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1 A bill to be entitled

2 An act relating to probate; amending s. 222.21, F.S.;
3 specifying additional circumstances under which certain
4 funds or accounts are not exempt from a surviving spouse's
5 claims; amending s. 731.110, F.S.; providing a
6 prerequisite to admitting a will to probate or appointing
7 a personal representative under certain circumstances;
8 amending s. 731.201, F.S.; defining the terms "collateral
9 heirs" and "descendant"; creating s. 731.401, F.S.;
10 providing for enforceability of will or trust provisions
11 requiring arbitration of certain disputes; amending ss.
12 732.102, 732.103, 732.104, 732.108, 732.401, and 732.507,
13 F.S.; conforming provisions to new definitions; amending
14 s. 732.2025, F.S.; revising the definition of "elective
15 share trust"; amending ss. 732.2035 and 732.2075, F.S.;
16 revising provisions relating to the elective estate and
17 elective share; amending s. 732.4015, F.S.; revising a
18 provision prohibiting devise of a homestead; creating s.
19 733.620, F.S.; providing for unenforceability and
20 invalidity of certain will provisions exculpating personal
21 representatives; amending s. 734.101, F.S.; increasing a
22 time period for procedures relating to foreign personal
23 representatives; amending s. 895.02, F.S.; correcting a
24 cross-reference; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Paragraph (d) of subsection (2) of section
 29 222.21, Florida Statutes, is amended to read:

30 222.21 Exemption of pension money and certain tax-exempt
 31 funds or accounts from legal processes.--

32 (2)

33 (d) Any fund or account described in paragraph (a) is not
 34 exempt from the claims of an alternate payee under a qualified
 35 domestic relations order or from the claims of a surviving
 36 spouse pursuant to an order determining the amount of elective
 37 share and contribution as provided in part II of chapter 732.

38 However, the interest of any alternate payee under a qualified
 39 domestic relations order is exempt from all claims of any
 40 creditor, other than the Department of Revenue, of the alternate
 41 payee. As used in this paragraph, the terms "alternate payee"
 42 and "qualified domestic relations order" have the meanings
 43 ascribed to them in s. 414(p) of the Internal Revenue Code of
 44 1986.

45 Section 2. Subsection (3) is added to section 731.110,
 46 Florida Statutes, to read:

47 731.110 Caveat; proceedings.--

48 (3) When a caveat has been filed by an interested person
 49 other than a creditor, the court shall not admit a will of the
 50 decedent to probate or appoint a personal representative until
 51 service, as provided by the Florida Probate Rules, has been
 52 accomplished.

53 Section 3. Subsections (6) and (7) and subsections (8)
 54 through (37) of section 731.201, Florida Statutes, as amended by
 55 section 29 of chapter 2006-217, Laws of Florida, are renumbered

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56 as subsections (7) and (8) and subsections (10) through (39),
57 respectively, and new subsections (6) and (9) are added to that
58 section, to read:

59 731.201 General definitions.--Subject to additional
60 definitions in subsequent chapters that are applicable to
61 specific chapters or parts, and unless the context otherwise
62 requires, in this code, in s. 409.9101, and in chapters 736,
63 738, 739, and 744, the term:

64 (6) "Collateral heirs" means heirs who are descendants of
65 an ancestor, excluding the decedent's own descendants and
66 ancestors.

67 (9) "Descendant" means a person in any generational level
68 down the applicable individual's descending line and includes
69 children, grandchildren, and more remote descendants. The term
70 "descendant" is synonymous with the terms "lineal descendant"
71 and "issue" but excludes collateral heirs.

72 Section 4. Section 731.401, Florida Statutes, is created
73 to read:

74 731.401 Arbitration of disputes.--

75 (1) A provision in a will or trust requiring the
76 arbitration of disputes, other than disputes of the validity of
77 all or a part of a will or trust, between or among the
78 beneficiaries and a fiduciary under the will or trust, or any
79 combination of such persons or entities, is enforceable.

