

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 Rules

BILL: CS/CS/SB 380

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Baxley

SUBJECT: Disposition of Personal Property

DATE: February 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Palecki</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 380 authorizes the summary distribution of a decedent's bank account or other depository account of \$1,000 or less and provides for the informal disposition of small intestate estates.

Regarding depository accounts and certificates of deposit, the bill authorizes 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 these funds does not exceed \$1,000. The financial institution may make the payment not earlier than 6 months after the date of the decedent's death.

The family member seeking payment of the funds from the qualified accounts must provide the financial institution with a certified copy of the decedent's death certificate and a sworn affidavit. The affidavit must state that the affiant is a family member who is entitled to the funds, that the he or she is not aware of a will or a probate proceeding for the accountholder's estate, and that he or she expressly accepts liability for the disbursement of the funds. The bill provides criminal penalties for making a false statement in the affidavit, classifying such action as theft. Accordingly, the bill releases a financial institution from liability upon its disbursement of funds to an affiant and expressly provides that the institution is not required to verify the content of the affidavit.

Regarding the distribution of small intestate estates, meaning estates consisting of exempt property and personal property valued at less than \$10,000, the bill authorizes the distribution of certain of these estates without probate administration or other “formal proceedings.” To acquire the property of these estates, an heir of a person who has been deceased for at least one year must file an affidavit with the court, which in turn provides the heir with a letter authorizing anyone holding the decedent’s property to release it to the heir. The required content of the affidavit is designed to demonstrate to the court that the rights of any creditors and other heirs are and will be protected.

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

However, not all financial institutions are expressly authorized to accept or hold deposits or certificates of deposits.²

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.³

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency (OCC).⁴ National banks are required to be members of the Federal Reserve System; state banks may apply for membership.⁵ 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.⁶

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 Section 655.012(1)(a), F.S.

⁴ 12 U.S.C. s. 481.

⁵ 12 U.S.C. s. 208.3 and 222.

⁶ 12 U.S.C. s. 248.

Federally-chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).⁷ Both state- and federally-chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.⁸

Transfer of Deposited Funds Incident to Death

When an accountholder dies, his or her stake in an account under more than one name will vest automatically in another surviving accountholder.⁹ However, if all named accountholders die, the account will generally pass according to any “pay-on-death designation” on the account.¹⁰ Under this arrangement, upon the death of all accountholders, the account becomes the property of any designated beneficiary or beneficiaries.¹¹ The institution may pay the balance of the account to the beneficiaries named on the account upon the presentation to the institution of proof of the death of the accountholder(s).¹²

An institution may also, upon receiving the accountholder’s death certificate, pass the funds of a “pay-on-death” account to the heirs of an accountholder if they survived all other accountholders and beneficiaries.¹³

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.”¹⁴ 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.¹⁵ Accordingly, they generally do not include pay-on-death accounts and accounts under multiple names, which, as discussed above, pass automatically upon an accountholder’s death.

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.¹⁶ 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.¹⁷ If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, the

⁷ See 12 U.S.C. s. 1751, et. seq.

⁸ Section 657.033, F.S.; 12 U.S.C. s. 1784.

⁹ Section 655.79, F.S.

¹⁰ Section 655.82.

¹¹ Section 655.82(3), F.S.

¹² Section 655.82(6), F.S.

¹³ Section 655.82(6)(c), F.S.

¹⁴ Section 731.201(14), F.S.

¹⁵ The Florida Bar, Consumer Pamphlet: *Probate in Florida*, <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited Feb. 12, 2020).

¹⁶ Section 732.101(1), F.S.

¹⁷ See s. 732.102(2), F.S.

surviving spouse takes one-half of the intestate estate.¹⁸ 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.¹⁹ 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.²⁰ If the decedent has no descendants, the decedent's parents take the intestate estate.²¹

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.²² 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.²³ Those persons must act to contest the will or take other actions within statutory time limits.²⁴ The personal representative must search for and provide notice, by publication in a newspaper, to creditors of the decedent.²⁵ Creditors must generally make claims against the estate within 3 months of notice.²⁶ 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.²⁷

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 creditors²⁸) is less than \$75,000.²⁹ However, summary administration is not available if a decedent's will specifically directs formal administration.³⁰

A petition for summary administration may be filed by any beneficiary or person nominated as personal representative in the decedent's will.³¹ However, any other beneficiary must be served with formal notice of the petition.³²

¹⁸ See s. 732.102(3), F.S.

¹⁹ See s. 732.102(4), F.S.

²⁰ See s. 732.103(1), F.S.

