

By the Committee on Real Property & Probate and  
Representative Goodlette

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, inapplicability of ch. 61, F.S., the  
3           effect of prior waivers, and transition rules;  
4           providing an effective date.

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

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

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

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

17           732.2025 Definitions.--As used in sections  
18           732.2025-732.215, the term:

19           (1) "Direct recipient" means the decedent's probate  
20           estate and any other person who receives property included in  
21           the elective estate by transfer from the decedent, including  
22           transfers described in s. 732.2035(8), by right of  
23           survivorship, or by beneficiary designation under a governing  
24           instrument. For this purpose, a beneficiary of an insurance  
25           policy on the decedent's life, the net cash surrender value of  
26           which is included in the elective estate, is treated as having  
27           received property included in the elective estate. In the case  
28           of property held in trust, "direct recipient" includes the  
29           trustee but excludes the 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) "Qualifying special needs trust" means a trust  
9 established with court approval before or after a decedent's  
10 death for an incapacitated surviving spouse, if, commencing on  
11 the decedent's death:  
12 (a) The income and principal are distributable to or  
13 for the benefit of the spouse for life in the discretion of  
14 one or more trustees less than half of whom are ineligible  
15 family trustees. For purposes of this paragraph, ineligible  
16 family trustees include the decedent's grandparents and any  
17 descendants of the decedent's grandparents who are not also  
18 descendants of the surviving spouse.  
19 (b) During the spouse's life, no person other than the  
20 spouse has the power to distribute income or principal to  
21 anyone other than the spouse.  
22 (9) "Revocable trust" means a trust that is includable  
23 in the elective estate under s. 732.2035(4).  
24 (10) "Transfer in satisfaction of the elective share"  
25 means an irrevocable transfer by the decedent to an elective  
26 share trust.  
27 (11) "Transfer tax value" means the value the interest  
28 would have for purposes of the United States estate and gift  
29 tax laws if it passed without consideration to an unrelated  
30 person on the applicable valuation date.  
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1           Section 3. Section 732.2035, Florida Statutes, is  
2 created to read:

3           732.2035 Property entering into elective  
4 estate.--Except as provided in s. 732.2045, the elective  
5 estate consists of the sum of the values as determined under  
6 s. 732.205 of the property interests described in this  
7 section.

8           (1) The decedent's probate estate.

9           (2) The decedent's ownership interest in accounts or  
10 securities registered in "Pay On Death," "Transfer On Death,"  
11 "In Trust For," or coownership with right of survivorship  
12 form. For this purpose, "decedent's ownership interest" means  
13 that portion of the accounts or securities which the decedent  
14 had, immediately before death, the right to withdraw or use  
15 without the duty to account to any person.

16           (3) The decedent's fractional interest in property,  
17 other than property described in subsection (2) or subsection  
18 (7), held by the decedent in joint tenancy with right of  
19 survivorship or in tenancy by the entirety. For this purpose,  
20 "decedent's fractional interest in property" means the value  
21 of the property divided by the number of tenants.

22           (4) That portion of property, other than property  
23 described in subsection (2), transferred by the decedent to  
24 the extent that at the time of the decedent's death the  
25 transfer was revocable by the decedent alone or in conjunction  
26 with any other person. This subsection does not apply to a  
27 transfer that is revocable by the decedent only with the  
28 consent of all persons having a beneficial interest in the  
29 property.

30           (5)(a) That portion of property, other than property  
31 described in subsection (3), subsection (4), or subsection

1 (7), transferred by the decedent to the extent that at the  
2 time of the decedent's death:  
3       1. The decedent possessed the right to, or in fact  
4 enjoyed the possession or use of, the income or principal of  
5 the property; or  
6       2. The principal of the property could, in the  
7 discretion of any person other than the spouse of the  
8 decedent, be distributed or appointed to or for the benefit of  
9 the decedent.  
10  
11 In the application of this subsection, a right to payments  
12 from an annuity or under a similar contractual arrangement  
13 shall be treated as a right to that portion of the income of  
14 the property necessary to equal the annuity or other  
15 contractual payment.  
16       (b) The amount included under this subsection is:  
17       1. With respect to subparagraph (a)1., the value of  
18 the portion of the property to which the decedent's right or  
19 enjoyment related, to the extent the portion passed to or for  
20 the benefit of any person other than the decedent's probate  
21 estate; and  
22       2. With respect to subparagraph (a)2., the value of  
23 the portion subject to the discretion, to the extent the  
24 portion passed to or for the benefit of any person other than  
25 the decedent's probate estate.  
26       (c) This subsection does not apply to any property if  
27 the decedent's only interests in the property are that:  
28       1. The property could be distributed to or for the  
29 benefit of the decedent only with the consent of all persons  
30 having a beneficial interest in the property; or  
31

