

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1439 Bank Property of Deceased Account Holders
SPONSOR(S): Commerce Committee, Insurance & Banking Subcommittee, Yarborough
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 380

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Hinshelwood	Cooper
2) Commerce Committee	20 Y, 0 N, As CS	Hinshelwood	Hamon

SUMMARY ANALYSIS

Probate is a court-supervised process that ensures a deceased person's (decedent's) debts are paid in an orderly fashion and that the rightful beneficiaries, whether determined according to a will or by default rules of succession, receive the property to which they are entitled. Assets subject to probate are those that were owned in the decedent's sole name at death or that were owned by the decedent and one or more co-owners but lacked a provision for automatic succession of ownership at death. Florida has two types of probate administration: formal administration for estates of any size and summary administration for estates generally under \$75,000. Additionally, Florida has an abbreviated process for distributing small estates that consist of only personal property, such as money.

Under the Florida Disposition of Unclaimed Property Act, checking or savings accounts or certificates of deposit that remain dormant for five years are presumed unclaimed and must be turned over to the Department of Financial Services (DFS), which maintains a website at which members of the public can search for unclaimed property to which they may be entitled. A deceased owner's beneficiaries may claim the property by filing an affidavit with the DFS (no court order required) if all of the unclaimed property held by the DFS on behalf of the owner has an aggregate value of \$10,000 or less and no probate proceeding is pending.

The bill authorizes certain family members of a decedent to present a sworn affidavit and certified death certificate to a financial institution in Florida and receive up to \$1,000 from "qualified accounts" (depository accounts or certificates of deposit held in the sole name of the decedent without a pay-on-death or any other survivor designation) if the total amount of the combined funds in all qualified accounts at that financial institution is less than \$1,000 and if at least six months have passed since the decedent's death. No court proceeding is needed. The affiant (a person who swears to an affidavit) must attest that a personal representative has not been appointed to administer the decedent's estate, that no formal or summary probate proceedings has been commenced, and that the affiant has no knowledge of the existence of any will or other document relating to the distribution of the decedent's estate. The financial institution is not required to determine whether the contents of the sworn affidavit are truthful, and it is fully released and discharged from further liability for the amount paid.

The bill creates a process by which a beneficiary of an intestate decedent (a person who died without a will) may file an affidavit with the court to request distribution of certain assets of the decedent. This process is available if the intestate decedent left only personal property that is exempt from probate proceedings, personal property that is constitutionally protected from creditors' claims, and nonexempt personal property valued at less than the sum of \$10,000 and certain funeral and medical expenses. The decedent must have died more than one year prior, and no Florida probate proceeding may be pending.

The bill has no fiscal impact on state government and an indeterminate fiscal impact on local governments and the private sector.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulation of Depository Financial Institutions

The U.S. dual banking system allows commercial banks to become chartered (organized) under either federal or state law:

- National banks are chartered under federal law, i.e., the National Bank Act.¹ Their primary federal regulator is the Office of the Comptroller of the Currency, an independent agency within the U.S. Department of the Treasury.
- State-chartered banks are chartered under the laws of the state in which the bank is headquartered. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System. The primary federal regulator for non-members is the Federal Deposit Insurance Corporation (FDIC).²

In addition to having a federal regulator, state-chartered banks are regulated by their chartering state. In Florida, the state regulatory agency for financial institutions is the Office of Financial Regulation (OFR).³ The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes (FI Codes) and the rules promulgated thereunder.⁴ The OFR also ensures that Florida-chartered financial institutions comply with state and applicable federal requirements for safety and soundness.⁵ The OFR does not regulate federally chartered financial institutions or financial institutions chartered by other states.

Like banks, credit unions accept deposits and make loans, and can be state-chartered or federally-chartered:

- State-chartered credit unions may be formed under the Florida Credit Union Act (FCUA), which became law in 1980.⁶ The FCUA provides that “[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition.”⁷ State-chartered credit unions have both a state regulator, the OFR, and a federal regulator, the National Credit Union Association (NCUA).
- Federally-chartered credit unions are chartered under the Federal Credit Union Act of 1934⁸ and are regulated by the NCUA.

The FI Codes currently provide that “[t]he books and records pertaining to . . . the deposit accounts . . . of depositors . . . [and] members . . . of any financial institution shall be kept confidential by the financial

¹The National Bank Act of 1964 (12 U.S.C. § 24 Seventh) gives enumerated powers and “all such incidental powers as shall be necessary to carry on the business of banking” to nationally chartered banks. To prevent inconsistent or intrusive state regulation from impairing the national system, Congress provided: “No national bank shall be subject to any visitatorial powers except as authorized by Federal law.” *Id.* at § 484(a).

²12 U.S.C. § 1813(q).

³s. 20.121(3)(a)2., F.S.

⁴Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

⁵While the FI Codes do not specifically define “safety and soundness,” the FI Codes define “unsafe and unsound practice” as “any practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.” See s. 655.005(1)(y), F.S. For a discussion of the FDIC’s approach to unsafe or unsound practices, see FDIC’s Risk Management Manual of Examination Policies, Section 15.1, at: <https://www.fdic.gov/regulations/safety/manual/section15-1.pdf> (last visited Jan. 24, 2020).

⁶ Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.

⁷ s. 657.003, F.S.

