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2 An act relating to probate; amending s.  
3 732.201, F.S.; revising provisions governing  
4 the right to elective share; creating s.  
5 732.2025, F.S.; providing definitions;  
6 transferring, renumbering, and amending s.  
7 732.206, F.S.; providing for property entering  
8 into the elective estate; creating s. 732.2045,  
9 F.S.; providing for exclusions and overlapping  
10 application; creating s. 732.2055, F.S.;  
11 providing for the valuation of the elective  
12 estate; transferring, renumbering, and amending  
13 s. 732.207, F.S.; providing for the elective  
14 share amount; transferring, renumbering, and  
15 amending s. 732.209, F.S.; providing for the  
16 sources from which the elective share is  
17 payable; providing for abatement; creating s.  
18 732.2085, F.S.; providing for the liability of  
19 direct recipients and beneficiaries; creating  
20 s. 732.2095, F.S.; providing for the valuation  
21 of the property used to satisfy the elective  
22 share; transferring, renumbering, and amending  
23 s. 732.208, F.S.; providing for the effect of  
24 the election on other interests; creating s.  
25 732.2115, F.S.; providing for the protection of  
26 payors and other third parties; transferring,  
27 renumbering, and amending s. 732.210, F.S.;  
28 providing who may exercise the right of  
29 election; transferring, renumbering, and  
30 amending s. 732.212, F.S.; providing for the  
31 time of election; providing for extensions and

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

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Section 732.201, Florida Statutes, is  
22 amended to read:23 732.201 Right to elective share.--The surviving spouse  
24 of a person who dies domiciled in Florida has ~~shall have~~ the  
25 right to a share of the elective estate of the decedent  
26 ~~deceased spouse~~ as provided in this part, to be designated the  
27 elective share.28 Section 2. Section 732.2025, Florida Statutes, is  
29 created to read:30 732.2025 Definitions.--As used in sections  
31 732.2025-732.2155, the term:

1           (1) "Direct recipient" means the decedent's probate  
2 estate and any other person who receives property included in  
3 the elective estate by transfer from the decedent, including  
4 transfers described in s. 732.2035(8), by right of  
5 survivorship, or by beneficiary designation under a governing  
6 instrument. For this purpose, a beneficiary of an insurance  
7 policy on the decedent's life, the net cash surrender value of  
8 which is included in the elective estate, is treated as having  
9 received property included in the elective estate. In the case  
10 of property held in trust, "direct recipient" includes the  
11 trustee but excludes the beneficiaries of the trust.

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

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

16           (b) The trust is subject to the provisions of s.  
17 738.12 or the surviving spouse has the right under the terms  
18 of the trust or state law to require the trustee either to  
19 make the property productive or to convert it within a  
20 reasonable time; and

21           (c) During the spouse's life, no person other than the  
22 spouse has the power to distribute income or principal to  
23 anyone other than the spouse.

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

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1 relating to the holder's health, education, support, or  
2 maintenance.

3 (4) "Governing instrument" means a deed; will; trust;  
4 insurance or annuity policy; account with payable-on-death  
5 designation; security registered in beneficiary form (TOD);  
6 pension, profit-sharing, retirement, or similar benefit plan;  
7 an instrument creating or exercising a power of appointment or  
8 a power of attorney; or a dispositive, appointive, or  
9 nominative instrument of any similar type.

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

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

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

21 (8) "Qualifying special needs trust" or "supplemental  
22 needs trust" means a trust established for an ill or disabled  
23 surviving spouse with court approval before or after a  
24 decedent's death for such incapacitated surviving spouse, if,  
25 commencing on the decedent's death:

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

3 (b) During the spouse's life, no person other than the  
4 spouse has the power to distribute income or principal to  
5 anyone other than the spouse.

6 (c) The requirement for court approval and the  
7 limitation on ineligible family trustees shall not apply if  
8 the aggregate of the trust property as of the applicable  
9 valuation date in a qualifying special needs trust is less  
10 than \$100,000.

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

13 (10) "Transfer in satisfaction of the elective share"  
14 means an irrevocable transfer by the decedent to an elective  
15 share trust.

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

20 Section 3. Section 732.206, Florida Statutes, is  
21 transferred, renumbered as section 732.2035, Florida Statutes,  
22 and amended to read:

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

25 732.2035 Property entering into elective  
26 estate.--Except as provided in s. 732.2045, the elective  
27 estate consists of the sum of the values as determined under  
28 s. 732.2055 of the following property interests:

29 (1) The decedent's probate estate.

