

By the Committee on Judiciary; and Senator Simmons

590-02330-12

20121146c1

1 A bill to be entitled
2 An act relating to effect of dissolution or annulment
3 of marriage on certain designations; creating s.
4 732.703, F.S.; providing definitions; providing that a
5 designation made by or on behalf of a decedent
6 providing for the payment or transfer at death of an
7 interest in an asset to or for the benefit of the
8 decedent's former spouse shall become void if the
9 decedent's marriage was judicially dissolved or
10 declared invalid before the decedent's death, if the
11 designation was made prior to the dissolution or
12 order; providing for disposition of assets; providing
13 for treatment of certain retirement plans; specifying
14 assets subject to provisions; providing exceptions;
15 providing that payors are not liable for payments or
16 transfers to beneficiaries contrary to this provision
17 in certain circumstances; specifying the form of an
18 affidavit that may be used to relieve a payor of
19 liability for a transfer if the death certificate is
20 silent as to the decedent's marital status at the time
21 of death; providing that the payor is not liable for
22 making any payment on account of, or transferring any
23 interest in, certain types of assets to a beneficiary;
24 providing that certain provisions apply
25 notwithstanding the payor's knowledge that the person
26 to whom the asset is transferred is different from the
27 person who would own the interest due to the
28 dissolution of the decedent's marriage or declaration
29 of the marriage's validity before the decedent's

590-02330-12

20121146c1

30 death; providing that the provisions do not affect
31 specified interests and rights; providing
32 applicability; providing an effective date.

33
34 Be It Enacted by the Legislature of the State of Florida:

35
36 Section 1. Section 732.703, Florida Statutes, is created to
37 read:

38 732.703 Effect of divorce, dissolution, or invalidity of
39 marriage on disposition of certain assets at death.-

40 (1) As used in this section, unless the context requires
41 otherwise, the term:

42 (a) "Asset," when not modified by other words or phrases,
43 means an asset described in subsection (3).

44 (b) "Beneficiary" means any person designated in a
45 governing instrument to receive an interest in an asset upon the
46 death of the decedent.

47 (c) "Death certificate" means a certified copy of a death
48 certificate issued by an official or agency for the place where
49 the decedent's death occurred.

50 (d) "Employee benefit plan" means any funded or unfunded
51 plan, program, or fund established by an employer to provide an
52 employee's beneficiaries with benefits that may be payable on
53 the employee's death.

54 (e) "Governing instrument" means any writing or contract
55 governing the disposition of all or any part of an asset upon
56 the death of the decedent.

57 (f) "Payor" means any person obligated to make payment of
58 the decedent's interest in an asset upon the death of the

590-02330-12

20121146c1

59 decedent, and any other person who is in control or possession
60 of an asset.

61 (g) "Primary beneficiary" means a beneficiary designated
62 under the governing instrument to receive an interest in an
63 asset upon the death of the decedent who is not a secondary
64 beneficiary. A person who receives an interest in the asset upon
65 the death of the decedent due to the death of another
66 beneficiary prior to the decedent's death is also a primary
67 beneficiary.

68 (h) "Secondary beneficiary" means a beneficiary designated
69 under the governing instrument who will receive an interest in
70 an asset if the designation of the primary beneficiary is
71 revoked or otherwise cannot be given effect.

72 (2) A designation made by or on behalf of the decedent
73 providing for the payment or transfer at death of an interest in
74 an asset to or for the benefit of the decedent's former spouse
75 is void as of the time the decedent's marriage was judicially
76 dissolved or declared invalid by court order prior to the
77 decedent's death, if the designation was made prior to the
78 dissolution or court order. The decedent's interest in the asset
79 shall pass as if the decedent's former spouse predeceased the
80 decedent. An individual retirement account described in s. 408
81 or s. 408A of the Internal Revenue Code of 1986, or an employee
82 benefit plan, may not be treated as a trust for purposes of this
83 section.

84 (3) Subsection (2) applies to the following assets in which
85 a resident of this state has an interest at the time of the
86 resident's death:

87 (a) A life insurance policy, qualified annuity, or other

590-02330-12

20121146c1

88 similar tax-deferred contract held within an employee benefit
89 plan.

90 (b) An employee benefit plan.

91 (c) An individual retirement account described in s. 408 or
92 s. 408A of the Internal Revenue Code of 1986, including an
93 individual retirement annuity described in s. 408(b) of the
94 Internal Revenue Code of 1986.

95 (d) A payable-on-death account.

96 (e) A security or other account registered in a transfer-
97 on-death form.

98 (f) A life insurance policy, annuity, or other similar
99 contract that is not held within an employee benefit plan or a
100 tax-qualified retirement account.

101 (4) Subsection (2) does not apply:

102 (a) To the extent that controlling federal law provides
103 otherwise;

104 (b) If the governing instrument is signed by the decedent,
105 or on behalf of the decedent, after the order of dissolution or
106 order declaring the marriage invalid and such governing
107 instrument expressly provides that benefits will be payable to
108 the decedent's former spouse;

109 (c) To the extent a will or trust governs the disposition
110 of the assets and s. 732.507(2) or s. 736.1005 applies;

111 (d) If the order of dissolution or order declaring the
112 marriage invalid requires that the decedent acquire or maintain
113 the asset for the benefit of a former spouse or children of the
114 marriage, payable upon the death of the decedent either outright
115 or in trust, only if other assets of the decedent fulfilling
116 such a requirement for the benefit of the former spouse or

590-02330-12

20121146c1

117 children of the marriage do not exist upon the death of the
118 decendent;

119 (e) If, under the terms of the order of dissolution or
120 order declaring the marriage invalid, the decedent could not
121 have unilaterally terminated or modified the ownership of the
122 asset, or its disposition upon the death of the decedent;

123 (f) If the designation of the decedent's former spouse as a
124 beneficiary is irrevocable under applicable law;

125 (g) If the instrument directing the disposition of the
126 asset at death is governed by the laws of a state other than
127 this state;

128 (h) To an asset held in two or more names as to which the
129 death of one coowner vests ownership of the asset in the
130 surviving coowner or coowners; or

131 (i) If the decedent remarries the person whose interest
132 would otherwise have been revoked under this section and the
133 decedent and that person are married to one another at the time
134 of the decedent's death.

