

Committee Substitute for
Committee Substitute for House Bill No. 301

An act relating to probate; amending s. 732.201, F.S.; revising provisions governing the right to elective share; creating s. 732.2025, F.S.; providing definitions; transferring, renumbering, and amending s. 732.206, F.S.; providing for property entering into the elective estate; creating s. 732.2045, F.S.; providing for exclusions and overlapping application; creating s. 732.2055, F.S.; providing for the valuation of the elective estate; transferring, renumbering, and amending s. 732.207, F.S.; providing for the elective share amount; transferring, renumbering, and amending s. 732.209, F.S.; providing for the sources from which the elective share is payable; providing for abatement; creating s. 732.2085, F.S.; providing for the liability of direct recipients and beneficiaries; creating s. 732.2095, F.S.; providing for the valuation of the property used to satisfy the elective share; transferring, renumbering, and amending s. 732.208, F.S.; providing for the effect of the election on other interests; creating s. 732.2115, F.S.; providing for the protection of payors and other third parties; transferring, renumbering, and amending s. 732.210, F.S.; providing who may exercise the right of election; transferring, renumbering, and amending s. 732.212, F.S.; providing for the time of election; providing for extensions and for withdrawal; creating s. 732.2145, F.S.; providing for the order of contribution; providing for the personal representative's duty to collect contributions; creating s. 732.2155, F.S.; providing for the effective date, inapplicability of ch. 61, F.S., the effect of prior waivers, and transition rules; repealing s. 732.205, F.S., which provides elective share solely for Florida resident decedent; repealing s. 732.211, F.S., which provides for the effect of the exercise of the right of election; repealing s. 732.213, F.S., which provides for preexisting right to dower; repealing s. 732.214, F.S., which provides for proceedings on election; repealing s. 732.215, F.S., which provides for the effect of elective share on taxes; providing an effective date.

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

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

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

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

732.2025 Definitions.—As used in sections 732.2025-732.2155, the term:
(1) “Direct recipient” means the decedent’s probate estate and any other person who receives property included in the elective estate by transfer from

the decedent, including transfers described in s. 732.2035(8), by right of survivorship, or by beneficiary designation under a governing instrument. For this purpose, a beneficiary of an insurance policy on the decedent's life, the net cash surrender value of which is included in the elective estate, is treated as having received property included in the elective estate. In the case of property held in trust, "direct recipient" includes the trustee but excludes the beneficiaries of the trust.

(2) "Elective share trust" means a trust where:

(a) The surviving spouse is entitled for life to the use of the property or to all of the income payable at least as often as annually;

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

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

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

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

(5) "Payor" means an insurer, business entity, employer, government, governmental agency or subdivision, or any other person, other than the decedent's personal representative or a trustee of a trust created by the decedent, authorized or obligated by law or a governing instrument to make payments.

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

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

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

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

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

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

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

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

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

Section 3. Section 732.206, Florida Statutes, is transferred, renumbered as section 732.2035, Florida Statutes, and amended to read:

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

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

(1) The decedent's probate estate.

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

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

(4) That portion of property, other than property described in subsection (2), transferred by the decedent to the extent that at the time of the decedent's death the transfer was revocable by the decedent alone or in conjunction with any other person. This subsection does not apply to a transfer that

is revocable by the decedent only with the consent of all persons having a beneficial interest in the property.

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

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

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

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

(b) The amount included under this subsection is:

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

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

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

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

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

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

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

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

(7) The value of amounts payable to or for the benefit of any person by reason of surviving the decedent under any public or private pension, retire-

ment, or deferred compensation plan, or any similar arrangement, other than benefits payable under the federal Railroad Retirement Act or the federal Social Security System. In the case of a defined contribution plan as defined in s. 414(i) of the Internal Revenue Code of 1986, as amended, this subsection shall not apply to the excess of the proceeds of any insurance policy on the decedent's life over the net cash surrender value of the policy immediately before the decedent's death.

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

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

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

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

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

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

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

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

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

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

2. A distribution from a trust is not subject to this subsection if the distribution is required by the terms of the governing instrument unless the

event triggering the distribution is determined by reference to the death of the decedent and the court finds that a principal purpose of the terms of the governing instrument relating to the distribution is avoidance of the elective share.

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

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

732.2045 Exclusions and overlapping application.—

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

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

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

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

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

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

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

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

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

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

Section 5. Section 732.2055, Florida Statutes, is created to read:

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

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

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

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

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

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

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

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

Section 6. Section 732.207, Florida Statutes, is transferred, renumbered as section 732.2065, Florida Statutes, and amended to read:

732.2065 732.207 Amount of the elective share.—The elective share is shall consist of an amount equal to 30 percent of the elective estate, fair market value, on the date of death, of all assets referred to in s. 732.206, computed after deducting from the total value of the assets:

(1) All valid claims against the estate paid or payable from the estate; and

(2) All mortgages, liens, or security interests on the assets.

Section 7. Section 732.209, Florida Statutes, is transferred, renumbered as section 732.2075, Florida Statutes, and amended to read:

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

732.2075 Sources from which elective share payable; abatement.—

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

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

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

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

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

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

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

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

(a) Class 1.—The decedent's probate estate and revocable trusts.

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

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

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

(4) Unless otherwise provided in the decedent's will or, in the absence of a provision in the decedent's will, in a trust referred to in the decedent's will, any amount to be satisfied from the decedent's probate estate, other than from property passing to an inter vivos trust, shall be paid from the assets of the probate estate in the order prescribed in s. 733.805.

