

1                   A bill to be entitled  
2           An act relating to estates; amending s. 732.2025,  
3           F.S.; conforming cross-references; amending s.  
4           732.2035, F.S.; providing that a decedent's property  
5           interest in the protected homestead is included in the  
6           elective estate; amending s. 732.2045, F.S.; revising  
7           the circumstances under which the decedent's property  
8           interest in the protected homestead is excluded from  
9           the elective estate; amending s. 732.2055, F.S.;  
10          providing for the valuation of the decedent's  
11          protected homestead under certain circumstances;  
12          amending s. 732.2065, F.S.; providing elective share  
13          percentages as determined by the length of the  
14          surviving spouse's marriage to the decedent; amending  
15          s. 732.2075, F.S.; conforming cross-references;  
16          amending s. 732.2085, F.S.; requiring the payment of  
17          interest on any unpaid portion of a person's required  
18          contribution toward the elective share with respect to  
19          certain property; amending s. 732.2095, F.S.; revising  
20          provisions relating to the valuation of a surviving  
21          spouse's interest in property to include protected  
22          homestead; conforming cross-references; amending s.  
23          732.2115; conforming a cross-reference; amending s.  
24          732.2135, F.S.; revising the period within which a  
25          specified person may petition the court for an

26 extension of time for making an election; removing a  
 27 provision authorizing assessment of attorney fees and  
 28 costs if an election is made in bad faith; amending s.  
 29 732.2145, F.S.; requiring the payment of interest on  
 30 any unpaid portion of a person's required contribution  
 31 toward the elective share after a certain date;  
 32 creating s. 732.2151, F.S.; providing for the award of  
 33 fees and costs in certain elective share proceedings;  
 34 providing that a court may direct payment from certain  
 35 sources; providing applicability; amending s. 738.606,  
 36 F.S.; providing that a surviving spouse may require a  
 37 trustee of a marital or elective share trust to make  
 38 property productive of income; providing  
 39 applicability; providing an effective date.

40  
 41 Be It Enacted by the Legislature of the State of Florida:

42  
 43 Section 1. Subsections (1) and (9) of section 732.2025,  
 44 Florida Statutes, are amended to read:

45 732.2025 Definitions.—As used in ss. 732.2025–732.2155,  
 46 the term:

47 (1) "Direct recipient" means the decedent's probate estate  
 48 and any other person who receives property included in the  
 49 elective estate by transfer from the decedent, including  
 50 transfers described in s. 732.2035(9) ~~s. 732.2035(8)~~, by right

51 of survivorship, or by beneficiary designation under a governing  
52 instrument. For this purpose, a beneficiary of an insurance  
53 policy on the decedent's life, the net cash surrender value of  
54 which is included in the elective estate, is treated as having  
55 received property included in the elective estate. In the case  
56 of property held in trust, "direct recipient" includes the  
57 trustee but excludes the beneficiaries of the trust.

58 (9) "Revocable trust" means a trust that is includable in  
59 the elective estate under s. 732.2035(5) ~~s. 732.2035(4)~~.

60 Section 2. Section 732.2035, Florida Statutes, is amended  
61 to read:

62 732.2035 Property entering into elective estate.—Except as  
63 provided in s. 732.2045, the elective estate consists of the sum  
64 of the values as determined under s. 732.2055 of the following  
65 property interests:

66 (1) The decedent's probate estate.

67 (2) The decedent's interest in property which constitutes  
68 the protected homestead of the decedent.

69 (3) The decedent's ownership interest in accounts or  
70 securities registered in "Pay On Death," "Transfer On Death,"  
71 "In Trust For," or coownership with right of survivorship form.  
72 For this purpose, "decedent's ownership interest" means, in the  
73 case of accounts or securities held in tenancy by the entirety,  
74 one-half of the value of the account or security, and in all  
75 other cases, that portion of the accounts or securities which

76 | the decedent had, immediately before death, the right to  
77 | withdraw or use without the duty to account to any person.

