

Bill No. CS/CS/HB 301, 1st Eng.

Amendment No.     

|    | <u>Senate</u>  | CHAMBER ACTION | <u>House</u> |
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| 11 | Senator Geller moved the following amendment:                                  |                |              |
| 12 |  |                |              |
| 13 | <b>Senate Amendment (with title amendment)</b>                                 |                |              |
| 14 | Delete everything after the enacting clause                                    |                |              |
| 15 |  |                |              |
| 16 | and insert:  |                |              |
| 17 | Section 1. Section 732.201, Florida Statutes, is                               |                |              |
| 18 | amended to read:   |                |              |
| 19 | 732.201 Right to elective share.--The surviving spouse                         |                |              |
| 20 | of a person who dies domiciled in Florida <u>has</u> <del>shall have</del> the |                |              |
| 21 | right to a share of the <u>elective</u> estate of the <u>decedent</u>          |                |              |
| 22 | <del>deceased spouse</del> as provided in this part, to be designated the      |                |              |
| 23 | elective share.  |                |              |
| 24 | Section 2. Section 732.2025, Florida Statutes, is                              |                |              |
| 25 | created to read:   |                |              |
| 26 | <u>732.2025 Definitions.--As used in sections</u>                              |                |              |
| 27 | <u>732.2025-732.2155, the term:</u>  |                |              |
| 28 | <u>(1) "Direct recipient" means the decedent's probate</u>                     |                |              |
| 29 | <u>estate and any other person who receives property included in</u>           |                |              |
| 30 | <u>the elective estate by transfer from the decedent, including</u>            |                |              |
| 31 | <u>transfers described in s. 732.2035(8), by right of</u>                      |                |              |

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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);

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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

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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,

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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:

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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

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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

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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:



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- 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

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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

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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

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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.

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

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

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

22           Section 8. Section 732.2085, Florida Statutes, is  
23 created to read:

24           732.2085 Liability of direct recipients and  
25 beneficiaries.--

26           (1) Only direct recipients of property included in the  
27 elective estate and the beneficiaries of the decedent's  
28 probate estate or of any trust that is a direct recipient, are  
29 liable to contribute toward satisfaction of the elective  
30 share.

31           (a) Within each of the classes described in s.

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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.

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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

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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



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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

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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:

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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

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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

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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.--

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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.

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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

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1 and insert:

2 A bill to be entitled

3 An act relating to probate; amending s.

4 732.201, F.S.; revising provisions governing

5 the right to elective share; creating s.

6 732.2025, F.S.; providing definitions;

7 transferring, renumbering, and amending s.

8 732.206, F.S.; providing for property entering

9 into the elective estate; creating s. 732.2045,

10 F.S.; providing for exclusions and overlapping

11 application; creating s. 732.2055, F.S.;

12 providing for the valuation of the elective

13 estate; transferring, renumbering, and amending

14 s. 732.207, F.S.; providing for the elective

15 share amount; transferring, renumbering, and

16 amending s. 732.209, F.S.; providing for the

17 sources from which the elective share is

18 payable; providing for abatement; creating s.

19 732.2085, F.S.; providing for the liability of

20 direct recipients and beneficiaries; creating

21 s. 732.2095, F.S.; providing for the valuation

22 of the property used to satisfy the elective

23 share; transferring, renumbering, and amending

24 s. 732.208, F.S.; providing for the effect of

25 the election on other interests; creating s.

26 732.2115, F.S.; providing for the protection of

27 payors and other third parties; transferring,

28 renumbering, and amending s. 732.210, F.S.;

29 providing who may exercise the right of

30 election; transferring, renumbering, and

31 amending s. 732.212, F.S.; providing for the

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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.  
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