

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 and providing copies
6 of specified affidavits to certain persons relating to
7 deceased account holders; creating s. 655.795, F.S.;
8 providing definitions; authorizing a financial
9 institution to pay funds on deposit in certain
10 accounts to the authorized family member of a decedent
11 without any court proceeding, order, or judgment under
12 certain circumstances; requiring the authorized family
13 member to provide the financial institution a
14 certified copy of the decedent's death certificate and
15 a specified affidavit in order to receive the funds;
16 providing an affidavit form that the authorized family
17 member may use; providing that the financial
18 institution has no duty to make certain
19 determinations; specifying that a person does not have
20 a right or cause of action against a financial
21 institution for certain actions or for failing to take
22 certain actions; providing liability for authorized
23 family members; requiring a financial institution to
24 maintain a copy or image of the affidavit for a
25 specified time; authorizing the financial institution

26 | to provide copies of the affidavit to certain persons;
27 | authorizing a financial institution to release certain
28 | information on specified accounts under certain
29 | circumstances; providing a criminal penalty; providing
30 | an effective date.

31 |
32 | Be It Enacted by the Legislature of the State of Florida:
33 |

34 | Section 1. Paragraph (b) of subsection (2) of section
35 | 655.059, Florida Statutes, is amended to read:

36 | 655.059 Access to books and records; confidentiality;
37 | penalty for disclosure.—

38 | (2)

39 | (b) The books and records pertaining to trust accounts and
40 | the deposit accounts and loans of depositors, borrowers,
41 | members, and stockholders of any financial institution shall be
42 | kept confidential by the financial institution and its
43 | directors, officers, and employees and may not be released
44 | except upon express authorization of the account holder as to
45 | her or his own accounts, loans, or voting rights. However,
46 | information relating to any loan made by a financial institution
47 | may be released without the borrower's authorization in a manner
48 | prescribed by the board of directors for the purpose of meeting
49 | the needs of commerce and for fair and accurate credit
50 | information. Information may also be released, without the

51 authorization of a member or depositor but in a manner
52 prescribed by the board of directors, to verify or corroborate
53 the existence or amount of a customer's or member's account when
54 such information is reasonably provided to meet the needs of
55 commerce and to ensure accurate credit information. In addition,
56 a financial institution, affiliate, and its subsidiaries, and
57 any holding company of the financial institution or subsidiary
58 of such holding company, may furnish to one another information
59 relating to their customers or members, subject to the
60 requirement that each corporation receiving information that is
61 confidential maintain the confidentiality of such information
62 and not provide or disclose such information to any unaffiliated
63 person or entity. Notwithstanding this paragraph, this
64 subsection does not prohibit:

65 1. A financial institution from disclosing financial
66 information as referenced in this subsection as authorized ~~by~~
67 ~~Pub. L. No. 106-102 (1999), as set forth in 15 U.S.C. s. 6802~~
68 (2010) U.S.C.A. s. 6802, as amended.

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

73 3. A financial institution from disclosing the existence
74 of and amounts on deposit in any qualified account of a decedent
75 pursuant to s. 655.795, and providing a copy of any affidavit

76 delivered to the financial institution pursuant thereto, to a
 77 person authorized to receive such information under s. 655.795.

78 Section 2. Section 655.795, Florida Statutes, is created
 79 to read:

80 655.795 Payment to successor without court proceedings.-

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

82 (a) "Authorized family member" means:

83 1. The surviving spouse of the decedent;

84 2. An adult child of the decedent if the decedent left no
 85 surviving spouse;

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

88 4. A parent of the decedent if the decedent left no
 89 surviving spouse, no surviving adult child, and no surviving
 90 adult descendant.

91 (b) "Child" includes a minor and an adult child of a
 92 person, unless the context clearly indicates otherwise.

93 (c) "Descendant" includes a minor and an adult descendant
 94 of a person, unless the context clearly indicates otherwise.

