

Bill No. CS for SB 298

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
---------------	----------------	--------------

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

·
·
·
·
·
·

Senator Geller moved the following amendment:

Senate Amendment (with title amendment)
Delete everything after the enacting clause

and insert:

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

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

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

732.2025 Definitions.--As used in sections 732.2025-732.2155, the term:

(1) "Direct recipient" means the decedent's probate estate and any other person who receives property included in the elective estate by transfer from the decedent, including transfers described in s. 732.2035(8), by right of

Bill No. CS for SB 298

Amendment No. ____

1 survivorship, or by beneficiary designation under a governing
2 instrument. For this purpose, a beneficiary of an insurance
3 policy on the decedent's life, the net cash surrender value of
4 which is included in the elective estate, is treated as having
5 received property included in the elective estate. In the case
6 of property held in trust, "direct recipient" includes the
7 trustee but excludes the beneficiaries of the trust.

8 (2) "Elective share trust" means a trust where:

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

12 (b) The trust is subject to the provisions of s.
13 738.12 or the surviving spouse has the right under the terms
14 of the trust or state law to require the trustee either to
15 make the property productive or to convert it within a
16 reasonable time; and

17 (c) During the spouse's life, no person other than the
18 spouse has the power to distribute income or principal to
19 anyone other than the spouse.

20 (3) "General power of appointment" means a power of
21 appointment under which the holder of the power, whether or
22 not the holder has the capacity to exercise it, has the power
23 to create a present or future interest in the holder, the
24 holder's estate, or the creditors of either. The term includes
25 a power to consume or invade the principal of a trust, but
26 only if the power is not limited by an ascertainable standard
27 relating to the holder's health, education, support, or
28 maintenance.

29 (4) "Governing instrument" means a deed; will; trust;
30 insurance or annuity policy; account with payable-on-death
31 designation; security registered in beneficiary form (TOD);

Bill No. CS for SB 298

Amendment No. ____

1 pension, profit-sharing, retirement, or similar benefit plan;
2 an instrument creating or exercising a power of appointment or
3 a power of attorney; or a dispositive, appointive, or
4 nominative instrument of any similar type.

5 (5) "Payor" means an insurer, business entity,
6 employer, government, governmental agency or subdivision, or
7 any other person, other than the decedent's personal
8 representative or a trustee of a trust created by the
9 decedent, authorized or obligated by law or a governing
10 instrument to make payments.

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

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

16 (8) "Qualifying special needs trust" or "supplemental
17 needs trust" means a trust established for an ill or disabled
18 surviving spouse with court approval before or after a
19 decedent's death for such incapacitated surviving spouse, if,
20 commencing on the decedent's death:

21 (a) The income and principal are distributable to or
22 for the benefit of the spouse for life in the discretion of
23 one or more trustees less than half of whom are ineligible
24 family trustees. For purposes of this paragraph, ineligible
25 family trustees include the decedent's grandparents and any
26 descendants of the decedent's grandparents who are not also
27 descendants of the surviving spouse; and

28 (b) During the spouse's life, no person other than the
29 spouse has the power to distribute income or principal to
30 anyone other than the spouse.

31 (c) The requirement for court approval and the

Bill No. CS for SB 298

Amendment No. ____

1 limitation on ineligible family trustees shall not apply if
 2 the aggregate of the trust property as of the applicable
 3 valuation date in a qualifying special needs trust is less
 4 than \$100,000.

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

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

10 (11) "Transfer tax value" means the value the interest
 11 would have for purposes of the United States estate and gift
 12 tax laws if it passed without consideration to an unrelated
 13 person on the applicable valuation date.

14 Section 3. Section 732.206, Florida Statutes, is
 15 transferred, renumbered as section 732.2035, Florida Statutes,
 16 and amended to read:

17 (Substantial rewording of section. See
 18 s. 732.206, F.S., for present text.)

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. 732.2055 of the following property interests:

23 (1) The decedent's probate estate.

