

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 380

INTRODUCER: Banking and Insurance Committee and Senator Baxley

SUBJECT: Bank Property of Deceased Account Holders

DATE: February 13, 2020 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Palecki	Knudson	BI	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Payment of Decedent Funds at Financial Institutions

CS/SB 380 allows a financial institution to pay the family member of a decedent, without any court proceeding, order, or judgment authorizing the payment, the funds on deposit in all qualified accounts if the total amount of such funds does not exceed \$1,000. The financial institution may make such payment not earlier than 6 months after the date of the decedent's death.

In order for a financial institution to pay the funds to a family member, the family member seeking payment must provide the financial institution with a certified copy of the decedent's death certificate, and a sworn affidavit describing the family member's entitlement to the funds, the eligibility of the accounts, the lack of any will or other document providing for disposition, and the affiant's assumption of personal liability for claims by others rightfully entitled to the funds under the Florida Probate Code. The bill provides criminal penalties for making a false statement in the affidavit, classifying such action as theft.

The bill expressly provides that a person does not have a right or cause of action against a financial institution due to any action, or inaction, related to the affidavit or the payment of funds, but, creates personal liability for the family member who withdraws the funds in the face of creditors of the decedent and any other person rightfully entitled to the funds under the Florida Probate Code.

The bill allows a financial institution to release otherwise confidential information related to the existence of and amounts on deposit in any qualified account of a decedent, and to provide a copy of any affidavit delivered to the financial institution for the purpose of collecting such funds to a person authorized to receive such information.

Disposition Without Administration of Intestate Property in Small Estates

The bill creates a new mechanism for the disposition intestate property of certain small estates without administration or formal proceedings. Eligible small estates include the estate of a decedent who died intestate, i.e., without a will, and has been deceased for more than 1 year, of which no administration is pending in this state or has been previously granted, and which contains only personal property exempted from creditors and non-exempt personal property that is valued at less than \$10,000. The bill authorizes a court to authorize distribution of the decedent's assets by letter or other writing, upon receiving a sufficient affidavit from an heir at law of the decedent who is entitled to a share of the intestate estate.

Effective Date

The bill takes effect July 1, 2020.

II. Present Situation:

Regulation of Financial Institutions

Florida law defines the term “financial institution” broadly; the term includes state and federal savings or thrift associations, banks, savings banks, trust companies, international bank agencies, international banking corporations, international branches, international representative offices, international administrative offices, international trust entities, international trust company representative offices, qualified limited service affiliates, credit unions, agreement corporations operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. and Edge Act corporations organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.”¹

Not all financial institutions are depository institutions; some are not authorized to accept or hold deposits or certificates of deposits.² Funds held in either a deposit account³ or a certificate of

¹ Section 655.005(1)(i), F.S.

² For instance, holding a deposit does not fall within the enumerated permissible activities of an international representative office, an international administrative office, an international trust company representative office, or a qualified limited service affiliate. *See* ss. 663.062, 663.063, 663.409, and 663.531, F.S.

³ The term “deposit account” is not broadly defined within the financial institutions codes (ss. 655-667, F.S.), but is defined for the purposes of s. 655.55, F.S., governing the applicability of state law to deposits, as “any deposit or account in one or more names including, without limitation, any certificate of deposit, time deposit, credit balance, checking account, interest-bearing account, non-interest-bearing account, individual retirement account (IRA), money market account, NOW account, transaction account, savings account, passbook account, joint account, convenience account, escrow account, trust account, custodial account, fiduciary account, deposit in trust, or Totten trust account.”

deposit⁴ are commonly referred to as being “on deposit” with a financial institution.⁵ Banks and credit unions are depository institutions.

Dual Regulatory System

Banks and credit unions may be either state or federally chartered. The Florida Office of Financial Regulation (OFR) is responsible for chartering and supervising state financial institutions, including state-chartered banks and state-chartered credit unions.⁶ State financial institutions are subject to both state and federal regulation. The OFR does not regulate federally chartered financial institutions or financial institutions chartered by other states, however, such institutions may operate in Florida.

