

SENATE NO. 875

AN ACT RELATIVE TO THE SPOUSAL ELECTIVE SHARE

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. The General Laws, as appearing in the 2004 Official Edition, are hereby amended by
2 inserting after chapter 191B the following new chapter:-

3 CHAPTER 191C.

4 [ELECTIVE SHARE OF SURVIVING HUSBAND OR WIFE]

5 Section 1. [Definitions.]

6 As used in this chapter the following words shall, unless the context otherwise requires, have
7 the following meanings:-.

8 (1) “Decedent’s nonprobate transfers to others” means the types of transfers specifically included
9 in the elective estate under section five.

10 (2) “Fractional interest in property held in joint tenancy with the right of survivorship,” whether
11 the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one

12 and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint
13 tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of
14 joint tenants.

15 (3) “Marriage,” as it relates to a transfer by the decedent during marriage, means any marriage of
16 the decedent to the decedent’s surviving spouse.

17 (4) “Nonadverse party” means a person who does not have a substantial beneficial interest in the
18 trust or other property arrangement that would be adversely affected by the exercise or nonexercise of
19 the power that he [or she] possesses respecting the trust or other property arrangement. A person
20 having a general power of appointment over property is deemed to have a beneficial interest in the
21 property.

22 (5) “Power” or “power of appointment” includes a power to designate the beneficiary of a
23 beneficiary designation.

24 (6) “Presently exercisable general power of appointment” means a power of appointment under
25 which, at the time in question, the decedent, whether or not he [or she] then had the capacity to
26 exercise the power, held a power to create a present or future interest in himself [or herself], his [or
27 her] creditors, his [or her] estate, or creditors of his [or her] estate, and includes a power to revoke or
28 invade the principal of a trust or other property arrangement.

29 (7) “Probate estate” means property that would pass by intestate succession if the decedent dies
30 without a valid will.

31 (8) “Property” includes values subject to a beneficiary designation.

32 (9) “Right to income” includes a right to payments under a commercial or private annuity, an
33 annuity trust, a unitrust, or a similar arrangement.

34 (10) “Transfer,” as it relates to a transfer by or of the decedent, includes (A) an exercise or release
35 of a presently exercisable general power of appointment held by the decedent, and (B) an exercise,
36 release, or lapse of a general power of appointment that the decedent, created in himself [or herself].

37 (11) “Transfers by a testamentary substitute” means those nonprobate transfers of the type
38 specifically included in the elective estate by the provisions of section five.

39 (12) “Surviving husband or wife.” A person who was married to the decedent at the time of his or
40 her death.

41 Section 2. [Elective Share - Relinquishment of Election.]

42 (a) The surviving husband or wife of a person who dies domiciled in Massachusetts may
43 elect, under the limitations and conditions stated in this chapter, to claim the value of such portion of
44 the elective estate of the deceased spouse as he or she is given under this chapter in lieu of any
45 provisions that may have been made in a will for him or for her and any provisions under the intestacy
46 laws for him or for her and any provisions that may have been made for him or for her in any
47 testamentary substitute included in the elective estate. The election provided by this chapter is subject
48 to the provisions of section thirty-six of chapter two hundred and nine. The right, if any, of the
49 surviving husband or wife of a person who dies domiciled outside this commonwealth to take an
50 elective share in property in this commonwealth is governed by the law of the decedent’s domicile at
51 death.

52 (b) Spouses are entitled to opt out of the provisions of this chapter by relinquishing the
53 election provided by this chapter. A spouse, by a writing subscribed by said spouse, may relinquish
54 the election granted by this chapter as to the entire elective estate or a portion thereof or as to any
55 particular property. A relinquishment is effective, in accordance with its terms, whether executed
56 before or after the marriage of the spouses; whether executed before, on or after the effective date of
57 this chapter; whether unilateral in form, executed only by the maker thereof, or bilateral in form,
58 executed by both spouses; whether absolute or conditional; whether executed with or without
59 consideration; and whether executed during the lifetime of the other spouse or after his or her death.

60 (c) Language that relinquish, renounce, waive, release, abandon, or disclaim all rights in
61 the estate of the other spouse, or substantially equivalent language, is a relinquishment of election
62 against any property included in the elective estate under this chapter. Language that relinquish,
63 renounce, waive, release, abandon, or disclaim rights under a particular will or testamentary substitute
64 or an interest in particular property, or substantially equivalent language, is a relinquishment only of
65 the particular rights or property identified therein with reasonable particularity.

