contractual arrangement  
29 shall be treated as a right to that portion of the income of  
30 the property necessary to equal the annuity or other  
31 contractual payment.

1           (b) The amount included under this subsection is:  
2           1. With respect to paragraph (a)1., the value of the  
3 portion of the property to which the decedent's right or  
4 enjoyment related, to the extent the portion passed to or for  
5 the benefit of any person other than the decedent's probate  
6 estate; and  
7           2. With respect to paragraph (a)2., the value of the  
8 portion subject to the discretion, to the extent the portion  
9 passed to or for the benefit of any person other than the  
10 decedent's probate estate.  
11           (c) This subsection does not apply to any property if  
12 the decedent's only interests in the property are that:  
13           1. The property could be distributed to or for the  
14 benefit of the decedent only with the consent of all persons  
15 having a beneficial interest in the property; or  
16           2. The income or principal of the property could be  
17 distributed to or for the benefit of the decedent only through  
18 the exercise or in default of an exercise of a general power  
19 of appointment held by any person other than the decedent; or  
20           3. The income or principal of the property is or could  
21 be distributed in satisfaction of the decedent's obligation of  
22 support; or  
23           4. The decedent had a contingent right to receive  
24 principal, other than at the discretion of any person, which  
25 contingency was beyond the control of the decedent and which  
26 had not in fact occurred at the decedent's death.  
27           (6) The decedent's beneficial interest in the net cash  
28 surrender value immediately before death of any policy of  
29 insurance on the decedent's life.  
30           (7) The value of amounts payable to or for the benefit  
31 of any person by reason of surviving the decedent under any

1 public or private pension, retirement, or deferred  
2 compensation plan, or any similar arrangement, other than  
3 benefits payable under the federal Railroad Retirement Act or  
4 the federal Social Security System. In the case of a defined  
5 contribution plan as defined in s. 414(i) of the Internal  
6 Revenue Code of 1986, as amended, this subsection shall not  
7 apply to the excess of the proceeds of any insurance policy on  
8 the decedent's life over the net cash surrender value of the  
9 policy immediately before the decedent's death.

10 (8) Property that passed during the 1-year period  
11 preceding the decedent's death as a result of a transfer by  
12 the decedent if the transfer was either of the following  
13 types:

14 (a) Any property that passed as a result of the  
15 termination of a right or interest in, or power over, property  
16 that would have been included in the elective estate under  
17 subsection (4) or subsection (5) if the right, interest, or  
18 power had not terminated until the decedent's death.

19 (b) Any transfer of property to the extent not  
20 otherwise included in the elective estate, made to or for the  
21 benefit of any person, except:

22 1. Any transfer of property for medical or educational  
23 expenses to the extent it qualifies for exclusion from the  
24 United States gift tax under s. 2503(e) of the Internal  
25 Revenue Code, as amended; and

26 2. After the application of paragraph (b)1., the first  
27 \$10,000 of property transferred to or for the benefit of each  
28 donee during the 1-year period, but only to the extent the  
29 transfer qualifies for exclusion from the United States gift  
30 tax under s. 2503(b) or s. 2503(c) of the Internal Revenue  
31 Code, as amended.

1           (c) Except as provided in paragraph (d), for purposes  
2 of this subsection:

3           1. A "termination" with respect to a right or interest  
4 in property occurs when the decedent transfers or relinquishes  
5 the right or interest, and, with respect to a power over  
6 property, occurs when the power terminates by exercise,  
7 release, lapse, default, or otherwise.

8           2. A distribution from a trust the income or principal  
9 of which is subject to subsection (4), subsection (5), or  
10 subsection (9) shall be treated as a transfer of property by  
11 the decedent and not as a termination of a right or interest  
12 in, or a power over, property.

13           (d) Notwithstanding anything in paragraph (c) to the  
14 contrary:

15           1. A "termination" with respect to a right or interest  
16 in property does not occur when the right or interest  
17 terminates by the terms of the governing instrument unless the  
18 termination is determined by reference to the death of the  
19 decedent and the court finds a principal purpose for the terms  
20 of the instrument relating to the termination was avoidance of  
21 the elective share.

22           2. A distribution from a trust is not subject to this  
23 subsection if the distribution is required by the terms of the  
24 governing instrument unless the event triggering the  
25 distribution is determined by reference to the death of the  
26 decedent and the court finds that a principal purpose of the  
27 terms of the governing instrument relating to the distribution  
28 is avoidance of the elective share.

