

HB 1241

2018

1 A bill to be entitled

2 An act relating to financial institution payments to
3 surviving successors; creating s. 655.795, F.S.;
4 authorizing a financial institution to pay to the
5 surviving successor of a decedent depositor, without
6 any court proceedings, order, or judgment authorizing
7 the payment, the funds in the decedent's deposit
8 accounts and certificates of deposit if the sum does
9 not exceed a specified amount; providing definitions;
10 requiring the surviving successor to provide a
11 certified copy of the decedent's death certificate and
12 a specified affidavit to the financial institution;
13 providing that the financial institution has no duty
14 to make certain determinations; providing construction
15 relating to liability and indemnification; providing
16 that a false statement in an affidavit constitutes
17 theft; providing an affidavit form that the surviving
18 successor may use; providing construction relating to
19 any conflict with the Florida Probate Code; providing
20 an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 655.795, Florida Statutes, is created
25 to read:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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26 655.795 Payment to successor without court proceedings.-

27 (1)(a) A financial institution in this state may pay to
28 the surviving successor of a decedent, without a court
29 proceeding, order, or judgment authorizing the payment, the
30 funds on deposit in all qualified accounts of the decedent at
31 the financial institution if the total amount of such funds does
32 not exceed \$10,000. The financial institution may make such
33 payment no sooner than 45 days after the decedent's death.

34 (b) For purposes of this section, the term:

35 1. "Surviving successor" means:

36 a. The surviving spouse of the decedent;

37 b. If the decedent did not leave a surviving spouse, an
38 adult child of the decedent; or

39 c. If the decedent did not leave a surviving spouse or
40 adult child, the parent of the decedent.

41 2. "Qualified account" means a depository account or
42 certificate of deposit held in the sole name of the decedent
43 with no pay-on-death or other survivor designation.

44 (c) The surviving successor must provide to the financial
45 institution a certified copy of the decedent's death certificate
46 and a sworn affidavit that includes the following:

47 1. A statement attesting that the surviving successor is
48 the surviving spouse, adult child, or parent of the decedent. If
49 the surviving successor is an adult child, the affidavit must
50 attest that the decedent left no surviving spouse. If the

51 surviving successor is a parent, the affidavit must attest that
52 the decedent left no surviving spouse or adult children. If the
53 surviving successor is an adult child or parent, the affidavit
54 must also indicate that there is no other surviving successor or
55 that the other surviving successors have agreed to allow the
56 withdrawal requested by the affiant.

57 2. The date of death and the address of the last residence
58 of the decedent.

59 3. A statement attesting that the total amount on deposit
60 with the financial institution does not exceed \$10,000.

61 4. A statement acknowledging that a personal
62 representative has not been appointed to administer the estate
63 of the decedent.

64 5. A statement acknowledging that the payment of the funds
65 constitutes a full release and discharge of the financial
66 institution for the amount paid and that the surviving successor
67 indemnifies the financial institution against claims; demands;
68 expenses, including attorney fees and court costs; losses; or
69 damages incurred by the financial institution for taking any
70 action, or failing to take an action, in connection with the
71 payment of the funds.

72 (d) The financial institution is not required to determine
73 whether the contents of the sworn affidavit are truthful. The
74 payment of funds by the financial institution to the surviving
75 successor constitutes a full release and discharge of the

76 financial institution for the amount paid. No person has a right
77 or cause of action against a financial institution because of
78 such payment, and the surviving successor must indemnify and
79 hold harmless the financial institution against claims; demands;
80 expenses, including attorney fees and court costs; losses; or
81 damages incurred by the financial institution for taking any
82 action, or failing to take an action, in connection with the
83 affidavit or the payment.

84 (e) The surviving successor who withdraws funds is
85 personally liable:

86 1. To the creditors of the decedent to the extent of the
87 amount paid.

88 2. To the personal representative of the decedent to the
89 extent of the amount paid.

90 3. If a personal representative has not been appointed, to
91 the other intestate heirs of the decedent, to the extent of any
92 excess of the amount paid over the amount that is properly
93 attributable to the intestate share of the surviving successor.

94 4. If the personal representative has been discharged, to
95 the devisees of the estate to the extent of any excess of the
96 amount paid over the amount that would have been devised to the
97 surviving successor.

98 (f) In addition to any other penalty provided by general
99 law, a person who knowingly makes a false statement in a sworn
100 affidavit given to a financial institution pursuant to this

101 section commits theft under s. 812.014.

102 (2) The surviving successor may use the following
 103 affidavit form to fulfill the requirements of paragraph (1)(c):

105 AFFIDAVIT UNDER SECTION 655.795, FLORIDA STATUTES, TO OBTAIN
 106 FINANCIAL INSTITUTION PROPERTY OF DECEASED ACCOUNTHOLDER:

107 ...(Name of deceased)...

108 State of

109 County of

111 Before me, the undersigned authority, personally appeared
 112 Affiant, ...(name of Affiant)... of ...(residential address of
 113 Affiant)..., who has been sworn and says the following
 114 statements are true:

115 1. Affiant is (initial one response):

116 The surviving spouse of the deceased.

117 A surviving adult child of the deceased and the
 118 deceased left no surviving spouse and no other surviving adult
 119 children.

120 A surviving adult child of the deceased and the
 121 deceased left no surviving spouse. The other adult children of
 122 the deceased have agreed to allow me to withdraw the Funds.

123 A surviving parent of the deceased and the deceased
 124 left no surviving spouse, no adult children, and no other
 125 surviving parent.

126 A surviving parent of the deceased and the deceased
 127 left no surviving spouse and no adult children. The other
 128 surviving parent of the deceased has agreed to allow me to
 129 withdraw the Funds.

130 2. As shown in the certified death certificate, the date
 131 of death was ...(date of death)... and the last address of the
 132 deceased was ...(last address)....

133 3. A personal representative has not been appointed to
 134 administer the estate of the deceased.

135 4. Affiant is entitled to payment of the deceased's
 136 deposit accounts (the "Funds") held by the Financial
 137 Institution: ...(name of financial institution)..., which amount
 138 does not cumulatively exceed \$10,000. Affiant requests full
 139 payment from the Financial Institution.

140 5. The payment of the Funds constitutes a full release and
 141 discharge of the Financial Institution for the amount paid.

142 6. Individually and as the affiant, Affiant agrees to
 143 indemnify the Financial Institution and hold it free and
 144 harmless from any and all claims; demands; expenses, including
 145 attorney fees and court costs; losses; or damages incurred by
 146 the Financial Institution for any action taken, or failure to
 147 take any action, in connection with this Affidavit and the
 148 payment of the Funds to Affiant or as instructed by Affiant.

149 By ...(signature of Affiant)...
 150

151 Sworn to and subscribed before me this day of
 152 ...(month)..., ...(year)..., by ...(name of
 153 Affiant)..., who is personally known to me or produced
 154 ...(form of identification)... as identification, and
 155 did take an oath.

156
 157 ...(signature of Notary Public)...
 158 (Print, type, or stamp name of Notary Public)

159 My commission expires:
 160 ...(date of expiration of commission)...

161
 162 (3) This section supersedes any conflicting provision of
 163 the Florida Probate Code.

164 Section 2. This act shall take effect July 1, 2018.