66 (d) A relinquishment executed after the effective date of this chapter is sufficient if in
67 writing and subscribed by the maker thereof, acknowledged before a notary public in form and content
68 substantially as follows:

69 This form gives up important legal rights. If not understood, consult a lawyer.

70 Relinquishment of Rights to Claim Share of Elective Estate Under G.L. c. 191 C.

71 1.) As a married person I will have certain rights under Massachusetts Laws Chapter 191 C to
72 elect to take a share of my spouse's property after his or her death. I may claim this share even if my

73 spouse does not want me to have it. I have been given an explanation of these rights or an opportunity
74 to review my rights under Massachusetts law as fully as I desire. I have the right to consult a lawyer
75 regarding my rights under Massachusetts law.

76 2.) I have a right to know what property my spouse owns or has an interest in before signing this
77 form. Knowing of this right, I have [initial one]:

78 [] reviewed a list of such property which is attached to this form as Exhibit A; or

79 [] intentionally decided to sign this form without full disclosure of the property owned by my
80 spouse, knowing I will be bound by my signature even for property I know nothing about.

81 3.) I have read the foregoing description of my rights, and have been given a full opportunity to
82 seek whatever advice and counsel I desire, and I am signing this form voluntarily as my free act and
83 deed.

84 I hereby relinquish, renounce, waive, release, abandon, disclaim, and give up the following rights:

85 [initial only those categories you intend to apply]

86 [] All rights in the estate of my spouse that I may otherwise have under Mass.
87 Gen. Laws Chapter 191 C.

88 [] Any rights I may have as to:

89 _____

90 [here state the particular property, will, or testamentary substitute as to which rights are being given
91 up]

92 [] I release my rights in return for the following promises or subject to the following conditions.

93 [here insert any conditions or limitations you wish to impose]

94 Signed under seal as a legally binding document.

95 DATE: _____

96 Signature

97 COMMONWEALTH OF MASSACHUSETTS

98 _____, ss. (Date)

99 Then personally appeared the above-named _____ and
100 acknowledged the foregoing instrument to be his/her free act and deed, before me.

101 _____

102 Notary Public

103 My Commission Exp:

104 _____

105 (d) Unless it provides to the contrary, an instrument of transfer to a third party executed by
106 both spouses, or executed by one spouse and consented to in writing by the other spouse, is a

107 relinquishment of the election under this chapter by each spouse against the other in the property
108 transferred.

109 (e) Unless it provides to the contrary, a valid written agreement that relinquishes,
110 renounces, waives, releases, abandons, or disclaims all rights in the property or estate of a present or
111 prospective spouse, or substantially equivalent language, or a complete property settlement entered
112 into after or in anticipation of separation or divorce is a relinquishment of the elective share under this
113 chapter by each spouse in the property of the other.

114 (f) If the validity of a relinquishment, renunciation, waiver, release, disclaimer, or consent
115 to transfer with respect to any property includible in the elective estate is or was governed by federal
116 law or by the law of another jurisdiction, then a valid relinquishment, renunciation, waiver, release,
117 disclaimer, or consent to transfer under such law shall be deemed an effective relinquishment of the
118 election provided by this chapter.

119 Section 3. [Election Personal To Surviving Husband Or Wife.]

120 (a) [Surviving husband or wife must be living at time of election.] The election provided
121 by this chapter is personal to the surviving husband or wife, may not be reached by creditors or sold,
122 assigned, or transferred in any manner, other than a relinquishment as provided in section two of this
123 chapter, and may only be made during the lifetime of the surviving husband or wife. In the case of a
124 surviving husband or wife under conservatorship or guardianship, the election may be made by the
125 duly appointed conservator or guardian of the surviving husband or wife only with the approval of the
126 probate court upon a substituted judgment standard. No surviving husband or wife or the conservator,
127 guardian, or agent under a durable power of attorney of said surviving husband or wife shall be

128 compelled to make an election under this chapter nor penalized, disadvantaged, or discriminated
129 against by virtue of the relinquishment of or failure to make an election under this chapter.
130 Relinquishment of election or failure to make an election shall not affect the eligibility of the surviving
131 husband or wife for benefits or assistance under any governmental program.

