

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 1184

INTRODUCER: Senator Baxley

SUBJECT: Payments to Surviving Successors

DATE: March 8, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 1184 allows a financial institution to pay the surviving successor of a decedent, without any court proceedings, order, or judgment authorizing the payment, the funds on deposit in all qualified accounts of the decedent at the financial institution if the total amount of such funds does not exceed \$10,000. The financial institution may make such payment not earlier than 45 days after the date of the decedent's death. Currently, a surviving successor could make a claim for the funds in the account only after the financial institution reports the funds to the Department of Financial Services pursuant to the Unclaimed Property Law.

The bill requires a surviving successor to provide an affidavit to the financial institution containing:

- A statement attesting that the surviving successor is the surviving spouse, adult child, or parent of the decedent;
- The date of death of the decedent and the address of the last residence of the decedent;
- A statement attesting that the total amount of all qualified accounts held by the decedent with any financial institution does not exceed an aggregate total of \$10,000;
- A statement acknowledging that a personal representative has not been appointed to administer the estate of the decedent, that no probate or summary administration procedures have been commenced with respect to the estate of the decedent, and that after diligent inquiry, the surviving successor believes in good faith that no last will and testament of the decedent will be presented to any court for administration;
- A statement attesting either that the affiant has made a diligent search for creditors of the decedent, and that after the search, has no knowledge of the existence of any unpaid creditor of the decedent, or that the written consent of all known creditors of the decedent to the withdrawal by the surviving successor is attached; and
- A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution for the amount paid and that the surviving successor

indemnifies the financial institution against claims in connection with the payment of the funds.

The bill does not require the financial institution to determine whether the contents of the sworn affidavit are truthful and the bill provides that a person does not have a right or cause of action against a financial institution because of payment of the funds. It further requires the surviving successor to indemnify and hold harmless the financial institution against claims, losses, or damages incurred by the financial institution for taking any action, or failing to take an action, in connection with the affidavit or the payment.

The bill provides that the surviving successor who withdraws funds is personally liable:

- To the creditors of the decedent to the extent of the amount paid;
- To the personal representative of the decedent to the extent of the amount paid;
- If a personal representative has not been appointed, to the other intestate heirs of the decedent, to the extent of excess of the amount paid over the amount that is properly attributable to the intestate share of the surviving successor; and
- If the personal representative has been discharged, to the devisees of the estate to the extent of excess of the amount paid over the amount that would have been devised to the surviving successor.

The bill takes effect July 1, 2019.

## II. Present Situation:

### Florida Probate Law

The Florida Probate Code provides the statutory mechanism for the transfer of property from a decedent to persons or entities named in a decedent's will (often called beneficiaries) or to the decedent's heirs, if there is no will. The property transferred via the probate process is called the "estate." In addition, the code provides a statutory mechanism to wind up the decedent's financial affairs and ensure that the decedent's creditors are paid.

If the decedent had a will, the property is transferred as directed by the will. If a person dies without a will, the person is considered to have died "intestate" and the person's property is transferred to heirs according to the laws of intestate succession. Section 732.102, F.S., provides that a surviving spouse takes the entire intestate estate if there is no surviving descendant of the decedent. If the decedent is survived by one or more descendants, all of whom are also descendants of the surviving spouse, and the surviving spouse has no other descendants, the surviving spouse takes the entire intestate estate.<sup>1</sup> If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, the surviving spouse takes one-half of the intestate estate.<sup>2</sup> If there are one or more surviving descendants of the decedent, all of whom are also descendants of the surviving spouse, and the surviving spouse has one or more descendants who are not descendants of the decedent, the surviving spouse takes one-half of the intestate estate.<sup>3</sup>

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<sup>1</sup> See s. 732.102(2), F.S.

<sup>2</sup> See s. 732.102(3), F.S.

<sup>3</sup> See s. 732.102(4), F.S.