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

5           3. The income or principal of the property is or could  
6 be distributed in satisfaction of the decedent's obligation of  
7 support; or

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

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

15           (7) The value of amounts payable to or for the benefit  
16 of any person by reason of surviving the decedent under any  
17 public or private pension, retirement, or deferred  
18 compensation plan, or any similar arrangement, other than  
19 benefits payable under the federal Railroad Retirement Act or  
20 the federal Social Security System. In the case of a defined  
21 contribution plan as defined in s. 414(i) of the Internal  
22 Revenue Code of 1986, as amended, this subsection shall not  
23 apply to the excess of the proceeds of any insurance policy on  
24 the decedent's life over the net cash surrender value of the  
25 policy immediately before the decedent's death.

26           (8) Property that was transferred during the 1-year  
27 period preceding the decedent's death as a result of a  
28 transfer by the decedent if the transfer was either of the  
29 following types:

30           (a) Any property transferred as a result of the  
31 termination of a right or interest in, or power over, property

1 that would have been included in the elective estate under  
2 subsection (4) or subsection (5) if the right, interest, or  
3 power had not terminated until the decedent's death.  
4 (b) Any transfer of property to the extent not  
5 otherwise included in the elective estate, made to or for the  
6 benefit of any person, except:  
7 1. Any transfer of property for medical or educational  
8 expenses to the extent it qualifies for exclusion from the  
9 United States gift tax under s. 2503(e) of the Internal  
10 Revenue Code, as amended; and  
11 2. After the application of paragraph (b)1., the first  
12 \$10,000 of property transferred to or for the benefit of each  
13 donee during the 1-year period, but only to the extent the  
14 transfer qualifies for exclusion from the United States gift  
15 tax under s. 2503(b) or s. 2503(c) of the Internal Revenue  
16 Code, as amended.  
17 (c) Except as provided in paragraph (d), for purposes  
18 of this subsection:  
19 1. A "termination" with respect to a right or interest  
20 in property occurs when the decedent transfers or relinquishes  
21 the right or interest, and, with respect to a power over  
22 property, a termination occurs when the power terminates by  
23 exercise, release, lapse, default, or otherwise.  
24 2. A distribution from a trust the income or principal  
25 of which is subject to subsection (4), subsection (5), or  
26 subsection (9) shall be treated as a transfer of property by  
27 the decedent and not as a termination of a right or interest  
28 in, or a power over, property.  
29 (d) Notwithstanding anything in paragraph (c) to the  
30 contrary:  
31



1           1. A "termination" with respect to a right or interest  
2 in property does not occur when the right or interest  
3 terminates by the terms of the governing instrument unless the  
4 termination is determined by reference to the death of the  
5 decedent and the court finds a principal purpose for the terms  
6 of the instrument relating to the termination was avoidance of  
7 the elective share.

8           2. A distribution from a trust is not subject to this  
9 subsection if the distribution is required by the terms of the  
10 governing instrument unless the event triggering the  
11 distribution is determined by reference to the death of the  
12 decedent and the court finds that a principal purpose of the  
13 terms of the governing instrument relating to the distribution  
14 is avoidance of the elective share.

15           (9) Property transferred in satisfaction of the  
16 elective share.

17           Section 4. Section 732.2045, Florida Statutes, is  
18 created to read:

19           732.2045 Exclusions and overlapping application.--

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

21           (a) Except as provided in s. 732.215(4), any transfer  
22 of property by the decedent to the extent the transfer is  
23 irrevocable before the effective date of this subsection or  
24 after that date but before the date of the decedent's marriage  
25 to the surviving spouse.

26           (b) Any transfer of property by the decedent to the  
27 extent the decedent received adequate consideration in money  
28 or money's worth for the transfer.

29           (c) Any transfer of property by the decedent made with  
30 the written consent of the decedent's spouse. For this  
31 purpose, spousal consent to split-gift treatment under the

1 United States gift tax laws does not constitute written  
2 consent to the transfer by the decedent.

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

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

9 (f) The decedent's one-half of the property to which  
10 ss. 732.216-732.228 apply and real property that is community  
11 property under the laws of the jurisdiction where it is  
12 located.

13 (g) Property held in a qualifying special needs trust  
14 on the date of the decedent's death.