⁸ Public Law 73-467, codified at 12 U.S.C. § 1751 *et seq.*

institution and its directors, officers, and employees and may not be released except upon express authorization of the account holder as to her or his own accounts”⁹ The FI Codes provide limited exceptions to the confidential protection given such information.¹⁰ One such exception states that a financial institution is not prohibited from disclosing financial information as authorized by the Gramm-Leach-Bliley Act,¹¹ as set forth in 15 U.S.C. s. 6802 relating to obligations with respect to disclosures of personal information.¹²

Probate Process in Florida

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent’s debts, and distributing the decedent’s assets to his or her beneficiaries.¹³ Probate proceedings are governed by The Florida Probate Code found in chs. 731 – 735, F.S., and the Florida Probate Rules of court.¹⁴ The probate process ensures that the decedent’s debts are paid in an orderly fashion and that the rightful beneficiaries, whether determined according to a will or by default rules of succession, receive the property to which they are entitled.

Assets subject to probate are those that were owned in the decedent’s sole name at death or that were owned by the decedent and one or more co-owners but lacked a provision for automatic succession of ownership at death.¹⁵ The following are examples to illustrate common probate and non-probate assets:¹⁶

- A bank account or investment account in the sole name of a decedent is a probate asset; but a bank account or investment account owned by the decedent and payable on death or transferable on death to another, or held jointly with rights of survivorship with another, is not a probate asset.
- A life insurance policy, annuity contract or individual retirement account that is payable to a specific beneficiary is not a probate asset; but a life insurance policy, annuity contract, or individual retirement account payable to the decedent’s estate is a probate asset.
- Real estate titled in the sole name of the decedent, or in the name of the decedent and another person as tenants in common, is a probate asset (unless it is homestead property); but real estate titled in the name of the decedent and one or more other persons as joint tenants with rights of survivorship is not a probate asset.
- Property owned by spouses as tenants by the entirety is not a probate asset on the death of the first spouse to die; it goes automatically to the surviving spouse.

There are two types of probate administration in Florida: formal administration and summary administration.

Formal Administration

Any interested person¹⁷ may petition the court to begin administration of the decedent’s estate.¹⁸ Venue is proper in the county where the decedent was domiciled.¹⁹ If the decedent left a will, the custodian of

⁹ S. 655.059(2)(b), F.S.

¹⁰ *Id.*

¹¹ Pub. L. 106-102.

¹² S. 655.059(2)(b)1., F.S.

¹³ The Florida Bar, *Consumer Pamphlet: Probate in Florida*, <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited Jan. 24, 2020).

¹⁴ Available at <https://www-media.floridabar.org/uploads/2020/01/Probate-Rules-01-01-20.pdf> (last visited Jan. 24, 2020).

¹⁵ The Florida Bar, *supra* note 13.

¹⁶ *Id.*

¹⁷ “Interested person” is defined as “any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent’s estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor’s estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.” S. 731.201(23), F.S.

¹⁸ S. 733.202, F.S.

¹⁹ S. 733.101(1), F.S.

the will must deposit the original copy of the will with the clerk of the court having venue of the decedent's estate within 10 days of receiving information that the decedent died.²⁰

The probate proceedings are presided over by a circuit court judge. The judge will determine whether the decedent's will, if any, is valid. If the decedent had no will or the will is invalid, the decedent is said to have died intestate. The estate will be administered by a personal representative who is a fiduciary appointed by the court.²¹ If the decedent had a valid will that named a person to serve as the personal representative, the court will appoint the named person so long as that person is qualified to serve as such.²² If the decedent did not leave a will, the surviving spouse is given first preference to serve as the personal representative.²³

The judge will issue letters of administration in order to grant authority to the personal representative to act on behalf of the decedent's estate.²⁴ It is recommended that a personal representative engage a qualified attorney to assist in the administration of the decedent's probate estate.²⁵ Many legal issues arise, even in the simplest probate estate administration, and most of these issues will be novel and unfamiliar to non-attorneys.²⁶ The attorney for the personal representative advises the personal representative on the rights and duties under the law, and represents the personal representative in probate estate proceedings.²⁷ The attorney for the personal representative is not the attorney for any of the beneficiaries of the decedent's probate estate.²⁸

The personal representative must:²⁹

- Identify, gather, value, and safeguard the decedent's probate assets.
- Publish a notice to creditors in a local newspaper in order to give notice to potential claimants to file claims in the manner required by law.
- Serve a notice of administration to provide information about the probate estate administration and notice of the procedures required to be followed by those having any objection to the administration of the decedent's probate estate.
- Conduct a diligent search to locate known or reasonably ascertainable creditors, and notify these creditors of the time by which their claims must be filed.
- Object to improper claims and defend suits brought on such claims.
- Pay valid claims.
- File tax returns and pay any taxes properly due.
- Employ professionals to assist in the administration of the probate estate; for example, attorneys, certified public accountants, appraisers, and investment advisers.
- Pay expenses of administering the probate estate.
- Pay statutorily required amounts to the decedent's surviving spouse or family.
- Distribute probate assets to beneficiaries.
- Close the probate estate.

The Florida Probate Code provides the order and priority of distributions from the decedent's estate. In general, the decedent's assets are used first to pay the cost of the probate proceeding; then assets are used to pay the decedent's funeral expenses, followed by payment of the decedent's outstanding debts, and the remainder is distributed to the decedent's beneficiaries.³⁰

As previously noted, the personal representative must use diligent efforts to give actual notice of the probate proceeding to known or reasonably ascertainable creditors, and the personal representative

²⁰ S. 732.901(1), F.S.

²¹ Ss. 731.201(28) and 733.602, F.S.

