

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>    </u>	

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1 Committee/Subcommittee hearing bill: Insurance & Banking  
2 Subcommittee

3 Representative Yarborough offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (b) of subsection (2) of section  
8 655.059, Florida Statutes, is amended to read:

9 655.059 Access to books and records; confidentiality;  
10 penalty for disclosure.—

11 (2)

12 (b) The books and records pertaining to trust accounts and  
13 the deposit accounts and loans of depositors, borrowers,  
14 members, and stockholders of any financial institution shall be  
15 kept confidential by the financial institution and its  
16 directors, officers, and employees and may not be released

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17 except upon express authorization of the account holder as to  
18 her or his own accounts, loans, or voting rights. However,  
19 information relating to any loan made by a financial institution  
20 may be released without the borrower's authorization in a manner  
21 prescribed by the board of directors for the purpose of meeting  
22 the needs of commerce and for fair and accurate credit  
23 information. Information may also be released, without the  
24 authorization of a member or depositor but in a manner  
25 prescribed by the board of directors, to verify or corroborate  
26 the existence or amount of a customer's or member's account when  
27 such information is reasonably provided to meet the needs of  
28 commerce and to ensure accurate credit information. In addition,  
29 a financial institution, affiliate, and its subsidiaries, and  
30 any holding company of the financial institution or subsidiary  
31 of such holding company, may furnish to one another information  
32 relating to their customers or members, subject to the  
33 requirement that each corporation receiving information that is  
34 confidential maintain the confidentiality of such information  
35 and not provide or disclose such information to any unaffiliated  
36 person or entity. Notwithstanding this paragraph, this  
37 subsection does not prohibit:

38 1. A financial institution from disclosing financial  
39 information as referenced in this subsection as authorized ~~by~~  
40 ~~Pub. L. No. 106-102 (1999), as set forth in 15 U.S.C. s. 6802~~  
41 ~~(2010) U.S.C.A. s. 6802, as amended.~~

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42           2. The Florida office of the international banking  
43 corporation or international trust entity from sharing books and  
44 records under this subsection with the home-country supervisor  
45 in accordance with subsection (1).

46           3. A financial institution from disclosing the existence  
47 of and amounts on deposit in any qualified account of a decedent  
48 pursuant to s. 735.303 and from providing a copy of any  
49 affidavit delivered to the financial institution pursuant  
50 thereto, to a person authorized to receive such information  
51 under s. 735.303.

52           Section 2. Section 735.303, Florida Statutes, is created  
53 to read:

54           735.303 Payment to successor without court proceedings.-

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

56           (a) "Family member" means:

57           1. The surviving spouse of the decedent;

58           2. An adult child of the decedent if the decedent left no  
59 surviving spouse;

60           3. An adult descendant of the decedent if the decedent  
61 left no surviving spouse and no surviving adult child; or

62           4. A parent of the decedent if the decedent left no  
63 surviving spouse, no surviving adult child, and no surviving  
64 adult descendant.

65           (b) "Qualified account" means a depository account or  
66 certificate of deposit held by a financial institution in the

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67 sole name of the decedent without a pay-on-death or any other  
68 survivor designation.

69 (2) A financial institution in this state may pay to the  
70 family member of a decedent, without any court proceeding,  
71 order, or judgment, the funds on deposit in all qualified  
72 accounts of the decedent at the financial institution if the  
73 total amount of the combined funds in the qualified accounts at  
74 the financial institution do not exceed an aggregate total of  
75 \$1,000. The financial institution may not make such payment  
76 earlier than 6 months after the date of the decedent's death.

77 (3) In order to receive the funds described in subsection  
78 (2), the family member must provide the financial institution  
79 with a certified copy of the decedent's death certificate and a  
80 sworn affidavit that includes all of the following:

81 (a) A statement attesting that the affiant is the  
82 surviving spouse, adult child, adult descendant, or parent of  
83 the decedent.

84 1. If the affiant is an adult child of the decedent, the  
85 affidavit must attest that the decedent left no surviving  
86 spouse.