132 (b) [Incapacitated Surviving Spouse.] If the election is exercised on behalf of a surviving
133 spouse who is an incapacitated person, that portion of the elective share amounts due under section
134 seven (b) must be placed in a custodial trust for the benefit of the surviving husband or wife under the
135 provisions of chapter two hundred and three B, except as modified below. For the purposes of this
136 subsection, an election on behalf of a surviving spouse by an authorized agent under a durable power
137 of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. For
138 purposes of the custodial trust established by this subsection, (i) the electing guardian, conservator, or
139 agent is the custodial trustee, (ii) the surviving spouse is the beneficiary, and (iii) the custodial trust is
140 deemed to have been created by the decedent spouse by written transfer that takes effect at the
141 decedent spouse's death and that directs the custodial trustee to administer the custodial trust as for an
142 incapacitated beneficiary.

143 (c) [Custodial Trust.] For the purposes of subsection (b) of this section, the chapter two
144 hundred and three B shall be applied as if section six (b) thereof were repealed and sections two (e),
145 nine (b), and seventeen (a) were amended to read as follows:

146 (1) Neither an incapacitated beneficiary nor anyone acting on behalf of an incapacitated
147 beneficiary has a power to terminate the custodial trust; but if the beneficiary regains capacity, the
148 beneficiary then acquires the power to terminate the custodial trust by delivering to the custodial

149 trustee a writing signed by the beneficiary declaring the termination. If not previously terminated, the
150 custodial trust terminates on the death of the beneficiary.

151 (2) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of
152 the custodial trust property as the custodial trustee considers advisable for the use and benefit of the
153 beneficiary and individuals who were supported by the beneficiary when the beneficiary became
154 incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in
155 the manner, when and to the extent that the custodial trustee determines suitable and proper, without
156 court order but with regard to other support, income, and property of the beneficiary and benefits of
157 medical or other forms of assistance from any state or federal government or governmental agency for
158 which the beneficiary must qualify on the basis of need.

159 (3) Upon the beneficiary's death, the custodial trustee shall transfer the unexpended
160 custodial trust property in the following order: (i) to or as directed by the person who would have
161 taken under the disposition originally made by the beneficiary's predeceased spouse against whom the
162 elective share was taken; or (ii) under the residuary clause, if any, of the will of the beneficiary's
163 predeceased spouse against whom the elective share was taken, as if that predeceased spouse died
164 immediately after the beneficiary; or (iii) to that predeceased spouse's heirs.

165 Section 4. [Amount of Elective Share.]

166 (a) Except as otherwise provided in paragraphs (c), (d) and (e) of this section, if the deceased
167 left issue, the surviving husband or wife shall take absolutely an amount equal to the value of one-third
168 of so much of the elective estate as does not exceed one million dollars, and shall receive in addition to

169 that amount only the income during his or her life on an amount equal to the value of one-third of the
170 excess of the elective estate above one million dollars.

171 (b) Except as otherwise provided in paragraphs (c), (d) and (e) of this section, if the deceased
172 left no issue, the surviving husband or wife shall take absolutely an amount equal to the greater of fifty
173 thousand dollars or one-half of the value of so much of the elective estate as does not exceed one
174 million dollars, and shall receive in addition to that amount only the income during his or her life on
175 an amount equal to one-third of the excess of the elective estate above one million dollars.

176 (c) Except for an election under paragraph (e) of this section, if the deceased person and the
177 surviving husband or wife were married for less than fifteen years, then the surviving husband or wife
178 shall take the following percentage of the elective share amount otherwise provided under (a) or (b) of
179 this section.

180 (1) If the decedent and the spouse were married to each other for one year or less, then
181 sixteen percent of the elective share amount;

182 (2) for each additional year of marriage after the first, an additional six percent of the
183 elective share amount.

184 (3) For purposes of this section, the length of time the decedent and the surviving spouse
185 were married to each other shall be the sum of the lengths of all of their marriages to each other.

186 (d) Except for an election under paragraph (e) of this section, an election under this chapter
187 shall be further limited to no more than the amount necessary to bring the value of the property of the
188 surviving husband or wife, after said election, to one-half the value of the combined property of the

189 elective estate of the deceased spouse and the elective estate of the surviving husband or wife valued
190 as if he or she had died contemporaneously with the deceased spouse.

191 (e) If at the time of death of the deceased spouse, divorce proceedings were pending and
192 the parties had executed a written property settlement or the court had entered judgment dividing their
193 property which had not yet become final, the surviving husband or wife may elect to take thereunder,
194 which shall become the elective share for purposes of this chapter.