²² See ch. 733, part III, F.S., for qualifications and disqualifications.

²³ S. 733.301(1)(b), F.S.

²⁴ S. 731.201(24), F.S.

²⁵ The Florida Bar, *supra* note 13.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*; ch. 733, parts VI-IX, F.S.

³⁰ The Florida Bar, *supra* note 13.

must publish a notice to creditors in a local newspaper in order to give notice to other potential claimants. Creditors' claims are barred unless filed in the probate proceeding within the later of three months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor.³¹ The decedent's estate, personal representative, and beneficiaries are no longer liable for any claim or cause of action against the decedent two years after the decedent's death, regardless of whether letters of administration have been issued.³² This is often referred to as the "non-claim statute".

The judge presiding over the probate proceeding will consider evidence to confirm the identities of beneficiaries who are entitled to receive property from the decedent's probate estate. A Florida resident does have the right to entirely disinherit anyone.³³ However, the decedent's surviving spouse and children may be entitled to receive assets from the decedent's probate estate, even if the decedent's will gives them nothing.³⁴ Florida law protects the decedent's surviving spouse and certain surviving children from total disinheritance.³⁵ For example:³⁶

- Homestead protection: A surviving spouse may have rights in the decedent's homestead real property.³⁷
- Elective share: A surviving spouse may have the right to claim an "elective share" from the decedent's probate estate. The elective share is, generally speaking, 30 percent of all of the decedent's assets, including any assets that are non-probate assets.³⁸
- Family allowance: A surviving spouse or the decedent's children may have the right to a family allowance to provide them with funds (up to \$18,000) before final distribution of the estate assets.³⁹
- Pretermitted spouse or children: If the decedent married, or had children, after the date of the decedent's last will, and if the decedent neglected to provide for the new spouse or children, an omitted family member may nevertheless be entitled to a share of the decedent's probate estate.⁴⁰

If a decedent left no will or if any part of the decedent's estate is not effectively disposed of by will, the decedent's property will pass to the decedent's heirs as prescribed by default rules of intestate succession.⁴¹

The intestate share of the surviving spouse is as follows:⁴²

- If there is no surviving descendant of the decedent, the entire intestate estate.
- 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 descendant, the entire intestate estate.
- If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, one-half of the intestate estate.
- 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, one-half of the intestate estate.

The part of the intestate estate not passing to the surviving spouse as described above, or the entire intestate estate if there is no surviving spouse, descends as follows:⁴³

- To the descendants of the decedent.

³¹ S. 733.702(1), F.S.

³² S. 733.710, F.S.

³³ The Florida Bar, *supra* note 13.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Art. X, s. 4, Fla. Const.; ss. 732.401 and 732.4015, F.S.

³⁸ Ch. 732, part II, F.S.

³⁹ Ss. 732.403 and 733.707(1)(e), F.S.

⁴⁰ Ss. 732.301 and 732.302, F.S.

⁴¹ S. 732.101, F.S.; ch. 732, part I, F.S.

⁴² S. 732.102, F.S.

⁴³ S. 732.103, F.S.

- If there is no descendant, to the decedent's father and mother equally, or to the survivor of them.
- If there is none of the foregoing, to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.
- If there is none of the foregoing, the estate must be divided: one-half to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:
 - To the grandfather and grandmother equally, or to the survivor of them.
 - If there is no grandfather or grandmother, to uncles and aunts and descendants of deceased uncles and aunts of the decedent.
 - If there is either no paternal kindred or no maternal kindred, the estate must go to the other kindred who survive, in the order stated above.
- If there is no kindred of either part, the whole of the property must go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

Descent of inheritance under the above intestate succession statutes must be per stirpes.⁴⁴ If property descends to the decedent's collateral kin and part of the collateral kin are of the whole blood to the decedent and the other part of the half blood, the half-blooded kin inherit only half as much as the whole-blooded kin.⁴⁵ Heirs of the decedent conceived before his or her death, but born thereafter, inherit intestate property as if they had been born in the decedent's lifetime.⁴⁶ With some exceptions, an adopted person is a descendant of the adopting parent, is one of the natural kindred of all members of the adopting parent's family, is not a descendant of his or her natural parents, and is not one of the kindred of any member of the natural parent's family or any prior adoptive parent's family.⁴⁷ A person born out of wedlock is a descendant of his or her father and is one of the natural kindred of all members of the father's family if the natural parents eventually married or if paternity has otherwise been established.⁴⁸ A natural or adoptive parent is barred from inheriting from or through a child if the natural or adoptive parent's parental rights were terminated prior to the death of the child, and the natural or adoptive parent must be treated as if the parent predeceased the child.⁴⁹

Summary Probate Administration

Summary administration is an alternative to the formal administration process that is generally faster and less costly than formal administration. For example, a personal representative is not appointed and, therefore, no fee need be paid to such a person. Additionally, the shorter process can result in lower attorney's fees. Summary administration is available only if the decedent has been dead for more than two years or if the value of the estate subject to administration in Florida (less the value of property which is exempt from the claims of creditors⁵⁰) is less than \$75,000.⁵¹ Summary administration is not available if a decedent's will specifically directs formal administration.⁵²

A petition for summary administration may be filed by any beneficiary or person nominated as personal representative in the decedent's will.⁵³ The petition must be signed and verified by any surviving spouse and any beneficiaries who will not receive a full distributive share under the proposed distribution.⁵⁴

⁴⁴ Distribution per stirpes means that the inherited property is "[p]roportionately divided between beneficiaries according to their deceased ancestor's share." BLACK'S LAW DICTIONARY 1181 (8th ed. 2004). In other words, if an estate is distributed per stirpes, individuals within each generation of the family receive an equal distribution of the estate. Distribution per stirpes differs from distribution per capita in which individuals within the same class (for example, all living descendants of the decedent) inherit equally. Distribution per capita can result in individuals within the same generation inheriting differing amounts if other members in that generation had children but predeceased the decedent.