78 |       ~~(4)-(3)~~ The decedent's fractional interest in property,  
79 | other than property described in subsection ~~(3)-(2)~~ or subsection  
80 | ~~(8)-(7)~~, held by the decedent in joint tenancy with right of  
81 | survivorship or in tenancy by the entirety. For this purpose,  
82 | "decedent's fractional interest in property" means the value of  
83 | the property divided by the number of tenants.

84 |       ~~(5)-(4)~~ That portion of property, other than property  
85 | described in subsection (2) and subsection (3), transferred by  
86 | the decedent to the extent that at the time of the decedent's  
87 | death the transfer was revocable by the decedent alone or in  
88 | conjunction with any other person. This subsection does not  
89 | apply to a transfer that is revocable by the decedent only with  
90 | the consent of all persons having a beneficial interest in the  
91 | property.

92 |       ~~(6) (a)-(5) (a)~~ That portion of property, other than property  
93 | described in subsection ~~(2)-(3)~~, subsection (4), subsection (5),  
94 | or subsection ~~(8)-(7)~~, transferred by the decedent to the extent  
95 | that at the time of the decedent's death:

96 |           1. The decedent possessed the right to, or in fact enjoyed  
97 | the possession or use of, the income or principal of the  
98 | property; or

99 |           2. The principal of the property could, in the discretion  
100 | of any person other than the spouse of the decedent, be

101 distributed or appointed to or for the benefit of the decedent.

102

103 In the application of this subsection, a right to payments under  
104 a commercial or private annuity, an annuity trust, a unitrust,  
105 or a similar arrangement shall be treated as a right to that  
106 portion of the income of the property necessary to equal the  
107 annuity, unitrust, or other payment.

108 (b) The amount included under this subsection is:

109 1. With respect to subparagraph (a)1., the value of the  
110 portion of the property to which the decedent's right or  
111 enjoyment related, to the extent the portion passed to or for  
112 the benefit of any person other than the decedent's probate  
113 estate; and

114 2. With respect to subparagraph (a)2., the value of the  
115 portion subject to the discretion, to the extent the portion  
116 passed to or for the benefit of any person other than the  
117 decedent's probate estate.

118 (c) This subsection does not apply to any property if the  
119 decedent's only interests in the property are that:

120 1. The property could be distributed to or for the benefit  
121 of the decedent only with the consent of all persons having a  
122 beneficial interest in the property; or

123 2. The income or principal of the property could be  
124 distributed to or for the benefit of the decedent only through  
125 the exercise or in default of an exercise of a general power of

126 | appointment held by any person other than the decedent; or

127 |       3. The income or principal of the property is or could be  
128 | distributed in satisfaction of the decedent's obligation of  
129 | support; or

130 |       4. The decedent had a contingent right to receive  
131 | principal, other than at the discretion of any person, which  
132 | contingency was beyond the control of the decedent and which had  
133 | not in fact occurred at the decedent's death.

134 |       (7)~~(6)~~ The decedent's beneficial interest in the net cash  
135 | surrender value immediately before death of any policy of  
136 | insurance on the decedent's life.

137 |       (8)~~(7)~~ The value of amounts payable to or for the benefit  
138 | of any person by reason of surviving the decedent under any  
139 | public or private pension, retirement, or deferred compensation  
140 | plan, or any similar arrangement, other than benefits payable  
141 | under the federal Railroad Retirement Act or the federal Social  
142 | Security System. In the case of a defined contribution plan as  
143 | defined in s. 414(i) of the Internal Revenue Code of 1986, as  
144 | amended, this subsection shall not apply to the excess of the  
145 | proceeds of any insurance policy on the decedent's life over the  
146 | net cash surrender value of the policy immediately before the  
147 | decedent's death.

148 |       (9)~~(8)~~ Property that was transferred during the 1-year  
149 | period preceding the decedent's death as a result of a transfer  
150 | by the decedent if the transfer was either of the following

151 types:

152 (a) Any property transferred as a result of the  
153 termination of a right or interest in, or power over, property  
154 that would have been included in the elective estate under  
155 subsection (5)~~(4)~~ or subsection (6)~~(5)~~ if the right, interest,  
156 or power had not terminated until the decedent's death.

