

By Senator Baxley

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1                   A bill to be entitled  
2       An act relating to payments to surviving successors;  
3       creating s. 655.795, F.S.; defining the terms  
4       "qualified account" and "surviving successor";  
5       authorizing a financial institution to pay to the  
6       surviving successor of a decedent depositor, without  
7       any court proceeding, order, or judgment authorizing  
8       the payment and not earlier than a specified time, the  
9       funds in the decedent's qualified accounts if the sum  
10      does not exceed a specified amount; requiring the  
11      surviving successor to provide a certified copy of the  
12      decedent's death certificate and a specified affidavit  
13      to the financial institution; providing that the  
14      financial institution has no duty to make certain  
15      determinations; providing construction relating to  
16      liability and indemnification; providing a criminal  
17      penalty; providing an affidavit form the surviving  
18      successor may use; providing construction relating to  
19      any conflict with the Florida Probate Code; providing  
20      an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24       Section 1. Section 655.795, Florida Statutes, is created to  
25 read:

26       655.795 Payment to successor without court proceedings.-

27       (1) For purposes of this section, the term:

28       (a) "Qualified account" means a depository account or a  
29 certificate of deposit held in the sole name of the decedent

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30 with no pay on death or other survivor designation.

31 (b) "Surviving successor" means:

32 1. The surviving spouse of the decedent;

33 2. If the decedent did not leave a surviving spouse, an  
34 adult child of the decedent; or

35 3. If the decedent did not leave a surviving spouse or an  
36 adult child, the parent of the decedent.

37 (2) (a) A financial institution in this state may pay to the  
38 surviving successor of a decedent, without any court  
39 proceedings, order, or judgment authorizing the payment, the  
40 funds on deposit in all qualified accounts of the decedent at  
41 the financial institution if the total amount of such funds does  
42 not exceed \$10,000. The financial institution may make such  
43 payment not earlier than 45 days after the date of the  
44 decedent's death.

45 (b) The surviving successor must provide the financial  
46 institution with a certified copy of the decedent's death  
47 certificate and a sworn affidavit that includes all of the  
48 following:

49 1. A statement attesting that the surviving successor is  
50 the surviving spouse, adult child, or parent of the decedent.

51 a. If the surviving successor is the surviving spouse, a  
52 statement that either all of the decedent's children are also  
53 the children of the surviving spouse, or a statement identifying  
54 the children of the decedent who are not also children of the  
55 surviving spouse and that the written consent of each of those  
56 children to the withdrawal of funds in the qualified account by  
57 the surviving spouse is attached. The natural parent or the  
58 guardian of any such child who is a minor may give consent on

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59 behalf of the child.

60 b. If the surviving successor is an adult child, the  
61 affidavit must attest that the decedent left no surviving  
62 spouse. The affidavit must also indicate that there are no other  
63 surviving adult children of the decedent, or must include a  
64 statement identifying the other surviving adult children of the  
65 decedent and stating that that the written consent of the other  
66 surviving children to the withdrawal of funds from the qualified  
67 account by the affiant adult child is attached. If any such  
68 child is a minor, the natural parent or the guardian of such  
69 child may give consent on behalf of the child.

70 c. If the surviving successor is a parent, the affidavit  
71 must attest that the decedent left no surviving spouse or adult  
72 child. The affidavit must also indicate that there is no other  
73 surviving parent of the decedent, or must include a statement  
74 identifying the other surviving parent and stating that the  
75 written consent of the other surviving parent to the withdrawal  
76 of funds from the qualified account by the affiant parent is  
77 attached.

78 2. The date of death of the decedent and the address of the  
79 last residence of the decedent.

80 3. A statement attesting that the total amount of all  
81 qualified accounts held by the decedent with any financial  
82 institution does not exceed an aggregate total of \$10,000.

83 4. A statement acknowledging that a personal representative  
84 has not been appointed to administer the estate of the decedent,  
85 that no probate or summary administration procedures have been  
86 commenced with respect to the estate of the decedent, and that  
87 after diligent inquiry, the surviving successor believes in good

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88 faith that no last will and testament of the decedent will be  
89 presented to any court for administration.

90 5. A statement attesting either that the affiant has made a  
91 diligent search for creditors of the decedent, and that after  
92 the search, has no knowledge of the existence of any unpaid  
93 creditor of the decedent, or that the written consent of all  
94 known creditors of the decedent to the withdrawal by the  
95 surviving successor is attached.

96 6. A statement acknowledging that the payment of the funds  
97 constitutes a full release and discharge of the financial  
98 institution for the amount paid and that the surviving successor  
99 indemnifies the financial institution against claims; demands;  
100 expenses, including attorney fees and court costs; losses; or  
101 damages incurred by the financial institution for taking any  
102 action, or failing to take an action, in connection with the  
103 payment of the funds.

104 (c) The financial institution is not required to determine  
105 whether the contents of the sworn affidavit are truthful. The  
106 payment of funds by the financial institution to the surviving  
107 successor constitutes a full release and discharge of the  
108 financial institution for the amount paid. A person does not  
109 have a right or cause of action against a financial institution  
110 because of such payment, and the surviving successor must  
111 indemnify and hold harmless the financial institution against  
112 claims; demands; expenses, including attorney fees and court  
113 costs; losses; or damages incurred by the financial institution  
114 for taking any action, or failing to take an action, in  
115 connection with the affidavit or the payment.

