

By the Committee on Judiciary and Senator Geller

308-1836-99

1                                   A bill to be entitled  
2           An act relating to probate; amending s.  
3           732.201, F.S.; revising language with respect  
4           to the right to elective share; creating s.  
5           732.2025, F.S.; providing definitions; creating  
6           s. 732.2035, F.S.; providing for property  
7           entering into the elective estate; creating s.  
8           732.2045, F.S.; providing for exclusions and  
9           overlapping application; amending s. 732.205,  
10          F.S.; providing for the valuation of the  
11          elective estate; amending s. 732.206, F.S.;  
12          providing for the elective share amount;  
13          amending s. 732.207, F.S.; providing for the  
14          sources from which the elective share is  
15          payable; providing for abatement; amending s.  
16          732.208, F.S.; providing for the liability of  
17          direct recipients and beneficiaries; amending  
18          s. 732.209, F.S.; providing for the valuation  
19          of the property used to satisfy the elective  
20          share; amending s. 732.210, F.S.; providing for  
21          the effect of the election on other interests;  
22          amending s. 732.211, F.S.; providing for the  
23          protection of payors and other third parties;  
24          amending s. 732.212, F.S.; providing who may  
25          exercise the right of election; amending s.  
26          732.213, F.S.; providing for the time of  
27          election; providing for extensions and for  
28          withdrawal; amending s. 732.214, F.S.;  
29          providing for the order of contribution;  
30          providing for the personal representative's  
31          duty to collect contributions; amending s.

1           732.215, F.S.; providing for the effective  
2           date, inapplicability of ch. 61, F.S., the  
3           effect of prior waivers, and transition rules;  
4           providing an effective date.

5  
6   Be It Enacted by the Legislature of the State of Florida:

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8           Section 1. Section 732.201, Florida Statutes, is  
9   amended to read:

10           732.201 Right to elective share.--The surviving spouse  
11   of a person who dies domiciled in Florida has ~~shall have~~ the  
12   right to a share of the elective estate of the decedent  
13   ~~deceased spouse~~ as provided in this part, to be designated the  
14   elective share.

15           Section 2. Section 732.2025, Florida Statutes, is  
16   created to read:

17           732.2025 Definitions.--As used in sections  
18   732.2025-732.215, the term:

19           (1) "Direct recipient" means the decedent's probate  
20   estate and any other person who receives property included in  
21   the elective estate by transfer from the decedent, including  
22   transfers described in s. 732.2035(8), by right of  
23   survivorship, or by beneficiary designation under a governing  
24   instrument. For this purpose, a beneficiary of an insurance  
25   policy on the decedent's life, the net cash surrender value of  
26   which is included in the elective estate, is treated as having  
27   received property included in the elective estate. In the case  
28   of property held in trust, "direct recipient" includes the  
29   trustee but excludes the beneficiaries of the trust.

30           (2) "Elective share trust" means a trust where:  
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1           (a) The surviving spouse is entitled for life to the  
2 use of the property or to all of the income payable at least  
3 as often as annually;

4           (b) The trust is subject to the provisions of s.  
5 738.12 or the surviving spouse has the right under the terms  
6 of the trust or state law to require the trustee either to  
7 make the property productive or to convert it within a  
8 reasonable time; and

9           (c) During the spouse's life, no person other than the  
10 spouse has the power to distribute income or principal to  
11 anyone other than the spouse.

12           (3) "General power of appointment" means a power of  
13 appointment under which the holder of the power, whether or  
14 not the holder has the capacity to exercise it, has the power  
15 to create a present or future interest in the holder, the  
16 holder's estate, or the creditors of either. The term includes  
17 a power to consume or invade the principal of a trust, but  
18 only if the power is not limited by an ascertainable standard  
19 relating to the holder's health, education, support, or  
20 maintenance.

21           (4) "Governing instrument" means a deed; will; trust;  
22 insurance or annuity policy; account with payable-on-death  
23 designation; security registered in beneficiary form (TOD);  
24 pension, profit-sharing, retirement, or similar benefit plan;  
25 an instrument creating or exercising a power of appointment or  
26 a power of attorney; or a dispositive, appointive, or  
27 nominative instrument of any similar type.

