

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 1184

INTRODUCER: Banking and Insurance Committee and Senator Baxley

SUBJECT: Payments to Surviving Successors

DATE: March 12, 2019

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1184 allows a financial institution to pay the authorized family member of a decedent, without any court proceedings, 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 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;

- A statement acknowledging that a personal representative has not been appointed to administer the estate of the decedent, 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 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 takes effect July 1, 2019.

II. Present Situation:

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.¹ 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.² 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.³

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.⁴ If the descendant has no descendants, the descendant's parents take the intestate estate.⁵

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.⁶ 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.⁷ Those persons must act to contest the will or take other actions within statutory time limits.⁸ The personal representative must search for and provide notice, by publication in a newspaper, to creditors of the decedent.⁹ Creditors must generally make claims against the estate within 3 months of notice.¹⁰ In order for personal representatives to claim monies from bank accounts on 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.¹¹ 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 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

¹ See s. 732.102(2), F.S.

² See s. 732.102(3), F.S.

³ See s. 732.102(4), F.S.

⁴ See s. 732.103(1), F.S.

⁵ See s. 732.103(2), F.S.

⁶ See s. 733.202, F.S.

⁷ See s. 733.212, F.S.

⁸ See s. 733.212, F.S.

⁹ See s. 733.2121, F.S.

¹⁰ See s. 733.702, F.S.

¹¹ See <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited March 6, 2019).

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.¹²

Funds Held by Financial Institutions

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.¹³ An account holder may elect to designate a beneficiary or beneficiaries through a “pay-on-death designation.”¹⁴ Upon the death of the account holder, the amount on deposit in the account belong to the surviving beneficiaries.¹⁵ Not all account holders elect a “pay on death” designation.¹⁶

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 paid the final expenses, such as funeral or medical bills, for the last 60 days.

III. Effect of Proposed Changes:

This bill allows a financial institution to pay the authorized family member¹⁷ of a decedent, without any court proceedings, order, or judgment authorizing the payment, the funds on deposit in all qualified accounts¹⁸ 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.¹⁹

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;

¹² See <https://www.fltreasurehunt.gov/UP-Web/sitePages/FAQs.jsp> (last visited March 6, 2019).

¹³ See s. 655.79, F.S.

¹⁴ See s. 655.82, F.S.

¹⁵ See s. 655.82, F.S.

¹⁶ Information Sheet provided by the Florida Bankers Association (on file with the Committee on Banking and Insurance).

¹⁷ 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.

¹⁸ 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.

¹⁹ 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 three months, to make claims against the estate.

- 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 member²⁰ 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 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

²⁰ 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."

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 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, 2019.

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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On lines the bill allows the bank to “release the existence of and amounts contained in any qualified account” to specified persons. It is unclear whether “release...the amounts contained in any qualified account” refers to providing information regarding the amount in the account or paying the funds in the account to specified persons. Striking “release” and inserting “disclose” would resolve this ambiguity.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 655.795 of the Florida Statutes.

This bill amends section 655.059 of the Florida Statutes.

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 March 11, 2019:

The CS:

- Replaces the term “surviving successor” with “authorized family member;”
- Allows adult descendants of the decedent to claim funds in specified circumstances;
- Provides that an authorized family member cannot claim the funds in the account until at least 2 years have elapsed since the decedent’s death;
- Removes provisions of the bill requiring the authorized family member to indemnify the financial institution against claims brought against financial institutions relating to payments made pursuant to the bill; and
- Allows the financial institution to disclose to the authorized family member the existence of and amounts on deposit in a decedent’s account.

- B. **Amendments:**

None.