30 (2) The decedent's ownership interest in accounts or  
31 securities registered in "Pay On Death," "Transfer On Death,"

1 "In Trust For," or coownership with right of survivorship  
2 form. For this purpose, "decedent's ownership interest" means  
3 that portion of the accounts or securities which the decedent  
4 had, immediately before death, the right to withdraw or use  
5 without the duty to account to any person.

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

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

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

24 1. The decedent possessed the right to, or in fact  
25 enjoyed the possession or use of, the income or principal of  
26 the property; or

27 2. The principal of the property could, in the  
28 discretion of any person other than the spouse of the  
29 decedent, be distributed or appointed to or for the benefit of  
30 the decedent.

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1 In the application of this subsection, a right to payments  
2 from an annuity or under a similar contractual arrangement  
3 shall be treated as a right to that portion of the income of  
4 the property necessary to equal the annuity or other  
5 contractual payment.

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

7 1. With respect to subparagraph (a)1., the value of  
8 the portion of the property to which the decedent's right or  
9 enjoyment related, to the extent the portion passed to or for  
10 the benefit of any person other than the decedent's probate  
11 estate; and

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

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

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

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

25 3. The income or principal of the property is or could  
26 be distributed in satisfaction of the decedent's obligation of  
27 support; or

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

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

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

15           (8) Property that was transferred during the 1-year  
16 period preceding the decedent's death as a result of a  
17 transfer by the decedent if the transfer was either of the  
18 following types:

19           (a) Any property transferred as a result of the  
20 termination of a right or interest in, or power over, property  
21 that would have been included in the elective estate under  
22 subsection (4) or subsection (5) if the right, interest, or  
23 power had not terminated until the decedent's death.

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

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

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

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

9           1. A "termination" with respect to a right or interest  
10 in property occurs when the decedent transfers or relinquishes  
11 the right or interest, and, with respect to a power over  
12 property, a termination occurs when the power terminates by  
13 exercise, release, lapse, default, or otherwise.

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

19           (d) Notwithstanding anything in paragraph (c) to the  
20 contrary:

21           1. A "termination" with respect to a right or interest  
22 in property does not occur when the right or interest  
23 terminates by the terms of the governing instrument unless the  
24 termination is determined by reference to the death of the  
25 decedent and the court finds that a principal purpose for the  
26 terms of the instrument relating to the termination was  
27 avoidance of the elective share.

28           2. A distribution from a trust is not subject to this  
29 subsection if the distribution is required by the terms of the  
30 governing instrument unless the event triggering the  
31 distribution is determined by reference to the death of the

1 decedent and the court finds that a principal purpose of the  
2 terms of the governing instrument relating to the distribution  
3 is avoidance of the elective share.

4 (9) Property transferred in satisfaction of the  
5 elective share.

6 Section 4. Section 732.2045, Florida Statutes, is  
7 created to read:

8 732.2045 Exclusions and overlapping application.--

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

10 (a) Except as provided in s. 732.2155(4), any transfer  
11 of property by the decedent to the extent the transfer is  
12 irrevocable before the effective date of this subsection or  
13 after that date but before the date of the decedent's marriage  
14 to the surviving spouse.

15 (b) Any transfer of property by the decedent to the  
16 extent the decedent received adequate consideration in money  
17 or money's worth for the transfer.

18 (c) Any transfer of property by the decedent made with  
19 the written consent of the decedent's spouse. For this  
20 purpose, spousal consent to split-gift treatment under the  
21 United States gift tax laws does not constitute written  
22 consent to the transfer by the decedent.

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

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

29 (f) The decedent's one-half of the property to which  
30 ss. 732.216-732.228 apply and real property that is community

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1 property under the laws of the jurisdiction where it is  
2 located.

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

5 (h) Property included in the gross estate of the  
6 decedent for federal estate tax purposes solely because the  
7 decedent possessed a general power of appointment.

8 (2) OVERLAPPING APPLICATION.--If s. 732.2035(1) and  
9 any other subsection of s. 732.2035 apply to the same property  
10 interest, the amount included in the elective estate under  
11 other subsections is reduced by the amount included under  
12 subsection (1). In all other cases, if more than one  
13 subsection of s. 732.2035 applies to a property interest, only  
14 the subsection resulting in the largest elective estate shall  
15 apply.

16 Section 5. Section 732.2055, Florida Statutes, is  
17 created to read:

18 732.2055 Valuation of the elective estate.--For  
19 purposes of s. 732.2035, "value" means:

20 (1) In the case of any policy of insurance on the  
21 decedent's life includable under s. 732.2035(4), (5), or (6),  
22 the net cash surrender value of the policy immediately before  
23 the decedent's death.