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency (OCC).⁷ National banks are required to be members of the Federal Reserve System; state banks may apply for membership.⁸ The Federal Reserve is the primary federal regulator of state member banks, and also serves as the primary regulator of bank holding companies and financial holding companies.⁹ While all state banks are required to obtain deposit insurance,¹⁰ the Federal Deposit Insurance Corporation (FDIC) is the primary federal regulator of non-member state banks, although it is authorized to make special examination of any insured bank when necessary.¹¹

Federally-chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).¹² Both state- and federally-chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.¹³

Transfer of Funds Incident to Death

Funds held by a financial institution may be transferred to a person who survives a decedent in different ways. If an account is in two or more names, it vests in the surviving person or persons if one of the account holders dies. An account holder may elect to designate a beneficiary or beneficiaries through a “pay-on-death designation.” Upon the death of the account holder, the amount on deposit in the account belong to the surviving beneficiaries.

Section 735.301, F.S., allows for a disposition of small estates without administration. This type of proceeding is used to request release of assets of the deceased to reimburse the person who

⁴ The term “certificate of deposit” is defined as “an instrument containing an acknowledgement by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.” Section 673.1041(10), F. S. This definition is applicable pursuant to s. 655.005(2), F.S., which provides that terms used but not defined in the financial institutions codes, but which are defined in ch. 668 through 680, F.S., shall have the meanings ascribed to them there.

⁵ Office of Financial Regulation, *Analysis of SB 380*, Nov. 21, 2019 (on file with Senate Banking and Insurance Committee).

⁶ Section 655.012(1)(a), F.S.

⁷ 12 U.S.C. s. 481.

⁸ 12 U.S.C. s. 208.3 and 222.

⁹ 12 U.S.C. s. 248.

¹⁰ Section 658.38, F.S.

¹¹ 12 U.S.C. s. 1811 et. seq.

¹² 12 U.S.C. s. 1751, et. seq.

¹³ Section 657.033, F.S.; 12 U.S.C. s. 1784.

paid the final expenses, such as funeral or medical bills, which arose during the last 60 days of the account holder's life.

Florida Probate Law

The Florida Probate Code provides the statutory mechanism for the transfer of property from a decedent to persons or entities named in a decedent's will (often called beneficiaries) or to the decedent's heirs, if there is no will. The property transferred via the probate process is called the "estate." 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.¹⁴ In addition, the code provides a statutory mechanism to wind up the decedent's financial affairs and ensure that the decedent's creditors are paid.

If the decedent had a will, the property is transferred as directed by the will. If a person dies without a will, the person is considered to have died "intestate" and the person's property is transferred to heirs according to the laws of intestate succession. Section 732.102, F.S., provides that a surviving spouse takes the entire intestate estate if there is no surviving descendant of the decedent. 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 descendants, the surviving spouse takes the entire intestate estate.¹⁵ If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, the surviving spouse takes one-half of the intestate estate.¹⁶ 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, the surviving spouse takes one-half of the intestate estate.¹⁷ The part of the intestate estate not passing to the surviving spouse, or the entire intestate estate if there is no surviving spouse, transfers to the descendants of the decedent.¹⁸ If the decedent has no descendants, the decedent's parents take the intestate estate.¹⁹

In order for the decedent's estate to be transferred to heirs or to the beneficiaries of the will, a petition for administration must be filed with the circuit court.²⁰ The personal representative, a person designated by the will or the circuit court to serve in that role, must provide a notice of administration to various persons, such as family members and beneficiaries, and other entities.²¹ Those persons must act to contest the will or take other actions within statutory time limits.²² The personal representative must search for and provide notice, by publication in a newspaper, to creditors of the decedent.²³ Creditors must generally make claims against the estate within

¹⁴ The Florida Bar, Consumer Pamphlet: *Probate in Florida*, <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited Feb. 12, 2020).

¹⁵ See s. 732.102(2), F.S.

¹⁶ See s. 732.102(3), F.S.

¹⁷ See s. 732.102(4), F.S.

¹⁸ See s. 732.103(1), F.S.

¹⁹ See s. 732.103(2), F.S.