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

31 (3) The decedent's fractional interest in property,

Bill No. CS for SB 298

Amendment No. ____

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

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

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

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

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

25
26 In the application of this subsection, a right to payments
27 from an annuity or under a similar contractual arrangement
28 shall be treated as a right to that portion of the income of
29 the property necessary to equal the annuity or other
30 contractual payment.

31 (b) The amount included under this subsection is:

Bill No. CS for SB 298

Amendment No. ____

1 1. With respect to subparagraph (a)1., the value of
2 the portion of the property to which the decedent's right or
3 enjoyment related, to the extent the portion passed to or for
4 the benefit of any person other than the decedent's probate
5 estate; and

6 2. With respect to subparagraph (a)2., the value of
7 the portion subject to the discretion, to the extent the
8 portion passed to or for the benefit of any person other than
9 the decedent's probate estate.

10 (c) This subsection does not apply to any property if
11 the decedent's only interests in the property are that:

12 1. The property could be distributed to or for the
13 benefit of the decedent only with the consent of all persons
14 having a beneficial interest in the property; or

15 2. The income or principal of the property could be
16 distributed to or for the benefit of the decedent only through
17 the exercise or in default of an exercise of a general power
18 of appointment held by any person other than the decedent; or

19 3. The income or principal of the property is or could
20 be distributed in satisfaction of the decedent's obligation of
21 support; or

22 4. The decedent had a contingent right to receive
23 principal, other than at the discretion of any person, which
24 contingency was beyond the control of the decedent and which
25 had not in fact occurred at the decedent's death.

26 (6) The decedent's beneficial interest in the net cash
27 surrender value immediately before death of any policy of
28 insurance on the decedent's life.

29 (7) The value of amounts payable to or for the benefit
30 of any person by reason of surviving the decedent under any
31 public or private pension, retirement, or deferred

Bill No. CS for SB 298

Amendment No. ____

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

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

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

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

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

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

31 (c) Except as provided in paragraph (d), for purposes

Bill No. CS for SB 298

Amendment No. ____

1 of this subsection:

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

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

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

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

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

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

30 Section 4. Section 732.2045, Florida Statutes, is
31 created to read:

Bill No. CS for SB 298

Amendment No. ____

- 1 732.2045 Exclusions and overlapping application.--
2 (1) EXCLUSIONS.--Section 732.2035 does not apply to:
3 (a) Except as provided in s. 732.2155(4), any transfer
4 of property by the decedent to the extent the transfer is
5 irrevocable before the effective date of this subsection or
6 after that date but before the date of the decedent's marriage
7 to the surviving spouse.
8 (b) Any transfer of property by the decedent to the
9 extent the decedent received adequate consideration in money
10 or money's worth for the transfer.
11 (c) Any transfer of property by the decedent made with
12 the written consent of the decedent's spouse. For this
13 purpose, spousal consent to split-gift treatment under the
14 United States gift tax laws does not constitute written
15 consent to the transfer by the decedent.
16 (d) The proceeds of any policy of insurance on the
17 decedent's life in excess of the net cash surrender value of
18 the policy whether payable to the decedent's estate, a trust,
19 or in any other manner.
20 (e) Any policy of insurance on the decedent's life
21 maintained pursuant to a court order.
22 (f) The decedent's one-half of the property to which
23 ss. 732.216-732.228 apply and real property that is community
24 property under the laws of the jurisdiction where it is
25 located.
26 (g) Property held in a qualifying special needs trust
27 on the date of the decedent's death.
28 (h) Property included in the gross estate of the
29 decedent for federal estate tax purposes solely because the
30 decedent possessed a general power of appointment.
31 (2) OVERLAPPING APPLICATION.--If s. 732.2035(1) and

Bill No. CS for SB 298

Amendment No.

1 any other subsection of s. 732.2035 apply to the same property
2 interest, the amount included in the elective estate under
3 other subsections is reduced by the amount included under
4 subsection (1). In all other cases, if more than one
5 subsection of s. 732.2035 applies to a property interest, only
6 the subsection resulting in the largest elective estate shall
7 apply.

