

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: SB 380

INTRODUCER: Senator Baxley

SUBJECT: Bank Property of Deceased Account Holders

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 380 allows a financial institution to pay the authorized family member of a decedent, without any court proceeding, order, or judgment authorizing the payment, the funds on deposit in all qualified accounts of the decedent at the financial institution if the total amount of such funds does not exceed \$10,000. The financial institution may make such payment not earlier than 2 years after the date of the decedent's death. Currently, an authorized family member can make a claim for the funds in the account only after the financial institution reports the funds to the Department of Financial Services pursuant to the Unclaimed Property Law.

The bill requires an authorized family member to provide an affidavit to the financial institution containing:

- A statement attesting that the authorized family member is the surviving spouse, adult child, adult descendant, or parent of the decedent;
- A statement that the authorized family member is the appropriate person to receive the funds;
- 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 any financial institution does not exceed \$10,000;
- 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 procedures have been commenced with respect to the estate of the decedent;
- A statement identifying the name of each family member of the decedent and the notarized written consent of each other family member 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.

The bill does not require the financial institution to determine whether the contents of the sworn affidavit are truthful and the bill provides that a person does not have a right or cause of action against a financial institution because of payment of the funds.

The bill provides that the authorized family member who withdraws the funds is personally liable to any 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 authorized family member's share.

The bill allows a financial institution to release information regarding the existence of and the amounts contained in any qualified account of the decedent at the financial institution to either a surviving spouse who presents a copy of a marriage certificate evidencing the spouse's marriage to the decedent, or an adult child of the decedent who presents a copy of a birth certificate evidencing that the decedent is the parent of the adult child.

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, 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 belongs 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 Chapters 668 through 680, 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." 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.¹⁴ 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.¹⁵ 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.¹⁶ 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.¹⁷ If the decedent has no descendants, the decedent's parents take the intestate estate.¹⁸

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.¹⁹ 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.²⁰ Those persons must act to contest the will or take other actions within statutory time limits.²¹ The personal representative must search for and provide notice, by publication in a newspaper, to creditors of the decedent.²² Creditors must generally make claims against the estate within 3 months of notice.²³ 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

¹⁴ See s. 732.102(2), F.S.

¹⁵ See s. 732.102(3), F.S.

¹⁶ See s. 732.102(4), F.S.

¹⁷ See s. 732.103(1), F.S.

¹⁸ See s. 732.103(2), F.S.

¹⁹ See s. 733.202, F.S.

²⁰ See s. 733.212, F.S.

²¹ See s. 733.212, F.S.

²² See s. 733.2121, F.S.

²³ See s. 733.702, F.S.

can take 5 or 6 months to administer and close.²⁴ For small estates, ch. 735, F.S., provides for summary administration or disposition without administration.

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.²⁵

III. Effect of Proposed Changes:

This bill allows a financial institution to pay the authorized family member²⁶ of a decedent, without any court proceedings, order, or judgment authorizing the payment, the funds on deposit in all qualified accounts²⁷ of the decedent at the financial institution if the total amount of such funds does not exceed \$10,000. The financial institution may make such payment not earlier than 2 years after the date of the decedent's death.²⁸

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

- A statement attesting that the authorized family member is the surviving spouse, adult child, adult descendant, or parent of the decedent;
- A statement to demonstrate that the authorized 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 any financial institution does not exceed \$10,000;

²⁴ See <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited February 7, 2020).

²⁵ See <https://www.fltreasurehunt.gov/UP-Web/sitePages/FAQs.jsp> (last visited February 7, 2020).

²⁶ The bill defines "authorized family member" as (1) the surviving spouse of the decedent; (2) if the decedent did not leave a surviving spouse, an adult child of the decedent; (3) if the decedent did not leave a surviving spouse or an adult child, an adult descendant of the decedent, or (4) the parent of the decedent.

²⁷ The bill defines "qualified account" as a depository account or a certificate of deposit held in the sole name of the decedent with no pay on death or other survivor designation.

²⁸ Allowing a surviving successor to claim the funds 45 days after the date of the decedent's death would be a change from the current method under the Florida Probate Code. Under the Probate Code, the estate must go through either formal or summary administration. Those procedures provide an opportunity, usually 3 months, to make claims against the estate.

- 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 procedures have been commenced with respect to the estate of the decedent;
- A statement identifying the name of each family member²⁹ of the decedent and the notarized written consent of each other family member 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.

Heirs other than a surviving spouse, an adult child, and adult descendant, or a parent may not make a claim to the financial institution and would have to make a claim under the Probate Code.

The bill requires the financial institution to maintain a copy or an image of the affidavit for a period of 7 years after releasing the funds. If a family member 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 family member of the decedent.

The bill does not require the financial institution to determine whether the contents of the sworn affidavit are truthful. The payment of funds by the financial institution to the surviving successor constitutes a full release and discharge of the financial institution's obligation for the amount paid. The bill provides that a person does not have a right or cause of action against a financial institution because of such payment.

The bill provides that the authorized family member who withdraws the funds is personally liable to any 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 authorized family member's share.

The bill allows a financial institution to release, upon presentation of a decedent's death certificate to a financial institution not less than 2 years after the date of death of the decedent, the existence of and amounts contained in any qualified account of the decedent at the financial institution to a surviving spouse who presents a copy of a marriage certificate evidencing the spouse's marriage to the decedent or an adult child of the decedent who presents a copy of a birth certificate evidencing that the decedent is the parent of the adult child. The bill also makes a conforming change by amending s. 655.059, F.S., to allow a financial institution to disclose the existence of and amounts on deposit in any qualified accounts of a decedent, and to provide a

²⁹ The bill defines "family member" as "1. The surviving spouse of the decedent; 2. If there is no surviving spouse, or if any of the children of the decedent are not also children of the surviving spouse, the living children of the decedent, and the living descendants of any deceased child of the decedent; or 3. If there is no surviving spouse or living descendants of the decedent, the living parents of the decedent."

copy of any affidavit delivered to the financial institution pursuant s. 655.795, F.S., to persons authorized to receive such information under s. 655.795, F.S.

The bill makes knowingly making a false statement in a sworn affidavit provided to a financial institution is punishable as theft, punishable as provided in s. 812.014, F.S.

The bill provides a form affidavit for use by surviving successors to make claims with financial institutions.

The bill takes effect 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.³⁰

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 1863.³¹ Generally, federally chartered banks are subject to state laws of general application in their daily business to the extent such laws do not

³⁰ *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).

³¹ *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).

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.³²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill defines an "authorized 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 section 655.795 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³² *Watters v. Wachovia*, 550 U.S. 1 (2007), citing 12 U.S.C. s. 21 *et. seq.*