⁴⁵ S. 732.105, F.S.

⁴⁶ S. 732.106, F.S.

⁴⁷ S. 732.108, F.S.

⁴⁸ *Id.*

⁴⁹ S. 732.1081, F.S.

⁵⁰ For example, homestead property that is protected from creditors' claims by Art. X, s. 4, Fla. Const.

⁵¹ S. 735.201(1), F.S.

⁵² *Id.*

⁵³ S. 735.203(1), F.S.

⁵⁴ *Id.*

However, any other beneficiary must be served with formal notice of the petition.⁵⁵ Once the court receives the petition for summary administration and is satisfied that the estate qualifies, the court issues an order of summary administration allowing immediate distribution of assets to the persons entitled to them.⁵⁶

If the decedent passed away more than two years before the filing of the petition for summary administration, creditors' claims do not need to be addressed in the summary administration proceeding because Florida's non-claim statute effectively bars any creditors' claims that are not brought within two years of the decedent's death.⁵⁷ If the decedent passed away less than two years before the filing of the petition for summary judgment, the petitioner is required to make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, serve a copy of the petition on those creditors, and make provision for payment for those creditors to the extent that assets are available.⁵⁸ As for those creditors who are not known or reasonably ascertainable, if proof of publication of a specified notice to creditors has been filed with the court, all claims and demands of such creditors are forever barred unless their claims are filed within three months after the first publication of the notice.⁵⁹

Those who receive a distribution of estate assets generally remain liable for claims against the decedent for two years after the date of death.⁶⁰ The following parties are entitled to receive reasonable attorney's fees and costs if they prevail in an action to enforce their claim:

- Any known or reasonably ascertainable creditor who did not receive notice and for whom provision for payment was not made.⁶¹
- Any heir or devisee⁶² of the decedent who was lawfully entitled to share in the estate but who was not included in the order of summary administration and distribution.⁶³

If the decedent owned a homestead in Florida, the heirs may not automatically have clear title such that the property can later be sold. The heirs may be required to get a court to issue an order determining homestead, which is a process that can be accomplished alongside or as part of a summary administration proceeding.⁶⁴ If the Florida homestead is the only asset in the decedent's probate estate, it will qualify for summary administration regardless of the value of the homestead because the value of Florida homestead property is not counted for purposes of determining whether the estate meets the \$75,000 limitation for summary administration.

Disposition of Personal Property Without Administration

Disposition of personal property without administration is yet another alternative to the formal administration process and is a more abbreviated process than summary administration.⁶⁵ It is available only if the decedent's probate estate consists solely of the following:⁶⁶

- Personal property classified as exempt under the provisions of s. 732.402, F.S., such as household furnishings up to a net value of \$20,000 and two vehicles;
- Personal property exempt from the claims of creditors under the Florida Constitution, such as personal property valued at \$1,000 or less;⁶⁷ and
- Non-exempt personal property valued at less than the sum of:
 - The amount of preferred funeral expenses, and

⁵⁵ *Id.*

⁵⁶ S. 735.206(3), F.S.

⁵⁷ S. 733.710, F.S.

⁵⁸ S. 735.206(2), F.S.

⁵⁹ S. 735.2063, F.S.

⁶⁰ S. 735.206(4)(d)-(f), F.S.

⁶¹ S. 735.206(4)(d), F.S.

⁶² "Devisee" means "[a] recipient of property by will." BLACK'S LAW DICTIONARY 484 (8th ed. 2004).

⁶³ S. 735.206(4)(g), F.S.

⁶⁴ The value of homestead property is not counted for purposes of determining whether the decedent's probate estate falls within the cap of \$75,000 for summary administration.

⁶⁵ S. 735.301, F.S.

⁶⁶ S. 735.301(1), F.S.

⁶⁷ Art. X, s. 4(a)(2), Fla. Const.

- The amount of reasonable and necessary medical and hospital expenses incurred in the last 60 days of the decedent's final illness.

Personal property is anything that is movable (e.g., money and jewelry) or intangible (e.g., stocks and bonds).⁶⁸

To initiate this abbreviated process, any interested party may file an informal application by affidavit, letter, or otherwise with the court.⁶⁹ If the court is satisfied that the decedent's assets meet the criteria for this abbreviated process, the court may, by letter or other writing under the seal of the court, authorize the payment, transfer, or disposition of the personal property, tangible or intangible, belonging to the decedent to those persons entitled.⁷⁰ Any person, firm, or corporation paying, delivering, or transferring property under the court's authorization is forever discharged from liability thereon.⁷¹

Escheated and Unclaimed Property

When a person dies leaving an estate without being survived by any person entitled to a part of it, that part reverts to the state.⁷² Such property is said to "escheat to the state".⁷³ Property that escheats must be sold as provided in the Florida Probate Rules and the proceeds paid to Florida's Chief Financial Officer, who heads the Department of Financial Services (DFS), and deposited in the State School Fund.⁷⁴ A person claiming to be entitled to the proceeds may, within 10 years after the payment to the Chief Financial Officer, petition the court to assert entitlement to the proceeds.⁷⁵ If no claim is timely asserted, the state's right to the proceeds becomes absolute.⁷⁶

Similarly, abandoned and unclaimed property must be turned over to the DFS under the Florida Disposition of Unclaimed Property Act (Act). Under the Act, the Division of Unclaimed Property, a division within the DFS, is responsible for receiving abandoned property, attempting to locate the rightful owner, and returning the property or proceeds to the owner. The Act protects the interests of missing owners of property while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. There is no statute of limitations in the Act for an owner's claim; the owner may claim his or her property at any time and at no cost.