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

Section 8. Section 732.2085, Florida Statutes, is created to read:

732.2085 Liability of direct recipients and beneficiaries.—

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

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

(b) Trust and probate estate beneficiaries who receive a distribution of principal after the decedent's death are liable in an amount equal to the value of the principal distributed to them multiplied by the contribution percentage of the distributing trust or estate. For this purpose, "contribution percentage" means the remaining unsatisfied balance of the trust or estate at the time of the distribution divided by the value of the trust or estate as determined under s. 732.2055. "Remaining unsatisfied balance" means the amount of liability initially apportioned to the trust or estate reduced by amounts or property previously contributed by any person in satisfaction of that liability.

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

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

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

1. Contribute all of the property; or

2. If the property has been sold or exchanged prior to the date on which the spouse's election is filed, pay an amount equal to the value of the property, less reasonable costs of sale, on the date it was sold or exchanged.

In the application of paragraph (a), the "proportional part of all property received" is determined separately for each class of priority under s. 732.2075(2).

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

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

(b) Any unsatisfied contribution is treated as additional unsatisfied balance and reapportioned to other recipients as provided in s. 732.2075 and this section.

(4) If any part of s. 732.2035 or s. 732.2075 is preempted by federal law with respect to a payment, an item of property, or any other benefit included

in the elective estate, a person who, not for value, receives the payment, item of property, or any other benefit is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of that item of property or benefit, as provided in s. 732.2035 and s. 732.2075, to the person who would have been entitled to it were that section or part of that section not preempted.

Section 9. Section 732.2095, Florida Statutes, is created to read:

732.2095 Valuation of property used to satisfy elective share.—

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

(a) “Applicable valuation date” means:

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

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

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

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

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

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

7. In the case of proceeds of any policy of insurance payable to the surviving spouse, the date of the decedent’s death.

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

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

(b) “Qualifying power of appointment” means a general power of appointment that is exercisable alone and in all events by the decedent’s spouse in favor of the spouse or the spouse’s estate. For this purpose, a general power to appoint by will is a qualifying power of appointment if the power may be exercised by the spouse in favor of the spouse’s estate without the consent of any other person.

(c) “Qualifying invasion power” means a power held by the surviving spouse or the trustee of an elective share trust to invade trust principal for

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

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

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

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

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

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

3. Fifty percent in all other cases.

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

(d) If the surviving spouse has an interest in a trust that does not meet the requirements of an elective share trust, the value of the spouse's interest is the transfer tax value of the interest on the applicable valuation date; however, the aggregate value of all of the spouse's interests in the trust shall not exceed one-half of the value of the trust principal on the applicable valuation date.

(e) In the case of any policy of insurance on the decedent's life the proceeds of which are payable outright or to a trust described in paragraph (b), paragraph (c), or paragraph (d), the value of the policy for purposes of s. 732.2075 and paragraphs (b), (c), and (d) is the net proceeds.

(f) In the case of a right to one or more payments from an annuity or under a similar contractual arrangement or under any plan or arrangement described in s. 732.2035(7), the value of the right to payments for purposes of s. 732.2075 and paragraphs (b), (c), and (d) is the transfer tax value of the right on the applicable valuation date.

Section 10. Section 732.208, Florida Statutes, is transferred, renumbered as section 732.2105, Florida Statutes, and amended to read:

732.2105 ~~732.208~~ Effect of election on other interests ~~Interests in addition to elective share.~~—

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

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

Section 11. Section 732.2115, Florida Statutes, is created to read:

732.2115 Protection of payors and other third parties.—Although a property interest is included in the decedent's elective estate under s. 732.2035(2)-(8), a payor or other third party is not liable for paying, distributing, or transferring the property to a beneficiary designated in a governing instrument, or for taking any other action in good-faith reliance on the validity of a governing instrument.

Section 12. Section 732.210, Florida Statutes, is transferred, renumbered as section 732.2125, Florida Statutes, and amended to read:

732.2125 732.210 Right of election; by whom exercisable.—The right of election may be exercised:

(1) By the surviving spouse.

(2) By an attorney in fact or a guardian of the property of the surviving spouse, with approval of the court having jurisdiction of the probate proceeding. The court shall determine the election as the best interests of the surviving spouse, during the spouse's probable lifetime, require.

Section 13. Section 732.212, Florida Statutes, is transferred, renumbered as section 732.2135, Florida Statutes, and amended to read:

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

732.2135 Time of election; extensions; withdrawal.—

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

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

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

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

Section 14. Section 732.2145, Florida Statutes, is created to read:

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

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

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

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

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

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

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

Section 15. Section 732.2155, Florida Statutes, is created to read:

732.2155 Effective date; effect of prior waivers; transition rules.—

(1) Sections 732.201-732.2155 are effective on October 1, 1999, for all decedents dying on or after October 1, 2001. The law in effect prior to October 1, 1999, applies to decedents dying before October 1, 2001.

(2) Nothing in ss. 732.201-732.2155 modifies or applies to the rights of spouses under chapter 61.

(3) A waiver of elective share rights before the effective date of this section which is otherwise in compliance with the requirements of s. 732.702 is a waiver of all rights under ss. 732.201-732.2145.

(4) Notwithstanding anything in s. 732.2045(1)(a) to the contrary, any trust created by the decedent before the effective date of this section that meets the requirements of an elective share trust is treated as if the decedent created the trust after the effective date of this subsection and in satisfaction of the elective share.

(5) Sections 732.201-732.2155 do not affect any interest in contracts entered into for adequate consideration in money or money's worth before October 1, 1999, to the extent that the contract was irrevocable at all times from October 1, 1999, until the date of the decedent's death.

Section 16. Sections 732.205, 732.211, 732.213, 732.214, and 732.215, Florida Statutes, are repealed.

Section 17. This act shall take effect October 1, 1999.

Approved by the Governor June 11, 1999.

Filed in Office Secretary of State June 11, 1999.