28           (5) "Payor" means an insurer, business entity,  
29 employer, government, governmental agency or subdivision, or  
30 any other person, other than the decedent's personal  
31 representative or a trustee of a trust created by the

1 decedent, authorized or obligated by law or a governing  
2 instrument to make payments.

3 (6) "Person" includes an individual, trust, estate,  
4 partnership, association, company, or corporation.

5 (7) "Probate estate" means all property wherever  
6 located that is subject to estate administration in any state  
7 of the United States or in the District of Columbia.

8 (8) "Qualifying special needs trust" or "supplemental  
9 needs trust" means a trust established for an ill or disabled  
10 surviving spouse with court approval before or after a  
11 decedent's death for such incapacitated surviving spouse, if,  
12 commencing on the decedent's death:

13 (a) The income and principal are distributable to or  
14 for the benefit of the spouse for life in the discretion of  
15 one or more trustees less than half of whom are ineligible  
16 family trustees. For purposes of this paragraph, ineligible  
17 family trustees include the decedent's grandparents and any  
18 descendants of the decedent's grandparents who are not also  
19 descendants of the surviving spouse; and

20 (b) During the spouse's life, no person other than the  
21 spouse has the power to distribute income or principal to  
22 anyone other than the spouse.

23 (c) The requirement for court approval and the  
24 limitation on ineligible family trustees shall not apply if  
25 the aggregate of the trust property as of the applicable  
26 valuation date in a qualifying special needs trust is less  
27 than \$100,000.

28 (9) "Revocable trust" means a trust that is includable  
29 in the elective estate under s. 732.2035(4).

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1           (10) "Transfer in satisfaction of the elective share"  
2 means an irrevocable transfer by the decedent to an elective  
3 share trust.

4           (11) "Transfer tax value" means the value the interest  
5 would have for purposes of the United States estate and gift  
6 tax laws if it passed without consideration to an unrelated  
7 person on the applicable valuation date.

8           Section 3. Section 732.2035, Florida Statutes, is  
9 created to read:

10           732.2035 Property entering into elective  
11 estate.--Except as provided in s. 732.2045, the elective  
12 estate consists of the sum of the values as determined under  
13 s. 732.205 of the following property interests:

14           (1) The decedent's probate estate.

15           (2) The decedent's ownership interest in accounts or  
16 securities registered in "Pay On Death," "Transfer On Death,"  
17 "In Trust For," or coownership with right of survivorship  
18 form. For this purpose, "decedent's ownership interest" means  
19 that portion of the accounts or securities which the decedent  
20 had, immediately before death, the right to withdraw or use  
21 without the duty to account to any person.

22           (3) The decedent's fractional interest in property,  
23 other than property described in subsection (2) or subsection  
24 (7), held by the decedent in joint tenancy with right of  
25 survivorship or in tenancy by the entirety. For this purpose,  
26 "decedent's fractional interest in property" means the value  
27 of the property divided by the number of tenants.

28           (4) That portion of property, other than property  
29 described in subsection (2), transferred by the decedent to  
30 the extent that at the time of the decedent's death the  
31 transfer was revocable by the decedent alone or in conjunction

1 with any other person. This subsection does not apply to a  
2 transfer that is revocable by the decedent only with the  
3 consent of all persons having a beneficial interest in the  
4 property.

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

9 1. The decedent possessed the right to, or in fact  
10 enjoyed the possession or use of, the income or principal of  
11 the property; or

12 2. The principal of the property could, in the  
13 discretion of any person other than the spouse of the  
14 decedent, be distributed or appointed to or for the benefit of  
15 the decedent.

16  
17 In the application of this subsection, a right to payments  
18 from an annuity or under a similar contractual arrangement  
19 shall be treated as a right to that portion of the income of  
20 the property necessary to equal the annuity or other  
21 contractual payment.

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

23 1. With respect to subparagraph (a)1., the value of  
24 the portion of the property to which the decedent's right or  
25 enjoyment related, to the extent the portion passed to or for  
26 the benefit of any person other than the decedent's probate  
27 estate; and

28 2. With respect to subparagraph (a)2., the value of  
29 the portion subject to the discretion, to the extent the  
30 portion passed to or for the benefit of any person other than  
31 the decedent's probate estate.