8 Section 5. Section 732.2055, Florida Statutes, is
9 created to read:

10 732.2055 Valuation of the elective estate.--For
11 purposes of s. 732.2035, "value" means:

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

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

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

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

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

31 (a) All claims, other than claims for funeral

Bill No. CS for SB 298

Amendment No. ____

1 expenses, paid or payable from the elective estate; and
2 (b) To the extent they are not deducted under
3 paragraph (a), all mortgages, liens, or security interests on
4 the property.

5 Section 6. Section 732.207, Florida Statutes, is
6 transferred, renumbered as section 732.2065, Florida Statutes,
7 and amended to read:

8 732.2065 732.207 Amount of the elective share.--The
9 elective share is ~~shall consist of~~ an amount equal to 30
10 percent of the elective estate fair market value, on the date
11 ~~of death, of all assets referred to in s. 732.206, computed~~
12 ~~after deducting from the total value of the assets:~~

13 ~~(1) All valid claims against the estate paid or~~
14 ~~payable from the estate; and~~

15 ~~(2) All mortgages, liens, or security interests on the~~
16 ~~assets.~~

17 Section 7. Section 732.209, Florida Statutes, is
18 transferred, renumbered as section 732.2075, Florida Statutes,
19 and amended to read:

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

22 732.2075 Sources from which elective share payable;
23 abatement.--

24 (1) Unless otherwise provided in the decedent's will
25 or, in the absence of a provision in the decedent's will, in a
26 trust referred to in the decedent's will, the following are
27 applied first to satisfy the elective share:

28 (a) To the extent paid to or for the benefit of the
29 surviving spouse, the proceeds of any term or other policy of
30 insurance on the decedent's life if, at the time of decedent's
31 death, the policy was owned by any person other than the

Bill No. CS for SB 298

Amendment No. ____

1 surviving spouse.

2 (b) To the extent paid to or for the benefit of the
3 surviving spouse, amounts payable under any plan or
4 arrangement described in s. 732.2035(7).

5 (c) To the extent paid to or for the benefit of the
6 surviving spouse, the decedent's one-half of any property
7 described in s. 732.2045(1)(f).

8 (d) Property held for the benefit of the surviving
9 spouse in a qualifying special needs trust.

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

13 (f) Property interests that would have satisfied the
14 elective share under any preceding paragraph of this
15 subsection but were disclaimed.

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

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

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

27 (c) Class 3.--Recipients of all other property
28 interests included in the elective estate except interests for
29 which a charitable deduction with respect to the transfer of
30 the property was allowed or allowable to the decedent or the
31 decedent's spouse under the United States gift tax laws.

Bill No. CS for SB 298

Amendment No. ____

1 732.2075(2)(b) and (c), each direct recipient is liable in an
2 amount equal to the value, as determined under s. 732.2055, of
3 the proportional part of the liability for all members of the
4 class.

5 (b) Trust and probate estate beneficiaries who receive
6 a distribution of principal after the decedent's death are
7 liable in an amount equal to the value of the principal
8 distributed to them multiplied by the contribution percentage
9 of the distributing trust or estate. For this purpose,
10 "contribution percentage" means the remaining unsatisfied
11 balance of the trust or estate at the time of the distribution
12 divided by the value of the trust or estate as determined
13 under s. 732.2055. "Remaining unsatisfied balance" means the
14 amount of liability initially apportioned to the trust or
15 estate reduced by amounts or property previously contributed
16 by any person in satisfaction of that liability.

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

22 (a) Contribute a proportional part of all property
23 received; or

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

26 1. Contribute all of the property; or

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

31

Bill No. CS for SB 298

Amendment No.

1 In the application of paragraph (a), the "proportional part of
 2 all property received" is determined separately for each class
 3 of priority under s. 732.2075(2).

4 (3) If a person pays the value of the property on the
 5 date of a sale or exchange or contributes all of the property
 6 received, as provided in paragraph (2)(b):

7 (a) No further contribution toward satisfaction of the
 8 elective share shall be required with respect to such
 9 property.