24 (2) In the case of any policy of insurance on the  
25 decedent's life includable under s. 732.2035(8), the net cash  
26 surrender value of the policy on the date of the termination  
27 or transfer.

28 (3) In the case of amounts includable under s.  
29 732.2035(7), the transfer tax value of the amounts on the date  
30 of the decedent's death.

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1           (4) In the case of other property included under s.  
2 732.2035(8), the fair-market value of the property on the date  
3 of the termination or transfer, computed after deducting any  
4 mortgages, liens, or security interests on the property as of  
5 that date.

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

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

11           (b) To the extent they are not deducted under  
12 paragraph (a), all mortgages, liens, or security interests on  
13 the property.

14           Section 6. Section 732.207, Florida Statutes, is  
15 transferred, renumbered as section 732.2065, Florida Statutes,  
16 and amended to read:

17           732.2065 ~~732.207~~ Amount of the elective share.--The  
18 elective share is ~~shall consist of~~ an amount equal to 30  
19 percent of the elective estate.~~fair market value, on the date~~  
20 ~~of death, of all assets referred to in s. 732.206, computed~~  
21 ~~after deducting from the total value of the assets:~~

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

24           ~~(2) All mortgages, liens, or security interests on the~~  
25 ~~assets.~~

26           Section 7. Section 732.209, Florida Statutes, is  
27 transferred, renumbered as section 732.2075, Florida Statutes,  
28 and amended to read:

29           (Substantial rewording of section. See

30           s. 732.209, F.S., for present text.)

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1           732.2075 Sources from which elective share payable;  
2 abatement.--

3           (1) Unless otherwise provided in the decedent's will  
4 or, in the absence of a provision in the decedent's will, in a  
5 trust referred to in the decedent's will, the following are  
6 applied first to satisfy the elective share:

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

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

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

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

20           (e) Property interests included in the elective estate  
21 that pass or have passed to or for the benefit of the  
22 surviving spouse.

23           (f) Property interests that would have satisfied the  
24 elective share under any preceding paragraph of this  
25 subsection but were disclaimed.

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

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

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

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

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

18           (4) Unless otherwise provided in the decedent's will  
19 or, in the absence of a provision in the decedent's will, in a  
20 trust referred to in the decedent's will, any amount to be  
21 satisfied from the decedent's probate estate, other than from  
22 property passing to an inter vivos trust, shall be paid from  
23 the assets of the probate estate in the order prescribed in s.  
24 733.805.

25           (5) Unless otherwise provided in the trust instrument  
26 or, in the decedent's will if there is no provision in the  
27 trust instrument, any amount to be satisfied from trust  
28 property shall be paid from the assets of the trust in the  
29 order provided for claims under s. 737.3054(2) and (3). A  
30 direction in the decedent's will is effective only for  
31 revocable trusts.

1           Section 8. Section 732.2085, Florida Statutes, is  
2 created to read:

3           732.2085 Liability of direct recipients and  
4 beneficiaries.--

5           (1) Only direct recipients of property included in the  
6 elective estate and the beneficiaries of the decedent's  
7 probate estate or of any trust that is a direct recipient, are  
8 liable to contribute toward satisfaction of the elective  
9 share.

10           (a) Within each of the classes described in s.  
11 732.2075(2)(b) and (c), each direct recipient is liable in an  
12 amount equal to the value, as determined under s. 732.2055, of  
13 the proportional part of the liability for all members of the  
14 class.

15           (b) Trust and probate estate beneficiaries who receive  
16 a distribution of principal after the decedent's death are  
17 liable in an amount equal to the value of the principal  
18 distributed to them multiplied by the contribution percentage  
19 of the distributing trust or estate. For this purpose,  
20 "contribution percentage" means the remaining unsatisfied  
21 balance of the trust or estate at the time of the distribution  
22 divided by the value of the trust or estate as determined  
23 under s. 732.2055. "Remaining unsatisfied balance" means the  
24 amount of liability initially apportioned to the trust or  
25 estate reduced by amounts or property previously contributed  
26 by any person in satisfaction of that liability.

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

1           (a) Contribute a proportional part of all property  
2 received; or

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

5               1. Contribute all of the property; or

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

10  
11 In the application of paragraph (a), the "proportional part of  
12 all property received" is determined separately for each class  
13 of priority under s. 732.2075(2).

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

17               (a) No further contribution toward satisfaction of the  
18 elective share shall be required with respect to such  
19 property.

20               (b) Any unsatisfied contribution is treated as  
21 additional unsatisfied balance and reapportioned to other  
22 recipients as provided in s. 732.2075 and this section.

