

1 A bill to be entitled
2 An act relating to bank property of deceased account
3 holders; amending s. 655.059, F.S.; specifying that a
4 financial institution is not prohibited from
5 disclosing specified information and providing copies
6 of specified affidavits to certain persons relating to
7 deceased account holders; creating s. 735.303, F.S.;
8 providing definitions; authorizing a financial
9 institution to pay funds on deposit in certain
10 accounts to a specified family member of a decedent
11 without any court proceeding, order, or judgment under
12 certain circumstances; requiring the family member to
13 provide the financial institution a certified copy of
14 the decedent's death certificate and a specified
15 affidavit in order to receive the funds; providing an
16 affidavit form that the family member may use;
17 providing that the financial institution has no duty
18 to make certain determinations; specifying that a
19 person does not have a right or cause of action
20 against a financial institution for taking certain
21 actions or for failing to take certain actions;
22 providing liability for the family member who
23 withdraws funds; requiring a financial institution to
24 maintain a copy or image of the affidavit for a
25 specified time; authorizing the financial institution

26 | to provide copies of the affidavit to certain persons;
27 | providing penalties; creating s. 735.304, F.S.;
28 | providing that specified types of personal property
29 | are not subject to probate administration or formal
30 | proceedings under certain circumstances; providing
31 | that specified persons may request distribution of a
32 | decedent's assets by affidavit through an informal
33 | application under certain circumstances; providing
34 | requirements for such affidavits; requiring certain
35 | actions relating to the decedent's creditors;
36 | providing requirements for service of the affidavit on
37 | specified persons; authorizing the court to approve
38 | the payment, transfer, disposition, delivery, or
39 | assignment of personal property under certain
40 | circumstances; providing discharge from liability for
41 | certain individuals and entities under certain
42 | circumstances; providing certain bona fide purchasers
43 | protection from specified claims of creditors and from
44 | rights of spouses, beneficiaries, and heirs of
45 | decedents; providing for liability against certain
46 | personal property for a specified time; authorizing
47 | specified creditors to enforce claims and to be
48 | awarded costs under certain circumstances; providing
49 | liability of recipients of the decedent's personal
50 | property under certain circumstances; providing a

51 limitation on liability of the decedent's estate and
52 recipients of the estate under certain circumstances;
53 providing an exception; authorizing specified heirs or
54 devisees of a decedent to enforce all rights in
55 proceedings under certain circumstances; providing for
56 the award of costs and reasonable attorney fees under
57 certain circumstances; providing an effective date.
58

59 Be It Enacted by the Legislature of the State of Florida:
60

61 Section 1. Paragraph (b) of subsection (2) of section
62 655.059, Florida Statutes, is amended to read:

63 655.059 Access to books and records; confidentiality;
64 penalty for disclosure.—

65 (2)

66 (b) The books and records pertaining to trust accounts and
67 the deposit accounts and loans of depositors, borrowers,
68 members, and stockholders of any financial institution shall be
69 kept confidential by the financial institution and its
70 directors, officers, and employees and may not be released
71 except upon express authorization of the account holder as to
72 her or his own accounts, loans, or voting rights. However,
73 information relating to any loan made by a financial institution
74 may be released without the borrower's authorization in a manner
75 prescribed by the board of directors for the purpose of meeting

76 | the needs of commerce and for fair and accurate credit
77 | information. Information may also be released, without the
78 | authorization of a member or depositor but in a manner
79 | prescribed by the board of directors, to verify or corroborate
80 | the existence or amount of a customer's or member's account when
81 | such information is reasonably provided to meet the needs of
82 | commerce and to ensure accurate credit information. In addition,
83 | a financial institution, affiliate, and its subsidiaries, and
84 | any holding company of the financial institution or subsidiary
85 | of such holding company, may furnish to one another information
86 | relating to their customers or members, subject to the
87 | requirement that each corporation receiving information that is
88 | confidential maintain the confidentiality of such information
89 | and not provide or disclose such information to any unaffiliated
90 | person or entity. Notwithstanding this paragraph, this
91 | subsection does not prohibit:

92 | 1. A financial institution from disclosing financial
93 | information as referenced in this subsection as authorized ~~by~~
94 | ~~Pub. L. No. 106-102 (1999), as set forth in 15 U.S.C. s. 6802~~
95 | (2010) U.S.C.A. s. 6802, as amended.

