



190298

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
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The Committee on Banking and Insurance (Baxley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

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

(2)

(b) The books and records pertaining to trust accounts and



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

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



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

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

50           Section 2. Section 735.303, Florida Statutes, is created to  
51 read:

52           735.303 Payment to successor without court proceedings.—

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

54           (a) "Family member" means:

55           1. The surviving spouse of the decedent;

56           2. An adult child of the decedent if the decedent left no  
57 surviving spouse;

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

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

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

67           (2) A financial institution in this state may pay to the  
68 family member of a decedent, without any court proceeding,



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69 order, or judgment, the funds on deposit in all qualified  
70 accounts of the decedent at the financial institution if the  
71 total amount of the combined funds in the qualified accounts at  
72 the financial institution does not exceed an aggregate total of  
73 \$1,000. The financial institution may not make such payment  
74 earlier than 6 months after the date of the decedent's death.

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

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

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

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

88 3. If the affiant is a parent of the decedent, the  
89 affidavit must attest that the decedent left no surviving  
90 spouse, no surviving adult child, and no surviving adult  
91 descendant.

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

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



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

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

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

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

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

118 (4) The family member may use an affidavit in substantially  
119 the following form to fulfill the requirements of subsection

120 (3):

121  
122 AFFIDAVIT UNDER SECTION 735.303, FLORIDA STATUTES, TO OBTAIN  
123 BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ... (Name of  
124 decedent)...

125 State of ....

126 County of ....



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127  
128 Before the undersigned authority personally appeared ... (name of  
129 affiant) ..., of ... (residential address of affiant) ..., who has  
130 been sworn and says the following statements are true:

131 (a) The affiant is (initial one of the following  
132 responses):

133 .... The surviving spouse of the decedent.

134 .... A surviving adult child of the decedent, and the  
135 decedent left no surviving spouse.

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

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

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

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

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



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

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

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

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

170 By ...(signature of Affiant)...

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

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

180 My commission expires: ...(date of expiration of  
181 commission)...

182 (5) The financial institution is not required to determine  
183 whether the contents of the sworn affidavit are truthful. The  
184 payment of the funds by the financial institution to the affiant



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185 constitutes the financial institution's full release and  
186 discharge regarding the amount paid. A person does not have a  
187 right or cause of action against the financial institution for  
188 taking an action, or for failing to take an action, in  
189 connection with the affidavit or the payment of the funds.

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

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

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

206 Section 3. Section 735.304, Florida Statutes, is created to  
207 read:

208 735.304 Disposition without administration of intestate  
209 property in small estates.-

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





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

222 (2) Any heir at law of the decedent entitled to a share of  
223 the intestate estate pursuant to s. 732.102 or s. 732.103 may by  
224 affidavit request distribution of assets of the decedent through  
225 informal application under this section. The affidavit must be  
226 signed and verified by the surviving spouse, if any, and any  
227 heirs at law, except that joinder in the affidavit is not  
228 required of an heir who will receive a full intestate share  
229 under the proposed distribution of the personal property. Before  
230 the filing of the affidavit, the affiant must make a diligent  
231 search and reasonable inquiry for any known or reasonably  
232 ascertainable creditors, and the proposed distribution must make  
233 provision for payment of those creditors to the extent that  
234 assets are available or the creditors must consent to the  
235 proposed distribution. The affidavit must be served in the  
236 manner of formal notice upon all heirs at law who have not  
237 joined in the affidavit; upon all known or reasonably  
238 ascertainable creditors of the decedent; and, if the decedent at  
239 the time of death was over the age of 55 years of age, upon the  
240 Agency for Health Care Administration.

241 (3) If the court is satisfied that subsection (1) is  
242 applicable and the affidavit filed by the heir at law meets the



243 requirements of subsection (2), the court, by letter or other  
244 writing under the seal of the court, may authorize the payment,  
245 transfer, disposition, delivery, or assignment of the tangible  
246 or intangible personal property to those persons entitled.

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

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

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

267 (d) Recipients of the decedent's personal property under  
268 this section shall be personally liable for a pro rata share of  
269 all lawful claims against the estate of the decedent, but only  
270 to the extent of the value on the date of distribution of the  
271 personal property actually received by each recipient, exclusive



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272 of the property exempt from claims of creditors under the State  
273 Constitution and Florida Statutes.

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

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

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

287

288 ===== T I T L E A M E N D M E N T =====

289 And the title is amended as follows:

290 Delete everything before the enacting clause  
291 and insert:

292 A bill to be entitled

293 An act relating to the disposition of personal  
294 property; amending s. 655.059, F.S.; specifying that a  
295 financial institution is not prohibited from  
296 disclosing specified information and providing copies  
297 of specified affidavits to certain persons relating to  
298 deceased account holders; creating s. 735.303, F.S.;;  
299 providing definitions; authorizing a financial  
300 institution to pay funds on deposit in certain



301 accounts to a specified family member of a decedent  
302 without any court proceeding, order, or judgment under  
303 certain circumstances; requiring the family member to  
304 provide the financial institution a certified copy of  
305 the decedent's death certificate and a specified  
306 affidavit in order to receive the funds; providing an  
307 affidavit form that the family member may use;  
308 providing that the financial institution has no duty  
309 to make certain determinations; specifying that a  
310 person does not have a right or cause of action  
311 against a financial institution for certain actions or  
312 for failing to take certain actions; providing  
313 liability for the family member who withdraws funds;  
314 requiring a financial institution to maintain a copy  
315 or image of the affidavit for a specified time;  
316 authorizing the financial institution to provide  
317 copies of the affidavit to certain persons; providing  
318 a criminal penalty; creating s. 735.304, F.S.;  
319 providing that estates of certain decedents are not  
320 subject to probate administration if certain  
321 conditions are met; providing that specified persons  
322 may request distribution of a decedent's assets by  
323 affidavit filed with a court under certain  
324 circumstances; providing requirements for content of  
325 the affidavit and service of the affidavit on  
326 specified persons; requiring certain actions relating  
327 to the decedent's creditors; authorizing the court to  
328 approve the affidavit and payment of personal property  
329 under certain circumstances; providing that bona fide



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330 purchasers of personal property take the property free  
331 of certain claims and rights; providing for liability  
332 against certain personal property for a specified  
333 time; providing for liability of recipients of the  
334 decedent's personal property under certain  
335 circumstances; providing a limitation on liability of  
336 the decedent's estate and recipients of the estate  
337 under certain circumstances; providing for the award  
338 of costs and reasonable attorney fees under certain  
339 circumstances; providing an effective date.