Generally, all intangible property, including any income thereon less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or distributable, unless otherwise provided in the Act.⁷⁷ For particular kinds of property, the Act provides varying time periods to trigger a finding that such property is presumed unclaimed and must be turned over to the DFS. For example, the presumption of unclaimed property arises for:

- *Traveler's checks* 15 years after its issuance if, within that time, the owner has not communicated in writing with the issuer concerning it or otherwise indicated an interest in it.⁷⁸
- *Money orders* 7 years after its issuance if, within that time, the owner has not communicated in writing with the issuer concerning it or otherwise indicated an interest in it.⁷⁹
- *Sums payable on a check, draft, or similar instrument on which a banking or financial organization is directly liable* 5 years after it was payable, or after its issuance if payable on demand, if, within that time, the owner has not communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest in it.⁸⁰

⁶⁸ BLACK'S LAW DICTIONARY 1254 (8th ed. 2004).

⁶⁹ S. 735.301(2), F.S.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² S. 732.107, F.S.

⁷³ *Id.*

⁷⁴ *Id.*; s. 20.121(1), F.S.; s. 733.816, F.S.

⁷⁵ S. 732.107, F.S.; s. 733.816, F.S.

⁷⁶ *Id.*

⁷⁷ S. 717.102(1), F.S.

⁷⁸ S. 717.104(1), F.S.

⁷⁹ S. 717.104(2), F.S.

⁸⁰ S. 717.105, F.S.

- *Checking or savings deposits or a certificate of deposit, including interest or dividends thereon, held by a banking or financial organization 5 years after the owner last:*
 - Increased or decreased the amount of the deposit;
 - Increased or decreased the amount of another deposit with the banking or financial organization so long as the banking or financial organization communicates in writing, at the address to which communications regarding the other deposit are regularly sent, with the owner with regard to the deposit that would otherwise be presumed unclaimed;
 - Communicated with the banking or financial organization concerning the property;
 - Otherwise indicated an interest in the property;
 - Communicated in writing with the banking or financial organization concerning another relationship with such banking or financial organization; or
 - Otherwise indicated an interest concerning another relationship with such banking or financial organization so long as the banking or financial organization communicates in writing, at the address to which communications regarding the other relationship are regularly sent, with the owner with regard to the property that would otherwise be presumed unclaimed.⁸¹
- *Intangible property held by fiduciaries 5 years after it has become payable or distributable if, within that time, the owner has not increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest in it.*⁸²
- *Intangible property held by fiduciaries under trust instruments 2 years after it has become payable or distributable if, within that time, the owner has not increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest in it.*⁸³
- *Tangible and intangible property held by a banking or financial organization in a safe-deposit box 3 years after the lease or rental period on the box has expired.*⁸⁴

Holders of unclaimed property are required to file an annual report of unclaimed property with the DFS, and must transmit the unclaimed property with the report, between January 1 and May 1 of each year.⁸⁵ The report and transmittal must include all property considered unclaimed in the previous calendar year.⁸⁶ Holders of inactive accounts having a value of \$50 or more are required to use due diligence to locate and notify the apparent owners at least 60 days but not more than 120 days prior to filing the report of unclaimed property with the DFS.⁸⁷ The report of unclaimed property must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address.⁸⁸

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.⁸⁹ Any person who pays or delivers property to the DFS in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.⁹⁰ The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.⁹¹ Claims for recovery of unclaimed property may be filed by or on behalf of any person with an interest in the property.⁹² The DFS maintains a website at which members of the public can search for unclaimed property to which they may be entitled.⁹³

⁸¹ S. 717.106, F.S.

⁸² S. 717.112(1), F.S.

⁸³ S. 717.1125, F.S.

⁸⁴ S. 717.116, F.S.

⁸⁵ Ss. 717.117(3) and 717.119, F.S.

⁸⁶ *Id.*

⁸⁷ S. 717.117(4), F.S.

⁸⁸ S. 717.117(1), F.S.

⁸⁹ S. 717.1201, F.S.

⁹⁰ *Id.*

⁹¹ S. 717.117 and 717.124, F.S.

⁹² S. 717.124, F.S.

⁹³ FLTreasureHunt.gov, <https://www.fltreasurehunt.gov/> (last visited Jan. 24, 2020).