96 | 2. The Florida office of the international banking
97 | corporation or international trust entity from sharing books and
98 | records under this subsection with the home-country supervisor
99 | in accordance with subsection (1).

100 | 3. A financial institution from disclosing the existence

101 of and amounts on deposit in any qualified account of a decedent
102 pursuant to s. 735.303, and from providing a copy of any
103 affidavit delivered to the financial institution pursuant
104 thereto, to a person authorized to receive such information
105 under s. 735.303.

106 Section 2. Section 735.303, Florida Statutes, is created
107 to read:

108 735.303 Payment to successor without court proceedings.-

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

110 (a) "Family member" means:

111 1. The surviving spouse of the decedent;

112 2. An adult child of the decedent if the decedent left no
113 surviving spouse;

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

116 4. A parent of the decedent if the decedent left no
117 surviving spouse, no surviving adult child, and no surviving
118 adult descendant.

119 (b) "Qualified account" means a depository account or
120 certificate of deposit held by a financial institution in the
121 sole name of the decedent without a pay-on-death or any other
122 survivor designation.

123 (2) A financial institution in this state may pay to the
124 family member of a decedent, without any court proceeding,
125 order, or judgment, the funds on deposit in all qualified

126 accounts of the decedent at the financial institution if the
127 total amount of the combined funds in the qualified accounts at
128 the financial institution do not exceed an aggregate total of
129 \$1,000. The financial institution may not make such payment
130 earlier than 6 months after the date of the decedent's death.

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

135 (a) A statement attesting that the affiant is the
136 surviving spouse, adult child, adult descendant, or parent of
137 the decedent.

138 1. If the affiant is an adult child of the decedent, the
139 affidavit must attest that the decedent left no surviving
140 spouse.

141 2. If the affiant is an adult descendant of the decedent,
142 the affidavit must attest that the decedent left no surviving
143 spouse and no surviving adult child.

144 3. If the affiant is a parent of the decedent, the
145 affidavit must attest that the decedent left no surviving
146 spouse, no surviving adult child, and no surviving adult
147 descendant.

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

150 (c) A statement attesting that the total amount in all

151 qualified accounts held by the decedent in all financial
152 institutions known to the affiant does not exceed an aggregate
153 total of \$1,000.

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

159 (e) A statement acknowledging that the affiant has no
160 knowledge of the existence of any last will and testament or
161 other document or agreement relating to the distribution of the
162 decedent's estate.

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

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

171 (h) A statement acknowledging that the affiant understands
172 that making a false statement in the affidavit may be punishable
173 as a criminal offense.

174 (4) The family member may use an affidavit in
175 substantially the following form to fulfill the requirements of

176 subsection (3):

177

178 AFFIDAVIT UNDER SECTION 735.303, FLORIDA STATUTES, TO OBTAIN

179 BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ... (Name of

180 decedent)...

181 State of

182 County of

183

184 Before the undersigned authority personally appeared ... (name of

185 affiant)..., of ... (residential address of affiant)..., who has

186 been sworn and says the following statements are true:

187 (a) The affiant is (initial one of the following

188 responses):

189 The surviving spouse of the decedent.

190 A surviving adult child of the decedent, and the

191 decedent left no surviving spouse.

192 A surviving adult descendant of the decedent, and the

193 decedent left no surviving spouse and no surviving adult child.

194 A surviving parent of the decedent, and the decedent

195 left no surviving spouse, no surviving adult child, and no

196 surviving adult descendant.

197 (b) As shown in the certified death certificate, the date

198 of death of the decedent was ... (date of death)..., and the

199 address of the decedent's last residence was ... (address of last

200 residence)....

201 (c) The affiant is entitled to payment of the funds in the
 202 decedent's depository accounts and certificates of deposit held
 203 by the financial institution ...(name of financial
 204 institution).... The total amount in all qualified accounts held
 205 by the decedent in all financial institutions known to the
 206 affiant does not exceed an aggregate total of \$1,000. The
 207 affiant requests full payment from the financial institution.

208 (d) A personal representative has not been appointed to
 209 administer the decedent's estate, and no probate proceeding or
 210 summary administration procedure has been commenced with respect
 211 to the estate.

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

215 (f) The payment of the funds constitutes a full release
 216 and discharge of the financial institution regarding the amount
 217 paid.