15 (2) OVERLAPPING APPLICATION.--If s. 732.2035(1) and  
16 any other subsection of s. 732.2035 apply to the same property  
17 interest, the amount included in the elective estate under  
18 other subsections is reduced by the amount included under  
19 subsection (1). In all other cases, if more than one  
20 subsection of s. 732.2035 applies to a property interest, only  
21 the subsection resulting in the largest elective estate shall  
22 apply.

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

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

27 732.205 Valuation of the elective estate.--For  
28 purposes of s. 732.2035, "value" means:

29 (1) In the case of any policy of insurance on the  
30 decedent's life includable under s. 732.2035(4), (5), or (6),  
31

1 the net cash surrender value of the policy immediately before  
2 the decedent's death.

3 (2) In the case of any policy of insurance on the  
4 decedent's life includable under s. 732.2035(8), the net cash  
5 surrender value of the policy on the date of the termination  
6 or transfer.

7 (3) In the case of amounts includable under s.  
8 732.2035(7), the transfer tax value of the amounts on the date  
9 of the decedent's death.

10 (4) In the case of other property included under s.  
11 732.2035(8), the fair market value of the property on the date  
12 of the termination or transfer, computed after deducting any  
13 mortgages, liens, or security interests on the property as of  
14 that date.

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

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

20 (b) To the extent they are not deducted under  
21 paragraph (a), all mortgages, liens, or security interests on  
22 the property.

23 Section 6. Section 732.206, Florida Statutes, is  
24 amended to read:

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

27 732.206 Elective share amount.--

28 (1) The elective share is the greater of the minimum  
29 elective share provided in subsection (2) or an amount equal  
30 to a percentage of the elective estate determined in  
31 accordance with the following schedule:

1		
2	<u>If the decedent and the spouse</u>	<u>The percentage is:</u>
3	<u>were last married to each other:</u>	
4	<u>Less than 5 years</u>	<u>10 percent</u>
5	<u>5 years but less than 15 years</u>	<u>20 percent</u>
6	<u>15 years but less than 25 years</u>	<u>30 percent</u>
7	<u>25 years or more</u>	<u>40 percent</u>
8		

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

11           Section 7. Section 732.207, Florida Statutes, is  
12 amended to read:

13           (Substantial rewording of section. See  
14 s. 732.207, F.S., for present text.)

15           732.207 Sources from which elective share payable;  
16 abatement.--

17           (1) Unless otherwise provided in the decedent's will  
18 or, in the absence of a provision in the decedent's will, in a  
19 trust referred to in the decedent's will, the following are  
20 applied first to satisfy the elective share:

21           (a) To the extent paid to or for the benefit of the  
22 surviving spouse, the proceeds of any term or other policy of  
23 insurance on the decedent's life if, at the time of decedent's  
24 death, the policy was owned by any person other than the  
25 surviving spouse.

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

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

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

3       (e) Property interests included in the elective estate  
4 that pass or have passed to or for the benefit of the  
5 surviving spouse.

6       (f) Property interests that would have satisfied the  
7 elective share under any preceding paragraph of this  
8 subsection but were disclaimed.

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

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

15       (b) Class 2.--Recipients of property interests  
16 included in the elective estate under s. 732.2035(2), (3), or  
17 (6) and, to the extent the decedent had at the time of death  
18 the power to designate the recipient of the property, property  
19 interests included under s. 732.2035(5) and (7).

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

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

1       (4) Unless otherwise provided in the decedent's will  
2 or, in the absence of a provision in the decedent's will, in a  
3 trust referred to in the decedent's will, any amount to be  
4 satisfied from the decedent's probate estate, other than from  
5 property passing to an inter vivos trust, shall be paid from  
6 the assets of the probate estate in the order prescribed in s.  
7 733.805.

8       (5) Unless otherwise provided in the trust instrument  
9 or, in the decedent's will if there is no provision in the  
10 trust instrument, any amount to be satisfied from trust  
11 property shall be paid from the assets of the trust in the  
12 order provided for claims under s. 737.3054(2) and (3). A  
13 direction in the decedent's will is effective only for  
14 revocable trusts.

15       Section 8. Section 732.208, Florida Statutes, is  
16 amended to read:

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

19       732.208 Liability of direct recipients and  
20 beneficiaries.--

21       (1) Only direct recipients of property included in the  
22 elective estate and the beneficiaries of the decedent's  
23 probate estate or of any trust that is a direct recipient, are  
24 liable to contribute toward satisfaction of the elective  
25 share.