95 (d) "Eligible child" means a child of the decedent who is
 96 not also the child of the surviving spouse of the decedent.

97 (e) "Family members of the decedent" means:

98 1. The surviving spouse of the decedent;

99 2. If the decedent left one or more eligible children: the
 100 surviving spouse of the decedent, the surviving eligible

101 children, and the surviving descendants of any deceased eligible
102 child;

103 3. If the decedent left no surviving spouse: the surviving
104 children of the decedent and the surviving descendants of any
105 deceased child of the decedent; or

106 4. If the decedent left no surviving spouse, no surviving
107 child, and no surviving descendant: the surviving parents of the
108 decedent.

109 (f) "Qualified account" means a depository account or
110 certificate of deposit held in the sole name of the decedent
111 without a pay-on-death or any other survivor designation.

112 (2) A financial institution in this state may pay to the
113 authorized family member of a decedent, without any court
114 proceeding, order, or judgment, the funds on deposit in all
115 qualified accounts of the decedent at the financial institution
116 if the total amount of the combined funds in the qualified
117 accounts at the financial institution do not exceed an aggregate
118 total of \$10,000. The financial institution may not make such
119 payment earlier than 2 years after the date of the decedent's
120 death.

121 (3) In order to receive the funds described in subsection
122 (2), the authorized family member must provide the financial
123 institution with a certified copy of the decedent's death
124 certificate and a sworn affidavit that includes all of the
125 following:

126 (a) A statement attesting that the affiant is the
127 surviving spouse, adult child, adult descendant, or parent of
128 the decedent.

129 1. If the affiant is an adult child of the decedent, the
130 affidavit must attest that the decedent left no surviving
131 spouse.

132 2. If the affiant is an adult descendant of the decedent,
133 the affidavit must attest that the decedent left no surviving
134 spouse and no surviving adult child.

135 3. If the affiant is a parent of the decedent, the
136 affidavit must attest that the decedent left no surviving
137 spouse, no surviving adult child, and no surviving adult
138 descendant.

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

141 (c) A statement attesting that the total amount in all
142 qualified accounts held by the decedent in all financial
143 institutions known to the affiant does not exceed an aggregate
144 total of \$10,000.

145 (d) A statement acknowledging that a personal
146 representative has not been appointed to administer the
147 decedent's estate and attesting that no probate proceeding or
148 summary administration procedure has been commenced with respect
149 to the estate.

150 (e) A statement attesting that the affiant has been

151 provided with and has read the provisions of this section which
152 identify each of the family members of the decedent and
153 attesting that notarized letters of all of the family members of
154 the decedent other than the affiant consenting to the affiant's
155 funds withdrawal are attached. The natural parent or guardian of
156 any person who is a minor may give consent on behalf of such
157 person.

158 (f) A statement acknowledging that the affiant has no
159 knowledge of the existence of any last will and testament or
160 other document or agreement relating to the distribution of the
161 decedent's estate.

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

165 (h) A statement acknowledging that the affiant understands
166 that he or she is personally liable to the persons rightfully
167 entitled to the funds under the Florida Probate Code, to the
168 extent the amount paid exceeds the amount properly attributable
169 to the affiant's share.

170 (i) A statement acknowledging that the affiant understands
171 that making a false statement in the affidavit may be punishable
172 as a criminal offense.

