

By the Committee on Banking and Insurance; and Senator Baxley

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1 A bill to be entitled
2 An act relating to bank property of deceased
3 accountholders; amending s. 655.059, F.S.; specifying
4 that a financial institution is not prohibited from
5 disclosing specified information to certain persons
6 relating to deceased account holders; creating s.
7 655.795, F.S.; defining terms; authorizing a financial
8 institution to pay to the authorized family member of
9 a decedent depositor, without any court proceeding,
10 order, or judgment authorizing the payment and not
11 earlier than a specified time, the funds in the
12 decedent's qualified accounts if the sum does not
13 exceed a specified amount; requiring the authorized
14 family member to provide the financial institution a
15 certified copy of the decedent's death certificate and
16 a specified affidavit in order to receive the funds;
17 providing an affidavit form the authorized family
18 member may use; providing that the financial
19 institution has no duty to make certain
20 determinations; specifying a person does not have a
21 right or cause of action against a financial
22 institution for certain actions or for failing to take
23 certain actions; providing liability for authorized
24 family members; requiring a financial institution to
25 maintain a copy or image of the affidavit for a
26 specified time; authorizing the financial institution
27 to provide copies of the affidavit to certain persons;
28 authorizing a financial institution to release certain
29 information bank accounts under certain circumstances;

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30 providing a criminal penalty; providing an effective
31 date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Paragraph (b) of subsection (2) of section
36 655.059, Florida Statutes, is amended to read:

37 655.059 Access to books and records; confidentiality;
38 penalty for disclosure.-

39 (2)

40 (b) The books and records pertaining to trust accounts and
41 the deposit accounts and loans of depositors, borrowers,
42 members, and stockholders of any financial institution shall be
43 kept confidential by the financial institution and its
44 directors, officers, and employees and may not be released
45 except upon express authorization of the account holder as to
46 her or his own accounts, loans, or voting rights. However,
47 information relating to any loan made by a financial institution
48 may be released without the borrower's authorization in a manner
49 prescribed by the board of directors for the purpose of meeting
50 the needs of commerce and for fair and accurate credit
51 information. Information may also be released, without the
52 authorization of a member or depositor but in a manner
53 prescribed by the board of directors, to verify or corroborate
54 the existence or amount of a customer's or member's account when
55 such information is reasonably provided to meet the needs of
56 commerce and to ensure accurate credit information. In addition,
57 a financial institution, affiliate, and its subsidiaries, and
58 any holding company of the financial institution or subsidiary

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59 of such holding company, may furnish to one another information
60 relating to their customers or members, subject to the
61 requirement that each corporation receiving information that is
62 confidential maintain the confidentiality of such information
63 and not provide or disclose such information to any unaffiliated
64 person or entity. Notwithstanding this paragraph, this
65 subsection does not prohibit:

66 1. A financial institution from disclosing financial
67 information as referenced in this subsection as authorized by
68 Pub. L. No. 106-102 (1999), as set forth in 15 U.S.C.A. s. 6802,
69 as amended.

70 2. The Florida office of the international banking
71 corporation or international trust entity from sharing books and
72 records under this subsection with the home-country supervisor
73 in accordance with subsection (1).

74 3. A financial institution from disclosing, pursuant to s.
75 655.795, the existence of and amounts on deposit in any
76 qualified accounts of a decedent, and providing a copy of any
77 affidavit delivered to the financial institution pursuant
78 thereto, to persons authorized to receive such information under
79 s. 655.795.

80 Section 2. Section 655.795, Florida Statutes, is created to
81 read:

82 655.795 Payment to successor without court proceedings.—

83 (1) As used in this section, the term:

84 (a) "Authorized family member" means:

85 1. The surviving spouse of the decedent;

86 2. If the decedent did not leave a surviving spouse, an
87 adult child of the decedent;

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88 3. If the decedent did not leave a surviving spouse or a
89 surviving adult child, an adult descendant of the decedent; or

90 4. If the decedent did not leave a surviving spouse, an
91 adult child, or an adult descendant, the parent of the decedent.