10 (b) Any unsatisfied contribution is treated as
 11 additional unsatisfied balance and reapportioned to other
 12 recipients as provided in s. 732.2075 and this section.

13 (4) If any part of s. 732.2035 or s. 732.2075 is
 14 preempted by federal law with respect to a payment, an item of
 15 property, or any other benefit included in the elective
 16 estate, a person who, not for value, receives the payment,
 17 item of property, or any other benefit is obligated to return
 18 the payment, item of property, or benefit, or is personally
 19 liable for the amount of the payment or the value of that item
 20 of property or benefit, as provided in s. 732.2035 and s.
 21 732.2075, to the person who would have been entitled to it
 22 were that section or part of that section not preempted.

23 Section 9. Section 732.2095, Florida Statutes, is
 24 created to read:

25 732.2095 Valuation of property used to satisfy
 26 elective share.--

27 (1) DEFINITIONS.--As used in this section, the term:

28 (a) "Applicable valuation date" means:

29 1. In the case of transfers in satisfaction of the
 30 elective share, the date of the decedent's death.

31 2. In the case of property held in a qualifying

Bill No. CS for SB 298

Amendment No. ____

1 special needs trust on the date of the decedent's death, the
2 date of the decedent's death.

3 3. In the case of other property irrevocably
4 transferred to or for the benefit of the surviving spouse
5 during the decedent's life, the date of the transfer.

6 4. In the case of property distributed to the
7 surviving spouse by the personal representative, the date of
8 distribution.

9 5. Except as provided in subparagraphs 1., 2., and 3.,
10 in the case of property passing in trust for the surviving
11 spouse, the date or dates the trust is funded in satisfaction
12 of the elective share.

13 6. In the case of property described in s. 732.2035(3)
14 or (4), the date of the decedent's death.

15 7. In the case of proceeds of any policy of insurance
16 payable to the surviving spouse, the date of the decedent's
17 death.

18 8. In the case of amounts payable to the surviving
19 spouse under any plan or arrangement described in s.
20 732.2035(7), the date of the decedent's death.

21 9. In all other cases, the date of the decedent's
22 death or the date the surviving spouse first comes into
23 possession of the property, whichever occurs later.

24 (b) "Qualifying power of appointment" means a general
25 power of appointment that is exercisable alone and in all
26 events by the decedent's spouse in favor of the spouse or the
27 spouse's estate. For this purpose, a general power to appoint
28 by will is a qualifying power of appointment if the power may
29 be exercised by the spouse in favor of the spouse's estate
30 without the consent of any other person.

31 (c) "Qualifying invasion power" means a power held by

Bill No. CS for SB 298

Amendment No. ____

1 the surviving spouse or the trustee of an elective share trust
2 to invade trust principal for the health, support, and
3 maintenance of the spouse. The power may, but need not,
4 provide that the other resources of the spouse are to be taken
5 into account in any exercise of the power.

6 (2) Except as provided in this subsection, the value
7 of property for purposes of s. 732.2075 is the fair market
8 value of the property on the applicable valuation date.

9 (a) If the surviving spouse has a life interest in
10 property not in trust that entitles the spouse to the use of
11 the property for life, the value of the spouse's interest is
12 one-half of the value of the property on the applicable
13 valuation date.

14 (b) If the surviving spouse has an interest in a
15 trust, or portion of a trust, which meets the requirements of
16 an elective share trust, the value of the spouse's interest is
17 a percentage of the value of the principal of the trust, or
18 trust portion, on the applicable valuation date as follows:

19 1. One hundred percent if the trust instrument
20 includes both a qualifying invasion power and a qualifying
21 power of appointment.

22 2. Eighty percent if the trust instrument includes a
23 qualifying invasion power but no qualifying power of
24 appointment.

25 3. Fifty percent in all other cases.

