

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2214

SPONSOR: Senator Jones

SUBJECT: Intestate Succession

DATE: March 19, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Roberts</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill expands the statutory intestacy scheme to include the classes of great-grandparents and great-great grandparents and their respective siblings and sibling descendants.

This bill substantially amends the following section of the Florida Statutes: 732.103.

II. Present Situation:

When a person dies without having a will, leaving a valid will or transferring property to a trust, the person's estate is governed by default through an intestate distribution scheme under the Florida Probate Code. *See* s. 732.103, F.S. The intestacy distribution scheme provides for distribution at three major tiers: 1) the decedent's spouse and the decedent's lineal *descendants*, 2) the decedent's *ascendants* and *collateral relatives*, and 3) the deceased *spouse's relatives*. If the property does not pass to the spouse under s. 732.102, F.S., or if there is no surviving spouse, the current intestacy statute provides distribution of equal shares to, or in its entirety to the sole survivor in, the following classes, in order of priority:

1. The lineal *descendants* of the decedent;
2. The *ascendants* of the decedent as follows:
 - a. The decedent's surviving father and mother, equally, or survivor;
 - b. The decedent's surviving brothers and sisters, then to their surviving descendants;
 - c. The decedent's surviving class of paternal grandparents and class of maternal grandparents, equally, then to their respective children (aunts and uncles of the decedent), and the descendants of those aunts and uncles;
 - d. The surviving kindred of the above.
3. The *surviving kindred* of the decedent's deceased spouse.

The term "kindred" is not defined in statute. Black's Law Dictionary (7th Ed.) defines "kindred" as relatives whose relationship arise by blood, marriage, or adoption.

In the event none of these heirs survive, the intestate estate escheats to the State of Florida. This hierarchical scheme for distribution of an intestate estate has existed since 1975 when the Florida Probate Code¹ underwent a major rewrite. *See* ch. 74-106, L.O.F. Prior to 1975, the intestacy statute included the classes of great-grandparents and great-great grandparents. The last class consisting of the decedent's deceased spouse's kindred existed prior to 1975 and remains today the last class to which the intestacy statute applies before the property escheats to the State.

Under law the personal representative or lawyer for an estate has a duty to conduct a due diligent search and inquiry of the true heirs. The personal representative or any interested person may petition for a determination of the heirs or beneficiaries. *See* s. 733.105, F.S., Fla. Prob. R. Rule 3.385. Since 1975, geneological searches to identify or locate identified relatives have become easier and less costly due to technologically enhanced research tools such as the Internet. This is an essential tool used by personal representatives and lawyers to satisfy their statutory obligation to conduct due diligence searches within the one year it takes to administer and close an estate.

Escheated funds are initially handled by the Department of Financial Services. Other escheated monies such as from intestate estates under s. 732.107, F.S., and other funds under a probated estate which are unclaimed due to the inability to locate heirs under s. 733.816, F.S., reportedly go into a general revenue fund in connection with the State Attorney's Office where it is held for 10 years before it absolutely defaults to the state.²

III. Effect of Proposed Changes:

This bill amends section 732.103, F.S., to change the statutory hierarchical scheme for distribution and division of property of intestate estates. The bill expands the scheme of inheritance to include the classes of great-grandparents, and the great-great grandparents and their respective siblings and siblings' descendants. These classes would follow in priority the bifurcated class of maternal versus paternal grandparents and their siblings and their respective descendants. At the subsequent levels, distribution is made equally between the two surviving great-grandparents entirely to the survivor in each class, and to their siblings and their respective descendants. The same applies for the next class consisting of the great-great-grandparents.

The classes of great-grandparents and great-great grandparents precede the class of any surviving maternal or paternal kindred if none exist at the level of the grandparent class. This change would largely reinstate the law as it existed prior to 1975. The last class of potential heirs consisting of the decedent's deceased spouse's kindred remains unchanged as is in current law.

¹ Based on the Uniform Probate Code.

² Currently, unclaimed money and property from dormant accounts in financial institutions, insurance and utility companies, safe deposit boxes and trust holdings are deposited into a state school fund, and are reportedly used exclusively for public education.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Constitutional Issues:

Sections 2 and 9 of Article I of the Florida Constitution provide that no person shall be deprived of the right to possess and protect property without due process of law. This bill may actually address the issue about whether current law is unintentionally denying the equal protection of the law regarding the right to distribute or dispose of his or her property. Under the current intestacy statute, a person who fails to execute a will or trust whether out of ignorance, confusion of the law, or poverty, is not given the same treatment or benefit under the right of inheritance as the right of a person who has executed a will or trust and is able to extend the right of inheritance to surviving family members beyond the class of grandparents.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill may benefit persons whose families extend to great-grandparents and great-great-grandparents and those who would prefer that their money or property go to a relative, even if a distant relative, rather than to the government. The percentage of surviving great-grandparents and great-grandchildren, and great-great grandparents and great-great-grandchildren is increasing. Since 1975, the average life-span of a person in the United States has increased from 70.75 to 76.9 years.³

C. Government Sector Impact:

The bill may affect the amount of money that escheats to the State after the hierarchical scheme is exhausted and the 10 years for unclaimed funds has expired. The Department of Financial Services reports that escheated property under s. 732.107, F.S., totaled \$2.8 million for the last 3 calendar years.

³ U.S. Decennial Life Tables 19

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
