

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.

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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:
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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" or "supplemental
9 needs trust" means a trust established for an ill or disabled
10 surviving spouse with court approval before or after a
11 decedent's death for such incapacitated surviving spouse, if,
12 commencing on the decedent's death:

13 (a) The income and principal are distributable to or
14 for the benefit of the spouse for life in the discretion of
15 one or more trustees less than half of whom are ineligible
16 family trustees. For purposes of this paragraph, ineligible
17 family trustees include the decedent's grandparents and any
18 descendants of the decedent's grandparents who are not also
19 descendants of the surviving spouse;

20 (b) During the spouse's life, no person other than the
21 spouse has the power to distribute income or principal to
22 anyone other than the spouse; and

23 (c) The requirement for court approval and the
24 limitation on ineligible family trustees shall not apply if
25 the aggregate of the trust property as of the applicable
26 valuation date in qualifying special needs trusts is less than
27 \$100,000.

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

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1 (10) "Transfer in satisfaction of the elective share"
2 means an irrevocable transfer by the decedent to an elective
3 share trust.

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

8 Section 3. Section 732.2035, Florida Statutes, is
9 created to read:

10 732.2035 Property entering into elective
11 estate.--Except as provided in s. 732.2045, the elective
12 estate consists of the sum of the values as determined under
13 s. 732.205 of the property interests described in this
14 section.

15 (1) The decedent's probate estate.

16 (2) The decedent's ownership interest in accounts or
17 securities registered in "Pay On Death," "Transfer On Death,"
18 "In Trust For," or coownership with right of survivorship
19 form. For this purpose, "decedent's ownership interest" means
20 that portion of the accounts or securities which the decedent
21 had, immediately before death, the right to withdraw or use
22 without the duty to account to any person.

23 (3) The decedent's fractional interest in property,
24 other than property described in subsection (2) or subsection
25 (7), held by the decedent in joint tenancy with right of
26 survivorship or in tenancy by the entirety. For this purpose,
27 "decedent's fractional interest in property" means the value
28 of the property divided by the number of tenants.

29 (4) That portion of property, other than property
30 described in subsection (2), transferred by the decedent to
31 the extent that at the time of the decedent's death the

1 transfer was revocable by the decedent alone or in conjunction
2 with any other person. This subsection does not apply to a
3 transfer that is revocable by the decedent only with the
4 consent of all persons having a beneficial interest in the
5 property.

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

10 1. The decedent possessed the right to, or in fact
11 enjoyed the possession or use of, the income or principal of
12 the property; or

13 2. The principal of the property could, in the
14 discretion of any person other than the spouse of the
15 decedent, be distributed or appointed to or for the benefit of
16 the decedent.

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18 In the application of this subsection, a right to payments
19 from an annuity or under a similar contractual arrangement
20 shall be treated as a right to that portion of the income of
21 the property necessary to equal the annuity or other
22 contractual payment.

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

24 1. With respect to subparagraph (a)1., the value of
25 the portion of the property to which the decedent's right or
26 enjoyment related, to the extent the portion passed to or for
27 the benefit of any person other than the decedent's probate
28 estate; and

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

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

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

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

12 3. The income or principal of the property is or could
13 be distributed in satisfaction of the decedent's obligation of
14 support; or

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

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

22 (7) The value of amounts payable to or for the benefit
23 of any person by reason of surviving the decedent under any
24 public or private pension, retirement, or deferred
25 compensation plan, or any similar arrangement, other than
26 benefits payable under the federal Railroad Retirement Act or
27 the federal Social Security System. In the case of a defined
28 contribution plan as defined in s. 414(i) of the Internal
29 Revenue Code of 1986, as amended, this subsection shall not
30 apply to the excess of the proceeds of any insurance policy on

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

3 (8) Property that was transferred during the 1-year
4 period preceding the decedent's death as a result of a
5 transfer by the decedent if the transfer was either of the
6 following types:

7 (a) Any property transferred as a result of the
8 termination of a right or interest in, or power over, property
9 that would have been included in the elective estate under
10 subsection (4) or subsection (5) if the right, interest, or
11 power had not terminated until the decedent's death.