80 (2) Unless otherwise specified in the will or trust, a
81 will or trust provision requiring arbitration shall be presumed
82 to require binding arbitration under s. 44.104.

83 Section 5. Section 732.102, Florida Statutes, is amended
 84 to read:

85 732.102 Spouse's share of intestate estate.--The intestate
 86 share of the surviving spouse is:

87 (1) If there is no surviving ~~lineal~~ descendant of the
 88 decedent, the entire intestate estate.

89 (2) If there are surviving ~~lineal~~ descendants of the
 90 decedent, all of whom are also lineal descendants of the
 91 surviving spouse, the first \$60,000 of the intestate estate,
 92 plus one-half of the balance of the intestate estate. Property
 93 allocated to the surviving spouse to satisfy the \$60,000 shall
 94 be valued at the fair market value on the date of distribution.

95 (3) If there are surviving ~~lineal~~ descendants, one or more
 96 of whom are not lineal descendants of the surviving spouse, one-
 97 half of the intestate estate.

98 Section 6. Subsections (1), (2), and (6) of section
 99 732.103, Florida Statutes, are amended to read:

100 732.103 Share of other heirs.--The part of the intestate
 101 estate not passing to the surviving spouse under s. 732.102, or
 102 the entire intestate estate if there is no surviving spouse,
 103 descends as follows:

104 (1) To the ~~lineal~~ descendants of the decedent.

105 (2) If there is no ~~lineal~~ descendant, to the decedent's
 106 father and mother equally, or to the survivor of them.

107 (6) If none of the foregoing, and if any of the
 108 descendants of the decedent's great-grandparents were Holocaust
 109 victims as defined in s. 626.9543(3)(a), including such victims
 110 in countries cooperating with the discriminatory policies of

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111 Nazi Germany, then to the ~~lineal~~ descendants of the great-
112 grandparents. The court shall allow any such descendant to meet
113 a reasonable, not unduly restrictive, standard of proof to
114 substantiate his or her lineage. This subsection only applies to
115 escheated property and shall cease to be effective for
116 proceedings filed after December 31, 2004.

117 Section 7. Section 732.104, Florida Statutes, is amended
118 to read:

119 732.104 Inheritance per stirpes.--Descent shall be per
120 stirpes, whether to ~~lineal~~ descendants or to collateral heirs.

121 Section 8. Section 732.108, Florida Statutes, is amended
122 to read:

123 732.108 Adopted persons and persons born out of wedlock.--

124 (1) For the purpose of intestate succession by or from an
125 adopted person, the adopted person is a ~~lineal~~ descendant of the
126 adopting parent and is one of the natural kindred of all members
127 of the adopting parent's family, and is not a ~~lineal~~ descendant
128 of his or her natural parents, nor is he or she one of the
129 kindred of any member of the natural parent's family or any
130 prior adoptive parent's family, except that:

131 (a) Adoption of a child by the spouse of a natural parent
132 has no effect on the relationship between the child and the
133 natural parent or the natural parent's family.

134 (b) Adoption of a child by a natural parent's spouse who
135 married the natural parent after the death of the other natural
136 parent has no effect on the relationship between the child and
137 the family of the deceased natural parent.

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138 (c) Adoption of a child by a close relative, as defined in
 139 s. 63.172(2), has no effect on the relationship between the
 140 child and the families of the deceased natural parents.

141 (2) For the purpose of intestate succession in cases not
 142 covered by subsection (1), a person born out of wedlock is a
 143 ~~lineal~~ descendant of his or her mother and is one of the natural
 144 kindred of all members of the mother's family. The person is
 145 also a ~~lineal~~ descendant of his or her father and is one of the
 146 natural kindred of all members of the father's family, if:

147 (a) The natural parents participated in a marriage
 148 ceremony before or after the birth of the person born out of
 149 wedlock, even though the attempted marriage is void.

150 (b) The paternity of the father is established by an
 151 adjudication before or after the death of the father.

