

1                                   A bill to be entitled  
 2           An act relating to payments by financial institutions  
 3           to surviving successors; creating s. 655.795, F.S.;  
 4           providing definitions; authorizing payment of funds by  
 5           financial institutions to surviving successors under  
 6           certain circumstances; providing requirements to  
 7           receive the funds; providing financial institutions'  
 8           immunity from liability; providing surviving  
 9           successors' liability; providing penalties; providing  
 10          construction; providing an effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1. Section 655.795, Florida Statutes, is created  
 15 to read:

16           655.795 Payments to surviving successors without court  
 17 proceedings.-

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

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

22           (b) "Surviving successor" means:

- 23           1. The surviving spouse of the decedent;  
 24           2. An adult child of the decedent if the decedent did not  
 25 leave a surviving spouse; or

26 | 3. A parent of the decedent if the decedent did not leave  
 27 | a surviving spouse or an adult child.

28 | (2) A financial institution in this state may pay to the  
 29 | surviving successor of a decedent, without any court proceeding,  
 30 | order, or judgment, the funds on deposit in all qualified  
 31 | accounts of the decedent at the financial institution if the  
 32 | total amount of the combined funds in the qualified accounts  
 33 | does not exceed \$10,000. The financial institution may not make  
 34 | such payment earlier than 45 days after the date of the  
 35 | decedent's death.

36 | (3) In order to receive the funds, the surviving successor  
 37 | must provide to the financial institution a certified copy of  
 38 | the decedent's death certificate and a sworn affidavit that  
 39 | includes all of the following:

40 | (a) A statement attesting that the affiant is the  
 41 | surviving spouse, an adult child, or a parent of the decedent.

42 | 1. If the affiant is an adult child of the decedent, the  
 43 | statement must attest that the decedent did not leave a  
 44 | surviving spouse.

45 | 2. If the affiant is a parent of the decedent, the  
 46 | statement must attest that the decedent did not leave a  
 47 | surviving spouse or an adult child.

48 |  
 49 | If the affiant is an adult child or a parent of the decedent,  
 50 | the statement must also attest that the decedent did not leave

51 any other surviving successors or that letters of all other  
52 surviving successors consenting to the affiant's funds  
53 withdrawal are attached.

54 (b) The date of the decedent's death and the address of  
55 the last residence of the decedent.

56 (c) A statement attesting that the total amount of the  
57 combined funds on deposit in the decedent's qualified accounts  
58 with the financial institution does not exceed \$10,000.

59 (d) A statement attesting that a personal representative  
60 has not been appointed to administer the decedent's estate and  
61 that no probate proceeding or summary administration procedure  
62 has been commenced with respect to the estate.

63 (e) A statement attesting that the affiant has no  
64 knowledge of the existence of any unpaid creditor of the  
65 decedent or that letters of all creditors of the decedent known  
66 by the affiant consenting to the affiant's funds withdrawal are  
67 attached.

68 (f) A statement acknowledging that the payment of the  
69 funds constitutes a full release and discharge of the financial  
70 institution for the amount paid.

71 (g) A statement acknowledging that the affiant indemnifies  
72 the financial institution and holds it harmless against any  
73 claim; demand; expense, including attorney fees and court costs;  
74 loss; or damage incurred by the financial institution for taking  
75 an action, or failing to take an action, in connection with the

76 | affidavit or the payment of the funds.

77 | (4) The surviving successor may use the following  
 78 | affidavit form to fulfill the requirements of subsection (3):

80 | AFFIDAVIT UNDER SECTION 655.795, FLORIDA STATUTES, TO OBTAIN  
 81 | BANK PROPERTY OF DECEASED ACCOUNT HOLDER  
 82 | ...(name of decedent)...

84 | State of ....

85 | County of ....

87 | Before the undersigned authority personally appeared ...(name of  
 88 | affiant)..., of ...(residential address of affiant)..., who has  
 89 | been sworn and says the following statements are true:

90 | (a) The affiant is (initial one of the following  
 91 | responses):

92 | .... The surviving spouse of the decedent.

93 | .... A surviving adult child of the decedent, and the  
 94 | decedent did not leave a surviving spouse or any other surviving  
 95 | adult children.