92 (b) "Family members of the decedent" means:

93 1. The surviving spouse of the decedent;

94 2. If there is no surviving spouse, or if any of the
95 children of the decedent are not also children of the surviving
96 spouse, the living children of the decedent, and the living
97 descendants of any deceased child of the decedent; or

98 3. If there is no surviving spouse or living descendants of
99 the decedent, the living parents of the decedent.

100 (c) "Qualified account" means a depository account or
101 certificate of deposit held in the sole name of the decedent
102 without a pay-on-death or any other survivor designation.

103 (2) A financial institution in this state may pay to the
104 authorized family member of a decedent, without any court
105 proceeding, order, or judgment, the funds on deposit in all
106 qualified accounts of the decedent at the financial institution
107 if the total amount of the combined funds in the qualified
108 accounts at that financial institution do not exceed \$10,000.
109 The financial institution may not make such payment earlier than
110 2 years after the date of the decedent's death.

111 (3) In order to receive the funds, the authorized family
112 member must provide the financial institution with a certified
113 copy of the decedent's death certificate and a sworn affidavit
114 that includes all of the following:

115 (a) A statement attesting that the affiant is the surviving
116 spouse, adult child, adult descendant, or parent of the

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117 decedent.

118 1. If the affiant is an adult child of the decedent, the
119 affidavit must attest that the decedent left no surviving
120 spouse.

121 2. If the affiant is an adult descendant of the decedent,
122 the affidavit must attest that the decedent left no surviving
123 spouse or adult children.

124 3. If the affiant is a parent of the decedent, the
125 affidavit must attest that the decedent left no surviving
126 spouse, adult children, or adult descendants.

127 (b) The date of death and the address of the last residence
128 of the decedent.

129 (c) A statement attesting that the total amount in all
130 qualified accounts held by the decedent with any financial
131 institution known to the affiant does not exceed \$10,000.

132 (d) A statement acknowledging that a personal
133 representative has not been appointed to administer the
134 decedent's estate and stating that no probate proceeding or
135 summary administration procedure has been commenced with respect
136 to the estate.

137 (e) A statement identifying the name of each of the family
138 members of the decedent and that the notarized written consent
139 of each other family member of the decedent is attached. The
140 natural parent or guardian of any person who is a minor may give
141 consent on behalf of such person.

142 (f) A statement acknowledging that the affiant has no
143 knowledge of the existence of any last will and testament or
144 other document or agreement relating to the distribution of the
145 estate of the decedent.

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146 (g) A statement acknowledging that the payment of the funds
147 constitutes a full release and discharge of the financial
148 institution's obligation regarding the amount paid.

149 (h) A statement acknowledging that the affiant understands
150 that he or she is personally liable to the persons rightfully
151 entitled to the funds under the Florida Probate Code, to the
152 extent that the amount paid exceeds the amount properly
153 attributable to the affiant's share.

154 (i) A statement acknowledging that the affiant understands
155 that making a false statement in the affidavit may be punishable
156 as a criminal offense.

157 (4) The authorized family member may use an affidavit in
158 substantially the following form to fulfill the requirements of
159 subsection (3):

161 AFFIDAVIT UNDER SECTION 655.795, FLORIDA STATUTES, TO OBTAIN
162 BANK PROPERTY OF DECEASED ACCOUNTHOLDER: ... (Name of
163 decedent)...

164 State of
165 County of

166
167 Before the undersigned authority personally appeared ... (name of
168 affiant) ..., of ... (residential address of affiant) ..., who has
169 been sworn and says the following statements are true:

170 (a) The affiant is (initial one of the following
171 responses):

172 The surviving spouse of the decedent.

173 A surviving adult child of the decedent, and the
174 decedent left no surviving spouse.

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175 A surviving adult descendent of the decedent, and the
176 decedent left no surviving spouse and no surviving adult
177 children.

