

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Judicial Oversight offered the following:

Amendment (with title amendment)

On page 36, line 5 through page 37, line 3
remove from the bill: All of said lines

and insert in lieu thereof:

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

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

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

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1 anyone other than the spouse.

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3 ~~(c) The requirement for court approval and the limitation on~~
4 ~~ineligible family trustees shall not apply if the aggregate~~
5 ~~value of all the trust property as of the applicable valuation~~
6 ~~date in a all qualifying special needs trust trusts for the~~
7 ~~spouse is less than \$100,000. For purposes of this~~
8 ~~subsection, value is determined on the "applicable valuation~~
9 ~~date" as defined in s. 732.2095(1)(a).~~

10 Section 20. Subsections (2), and paragraph (a) of
11 subsection (5), of section 732.2035, Florida Statutes, is
12 amended to read:

13 732.2035 Property entering into elective
14 estate.--Except as provided in s. 732.2045, the elective
15 estate consists of the sum of the values as determined under
16 s. 732.2055 of the following property interests:

17 (2) The decedent's ownership interest in accounts or
18 securities registered in "Pay On Death," "Transfer On Death,"
19 "In Trust For," or coownership with right of survivorship
20 form. For this purpose, "decedent's ownership interest"
21 means, in the case of accounts or securities held in tenancy
22 by the entirety, one half the value of the account or
23 security, and in all other cases, that portion of the accounts
24 or securities which the decedent had, immediately before
25 death, the right to withdraw or use without the duty to
26 account to any person.

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

31 1. The decedent possessed the right to, or in fact

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1 enjoyed the possession or use of, the income or principal of
2 the property; or

3 2. The principal of the property could, in the
4 discretion of any person other than the spouse of the
5 decedent, be distributed or appointed to or for the benefit of
6 the decedent.

7
8 In the application of this subsection, a right to payments
9 ~~from an~~ under a commercial or private annuity, an annuity
10 trust, a unitrust, or ~~under~~ a similar ~~contractual~~ arrangement
11 shall be treated as a right to that portion of the income of
12 the property necessary to equal the annuity, unitrust, or
13 other ~~contractual~~ payment.

14 Section 21. Subsection (1) of section 732.2045,
15 Florida Statutes, is amended to read:

16 732.2045 Exclusions and overlapping application.--

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

18 (a) Except as provided in s. 732.2155(4), any transfer
19 of property by the decedent to the extent the transfer is
20 irrevocable before the effective date of this subsection or
21 after that date but before the date of the decedent's marriage
22 to the surviving spouse.

23 (b) Any transfer of property by the decedent to the
24 extent the decedent received adequate consideration in money
25 or money's worth for the transfer.

26 (c) Any transfer of property by the decedent made with
27 the written consent of the decedent's spouse. For this
28 purpose, spousal consent to split-gift treatment under the
29 United States gift tax laws does not constitute written
30 consent to the transfer by the decedent.

31 (d) The proceeds of any policy of insurance on the

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1 decedent's life in excess of the net cash surrender value of
2 the policy whether payable to the decedent's estate, a trust,
3 or in any other manner.

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

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

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

12 (h) Property included in the gross estate of the
13 decedent for federal estate tax purposes solely because the
14 decedent possessed a general power of appointment.

15 (i) Property which constitutes the protected homestead
16 of the decedent whether held by the decedent or by a trust at
17 the decedent's death.

18 Section 22. Paragraph (a) of subsection (5) of section
19 732.2055, Florida Statutes, is amended to read:

20 732.2055 Valuation of the elective estate.--For
21 purposes of s. 732.2035, "value" means:

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

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

27 Section 23. Subsection (2) of section 732.2075,
28 Florida Statutes, is amended to read:

29 732.2075 Sources from which elective share payable;
30 abatement.--

31 (2) If, after the application of subsection (1), the

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1 elective share is not fully satisfied, the unsatisfied balance
2 shall be apportioned among the direct recipients of the
3 remaining elective estate in the following order of priority:

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

6 (b) Class 2.--Recipients of property interests, other
7 than protected charitable interests, included in the elective
8 estate under s. 732.2035(2), (3), or (6) and, to the extent
9 the decedent had at the time of death the power to designate
10 the recipient of the property, property interests, other than
11 protected charitable interests, included under s. 732.2035(5)
12 and (7).