195 (f) Except for an election under paragraph (e) of this section, the surviving husband's or
196 wife's homestead allowance, exempt property, and family allowance, if any, are not charged against
197 but are in addition to the elective share.

198 Section 5. [Property included in and excluded from the Elective Estate.]

199 For purposes of this chapter, the elective estate includes:

200 (a) The decedent's probate estate, reduced by funeral and administration expenses,
201 homestead allowance, family allowances, exempt property, and enforceable claims; and

202 (b) The decedent's transfers by testamentary substitute, consisting of the decedent's nonprobate
203 transfers to others of any of the following types, in the amount provided respectively for each type of
204 transfer.

205 (1) Property owned or owned in substance by the decedent immediately before death that
206 passed outside probate at the decedent's death. Property included under this category includes:

207 (i) Property over which the decedent alone, immediately before death, held a presently
208 exercisable general power of appointment. The amount included is the value of the property subject to
209 the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, in
210 default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving
211 husband or wife.

212 (ii) The decedent's fractional interest in property held by the decedent in joint tenancy with
213 the right of survivorship. The amount included is the value of the decedent's fractional interest, to the
214 extent the fractional interest passed by right of survivorship at the decedent's death to a surviving joint
215 tenant other than the decedent's surviving husband or wife.

216 (iii) The decedent's ownership interest in property or accounts held in POD, TOD, or co-
217 ownership registration with the right of survivorship. The amount included is the value of the
218 decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's
219 death to or for the benefit of any person other than the decedent's estate or surviving husband or wife.

220 (2) Property transferred in any of the following forms by the decedent during marriage:

221 (i) Any irrevocable transfer in which the decedent retained the right to the possession or
222 enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at
223 or continued beyond the decedent's death. The amount included is the value of the fraction of the
224 property to which the decedent's right related, to the extent the fraction of the property passed outside
225 probate to or for the benefit of any person other than the decedent's estate or surviving husband or
226 wife.

227 (ii) Any transfer in which the decedent created a power over income or property,
228 exercisable by the decedent alone or in conjunction with any other person, or exercisable by a
229 nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate,
230 or creditors of the decedent's estate. The amount included with respect to a power over property is the
231 value of the property subject to the power, and the amount included with respect to a power over
232 income is the value of the property that produces or produced the income, to the extent the power in
233 either case was exercisable at the decedent's death to or for the benefit of any person other than the
234 decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise,
235 release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's
236 estate or surviving spouse. If the power is a power over both income and property and the preceding
237 sentence produces different amounts, the amount included is the greater amount.

238 (3) Property that passed during marriage and during the one year period next preceding the
239 decedent's death as a result of a transfer by the decedent if the transfer occurred after the filing of
240 divorce or separation proceedings and in violation of a restraining order, injunction, or other order of
241 the probate court restricting the transfer; and

242 (c) [Testamentary substitutes passing to surviving husband or wife] Excluding property passing to
243 the surviving husband or wife under the federal social security system, the value of the elective estate
244 includes the value of the decedent's transfers by testamentary substitute, consisting of nonprobate
245 transfers to the decedent's surviving husband or wife, of the following types in the amount provided
246 respectively for each type of transfer:

247 (1) the decedent's fractional interest in property held as a joint tenant with the right of
248 survivorship, to the extent that the decedent's fractional interest passed to the surviving husband or
249 wife as surviving joint tenant;

250 (2) the decedent's ownership interest in property or accounts held in co-ownership registration
251 with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving
252 husband or wife as surviving co-owner; and

253 (3) all other property that would have been included in the elective estate under paragraphs (b)(1)
254 or (b)(2) or (b)(3) of this section had it passed to or for the benefit of a person other than the
255 decedent's spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

256 (d) The value of property included in the elective estate is reduced in each category by enforceable
257 claims against the included property

258 (e) In case of overlapping application to the same property of the paragraphs or subparagraphs of
259 this section including property in the elective estate, the property is included in the elective estate
260 under the provision yielding the greatest value, and under only one overlapping provision if they all
261 yield the same value.

262 (f) [Property excluded from Elective Estate.]

263 Notwithstanding any other provision of this chapter, the following are excluded from the
264 elective estate:

265 (1) The value of any property is excluded from the decedent's transfers by testamentary
266 substitute to the extent the decedent received adequate and full consideration in money or money's
267 worth for a transfer of the property.