135 (5) In the case of an asset described in paragraph (3) (a),
136 paragraph (3) (b), or paragraph (3) (c), unless payment or
137 transfer would violate a court order directed to, and served as
138 required by law on, the payor:

139 (a) If the governing instrument does not explicitly specify
140 the relationship of the beneficiary to the decedent or if the
141 governing instrument explicitly provides that the beneficiary is
142 not the decedent's spouse, the payor is not liable for making
143 any payment on account of, or transferring any interest in, the
144 asset to the beneficiary.

145 (b) As to any portion of the asset required by the

590-02330-12

20121146c1

146 governing instrument to be paid after the decedent's death to a
147 primary beneficiary explicitly designated in the governing
148 instrument as the decedent's spouse:

149 1. If the death certificate states that the decedent was
150 married at the time of his or her death to that spouse, the
151 payor is not liable for making a payment on account of, or for
152 transferring an interest in, that portion of the asset to such
153 primary beneficiary.

154 2. If the death certificate states that the decedent was
155 not married at the time of his or her death, or if the death
156 certificate states that the decedent was married to a person
157 other than the spouse designated as the primary beneficiary at
158 the time of his or her death, the payor is not liable for making
159 a payment on account of, or for transferring an interest in,
160 that portion of the asset to a secondary beneficiary under the
161 governing instrument.

162 3. If the death certificate is silent as to the decedent's
163 marital status at the time of his or her death, the payor is not
164 liable for making a payment on account of, or for transferring
165 an interest in, that portion of the asset to the primary
166 beneficiary upon delivery to the payor of an affidavit validly
167 executed by the primary beneficiary in substantially the
168 following form:

169
170 STATE OF _____

171 COUNTY OF _____

172 Before me, the undersigned authority, personally
173 appeared ... (type or print affiant's name)...

174 ("Affiant"), who swore or affirmed that:

590-02330-12

20121146c1

175 1. ... (Type or print name of decedent)...
176 ("Decedent") died on ... (type or print the date of the
177 Decedent's death)....

178 2. Affiant is a "primary beneficiary" as that
179 term is defined in Section 732.703, Florida Statutes.
180 Affiant and Decedent were married on ... (type or print
181 the date of marriage)..., and were legally married to
182 one another on the date of the Decedent's death.

183 _____
184 _____
185 ... (Affiant)...

186 Sworn to or affirmed before me by the affiant who
187 is personally known to me or who has produced
188 ... (state type of identification) ... as identification
189 this day of ... (month) ..., ... (year)

190 ... (Signature of Officer)...
191 ... (Print, Type, or Stamp Commissioned name of Notary
192 Public)...

193 _____
194 4. If the death certificate is silent as to the decedent's
195 marital status at the time of his or her death, the payor is not
196 liable for making a payment on account of, or for transferring
197 an interest in, that portion of the asset to the secondary
198 beneficiary upon delivery to the payor of an affidavit validly
199 executed by the secondary beneficiary affidavit in substantially
200 the following form:

201 _____
202 STATE OF _____
203 COUNTY OF _____

590-02330-12

20121146c1

204 Before me, the undersigned authority, personally
205 appeared ... (type or print affiant's name)...
206 ("Affiant"), who swore or affirmed that:

207 1. ... (Type or print name of decedent)...
208 ("Decedent") died on ... (type or print the date of the
209 Decedent's death)....

210 2. Affiant is a "secondary beneficiary" as that
211 term is defined in Section 732.703, Florida Statutes.
212 On the date of the Decedent's death, the Decedent was
213 not legally married to the spouse designated as the
214 "primary beneficiary" as that term is defined in
215 Section 732.703, Florida Statutes.

216 Sworn to or affirmed before me by the affiant who
217 is personally known to me or who has produced
218 ... (state type of identification) ... as identification
219 this day of ... (month) ..., ... (year)....

220 ... (Signature of Officer)...
221 ... (Print, Type, or Stamp Commissioned name of Notary
222 Public)...

223
224 (6) In the case of an asset described in paragraph (3) (d),
225 paragraph (3) (e), or paragraph (3) (f), the payor is not liable
226 for making any payment on account of, or transferring any
227 interest in, the asset to any beneficiary.

228 (7) Subsections (5) and (6) apply notwithstanding the
229 payor's knowledge that the person to whom the asset is
230 transferred is different from the person who would own the
231 interest pursuant to subsection (2).

232 (8) This section does not affect the ownership of an

590-02330-12

20121146c1

233 interest in an asset as between the former spouse and any other
234 person entitled to such interest by operation of this section,
235 the rights of any purchaser for value of any such interest, the
236 rights of any creditor of the former spouse or any other person
237 entitled to such interest, or the rights and duties of any
238 insurance company, financial institution, trustee,
239 administrator, or other third party.

240 (9) This section applies to all designations made by or on
241 behalf of decedents dying on or after July 1, 2012, regardless
242 of when the designation was made.

243 Section 2. This act shall take effect July 1, 2012.