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

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

19 2. After the application of paragraph (b)1., the first
20 \$10,000 of property transferred to or for the benefit of each
21 donee during the 1-year period, but only to the extent the
22 transfer qualifies for exclusion from the United States gift
23 tax under s. 2503(b) or s. 2503(c) of the Internal Revenue
24 Code, as amended.

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

27 1. A "termination" with respect to a right or interest
28 in property occurs when the decedent transfers or relinquishes
29 the right or interest, and, with respect to a power over
30 property, a termination occurs when the power terminates by
31 exercise, release, lapse, default, or otherwise.

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

6 (d) Notwithstanding anything in paragraph (c) to the
7 contrary:

8 1. A "termination" with respect to a right or interest
9 in property does not occur when the right or interest
10 terminates by the terms of the governing instrument unless the
11 termination is determined by reference to the death of the
12 decedent and the court finds a principal purpose for the terms
13 of the instrument relating to the termination was avoidance of
14 the elective share.

15 2. A distribution from a trust is not subject to this
16 subsection if the distribution is required by the terms of the
17 governing instrument unless the event triggering the
18 distribution is determined by reference to the death of the
19 decedent and the court finds that a principal purpose of the
20 terms of the governing instrument relating to the distribution
21 is avoidance of the elective share.

22 (9) Property transferred in satisfaction of the
23 elective share.

24 Section 4. Section 732.2045, Florida Statutes, is
25 created to read:

26 732.2045 Exclusions and overlapping application.--

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

28 (a) Except as provided in s. 732.215(4), any transfer
29 of property by the decedent to the extent the transfer is
30 irrevocable before the effective date of this subsection or
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1 after that date but before the date of the decedent's marriage
2 to the surviving spouse.

3 (b) Any transfer of property by the decedent to the
4 extent the decedent received adequate consideration in money
5 or money's worth for the transfer.

6 (c) Any transfer of property by the decedent made with
7 the written consent of the decedent's spouse. For this
8 purpose, spousal consent to split-gift treatment under the
9 United States gift tax laws does not constitute written
10 consent to the transfer by the decedent.

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

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

17 (f) The decedent's one-half of the property to which
18 ss. 732.216-732.228 apply and real property that is community
19 property under the laws of the jurisdiction where it is
20 located.

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

23 (h) Property included in the gross estate of the
24 decedent for federal estate tax purposes solely because the
25 decedent possessed a general power of appointment.

26 (2) OVERLAPPING APPLICATION.--If s. 732.2035(1) and
27 any other subsection of s. 732.2035 apply to the same property
28 interest, the amount included in the elective estate under
29 other subsections is reduced by the amount included under
30 subsection (1). In all other cases, if more than one
31 subsection of s. 732.2035 applies to a property interest, only

1 the subsection resulting in the largest elective estate shall
2 apply.

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

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

7 732.205 Valuation of the elective estate.--For
8 purposes of s. 732.2035, "value" means:

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

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

17 (3) In the case of amounts includable under s.
18 732.2035(7), the transfer tax value of the amounts on the date
19 of the decedent's death.

20 (4) In the case of other property included under s.
21 732.2035(8), the fair market value of the property on the date
22 of the termination or transfer, computed after deducting any
23 mortgages, liens, or security interests on the property as of
24 that date.

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

28 (a) All claims, other than claims for funeral
29 expenses, paid or payable from the elective estate; and
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1 (b) To the extent they are not deducted under
2 paragraph (a), all mortgages, liens, or security interests on
3 the property.

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

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

8 732.206 Elective share amount.--The elective share is
9 an amount equal to 30 percent of the elective estate.

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

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

14 732.207 Sources from which elective share payable;
15 abatement.--

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

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

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

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

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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.

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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.

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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).

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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.

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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, 2001.
11 The law in effect prior to October 1, 1999, applies to
12 decedents dying before October 1, 2001.

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 (5) This act does not affect any interest in contracts
26 entered into for adequate consideration in money or moneys
27 worth before October 1, 1999, to the extent that the contract
28 was irrevocable at all times from October 1, 1999, until the
29 date of decedent's death.

30 Section 16. This act shall take effect October 1,
31 1999.