

By Senator Baxley

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1 A bill to be entitled
2 An act relating to bank property of deceased account
3 holders; amending s. 655.059, F.S.; specifying that a
4 financial institution is not prohibited from
5 disclosing specified information to certain persons
6 relating to deceased account holders; creating s.
7 655.795, F.S.; defining terms; authorizing a financial
8 institution to pay to the authorized family member of
9 a decedent depositor, without any court proceeding,
10 order, or judgment authorizing the payment and not
11 earlier than a specified time, the funds in the
12 decedent's qualified accounts if the sum does not
13 exceed a specified amount; requiring the authorized
14 family member to provide the financial institution
15 with a certified copy of the decedent's death
16 certificate and a specified affidavit in order to
17 receive the funds; providing an affidavit form the
18 authorized family member may use; providing that the
19 financial institution does not have a duty to make
20 certain determinations; specifying that a person does
21 not have a right or cause of action against a
22 financial institution for certain actions or for
23 failing to take certain actions; providing that an
24 authorized family member who withdraws funds is
25 personally liable to certain persons if the amount
26 paid exceeds his or her share; requiring a financial
27 institution to maintain a copy or image of the
28 affidavit for a specified time period; authorizing the
29 financial institution to provide copies of the

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30 affidavit to certain persons; authorizing a financial
31 institution to release certain information on bank
32 accounts under certain circumstances; providing a
33 criminal penalty; providing an effective date.
34

35 Be It Enacted by the Legislature of the State of Florida:
36

37 Section 1. Paragraph (b) of subsection (2) of section
38 655.059, Florida Statutes, is amended to read:

39 655.059 Access to books and records; confidentiality;
40 penalty for disclosure.—

41 (2)

42 (b) The books and records pertaining to trust accounts and
43 the deposit accounts and loans of depositors, borrowers,
44 members, and stockholders of any financial institution shall be
45 kept confidential by the financial institution and its
46 directors, officers, and employees and may not be released
47 except upon express authorization of the account holder as to
48 her or his own accounts, loans, or voting rights. However,
49 information relating to any loan made by a financial institution
50 may be released without the borrower's authorization in a manner
51 prescribed by the board of directors for the purpose of meeting
52 the needs of commerce and for fair and accurate credit
53 information. Information may also be released, without the
54 authorization of a member or depositor but in a manner
55 prescribed by the board of directors, to verify or corroborate
56 the existence or amount of a customer's or member's account when
57 such information is reasonably provided to meet the needs of
58 commerce and to ensure accurate credit information. In addition,

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59 a financial institution, affiliate, and its subsidiaries, and
60 any holding company of the financial institution or subsidiary
61 of such holding company, may furnish to one another information
62 relating to their customers or members, subject to the
63 requirement that each corporation receiving information that is
64 confidential maintain the confidentiality of such information
65 and not provide or disclose such information to any unaffiliated
66 person or entity. Notwithstanding this paragraph, this
67 subsection does not prohibit:

68 1. A financial institution from disclosing financial
69 information as referenced in this subsection as authorized by
70 Pub. L. No. 106-102 (1999), as set forth in 15 U.S.C.A. s. 6802,
71 as amended.

72 2. The Florida office of the international banking
73 corporation or international trust entity from sharing books and
74 records under this subsection with the home-country supervisor
75 in accordance with subsection (1).

76 3. A financial institution from disclosing, pursuant to s.
77 655.795, the existence of and amounts on deposit in any
78 qualified accounts of a decedent, and providing a copy of any
79 affidavit delivered to the financial institution pursuant
80 thereto, to persons authorized to receive such information under
81 s. 655.795.

82 Section 2. Section 655.795, Florida Statutes, is created to
83 read:

84 655.795 Payment to successor without court proceedings.-

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

86 (a) "Authorized family member" means:

87 1. The surviving spouse of the decedent;

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88 2. If the decedent did not leave a surviving spouse, an
89 adult child of the decedent;

90 3. If the decedent did not leave a surviving spouse or a
91 surviving adult child, an adult descendant of the decedent; or

92 4. If the decedent did not leave a surviving spouse, an
93 adult child, or an adult descendant, the parent of the decedent.