29           (9) Property transferred in satisfaction of the  
30 elective share.

31



1           Section 4. Section 732.2045, Florida Statutes, is  
2 created to read:

3           732.2045 Exclusions and overlapping application.--

4           (1) EXCLUSIONS.--Section 732.2035 does not apply to:

5           (a) Except as provided in subsection (3) of s.

6 732.215, any transfer of property by the decedent to the  
7 extent the transfer is irrevocable before the effective date  
8 of this subsection or after that date but before the date of  
9 the decedent's marriage to the surviving spouse.

10           (b) Any transfer of property by the decedent to the  
11 extent the decedent received adequate consideration in money  
12 or money's worth for the transfer.

13           (c) Any transfer of property by the decedent made with  
14 the written consent of the decedent's spouse. For this  
15 purpose, spousal consent to split-gift treatment under the  
16 United States gift tax laws does not constitute written  
17 consent to the transfer by the decedent.

18           (d) The proceeds of any policy of insurance on the  
19 decedent's life in excess of the net cash surrender value of  
20 the policy whether payable to the decedent's estate, a trust,  
21 or in any other manner.

22           (e) Any policy of insurance on the decedent's life  
23 maintained pursuant to a court order.

24           (f) The decedent's one-half of the property to which  
25 ss. 732.216-732.228 apply and real property that is community  
26 property under the laws of the jurisdiction where it is  
27 located.

28           (2) OVERLAPPING APPLICATION.--If subsection (1) of s.  
29 732.2035 and any other subsection of s. 732.2035 apply to the  
30 same property interest, the amount included in the elective  
31 estate under other subsections is reduced by the amount

1 included under subsection (1). In all other cases, if more  
2 than one subsection of section 732.2035 applies to a property  
3 interest, only the subsection resulting in the largest  
4 elective estate shall apply.

5 Section 5. Section 732.205, Florida Statutes, is  
6 amended to read:

7 (Substantial rewording of section. See  
8 s. 732.205, F.S., for present text.)

9 732.205 Valuation of the elective estate.--For  
10 purposes of s. 732.2035, "value" means:

11 (1) In the case of any policy of insurance on the  
12 decedent's life includable under subsection (4), subsection  
13 (5), or subsection (6) of s. 732.2035, the net cash surrender  
14 value of the policy immediately before the decedent's death.

15 (2) In the case of any policy of insurance on the  
16 decedent's life includable under subsection (8) of s.  
17 732.2035, the net cash surrender value of the policy on the  
18 date of the termination or transfer.

19 (3) In the case of amounts includable under subsection  
20 (7) of s. 732.2035, the transfer tax value of the amounts on  
21 the date of the decedent's death.

22 (4) In the case of other property included under  
23 subsection (8) of s. 732.2035, the fair market value of the  
24 property on the date of the termination or transfer, computed  
25 after deducting any mortgages, liens, or security interests on  
26 the property as of that date.

27 (5) In the case of all other property, the fair market  
28 value of the property on the date of the decedent's death,  
29 computed after deducting from the total value of the property:

30 (a) All claims, other than claims for funeral  
31 expenses, paid or payable from the elective estate; and

1           (b) To the extent they are not deducted under  
2 paragraph (a), all mortgages, liens, or security interests on  
3 the property.

4           Section 6. Section 732.206, Florida Statutes, is  
5 amended to read:

6           (Substantial rewording of section. See  
7 s. 732.206, F.S., for present text.)  
8 732.206 Elective share amount.--

9           (1) The elective share is the greater of the minimum  
10 elective share provided in subsection (2) or an amount equal  
11 to a percentage of the elective estate determined in  
12 accordance with the following schedule:

<u>If the decedent and the spouse</u>	<u>The percentage is:</u>
<u>were last married to each other:</u>	
<u>Less than 5 years</u>	<u>10 percent</u>
<u>5 years but less than 15 years</u>	<u>20 percent</u>
<u>15 years but less than 25 years</u>	<u>30 percent</u>
<u>25 years or more</u>	<u>40 percent</u>

21           (2) "Minimum elective share" means an amount equal to  
22 the lesser of \$50,000 or one-half of the elective estate.