26 (c) If the surviving spouse is a beneficiary of a
27 trust, or portion of a trust, which meets the requirements of
28 a qualifying special needs trust, the value of the principal
29 of the trust, or trust portion, on the applicable valuation
30 date.

31 (d) If the surviving spouse has an interest in a trust

Bill No. CS for SB 298

Amendment No. ____

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

7 (e) In the case of any policy of insurance on the
 8 decedent's life the proceeds of which are payable outright or
 9 to a trust described in paragraph (b), paragraph (c), or
 10 paragraph (d), the value of the policy for purposes of s.
 11 732.2075 and paragraphs (b), (c), and (d) is the net proceeds.

12 (f) In the case of a right to one or more payments
 13 from an annuity or under a similar contractual arrangement or
 14 under any plan or arrangement described in s. 732.2035(7), the
 15 value of the right to payments for purposes of s. 732.2075 and
 16 paragraphs (b), (c), and (d) is the transfer tax value of the
 17 right on the applicable valuation date.

18 Section 10. Section 732.208, Florida Statutes, is
 19 transferred, renumbered as section 732.2105, Florida Statutes,
 20 and amended to read:

21 732.2105 ~~732.208~~ Effect of election on other interests
 22 interests in addition to elective share.--

23 (1) The elective share shall be in addition to
 24 homestead, exempt property, and allowances as provided in part
 25 IV.

26 (2) If an election is filed, the balance of the
 27 elective estate, after the application of s. 732.2145(1),
 28 shall be administered as though the surviving spouse had
 29 predeceased the decedent.

30 Section 11. Section 732.2115, Florida Statutes, is
 31 created to read:

Bill No. CS for SB 298

Amendment No. ____

1 732.2115 Protection of payors and other third
 2 parties.--Although a property interest is included in the
 3 decedent's elective estate under s. 732.2035(2)-(8), a payor
 4 or other third party is not liable for paying, distributing,
 5 or transferring the property to a beneficiary designated in a
 6 governing instrument, or for taking any other action in
 7 good-faith reliance on the validity of a governing instrument.

8 Section 12. Section 732.210, Florida Statutes, is
 9 transferred, renumbered as section 732.2125, Florida Statutes,
 10 and amended to read:

11 732.2125 ~~732.210~~ Right of election; by whom
 12 exercisable.--The right of election may be exercised:

13 (1) By the surviving spouse.

14 (2) By an attorney in fact or a guardian of the
 15 property of the surviving spouse, with approval of-the court
 16 having jurisdiction of the probate proceeding. The court shall
 17 determine the election as the best interests of the surviving
 18 spouse, during the spouse's probable lifetime, require.

19 Section 13. Section 732.212, Florida Statutes, is
 20 transferred, renumbered as section 732.2135, Florida Statutes,
 21 and amended to read:

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

24 732.2135 Time of election; extensions; withdrawal.--

25 (1) Except as provided in subsection (2), the election
 26 must be filed within the earlier of 6 months of the date of
 27 the first publication of notice of administration or 2 years
 28 after the date of the decedent's death.

29 (2) Within the period provided in subsection (1), the
 30 surviving spouse or an attorney in fact or guardian of the
 31 property of the surviving spouse may petition the court for an

Bill No. CS for SB 298

Amendment No. ____

1 extension of time for making an election. After notice and
2 hearing, the court for good cause shown may extend the time
3 for election. If the court grants the petition for an
4 extension, the election must be filed within the time allowed
5 by the extension.

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

13 (4) A petition for an extension of the time for making
14 the election or for approval to make the election shall toll
15 the time for making the election.

16 Section 14. Section 732.2145, Florida Statutes, is
17 created to read:

18 732.2145 Order of contribution; personal
19 representative's duty to collect contribution.--

20 (1) The court shall determine the elective share and
21 shall order contribution. All contributions are to bear
22 interest at the statutory rate provided in s. 55.03(1)
23 beginning 90 days from the date of the order. The order of
24 contribution is prima facie correct in proceedings in any
25 court or jurisdiction.

