

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Representative(s) Goodlette offered the following:

12

13 **Amendment**

14 On page 37, line 9, through page 46, line 18
15 remove from the bill: all of said lines

16

17 and insert in lieu thereof:

18 Section 19. Effective October 1, 2001, subsection (8)
19 of section 732.2025, Florida Statutes, is amended to read:

20 732.2025 Definitions.--As used in ss.

21 732.2025-732.2155, the term:

22 (8) "Qualifying special needs trust" or "supplemental
23 needs trust" means a trust established for a ~~an ill or~~
24 disabled surviving spouse with court approval before or after
25 a decedent's death ~~for such incapacitated surviving spouse,~~
26 if, commencing on the decedent's death:

27 (a) The income and principal are distributable to or
28 for the benefit of the spouse for life in the discretion of
29 one or more trustees less than half of whom are ineligible
30 family trustees. For purposes of this paragraph, ineligible
31 family trustees include the decedent's grandparents and any

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1 descendants of the decedent's grandparents who are not also
2 descendants of the surviving spouse; and

3 (b) During the spouse's life, no person other than the
4 spouse has the power to distribute income or principal to
5 anyone other than the spouse.

6
7 ~~(c) The requirement for court approval and the limitation on~~
8 ~~ineligible family trustees shall not apply if the aggregate~~
9 ~~value of all the trust property as of the applicable valuation~~
10 ~~date in all a qualifying special needs trusts for the spouse~~
11 ~~trust is less than \$100,000. For purposes of this subsection,~~
12 ~~value is determined on the "applicable valuation date" as~~
13 ~~defined in s. 732.2095(1)(a).~~

14 Section 20. Effective October 1, 2001, subsection (2)
15 and paragraph (a) of subsection (5) of section 732.2035,
16 Florida Statutes, are amended to read:

17 732.2035 Property entering into elective
18 estate.--Except as provided in s. 732.2045, the elective
19 estate consists of the sum of the values as determined under
20 s. 732.2055 of the following property interests:

21 (2) The decedent's ownership interest in accounts or
22 securities registered in "Pay On Death," "Transfer On Death,"
23 "In Trust For," or coownership with right of survivorship
24 form. For this purpose, "decedent's ownership interest"
25 means, in the case of accounts or securities held in tenancy
26 by the entirety, one-half of the value of the account or
27 security, and in all other cases, that portion of the accounts
28 or securities which the decedent had, immediately before
29 death, the right to withdraw or use without the duty to
30 account to any person.

31 (5)(a) That portion of property, other than property

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1 described in subsection (3), subsection (4), or subsection
2 (7), transferred by the decedent to the extent that at the
3 time of the decedent's death:

4 1. The decedent possessed the right to, or in fact
5 enjoyed the possession or use of, the income or principal of
6 the property; or

7 2. The principal of the property could, in the
8 discretion of any person other than the spouse of the
9 decedent, be distributed or appointed to or for the benefit of
10 the decedent.

11
12 In the application of this subsection, a right to payments
13 under a commercial or private ~~from an annuity, an annuity~~
14 trust, a unitrust, or under a similar ~~contractual~~ arrangement
15 shall be treated as a right to that portion of the income of
16 the property necessary to equal the annuity, unitrust, or
17 other ~~contractual~~ payment.

18 Section 21. Effective October 1, 2001, subsection (1)
19 of section 732.2045, Florida Statutes, is amended to read:

20 732.2045 Exclusions and overlapping application.--

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

22 (a) Except as provided in s. 732.2155(4), any transfer
23 of property by the decedent to the extent the transfer is
24 irrevocable before the effective date of this subsection or
25 after that date but before the date of the decedent's marriage
26 to the surviving spouse.

27 (b) Any transfer of property by the decedent to the
28 extent the decedent received adequate consideration in money
29 or money's worth for the transfer.

30 (c) Any transfer of property by the decedent made with
31 the written consent of the decedent's spouse. For this

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1 purpose, spousal consent to split-gift treatment under the
2 United States gift tax laws does not constitute written
3 consent to the transfer by the decedent.

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

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

10 (f) The decedent's one-half of the property to which
11 ss. 732.216-732.228 apply and real property that is community
12 property under the laws of the jurisdiction where it is
13 located.