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

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

6           2. The income or principal of the property could be  
7 distributed to or for the benefit of the decedent only through  
8 the exercise or in default of an exercise of a general power  
9 of appointment held by any person other than the decedent; or

10           3. The income or principal of the property is or could  
11 be distributed in satisfaction of the decedent's obligation of  
12 support; or

13           4. The decedent had a contingent right to receive  
14 principal, other than at the discretion of any person, which  
15 contingency was beyond the control of the decedent and which  
16 had not in fact occurred at the decedent's death.

17           (6) The decedent's beneficial interest in the net cash  
18 surrender value immediately before death of any policy of  
19 insurance on the decedent's life.

20           (7) The value of amounts payable to or for the benefit  
21 of any person by reason of surviving the decedent under any  
22 public or private pension, retirement, or deferred  
23 compensation plan, or any similar arrangement, other than  
24 benefits payable under the federal Railroad Retirement Act or  
25 the federal Social Security System. In the case of a defined  
26 contribution plan as defined in s. 414(i) of the Internal  
27 Revenue Code of 1986, as amended, this subsection shall not  
28 apply to the excess of the proceeds of any insurance policy on  
29 the decedent's life over the net cash surrender value of the  
30 policy immediately before the decedent's death.

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

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

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

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

17           2. After the application of paragraph (b)1., the first  
18 \$10,000 of property transferred to or for the benefit of each  
19 donee during the 1-year period, but only to the extent the  
20 transfer qualifies for exclusion from the United States gift  
21 tax under s. 2503(b) or s. 2503(c) of the Internal Revenue  
22 Code, as amended.

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

25           1. A "termination" with respect to a right or interest  
26 in property occurs when the decedent transfers or relinquishes  
27 the right or interest, and, with respect to a power over  
28 property, a termination occurs when the power terminates by  
29 exercise, release, lapse, default, or otherwise.

30           2. A distribution from a trust the income or principal  
31 of which is subject to subsection (4), subsection (5), or



1 subsection (9) shall be treated as a transfer of property by  
2 the decedent and not as a termination of a right or interest  
3 in, or a power over, property.

4 (d) Notwithstanding anything in paragraph (c) to the  
5 contrary:

6 1. A "termination" with respect to a right or interest  
7 in property does not occur when the right or interest  
8 terminates by the terms of the governing instrument unless the  
9 termination is determined by reference to the death of the  
10 decedent and the court finds that a principal purpose for the  
11 terms of the instrument relating to the termination was  
12 avoidance of the elective share.

13 2. A distribution from a trust is not subject to this  
14 subsection if the distribution is required by the terms of the  
15 governing instrument unless the event triggering the  
16 distribution is determined by reference to the death of the  
17 decedent and the court finds that a principal purpose of the  
18 terms of the governing instrument relating to the distribution  
19 is avoidance of the elective share.

20 (9) Property transferred in satisfaction of the  
21 elective share.

22 Section 4. Section 732.2045, Florida Statutes, is  
23 created to read:

24 732.2045 Exclusions and overlapping application.--

25 (1) EXCLUSIONS.--Section 732.2035 does not apply to:

26 (a) Except as provided in s. 732.215(4), any transfer  
27 of property by the decedent to the extent the transfer is  
28 irrevocable before the effective date of this subsection or  
29 after that date but before the date of the decedent's marriage  
30 to the surviving spouse.

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1           (b) Any transfer of property by the decedent to the  
2 extent the decedent received adequate consideration in money  
3 or money's worth for the transfer.

4           (c) Any transfer of property by the decedent made with  
5 the written consent of the decedent's spouse. For this  
6 purpose, spousal consent to split-gift treatment under the  
7 United States gift tax laws does not constitute written  
8 consent to the transfer by the decedent.

9           (d) The proceeds of any policy of insurance on the  
10 decedent's life in excess of the net cash surrender value of  
11 the policy whether payable to the decedent's estate, a trust,  
12 or in any other manner.