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

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

164 2. After the application of subparagraph 1., the first  
165 annual exclusion amount of property transferred to or for the  
166 benefit of each donee during the 1-year period, but only to the  
167 extent the transfer qualifies for exclusion from the United  
168 States gift tax under s. 2503(b) or (c) of the Internal Revenue  
169 Code, as amended. For purposes of this subparagraph, the term  
170 "annual exclusion amount" means the amount of one annual  
171 exclusion under s. 2503(b) or (c) of the Internal Revenue Code,  
172 as amended.

173 (c) Except as provided in paragraph (d), for purposes of  
174 this subsection:

175 1. A "termination" with respect to a right or interest in

176 property occurs when the decedent transfers or relinquishes the  
177 right or interest, and, with respect to a power over property, a  
178 termination occurs when the power terminates by exercise,  
179 release, lapse, default, or otherwise.

180 2. A distribution from a trust the income or principal of  
181 which is subject to subsection (5)~~(4)~~, subsection (6)~~(5)~~, or  
182 subsection (10)~~(9)~~ shall be treated as a transfer of property by  
183 the decedent and not as a termination of a right or interest in,  
184 or a power over, property.

185 (d) Notwithstanding anything in paragraph (c) to the  
186 contrary:

187 1. A "termination" with respect to a right or interest in  
188 property does not occur when the right or interest terminates by  
189 the terms of the governing instrument unless the termination is  
190 determined by reference to the death of the decedent and the  
191 court finds that a principal purpose for the terms of the  
192 instrument relating to the termination was avoidance of the  
193 elective share.

194 2. A distribution from a trust is not subject to this  
195 subsection if the distribution is required by the terms of the  
196 governing instrument unless the event triggering the  
197 distribution is determined by reference to the death of the  
198 decedent and the court finds that a principal purpose of the  
199 terms of the governing instrument relating to the distribution  
200 is avoidance of the elective share.



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201        ~~(10)(9)~~ Property transferred in satisfaction of the  
202 elective share.

203        Section 3. Paragraph (i) of subsection (1) of section  
204 732.2045, Florida Statutes, is amended to read:

205        732.2045 Exclusions and overlapping application.—

206        (1) EXCLUSIONS.—Section 732.2035 does not apply to:

207        (i) Property which constitutes the protected homestead of  
208 the decedent if the surviving spouse validly waived his or her  
209 homestead rights as provided under s. 732.702, or otherwise  
210 under applicable law, and such spouse did not receive any  
211 interest in the protected homestead upon the decedent's death  
212 ~~whether held by the decedent or by a trust at the decedent's~~  
213 ~~death.~~

214        Section 4. Section 732.2055, Florida Statutes, is amended  
215 to read:

216        732.2055 Valuation of the elective estate.—For purposes of  
217 s. 732.2035, "value" means:

218        (1) (a) In the case of protected homestead:

219        1. If the surviving spouse receives a fee simple interest,  
220 the fair market value of the protected homestead on the date of  
221 the decedent's death.

222        2. If the spouse takes a life estate as provided in s.  
223 732.401(1), or validly elects to take an undivided one-half  
224 interest as a tenant in common as provided in s. 732.401(2),  
225 one-half of the fair market value of the protected homestead on

226 the date of the decedent's death.

227 3. If the surviving spouse validly waived his or her  
228 homestead rights as provided under s. 732.702 or otherwise under  
229 applicable law, but nevertheless receives an interest in the  
230 protected homestead, other than an interest described in s.  
231 732.401, including an interest in trust, the value of the  
232 spouse's interest is determined as property interests that are  
233 not protected homestead.

234 (b) For purposes of this subsection, fair market value is  
235 net of the aggregate amount, as of the date of the decedent's  
236 death, of all mortgages, liens, and security interests to which  
237 the protected homestead is subject and for which the decedent is  
238 liable, but only to the extent that such amount is not otherwise  
239 deducted as a claim paid or payable from the elective estate.

240 (2) In the case of any policy of insurance on the  
241 decedent's life includable under s. 732.2035(5), (6), or (7) ~~s.~~  
242 ~~732.2035(4), (5), or (6),~~ the net cash surrender value of the  
243 policy immediately before the decedent's death.