87 2. If the affiant is an adult descendant of the decedent,  
88 the affidavit must attest that the decedent left no surviving  
89 spouse and no surviving adult child.

90 3. If the affiant is a parent of the decedent, the  
91 affidavit must attest that the decedent left no surviving

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92 spouse, no surviving adult child, and no surviving adult  
93 descendant.

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

96 (c) A statement attesting that the total amount in all  
97 qualified accounts held by the decedent in all financial  
98 institutions known to the affiant does not exceed an aggregate  
99 total of \$1,000.

100 (d) A statement acknowledging that a personal  
101 representative has not been appointed to administer the  
102 decedent's estate and attesting that no probate proceeding or  
103 summary administration procedure has been commenced with respect  
104 to the estate.

105 (e) A statement acknowledging that the affiant has no  
106 knowledge of the existence of any last will and testament or  
107 other document or agreement relating to the distribution of the  
108 decedent's estate.

109 (f) A statement acknowledging that the payment of the  
110 funds constitutes a full release and discharge of the financial  
111 institution's obligation regarding the amount paid.

112 (g) A statement acknowledging that the affiant understands  
113 that he or she is personally liable to the creditors of the  
114 decedent and other persons rightfully entitled to the funds  
115 under the Florida Probate Code, to the extent the amount paid  
116 exceeds the amount properly attributable to the affiant's share.

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117 (h) A statement acknowledging that the affiant understands  
118 that making a false statement in the affidavit may be punishable  
119 as a criminal offense.

120 (4) The family member may use an affidavit in  
121 substantially the following form to fulfill the requirements of  
122 subsection (3):

124 AFFIDAVIT UNDER SECTION 735.303, FLORIDA STATUTES, TO OBTAIN  
125 BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ... (Name of  
126 decedent)...

127 State of ....

128 County of ....

129  
130 Before the undersigned authority personally appeared ... (name of  
131 affiant) ..., of ... (residential address of affiant) ..., who has  
132 been sworn and says the following statements are true:

133 (a) The affiant is (initial one of the following  
134 responses):

135 .... The surviving spouse of the decedent.

136 .... A surviving adult child of the decedent, and the  
137 decedent left no surviving spouse.

138 .... A surviving adult descendant of the decedent, and the  
139 decedent left no surviving spouse and no surviving adult child.

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140 .... A surviving parent of the decedent, and the decedent  
141 left no surviving spouse, no surviving adult child, and no  
142 surviving adult descendant.

143 (b) As shown in the certified death certificate, the date  
144 of death of the decedent was ...(date of death)..., and the  
145 address of the decedent's last residence was ...(address of last  
146 residence)....

147 (c) The affiant is entitled to payment of the funds in the  
148 decedent's depository accounts and certificates of deposit held  
149 by the financial institution ...(name of financial  
150 institution).... The total amount in all qualified accounts held  
151 by the decedent in all financial institutions known to the  
152 affiant does not exceed an aggregate total of \$1,000. The  
153 affiant requests full payment from the financial institution.

154 (d) A personal representative has not been appointed to  
155 administer the decedent's estate, and no probate proceeding or  
156 summary administration procedure has been commenced with respect  
157 to the estate.

158 (e) The affiant has no knowledge of any last will and  
159 testament or other document or agreement relating to the  
160 distribution of the decedent's estate.

161 (f) The payment of the funds constitutes a full release  
162 and discharge of the financial institution regarding the amount  
163 paid.

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164         (g) The affiant understands that he or she is personally  
165         liable to the creditors of the decedent and other persons  
166         rightfully entitled to the funds under the Florida Probate Code,  
167         to the extent the amount paid exceeds the amount properly  
168         attributable to the affiant's share.

169         (h) The affiant understands that making a false statement  
170         in this affidavit may be punishable as a criminal offense.