94 (b) "Family members of the decedent" means:

95 1. The surviving spouse of the decedent;

96 2. If there is no surviving spouse or if any of the
97 children of the decedent are not also children of the surviving
98 spouse, the living children of the decedent and the living
99 descendants of any deceased child of the decedent; or

100 3. If there is no surviving spouse or living descendants of
101 the decedent, the living parents of the decedent.

102 (c) "Qualified account" means a depository account or
103 certificate of deposit held in the sole name of the decedent
104 without a pay-on-death or any other survivor designation.

105 (2) A financial institution in this state may pay to the
106 authorized family member of a decedent, without any court
107 proceeding, order, or judgment, the funds on deposit in all
108 qualified accounts of the decedent at the financial institution,
109 if the total amount of the combined funds in the qualified
110 accounts at that financial institution does not exceed \$10,000.
111 The financial institution may not make such payment earlier than
112 2 years after the date of the decedent's death.

113 (3) In order to receive the funds, the authorized family
114 member must provide the financial institution with a certified
115 copy of the decedent's death certificate and a sworn affidavit
116 that includes all of the following:

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117 (a) A statement attesting that the affiant is the surviving
118 spouse, adult child, adult descendant, or parent of the
119 decedent.

120 1. If the affiant is an adult child of the decedent, the
121 affidavit must attest that the decedent left no surviving
122 spouse.

123 2. If the affiant is an adult descendant of the decedent,
124 the affidavit must attest that the decedent left no surviving
125 spouse or adult children.

126 3. If the affiant is a parent of the decedent, the
127 affidavit must attest that the decedent left no surviving
128 spouse, adult children, or adult descendants.

129 (b) The date of death and the address of the last residence
130 of the decedent.

131 (c) A statement attesting that the total amount in all
132 qualified accounts held by the decedent with any financial
133 institution known to the affiant does not exceed \$10,000.

134 (d) A statement acknowledging that a personal
135 representative has not been appointed to administer the
136 decedent's estate and stating that no probate proceeding or
137 summary administration procedure has been commenced with respect
138 to the estate.

139 (e) A statement identifying the name of each of the family
140 members of the decedent and attesting that the notarized written
141 consent of each other family member of the decedent is attached.
142 The natural parent or guardian of any person who is a minor may
143 give consent on behalf of such person.

144 (f) A statement acknowledging that the affiant does not
145 have knowledge of the existence of any last will and testament

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146 or other document or agreement relating to the distribution of
 147 the estate of the decedent.

148 (g) A statement acknowledging that the payment of the funds
 149 constitutes a full release and discharge of the financial
 150 institution's obligation regarding the amount paid.

151 (h) A statement acknowledging that the affiant understands
 152 that he or she is personally liable to the persons rightfully
 153 entitled to the funds under the Florida Probate Code, to the
 154 extent that the amount paid exceeds the amount properly
 155 attributable to the affiant's share.

156 (i) A statement acknowledging that the affiant understands
 157 that making a false statement in the affidavit may be punishable
 158 as a criminal offense.

159 (4) The authorized family member may use an affidavit in
 160 substantially the following form to fulfill the requirements of
 161 subsection (3):

163 AFFIDAVIT UNDER SECTION 655.795, FLORIDA STATUTES, TO OBTAIN

164 BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ... (Name of
 165 decedent)...

166 State of

167 County of

168
 169 Before the undersigned authority personally appeared ... (name of
 170 affiant) ..., of ... (residential address of affiant) ..., who has
 171 been sworn and says the following statements are true:

172 (a) The affiant is (initial one of the following
 173 responses):

174 The surviving spouse of the decedent.

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175 A surviving adult child of the decedent, and the
176 decedent left no surviving spouse.

177 A surviving adult descendent of the decedent, and the
178 decedent left no surviving spouse and no surviving adult
179 children.