The Act provides a process for a deceased owner's beneficiaries to claim the property without an order of a probate court if all of the unclaimed property held by the DFS on behalf of the owner has an aggregate value of \$10,000 or less and no probate proceeding is pending.⁹⁴ To do so, the claimant must file with the DFS an affidavit, signed by all beneficiaries, stating that all the beneficiaries have amicably agreed among themselves upon a division of the estate and that all funeral expenses, expenses of the last illness, and any other lawful claims have been paid.⁹⁵ The claimant must provide any additional information reasonably necessary to make a determination of entitlement.⁹⁶ If the owner died testate,⁹⁷ the claim must be accompanied by a copy of the will.⁹⁸ Each person receiving property under this process is personally liable for all lawful claims against the estate of the owner, but only to the extent of the value of the property received by such person under this process, exclusive of the property exempt from claims of creditors under the constitution and laws of Florida.⁹⁹ Any heir or devisee of the owner, who was lawfully entitled to share in the property but did not receive his or her share of the property, may enforce his or her rights in appropriate proceedings against those who received the property and will be awarded costs and attorney's fees.¹⁰⁰

The DFS is required to make a determination on a claim within 90 days.¹⁰¹ If a claim is determined in favor of the claimant, the DFS must deliver or pay over to the claimant the property or the amount the DFS actually received or the proceeds, if it has been sold by the DFS.¹⁰² All proceeds from unclaimed property are deposited by the DFS into the Unclaimed Property Trust Fund.¹⁰³ The DFS is allowed to retain up to \$15 million to make prompt payment on verified claims and to cover costs incurred by the DFS in administering and enforcing the Act.¹⁰⁴ All remaining funds must be deposited into the State School Fund to be used for public education.¹⁰⁵

Filing and Disclosure of Death Certificates in Florida

The Florida Vital Statistics Act directs the Department of Health (DOH), to establish the Bureau of Vital Statistics (Bureau)¹⁰⁶ under the direction of a state registrar for the uniform and efficient registration, compilation, storage, and preservation of all vital records¹⁰⁷ in this state.¹⁰⁸ The DOH is also responsible for establishing registration districts throughout the state and appointing a local registrar of vital statistics for each registration district.

A certificate for each death or fetal death that occurs in Florida must be filed within 5 days after such death and prior to the final disposition of the dead body or fetus.¹⁰⁹ Final disposition means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.¹¹⁰ The registration of the death certificate may be submitted via the DOH's electronic death registration system to the Bureau on a form prescribed by the DOH, or to the local registrar of the district in which the death occurred.

The DOH must provide a certified copy of all or part of a death or fetal death certificate, excluding any portions that are confidential and exempt from public disclosure, to any person requesting it upon

⁹⁴ S. 717.1243, F.S.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ "Testate" means "[h]aving left a will at death." BLACK'S LAW DICTIONARY 1514 (8th ed. 2004).

⁹⁸ S. 717.1243, F.S.

⁹⁹ *Id.*

¹⁰⁰ S. 717.1243, F.S.

¹⁰¹ S. 717.124(1), F.S.

¹⁰² S. 717.124, F.S.

¹⁰³ S. 717.123, F.S.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Although the statute refers to an Office of Vital Statistics, it has been established as the Bureau of Vital Statistics within DOH.

¹⁰⁷ A vital record is defined as certificates or reports of birth, death, fetal death, marriage, dissolution of marriage, certain name changes, and data related thereto. S. 382.001(17), F.S.

¹⁰⁸ S. 382.003, F.S.

¹⁰⁹ S. 382.008, F.S.

¹¹⁰ S. 382.002(9), F.S.

receipt of a request and payment of the prescribed fee.¹¹¹ All information relating to cause of death in all death and fetal death records is confidential and exempt from public disclosure.¹¹² Additionally, social security numbers are confidential and exempt from public disclosure.¹¹³ However, 50 years after the date of death, the portions of a certificate of death which were exempt from public disclosure lose such protection, though the social security number information remains confidential and exempt.¹¹⁴ A certification of the death or fetal death certificate which includes the confidential portions, such as cause of death and social security number, may be issued only:¹¹⁵

- To the decedent's spouse or parent;
- To the decedent's child, grandchild, or sibling, if of legal age;
- To any person who provides an executed will, insurance policy, or other document that demonstrates his or her interest in the estate of the decedent;
- To any person who provides documentation that he or she is acting on behalf of any of the above-named persons;
- To any agency of the state or local government or the United States for official purposes upon approval of the DOH; or
- Upon order of any court of competent jurisdiction.

Effect of the Bill

Confidentiality of books and records

The bill amends s. 655.059, F.S., to correct the citation to the Gramm-Leach-Bliley Act and to provide additional exceptions to the general rule that a financial institution's books and records relating to deposit accounts must be kept confidential by the financial institution. The new exceptions state that a financial institution is not prohibited from:

- Disclosing the existence of and amounts on deposit in any qualified account of a decedent pursuant to s. 735.303, F.S.¹¹⁶
- Providing a copy of any affidavit delivered to the financial institution pursuant to s. 735.303, F.S, to a person authorized to receive such information.
- Disclosing the existence of and amounts on deposit in any individual account of a decedent to a petitioner that filed with the court a petition pursuant to s. 734.1025, F.S.,¹¹⁷ or s. 735.203, F.S.,¹¹⁸ or to an affiant that filed with the court an affidavit for disposition without administration pursuant to s. 735.301, F.S.,¹¹⁹ or s. 735.304, F.S.¹²⁰

Sworn affidavit provided to a financial institution in order to receive up to \$1,000 in qualified accounts

The bill creates s. 735.303, F.S., to authorize certain family members of a decedent to present a sworn affidavit to a financial institution in this state and receive up to \$1,000 from "qualified accounts", defined as depository account or certificate of deposit held by a financial institution in the sole name of the decedent without a pay-on-death or any other survivor designation. The bill does not require a court proceeding, order, or judgment in order for the family member to receive the funds. Family members authorized to present the sworn affidavit to the financial institution are as follows:

- The surviving spouse of the decedent;

¹¹¹ S. 382.025(2)(a), F.S.