The part of the intestate estate not passing to the surviving spouse, or the entire intestate estate if there is no surviving spouse, transfers to the descendants of the decedent.<sup>4</sup> If the descendant has no descendants, the descendant's parents take the intestate estate.<sup>5</sup>

In order for the decedent's estate to be transferred to heirs or to the beneficiaries of the will, a petition for administration must be filed with the circuit court.<sup>6</sup> The personal representative, a person designated by the will or the circuit court to serve in that role, must provide a notice of administration to various persons, such as family members and beneficiaries, and other entities.<sup>7</sup> Those persons must act to contest the will or take other actions within statutory time limits.<sup>8</sup> The personal representative must search for and provide notice, by publication in a newspaper, to creditors of the decedent.<sup>9</sup> Creditors must generally make claims against the estate within 3 months of notice.<sup>10</sup> In order for personal representatives to claim monies from bank accounts on for the estate, the court must issue letters of administration granting the personal representative the authority to act on behalf of the estate. The letters give the personal representative the power to gather assets, pay creditors, and pay the heirs or beneficiaries. Even a simple probate estate can take 5 or 6 months to administer and close.<sup>11</sup> For small estates, ch. 735, F.S., provides for summary administration or disposition without administration.

### **Florida Unclaimed Property Law**

Chapter 717, F.S., is Florida's law dealing with the disposition of unclaimed property. The most common types of unclaimed property are dormant bank accounts, unclaimed insurance proceeds, stocks, dividends, uncashed checks, deposits, credit balances and refunds. Unclaimed property assets are held by businesses for a set period of time, usually 5 years. Businesses (holders of unclaimed property) are required to try to locate the owner, but when their attempts fail, they report the property and the owner's name, last known address and other information to the Department of Financial Services. The Department acts as custodian for the State of Florida, but never takes legal ownership of the property. The State uses various methods, including database searches, in an effort to notify owners of their property. Citizens have the right to claim their property, at no cost, any time, regardless of the amount.<sup>12</sup>

### **Funds Held by Financial Institutions**

Funds held by a financial institution may be transferred to a person who survives a decedent in different ways. If an account is in two or more names, it vests in the surviving person or persons if one of the account holders dies.<sup>13</sup> An account holder may elect to designate a beneficiary or beneficiaries through a "pay-on-death designation."<sup>14</sup> Upon the death of the account holder, the

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<sup>4</sup> See s. 732.103(1), F.S.

<sup>5</sup> See s. 732.103(2), F.S.

<sup>6</sup> See s. 733.202, F.S.

<sup>7</sup> See s. 733.212, F.S.

<sup>8</sup> See s. 733.212, F.S.

<sup>9</sup> See s. 733.2121, F.S.

<sup>10</sup> See s. 733.702, F.S.

<sup>11</sup> See <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited March 6, 2019).

<sup>12</sup> See <https://www.fltreasurehunt.gov/UP-Web/sitePages/FAQs.jsp> (last visited March 6, 2019).

<sup>13</sup> See s. 655.79, F.S.

<sup>14</sup> See s. 655.82, F.S.

amount on deposit in the account belong to the surviving beneficiaries.<sup>15</sup> Not all account holders elect a “pay on death” designation.<sup>16</sup>

Section 735.301, F.S., allows for a disposition of small estates without administration. This type of proceeding is used to request release of assets of the deceased to reimburse the person who paid the final expenses, such as funeral or medical bills, for the last 60 days.

### III. Effect of Proposed Changes:

This bill allows a financial institution to pay the surviving successor<sup>17</sup> of a decedent, without any court proceedings, order, or judgment authorizing the payment, the funds on deposit in all qualified accounts<sup>18</sup> of the decedent at the financial institution if the total amount of such funds does not exceed \$10,000. The financial institution may make such payment not earlier than 45 days after the date of the decedent’s death.<sup>19</sup> The bill provides that in the event of a conflict between the bill and the Florida Probate Code, the bill controls over the conflicting provision of the Florida Probate Code.

In order to obtain payment from a financial institution, the surviving successor must provide the financial institution with a certified copy of the decedent’s death certificate and a sworn affidavit that includes all of the following:

- A statement attesting that the surviving successor is the surviving spouse, adult child, or parent of the decedent;
- The date of death of the decedent and the address of the last residence of the decedent;
- A statement attesting that the total amount of all qualified accounts held by the decedent with any financial institution does not exceed an aggregate total of \$10,000;
- A statement acknowledging that a personal representative has not been appointed to administer the estate of the decedent, that no probate or summary administration procedures have been commenced with respect to the estate of the decedent, and that after diligent inquiry, the surviving successor believes in good faith that no last will and testament of the decedent will be presented to any court for administration;
- A statement attesting either that the affiant has made a diligent search for creditors of the decedent, and that after the search, has no knowledge of the existence of any unpaid creditor of the decedent, or that the written consent of all known creditors of the decedent to the withdrawal by the surviving successor is attached; and
- A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution for the amount paid and that the surviving successor indemnifies the financial institution against claims, demands, expenses, including attorney

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<sup>15</sup> See s. 655.82, F.S.