244 (3)~~(2)~~ In the case of any policy of insurance on the  
245 decedent's life includable under s. 732.2035(9) ~~s. 732.2035(8),~~  
246 the net cash surrender value of the policy on the date of the  
247 termination or transfer.

248 (4)~~(3)~~ In the case of amounts includable under s.  
249 732.2035(8) ~~s. 732.2035(7),~~ the transfer tax value of the  
250 amounts on the date of the decedent's death.

251        (5)-(4) In the case of other property included under s.  
 252 732.2035(9) ~~s. 732.2035(8)~~, the fair market value of the  
 253 property on the date of the termination or transfer, computed  
 254 after deducting any mortgages, liens, or security interests on  
 255 the property as of that date.

256        (6)-(5) In the case of all other property, the fair market  
 257 value of the property on the date of the decedent's death,  
 258 computed after deducting from the total value of the property:

259            (a) All claims paid or payable from the elective estate;  
 260 and

261            (b) To the extent they are not deducted under paragraph  
 262 (a), all mortgages, liens, or security interests on the  
 263 property.

264            Section 5. Section 732.2065, Florida Statutes, is amended  
 265 to read:

266            732.2065 Amount of the elective share.—The elective share  
 267 to which a surviving spouse is entitled is determined based upon  
 268 the number of years of the surviving spouse's marriage to the  
 269 decedent, determined as of the date of the decedent's death, as  
 270 follows:

271            (1) If the decedent and the surviving spouse were last  
 272 married to each other for less than 5 full years, the elective  
 273 share is an amount equal to 10 percent of the elective estate.

274            (2) If the decedent and the surviving spouse were last  
 275 married to each other for at least 5 full years but less than 15

276 full years, the elective share is an amount equal to 20 percent  
 277 of the elective estate.

278 (3) If the decedent and the surviving spouse were last  
 279 married to each other for at least 15 full years but less than  
 280 25 full years, the elective share is an amount equal to 30  
 281 percent of the elective estate.

282 (4) If the decedent and the surviving spouse were last  
 283 married to each other for 25 full years or more, the elective  
 284 share is an amount equal to 40 percent of the elective estate.  
 285 ~~is an amount equal to 30 percent of the elective estate.~~

286 Section 6. Paragraph (b) of subsection (1), paragraph (b)  
 287 of subsection (2), and paragraph (c) of subsection (3) of  
 288 section 732.2075, Florida Statutes, are amended to read:

289 732.2075 Sources from which elective share payable;  
 290 abatement.—

291 (1) Unless otherwise provided in the decedent's will or,  
 292 in the absence of a provision in the decedent's will, in a trust  
 293 referred to in the decedent's will, the following are applied  
 294 first to satisfy the elective share:

295 (b) To the extent paid to or for the benefit of the  
 296 surviving spouse, amounts payable under any plan or arrangement  
 297 described in s. 732.2035(8) ~~s. 732.2035(7)~~.

298 (2) If, after the application of subsection (1), the  
 299 elective share is not fully satisfied, the unsatisfied balance  
 300 shall be allocated entirely to one class of direct recipients of

301 the remaining elective estate and apportioned among those  
302 recipients, and if the elective share amount is not fully  
303 satisfied, to the next class of direct recipients, in the  
304 following order of priority, until the elective share amount is  
305 satisfied:

306 (b) Class 2.—Recipients of property interests, other than  
307 protected charitable interests, included in the elective estate  
308 under s. 732.2035(3), (4), or (7) ~~s. 732.2035(2), (3), or (6)~~  
309 and, to the extent the decedent had at the time of death the  
310 power to designate the recipient of the property, property  
311 interests, other than protected charitable interests, included  
312 under s. 732.2035(6) and (8) ~~s. 732.2035(5) and (7)~~.

313  
314 For purposes of this subsection, a protected charitable interest  
315 is any interest for which a charitable deduction with respect to  
316 the transfer of the property was allowed or allowable to the  
317 decedent or the decedent's spouse under the United States gift  
318 or income tax laws.