23           (4) If any part of s. 732.2035 or s. 732.2075 is  
24 preempted by federal law with respect to a payment, an item of  
25 property, or any other benefit included in the elective  
26 estate, a person who, not for value, receives the payment,  
27 item of property, or any other benefit is obligated to return  
28 the payment, item of property, or benefit, or is personally  
29 liable for the amount of the payment or the value of that item  
30 of property or benefit, as provided in s. 732.2035 and s.

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1 732.2075, to the person who would have been entitled to it  
2 were that section or part of that section not preempted.

3 Section 9. Section 732.2095, Florida Statutes, is  
4 created to read:

5 732.2095 Valuation of property used to satisfy  
6 elective share.--

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

8 (a) "Applicable valuation date" means:

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

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

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

17 4. In the case of property distributed to the  
18 surviving spouse by the personal representative, the date of  
19 distribution.

20 5. Except as provided in subparagraphs 1., 2., and 3.,  
21 in the case of property passing in trust for the surviving  
22 spouse, the date or dates the trust is funded in satisfaction  
23 of the elective share.

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

26 7. In the case of proceeds of any policy of insurance  
27 payable to the surviving spouse, the date of the decedent's  
28 death.

29 8. In the case of amounts payable to the surviving  
30 spouse under any plan or arrangement described in s.  
31 732.2035(7), the date of the decedent's death.

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

4           (b) "Qualifying power of appointment" means a general  
5 power of appointment that is exercisable alone and in all  
6 events by the decedent's spouse in favor of the spouse or the  
7 spouse's estate. For this purpose, a general power to appoint  
8 by will is a qualifying power of appointment if the power may  
9 be exercised by the spouse in favor of the spouse's estate  
10 without the consent of any other person.

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

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

20           (a) If the surviving spouse has a life interest in  
21 property not in trust that entitles the spouse to the use of  
22 the property for life, the value of the spouse's interest is  
23 one-half of the value of the property on the applicable  
24 valuation date.

25           (b) If the surviving spouse has an interest in a  
26 trust, or portion of a trust, which meets the requirements of  
27 an elective share trust, the value of the spouse's interest is  
28 a percentage of the value of the principal of the trust, or  
29 trust portion, on the applicable valuation date as follows:  
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1           1. One hundred percent if the trust instrument  
2 includes both a qualifying invasion power and a qualifying  
3 power of appointment.

4           2. Eighty percent if the trust instrument includes a  
5 qualifying invasion power but no qualifying power of  
6 appointment.

7           3. Fifty percent in all other cases.

8           (c) If the surviving spouse is a beneficiary of a  
9 trust, or portion of a trust, which meets the requirements of  
10 a qualifying special needs trust, the value of the principal  
11 of the trust, or trust portion, on the applicable valuation  
12 date.

13           (d) If the surviving spouse has an interest in a trust  
14 that does not meet the requirements of an elective share  
15 trust, the value of the spouse's interest is the transfer tax  
16 value of the interest on the applicable valuation date;  
17 however, the aggregate value of all of the spouse's interests  
18 in the trust shall not exceed one-half of the value of the  
19 trust principal on the applicable valuation date.

20           (e) In the case of any policy of insurance on the  
21 decedent's life the proceeds of which are payable outright or  
22 to a trust described in paragraph (b), paragraph (c), or  
23 paragraph (d), the value of the policy for purposes of s.  
24 732.2075 and paragraphs (b), (c), and (d) is the net proceeds.

25           (f) In the case of a right to one or more payments  
26 from an annuity or under a similar contractual arrangement or  
27 under any plan or arrangement described in s. 732.2035(7), the  
28 value of the right to payments for purposes of s. 732.2075 and  
29 paragraphs (b), (c), and (d) is the transfer tax value of the  
30 right on the applicable valuation date.

31

1           Section 10. Section 732.208, Florida Statutes, is  
2 transferred, renumbered as section 732.2105, Florida Statutes,  
3 and amended to read:

4           732.2105 ~~732.208~~ Effect of election on other interests  
5 ~~interests in addition to elective share.--~~

6           (1) The elective share shall be in addition to  
7 homestead, exempt property, and allowances as provided in part  
8 IV.

9           (2) If an election is filed, the balance of the  
10 elective estate, after the application of s. 732.2145(1),  
11 shall be administered as though the surviving spouse had  
12 predeceased the decedent.

13          Section 11. Section 732.2115, Florida Statutes, is  
14 created to read:

15          732.2115 Protection of payors and other third  
16 parties.--Although a property interest is included in the  
17 decedent's elective estate under s. 732.2035(2)-(8), a payor  
18 or other third party is not liable for paying, distributing,  
19 or transferring the property to a beneficiary designated in a  
20 governing instrument, or for taking any other action in  
21 good-faith reliance on the validity of a governing instrument.