116 (d) The surviving successor who withdraws funds is

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117 personally liable:

118 1. To the creditors of the decedent to the extent of the  
119 amount paid;

120 2. To the personal representative of the decedent to the  
121 extent of the amount paid;

122 3. If a personal representative has not been appointed, to  
123 the other intestate heirs of the decedent, to the extent of  
124 excess of the amount paid over the amount that is properly  
125 attributable to the intestate share of the surviving successor;  
126 and

127 4. If the personal representative has been discharged, to  
128 the devisees of the estate to the extent of excess of the amount  
129 paid over the amount that would have been devised to the  
130 surviving successor.

131 (e) Personal liability of the surviving successor under  
132 this section is not barred by s. 733.702 or s. 733.710 unless  
133 the surviving successor publishes a notice to creditors which  
134 complies with s. 733.2121, except that the notice must state  
135 that the creditors must notify the surviving successor of the  
136 claim within the time limits set forth in s. 733.702 or be  
137 forever barred, in which case the claim must be barred as  
138 provided in s. 733.702.

139 (f) In addition to any other penalty provided by law, a  
140 person who knowingly makes a false statement in a sworn  
141 affidavit provided to a financial institution pursuant to this  
142 section commits theft, punishable as provided in s. 812.014.

143 (2) The surviving successor may use the following affidavit  
144 form to fulfill the requirements of paragraph (2) (b):

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146 AFFIDAVIT UNDER SECTION 655.795, FLORIDA STATUTES, TO OBTAIN  
 147 BANK PROPERTY OF DECEASED ACCOUNTHOLDER: ... (Name of  
 148 deceased)...

149 State of ....

150 County of ....

151

152 Before me, the undersigned authority, personally appeared  
 153 Affiant ... (name of Affiant) ... of ... (residential address of  
 154 Affiant) ..., who has been sworn and says the following  
 155 statements are true:

156

157 1. Affiant is (initial one response):

158 .... The surviving spouse of the deceased and the decedent  
 159 had no children who are not also children of the Affiant.

160 .... The surviving spouse of the deceased. The children of  
 161 the decedent who are not also children of the Affiant are  
 162 identified as ... (names of children) ..., and the written consent  
 163 of each such child to the withdrawal of funds in the qualified  
 164 account by the Affiant is attached.

165 .... A surviving adult child of the deceased, and the  
 166 deceased left no surviving spouse and no other surviving  
 167 children.

168 .... A surviving adult child of the deceased, and the  
 169 deceased left no surviving spouse. The other surviving children  
 170 of the decedent are identified as ... (names of children) ... and  
 171 the written consent of each such child to the withdrawal of  
 172 funds in the qualified account by the Affiant is attached.

173 .... A surviving parent of the deceased, and the deceased  
 174 left no surviving spouse, no surviving adult children, and no

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175 other surviving parent.

176 .... A surviving parent of the deceased, and the deceased  
177 left no surviving spouse and no surviving adult children. The  
178 other surviving parent of the decedent is identified as ...(name  
179 of other parent)... and the written consent of such other parent  
180 of the decedent to the withdrawal of funds in the qualified  
181 account by the Affiant is attached.

182 2. As shown in the certified death certificate, the date of  
183 death was ...(date of death)... and the last address of the  
184 deceased was ...(last address)....

185 3. Total amount of all accounts held in the sole name of  
186 the decedent with any financial institution does not exceed an  
187 aggregate total of \$10,000.

188 4. A personal representative has not been appointed to  
189 administer the estate of the deceased and no probate or summary  
190 administration procedures have been commenced with respect to  
191 the estate of the decedent. After diligent inquiry, the Affiant  
192 believes in good faith that no last will and testament of the  
193 decedent will be presented to any court for administration.

194 5. Affiant has (initial one response):

195 .... Made a diligent search for creditors of the decedent  
196 and has no knowledge of the existence of any unpaid creditor of  
197 the decedent.

198 .... Made a diligent search for creditors of the decedent  
199 and written consent of all creditors of the decedent known by  
200 the Affiant to the withdrawal of funds from the qualified  
201 account by Affiant is attached.

202 6. Affiant is entitled to payment of the deceased's deposit  
203 accounts ("Funds") held by ...(name of financial institution)...

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204 ("Financial Institution"). Affiant requests full payment from  
 205 the Financial Institution.

206 7. The payment of the Funds constitutes a full release and  
 207 discharge of the Financial Institution for the amount paid.

208 8. Individually and as the Affiant, the Affiant agrees to  
 209 indemnify the Financial Institution and hold it free and  
 210 harmless from any and all claims; demands; expenses, including  
 211 attorney fees and court costs; losses; or damages incurred by  
 212 the Financial Institution for any action taken, or failure to  
 213 take an action, in connection with this Affidavit and the  
 214 payment of the Funds to Affiant or as instructed by Affiant.

215 By ...(signature of Affiant)...

216  
 217 Sworn to and subscribed before me this .... day of  
 218 .... by ...(name of Affiant)..., who is personally  
 219 known to me or produced .... as identification, and  
 220 did take an oath.

221  
 222 ...(name of notary public)...

223 Notary Public

224 My Commission Expires:

225 ...(date of expiration of commission)...

226  
 227 (3) In the event of a conflict between this section and the  
 228 Florida Probate Code, this section supersedes the conflicting  
 229 provision of the Florida Probate Code.

230 Section 2. This act shall take effect July 1, 2019.