23           Section 7. Section 732.207, Florida Statutes, is  
24 amended to read:

25           (Substantial rewording of section. See  
26 s. 732.207, F.S., for present text.)  
27 732.207 Sources from which elective share payable;  
28 abatement.--

29           (1) Unless otherwise provided in the decedent's will  
30 or, in the absence of a provision in the decedent's will, in a  
31

1 trust referred to in the decedent's will, the following are  
2 applied first to satisfy the elective share:

3 (a) To the extent paid to or for the benefit of the  
4 surviving spouse, the proceeds of any term or other policy of  
5 insurance on the decedent's life if, at the time of decedent's  
6 death, the policy was owned by any person other than the  
7 surviving spouse.

8 (b) To the extent paid to or for the benefit of the  
9 surviving spouse, amounts payable under any plan or  
10 arrangement described in subsection (7) of s. 732.2035.

11 (c) Property interests included in the elective estate  
12 that pass or have passed to or for the benefit of the  
13 surviving spouse.

14 (d) Property interests that would have satisfied the  
15 elective share under paragraph (a), paragraph (b), or  
16 paragraph (c) but were disclaimed.

17 (2) If, after the application of subsection (1), the  
18 elective share is not fully satisfied, the unsatisfied balance  
19 shall be apportioned among the direct recipients of the  
20 remaining elective estate in the following order of priority:

21 (a) Class 1.--The decedent's probate estate and  
22 revocable trusts.

23 (b) Class 2.--Recipients of property interests  
24 included in the elective estate under subsection (2),  
25 subsection (3), or subsection (6) of s. 732.2035 and, to the  
26 extent the decedent had at the time of death the power to  
27 designate the recipient of the property, property interests  
28 included under subsections (5) and (7) of s. 732.2035.

29 (c) Class 3.--Recipients of all other property  
30 interests included in the elective estate except interests for  
31 which a charitable deduction with respect to the transfer of

1 the property was allowed or allowable to the decedent or the  
2 decedent's spouse under the United States gift tax laws.

3 (3) The contribution required of the decedent's  
4 probate estate and revocable trusts may be made in cash or in  
5 kind. In the application of this subsection, subsections (4)  
6 and (5) are to be applied to charge contribution for the  
7 elective share to the beneficiaries of the probate estate and  
8 revocable trusts as if all beneficiaries were taking under a  
9 common governing instrument.

10 (4) Unless otherwise provided in the decedent's will  
11 or, in the absence of a provision in the decedent's will, in a  
12 trust referred to in the decedent's will, any amount to be  
13 satisfied from the decedent's probate estate, other than from  
14 property passing to an inter vivos trust, shall be paid from  
15 the assets of the probate estate in the order prescribed in s.  
16 733.805.

17 (5) Unless otherwise provided in the trust instrument  
18 or, in the decedent's will if there is no provision in the  
19 trust instrument, any amount to be satisfied from trust  
20 property shall be paid from the assets of the trust in the  
21 order provided for claims under subsections (2) and (3) of s.  
22 737.3054. A direction in the decedent's will is effective only  
23 for revocable trusts.

24 Section 8. Section 732.208, Florida Statutes, is  
25 amended to read:

26 (Substantial rewording of section. See  
27 s. 732.208, F.S., for present text.)

28 732.208 Liability of direct recipients and  
29 beneficiaries.--

30 (1) Only direct recipients of property included in the  
31 elective estate and the beneficiaries of the decedent's

1 probate estate or of any trust that is a direct recipient, are  
2 liable to contribute toward satisfaction of the elective  
3 share.

4 (a) Within each of the classes described in paragraphs  
5 (b) and (c) of subsection (2) of s. 732.207, each direct  
6 recipient is liable in an amount equal to the value, as  
7 determined under s. 732.205, of the proportional part of the  
8 liability for all members of the class.

9 (b) Trust and probate estate beneficiaries who receive  
10 a distribution of principal after the decedent's death are  
11 liable in an amount equal to the value of the principal  
12 distributed to them multiplied by the contribution percentage  
13 of the distributing trust or estate. For this purpose,  
14 "contribution percentage" means the remaining unsatisfied  
15 balance of the trust or estate at the time of the distribution  
16 divided by the value of the trust or estate as determined  
17 under s. 732.205. "Remaining unsatisfied balance" means the  
18 amount of liability initially apportioned to the trust or  
19 estate reduced by amounts or property previously contributed  
20 by any person in satisfaction of that liability.