180 A surviving parent of the decedent, and the decedent
181 left no surviving spouse, no surviving adult children, and no
182 surviving adult descendant.

183 (b) As shown in the certified death certificate, the date
184 of death of the decedent was ...(date of death)... and the
185 address of the decedent's last residence was ...(address of last
186 residence)....

187 (c) The affiant is entitled to payment of the funds in the
188 decedent's depository accounts and certificates of deposit held
189 by the financial institution ...(name of financial
190 institution).... The total of qualified accounts held by the
191 decedent in all financial institutions known to the affiant does
192 not exceed an aggregate total of \$10,000. The affiant requests
193 full payment from the financial institution.

194 (d) A personal representative has not been appointed to
195 administer the decedent's estate and no probate proceeding or
196 summary administration procedure has been commenced with respect
197 to the estate.

198 (e) The affiant has been provided with and has read s.
199 655.795, Florida Statutes, and (initial one of the following
200 responses):

201 There are no family members of the decedent other than
202 affiant.

203 The family members of the decedent are ...(identify by

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204 name).... Notarized letters from all of the family members of
 205 the decedent other than the affiant consenting to the affiant's
 206 funds withdrawal are attached.

207 (f) The affiant does not have knowledge of any last will
 208 and testament or other document or agreement relating to the
 209 distribution of the decedent's estate.

210 (g) The payment of the funds constitutes a full release and
 211 discharge of the financial institution for the amount paid.

212 (h) The affiant understands that he or she is personally
 213 liable to the persons rightfully entitled to the funds under the
 214 Florida Probate Code, to the extent that the amount paid exceeds
 215 the amount properly attributable to the affiant's share.

216 (i) The affiant understands that making a false statement
 217 in this affidavit may be punishable as a criminal offense.

218
 219 By ... (signature of affiant)...
 220

221 Sworn to and subscribed before me this day of
 222 by ... (name of affiant) ..., who is personally
 223 known to me or produced as identification, and
 224 did take an oath.

225
 226 ... (Signature of Notary Public - State of Florida)...
 227 ... (Print, Type, or Stamp Commissioned Name of Notary
 228 Public)...

229 My commission expires: ... (date of expiration of
 230 commission)...

231 (5) The financial institution is not required to determine
 232 whether the contents of the sworn affidavit are truthful. The

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233 payment of the funds by the financial institution to the affiant
234 constitutes the financial institution's full release and
235 discharge for the amount paid. A person does not have a right or
236 cause of action against the financial institution for taking any
237 action, or for failing to take any action, in connection with
238 the affidavit or the payment of the funds.

239 (6) An authorized family member who withdraws funds
240 pursuant to this section is personally liable to any persons
241 rightfully entitled to the funds under the Florida Probate Code
242 to the extent that the amount paid exceeds the amount properly
243 attributable to the authorized family member's share.

244 (7) The financial institution shall maintain a copy or an
245 image of the affidavit for a period of 7 years after releasing
246 the funds. If a family member of the decedent requests a copy of
247 the affidavit during such time, the financial institution may
248 provide a copy of the affidavit to the requesting family member
249 of the decedent.

250 (8) Upon presentation of a decedent's death certificate to
251 a financial institution not less than 2 years after the date of
252 death of the decedent, the financial institution may release the
253 existence of and amounts contained in any qualified account of
254 the decedent at the financial institution to either of the
255 following persons:

256 (a) A surviving spouse who presents a copy of a marriage
257 certificate evidencing the spouse's marriage to the decedent.

258 (b) An adult child of the decedent who presents a copy of a
259 birth certificate evidencing that the decedent is the parent of
260 the adult child.

261 (9) In addition to any other penalty provided by law, a

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262 person who knowingly makes a false statement in a sworn
263 affidavit given to a financial institution to receive a
264 decendent's funds under this section commits theft, punishable as
265 provided in s. 812.014.

266 Section 3. This act shall take effect July 1, 2020.