171  
172                                                                 By ... (signature of Affiant) ...  
173

174         Sworn to and subscribed before me this .... day of  
175         .... by ... (name of Affiant) ..., who is personally  
176         known to me or produced .... as identification, and  
177         did take an oath.

178  
179         ... (Signature of Notary Public - State of Florida) ...  
180         ... (Print, Type, or Stamp Commissioned Name of Notary  
181         Public) ...

182         My commission expires: ... (date of expiration of  
183         commission) ...

184         (5) The financial institution is not required to determine  
185         whether the contents of the sworn affidavit are truthful. The  
186         payment of the funds by the financial institution to the affiant  
187         constitutes the financial institution's full release and  
188         discharge regarding the amount paid. A person does not have a



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189 right or cause of action against the financial institution for  
190 taking an action, or for failing to take an action, in  
191 connection with the affidavit or the payment of the funds.

192 (6) The family member who withdraws the funds under this  
193 section is personally liable to the creditors of the decedent  
194 and any other person rightfully entitled to the funds under the  
195 Florida Probate Code, to the extent the amount paid exceeds the  
196 amount properly attributable to the family member's share.

197 (7) The financial institution shall maintain a copy or an  
198 image of the affidavit in accordance with its customary  
199 retention policies. If a surviving spouse or descendant of the  
200 decedent requests a copy of the affidavit during such time, the  
201 financial institution may provide a copy of the affidavit to the  
202 requesting surviving spouse or descendant of the decedent.

203 (8) In addition to any other penalty provided by law, a  
204 person who knowingly makes a false statement in a sworn  
205 affidavit given to a financial institution to receive a  
206 decedent's funds under this section commits theft, punishable as  
207 provided in s. 812.014.

208 Section 3. Section 735.304, Florida Statutes, is created  
209 to read:

210 735.304 Disposition without administration of intestate  
211 property in small estates.-

212 (1) No administration shall be required or formal  
213 proceedings instituted upon the estate of a decedent who has

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214 died intestate leaving only personal property exempt under the  
215 provisions of s. 732.402, personal property exempt from the  
216 claims of creditors under the Florida Constitution, and  
217 nonexempt personal property the value of which does not exceed  
218 the sum of \$10,000 and the amount of preferred funeral expenses  
219 and reasonable and necessary medical and hospital expenses of  
220 the last 60 days of the last illness, provided the decedent has  
221 been deceased for more than 1 year and no administration of the  
222 decedent's estate is pending in this state or has been  
223 previously granted.

224 (2) Any heir at law of the decedent entitled to a share of  
225 the intestate estate pursuant to s. 732.102 or s. 732.103 may by  
226 affidavit request distribution of assets of the decedent through  
227 informal application under this section. The affidavit must be  
228 signed and verified by the surviving spouse, if any, and any  
229 heirs at law, except that joinder in the affidavit is not  
230 required of an heir who will receive a full intestate share  
231 under the proposed distribution of the personal property. Before  
232 the filing of the affidavit, the affiant must make a diligent  
233 search and reasonable inquiry for any known or reasonably  
234 ascertainable creditors, and the proposed distribution must make  
235 provision for payment of those creditors to the extent that  
236 assets are available or the creditors must consent to the  
237 proposed distribution. The affidavit must be served in the  
238 manner of formal notice upon all heirs at law who have not

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239 joined in the affidavit; upon all known or reasonably  
240 ascertainable creditors of the decedent; and, if the decedent at  
241 the time of death was over the age of 55 years of age, upon the  
242 Agency for Health Care Administration.

243 (3) If the court is satisfied that subsection (1) is  
244 applicable and the affidavit filed by the heir at law meets the  
245 requirements of subsection (2), the court, by letter or other  
246 writing under the seal of the court, may authorize the payment,  
247 transfer, disposition, delivery, or assignment of the tangible  
248 or intangible personal property to those persons entitled.

249 (a) Any individual, corporation, or other person paying,  
250 transferring, delivering, or assigning personal property under  
251 the authorization shall be forever discharged from liability  
252 thereon.

