

HOUSE No. 2145

The Commonwealth of Massachusetts

PRESENTED BY:

Garrett J. Bradley

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to spousal elective share.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Garrett J. Bradley</i>	<i>3rd Plymouth</i>	<i>1/20/2011</i>

HOUSE No. 2145

By Mr. Bradley of Hingham, a petition (accompanied by bill, House, No. 2145) of Garrett J. Bradley relative to spousal elective share. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to 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 The General Laws, as appearing in the 2008 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.] As used in this chapter the following words shall, unless the
6 context otherwise requires, have the following meanings:-

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

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

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

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

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

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

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

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

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

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

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

37 (11) “Transfers by a testamentary substitute” means those nonprobate transfers of the
38 type 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
40 time of his or 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
44 portion of the elective estate of the deceased spouse as he or she is given under this chapter in
45 lieu of any provisions that may have been made in a will for him or for her and any provisions
46 under the intestacy laws for him or for her and any provisions that may have been made for him
47 or for her in any testamentary substitute included in the elective estate. The election provided by
48 this chapter is subject to the provisions of section thirty-six of chapter two hundred and nine. The
49 right, if any, of the surviving husband or wife of a person who dies domiciled outside this
50 commonwealth to take an elective share in property in this commonwealth is governed by the
51 law of the decedent’s domicile at 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
54 relinquish the election granted by this chapter as to the entire elective estate or a portion thereof

55 or as to any particular property. A relinquishment is effective, in accordance with its terms,
56 whether executed before or after the marriage of the spouses; whether executed before, on or
57 after the effective date of this chapter; whether unilateral in form, executed only by the maker
58 thereof, or bilateral in form, executed by both spouses; whether absolute or conditional; whether
59 executed with or without consideration; and whether executed during the lifetime of the other
60 spouse or after his or her death.

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

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

71

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

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

74 1.) As a married person I will have certain rights under Massachusetts Laws Chapter
75 191 C to elect to take a share of my spouse's property after his or her death. I may claim this

76 share even if my spouse does not want me to have it. I have been given an explanation of these
77 rights or an opportunity to review my rights under Massachusetts law as fully as I desire. I have
78 the right to consult a lawyer regarding my rights under Massachusetts law.

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

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

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

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

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

90 [initial only those categories you intend to apply]

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

93 [] Any rights I may have as to:

94 _____.

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

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

99 .

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

101 Signed under seal as a legally binding document.

102 DATE: _____

103 Signature

104 COMMONWEALTH OF MASSACHUSETTS

105 _____, ss. (Date)

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

108 _____

109 Notary Public

110 My Commission Exp:

111 _____

112 (d) Unless it provides to the contrary, an instrument of transfer to a third party
113 executed by both spouses, or executed by one spouse and consented to in writing by the other
114 spouse, is a relinquishment of the election under this chapter by each spouse against the other in
115 the property transferred.

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

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

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

127 (a) [Surviving husband or wife must be living at time of election.] The election
128 provided by this chapter is personal to the surviving husband or wife, may not be reached by
129 creditors or sold, assigned, or transferred in any manner, other than a relinquishment as provided
130 in section two of this chapter, and may only be made during the lifetime of the surviving husband
131 or wife. In the case of a surviving husband or wife under conservatorship or guardianship, the
132 election may be made by the duly appointed conservator or guardian of the surviving husband or
133 wife only with the approval of the probate court upon a substituted judgment standard. No

134 surviving husband or wife or the conservator, guardian, or agent under a durable power of
135 attorney of said surviving husband or wife shall be compelled to make an election under this
136 chapter nor penalized, disadvantaged, or discriminated against by virtue of the relinquishment of
137 or failure to make an election under this chapter. Relinquishment of election or failure to make
138 an election shall not affect the eligibility of the surviving husband or wife for benefits or
139 assistance under any governmental program.

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

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

154 (1) Neither an incapacitated beneficiary nor anyone acting on behalf of an
155 incapacitated beneficiary has a power to terminate the custodial trust; but if the beneficiary

156 regains capacity, the beneficiary then acquires the power to terminate the custodial trust by
157 delivering to the custodial trustee a writing signed by the beneficiary declaring the termination.
158 If not previously terminated, the custodial trust terminates on the death of the beneficiary.

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

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

175 Section 4. [Amount of Elective Share.]

176 (a) Except as otherwise provided in paragraphs (c), (d) and (e) of this section, if the
177 deceased left issue, the surviving husband or wife shall take absolutely an amount equal to the

178 value of one-third of so much of the elective estate as does not exceed one million dollars, and
179 shall receive in addition to that amount only the income during his or her life on an amount equal
180 to the value of one-third of the excess of the elective estate above one million dollars.

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

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

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

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

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

198 (d) Except for an election under paragraph (e) of this section, an election under this
199 chapter shall be further limited to no more than the amount necessary to bring the value of the
200 property of the surviving husband or wife, after said election, to one-half the value of the
201 combined property of the elective estate of the deceased spouse and the elective estate of the
202 surviving husband or wife valued as if he or she had died contemporaneously with the deceased
203 spouse.