218 (g) The affiant understands that he or she is personally
 219 liable to the creditors of the decedent and other persons
 220 rightfully entitled to the funds under the Florida Probate Code,
 221 to the extent the amount paid exceeds the amount properly
 222 attributable to the affiant's share.

223 (h) The affiant understands that making a false statement
 224 in this affidavit may be punishable as a criminal offense.
 225

226 By ... (signature of Affiant)...

227
 228 Sworn to and subscribed before me this day of
 229 by ... (name of Affiant) ..., who is personally
 230 known to me or produced as identification, and
 231 did take an oath.

232
 233 ... (Signature of Notary Public - State of Florida)...
 234 ... (Print, Type, or Stamp Commissioned Name of Notary
 235 Public)...

236 My commission expires: ... (date of expiration of
 237 commission)...

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

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

251 (7) The financial institution shall maintain a copy or an
252 image of the affidavit in accordance with its customary
253 retention policies. If a surviving spouse or descendant of the
254 decedent requests a copy of the affidavit during such time, the
255 financial institution may provide a copy of the affidavit to the
256 requesting surviving spouse or descendant of the decedent.

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

262 Section 3. Section 735.304, Florida Statutes, is created
263 to read:

264 735.304 Disposition without administration of intestate
265 property in small estates.—

266 (1) No administration shall be required or formal
267 proceedings instituted upon the estate of a decedent who has
268 died intestate leaving only personal property exempt under the
269 provisions of s. 732.402, personal property exempt from the
270 claims of creditors under the Florida Constitution, and
271 nonexempt personal property the value of which does not exceed
272 the sum of \$10,000 and the amount of preferred funeral expenses
273 and reasonable and necessary medical and hospital expenses of
274 the last 60 days of the last illness, provided the decedent has
275 been deceased for more than 1 year and no administration of the

276 decedent's estate is pending in this state or has been
277 previously granted.

278 (2) Any heir at law of the decedent entitled to a share of
279 the intestate estate pursuant to s. 732.102 or s. 732.103 may by
280 affidavit request distribution of assets of the decedent through
281 informal application under this section. The affidavit must be
282 signed and verified by the surviving spouse, if any, and any
283 heirs at law, except that joinder in the affidavit is not
284 required of an heir who will receive a full intestate share
285 under the proposed distribution of the personal property. Before
286 the filing of the affidavit, the affiant must make a diligent
287 search and reasonable inquiry for any known or reasonably
288 ascertainable creditors, and the proposed distribution must make
289 provision for payment of those creditors to the extent that
290 assets are available or the creditors must consent to the
291 proposed distribution. The affidavit must be served in the
292 manner of formal notice upon all heirs at law who have not
293 joined in the affidavit; upon all known or reasonably
294 ascertainable creditors of the decedent; and, if the decedent at
295 the time of death was over the age of 55 years of age, upon the
296 Agency for Health Care Administration.

297 (3) If the court is satisfied that subsection (1) is
298 applicable and the affidavit filed by the heir at law meets the
299 requirements of subsection (2), the court, by letter or other
300 writing under the seal of the court, may authorize the payment,

301 transfer, disposition, delivery, or assignment of the tangible
302 or intangible personal property to those persons entitled.

303 (a) Any individual, corporation, or other person paying,
304 transferring, delivering, or assigning personal property under
305 the authorization shall be forever discharged from liability
306 thereon.

307 (b) Bona fide purchasers for value from those to whom
308 personal property of the decedent has been paid, transferred,
309 delivered, or assigned shall take the property free of all
310 claims of creditors of the decedent and all rights of the
311 surviving spouse and all other beneficiaries or heirs at law of
312 the decedent.

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

323 (d) Recipients of the decedent's personal property under
324 this section shall be personally liable for a pro rata share of
325 all lawful claims against the estate of the decedent, but only

326 to the extent of the value on the date of distribution of the
327 personal property actually received by each recipient, exclusive
328 of the property exempt from claims of creditors under the
329 constitution and statutes of Florida.

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

335 (f) Any heir or devisee of the decedent who was lawfully
336 entitled to share in the estate but who was not included in the
337 distribution under this section may enforce all rights in
338 appropriate proceedings against those who signed the affidavit
339 or received distribution of personal property and, if
340 successful, shall be awarded costs including reasonable attorney
341 fees as in chancery actions.

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