21 (2) In lieu of paying the amount for which they are  
22 liable, beneficiaries who have received a distribution of  
23 property included in the elective estate and direct recipients  
24 other than the decedent's probate estate or revocable trusts,  
25 may:

26 (a) Contribute a proportional part of all property  
27 received; or

28 (b) With respect to any property interest received  
29 before the date of the court's order of contribution:

30 1. Contribute all of the property; or  
31

1           2. If the property has been sold or exchanged prior to  
2 the date on which the spouse's election is filed, pay an  
3 amount equal to the value of the property, less reasonable  
4 costs of sale, on the date it was sold or exchanged.

5  
6 In the application of paragraph (a), the "proportional part of  
7 all property received" is determined separately for each class  
8 of priority under subsection (2) of s. 732.207.

9           (3) If a person pays the value of the property on the  
10 date of a sale or exchange or contributes all of the property  
11 received, as provided in paragraph (b) of subsection (2):

12           (a) No further contribution toward satisfaction of the  
13 elective share shall be required with respect to such  
14 property.

15           (b) Any unsatisfied contribution is treated as  
16 additional unsatisfied balance and reapportioned to other  
17 recipients as provided in s. 732.207 and this section.

18           (4) If any part of s. 732.2035 or s. 732.207 is  
19 preempted by federal law with respect to a payment, an item of  
20 property, or any other benefit included in the elective  
21 estate, a person who, not for value, receives the payment,  
22 item of property, or any other benefit is obligated to return  
23 the payment, item of property, or benefit, or is personally  
24 liable for the amount of the payment or the value of that item  
25 of property or benefit, as provided in s. 732.2035 and s.  
26 732.207, to the person who would have been entitled to it were  
27 that section or part of that section not preempted.

28           Section 9. Section 732.209, Florida Statutes, is  
29 amended to read:

30           (Substantial rewording of section. See  
31 s. 732.209, F.S., for present text.)

1           732.209 Valuation of property used to satisfy elective  
2 share.--  
3           (1) DEFINITIONS.--As used in this section, the term:  
4           (a) "Applicable valuation date" means:  
5           1. In the case of transfers in satisfaction of the  
6 elective share, the date of the decedent's death.  
7           2. In the case of other property irrevocably  
8 transferred to or for the benefit of the surviving spouse  
9 during the decedent's life, the date of the transfer.  
10           3. In the case of property distributed to the  
11 surviving spouse by the personal representative, the date of  
12 distribution.  
13           4. Except as provided in paragraphs (a)1. and 2., in  
14 the case of property passing in trust for the surviving  
15 spouse, the date or dates the trust is funded in satisfaction  
16 of the elective share.  
17           5. In the case of property described in subsection (2)  
18 or subsection (3) of s. 732.2035, the date of the decedent's  
19 death.  
20           6. In the case of proceeds of any policy of insurance  
21 payable to the surviving spouse, the date of the decedent's  
22 death.  
23           7. In the case of amounts payable to the surviving  
24 spouse under any plan or arrangement described in subsection  
25 (7) of s. 732.2035, the date of the decedent's death.  
26           8. In all other cases, the date of the decedent's  
27 death or the date the surviving spouse first comes into  
28 possession of the property, whichever occurs later.  
29           (b) "Qualifying power of appointment" means a general  
30 power of appointment that is exercisable alone and in all  
31 events by the decedent's spouse in favor of the spouse or the



1 spouse's estate. For this purpose, a general power to appoint  
2 by will is a qualifying power of appointment if the power may  
3 be exercised by the spouse in favor of the spouse's estate  
4 without the consent of any other person.

5 (c) "Qualifying invasion power" means a power held by  
6 the surviving spouse or the trustee of an elective share trust  
7 to invade trust principal for the health, support, and  
8 maintenance of the spouse. The power may, but need not,  
9 provide that the other resources of the spouse are to be taken  
10 into account in any exercise of the power.

11 (2) Except as provided in this subsection, the value  
12 of property for purposes of s. 732.207 is the fair market  
13 value of the property on the applicable valuation date.

14 (a) If the surviving spouse has a life interest in  
15 property not in trust that entitles the spouse to the use of  
16 the property for life, the value of the spouse's interest is  
17 one-half of the value of the property on the applicable  
18 valuation date.