13           (e) Any policy of insurance on the decedent's life  
14 maintained pursuant to a court order.

15           (f) The decedent's one-half of the property to which  
16 ss. 732.216-732.228 apply and real property that is community  
17 property under the laws of the jurisdiction where it is  
18 located.

19           (g) Property held in a qualifying special needs trust  
20 on the date of the decedent's death.

21           (h) Property in which the decedent's only interest was  
22 the power of appointment for the benefit of persons other than  
23 the decedent.

24           (2) OVERLAPPING APPLICATION.--If s. 732.2035(1) and  
25 any other subsection of s. 732.2035 apply to the same property  
26 interest, the amount included in the elective estate under  
27 other subsections is reduced by the amount included under  
28 subsection (1). In all other cases, if more than one  
29 subsection of s. 732.2035 applies to a property interest, only  
30 the subsection resulting in the largest elective estate shall  
31 apply.

1           Section 5. Section 732.205, Florida Statutes, is  
2 amended to read:

3           (Substantial rewording of section. See  
4           s. 732.205, F.S., for present text.)

5           732.205 Valuation of the elective estate.--For  
6 purposes of s. 732.2035, "value" means:

7           (1) In the case of any policy of insurance on the  
8 decedent's life includable under s. 732.2035(4), (5), or (6),  
9 the net cash surrender value of the policy immediately before  
10 the decedent's death.

11           (2) In the case of any policy of insurance on the  
12 decedent's life includable under s. 732.2035(8), the net cash  
13 surrender value of the policy on the date of the termination  
14 or transfer.

15           (3) In the case of amounts includable under s.  
16 732.2035(7), the transfer tax value of the amounts on the date  
17 of the decedent's death.

18           (4) In the case of other property included under s.  
19 732.2035(8), the fair-market value of the property on the date  
20 of the termination or transfer, computed after deducting any  
21 mortgages, liens, or security interests on the property as of  
22 that date.

23           (5) In the case of all other property, the fair-market  
24 value of the property on the date of the decedent's death,  
25 computed after deducting from the total value of the property:

26           (a) All claims, other than claims for funeral  
27 expenses, paid or payable from the elective estate; and

28           (b) To the extent they are not deducted under  
29 paragraph (a), all mortgages, liens, or security interests on  
30 the property.

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1           Section 6. Section 732.206, Florida Statutes, is  
2 amended to read:

3           (Substantial rewording of section. See  
4           s. 732.206, F.S., for present text.)

5           732.206 Elective share amount.--The elective share is  
6 an amount equal to 30 percent of the elective estate.

7           Section 7. Section 732.207, Florida Statutes, is  
8 amended to read:

9           (Substantial rewording of section. See  
10           s. 732.207, F.S., for present text.)

11           732.207 Sources from which elective share payable;  
12 abatement.--

13           (1) Unless otherwise provided in the decedent's will  
14 or, in the absence of a provision in the decedent's will, in a  
15 trust referred to in the decedent's will, the following are  
16 applied first to satisfy the elective share:

17           (a) To the extent paid to or for the benefit of the  
18 surviving spouse, the proceeds of any term or other policy of  
19 insurance on the decedent's life if, at the time of decedent's  
20 death, the policy was owned by any person other than the  
21 surviving spouse.

22           (b) To the extent paid to or for the benefit of the  
23 surviving spouse, amounts payable under any plan or  
24 arrangement described in s. 732.2035(7).

25           (c) To the extent paid to or for the benefit of the  
26 surviving spouse, the decedent's one-half of any property  
27 described in s. 732.2045(1)(f).

28           (d) Property held for the benefit of the surviving  
29 spouse in a qualifying special needs trust.

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1       (e) Property interests included in the elective estate  
2 that pass or have passed to or for the benefit of the  
3 surviving spouse.

4       (f) Property interests that would have satisfied the  
5 elective share under any preceding paragraph of this  
6 subsection but were disclaimed.

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

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

13       (b) Class 2.--Recipients of property interests  
14 included in the elective estate under s. 732.2035(2), (3), or  
15 (6) and, to the extent the decedent had at the time of death  
16 the power to designate the recipient of the property, property  
17 interests included under s. 732.2035(5) and (7).

