

By the Committees on Budget Subcommittee on General Government
Appropriations; and Judiciary; and Senator Simmons

601-04287-12

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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

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30 death; providing that the provisions do not affect
31 specified interests and rights; providing
32 applicability; providing an effective date.
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34 Be It Enacted by the Legislature of the State of Florida:
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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), except as provided
44 in paragraph (4)(j)..

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

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

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

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

58 (f) "Payor" means any person obligated to make payment of

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59 the decedent's interest in an asset upon the death of the
60 decedent, and any other person who is in control or possession
61 of an asset.

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

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

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

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

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88 (a) A life insurance policy, qualified annuity, or other
89 similar tax-deferred contract held within an employee benefit
90 plan.

91 (b) An employee benefit plan.

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

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

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

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

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

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

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

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

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

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117 such a requirement for the benefit of the former spouse or
118 children of the marriage do not exist upon the death of the
119 decedent;

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

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

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

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

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

136 (j) To state-administered retirement plans under chapter
137 121.

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

142 (a) If the governing instrument does not explicitly specify
143 the relationship of the beneficiary to the decedent or if the
144 governing instrument explicitly provides that the beneficiary is
145 not the decedent's spouse, the payor is not liable for making

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146 any payment on account of, or transferring any interest in, the
147 asset to the beneficiary.

148 (b) As to any portion of the asset required by the
149 governing instrument to be paid after the decedent's death to a
150 primary beneficiary explicitly designated in the governing
151 instrument as the decedent's spouse:

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

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

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

172
173 STATE OF _____
174 COUNTY OF _____

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175 Before me, the undersigned authority, personally
 176 appeared ... (type or print affiant's name)...
 177 ("Affiant"), who swore or affirmed that:
 178 1. ... (Type or print name of decedent)...
 179 ("Decedent") died on ... (type or print the date of the
 180 Decedent's death)....
 181 2. Affiant is a "primary beneficiary" as that
 182 term is defined in Section 732.703, Florida Statutes.
 183 Affiant and Decedent were married on ... (type or print
 184 the date of marriage)..., and were legally married to
 185 one another on the date of the Decedent's death.
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188 ... (Affiant)...
 189 Sworn to or affirmed before me by the affiant who
 190 is personally known to me or who has produced
 191 ... (state type of identification) ... as identification
 192 this day of ... (month) ..., ... (year)....
 193 ... (Signature of Officer)...
 194 ... (Print, Type, or Stamp Commissioned name of Notary
 195 Public)...
 196
 197 4. If the death certificate is silent as to the decedent's
 198 marital status at the time of his or her death, the payor is not
 199 liable for making a payment on account of, or for transferring
 200 an interest in, that portion of the asset to the secondary
 201 beneficiary upon delivery to the payor of an affidavit validly
 202 executed by the secondary beneficiary affidavit in substantially
 203 the following form:

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STATE OF _____
COUNTY OF _____

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

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

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

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

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

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

(7) Subsections (5) and (6) apply notwithstanding the
payor's knowledge that the person to whom the asset is

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233 transferred is different from the person who would own the
234 interest pursuant to subsection (2).

235 (8) This section does not affect the ownership of an
236 interest in an asset as between the former spouse and any other
237 person entitled to such interest by operation of this section,
238 the rights of any purchaser for value of any such interest, the
239 rights of any creditor of the former spouse or any other person
240 entitled to such interest, or the rights and duties of any
241 insurance company, financial institution, trustee,
242 administrator, or other third party.

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

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