253 (b) Bona fide purchasers for value from those to whom  
254 personal property of the decedent has been paid, transferred,  
255 delivered, or assigned shall take the property free of all  
256 claims of creditors of the decedent and all rights of the  
257 surviving spouse and all other beneficiaries or heirs at law of  
258 the decedent.

259 (c) Personal property of the decedent that is not exempt  
260 from claims of creditors and that remains in the possession of  
261 those to whom it has been paid, delivered, transferred, or  
262 assigned shall continue to be liable for claims against the  
263 decedent until barred as provided in the Florida Probate Code.

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264 Any known or reasonably ascertainable creditor who did not  
265 consent to the proposed distribution and for whom provision for  
266 payment was not made may enforce the claim and, if the creditor  
267 prevails, shall be awarded costs, including reasonable attorney  
268 fees, against those who joined in the affidavit.

269 (d) Recipients of the decedent's personal property under  
270 this section shall be personally liable for a pro rata share of  
271 all lawful claims against the estate of the decedent, but only  
272 to the extent of the value on the date of distribution of the  
273 personal property actually received by each recipient, exclusive  
274 of the property exempt from claims of creditors under the  
275 constitution and statutes of Florida.

276 (e) Except as otherwise provided in s. 733.710, after 2  
277 years from the death of the decedent, neither the decedent's  
278 estate nor those to whom it may be distributed shall be liable  
279 for any claim against the decedent, unless within that time  
280 proceedings have been taken for the enforcement of the claim.

281 (f) Any heir or devisee of the decedent who was lawfully  
282 entitled to share in the estate but who was not included in the  
283 distribution under this section may enforce all rights in  
284 appropriate proceedings against those who signed the affidavit  
285 or received distribution of personal property and, if  
286 successful, shall be awarded costs including reasonable attorney  
287 fees as in chancery actions.

288 Section 4. This act shall take effect July 1, 2020.

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**T I T L E   A M E N D M E N T**  
Remove everything before the enacting clause and insert:  
An act relating to bank property of deceased account  
holders; amending s. 655.059, F.S.; specifying that a  
financial institution is not prohibited from  
disclosing specified information and providing copies  
of specified affidavits to certain persons relating to  
deceased account holders; creating s. 735.303, F.S.;  
providing definitions; authorizing a financial  
institution to pay funds on deposit in certain  
accounts to a specified family member of a decedent  
without any court proceeding, order, or judgment under  
certain circumstances; requiring the family member to  
provide the financial institution a certified copy of  
the decedent's death certificate and a specified  
affidavit in order to receive the funds; providing an  
affidavit form that the family member may use;  
providing that the financial institution has no duty  
to make certain determinations; specifying that a  
person does not have a right or cause of action  
against a financial institution for certain actions or  
for failing to take certain actions; providing  
liability for the family member who withdraws funds;

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314 requiring a financial institution to maintain a copy  
315 or image of the affidavit for a specified time;  
316 authorizing the financial institution to provide  
317 copies of the affidavit to certain persons; providing  
318 a criminal penalty; creating s. 735.304, F.S.;  
319 providing that specified types of personal property  
320 are not subject to probate administration under  
321 certain circumstances; providing that specified  
322 persons may request distribution of a decedent's  
323 assets by affidavit filed with a court under certain  
324 circumstances; providing requirements for content of  
325 the affidavit and service of the affidavit on  
326 specified persons; requiring certain actions relating  
327 to the decedent's creditors; authorizing the court to  
328 approve the affidavit and payment of personal property  
329 under certain circumstances; providing certain bona  
330 fide purchasers protection from specified claims of  
331 creditors; providing for liability against certain  
332 personal property for a specified time; providing for  
333 liability of recipients of the decedent's personal  
334 property under certain circumstances; providing a  
335 limitation on liability of the decedent's estate and  
336 recipients of the estate under certain circumstances;  
337 providing for the award of costs and reasonable

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338 attorney fees under certain circumstances; providing  
339 an effective date.