¹¹² S. 382.008(6), F.S.

¹¹³ S. 119.071(5)(a)5., F.S.

¹¹⁴ *Id.*; s. 382.025(2)(b), F.S.

¹¹⁵ S. 382.025(2)(a), F.S.

¹¹⁶ Created by the bill and authorizes certain family members of a decedent to present a sworn affidavit to a financial institution in this state and receive up to \$1,000 from "qualified accounts".

¹¹⁷ Contains an abbreviated probate proceeding related to a nonresident decedent's testate estate with property not exceeding \$50,000.

¹¹⁸ Contains the process for a summary probate proceeding.

¹¹⁹ Permits a person to file an affidavit seeking court approval for disposition of certain assets without a probate proceeding.

¹²⁰ Created by the bill and provides another form of disposition of personal property without administration for intestate property in small estates.

- An adult child of the decedent if the decedent left no surviving spouse;
- An adult descendant of the decedent if the decedent left no surviving spouse and no surviving adult child; or
- A parent of the decedent if the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

The financial institution may pay the funds to the authorized family member if the total amount of the combined funds in all qualified accounts at that financial institution do not exceed an aggregate of \$1,000 and if at least six months have passed since the decedent's death.

In order to receive the funds, the authorized family member must provide to the financial institution a certified copy of the decedent's death certificate and a sworn affidavit that includes all of the following:

- A statement attesting that the affiant is the surviving spouse, adult child, adult descendant, or parent of the decedent.
 - If the affiant is an adult child of the decedent, the affidavit must attest that the decedent left no surviving spouse.
 - If the affiant is an adult descendant of the decedent, the affidavit must attest that the decedent left no surviving spouse and no surviving adult child.
 - If the affiant is a parent of the decedent, the affidavit must attest that the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.
- The date of death and the address of the decedent's last residence.
- A statement attesting that the total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of \$1,000.
- A statement acknowledging that a personal representative has not been appointed to administer the decedent's estate and attesting that no probate proceeding or summary administration procedure has been commenced with respect to the estate.
- A statement acknowledging that the affiant has no knowledge of the existence of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.
- A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid.
- A statement acknowledging that the affiant understands that he or she is personally liable to the creditors of the decedent and other persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.
- A statement acknowledging that the affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

The bill provides the substance of the sworn affidavit that would satisfy the bill's requirements. The financial institution must maintain a copy or an image of the affidavit in accordance with its customary retention policies. If a surviving spouse or descendant of the decedent requests a copy of the affidavit during such time, the financial institution may provide a copy of the affidavit to the requesting surviving spouse or descendant of the decedent.

The financial institution is not required to determine whether the contents of the sworn affidavit are truthful. The payment of the funds by the financial institution to the affiant constitutes the financial institution's full release and discharge regarding the amount paid. A person does not have a right or cause of action against the financial institution for taking an action, or for failing to take an action, in connection with the affidavit or the payment of the funds.

The authorized family member who withdraws the funds is personally liable to the creditors of the decedent and any other person rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the authorized family member's share.

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

Distribution of intestate property in small estates by filing a sworn affidavit with a court

The bill creates s. 735.304, F.S., to provide another form of disposition of personal property without administration for intestate property in small estates. It allows a beneficiary of an intestate decedent to file an affidavit with the court to request distribution of certain assets of the decedent. It is available only if the decedent's probate estate consists solely of the following:

- Personal property classified as exempt under the provisions of s. 732.402, F.S., such as household furnishings up to a net value of \$20,000 and two vehicles;
- Personal property exempt from the claims of creditors under the Florida Constitution, such as personal property valued at \$1,000 or less; and
- Non-exempt personal property valued at less than the sum of:
 - \$10,000,
 - The amount of preferred funeral expenses, and
 - The amount of reasonable and necessary medical and hospital expenses incurred in the last 60 days of the decedent's final illness.

The decedent must have died more than one year prior to the filing of the affidavit, and no Florida probate proceeding may be pending.

To initiate this process, any of the decedent's heirs at law entitled to a share of the intestate estate may file the affidavit with the court. The affidavit must be signed and verified by the surviving spouse, if any, and any heirs at law, except that joinder in the affidavit is not required of an heir who will receive a full intestate share under the proposed distribution of the personal property. Before the filing of the affidavit, the affiant must make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, and the proposed distribution must make provision for payment of those creditors to the extent that assets are available or the creditors must consent to the proposed distribution. The affidavit must be served in the manner of formal notice upon all heirs at law who have not joined in the affidavit; upon all known or reasonably ascertainable creditors of the decedent; and, if the decedent at the time of death was over the age of 55 years of age, upon the Agency for Health Care Administration.

If the court is satisfied that the decedent's estate and the affidavit filed by the heir at law meet the necessary requirements, the court, by letter or other writing under the seal of the court, may authorize the payment, transfer, disposition, delivery, or assignment of the tangible or intangible personal property to those persons entitled.

Any person paying, transferring, delivering, or assigning personal property under the authorization is forever discharged from liability thereon. Bona fide purchasers for value¹²¹ from those to whom personal property of the decedent has been paid, transferred, delivered, or assigned take the property free of all claims of creditors of the decedent and all rights of the surviving spouse and all other beneficiaries or heirs at law of the decedent.