19 (b) If the surviving spouse has an interest in a  
20 trust, or portion of a trust, that meets the requirements of  
21 an elective share trust, the value of the spouse's interest is  
22 a percentage of the value of the principal of the trust, or  
23 trust portion, on the applicable valuation date as follows:

24 1. One hundred percent if the trust instrument  
25 includes both a qualifying invasion power and a qualifying  
26 power of appointment.

27 2. Eighty percent if the trust instrument includes a  
28 qualifying invasion power but no qualifying power of  
29 appointment.

30 3. Fifty percent in all other cases.

31

1       (c) If the surviving spouse has an interest in a trust  
2 that does not meet the requirements of an elective share  
3 trust, the value of the spouse's interest is the transfer tax  
4 value of the interest on the applicable valuation date;  
5 provided, the aggregate value of all of the spouse's interests  
6 in the trust shall not exceed one-half of the value of the  
7 trust principal on the applicable valuation date.

8       (d) In the case of any policy of insurance on the  
9 decedent's life the proceeds of which are payable outright or  
10 to a trust described in paragraph (b) or paragraph (c) of this  
11 subsection, the value of the policy for purposes of s. 732.207  
12 and paragraphs (b) and (c) of this subsection is the net  
13 proceeds.

14       (e) In the case of a right to one or more payments  
15 from an annuity or under a similar contractual arrangement or  
16 under any plan or arrangement described in subsection (7) of  
17 s. 732.2035, the value of the right to payments for purposes  
18 of s. 732.207 and paragraphs (b) and (c) of this subsection is  
19 the transfer tax value of the right on the applicable  
20 valuation date.

21       Section 10. Section 732.210, Florida Statutes, is  
22 amended to read:

23       (Substantial rewording of section. See  
24 s. 732.210, F.S., for present text.)

25       732.210 Effect of election on other interests.--

26       (1) The elective share is in addition to homestead,  
27 exempt property and allowances as provided in part IV.

28       (2) If an election is filed, the balance of the  
29 elective estate, after the application of s. 732.214(1), shall  
30 be administered as though the surviving spouse had predeceased  
31 the decedent.

1           Section 11. Section 732.211, Florida Statutes, is  
2 amended to read:

3           (Substantial rewording of section. See  
4           s. 732.211, F.S., for present text.)

5           732.211 Protection of payors and other third  
6 parties.--Although a property interest is included in the  
7 decedent's elective estate under subsections (2) through (8)  
8 of s. 732.2035, a payor or other third party is not liable for  
9 paying, distributing, or transferring the property to a  
10 beneficiary designated in a governing instrument, or for  
11 taking any other action in good faith reliance on the validity  
12 of a governing instrument.

13           Section 12. Section 732.212, Florida Statutes, is  
14 amended to read:

15           (Substantial rewording of section. See  
16           s. 732.212, F.S., for present text.)

17           732.212 Right of election; by whom exercisable.--The  
18 right of election may be exercised:

19           (1) By the surviving spouse.

20           (2) With approval of the court having jurisdiction of  
21 the probate proceeding, by an attorney in fact or guardian of  
22 the property of the surviving spouse. The court shall  
23 determine the election as the best interests of the surviving  
24 spouse, during the spouse's probable lifetime, require.

25           Section 13. Section 732.213, Florida Statutes, is  
26 amended to read:

27           (Substantial rewording of section. See  
28           s. 732.213, F.S., for present text.)

29           732.213 Time of election; extensions; withdrawal.--

30           (1) Except as provided in subsection (2), the election  
31 must be filed within the earlier of 6 months of the date of

1 the first publication of notice of administration or 2 years  
2 after the date of the decedent's death.

3 (2) Within the period provided in subsection (1), the  
4 surviving spouse or an attorney in fact or guardian of the  
5 property of the surviving spouse may petition the court for an  
6 extension of time for making an election. After notice and  
7 hearing, the court for good cause shown may extend the time  
8 for election. If the court grants the petition for an  
9 extension, the election must be filed within the time allowed  
10 by the extension.

11 (3) The surviving spouse or an attorney in fact,  
12 guardian of the property, or personal representative of the  
13 surviving spouse may withdraw an election at any time within 8  
14 months of the decedent's death and before the court's order of  
15 contribution. If an election is withdrawn, the court may  
16 assess attorney's fees and costs against the surviving spouse  
17 or the spouse's estate.