²⁰ See s. 733.202, F.S.

²¹ See s. 733.212, F.S.

²² See s. 733.212, F.S.

²³ See s. 733.2121, F.S.

3 months of notice.²⁴ In order for personal representatives to claim monies from bank accounts for the estate, the court must issue letters of administration granting the personal representative the authority to act on behalf of the estate. The letters give the personal representative the power to gather assets, pay creditors, and pay the heirs or beneficiaries. Even a simple probate estate can take 5 or 6 months to administer and close.²⁵

Summary Probate Administration

Summary administration is an alternative to the formal administration process and is available only if the decedent has been dead for more than 2 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 creditors²⁶) is less than \$75,000.²⁷ Summary administration is not available if a decedent's will specifically directs formal administration.²⁸

A petition for summary administration may be filed by any beneficiary or person nominated as personal representative in the decedent's will.²⁹ However, any other beneficiary must be served with formal notice of the petition.³⁰

If the decedent passed away more than 2 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 2 years of the decedent's death.³¹ If the decedent passed away less than 2 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.³² 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 3 months after the first publication of the notice.³³

Those who receive a distribution of estate assets generally remain liable for claims against the decedent for 2 years after the date of death.³⁴ 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.³⁵

²⁴ See s. 733.702, F.S.

²⁵ See <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited February 7, 2020).

²⁶ For example, homestead property that is protected from creditors' claims by Art. X, s. 4, Fla. Const.

²⁷ Section 735.201(1), F.S.

²⁸ *Id.*

²⁹ Section 735.203(1), F.S.

³⁰ *Id.*

³¹ Section 733.710, F.S.

³² Section 735.206(2), F.S.

³³ Section 735.2063, F.S.

³⁴ Section 735.206(4)(d)-(f), F.S.

³⁵ Section 735.206(4)(d), F.S.

- Any heir or devisee 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.³⁶

Disposition of Decedent Property Without Administration

Disposition of personal property without administration is yet another alternative to the formal administration process and available only if the decedent's probate estate consists solely of the following:³⁷

- 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;³⁸ and
- Non-exempt personal property valued at less than the sum of 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.

Any interested party may file such an informal application by affidavit, letter, or otherwise with the court.³⁹ 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.⁴⁰ Any person, firm, or corporation paying, delivering, or transferring property under the court's authorization is forever discharged from liability thereon.⁴¹

Florida Unclaimed Property Law

Chapter 717, F.S., is Florida's law dealing with the disposition of unclaimed property. The most common types of unclaimed property are dormant bank accounts, unclaimed insurance proceeds, stocks, dividends, uncashed checks, deposits, credit balances and refunds. Unclaimed property assets are held by businesses for a set period of time, usually 5 years. Businesses (holders of unclaimed property) are required to try to locate the owner, but when their attempts fail, they must report the property and the owner's name, last known address and other information to the Department of Financial Services. The Department acts as custodian for the State of Florida, but never takes legal ownership of the property. The State uses various methods, including database searches, in an effort to notify owners of their property. Citizens have the right to claim their property, at no cost, any time, regardless of the amount.⁴²

III. Effect of Proposed Changes:

Section 1 of the bill amends paragraph (2)(b) of s. 655.059, F.S., to update a citation and to indicate that a financial institution is not prohibited from disclosing otherwise confidential books

³⁶ Section 735.206(4)(g), F.S.

³⁷ Section 735.301(1), F.S.

³⁸ Art. X, s. 4(a)(2), Fla. Const.

³⁹ Section 735.301(2), F.S.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See <https://www.fltreasurehunt.gov/UP-Web/sitePages/FAQs.jsp> (last visited February 7, 2020).

and records related to the existence of and amounts on deposit in any qualified account of a decedent pursuant to s. 735.303, F.S., and from providing a copy of any affidavit delivered to the financial institution for the purpose of collecting such funds to a person authorized to receive such information under s. 735.303, F.S.

Section 2 of the bill creates s. 735.303, F.S., to allow financial institutions to pay funds in certain depository accounts of decedents, which do not exceed \$1,000 in total, to the decedent's successor, without court proceedings, upon receiving a copy of the death certificate of the decedent and an affidavit from the successor demonstrating their entitlement to the funds.