26       (a) Within each of the classes described in s.  
27 732.207(2)(b) and (c), each direct recipient is liable in an  
28 amount equal to the value, as determined under s. 732.205, of  
29 the proportional part of the liability for all members of the  
30 class.

31

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

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

18       (a) Contribute a proportional part of all property  
19 received; or

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

22           1. Contribute all of the property; or

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

27  
28 In the application of paragraph (a), the "proportional part of  
29 all property received" is determined separately for each class  
30 of priority under s. 732.207(2).

31

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

4           (a) No further contribution toward satisfaction of the  
5 elective share shall be required with respect to such  
6 property.

7           (b) Any unsatisfied contribution is treated as  
8 additional unsatisfied balance and reapportioned to other  
9 recipients as provided in s. 732.207 and this section.

10       (4) If any part of s. 732.2035 or s. 732.207 is  
11 preempted by federal law with respect to a payment, an item of  
12 property, or any other benefit included in the elective  
13 estate, a person who, not for value, receives the payment,  
14 item of property, or any other benefit is obligated to return  
15 the payment, item of property, or benefit, or is personally  
16 liable for the amount of the payment or the value of that item  
17 of property or benefit, as provided in s. 732.2035 and s.  
18 732.207, to the person who would have been entitled to it were  
19 that section or part of that section not preempted.

20       Section 9. Section 732.209, Florida Statutes, is  
21 amended to read:

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

24       732.209 Valuation of property used to satisfy elective  
25 share.--

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

27       (a) "Applicable valuation date" means:

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



1           2. In the case of property held in a qualifying  
2 special needs trust on the date of the decedent's death, the  
3 date of the decedent's death.

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

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

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

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

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

19           8. In the case of amounts payable to the surviving  
20 spouse under any plan or arrangement described in s.  
21 732.2035(7), the date of the decedent's death.

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

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

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

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

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

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

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

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

26           3. Fifty percent in all other cases.

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

31

1       (d) 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       (e) 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), paragraph (c), or  
11 paragraph (d), the value of the policy for purposes of s.  
12 732.207 and paragraphs (b), (c), and (d) is the net proceeds.

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

19       Section 10. Section 732.210, Florida Statutes, is  
20 amended to read:

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

23       732.210 Effect of election on other interests.--

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

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

30       Section 11. Section 732.211, Florida Statutes, is  
31 amended to read:

1           (Substantial rewording of section. See  
2           s. 732.211, F.S., for present text.)  
3           732.211 Protection of payors and other third  
4 parties.--Although a property interest is included in the  
5 decedent's elective estate under s. 732.2035(2)-(8), a payor  
6 or other third party is not liable for paying, distributing,  
7 or transferring the property to a beneficiary designated in a  
8 governing instrument, or for taking any other action in good  
9 faith reliance on the validity of a governing instrument.

10           Section 12. Section 732.212, Florida Statutes, is  
11 amended to read:

12           (Substantial rewording of section. See  
13           s. 732.212, F.S., for present text.)  
14           732.212 Right of election; by whom exercisable.--The  
15 right of election may be exercised:

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

22           Section 13. Section 732.213, Florida Statutes, is  
23 amended to read:

24           (Substantial rewording of section. See  
25           s. 732.213, F.S., for present text.)  
26           732.213 Time of election; extensions; withdrawal.--

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

31

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

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

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

19       Section 14. Section 732.214, Florida Statutes, is  
20 amended to read:

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

23       732.214 Order of contribution; personal  
24 representative's duty to collect contribution.--

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

31

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

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

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

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

28       (4) Nothing in this section limits the independent  
29 right of the surviving spouse to collect the elective share as  
30 provided in the order of contribution and that right is hereby  
31 conferred. If the surviving spouse brings an action to enforce

1 an order of contribution, the judgment shall include the  
2 surviving spouse's costs and reasonable attorney's fees.

3 Section 15. Section 732.215, Florida Statutes, is  
4 amended to read:

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

7 732.215 Effective date; effect of prior waivers;  
8 transition rules.--

9 (1) Sections 732.201-732.215 are effective on October  
10 1, 1999, for all decedents dying on or after October 1, 2000.  
11 The law in effect prior to October 1, 1999, applies to  
12 decedents dying before October 1, 2000.

13 (2) Nothing in ss. 732.201-732.215 modifies or applies  
14 to the rights of spouses under chapter 61.

15 (3) A waiver of elective share rights before the  
16 effective date of this section which is otherwise in  
17 compliance with the requirements of s. 732.702 is a waiver of  
18 all rights under ss. 732.201-732.214.

19 (4) 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 1999.

27  
28  
29  
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