18 (4) A petition for an extension of the time for making  
19 the election or for approval to make the election shall toll  
20 the time for making the election.

21 Section 14. Section 732.214, Florida Statutes, is  
22 amended to read:

23 (Substantial rewording of section. See  
24 s. 732.214, F.S., for present text.)

25 732.214 Order of contribution; personal  
26 representative's duty to collect contribution.--

27 (1) The court shall determine the elective share and  
28 shall order contribution. All contributions are to bear  
29 interest at the statutory rate provided in s. 55.03(1)  
30 beginning 90 days from the date of the order. The order of  
31

1 contribution is prima facie correct in proceedings in any  
2 court or jurisdiction.

3 (2) Except as provided in subsection (3), the personal  
4 representative shall collect contribution from the recipients  
5 of the elective estate as provided in the court's order of  
6 contribution.

7 (a) If property within the possession or control of  
8 the personal representative is distributable to a beneficiary  
9 or trustee who is required to contribute in satisfaction of  
10 the elective share, the personal representative shall withhold  
11 from the distribution the contribution required of the  
12 beneficiary or trustee.

13 (b) If, after the order of contribution, the personal  
14 representative brings an action to collect contribution from  
15 property not within the personal representative's control, the  
16 judgment shall include the personal representative's costs and  
17 reasonable attorney's fees. The personal representative is not  
18 required to seek collection of any portion of the elective  
19 share from property not within the personal representative's  
20 control until after the entry of the order of contribution.

21 (3) A personal representative who has the duty under  
22 this section of enforcing contribution, may be relieved of  
23 that duty by an order of the court finding that it is  
24 impracticable to enforce contribution in view of the  
25 improbability of obtaining a judgment or the improbability of  
26 collection under any judgment that might be obtained, or  
27 otherwise. The personal representative shall not be liable for  
28 failure to attempt collection if the attempt would have been  
29 economically impracticable.

30 (4) Nothing in this section limits the independent  
31 right of the surviving spouse to collect the elective share as

1 provided in the order of contribution and that right is hereby  
2 conferred. If the surviving spouse brings an action to enforce  
3 an order of contribution, the judgment shall include the  
4 surviving spouse's costs and reasonable attorney's fees.

5 Section 15. Section 732.215, Florida Statutes, is  
6 amended to read:

7 (Substantial rewording of section. See  
8 s. 732.215, F.S., for present text.)

9 732.215 Effective date; effect of prior waivers;  
10 transition rules.--

11 (1) Sections 732.201-732.215 are effective on October  
12 1, 1997, for all decedents dying on or after October 1, 1998.  
13 The law in effect prior to October 1, 1997, applies to  
14 decedents dying before October 1, 1998.

15 (2) A waiver of elective share rights before the  
16 effective date of this section in compliance with the  
17 requirements of s. 732.2035 is a waiver of all rights under  
18 ss. 732.201-732.214.

19 (3) Notwithstanding anything in s. 732.2045(1)(a) to  
20 the contrary, any trust created by the decedent before the  
21 effective date of this section that meets the requirements of  
22 an elective share trust, is treated as if the decedent created  
23 the trust after the effective date of this subsection and in  
24 satisfaction of the elective share.

25 Section 16. This act shall take effect October 1,  
26 1997.

568-116-97

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

\*\*\*\*\*

HOUSE SUMMARY

Substantially revises provisions of law governing the elective share of the surviving spouse under the probate code. Among other revisions, the act:

1. Provides that the surviving spouse of a person who dies domiciled in Florida has the right to a share of the elective estate of the decedent, to be designated the elective share.
2. Provides for the property entering into the elective estate.
3. Provides for exclusions and overlapping application.
4. Includes provisions for the valuation of the elective estate.
5. Includes requirements with respect to the elective share amount.
6. Provides for sources from which the elective share is payable and for the abatement thereof.
7. Includes provisions with respect to the liability of direct recipients and beneficiaries.
8. Provides for the valuation of property used to satisfy the elective share.
9. Provides for the effect of the election on other interests.
10. Provides for the protection of payors and other third parties.
11. Provides by whom the right of election is exercisable.
12. Provides for the time of election, for extensions on the time and for withdrawal.
13. Provides for the order of contribution and the personal representative's duty to collect contribution.
14. Provides for transition rules.

See bill for details.