22          Section 12. Section 732.210, Florida Statutes, is  
23 transferred, renumbered as section 732.2125, Florida Statutes,  
24 and amended to read:

25          732.2125 ~~732.210~~ Right of election; by whom  
26 exercisable.--The right of election may be exercised:

27           (1) By the surviving spouse.

28           (2) By an attorney in fact or a guardian of the  
29 property of the surviving spouse, with approval of the court  
30 having jurisdiction of the probate proceeding. The court shall  
31

1 determine the election as the best interests of the surviving  
2 spouse, during the spouse's probable lifetime, require.

3 Section 13. Section 732.212, Florida Statutes, is  
4 transferred, renumbered as section 732.2135, Florida Statutes,  
5 and amended to read:

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

8 732.2135 Time of election; extensions; withdrawal.--

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

13 (2) Within the period provided in subsection (1), the  
14 surviving spouse or an attorney in fact or guardian of the  
15 property of the surviving spouse may petition the court for an  
16 extension of time for making an election. After notice and  
17 hearing, the court for good cause shown may extend the time  
18 for election. If the court grants the petition for an  
19 extension, the election must be filed within the time allowed  
20 by the extension.

21 (3) The surviving spouse or an attorney in fact,  
22 guardian of the property, or personal representative of the  
23 surviving spouse may withdraw an election at any time within 8  
24 months of the decedent's death and before the court's order of  
25 contribution. If an election is withdrawn, the court may  
26 assess attorney's fees and costs against the surviving spouse  
27 or the spouse's estate.

28 (4) A petition for an extension of the time for making  
29 the election or for approval to make the election shall toll  
30 the time for making the election.

31

1           Section 14. Section 732.2145, Florida Statutes, is  
2 created to read:

3           732.2145 Order of contribution; personal  
4 representative's duty to collect contribution.--

5           (1) The court shall determine the elective share and  
6 shall order contribution. All contributions are to bear  
7 interest at the statutory rate provided in s. 55.03(1)  
8 beginning 90 days from the date of the order. The order of  
9 contribution is prima facie correct in proceedings in any  
10 court or jurisdiction.

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

15           (a) If property within the possession or control of  
16 the personal representative is distributable to a beneficiary  
17 or trustee who is required to contribute in satisfaction of  
18 the elective share, the personal representative shall withhold  
19 from the distribution the contribution required of the  
20 beneficiary or trustee.

21           (b) If, after the order of contribution, the personal  
22 representative brings an action to collect contribution from  
23 property not within the personal representative's control, the  
24 judgment shall include the personal representative's costs and  
25 reasonable attorney's fees. The personal representative is not  
26 required to seek collection of any portion of the elective  
27 share from property not within the personal representative's  
28 control until after the entry of the order of contribution.

29           (3) A personal representative who has the duty under  
30 this section of enforcing contribution may be relieved of that  
31 duty by an order of the court finding that it is impracticable

1 to enforce contribution in view of the improbability of  
2 obtaining a judgment or the improbability of collection under  
3 any judgment that might be obtained, or otherwise. The  
4 personal representative shall not be liable for failure to  
5 attempt collection if the attempt would have been economically  
6 impracticable.

7 (4) Nothing in this section limits the independent  
8 right of the surviving spouse to collect the elective share as  
9 provided in the order of contribution and that right is hereby  
10 conferred. If the surviving spouse brings an action to enforce  
11 an order of contribution, the judgment shall include the  
12 surviving spouse's costs and reasonable attorney's fees.

13 Section 15. Section 732.2155, Florida Statutes, is  
14 created to read:

15 732.2155 Effective date; effect of prior waivers;  
16 transition rules.--

17 (1) Sections 732.201-732.2155 are effective on October  
18 1, 1999, for all decedents dying on or after October 1, 2001.  
19 The law in effect prior to October 1, 1999, applies to  
20 decedents dying before October 1, 2001.

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

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

27 (4) Notwithstanding anything in s. 732.2045(1)(a) to  
28 the contrary, any trust created by the decedent before the  
29 effective date of this section that meets the requirements of  
30 an elective share trust is treated as if the decedent created  
31

1 the trust after the effective date of this subsection and in  
2 satisfaction of the elective share.

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

8 Section 16. Sections 732.205, 732.211, 732.213,  
9 732.214, and 732.215, Florida Statutes, are repealed.

10 Section 17. This act shall take effect October 1,  
11 1999.

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