

By Senator Passidomo

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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, F.S.; conforming a cross-reference; amending
24 s. 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

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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, the
46 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:

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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

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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:

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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

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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 termination
153 of a right or interest in, or power over, property that would
154 have been included in the elective estate under subsection
155 (5)~~(4)~~ or subsection (6)~~(5)~~ if the right, interest, or power had
156 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

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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.

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:

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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, the term "fair market
235 value" means the net of the aggregate amount, as of the date of

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236 the decedent's death, of all mortgages, liens, and security
237 interests to which the protected homestead is subject and for
238 which the decedent is liable, but only to the extent that such
239 amount is not otherwise deducted as a claim paid or payable from
240 the elective estate.

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

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

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

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

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

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

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

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

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

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

275 (2) If the decedent and the surviving spouse were last
276 married to each other for at least 5 full years but less than 15
277 full years, the elective share is an amount equal to 20 percent
278 of the elective estate.

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

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

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

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

292 (1) Unless otherwise provided in the decedent's will or, in
293 the absence of a provision in the decedent's will, in a trust

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294 referred to in the decedent's will, the following are applied
295 first to satisfy the elective share:

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

299 (2) If, after the application of subsection (1), the
300 elective share is not fully satisfied, the unsatisfied balance
301 shall be allocated entirely to one class of direct recipients of
302 the remaining elective estate and apportioned among those
303 recipients, and if the elective share amount is not fully
304 satisfied, to the next class of direct recipients, in the
305 following order of priority, until the elective share amount is
306 satisfied:

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

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

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

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323 satisfied as follows:

324 (c) If there is more than one trust to which this
325 subsection could apply, unless otherwise provided in the
326 decedent's will or, in the absence of a provision in the
327 decedent's will, in a trust referred to in the decedent's will,
328 the unsatisfied balance shall be apportioned pro rata to all
329 such trusts in proportion to the value, as determined under s.
330 732.2095(2)(f) ~~s. 732.2095(2)(d)~~, of the surviving spouse's
331 beneficial interests in the trusts.

332 Section 7. Paragraph (a) of subsection (3) of section
333 732.2085, Florida Statutes, is amended to read:

334 732.2085 Liability of direct recipients and 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 elective
351 share, the date of the decedent's death.

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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 to
356 or for the benefit of the surviving spouse during the decedent's
357 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 power
377 of appointment that is exercisable alone and in all events by
378 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

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

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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 trust,
423 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), (c), and (d)~~ is

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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), (c), 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 must
461 be filed on or before the earlier of the date that is 6 months
462 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

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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

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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 share;

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

511 (c) The satisfaction of the elective share.

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

514 (a) Direct payment from the estate.

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

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

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

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526 incurred in connection with the preparation and filing of the
527 petition.

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

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

533 738.606 Property not productive of income.—

534 (1) If a marital deduction under the Internal Revenue Code
535 or comparable law of any state is allowed for all or part of a
536 trust, or if assets are transferred to a trust that satisfies
537 the requirements of s. 732.2025(2) (a) and (c), and such assets
538 have been used in whole or in part to satisfy an election by a
539 surviving spouse under s. 732.2125 and the income of which must
540 be distributed to the grantor's spouse and the assets of which
541 consist ~~substantially~~ of property that, in the aggregate, does
542 not provide the spouse with sufficient income from or use of the
543 trust assets, and if the amounts the trustee transfers from
544 principal to income under s. 738.104 and distributes to the
545 spouse from principal pursuant to the terms of the trust are
546 insufficient to provide the spouse with the beneficial enjoyment
547 required to obtain the marital deduction, even though, in the
548 case of an elective share trust, a marital deduction is not made
549 or is only partially made, the spouse may require the trustee of
550 such marital trust or elective share trust to make property
551 productive of income, convert property within a reasonable time,
552 or exercise the power conferred by ss. 738.104 and 738.1041. The
553 trustee may decide which action or combination of actions to
554 take.

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

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