319 (3) If, after the application of subsections (1) and (2),  
320 the elective share amount is not fully satisfied, the additional  
321 amount due to the surviving spouse shall be determined and  
322 satisfied as follows:

323 (c) If there is more than one trust to which this  
324 subsection could apply, unless otherwise provided in the  
325 decedent's will or, in the absence of a provision in the

326 decedent's will, in a trust referred to in the decedent's will,  
 327 the unsatisfied balance shall be apportioned pro rata to all  
 328 such trusts in proportion to the value, as determined under s.  
 329 732.2095(2)(f) ~~s. 732.2095(2)(d)~~, of the surviving spouse's  
 330 beneficial interests in the trusts.

331 Section 7. Paragraph (a) of subsection (3) of section  
 332 732.2085, Florida Statutes, is amended to read:

333 732.2085 Liability of direct recipients and  
 334 beneficiaries.—

335 (3) If a person pays the value of the property on the date  
 336 of a sale or exchange or contributes all of the property  
 337 received, as provided in paragraph (2)(b):

338 (a) No further contribution toward satisfaction of the  
 339 elective share shall be required with respect to that property.  
 340 However, if a person's required contribution is not fully paid  
 341 by 2 years after the date of the death of the decedent, such  
 342 person must also pay interest at the statutory rate on any  
 343 portion of the required contribution that remains unpaid.

344 Section 8. Section 732.2095, Florida Statutes, is amended  
 345 to read:

346 732.2095 Valuation of property used to satisfy elective  
 347 share.—

348 (1) DEFINITIONS.—As used in this section, the term:

349 (a) "Applicable valuation date" means:

350 1. In the case of transfers in satisfaction of the

351 elective share, the date of the decedent's death.

352 2. In the case of property held in a qualifying special  
353 needs trust on the date of the decedent's death, the date of the  
354 decedent's death.

355 3. In the case of other property irrevocably transferred  
356 to or for the benefit of the surviving spouse during the  
357 decedent's life, the date of the transfer.

358 4. In the case of property distributed to the surviving  
359 spouse by the personal representative, the date of distribution.

360 5. Except as provided in subparagraphs 1., 2., and 3., in  
361 the case of property passing in trust for the surviving spouse,  
362 the date or dates the trust is funded in satisfaction of the  
363 elective share.

364 6. In the case of property described in s. 732.2035(2),  
365 (3), or (4) ~~s. 732.2035(2) or (3)~~, the date of the decedent's  
366 death.

367 7. In the case of proceeds of any policy of insurance  
368 payable to the surviving spouse, the date of the decedent's  
369 death.

370 8. In the case of amounts payable to the surviving spouse  
371 under any plan or arrangement described in s. 732.2035(8) ~~s.~~  
372 ~~732.2035(7)~~, the date of the decedent's death.

373 9. In all other cases, the date of the decedent's death or  
374 the date the surviving spouse first comes into possession of the  
375 property, whichever occurs later.

376 (b) "Qualifying power of appointment" means a general  
377 power of appointment that is exercisable alone and in all events  
378 by the decedent's spouse in favor of the spouse or the spouse's  
379 estate. For this purpose, a general power to appoint by will is  
380 a qualifying power of appointment if the power may be exercised  
381 by the spouse in favor of the spouse's estate without the  
382 consent of any other person.

383 (c) "Qualifying invasion power" means a power held by the  
384 surviving spouse or the trustee of an elective share trust to  
385 invade trust principal for the health, support, and maintenance  
386 of the spouse. The power may, but need not, provide that the  
387 other resources of the spouse are to be taken into account in  
388 any exercise of the power.

389 (2) Except as provided in this subsection, the value of  
390 property for purposes of s. 732.2075 is the fair market value of  
391 the property on the applicable valuation date.

392 (a) If the surviving spouse has a life interest in  
393 property not in trust that entitles the spouse to the use of the  
394 property for life, including, without limitation, a life estate  
395 in protected homestead as provided in s. 732.401(1), the value  
396 of the spouse's interest is one-half of the value of the  
397 property on the applicable valuation date.

398 (b) If the surviving spouse elects to take an undivided  
399 one-half interest in protected homestead as a tenant in common  
400 as provided in s. 732.401(2), the value of the spouse's interest



401 is one-half of the value of the property on the applicable  
402 valuation date.