Personal property of the decedent that is not exempt from claims of creditors and that remains in the possession of those to whom it has been paid, delivered, transferred, or assigned will continue to be liable for claims against the decedent until barred as provided in the Florida Probate Code. Any known or reasonably ascertainable creditor who did not consent to the proposed distribution and for whom provision for payment was not made may enforce the claim and, if the creditor prevails, will be awarded costs, including reasonable attorney fees, against those who joined in the affidavit.

Recipients of the decedent's personal property will be personally liable for a pro rata share of all lawful claims against the estate of the decedent, but only to the extent of the value on the date of distribution

¹²¹ Persons who in good faith provide something of value in exchange for property received.

of the personal property actually received by each recipient, exclusive of the property exempt from claims of creditors under the constitution and statutes of Florida.

With some exception, after two years from the death of the decedent, neither the decedent's estate nor those to whom it may be distributed will be liable for any claim against the decedent, unless within that time proceedings have been taken for the enforcement of the claim.

Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the distribution may enforce all rights in appropriate proceedings against those who signed the affidavit or received distribution of personal property and, if successful, will be awarded costs including reasonable attorney fees as in chancery actions.

The bill takes effect July 1, 2020.

B. SECTION DIRECTORY:

Section 1. Amends s. 655.059, F.S., relating to access to books and records; confidentiality; penalty for disclosure.

Section 2. Creates s. 735.303, F.S., relating to payment to successor without court proceedings.

Section 3. Creates s. 735.304, F.S., relating to disposition without administration of intestate property in small estates.

Section 3. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Clerks of court may charge filing fees for the process created in the bill for disposition of personal property without administration for intestate property in small estates.

2. Expenditures:

There may be additional expenditures for courts to administer the process created in the bill for disposition of personal property without administration for intestate property in small estates.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact on the private sector is indeterminate. The portion of the bill providing a process for receiving up to \$1,000 in qualified accounts from a financial institution may prevent families from incurring court costs and attorney fees to probate the decedent's estate in order to obtain the funds prior to the funds being given to the state as unclaimed property after five years. However, the authorized family member who withdraws the funds is personally liable to any person rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the authorized family member's share. A decedent's family may still incur court costs and attorney fees following the withdrawal of funds if there is subsequent disagreement or confusion as to how much each family member is owed or if the person who withdrew funds does not

remit money to those rightfully entitled to the funds. Additionally, unlike in the summary administration process or the unclaimed property process, an heir or devisee rightfully owed money that he or she did not receive after funds were withdrawn from the financial institution will not be awarded attorney's fees and costs in an action to enforce the claim.¹²²

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the portion of the bill providing a process for receiving up to \$1,000 in qualified accounts from a financial institution, there is no attestation that the value of the decedent's entire estate is under \$1,000. Therefore, it is possible that the funds which a financial institution can release pursuant to that process may be part of a larger probate estate that is otherwise subject to formal or summary administration proceedings under the Florida Probate Code.

The bill's prioritization of individuals defined as a "family member" who can receive the decedent's funds directly from a financial institution does not track the prioritization of the decedent's heirs as prescribed by the rules of intestate succession found in part I of ch. 732, F.S.

Unlike in the summary administration process or the unclaimed property process, an heir or devisee rightfully owed money that he or she did not receive after funds were withdrawn from qualified accounts at a financial institution will not be awarded attorney's fees and costs in an action to enforce the claim.¹²³

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Amends the process by which a family member of a decedent who died intestate may provide an affidavit to a financial institution in Florida and receive funds from the decedent's qualified accounts at the financial institution. Specifically, the committee substitute makes the following changes:
 - Moves the statute from the financial institutions codes to the Florida Probate Code.

¹²² Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in an order of summary administration and distribution is entitled to receive reasonable attorney's fees and costs if they prevail in an action to enforce their claim. S. 735.206(4)(g), F.S. Similarly, the process for a beneficiary to receive up to \$10,000 by filing an unclaimed property affidavit provides that any heir or devisee of the owner, who was lawfully entitled to share in the property but did not receive his or her share of the property, may enforce his or her rights in appropriate proceedings against those who received the property and will be awarded costs and attorney's fees. S. 717.1243, F.S.

¹²³ See *supra* note 116.

- Lowers from \$10,000 to \$1,000 the aggregate amount of qualified accounts that may be withdrawn from the financial institution.
- Allows the financial institution to pay the funds to the affiant after six months rather than two years.
- Removes the requirement that the affiant provide notarized letters of other family members consenting to the affiant's withdrawal of funds.
- Adds that the affiant is personally liable to creditors and other persons rightfully entitled to the funds.
- Requires the financial institution to retain a copy of the affidavit in accordance with its customary retention policies rather than seven years.
- Creates a process by which a beneficiary of an intestate decedent may file an affidavit with the court to request distribution of certain assets of the decedent. This process is available if the intestate decedent left only personal property that is exempt from probate proceedings, personal property that is constitutionally protected from creditors' claims, and nonexempt personal property valued at less than the sum of \$10,000 and certain funeral and medical expenses. The decedent must have died more than one year prior to the filing of the affidavit, and no Florida probate proceeding may be pending or have been previously granted.
- Makes other technical changes.

On February 13, 2020, the Commerce Committee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Permits a financial institution to disclose the existence of and amounts on deposit in an individual account of a decedent when the decedent's assets are the subject of a summary probate proceeding, a proceeding related to a nonresident decedent's testate estate, or an affidavit seeking court approval for disposition of the assets without a probate proceeding.
- Removes language that was intended to prohibit use of the "disposition without administration of intestate property in small estates" process if administration had been previously granted.

The staff analysis has been updated to reflect the committee substitute.