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

16 (h) Property included in the gross estate of the
17 decedent for federal estate tax purposes solely because the
18 decedent possessed a general power of appointment.

19 (i) Property which constitutes the protected homestead
20 of the decedent whether held by the decedent or by a trust at
21 the decedent's death.

22 Section 22. Effective October 1, 2001, paragraph (a)
23 of subsection (5) of section 732.2055, Florida Statutes, is
24 amended to read:

25 732.2055 Valuation of the elective estate.--For
26 purposes of s. 732.2035, "value" means:

27 (5) In the case of all other property, the fair market
28 value of the property on the date of the decedent's death,
29 computed after deducting from the total value of the property:

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

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1 Section 23. Effective October 1, 2001, subsection (2)
2 of section 732.2075, Florida Statutes, is amended to read:

3 732.2075 Sources from which elective share payable;
4 abatement.--

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

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

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

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

24 (d) Class 4.--Recipients of protected charitable lead
25 interests, but only to the extent and at such times that
26 contribution is permitted without disqualifying the charitable
27 interest in that property for a deduction under the United
28 States gift tax laws.

29
30 For purposes of this subsection, a protected charitable
31 interest is any interest for which a charitable deduction with

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1 respect to the transfer of the property was allowed or
2 allowable to the decedent or the decedent's spouse under the
3 United States gift tax laws. A protected charitable lead
4 interest is a protected charitable interest where one or more
5 deductible interests in charity precede some other
6 nondeductible interest or interests in the property.

7 Section 24. Effective October 1, 2001, paragraph (a)
8 of subsection (1) and paragraph (a) of subsection (3) of
9 section 732.2085, Florida Statutes, are amended to read:

10 732.2085 Liability of direct recipients and
11 beneficiaries.--

12 (1) Only direct recipients of property included in the
13 elective estate and the beneficiaries of the decedent's
14 probate estate or of any trust that is a direct recipient, are
15 liable to contribute toward satisfaction of the elective
16 share.

17 (a) Within each of the classes described in s.
18 732.2075(2)(b), ~~and~~ (c), and (d), each direct recipient is
19 liable in an amount equal to the value, as determined under s.
20 732.2055, of the proportional part of the liability for all
21 members of the class.

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

25 (a) No further contribution toward satisfaction of the
26 elective share shall be required with respect to that ~~such~~
27 property.

28 Section 25. Effective October 1, 2001, paragraph (a)
29 of subsection (1) and paragraph (d) of subsection (2) of
30 section 732.2095, Florida Statutes, are amended to read:

31 732.2095 Valuation of property used to satisfy

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1 elective share.--

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

3 (a) "Applicable valuation date" means:

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

6 2. In the case of property held in a qualifying
7 special needs trust on the date of the decedent's death, the
8 date of the decedent's death.

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

12 4. In the case of property distributed to the
13 surviving spouse by the personal representative, the date of
14 distribution.

15 5. Except as provided in subparagraphs 1., 2., and 3.,
16 in the case of property passing in trust for the surviving
17 spouse, the date or dates the trust is funded in satisfaction
18 of the elective share.

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

21 7. In the case of proceeds of any policy of insurance
22 payable to the surviving spouse, the date of the decedent's
23 death.

24 8. In the case of amounts payable to the surviving
25 spouse under any plan or arrangement described in s.
26 732.2035(7), the date of the decedent's death.

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

30 (2) Except as provided in this subsection, the value
31 of property for purposes of s. 732.2075 is the fair market

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1 value of the property on the applicable valuation date.

2 (d) If the surviving spouse has an interest in a trust
3 that does not meet the requirements of either an elective
4 share trust or a qualifying special needs trust, the value of
5 the spouse's interest is the transfer tax value of the
6 interest on the applicable valuation date; however, the
7 aggregate value of all of the spouse's interests in the trust
8 shall not exceed one-half of the value of the trust principal
9 on the applicable valuation date.

10 Section 26. Effective October 1, 2001, section
11 732.2105, Florida Statutes, is amended to read:

12 732.2105 Effect of election on other interests.--

13 ~~(1)~~ The elective share shall be in addition to
14 homestead, exempt property, and allowances as provided in part
15 IV.