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

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

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

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

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

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

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

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

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

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

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

237 (i) Any irrevocable transfer in which the decedent retained the right to the
238 possession or enjoyment of, or to the income from, the property if and to the extent the
239 decedent's right terminated at or continued beyond the decedent's death. The amount included is

240 the value of the fraction of the property to which the decedent's right related, to the extent the
241 fraction of the property passed outside probate to or for the benefit of any person other than the
242 decedent's estate or surviving husband or wife.

243 (ii) Any transfer in which the decedent created a power over income or property,
244 exercisable by the decedent alone or in conjunction with any other person, or exercisable by a
245 nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's
246 estate, or creditors of the decedent's estate. The amount included with respect to a power over
247 property is the value of the property subject to the power, and the amount included with respect
248 to a power over income is the value of the property that produces or produced the income, to the
249 extent the power in either case was exercisable at the decedent's death to or for the benefit of any
250 person other than the decedent's surviving spouse or to the extent the property passed at the
251 decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any
252 person other than the decedent's estate or surviving spouse. If the power is a power over both
253 income and property and the preceding sentence produces different amounts, the amount
254 included is the greater amount.

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

259 (c) [Testamentary substitutes passing to surviving husband or wife] Excluding
260 property passing to the surviving husband or wife under the federal social security system, the
261 value of the elective estate includes the value of the decedent's transfers by testamentary

262 substitute, consisting of nonprobate transfers to the decedent's surviving husband or wife, of the
263 following types in the amount provided respectively for each type of transfer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

300 (a) An election under this chapter shall be made by filing in the probate court a
301 petition for the elective share within the earlier of nine months after the date of the decedent's
302 death or six months after the surviving husband or wife receives notice of proceedings for
303 probate of the decedent's will or administration of the decedent's estate. The surviving husband

304 or wife may dismiss or withdraw his or her petition for an elective share, with prejudice, at any
305 time before entry of a final determination by the court and the expiration of the time for appeal
306 or, if an appeal is taken, at any time during the appeal or within ten days after rescript.

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

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

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

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

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

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

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

341 (i) In addition to the powers conferred in section ten of chapter two hundred and
342 eleven B, the chief justice for the probate and family court department may, from time to time,
343 provide procedural forms and make general rules and issue standing orders in reference to
344 practice and procedure as relates to the elective share of the surviving husband or wife, subject to
345 the approval of the supreme judicial court.

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

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

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

359 (c) No original recipient who shall conform to the standard of a Massachusetts
360 executor or administrator with respect to the care and management of assets included in the
361 elective estate or who shall hold all such assets in the form in which such original recipient
362 received them, shall be liable to the surviving spouse in an amount greater than the value of the
363 elective estate assets received by such original recipient, determined as of the date of distribution
364 or payment to the surviving husband or wife in satisfaction of such liability including interest, if
365 any, under section six (g) of this chapter. No beneficiary shall be liable to the surviving spouse
366 in an amount greater than the value of such beneficiary's share of the elective estate at the date of

367 distribution or payment to the surviving husband or wife in satisfaction of such liability including
368 interest, if any, under section six (g) of this chapter.

369 (d) [Protection of Subsequent Transferees]

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

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

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

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

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

387 made or other actions taken after the payor or other third party received written notice that a
388 petition for the elective share has been filed.

389 (c) A written notice that a petition for the elective share has been filed must be
390 mailed to the payor's or other third party's main office or home by registered or certified mail,
391 return receipt requested, or served upon the payor or other third party in the same manner as a
392 summons in a civil action. Upon receipt of written notice that a petition for the elective share
393 has been filed, a payor or other third party may pay any amount owed to or with the court having
394 jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have
395 been commenced, to or with the probate court having jurisdiction of probate proceedings relating
396 to decedents' estates located in the county of the decedent's last known address. Subject to rule
397 or regulation of the probate court with respect to acceptable and unacceptable property, or on
398 motion with the approval of the probate court, and subject further to such terms and conditions as
399 the probate court may impose, a payor or other third party may transfer or deposit any item of
400 property held by it to or with the court having jurisdiction of the probate proceedings relating to
401 the decedent's death, or if no proceedings have been commenced, to or with the probate court
402 having jurisdiction of probate proceedings relating to decedents' estates in the county of the
403 decedent's last known address. The court shall hold the funds or item of property and, upon its
404 determination of the elective share under this chapter, shall order disbursement in accordance
405 with the determination. If the petition for an elective share is withdrawn or dismissed, the court
406 shall order disbursement to the designated beneficiary. Payments or transfers to the court or
407 deposits made into court discharge the payor or other third party from all claims for amounts so
408 paid or the value of property so transferred or deposited.

409

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

414 Section 9. [Real Estate.]

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

417 Section 10. This act shall be effective for estates of persons dying on or after January
418 one, two thousand thirteen.