268 (2) The value of any property relinquished under section two of this chapter is excluded
269 from the elective estate.

270 (3) the value of proceeds of life insurance not payable to the decedent's estate is excluded
271 from the elective estate.

272 (4) The value of interests in community property arising under the community property
273 laws of other states is excluded from the elective estate.

274 (5) The value of a principal residence transferred to or for the benefit of a decedent
275 spouse's issue is excluded from the elective estate.

276 (6) The value of any property held in trust for the benefit of a disabled child or grandchild
277 of the decedent spouse is excluded from the elective estate.

278 (7) The value of any property transferred by testamentary substitute as defined in section
279 five (b)(one) and (two) prior to the effective date of this chapter is excluded from the elective estate.

280 Section 6. [Proceedings for Elective Share; Time Limit].

281 (a) An election under this chapter shall be made by filing in the probate court a petition for
282 the elective share within the earlier of nine months after the date of the decedent's death or six months
283 after the surviving husband or wife receives notice of proceedings for probate of the decedent's will or

284 administration of the decedent's estate. The surviving husband or wife may dismiss or withdraw his or
285 her petition for an elective share, with prejudice, at any time before entry of a final determination by
286 the court and the expiration of the time for appeal or, if an appeal is taken, at any time during the
287 appeal or within ten days after rescript.

288 (b) If, after a will of the deceased is offered for probate, legal proceedings have been
289 instituted wherein its validity or effect is drawn in question, the probate court may within six months,
290 on petition and after such notice as it orders, extend the time for filing an election under this chapter
291 for a reasonable time not to exceed six months from the termination of such proceedings.

292 (c) After the decedent's death and either before or after the filing of a petition for election
293 under this chapter, a surviving husband or wife has the right to receive all material information
294 regarding property that is or may be includible in the elective estate, within a reasonable time after his
295 or her request for such information, from the personal representative of the decedent and from any
296 person in possession or control of such property and from any person with an interest in such property,
297 and if necessary, the surviving husband or wife may apply to the probate court for appropriate
298 assistance in enforcing such right to information.

299 (d) Notice of the filing of the petition shall be given to persons interested in the estate and
300 to persons whose interests may be adversely affected by the taking of the elective share. The
301 proceeding for determination of the elective share may be maintained against fewer than all persons
302 against whom relief could be sought, but no person is subject to contribution in any greater amount
303 than would have been the case if relief had been secured against all such persons.

304 (e) Upon application by the surviving husband or wife, the probate court may allow
305 attachments, trustee process, specific orders for equitable relief, and such other writs and orders as it
306 deems meet and just to preserve property that is or may be includible in the elective estate.

307 (f) Upon application to the probate court after the death of the decedent by the personal
308 representative or a surviving husband or wife or other person interested in the elective estate, the court
309 may order that all or part of the property that is or may be includible in the elective estate be paid
310 pendent lite to persons entitled thereto in amounts and subject to conditions consistent with this
311 chapter.

312 (g) After notice and hearing, the court shall determine the amount of the elective share and
313 shall order its payment as provided in section seven of this chapter. If it appears that a fund or
314 property included in the elective estate has not come into possession of the personal representative, or
315 has been distributed by the personal representative, the court shall nevertheless fix the liability of any
316 person who has any interest in the fund or property or who has possession thereof, whether as trustee
317 or otherwise.

318 (h) The orders or judgments of the probate court shall be enforceable in the same manner
319 as other orders or judgments for the payment of money or for specific relief as to particular assets.
320 Interest shall accrue from the date of judgment at twelve percent per annum.

321 (i) In addition to the powers conferred in section ten of chapter two hundred and eleven B,
322 the chief justice for the probate and family court department may, from time to time, provide
323 procedural forms and make general rules and issue standing orders in reference to practice and

324 procedure as relates to the elective share of the surviving husband or wife, subject to the approval of
325 the supreme judicial court.

326 Section 7. [Liability for Satisfaction of Elective Share.]

327 (a) In a petition for the elective share under this chapter, there shall first be applied to
328 satisfy the elective share amount and to reduce or eliminate any contributions due from others,
329 property that passes or has passed or but for the election would have passed to the surviving husband
330 or wife as a result of decedent's death.