²¹ See s. 732.103(2), F.S.

²² See s. 733.202, F.S.

²³ See s. 733.212, F.S.

²⁴ See s. 733.212, F.S.

²⁵ See s. 733.2121, F.S.

²⁶ See s. 733.702, F.S.

²⁷ See <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited February 7, 2020).

²⁸ For example, homestead property that is protected from creditors' claims by Art. X, s. 4, Fla. Const.

²⁹ Section 735.201(2), F.S.

³⁰ Section 735.201(1), F.S.

³¹ Section 735.203(1), F.S.

³² *Id.*

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.³³ 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.³⁴ 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.³⁵

Those who receive a distribution of estate assets generally remain liable for claims against the decedent for 2 years after the date of death.³⁶ 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.³⁷
- 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.³⁸

Disposition of Decedent Property Without Administration

Disposition of personal property without administration is another alternative to the formal administration process and available if the decedent's probate estate consists only of the following:³⁹

- 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;⁴⁰ 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.⁴¹ 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.⁴² Any person, firm, or corporation paying, delivering, or

³³ Section 733.710, F.S.

³⁴ Section 735.206(2), F.S.

³⁵ Section 735.2063, F.S.

³⁶ Section 735.206(4)(d)-(f), F.S.

³⁷ Section 735.206(4)(d), F.S.

³⁸ Section 735.206(4)(g), F.S.

³⁹ Section 735.301(1), F.S.

⁴⁰ FLA. CONST. art. X, s. 4(a)(2).

⁴¹ Section 735.301(2), F.S.

⁴² *Id.*

transferring property under the court's authorization is forever discharged from liability thereon.⁴³

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.⁴⁴

III. Effect of Proposed Changes:

The bill provides for an informal distribution process for a decedent's bank account or other depository account of \$1,000 or less and provides for the informal disposition of small intestate estates.

Informal Distribution of a Small Bank Account of a Decedent

The bill authorizes 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.

The family member seeking payment must provide the financial institution with a certified copy of the decedent's death certificate, and a sworn affidavit stating that:

- The family member is the surviving spouse, adult child, adult descendant, or parent of the decedent.
- The family member is the appropriate person to receive the funds. For example an adult child of the decedent must attest there is no surviving spouse. 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.
- 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 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.

⁴³ *Id.*

⁴⁴ See <https://www.fltreasurehunt.gov/UP-Web/sitePages/FAQs.jsp> (last visited February 14, 2020).

- 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.
- The payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid.
- 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.
- The affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

The bill provides that making a false statement is criminal theft, and might also constitute another crime. Additionally, the bill releases a financial institution from liability upon its disbursement of funds to an affiant and expressly provides that the institution is not required to verify the content of the affidavit.

Distribution of Small Intestate Estate's without Probate Administration

The bill authorizes the distribution of certain small intestate estates without probate administration or other "formal proceedings." To acquire the property of these estates, an heir of a person who has been deceased for at least one year must file an affidavit with the court and serve notice on interested persons; in turn, the court would provide the heir with a letter authorizing anyone holding the decedent's property to release it to the heir. The required content of the affidavit is designed to demonstrate to the court that the rights of any creditors and other heirs are and will be protected.

To be eligible for this option, there must be no administration pending on the estate and it must contain only the following types of property:

- Personal property exempt under the provisions of s. 732.402, F.S., such as household furniture and appliances having a combined value of \$20,000;
- Personal property of up to \$1,000, which is 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.

The bill requires the affidavit to be signed and verified by any surviving spouse and any heirs at law, and to 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.

If the court is satisfied that the estate in question is eligible for this type of distribution and that the affidavit is sufficient, the court must provide a letter authorizing the release of property as set forth in the affidavit. The 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.

Effective Date

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 authority to regulate.

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.⁴⁵

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 1863.⁴⁶ 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.⁴⁷

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

None.

B. Private Sector Impact:

The bill could reduce the costs of obtaining property from smaller estates.

C. Government Sector Impact:

The bill could decrease the burden on courts by allowing for the distribution of decedent’s bank accounts and other assets without the need for probate administration.

VI. Technical Deficiencies:

None.

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.

⁴⁵ *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).

⁴⁶ *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).

⁴⁷ *Watters v. Wachovia*, 550 U.S. 1 (2007), citing 12 U.S.C. s. 21 *et. seq.*

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/CS by Judiciary on February 19, 2020:

The committee substitute expands exceptions to a provision generally prohibiting a financial institution from disclosing certain records of a client.

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 of intestate property of small estates without administration or formal proceedings within the probate code.

B. Amendments:

None.