18       (c) Class 3.--Recipients of all other property  
19 interests included in the elective estate except interests for  
20 which a charitable deduction with respect to the transfer of  
21 the property was allowed or allowable to the decedent or the  
22 decedent's spouse under the United States gift tax laws.

23       (3) The contribution required of the decedent's  
24 probate estate and revocable trusts may be made in cash or in  
25 kind. In the application of this subsection, subsections (4)  
26 and (5) are to be applied to charge contribution for the  
27 elective share to the beneficiaries of the probate estate and  
28 revocable trusts as if all beneficiaries were taking under a  
29 common governing instrument.

30       (4) Unless otherwise provided in the decedent's will  
31 or, in the absence of a provision in the decedent's will, in a

1 trust referred to in the decedent's will, any amount to be  
2 satisfied from the decedent's probate estate, other than from  
3 property passing to an inter vivos trust, shall be paid from  
4 the assets of the probate estate in the order prescribed in s.  
5 733.805.

6 (5) Unless otherwise provided in the trust instrument  
7 or, in the decedent's will if there is no provision in the  
8 trust instrument, any amount to be satisfied from trust  
9 property shall be paid from the assets of the trust in the  
10 order provided for claims under s. 737.3054(2) and (3). A  
11 direction in the decedent's will is effective only for  
12 revocable trusts.

13 Section 8. Section 732.208, Florida Statutes, is  
14 amended to read:

15 (Substantial rewording of section. See  
16 s. 732.208, F.S., for present text.)

17 732.208 Liability of direct recipients and  
18 beneficiaries.--

19 (1) Only direct recipients of property included in the  
20 elective estate and the beneficiaries of the decedent's  
21 probate estate or of any trust that is a direct recipient, are  
22 liable to contribute toward satisfaction of the elective  
23 share.

24 (a) Within each of the classes described in s.  
25 732.207(2)(b) and (c), each direct recipient is liable in an  
26 amount equal to the value, as determined under s. 732.205, of  
27 the proportional part of the liability for all members of the  
28 class.

29 (b) Trust and probate estate beneficiaries who receive  
30 a distribution of principal after the decedent's death are  
31 liable in an amount equal to the value of the principal

1 distributed to them multiplied by the contribution percentage  
2 of the distributing trust or estate. For this purpose,  
3 "contribution percentage" means the remaining unsatisfied  
4 balance of the trust or estate at the time of the distribution  
5 divided by the value of the trust or estate as determined  
6 under s. 732.205. "Remaining unsatisfied balance" means the  
7 amount of liability initially apportioned to the trust or  
8 estate reduced by amounts or property previously contributed  
9 by any person in satisfaction of that liability.

10 (2) In lieu of paying the amount for which they are  
11 liable, beneficiaries who have received a distribution of  
12 property included in the elective estate and direct recipients  
13 other than the decedent's probate estate or revocable trusts,  
14 may:

15 (a) Contribute a proportional part of all property  
16 received; or

17 (b) With respect to any property interest received  
18 before the date of the court's order of contribution:

19 1. Contribute all of the property; or  
20 2. If the property has been sold or exchanged prior to  
21 the date on which the spouse's election is filed, pay an  
22 amount equal to the value of the property, less reasonable  
23 costs of sale, on the date it was sold or exchanged.

24

25 In the application of paragraph (a), the "proportional part of  
26 all property received" is determined separately for each class  
27 of priority under s. 732.207(2).

28 (3) If a person pays the value of the property on the  
29 date of a sale or exchange or contributes all of the property  
30 received, as provided in paragraph (2)(b):  
31

1           (a) No further contribution toward satisfaction of the  
2 elective share shall be required with respect to such  
3 property.

4           (b) Any unsatisfied contribution is treated as  
5 additional unsatisfied balance and reapportioned to other  
6 recipients as provided in s. 732.207 and this section.

7           (4) If any part of s. 732.2035 or s. 732.207 is  
8 preempted by federal law with respect to a payment, an item of  
9 property, or any other benefit included in the elective  
10 estate, a person who, not for value, receives the payment,  
11 item of property, or any other benefit is obligated to return  
12 the payment, item of property, or benefit, or is personally  
13 liable for the amount of the payment or the value of that item  
14 of property or benefit, as provided in s. 732.2035 and s.  
15 732.207, to the person who would have been entitled to it were  
16 that section or part of that section not preempted.