Subsection (1) provides definitions of the terms "family member" and "qualified account." "Family member" is defined as the surviving spouse of a decedent, the adult child of a decedent if the decedent left no surviving spouse, an adult descendant of the decedent if the decedent left no surviving spouse nor a surviving adult child, or, a parent of the decedent if the decedent left no surviving spouse, no surviving adult child, nor a surviving adult descendant. A "qualified account" is defined as a depository account or certificate of deposit in the sole name of the decedent without a pay-on-death or any other survivor designation.

Subsection (2) authorizes a financial institution in this state to pay a family member of a decedent the funds the decedent had on deposit in all qualified accounts if the total amount of such accounts at the financial institution does not exceed \$1,000, and at least 6 months have passed since the decedent's death. No prior court proceeding, order, or judgment ordering such payment is necessary.

Subsection (3) requires a family member seeking payment of qualified accounts to provide the financial institution with a certified copy of the decedent's death certificate, and a sworn affidavit in order to obtain payment from a financial institution. The sworn affidavit must contain the following:

- A statement attesting that the family member is the surviving spouse, adult child, adult descendant, or parent of the decedent;
- A statement to demonstrate that the family member is the appropriate person to receive the funds, e.g. an adult child of the decedent must attest there is no surviving spouse or a parent of the decedent must attest there is no surviving spouse, no surviving adult children, and no surviving adult descendants;
- The date of death of the decedent and the address of the last residence of the decedent;
- A statement attesting that the total amount of all qualified accounts held by the decedent with all financial institutions known to the affiant does not exceed \$1,000;
- A statement acknowledging that a personal representative has not been appointed to administer the estate of the decedent and that no probate or summary administration procedure has been commenced with respect to the estate of the decedent;
- A statement acknowledging that the affiant has no knowledge of the existence of a will 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 persons rightfully entitled to the funds under the Florida Probate Code, to the extent that the amount paid exceeds the amount properly attributable to the affiant's share; and
- A statement acknowledging that the affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

Subsection (4) provides a template affidavit that fulfills the requirements of subsection (3).

Subsections (5) and (6) assign liability. The bill provides that the financial institution is not required to determine whether the contents of the sworn affidavit are truthful, and that the payment of funds by the financial institution to the affiant family member constitutes a full release and discharge of the financial institution's obligation for the amount paid. A person does not have a right or cause of action against a financial institution due to any action, or inaction, related to the affidavit or the payment of funds, but, the 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 their rightful share.

Subsection (7) requires a financial institution to maintain a copy or an image of the affidavit in accordance with its customary retention policies after releasing the funds and authorizes the financial institution to provide a copy of the affidavit to the surviving spouse or decedent, but not the parent, of the decedent.

Subsection (8) provides that it is theft, punishable under s. 812.014, F.S., to make a false statement in a sworn affidavit given to a financial institution in order to receive a decedent's funds pursuant to this section. Generally, theft of property valued at \$750 or more but less than \$5,000 is a third degree felony, while theft of property valued at \$100 or more but less than \$750 is a first degree misdemeanor.

Section 3 of the bill creates s. 735.304, F.S., to allow the disposition intestate property of small estates without administration or formal proceedings.

Subsection (1) describes the types of estates eligible for this type of disposition. If the decedent has been deceased for more than 1 year, and no administration of the estate is pending in this state or has been previously granted, then no administration will be required or formal proceedings instituted on estates of a decedent who died intestate, i.e., without a will, which contain only the following types of property:

- Personal property exempt under the provisions of s. 732.402, F.S., governing property exempted from claims against an estate;
- Personal property exempt from the claims of creditors under the State Constitution; and
- Nonexempt personal property valued at \$10,000 or less, plus the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness.

Subsection (2) allows heirs at law of the decedent who are entitled to a share of the intestate estate to request distribution of the assets of the decedent by affidavit, through informal application. The affidavit must be signed and verified by the surviving spouse (if any) and any heirs at law, and must be served in the manner of formal notice upon:

- all heirs at law who have not joined in the affidavit;
- all known or reasonably ascertainable creditors of the decedent; and
- the Agency for Health Care Administration, if the decedent was over the age of 55 at the time of death.

