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CS/HB 311, Engrossed 1

2007 Legislature

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 heir" 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:
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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 the petition for administration has been served on the caveator
 52 or the caveator's designated agent by formal notice and the
 53 caveator has had the opportunity to participate in proceedings
 54 on the petition, as provided by the Florida Probate Rules.

55 Section 3. Subsections (6) and (7) and subsections (8)

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56 through (37) of section 731.201, Florida Statutes, as amended by
 57 section 29 of chapter 2006-217, Laws of Florida, are renumbered
 58 as subsections (7) and (8) and subsections (10) through (39),
 59 respectively, and new subsections (6) and (9) are added to that
 60 section, to read:

61 731.201 General definitions.--Subject to additional
 62 definitions in subsequent chapters that are applicable to
 63 specific chapters or parts, and unless the context otherwise
 64 requires, in this code, in s. 409.9101, and in chapters 736,
 65 738, 739, and 744, the term:

66 (6) "Collateral heir" means an heir who is related to the
 67 decedent through a common ancestor but who is not an ancestor or
 68 descendant of the decedent.

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

74 Section 4. Section 731.401, Florida Statutes, is created
 75 to read:

76 731.401 Arbitration of disputes.--

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

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

85 Section 5. Section 732.102, Florida Statutes, is amended
 86 to read:

87 732.102 Spouse's share of intestate estate.--The intestate
 88 share of the surviving spouse is:

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

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

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

100 Section 6. Subsections (1), (2), and (6) of section
 101 732.103, Florida Statutes, are amended to read:

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

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

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

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109 (6) If none of the foregoing, and if any of the
 110 descendants of the decedent's great-grandparents were Holocaust
 111 victims as defined in s. 626.9543(3)(a), including such victims
 112 in countries cooperating with the discriminatory policies of
 113 Nazi Germany, then to the ~~lineal~~ descendants of the great-
 114 grandparents. The court shall allow any such descendant to meet
 115 a reasonable, not unduly restrictive, standard of proof to
 116 substantiate his or her lineage. This subsection only applies to
 117 escheated property and shall cease to be effective for
 118 proceedings filed after December 31, 2004.

119 Section 7. Section 732.104, Florida Statutes, is amended
 120 to read:

121 732.104 Inheritance per stirpes.--Descent shall be per
 122 stirpes, whether to ~~lineal~~ descendants or to collateral heirs.

123 Section 8. Section 732.108, Florida Statutes, is amended
 124 to read:

125 732.108 Adopted persons and persons born out of wedlock.--

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

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

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

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

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

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

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

154 (c) The paternity of the father is acknowledged in writing
 155 by the father.

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

158 732.2025 Definitions.--As used in ss. 732.2025-732.2155,
 159 the term:

160 (2) "Elective share trust" means a trust under which
 161 ~~where~~:

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

165 (b) ~~The trust is subject to the provisions of former s.~~
 166 ~~738.12 or~~ the surviving spouse has the right under the terms of
 167 the trust or state law to require the trustee either to make the
 168 property productive or to convert it within a reasonable time;
 169 and

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

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

177 Section 10. Paragraph (b) of subsection (8) of section
 178 732.2035, Florida Statutes, is amended to read:

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

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

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

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

193 2. After the application of subparagraph (b)1., the first
 194 annual exclusion amount \$10,000 of property transferred to or
 195 for the benefit of each donee during the 1-year period, but only
 196 to the extent the transfer qualifies for exclusion from the
 197 United States gift tax under s. 2503(b) or (c) of the Internal
 198 Revenue Code, as amended. For purposes of this subparagraph, the
 199 term "annual exclusion amount" means the amount of one annual
 200 exclusion under s. 2503(b) or s. 2503(c) of the Internal Revenue
 201 Code, as amended.

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

204 732.2075 Sources from which elective share payable;
 205 abatement.--

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

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

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

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217 | protected charitable interests, included under s. 732.2035(5)
 218 | and (7).

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

222 | (d) Class 4.--Recipients of protected charitable lead
 223 | interests, but only to the extent and at such times that
 224 | contribution is permitted without disqualifying the charitable
 225 | interest in that property for a deduction under the United
 226 | States gift tax laws.

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

236 | Section 12. Subsection (1) of section 732.401, Florida
 237 | Statutes, is amended to read:

238 | 732.401 Descent of homestead.--

239 | (1) If not devised as permitted by law and the Florida
 240 | Constitution, the homestead shall descend in the same manner as
 241 | other intestate property; but if the decedent is survived by a
 242 | spouse and one or more ~~lineal~~ descendants, the surviving spouse
 243 | shall take a life estate in the homestead, with a vested

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244 remainder to the ~~lineal~~ descendants in being at the time of the
 245 decedent's death per stirpes.

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

248 732.4015 Devise of homestead.--

249 (1) As provided by the Florida Constitution, the homestead
 250 shall not be subject to devise if the owner is survived by a
 251 spouse or a minor child or minor children, except that the
 252 homestead may be devised to the owner's spouse if there is no
 253 minor child or minor children.

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

256 732.507 Effect of subsequent marriage, birth, adoption, or
 257 dissolution of marriage.--

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

262 Section 15. Section 733.620, Florida Statutes, is created
 263 to read:

264 733.620 Exculpation of personal representative.--

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

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

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

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

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

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

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

286 734.101 Foreign personal representative.--

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

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300 | lien, irrespective of whether the debtor making payment had
 301 | received a written demand before paying the debt.

302 | (4) Except as provided in s. 655.936, all persons indebted
 303 | to the estate of a decedent, or having possession of personal
 304 | property belonging to the estate, who have received no written
 305 | demand from a personal representative or curator appointed in
 306 | this state for payment of the debt or the delivery of the
 307 | property are authorized to pay the debt or to deliver the
 308 | personal property to the foreign personal representative after
 309 | the expiration of 90 ~~60~~ days from the date of appointment of the
 310 | foreign personal representative.

311 | Section 17. Subsection (10) of section 895.02, Florida
 312 | Statutes, is amended to read:

313 | 895.02 Definitions.--As used in ss. 895.01-895.08, the
 314 | term:

315 | (10) "Trustee" means any of the following:

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

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

321 | (c) Any successor trustee or trustees to any or all of the
 322 | foregoing persons.

323 |
 324 | However, the term "trustee" does not include any person
 325 | appointed or acting as a personal representative as defined in
 326 | s. 731.201 (27) ~~(25)~~ or appointed or acting as a trustee of any

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327 | testamentary trust or as a trustee of any indenture of trust
328 | under which any bonds have been or are to be issued.

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