178 A surviving parent of the decedent, and the decedent
179 left no surviving spouse, no surviving adult children, and no
180 surviving adult descendant.

181 (b) As shown in the certified death certificate, the date
182 of death of the decedent was ...(date of death)..., and the
183 address of the decedent's last residence was ...(address of last
184 residence)....

185 (c) The affiant is entitled to payment of the funds in the
186 decedent's depository accounts and certificates of deposit held
187 by the financial institution ...(name of financial
188 institution).... The total of qualified accounts held by the
189 decedent in all financial institutions known to the affiant does
190 not exceed an aggregate total of \$10,000. The affiant requests
191 full payment from the financial institution.

192 (d) A personal representative has not been appointed to
193 administer the decedent's estate and no probate proceeding or
194 summary administration procedure has been commenced with respect
195 to the estate.

196 (e) The affiant has been provided with and has read the
197 provisions s. 655.795, Florida Statutes, and (initial one of the
198 following responses):

199 There are no family members of the decedent other than
200 affiant.

201 The family members of the decedent are ...(identify by
202 name).... Notarized letters from all of the family members of
203 the decedent other than the affiant consenting to the affiant's

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204 funds withdrawal are attached.

205 (f) The affiant has no knowledge of any last will and
206 testament or other document or agreement relating to the
207 distribution of decedent's estate.

208 (g) The payment of the funds constitutes a full release and
209 discharge of the financial institution for the amount paid.

210 (h) The affiant understands that he or she is personally
211 liable to the persons rightfully entitled to the funds under the
212 Florida Probate Code, to the extent that the amount paid exceeds
213 the amount properly attributable to the affiant's share.

214 (i) The affiant understands that making a false statement
215 in this affidavit may be punishable as a criminal offense.

217 By ...(signature of Affiant)...

219 Sworn to and subscribed before me this day of
220 by ...(name of Affiant)..., who is personally
221 known to me or produced as identification, and
222 did take an oath.

224 ...(Signature of Notary Public - State of Florida)...

225 ...(Print, Type, or Stamp Commissioned Name of Notary
226 Public)...

227 My commission expires: ...(date of expiration of
228 commission)...

229 (5) The financial institution is not required to determine
230 whether the contents of the sworn affidavit are truthful. The
231 payment of the funds by the financial institution to the affiant
232 constitutes the financial institution's full release and

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233 discharge for the amount paid. A person does not have a right or
234 cause of action against the financial institution for taking any
235 action, or for failing to take an action, in connection with the
236 affidavit or the payment of the funds.

237 (6) The authorized family member who withdraws the funds
238 under this section is personally liable to any persons
239 rightfully entitled to the funds under the Florida Probate Code,
240 to the extent that the amount paid exceeds the amount properly
241 attributable to the authorized family member's share.

242 (7) The financial institution shall maintain a copy or an
243 image of the affidavit for a period of 7 years after releasing
244 the funds. If a family member of the decedent requests a copy of
245 the affidavit during such time, the financial institution may
246 provide a copy of the affidavit to the requesting family member
247 of the decedent.

248 (8) Upon presentation of a decedent's death certificate to
249 a financial institution not less than 2 years after the date of
250 death of the decedent, the financial institution may release the
251 existence of and amounts contained in any qualified account of
252 the decedent at the financial institution to the following
253 persons:

254 1. A surviving spouse who presents a copy of a marriage
255 certificate evidencing the spouse's marriage to the decedent; or

256 2. An adult child of the decedent who presents a copy of a
257 birth certificate evidencing that the decedent is the parent of
258 the adult child.

259 (9) In addition to any other penalty provided by law, a
260 person who knowingly makes a false statement in a sworn
261 affidavit given to a financial institution to receive a

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262 decendent's funds under this section commits theft, punishable as
263 provided in s. 812.014.

264 Section 3. This act shall take effect July 1, 2019.