

By the Committee on Banking and Insurance; and Senator Baxley

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1                   A bill to be entitled  
2           An act relating to the disposition of personal  
3           property; 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. 735.303, F.S.;  
8           providing definitions; authorizing a financial  
9           institution to pay funds on deposit in certain  
10          accounts to a specified family member of a decedent  
11          without any court proceeding, order, or judgment under  
12          certain circumstances; requiring the family member to  
13          provide the financial institution a certified copy of  
14          the decedent's death certificate and a specified  
15          affidavit in order to receive the funds; providing an  
16          affidavit form that the family member may use;  
17          providing that the financial institution has no duty  
18          to make certain determinations; specifying that a  
19          person does not have a right or cause of action  
20          against a financial institution for certain actions or  
21          for failing to take certain actions; providing  
22          liability for the family member who withdraws funds;  
23          requiring a financial institution to maintain a copy  
24          or image of the affidavit for a specified time;  
25          authorizing the financial institution to provide  
26          copies of the affidavit to certain persons; providing  
27          a criminal penalty; creating s. 735.304, F.S.;  
28          providing that estates of certain decedents are not  
29          subject to probate administration if certain

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30 conditions are met; providing that specified persons  
31 may request distribution of a decedent's assets by  
32 affidavit filed with a court under certain  
33 circumstances; providing requirements for content of  
34 the affidavit and service of the affidavit on  
35 specified persons; requiring certain actions relating  
36 to the decedent's creditors; authorizing the court to  
37 approve the affidavit and payment of personal property  
38 under certain circumstances; providing that bona fide  
39 purchasers of personal property take the property free  
40 of certain claims and rights; providing for liability  
41 against certain personal property for a specified  
42 time; providing for liability of recipients of the  
43 decedent's personal property under certain  
44 circumstances; providing a limitation on liability of  
45 the decedent's estate and recipients of the estate  
46 under certain circumstances; providing for the award  
47 of costs and reasonable attorney fees under certain  
48 circumstances; providing an effective date.

49  
50 Be It Enacted by the Legislature of the State of Florida:

51  
52 Section 1. Paragraph (b) of subsection (2) of section  
53 655.059, Florida Statutes, is amended to read:

54 655.059 Access to books and records; confidentiality;  
55 penalty for disclosure.—

56 (2)

57 (b) The books and records pertaining to trust accounts and  
58 the deposit accounts and loans of depositors, borrowers,

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59 members, and stockholders of any financial institution shall be  
60 kept confidential by the financial institution and its  
61 directors, officers, and employees and may not be released  
62 except upon express authorization of the account holder as to  
63 her or his own accounts, loans, or voting rights. However,  
64 information relating to any loan made by a financial institution  
65 may be released without the borrower's authorization in a manner  
66 prescribed by the board of directors for the purpose of meeting  
67 the needs of commerce and for fair and accurate credit  
68 information. Information may also be released, without the  
69 authorization of a member or depositor but in a manner  
70 prescribed by the board of directors, to verify or corroborate  
71 the existence or amount of a customer's or member's account when  
72 such information is reasonably provided to meet the needs of  
73 commerce and to ensure accurate credit information. In addition,  
74 a financial institution, affiliate, and its subsidiaries, and  
75 any holding company of the financial institution or subsidiary  
76 of such holding company, may furnish to one another information  
77 relating to their customers or members, subject to the  
78 requirement that each corporation receiving information that is  
79 confidential maintain the confidentiality of such information  
80 and not provide or disclose such information to any unaffiliated  
81 person or entity. Notwithstanding this paragraph, this  
82 subsection does not prohibit:

83 1. A financial institution from disclosing financial  
84 information as referenced in this subsection as authorized by  
85 ~~Pub. L. No. 106-102 (1999), as set forth in 15 U.S.C. s. 6802~~  
86 (2010) U.S.C.A. s. 6802, as amended.

87 2. The Florida office of the international banking

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88 corporation or international trust entity from sharing books and  
89 records under this subsection with the home-country supervisor  
90 in accordance with subsection (1).

91 3. A financial institution from disclosing the existence of  
92 and amounts on deposit in any qualified account of a decedent  
93 pursuant to s. 735.303 and from providing a copy of any  
94 affidavit delivered to the financial institution pursuant  
95 thereto, to a person authorized to receive such information  
96 under s. 735.303.

97 Section 2. Section 735.303, Florida Statutes, is created to  
98 read:

99 735.303 Payment to successor without court proceedings.—

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

101 (a) "Family member" means:

102 1. The surviving spouse of the decedent;

103 2. An adult child of the decedent if the decedent left no  
104 surviving spouse;

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

107 4. A parent of the decedent if the decedent left no  
108 surviving spouse, no surviving adult child, and no surviving  
109 adult descendant.

110 (b) "Qualified account" means a depository account or  
111 certificate of deposit held by a financial institution in the  
112 sole name of the decedent without a pay-on-death or any other  
113 survivor designation.

114 (2) A financial institution in this state may pay to the  
115 family member of a decedent, without any court proceeding,  
116 order, or judgment, the funds on deposit in all qualified

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117 accounts of the decedent at the financial institution if the  
118 total amount of the combined funds in the qualified accounts at  
119 the financial institution does not exceed an aggregate total of  
120 \$1,000. The financial institution may not make such payment  
121 earlier than 6 months after the date of the decedent's death.