403 (c) If the surviving spouse validly waived his or her  
404 homestead rights as provided in s. 732.702 or otherwise under  
405 applicable law but nevertheless receives an interest in  
406 protected homestead, other than an interest described in s.  
407 732.401, including, without limitation, an interest in trust,  
408 the value of the spouse's interest is determined as property  
409 interests that are not protected homestead.

410 (d)~~(b)~~ If the surviving spouse has an interest in a trust,  
411 or portion of a trust, which meets the requirements of an  
412 elective share trust, the value of the spouse's interest is a  
413 percentage of the value of the principal of the trust, or trust  
414 portion, on the applicable valuation date as follows:

415 1. One hundred percent if the trust instrument includes  
416 both a qualifying invasion power and a qualifying power of  
417 appointment.

418 2. Eighty percent if the trust instrument includes a  
419 qualifying invasion power but no qualifying power of  
420 appointment.

421 3. Fifty percent in all other cases.

422 (e)~~(e)~~ If the surviving spouse is a beneficiary of a  
423 trust, or portion of a trust, which meets the requirements of a  
424 qualifying special needs trust, the value of the principal of  
425 the trust, or trust portion, on the applicable valuation date.

426        (f)~~(d)~~ If the surviving spouse has an interest in a trust  
427 that does not meet the requirements of either an elective share  
428 trust or a qualifying special needs trust, the value of the  
429 spouse's interest is the transfer tax value of the interest on  
430 the applicable valuation date; however, the aggregate value of  
431 all of the spouse's interests in the trust shall not exceed one-  
432 half of the value of the trust principal on the applicable  
433 valuation date.

434        (g)~~(e)~~ In the case of any policy of insurance on the  
435 decedent's life the proceeds of which are payable outright or to  
436 a trust described in paragraph (d)~~(b)~~, paragraph (e)~~(e)~~, or  
437 paragraph (f)~~(d)~~, the value of the policy for purposes of s.  
438 732.2075 and paragraphs (d), (e), and (f) ~~(b)~~, ~~(e)~~, and ~~(d)~~ is  
439 the net proceeds.

440        (h)~~(f)~~ In the case of a right to one or more payments from  
441 an annuity or under a similar contractual arrangement or under  
442 any plan or arrangement described in s. 732.2035(8) ~~s.~~  
443 ~~732.2035(7)~~, the value of the right to payments for purposes of  
444 s. 732.2075 and paragraphs (d), (e), and (f) ~~(b)~~, ~~(e)~~, and ~~(d)~~  
445 is the transfer tax value of the right on the applicable  
446 valuation date.

447        Section 9. Section 732.2115, Florida Statutes, is amended  
448 to read:

449        732.2115 Protection of payors and other third parties.—  
450 Although a property interest is included in the decedent's

451 elective estate under s. 732.2035(3)-(9) ~~s. 732.2035(2)-(8)~~, a  
452 payor or other third party is not liable for paying,  
453 distributing, or transferring the property to a beneficiary  
454 designated in a governing instrument, or for taking any other  
455 action in good faith reliance on the validity of a governing  
456 instrument.

457 Section 10. Section 732.2135, Florida Statutes, is amended  
458 to read:

459 732.2135 Time of election; extensions; withdrawal.—

460 (1) Except as provided in subsection (2), the election  
461 must be filed on or before the earlier of the date that is 6  
462 months after the date of service of a copy of the notice of  
463 administration on the surviving spouse, or an attorney in fact  
464 or guardian of the property of the surviving spouse, or the date  
465 that is 2 years after the date of the decedent's death.

466 (2) Within the period provided in subsection (1), or 40  
467 days after the date of termination of any proceeding which  
468 affects the amount the spouse is entitled to receive under s.  
469 732.2075(1), whichever is later, but no more than 2 years after  
470 the decedent's death, the surviving spouse or an attorney in  
471 fact or guardian of the property of the surviving spouse may  
472 petition the court for an extension of time for making an  
473 election. For good cause shown, the court may extend the time  
474 for election. If the court grants the petition for an extension,  
475 the election must be filed within the time allowed by the

476 extension.