16 ~~(2) If an election is filed, the balance of the~~
17 ~~elective estate, after the application of s. 732.2145(1),~~
18 ~~shall be administered as though the surviving spouse had~~
19 ~~predeceased the decedent.~~

20 Section 27. Effective October 1, 2001, subsection (2)
21 of section 732.2125, Florida Statutes, is amended to read:

22 732.2125 Right of election; by whom exercisable.--The
23 right of election may be exercised:

24 (2) With approval of the court having jurisdiction of
25 the probate proceeding by an attorney in fact or a guardian of
26 the property of the surviving spouse, ~~with approval of the~~
27 ~~court having jurisdiction of the probate proceeding.~~ The court
28 shall determine the election as the best interests of the
29 surviving spouse, during the spouse's probable lifetime,
30 require.

31 Section 28. Effective October 1, 2001, section

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1 732.2135, Florida Statutes, is amended to read:

2 732.2135 Time of election; extensions; withdrawal.--

3 (1) Except as provided in subsection (2), the election
4 must be filed within the earlier of 6 months of the date of
5 service of a copy of the first publication of notice of
6 administration on the surviving spouse, or an attorney in fact
7 or guardian of the property of the surviving spouse, or 2
8 years after the date of the decedent's death.

9 (2) Within the period provided in subsection (1), the
10 surviving spouse or an attorney in fact or guardian of the
11 property of the surviving spouse may petition the court for an
12 extension of time for making an election. ~~After notice and~~
13 ~~hearing, the court~~ For good cause shown the court may extend
14 the time for election. If the court grants the petition for an
15 extension, the election must be filed within the time allowed
16 by the extension.

17 (3) The surviving spouse or an attorney in fact,
18 guardian of the property, or personal representative of the
19 surviving spouse may withdraw an election at any time within 8
20 months of the decedent's death and before the court's order of
21 contribution. If an election is withdrawn, the court may
22 assess attorney's fees and costs against the surviving spouse
23 or the surviving spouse's estate.

24 (4) A petition for an extension of the time for making
25 the election or for approval to make the election shall toll
26 the time for making the election.

27 Section 29. Effective October 1, 2001, subsections (1)
28 and (4) of section 732.2145, Florida Statutes, are amended to
29 read:

30 732.2145 Order of contribution; personal
31 representative's duty to collect contribution.--

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1 (1) The court shall determine the elective share and
2 ~~shall order~~ contribution. ~~All~~ Contributions shall ~~are to~~ bear
3 interest at the statutory rate ~~provided in s. 55.03(1)~~
4 beginning 90 days after ~~from the date of the~~ order of
5 contribution. The order ~~of contribution~~ is prima facie correct
6 in proceedings in any court or jurisdiction.

7 (4) Nothing in this section limits the independent
8 right of the surviving spouse to collect the elective share as
9 provided in the order of contribution, and that right is
10 hereby conferred. If the surviving spouse brings an action to
11 enforce the ~~an~~ order ~~of contribution~~, the judgment shall
12 include the surviving spouse's costs and reasonable attorney's
13 fees.

14 Section 30. Effective October 1, 2001, subsection (4)
15 of section 732.2155, Florida Statutes, is amended and
16 subsection (6) of section 732.2155, Florida Statutes, is
17 created to read:

18 732.2155 Effective date; effect of prior waivers;
19 transition rules.

20 (4) Notwithstanding anything in s. 732.2045(1)(a) to
21 the contrary, any trust created by the decedent before the
22 effective date of ss. 732.201-732.2145 ~~this section~~ that meets
23 the requirements of an elective share trust is treated as if
24 the decedent created the trust after the effective date of
25 these sections ~~this subsection~~ and in satisfaction of the
26 elective share.

27 (6) Sections 732.201-732.2155 do not affect any
28 interest in property held, as of the decedent's death, in a
29 trust, whether revocable or irrevocable, if:

30 (a) the property was an asset of the trust at all
31 times between October 1, 1999 and the date of the decedent's

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1 death;
2 (b) the decedent was not married to the decedent's
3 surviving spouse when the property was transferred to the
4 trust; and
5 (c) the property was a nonmarital asset as defined in
6 s. 61.075 immediately prior to the decedent's death.
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