<sup>16</sup> Information Sheet provided by the Florida Bankers Association (on file with the Committee on Banking and Insurance).

<sup>17</sup> The bill defines “surviving successor” as (1) the surviving spouse of the decedent; (2) if the decedent did not leave a surviving spouse, an adult child of the decedent; or (3) if the decedent did not leave a surviving spouse or an adult child, the parent of the decedent.

<sup>18</sup> The bill defines “qualified account” as a depository account or a certificate of deposit held in the sole name of the decedent with no pay on death or other survivor designation.

<sup>19</sup> Allowing a surviving successor to claim the funds 45 days after the date of the decedent’s death would be a change from the current method under the Florida Probate Code. Under the Probate Code, the estate must go through either formal or summary administration. Those procedures provide an opportunity, usually three months, to make claims against the estate.

fees and court costs; losses; or damages incurred by the financial institution for taking any action, or failing to take an action, in connection with the payment of the funds.

The bill's provisions allowing a surviving spouse, an adult child, or a parent to claim the decedent's money are modeled after the intestate succession laws in s. 732.102, F.S. Heirs other than a surviving spouse, an adult child, or a parent may not make a claim to the financial institution and would have to make a claim under the Probate Code. If the surviving successor is the surviving spouse, the affidavit must include a statement that either all of the decedent's children are also the children of the surviving spouse or a statement identifying the children of the decedent who are not also children of the surviving spouse and that the written consent of each of those children to the withdrawal of funds in the qualified account by the surviving spouse is attached. The bill provides that the natural parent or the guardian of any such child who is a minor may give consent on behalf of the child.

If the surviving successor is an adult child, the affidavit must attest that the decedent left no surviving spouse. The affidavit must also indicate that there are no other surviving adult children of the decedent, or must include a statement identifying the other surviving adult children of the decedent and stating that the written consent of the other surviving children to the withdrawal of funds from the qualified account by the affiant adult child is attached. The bill provides that if any such child is a minor, the natural parent or the guardian of such child may give consent on behalf of the child.

If the surviving successor is a parent, the affidavit must attest that the decedent left no surviving spouse or adult child. The affidavit must also indicate that there is no other surviving parent of the decedent, or must include a statement identifying the other surviving parent and stating that the written consent of the other surviving parent to the withdrawal of funds from the qualified account by the affiant parent is attached.

The bill does not require the financial institution to determine whether the contents of the sworn affidavit are truthful. The payment of funds by the financial institution to the surviving successor constitutes a full release and discharge of the financial institution for the amount paid. The bill provides that a person does not have a right or cause of action against a financial institution because of such payment. It requires the surviving successor to indemnify and hold harmless the financial institution against claims, demands, expenses, including attorney fees and court costs, losses, or damages incurred by the financial institution for taking any action, or failing to take an action, in connection with the affidavit or the payment.

The bill provides that the surviving successor who withdraws funds is personally liable:

- To the creditors of the decedent to the extent of the amount paid;
- To the personal representative of the decedent to the extent of the amount paid;
- If a personal representative has not been appointed, to the other intestate heirs of the decedent, to the extent of excess of the amount paid over the amount that is properly attributable to the intestate share of the surviving successor; and
- If the personal representative has been discharged, to the devisees of the estate to the extent of excess of the amount paid over the amount that would have been devised to the surviving successor.

The bill provides that personal liability of the surviving successor is not barred by ss. 733.702 or 733.710, F.S., unless the surviving successor publishes a notice to creditors which states that the creditors must notify the surviving successor of the claim within statutory time limits.

The bill makes knowingly making a false statement in a sworn affidavit provided to a financial institution is punishable as theft, punishable as provided in s. 812.014, F.S.

The bill provides a form affidavit for use by surviving successors to make claims with financial institutions.

The bill takes effect July 1, 2019.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

It could be difficult in some cases for a surviving successor to know whether a decedent had more than \$10,000 in different financial institutions. Section 655.059(2)(b), F.S., prohibits release of records pertaining to accounts without account holder consent unless such information is “reasonably provided to meet the needs of commerce and to ensure accurate credit information.” If a surviving successor did not have access to account information via some other means, it may be impossible for the surviving successor to file an affidavit.<sup>20</sup>

**VIII. Statutes Affected:**

This bill creates section 655.795 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>20</sup> Office of Financial Regulation, *Analysis of SB 1184*, March 4, 2019 (on file with the Committee on Banking and Insurance).