26 (2) Except as provided in subsection (3), the personal
27 representative shall collect contribution from the recipients
28 of the elective estate as provided in the court's order of
29 contribution.

30 (a) If property within the possession or control of
31 the personal representative is distributable to a beneficiary

Bill No. CS for SB 298

Amendment No. ____

1 or trustee who is required to contribute in satisfaction of
2 the elective share, the personal representative shall withhold
3 from the distribution the contribution required of the
4 beneficiary or trustee.

5 (b) If, after the order of contribution, the personal
6 representative brings an action to collect contribution from
7 property not within the personal representative's control, the
8 judgment shall include the personal representative's costs and
9 reasonable attorney's fees. The personal representative is not
10 required to seek collection of any portion of the elective
11 share from property not within the personal representative's
12 control until after the entry of the order of contribution.

13 (3) A personal representative who has the duty under
14 this section of enforcing contribution may be relieved of that
15 duty by an order of the court finding that it is impracticable
16 to enforce contribution in view of the improbability of
17 obtaining a judgment or the improbability of collection under
18 any judgment that might be obtained, or otherwise. The
19 personal representative shall not be liable for failure to
20 attempt collection if the attempt would have been economically
21 impracticable.

22 (4) Nothing in this section limits the independent
23 right of the surviving spouse to collect the elective share as
24 provided in the order of contribution and that right is hereby
25 conferred. If the surviving spouse brings an action to enforce
26 an order of contribution, the judgment shall include the
27 surviving spouse's costs and reasonable attorney's fees.

28 Section 15. Section 732.2155, Florida Statutes, is
29 created to read:

30 732.2155 Effective date; effect of prior waivers;
31 transition rules.--

Bill No. CS for SB 298

Amendment No. ____

1 (1) Sections 732.201-732.2155 are effective on October
2 1, 1999, for all decedents dying on or after October 1, 2001.
3 The law in effect prior to October 1, 1999, applies to
4 decedents dying before October 1, 2001.

5 (2) Nothing in ss. 732.201-732.2155 modifies or
6 applies to the rights of spouses under chapter 61.

7 (3) A waiver of elective share rights before the
8 effective date of this section which is otherwise in
9 compliance with the requirements of s. 732.702 is a waiver of
10 all rights under ss. 732.201-732.2145.

11 (4) Notwithstanding anything in s. 732.2045(1)(a) to
12 the contrary, any trust created by the decedent before the
13 effective date of this section that meets the requirements of
14 an elective share trust is treated as if the decedent created
15 the trust after the effective date of this subsection and in
16 satisfaction of the elective share.

17 (5) Sections 732.201-732.2155 do not affect any
18 interest in contracts entered into for adequate consideration
19 in money or money's worth before October 1, 1999, to the
20 extent that the contract was irrevocable at all times from
21 October 1, 1999, until the date of the decedent's death.

22 Section 16. Sections 732.205, 732.211, 732.213,
23 732.214, and 732.215, Florida Statutes, are repealed.

24 Section 17. This act shall take effect October 1,
25 1999.

26
27

28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete everything before the enacting clause

31

Bill No. CS for SB 298

Amendment No. ____

1 time of election; providing for extensions and
2 for withdrawal; creating s. 732.2145, F.S.;
3 providing for the order of contribution;
4 providing for the personal representative's
5 duty to collect contributions; creating s.
6 732.2155, F.S.; providing for the effective
7 date, inapplicability of ch. 61, F.S., the
8 effect of prior waivers, and transition rules;
9 repealing s. 732.205, F.S., which provides
10 elective share solely for Florida resident
11 decedent; repealing s. 732.211, F.S., which
12 provides for the effect of the exercise of the
13 right of election; repealing s. 732.213, F.S.,
14 which provides for preexisting right to dower;
15 repealing s. 732.214, F.S., which provides for
16 proceedings on election; repealing s. 732.215,
17 F.S., which provides for the effect of elective
18 share on taxes; providing an effective date.

19
20
21
22
23
24
25
26
27
28
29
30
31