17           Section 9. Section 732.209, Florida Statutes, is  
18 amended to read:

19           (Substantial rewording of section. See  
20 s. 732.209, F.S., for present text.)

21           732.209 Valuation of property used to satisfy elective  
22 share.--

23           (1) DEFINITIONS.--As used in this section, the term:

24           (a) "Applicable valuation date" means:

25           1. In the case of transfers in satisfaction of the  
26 elective share, the date of the decedent's death.

27           2. In the case of property held in a qualifying  
28 special needs trust on the date of the decedent's death, the  
29 date of the decedent's death.



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

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

7           5. Except as provided in subparagraphs 1., 2., and 3.,  
8 in the case of property passing in trust for the surviving  
9 spouse, the date or dates the trust is funded in satisfaction  
10 of the elective share.

11           6. In the case of property described in s. 732.2035(3)  
12 or (4), the date of the decedent's death.

13           7. In the case of proceeds of any policy of insurance  
14 payable to the surviving spouse, the date of the decedent's  
15 death.

16           8. In the case of amounts payable to the surviving  
17 spouse under any plan or arrangement described in s.  
18 732.2035(7), the date of the decedent's death.

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

22           (b) "Qualifying power of appointment" means a general  
23 power of appointment that is exercisable alone and in all  
24 events by the decedent's spouse in favor of the spouse or the  
25 spouse's estate. For this purpose, a general power to appoint  
26 by will is a qualifying power of appointment if the power may  
27 be exercised by the spouse in favor of the spouse's estate  
28 without the consent of any other person.

29           (c) "Qualifying invasion power" means a power held by  
30 the surviving spouse or the trustee of an elective share trust  
31 to invade trust principal for the health, support, and

1 maintenance of the spouse. The power may, but need not,  
2 provide that the other resources of the spouse are to be taken  
3 into account in any exercise of the power.

4 (2) Except as provided in this subsection, the value  
5 of property for purposes of s. 732.207 is the fair market  
6 value of the property on the applicable valuation date.

7 (a) If the surviving spouse has a life interest in  
8 property not in trust that entitles the spouse to the use of  
9 the property for life, the value of the spouse's interest is  
10 one-half of the value of the property on the applicable  
11 valuation date.

12 (b) If the surviving spouse has an interest in a  
13 trust, or portion of a trust, which meets the requirements of  
14 an elective share trust, the value of the spouse's interest is  
15 a percentage of the value of the principal of the trust, or  
16 trust portion, on the applicable valuation date as follows:

17 1. One hundred percent if the trust instrument  
18 includes both a qualifying invasion power and a qualifying  
19 power of appointment.

20 2. Eighty percent if the trust instrument includes a  
21 qualifying invasion power but no qualifying power of  
22 appointment.

23 3. Fifty percent in all other cases.

24 (c) If the surviving spouse is a beneficiary of a  
25 trust, or portion of a trust, which meets the requirements of  
26 a qualifying special needs trust, the value of the principal  
27 of the trust, or trust portion, on the applicable valuation  
28 date.

29 (d) If the surviving spouse has an interest in a trust  
30 that does not meet the requirements of an elective share  
31 trust, the value of the spouse's interest is the transfer tax

1 value of the interest on the applicable valuation date;  
2 however, the aggregate value of all of the spouse's interests  
3 in the trust shall not exceed one-half of the value of the  
4 trust principal on the applicable valuation date.

5 (e) In the case of any policy of insurance on the  
6 decedent's life the proceeds of which are payable outright or  
7 to a trust described in paragraph (b), paragraph (c), or  
8 paragraph (d), the value of the policy for purposes of s.  
9 732.207 and paragraphs (b), (c), and (d) is the net proceeds.

10 (f) In the case of a right to one or more payments  
11 from an annuity or under a similar contractual arrangement or  
12 under any plan or arrangement described in s. 732.2035(7), the  
13 value of the right to payments for purposes of s. 732.207 and  
14 paragraphs (b), (c), and (d) is the transfer tax value of the  
15 right on the applicable valuation date.