13 (c) Class 3.--Recipients of all other property
14 interests, other than protected charitable interests, included
15 in the elective estate ~~except interests for which a charitable~~
16 ~~deduction with respect to the transfer of the property was~~
17 ~~allowed or allowable to the decedent or the decedent's spouse~~
18 ~~under the United States gift tax laws.~~

19 (d) Class 4.--Recipients of protected charitable lead
20 interests, provided that contribution shall not be enforceable
21 against the recipients of any such interest until after the
22 expiration of all charitable interests in the property for
23 which a deduction was allowed or allowable to the decedent or
24 the decedent's spouse under the United States gift tax laws.

25
26 For purposes of this subsection, a protected charitable
27 interest is any interest for which a charitable deduction with
28 respect to the transfer of the property was allowed or
29 allowable to the decedent or the decedent's spouse under the
30 United States gift tax laws. A protected charitable lead
31 interest is a protected charitable interest where one or more

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1 deductible interests in charity precede some other
2 nondeductible interest or interests in the property.

3 Section 24. Paragraph (a) of subsection (1), and
4 paragraph (a) of subsection (3), of section 732.2085, Florida
5 Statutes, is amended to read:

6 732.2085 Liability of direct recipients and
7 beneficiaries.--

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

13 (a) Within each of the classes described in s.
14 732.2075(2)(b), and (c), and (d), each direct recipient is
15 liable in an amount equal to the value, as determined under s.
16 732.2055, of the proportional part of the liability for all
17 members of the class.

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

21 (a) No further contribution toward satisfaction of the
22 elective share shall be required with respect to such that
23 property.

24 Section 25. Paragraph (a) of subsection (1), and
25 paragraph (d) of subsection (2), of section 732.2095, Florida
26 Statutes, is amended to read:

27 732.2095 Valuation of property used to satisfy
28 elective share.--

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

30 (a) "Applicable valuation date" means:

31 1. In the case of transfers in satisfaction of the

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1 elective share, the date of the decedent's death.

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

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

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

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

15 6. In the case of property described in s. 732.2035(2)
16 or(3) ~~or~~(4), the date of the decedent's death.

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

20 8. In the case of amounts payable to the surviving
21 spouse under any plan or arrangement described in s.
22 732.2035(7), the date of the decedent's death.

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

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

29 (d) If the surviving spouse has an interest in a trust
30 that does not meet the requirements of either an elective
31 share trust or a qualifying special needs trust, the value of

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

6 Section 26. Section 732.2105, Florida Statutes, is
7 amended to read:

8 732.2105 Effect of election on other interests.--

9 (1) The elective share shall be in addition to
10 homestead, exempt property, and allowances as provided in part
11 IV.

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

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

19 And the title is amended as follows:

20 On page 2, lines 9 through 11
21 remove from the title of the bill:

22

23 and insert in lieu thereof:

24 trust; amending s. 732.2035, F.S.; redefining
25 the term "decedent's ownership interest";
26 amending s. 732.2045, F.S.; adding an exclusion
27 to the elective share for property that is part
28 of the protected homestead; amending s.
29 732.2055, F.S.; redefining "value" for purposes
30 of calculating the elective estate; amending s.
31 732.2075, F.S.; revising the formula for

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payment of the elective share; amending s.
732.2085, F.S., adding a cross-reference;
amending s. 732.2095, F.S.; correcting a
cross-reference; modifying the formula for
determining the fair market value of assets
regarding the elective share; amending s.
732.2105, F.S.; revising the effect of an
elective share election on other estate
interests; amending s. 732.2125, F.S.;