173 (4) The authorized family member may use an affidavit in
174 substantially the following form to fulfill the requirements of
175 subsection (3):

176
 177 AFFIDAVIT UNDER SECTION 655.795, FLORIDA STATUTES, TO OBTAIN
 178 BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ... (Name of
 179 decedent) ...
 180 State of
 181 County of
 182
 183 Before the undersigned authority personally appeared ... (name of
 184 affiant) ..., of ... (residential address of affiant) ..., who has
 185 been sworn and says the following statements are true:
 186 (a) The affiant is (initial one of the following
 187 responses):
 188 The surviving spouse of the decedent.
 189 A surviving adult child of the decedent, and the
 190 decedent left no surviving spouse.
 191 A surviving adult descendant of the decedent, and the
 192 decedent left no surviving spouse and no surviving adult child.
 193 A surviving parent of the decedent, and the decedent
 194 left no surviving spouse, no surviving adult child, and no
 195 surviving adult descendant.
 196 (b) As shown in the certified death certificate, the date
 197 of death of the decedent was ... (date of death) ..., and the
 198 address of the decedent's last residence was ... (address of last
 199 residence)
 200 (c) The affiant is entitled to payment of the funds in the

201 decedent's depository accounts and certificates of deposit held
202 by the financial institution ... (name of financial
203 institution).... The total amount in all qualified accounts held
204 by the decedent in all financial institutions known to the
205 affiant does not exceed an aggregate total of \$10,000. The
206 affiant requests full payment from the financial institution.

207 (d) A personal representative has not been appointed to
208 administer the decedent's estate, and no probate proceeding or
209 summary administration procedure has been commenced with respect
210 to the estate.

211 (e) The affiant has been provided with and has read the
212 provisions of s. 655.795, Florida Statutes, which identify each
213 of the family members of the decedent, and (initial one of the
214 following responses):

215 There are no family members of the decedent other than
216 the affiant.

217 The family members of the decedent are ... (identify by
218 name).... Notarized letters from all of the family members of
219 the decedent other than the affiant consenting to the affiant's
220 funds withdrawal are attached.

221 (f) The affiant has no knowledge of any last will and
222 testament or other document or agreement relating to the
223 distribution of the decedent's estate.

224 (g) The payment of the funds constitutes a full release
225 and discharge of the financial institution regarding the amount

226 paid.

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

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

233

234 By ... (signature of Affiant) ...

235

236 Sworn to and subscribed before me this day of
 237 by ... (name of Affiant) ..., who is personally
 238 known to me or produced as identification, and
 239 did take an oath.

240

241 ... (Signature of Notary Public - State of Florida) ...

242 ... (Print, Type, or Stamp Commissioned Name of Notary
 243 Public) ...

244 My commission expires: ... (date of expiration of
 245 commission) ...

246 (5) The financial institution is not required to determine
 247 whether the contents of the sworn affidavit are truthful. The
 248 payment of the funds by the financial institution to the affiant
 249 constitutes the financial institution's full release and
 250 discharge regarding the amount paid. A person does not have a

251 right or cause of action against the financial institution for
252 taking an action, or for failing to take an action, in
253 connection with the affidavit or the payment of the funds.

254 (6) The authorized family member who withdraws the funds
255 under this section is personally liable to any person rightfully
256 entitled to the funds under the Florida Probate Code, to the
257 extent the amount paid exceeds the amount properly attributable
258 to the authorized family member's share.

259 (7) The financial institution shall maintain a copy or an
260 image of the affidavit for 7 years after releasing the funds. If
261 a family member of the decedent requests a copy of the affidavit
262 during such time, the financial institution may provide a copy
263 of the affidavit to the requesting family member of the
264 decedent.

265 (8) Upon presentation of a decedent's death certificate to
266 a financial institution not less than 2 years after the date of
267 death of the decedent, the financial institution may release
268 information on the existence of and amounts contained in any
269 qualified account of the decedent at the financial institution
270 to the following persons:

271 (a) A surviving spouse who presents a copy of a marriage
272 certificate evidencing the spouse's marriage to the decedent; or

273 (b) An adult child of the decedent who presents a copy of
274 a birth certificate evidencing that the decedent is the parent
275 of the adult child.

276 (9) In addition to any other penalty provided by law, a
277 person who knowingly makes a false statement in a sworn
278 affidavit given to a financial institution to receive a
279 decedent's funds under this section commits theft, punishable as
280 provided in s. 812.014.

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