16 Section 10. Section 732.210, Florida Statutes, is  
17 amended to read:

18 (Substantial rewording of section. See  
19 s. 732.210, F.S., for present text.)

20 732.210 Effect of election on other interests.--

21 (1) The elective share is in addition to homestead,  
22 exempt property, and allowances as provided in part IV.

23 (2) If an election is filed, the balance of the  
24 elective estate, after the application of s. 732.214(1), shall  
25 be administered as though the surviving spouse had predeceased  
26 the decedent.

27 Section 11. Section 732.211, Florida Statutes, is  
28 amended to read:

29 (Substantial rewording of section. See  
30 s. 732.211, F.S., for present text.)

31

1           732.211 Protection of payors and other third  
2 parties.--Although a property interest is included in the  
3 decedent's elective estate under s. 732.2035(2)-(8), a payor  
4 or other third party is not liable for paying, distributing,  
5 or transferring the property to a beneficiary designated in a  
6 governing instrument, or for taking any other action in  
7 good-faith reliance on the validity of a governing instrument.

8           Section 12. Section 732.212, Florida Statutes, is  
9 amended to read:

10           (Substantial rewording of section. See  
11 s. 732.212, F.S., for present text.)

12           732.212 Right of election; by whom exercisable.--The  
13 right of election may be exercised:

14           (1) By the surviving spouse.

15           (2) With approval of the court having jurisdiction of  
16 the probate proceeding, by an attorney in fact or guardian of  
17 the property of the surviving spouse. The court shall  
18 determine the election as the best interests of the surviving  
19 spouse, during the spouse's probable lifetime, require.

20           Section 13. Section 732.213, Florida Statutes, is  
21 amended to read:

22           (Substantial rewording of section. See  
23 s. 732.213, F.S., for present text.)

24           732.213 Time of election; extensions; withdrawal.--

25           (1) Except as provided in subsection (2), the election  
26 must be filed within the earlier of 6 months of the date of  
27 the first publication of notice of administration or 2 years  
28 after the date of the decedent's death.

29           (2) Within the period provided in subsection (1), the  
30 surviving spouse or an attorney in fact or guardian of the  
31 property of the surviving spouse may petition the court for an

1 extension of time for making an election. After notice and  
2 hearing, the court for good cause shown may extend the time  
3 for election. If the court grants the petition for an  
4 extension, the election must be filed within the time allowed  
5 by the extension.

6 (3) The surviving spouse or an attorney in fact,  
7 guardian of the property, or personal representative of the  
8 surviving spouse may withdraw an election at any time within 8  
9 months of the decedent's death and before the court's order of  
10 contribution. If an election is withdrawn, the court may  
11 assess attorney's fees and costs against the surviving spouse  
12 or the spouse's estate.

13 (4) A petition for an extension of the time for making  
14 the election or for approval to make the election shall toll  
15 the time for making the election.

16 Section 14. Section 732.214, Florida Statutes, is  
17 amended to read:

18 (Substantial rewording of section. See  
19 s. 732.214, F.S., for present text.)

20 732.214 Order of contribution; personal  
21 representative's duty to collect contribution.--

22 (1) The court shall determine the elective share and  
23 shall order contribution. All contributions are to bear  
24 interest at the statutory rate provided in s. 55.03(1)  
25 beginning 90 days from the date of the order. The order of  
26 contribution is prima facie correct in proceedings in any  
27 court or jurisdiction.

28 (2) Except as provided in subsection (3), the personal  
29 representative shall collect contribution from the recipients  
30 of the elective estate as provided in the court's order of  
31 contribution.

1       (a) If property within the possession or control of  
2 the personal representative is distributable to a beneficiary  
3 or trustee who is required to contribute in satisfaction of  
4 the elective share, the personal representative shall withhold  
5 from the distribution the contribution required of the  
6 beneficiary or trustee.