Prior to such an application, an heir at law must make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors. Proposed distribution must make provision for payment of any creditors uncovered by the affiant's diligent search, or the creditors must consent to the proposed distribution.

Subsection (3) authorizes a court, upon presentation of a sufficient affidavit, to, by letter or other writing under seal of the court, authorize the payment, transfer, disposition, delivery, or assignment of an eligible estate to those persons entitled. Such payment, transfer, disposition, delivery, or assignment will result in the following:

- Discharge of liability for any person paying, transferring, delivering, or assigning the property under the court's authorization;
- Bona fide purchasers for value from those to whom personal property of the decedent has been paid, transferred, delivered, or assigned take the property free of claims of creditors of the decedent and all rights of the surviving spouse, other heirs at law, and all other beneficiaries at law of the decedent;
- Nonexempt personal property of the decedent remains subject to claims against the decedent until barred by the Florida Probate Code;
- Recipients of personal property that is not exempt from claims of creditors remain personally liable for a pro rata share of all lawful claims against the decedent's estate, but only to the extent of the value on the date of distribution of the personal property actually received by each recipient;
- Except as otherwise provided in s. 733.710, F.S., once 2 years have passed since the death of the decedent, neither the estate nor those to whom it may be distributed will be liable for any claim against the decedent, unless proceedings to enforce a claim have already begun.
- Any lawfully entitled heir, devisee, or reasonably ascertainable creditor of the decedent who was not included in the distribution retains the ability to enforce their rights in appropriate proceedings against the affiant(s) and those who received distributions, and, if successful, will be awarded costs including reasonable attorney fees in chancery actions.

Section 4 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

This bill may implicate issues of federal preemption as it applies to “financial institution[s],” a term which, as defined by current Florida law, includes federally chartered financial institutions that the State of Florida does not have regulatory authority over.

The Supremacy Clause of the United States Constitution requires courts to follow federal law, not state law, if Congress, in enacting the federal statute, intended to exercise its constitutionally delegated authority to set aside, i.e., preempt, the laws of a state.⁴³

The analysis of preemption principles as they apply to state banking laws is complex; banking has been subject to dual [federal-state] regulatory control since the passage of the first National Bank Act in 1863.⁴⁴ Generally, federally chartered banks are subject to state laws of general application in their daily business to the extent such laws do not conflict with the letter or the general purposes of the National Bank Act (NBA), or prevent or impair a bank’s exercise of its authority, be it enumerated or incidental.⁴⁵

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

⁴³ *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), citing U.S. Const., Art. VI, cl. 2; *California Fed. Sav. & Loan Assn. v. Guerra*, 479 U.S. 272 (1987).

⁴⁴ *Bank of America v. City and County of San Francisco*, 309 F.3d 551 (9th Cir. 2002), quoting *National State Bank v. Long*, 630 F.2d 981, 985 (3d Cir. 1980).

⁴⁵ *Watters v. Wachovia*, 550 U.S. 1 (2007), citing 12 U.S.C. s. 21 *et. seq.*

VII. Related Issues:

The bill defines a “family member,” in part, as a spouse, child, or parent of the decedent. As those terms are not defined, strict construction of this definition may preclude an adopted child, or adoptive parent from accessing the funds in a decedent’s account. Incorporating the definitions of those terms by reference to the probate code may alleviate this concern.

VIII. Statutes Affected:

This bill substantially amends section 655.059 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 735.303 and 735.304

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 11, 2020:

The CS contains substantial revisions to this affidavit process, including a decrease in the maximum value of eligible accounts from \$10,000 to \$1,000, a decrease in the amount of time that must pass before the institution can make a payment from 2 years to 6 months and the elimination of a requirement for family members to consent to the financial institution’s payment of the funds. The CS also creates a process for the disposition intestate property of small estates without administration or formal proceedings within the probate code.

- B. **Amendments:**

None.