331 (b) Except as otherwise provided in the will or an instrument governing a testamentary
332 substitute, contribution to the remaining elective share amount to which the surviving spouse is
333 entitled shall be made pro-rata in proportion to the value of their interests in the elective estate by the
334 original recipients, beneficiaries, and distributees under the decedent's will, by intestacy, and by
335 testamentary substitute, which contribution may be made in cash or in the specific property received
336 from the decedent by the person required to make such contribution or partly in cash and partly in such
337 property as such person in his or her discretion shall determine.

338 (c) No original recipient who shall conform to the standard of a Massachusetts executor or
339 administrator with respect to the care and management of assets included in the elective estate or who
340 shall hold all such assets in the form in which such original recipient received them, shall be liable to
341 the surviving spouse in an amount greater than the value of the elective estate assets received by such
342 original recipient, determined as of the date of distribution or payment to the surviving husband or
343 wife in satisfaction of such liability including interest, if any, under section six (g) of this chapter. No
344 beneficiary shall be liable to the surviving spouse in an amount greater than the value of such

345 beneficiary's share of the elective estate at the date of distribution or payment to the surviving husband
346 or wife in satisfaction of such liability including interest, if any, under section six (g) of this chapter.

347 (d) [Protection of Subsequent Transferees]

348 A person, other than an original recipient, a beneficiary, or a payor, who receives an
349 asset included in the elective estate, whether for value or as a gift, shall not be liable under this chapter
350 for the value of the asset or any portion thereof, regardless of whether at the time such asset was
351 received such person had notice of the surviving spouse's intention to file a petition for the elective
352 share or notice that a petition for the elective share had been filed, unless the transfer to such person
353 was a fraudulent transfer as to the surviving husband or wife.

354 Section 8. [Protection of Payors and Other Third Parties.]

355 (a) [Nonexistence of Liens or Encumbrances.]

356 The elective share of a surviving husband or wife under this chapter shall not be
357 construed as imposing a lien or other encumbrance on any real or personal property, tangible or
358 intangible, includible in the elective estate.

359 (b) A payor or other third party is not liable for having made a payment or transferred an
360 item of property or other benefit to a beneficiary designated in a governing instrument, or for having
361 taken any other action in good faith reliance on the validity of a governing instrument, upon request
362 and satisfactory proof of the decedent's death, before the payor or other third party received written
363 notice from the surviving spouse or the surviving spouse's representative that a petition for the elective
364 share has been filed. A payor or other third party is liable for payments made or other actions taken

365 after the payor or other third party received written notice that a petition for the elective share has been
366 filed.

367 (c) A written notice that a petition for the elective share has been filed must be mailed to
368 the payor's or other third party's main office or home by registered or certified mail, return receipt
369 requested, or served upon the payor or other third party in the same manner as a summons in a civil
370 action. Upon receipt of written notice that a petition for the elective share has been filed, a payor or
371 other third party may pay any amount owed to or with the court having jurisdiction of the probate
372 proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with
373 the probate court having jurisdiction of probate proceedings relating to decedents' estates located in
374 the county of the decedent's last known address. Subject to rule or regulation of the probate court with
375 respect to acceptable and unacceptable property, or on motion with the approval of the probate court,
376 and subject further to such terms and conditions as the probate court may impose, a payor or other
377 third party may transfer or deposit any item of property held by it to or with the court having
378 jurisdiction of the probate proceedings relating to the decedent's death, or if no proceedings have been
379 commenced, to or with the probate court having jurisdiction of probate proceedings relating to
380 decedents' estates in the county of the decedent's last known address. The court shall hold the funds
381 or item of property and, upon its determination of the elective share under this chapter, shall order
382 disbursement in accordance with the determination. If the petition for an elective share is withdrawn
383 or dismissed, the court shall order disbursement to the designated beneficiary. Payments or transfers
384 to the court or deposits made into court discharge the payor or other third party from all claims for
385 amounts so paid or the value of property so transferred or deposited.

386 The right of election provided under this chapter shall not create an interest, in any real or
387 personal property of a spouse, nor create any lien or encumbrance on any real or personal property of a
388 spouse, nor impair or impede or restrict in any way the right of a spouse to the ownership and free
389 transferability of his or her property.

390 Section 9. [Real Estate.]

391 An election under this chapter shall not divest, encumber or have any operation or effect on any
392 interest in real or personal property held by any third party.

393 Section 10. This act shall be effective for estates of persons dying on or after January one, two
394 thousand and nine.