

By Senator Burt

16-725-02

1 A bill to be entitled
2 An act relating to probate and trusts; amending
3 s. 732.2075, F.S.; revising provisions
4 governing sources from which the elective share
5 is payable; amending s. 733.107, F.S.;
6 clarifying the circumstances which shift the
7 burden of proof in certain proceedings
8 contesting the validity of a will; amending s.
9 733.702, F.S.; clarifying the limitation on the
10 presentation of claims; creating s. 737.115,
11 F.S.; requiring certain trusts to contain a
12 specified notice; providing an effective date.

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14 Be It Enacted by the Legislature of the State of Florida:
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16 Section 1. Paragraph (e) of subsection (1) of section
17 732.2075, Florida Statutes, is amended to read:

18 732.2075 Sources from which elective share payable;
19 abatement.--

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

24 (e) Property interests included in the elective estate
25 that pass or have passed to or for the benefit of the
26 surviving spouse, including interests that are contingent upon
27 making the election, but only to the extent that such
28 contingent interests do not diminish other property interests
29 that would be applied to satisfy the elective share in the
30 absence of the contingent interests.

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1 Section 2. Section 733.107, Florida Statutes, is
2 amended to read:

3 733.107 Burden of proof in contests; presumption of
4 undue influence.--

5 (1) In all proceedings contesting the validity of a
6 will, the burden shall be upon the proponent of the will to
7 establish prima facie its formal execution and attestation.
8 Thereafter, the contestant shall have the burden of
9 establishing the grounds on which the probate of the will is
10 opposed or revocation is sought.

11 (2) The presumption of undue influence which arises
12 when a person who occupies a fiduciary or confidential
13 relationship with a testator is active in procuring a
14 substantial devise or gift in his or her favor under the
15 testator's will implements public policy against abuse of
16 fiduciary or confidential relationships and is therefore a
17 presumption shifting the burden of proof under ss. 90.301
18 through 90.304.

19 Section 3. Subsection (1) of section 733.702, Florida
20 Statutes, is amended to read:

21 733.702 Limitations on presentation of claims.--

22 (1) If not barred by s. 733.710, no claim or demand
23 against the decedent's estate that arose before the death of
24 the decedent, including claims of the state and any of its
25 political subdivisions, even if the claims are unmatured,
26 contingent, or unliquidated; no claim for funeral or burial
27 expenses; no claim for personal property in the possession of
28 the personal representative; and no claim for damages,
29 including, but not limited to, an action founded on fraud or
30 another wrongful act or omission of the decedent, is binding
31 on the estate, on the personal representative, or on any

1 beneficiary unless filed in the probate proceeding on or
2 before ~~within~~ the later of the date that is 3 months after the
3 time of the first publication of the notice to creditors or,
4 as to any creditor required to be served with a copy of the
5 notice to creditors, 30 days after the date of service on the
6 creditor, even though the personal representative has
7 recognized the claim or demand by paying a part of it or
8 interest on it or otherwise. The personal representative may
9 settle in full any claim without the necessity of the claim
10 being filed when the settlement has been approved by the
11 interested persons.

12 Section 4. Section 737.115, Florida Statutes, is
13 created to read:

14 737.115 Notice of trustee duties.--

15 (1) A trust described in s. 733.707(3) must contain a
16 notice that the trustee may have duties and responsibilities
17 in addition to those described in the instrument creating the
18 trust. The notice may, but need not, read as follows:

19 "The trustee of a trust may have duties and
20 responsibilities in addition to those described
21 in the instrument creating the trust. If you
22 have questions you should obtain legal advice."

23 (2) The absence of the notice described in this
24 section in the trust instrument does not affect the validity
25 of the trust. A trustee is not relieved of any duty if the
26 notice is not contained in the trust instrument. No person is
27 liable for the failure to include the notice in the trust
28 instrument.

29 (3) This section applies to all trusts described in s.
30 733.707(3) and amendments to those trusts executed on or after
31 January 1, 2003.