7       (b) If, after the order of contribution, the personal  
8 representative brings an action to collect contribution from  
9 property not within the personal representative's control, the  
10 judgment shall include the personal representative's costs and  
11 reasonable attorney's fees. The personal representative is not  
12 required to seek collection of any portion of the elective  
13 share from property not within the personal representative's  
14 control until after the entry of the order of contribution.

15       (3) A personal representative who has the duty under  
16 this section of enforcing contribution may be relieved of that  
17 duty by an order of the court finding that it is impracticable  
18 to enforce contribution in view of the improbability of  
19 obtaining a judgment or the improbability of collection under  
20 any judgment that might be obtained, or otherwise. The  
21 personal representative shall not be liable for failure to  
22 attempt collection if the attempt would have been economically  
23 impracticable.

24       (4) Nothing in this section limits the independent  
25 right of the surviving spouse to collect the elective share as  
26 provided in the order of contribution and that right is hereby  
27 conferred. If the surviving spouse brings an action to enforce  
28 an order of contribution, the judgment shall include the  
29 surviving spouse's costs and reasonable attorney's fees.

30       Section 15. Section 732.215, Florida Statutes, is  
31 amended to read:

1           (Substantial rewording of section. See  
2           s. 732.215, F.S., for present text.)  
3           732.215 Effective date; effect of prior waivers;  
4 transition rules.--  
5           (1) Sections 732.201-732.215 are effective on October  
6 1, 1999, for all decedents dying on or after October 1, 2001.  
7 The law in effect prior to October 1, 1999, applies to  
8 decedents dying before October 1, 2001.  
9           (2) Nothing in ss. 732.201-732.215 modifies or applies  
10 to the rights of spouses under chapter 61.  
11           (3) A waiver of elective share rights before the  
12 effective date of this section which is otherwise in  
13 compliance with the requirements of s. 732.702 is a waiver of  
14 all rights under ss. 732.201-732.214.  
15           (4) Notwithstanding anything in s. 732.2045(1)(a) to  
16 the contrary, any trust created by the decedent before the  
17 effective date of this section that meets the requirements of  
18 an elective share trust is treated as if the decedent created  
19 the trust after the effective date of this subsection and in  
20 satisfaction of the elective share.  
21           Section 16. This act does not affect any interest in  
22 contracts entered into before October 1, 1999, to the extent  
23 that the contract is irrevocable.  
24           Section 17. This act shall take effect October 1,  
25 1999.  
26  
27  
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31

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   SB 298

4 Clarifies that a spouse has a right to claim an elective share  
5 of the "elective estate."

6 Enumerates the probate and nonprobate property assets,  
7 including any inter vivos trust, that constitute a part of the  
8 elective estate for purposes of determining the elective  
9 share.

8 Excludes certain property assets, including assets in a  
9 qualifying special needs trust for an incapacitated spouse,  
10 from the elective estate.

10 Revises existing fair market valuation of elective share  
11 property to provide for different valuation of elective estate  
12 property based on the type of property, and fair market  
13 valuation for all other unspecified property.

12 Provides valuation dates on which different properties are to  
13 be valued.

14 Establishes the elective share amount to be a flat 30% of the  
15 elective estate.

15 Revises the priority scheme of recipients and beneficiaries of  
16 the elective estate into a 3-tiered priority scheme and  
17 expands the sources from which to satisfy the elective share.

17 Imposes liability on direct recipients and beneficiaries for  
18 the value of or the actual estate or probate property sold or  
19 otherwise transferred prior to the distribution or  
20 contribution toward satisfying the elective share.

20 Provides a mechanism for extension of time to file and  
21 withdraw an election to an elective share.

21 Imposes a duty on the personal representative of the decedent  
22 to collect contributions from the recipients to satisfy the  
23 elective share.

23 Revises the statute of limitations period to extend the time  
24 for filing notice to exercise an elective share from the  
25 existing 4 months to the earlier of either within 6 months of  
26 the first publication on the notice of administration or  
27 within 2 years of the date of the decedent's death.

26 Provides that the rights of spouses established under chapter  
27 61, F.S., relating to dissolution of marriage, are unaffected  
28 by this bill.

28 Provides for effective dates and specifically excludes the  
29 application of the law to irrevocable contracts entered into  
30 before October 1, 1999.