477 (3) The surviving spouse or an attorney in fact, guardian  
 478 of the property, or personal representative of the surviving  
 479 spouse may withdraw an election at any time within 8 months  
 480 after the decedent's death and before the court's order of  
 481 contribution.

482 (4) A petition for an extension of the time for making the  
 483 election or for approval to make the election shall toll the  
 484 time for making the election.

485 ~~(5) If the court determines that an election is made or~~  
 486 ~~pursued in bad faith, the court may assess attorney's fees and~~  
 487 ~~costs against the surviving spouse or the surviving spouse's~~  
 488 ~~estate.~~

489 Section 11. Subsection (1) of section 732.2145, Florida  
 490 Statutes, is amended to read:

491 732.2145 Order of contribution; personal representative's  
 492 duty to collect contribution.—

493 (1) The court shall determine the elective share and  
 494 contribution. Any amount of the elective share not satisfied  
 495 within 2 years of the date of death of the decedent shall bear  
 496 interest at the statutory rate until fully satisfied, even if an  
 497 order of contribution has not yet been entered. Contributions  
 498 shall bear interest at the statutory rate beginning 90 days  
 499 after the order of contribution. The order is prima facie  
 500 correct in proceedings in any court or jurisdiction.

501 Section 12. Section 732.2151, Florida Statutes, is created  
502 to read:

503 732.2151 Award of fees and costs in elective share  
504 proceedings.-

505 (1) The court may award taxable costs as in chancery  
506 actions, including attorney fees, in any proceeding under this  
507 part in which there is an objection to or dispute over:

508 (a) The entitlement to or the amount of the elective  
509 share;

510 (b) The property interests included in the elective  
511 estate, or its value; or

512 (c) The satisfaction of the elective share.

513 (2) When awarding taxable costs or attorney fees, the  
514 court may do one or more of the following:

515 (a) Direct payment from the estate.

516 (b) Direct payment from a party's interest in the elective  
517 share or the elective estate.

518 (c) Enter a judgement that can be satisfied from other  
519 property of the party.

520 (3) In addition to any of the fees that may be awarded  
521 under subsections (1) and (2), if the personal representative  
522 does not file a petition to determine the amount of the elective  
523 share as required by the Florida Probate Rules, the electing  
524 spouse or the attorney-in-fact, guardian of the property, or  
525 personal representative of the electing spouse may be awarded

526 from the estate reasonable costs, including attorney fees,  
 527 incurred in connection with the preparation and filing of the  
 528 petition.

529 (4) This section applies to all proceedings commenced on  
 530 or after July 1, 2017, without regard to the date of the  
 531 decedent's death.

532 Section 13. Subsection (1) of section 738.606, Florida  
 533 Statutes, is amended to read:

534 738.606 Property not productive of income.—

535 (1) If a marital deduction under the Internal Revenue Code  
 536 or comparable law of any state is allowed for all or part of a  
 537 trust, or if assets are transferred to a trust that satisfies  
 538 the requirements of s. 732.2025(2)(a) and (c), and such assets  
 539 have been used in whole or in part to satisfy an election by a  
 540 surviving spouse under s. 732.2125 and ~~the income of which must~~  
 541 ~~be distributed to the grantor's spouse and the assets of which~~  
 542 consist ~~substantially~~ of property that, in the aggregate, does  
 543 not provide the spouse with sufficient income from or use of the  
 544 trust assets, and if ~~the~~ amounts the trustee transfers from  
 545 principal to income under s. 738.104 and distributes to the  
 546 spouse from principal pursuant to the terms of the trust are  
 547 insufficient to provide the spouse with the beneficial enjoyment  
 548 required to obtain the marital deduction, even though, in the  
 549 case of an elective share trust, a marital deduction is not made  
 550 or is only partially made, the spouse may require the trustee of

551 such marital trust or elective share trust to make property  
552 productive of income, convert property within a reasonable time,  
553 or exercise the power conferred by ss. 738.104 and 738.1041. The  
554 trustee may decide which action or combination of actions to  
555 take.

556 Section 14. Applicability.—Except as otherwise provided in  
557 this act, the amendments made by this act apply to decedents  
558 whose death occurred on or after July 1, 2017.

559 Section 15. This act shall take effect July 1, 2017.