96 | .... A surviving adult child of the decedent, and the  
 97 | decedent did not leave a surviving spouse. Letters of all the  
 98 | other adult children of the decedent consenting to the affiant's  
 99 | funds withdrawal are attached.

100 | .... A surviving parent of the decedent, and the decedent

101 did not leave a surviving spouse, a surviving adult child, or  
102 any other surviving parent.

103 .... A surviving parent of the decedent, and the decedent  
104 did not leave a surviving spouse or a surviving adult child. A  
105 letter of the other surviving parent of the decedent consenting  
106 to the affiant's funds withdrawal is attached.

107 (b) As shown in the certified death certificate, the date  
108 of death of the decedent was ...(date of death)..., and the  
109 address of the decedent's last residence was ...(address of last  
110 residence)....

111 (c) The affiant is entitled to payment of the funds in the  
112 decedent's depository accounts and certificates of deposit held  
113 by the financial institution ...(name of financial  
114 institution)..., which amount does not cumulatively exceed  
115 \$10,000. The affiant requests full payment from the financial  
116 institution.

117 (d) A personal representative has not been appointed to  
118 administer the decedent's estate, and no probate proceeding or  
119 summary administration procedure has been commenced with respect  
120 to the estate.

121 (e) Initial one of the following responses:

122 .... The affiant has no knowledge of the existence of any  
123 unpaid creditor of the decedent.

124 .... Letters of all creditors of the decedent known by the  
125 affiant consenting to the affiant's funds withdrawal are

126 attached.

127 (f) The payment of the funds constitutes a full release  
 128 and discharge of the financial institution for the amount paid.

129 (g) Individually and as the affiant, the affiant agrees to  
 130 indemnify the financial institution and hold it harmless against  
 131 any claim; demand; expense, including attorney fees and court  
 132 costs; loss; or damage incurred by the financial institution for  
 133 taking an action, or failing to take an action, in connection  
 134 with this affidavit or the payment of the funds to the affiant  
 135 or as instructed by the affiant.

136  
 137 By ...(signature of affiant)...

138  
 139 Sworn to and subscribed before me this ...(day)... of  
 140 ...(month)..., ...(year)..., by ...(name of affiant)..., who is  
 141 personally known to me or who produced ...(form of  
 142 identification)... as identification, and did take an oath.

143  
 144 ...(Signature of notary public - State of Florida)...

145 ...(Print, type, or stamp commissioned name of notary public)...

146 My commission expires: ...(date of expiration of commission)...

147 (5) The financial institution is not required to determine  
 148 whether the contents of the sworn affidavit are truthful. The  
 149 payment of the funds by the financial institution to the affiant  
 150 constitutes the financial institution's full release and

151 discharge for the amount paid. A person does not have a right or  
152 cause of action against the financial institution because of  
153 such payment, and the affiant must indemnify the financial  
154 institution and hold it harmless against any claim; demand;  
155 expense, including attorney fees and court costs; loss; or  
156 damage incurred by the financial institution for taking an  
157 action, or for failing to take an action, in connection with the  
158 affidavit or the payment of the funds.

159 (6) The surviving successor who withdraws the funds under  
160 subsection (3) is personally liable:

161 (a) To the creditors of the decedent, to the extent of the  
162 amount paid.

163 (b) To the personal representative of the decedent, to the  
164 extent of the amount paid.

165 (c) If a personal representative has not been appointed,  
166 to the other intestate heirs of the decedent, to the extent of  
167 the amount paid in excess of the amount properly attributable to  
168 the surviving successor's intestate share.

169 (d) If the personal representative has been discharged, to  
170 the devisees of the estate, to the extent of the amount paid in  
171 excess of the amount that would have been devised to the  
172 surviving successor.

173 (7) Personal liability of the surviving successor under  
174 this section is not barred by s. 733.710.

175 (8) In addition to any other penalty provided by law, a

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176 | person who knowingly makes a false statement in a sworn  
177 | affidavit provided to a financial institution to receive a  
178 | decedent's funds under this section commits theft as provided in  
179 | s. 812.014.

180 | (9) This section supersedes any conflict provision of the  
181 | Florida Probate Code.

182 | Section 2. This act shall take effect July 1, 2019.