152 (c) The paternity of the father is acknowledged in writing
 153 by the father.

154 Section 9. Subsection (2) of section 732.2025, Florida
 155 Statutes, is amended to read:

156 732.2025 Definitions.--As used in ss. 732.2025-732.2155,
 157 the term:

158 (2) "Elective share trust" means a trust under which
 159 ~~where:~~

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

163 (b) ~~The trust is subject to the provisions of former s.~~
 164 ~~738.12 or the surviving spouse has the right under the terms of~~
 165 the trust or state law to require the trustee either to make the

166 property productive or to convert it within a reasonable time;
 167 and

168 (c) During the spouse's life, no person other than the
 169 spouse has the power to distribute income or principal to anyone
 170 other than the spouse.

171
 172 As used in this subsection, the term "income" has the same
 173 meaning as that provided in s. 643(b) of the Internal Revenue
 174 Code, as amended, and regulations adopted under that section.

175 Section 10. Paragraph (b) of subsection (8) of section
 176 732.2035, Florida Statutes, is amended to read:

177 732.2035 Property entering into elective estate.--Except
 178 as provided in s. 732.2045, the elective estate consists of the
 179 sum of the values as determined under s. 732.2055 of the
 180 following property interests:

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

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

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

191 2. After the application of subparagraph (b)1., the first
 192 annual exclusion amount ~~\$10,000~~ of property transferred to or
 193 for the benefit of each donee during the 1-year period, but only

194 to the extent the transfer qualifies for exclusion from the
 195 United States gift tax under s. 2503(b) or (c) of the Internal
 196 Revenue Code, as amended. For purposes of this subparagraph, the
 197 term "annual exclusion amount" means the amount of one annual
 198 exclusion under s. 2503(b) or s. 2503(c) of the Internal Revenue
 199 Code, as amended.

200 Section 11. Subsection (2) of section 732.2075, Florida
 201 Statutes, is amended to read:

202 732.2075 Sources from which elective share payable;
 203 abatement.--

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

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

210 (b) Class 2.--Recipients of property interests, other than
 211 protected charitable interests, included in the elective estate
 212 under s. 732.2035(2), (3), or (6) and, to the extent the
 213 decedent had at the time of death the power to designate the
 214 recipient of the property, property interests, other than
 215 protected charitable interests, included under s. 732.2035(5)
 216 and (7).

217 (c) Class 3.--Recipients of all other property interests,
 218 other than protected charitable interests, included in the
 219 elective estate.

220 (d) Class 4.--Recipients of protected charitable lead
 221 interests, but only to the extent and at such times that

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222 contribution is permitted without disqualifying the charitable
 223 interest in that property for a deduction under the United
 224 States gift tax laws.

225
 226 For purposes of this subsection, a protected charitable interest
 227 is any interest for which a charitable deduction with respect to
 228 the transfer of the property was allowed or allowable to the
 229 decedent or the decedent's spouse under the United States gift
 230 or income tax laws. A protected charitable lead interest is a
 231 protected charitable interest where one or more deductible
 232 interests in charity precede some other nondeductible interest
 233 or interests in the property.

234 Section 12. Subsection (1) of section 732.401, Florida
 235 Statutes, is amended to read:

236 732.401 Descent of homestead.--

237 (1) If not devised as permitted by law and the Florida
 238 Constitution, the homestead shall descend in the same manner as
 239 other intestate property; but if the decedent is survived by a
 240 spouse and one or more ~~lineal~~ descendants, the surviving spouse
 241 shall take a life estate in the homestead, with a vested
 242 remainder to the ~~lineal~~ descendants in being at the time of the
 243 decedent's death per stirpes.

244 Section 13. Subsection (1) of section 732.4015, Florida
 245 Statutes, is amended to read:

246 732.4015 Devise of homestead.--

247 (1) As provided by the Florida Constitution, the homestead
 248 shall not be subject to devise if the owner is survived by a
 249 spouse or a minor child or minor children, except that the

250 homestead may be devised to the owner's spouse if there is no
 251 minor child or minor children.

