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CS/CS/HB 1439

2020 Legislature

1
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

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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

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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

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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

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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 4. A financial institution from disclosing the existence
 107 of and amounts on deposit in any individual account of a
 108 decedent to a petitioner that filed with the court a petition
 109 pursuant to s. 734.1025 or s. 735.203, or to an affiant that
 110 filed with the court an affidavit for disposition without
 111 administration pursuant to s. 735.301 or s. 735.304.

112 Section 2. Section 735.303, Florida Statutes, is created
 113 to read:

114 735.303 Payment to successor without court proceedings.—

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

116 (a) "Family member" means:

117 1. The surviving spouse of the decedent;

118 2. An adult child of the decedent if the decedent left no
 119 surviving spouse;

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

122 4. A parent of the decedent if the decedent left no
 123 surviving spouse, no surviving adult child, and no surviving
 124 adult descendant.

125 (b) "Qualified account" means a depository account or

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126 certificate of deposit held by a financial institution in the
127 sole name of the decedent without a pay-on-death or any other
128 survivor designation.

129 (2) A financial institution in this state may pay to the
130 family member of a decedent, without any court proceeding,
131 order, or judgment, the funds on deposit in all qualified
132 accounts of the decedent at the financial institution if the
133 total amount of the combined funds in the qualified accounts at
134 the financial institution do not exceed an aggregate total of
135 \$1,000. The financial institution may not make such payment
136 earlier than 6 months after the date of the decedent's death.

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

141 (a) A statement attesting that the affiant is the
142 surviving spouse, adult child, adult descendant, or parent of
143 the decedent.

144 1. If the affiant is an adult child of the decedent, the
145 affidavit must attest that the decedent left no surviving
146 spouse.

147 2. If the affiant is an adult descendant of the decedent,
148 the affidavit must attest that the decedent left no surviving
149 spouse and no surviving adult child.

150 3. If the affiant is a parent of the decedent, the

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151 affidavit must attest that the decedent left no surviving
 152 spouse, no surviving adult child, and no surviving adult
 153 descendant.

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

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

160 (d) A statement acknowledging that a personal
 161 representative has not been appointed to administer the
 162 decedent's estate and attesting that no probate proceeding or
 163 summary administration procedure has been commenced with respect
 164 to the estate.

165 (e) A statement acknowledging that the affiant has no
 166 knowledge of the existence of any last will and testament or
 167 other document or agreement relating to the distribution of the
 168 decedent's estate.

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

172 (g) A statement acknowledging that the affiant understands
 173 that he or she is personally liable to the creditors of the
 174 decedent and other persons rightfully entitled to the funds
 175 under the Florida Probate Code, to the extent the amount paid

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176 | exceeds the amount properly attributable to the affiant's share.

177 | (h) A statement acknowledging that the affiant understands
 178 | that making a false statement in the affidavit may be punishable
 179 | as a criminal offense.

180 | (4) The family member may use an affidavit in
 181 | substantially the following form to fulfill the requirements of
 182 | subsection (3):

184 | AFFIDAVIT UNDER SECTION 735.303, FLORIDA STATUTES, TO OBTAIN

185 | BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ... (Name of
 186 | decedent) ...

187 | State of

188 | County of

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

193 | (a) The affiant is (initial one of the following
 194 | responses):

195 | The surviving spouse of the decedent.

196 | A surviving adult child of the decedent, and the
 197 | decedent left no surviving spouse.

198 | A surviving adult descendant of the decedent, and the
 199 | decedent left no surviving spouse and no surviving adult child.

200 | A surviving parent of the decedent, and the decedent

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201 left no surviving spouse, no surviving adult child, and no
 202 surviving adult descendant.

203 (b) As shown in the certified death certificate, the date
 204 of death of the decedent was ...(date of death)..., and the
 205 address of the decedent's last residence was ...(address of last
 206 residence)....

207 (c) The affiant is entitled to payment of the funds in the
 208 decedent's depository accounts and certificates of deposit held
 209 by the financial institution ...(name of financial
 210 institution).... The total amount in all qualified accounts held
 211 by the decedent in all financial institutions known to the
 212 affiant does not exceed an aggregate total of \$1,000. The
 213 affiant requests full payment from the financial institution.

214 (d) A personal representative has not been appointed to
 215 administer the decedent's estate, and no probate proceeding or
 216 summary administration procedure has been commenced with respect
 217 to the estate.

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

221 (f) The payment of the funds constitutes a full release
 222 and discharge of the financial institution regarding the amount
 223 paid.

224 (g) The affiant understands that he or she is personally
 225 liable to the creditors of the decedent and other persons

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226 rightfully entitled to the funds under the Florida Probate Code,
 227 to the extent the amount paid exceeds the amount properly
 228 attributable to the affiant's share.

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

231
 232 By ...(signature of Affiant)...

233
 234 Sworn to and subscribed before me this day of
 235 by ...(name of Affiant)..., who is personally
 236 known to me or produced as identification, and
 237 did take an oath.

238
 239 ...(Signature of Notary Public - State of Florida)...
 240 ...(Print, Type, or Stamp Commissioned Name of Notary
 241 Public)...

242 My commission expires: ...(date of expiration of
 243 commission)...

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

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251 connection with the affidavit or the payment of the funds.

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

257 (7) The financial institution shall maintain a copy or an
 258 image of the affidavit in accordance with its customary
 259 retention policies. If a surviving spouse or descendant of the
 260 decedent requests a copy of the affidavit during such time, the
 261 financial institution may provide a copy of the affidavit to the
 262 requesting surviving spouse or descendant of the decedent.

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

268 Section 3. Section 735.304, Florida Statutes, is created
 269 to read:

270 735.304 Disposition without administration of intestate
 271 property in small estates.—

272 (1) No administration shall be required or formal
 273 proceedings instituted upon the estate of a decedent who has
 274 died intestate leaving only personal property exempt under the
 275 provisions of s. 732.402, personal property exempt from the

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276 claims of creditors under the Florida Constitution, and
277 nonexempt personal property the value of which does not exceed
278 the sum of \$10,000 and the amount of preferred funeral expenses
279 and reasonable and necessary medical and hospital expenses of
280 the last 60 days of the last illness, provided the decedent has
281 been deceased for more than 1 year and no administration of the
282 decedent's estate is pending in this state.

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

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301 Agency for Health Care Administration.

302 (3) If the court is satisfied that subsection (1) is
303 applicable and the affidavit filed by the heir at law meets the
304 requirements of subsection (2), the court, by letter or other
305 writing under the seal of the court, may authorize the payment,
306 transfer, disposition, delivery, or assignment of the tangible
307 or intangible personal property to those persons entitled.

308 (a) Any individual, corporation, or other person paying,
309 transferring, delivering, or assigning personal property under
310 the authorization shall be forever discharged from liability
311 thereon.

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

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

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326 prevails, shall be awarded costs, including reasonable attorney
 327 fees, against those who joined in the affidavit.

328 (d) Recipients of the decedent's personal property under
 329 this section shall be personally liable for a pro rata share of
 330 all lawful claims against the estate of the decedent, but only
 331 to the extent of the value on the date of distribution of the
 332 personal property actually received by each recipient, exclusive
 333 of the property exempt from claims of creditors under the
 334 constitution and statutes of Florida.

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

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

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