252 Section 14. Subsection (1) of section 732.507, Florida
 253 Statutes, is amended to read:

254 732.507 Effect of subsequent marriage, birth, adoption, or
 255 dissolution of marriage.--

256 (1) Neither subsequent marriage, birth, nor adoption of
 257 ~~lineal~~ descendants shall revoke the prior will of any person,
 258 but the pretermitted child or spouse shall inherit as set forth
 259 in ss. 732.301 and 732.302, regardless of the prior will.

260 Section 15. Section 733.620, Florida Statutes, is created
 261 to read:

262 733.620 Exculpation of personal representative.--

263 (1) A term of a will relieving a personal representative
 264 of liability to a beneficiary for breach of fiduciary duty is
 265 unenforceable to the extent that the term:

266 (a) Relieves the personal representative of liability for
 267 breach of fiduciary duty committed in bad faith or with reckless
 268 indifference to the purposes of the will or the interests of
 269 interested persons; or

270 (b) Was inserted into the will as the result of an abuse
 271 by the personal representative of a fiduciary or confidential
 272 relationship with the testator.

273 (2) An exculpatory term drafted or caused to be drafted by
 274 the personal representative is invalid as an abuse of a
 275 fiduciary or confidential relationship unless:

276 (a) The personal representative proves that the
 277 exculpatory term is fair under the circumstances.

278 (b) The term's existence and contents were adequately
 279 communicated directly to the testator or to the independent
 280 attorney of the testator. This paragraph applies only to wills
 281 created on or after July 1, 2007.

282 Section 16. Subsections (3) and (4) of section 734.101,
 283 Florida Statutes, are amended to read:

284 734.101 Foreign personal representative.--

285 (3) Debtors who have not received a written demand for
 286 payment from a personal representative or curator appointed in
 287 this state within 90 ~~60~~ days after appointment of a personal
 288 representative in any other state or country, and whose property
 289 in Florida is subject to a mortgage or other lien securing the
 290 debt held by the foreign personal representative, may pay the
 291 foreign personal representative after the expiration of 90 ~~60~~
 292 days from the date of appointment of the foreign personal
 293 representative. Thereafter, a satisfaction of the mortgage or
 294 lien executed by the foreign personal representative, with an
 295 authenticated copy of the letters or other evidence of authority
 296 attached, may be recorded in the public records. The
 297 satisfaction shall be an effective discharge of the mortgage or
 298 lien, irrespective of whether the debtor making payment had
 299 received a written demand before paying the debt.

300 (4) Except as provided in s. 655.936, all persons indebted
 301 to the estate of a decedent, or having possession of personal
 302 property belonging to the estate, who have received no written
 303 demand from a personal representative or curator appointed in
 304 this state for payment of the debt or the delivery of the
 305 property are authorized to pay the debt or to deliver the

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306 personal property to the foreign personal representative after
307 the expiration of 90 ~~60~~ days from the date of appointment of the
308 foreign personal representative.

309 Section 17. Subsection (10) of section 895.02, Florida
310 Statutes, is amended to read:

311 895.02 Definitions.--As used in ss. 895.01-895.08, the
312 term:

313 (10) "Trustee" means any of the following:

314 (a) Any person acting as trustee pursuant to a trust
315 established under s. 689.07 or s. 689.071 in which the trustee
316 holds legal or record title to real property.

317 (b) Any person who holds legal or record title to real
318 property in which any other person has a beneficial interest.

319 (c) Any successor trustee or trustees to any or all of the
320 foregoing persons.

321

322 However, the term "trustee" does not include any person
323 appointed or acting as a personal representative as defined in
324 s. 731.201 (27) ~~(25)~~ or appointed or acting as a trustee of any
325 testamentary trust or as a trustee of any indenture of trust
326 under which any bonds have been or are to be issued.

327 Section 18. This act shall take effect July 1, 2007.