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

126 (a) A statement attesting that the affiant is the surviving  
127 spouse, adult child, adult descendant, or parent of the  
128 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 \$1,000.

145 (d) A statement acknowledging that a personal

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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 acknowledging that the affiant has no  
151 knowledge of the existence of any last will and testament or  
152 other document or agreement relating to the distribution of the  
153 decedent's estate.

154 (f) A statement acknowledging that the payment of the funds  
155 constitutes a full release and discharge of the financial  
156 institution's obligation regarding the amount paid.

157 (g) A statement acknowledging that the affiant understands  
158 that he or she is personally liable to the creditors of the  
159 decedent and other persons rightfully entitled to the funds  
160 under the Florida Probate Code, to the extent the amount paid  
161 exceeds the amount properly attributable to the affiant's share.

162 (h) A statement acknowledging that the affiant understands  
163 that making a false statement in the affidavit may be punishable  
164 as a criminal offense.

165 (4) The family member may use an affidavit in substantially  
166 the following form to fulfill the requirements of subsection  
167 (3):

168  
169 AFFIDAVIT UNDER SECTION 735.303, FLORIDA STATUTES, TO OBTAIN  
170 BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ... (Name of  
171 decedent)...  
172 State of ....  
173 County of ....

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175 Before the undersigned authority personally appeared ... (name of  
176 affiant) ..., of ... (residential address of affiant) ..., who has  
177 been sworn and says the following statements are true:

178 (a) The affiant is (initial one of the following  
179 responses):

180 .... The surviving spouse of the decedent.

181 .... A surviving adult child of the decedent, and the  
182 decedent left no surviving spouse.

183 .... A surviving adult descendant of the decedent, and the  
184 decedent left no surviving spouse and no surviving adult child.

185 .... A surviving parent of the decedent, and the decedent  
186 left no surviving spouse, no surviving adult child, and no  
187 surviving adult descendant.

188 (b) As shown in the certified death certificate, the date  
189 of death of the decedent was ... (date of death) ..., and the  
190 address of the decedent's last residence was ... (address of last  
191 residence) ....

192 (c) The affiant is entitled to payment of the funds in the  
193 decedent's depository accounts and certificates of deposit held  
194 by the financial institution ... (name of financial  
195 institution) .... The total amount in all qualified accounts held  
196 by the decedent in all financial institutions known to the  
197 affiant does not exceed an aggregate total of \$1,000. The  
198 affiant requests full payment from the financial institution.

199 (d) A personal representative has not been appointed to  
200 administer the decedent's estate and no probate proceeding or  
201 summary administration procedure has been commenced with respect  
202 to the estate.

203 (e) The affiant has no knowledge of any last will and

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204 testament or other document or agreement relating to the  
205 distribution of the decedent's estate.

206 (f) The payment of the funds constitutes a full release and  
207 discharge of the financial institution regarding the amount  
208 paid.

209 (g) The affiant understands that he or she is personally  
210 liable to the creditors of the decedent and other persons  
211 rightfully entitled to the funds under the Florida Probate Code,  
212 to the extent the amount paid exceeds the amount properly  
213 attributable to the affiant's share.

214 (h) The affiant understands that making a false statement  
215 in this affidavit may be punishable as a criminal offense.

217 By ...(signature of Affiant)...

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

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

227 My commission expires: ...(date of expiration of  
228 commission)...

229 (5) The financial institution is not required to determine  
230 whether the contents of the sworn affidavit are truthful. The  
231 payment of the funds by the financial institution to the affiant  
232 constitutes the financial institution's full release and



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233 discharge regarding the amount paid. A person does not have a  
234 right or cause of action against the financial institution for  
235 taking an action, or for failing to take an action, in  
236 connection with the affidavit or the payment of the funds.

237 (6) The family member who withdraws the funds under this  
238 section is personally liable to the creditors of the decedent  
239 and any other person rightfully entitled to the funds under the  
240 Florida Probate Code to the extent the amount paid exceeds the  
241 amount properly attributable to the family member's share.

242 (7) The financial institution shall maintain a copy or an  
243 image of the affidavit in accordance with its customary  
244 retention policies. If a surviving spouse or descendant of the  
245 decedent requests a copy of the affidavit during such time, the  
246 financial institution may provide a copy of the affidavit to the  
247 requesting surviving spouse or descendant of the decedent.

248 (8) In addition to any other penalty provided by law, a  
249 person who knowingly makes a false statement in a sworn  
250 affidavit given to a financial institution to receive a  
251 decedent's funds under this section commits theft, punishable as  
252 provided in s. 812.014.

253 Section 3. Section 735.304, Florida Statutes, is created to  
254 read:

255 735.304 Disposition without administration of intestate  
256 property in small estates.—

257 (1) No administration shall be required or formal  
258 proceedings instituted upon the estate of a decedent who has  
259 died intestate leaving only personal property exempt under the  
260 provisions of s. 732.402, personal property exempt from the  
261 claims of creditors under the State Constitution, and nonexempt

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262 personal property the value of which does not exceed the sum of  
263 \$10,000 and the amount of preferred funeral expenses and  
264 reasonable and necessary medical and hospital expenses of the  
265 last 60 days of the last illness, provided the decedent has been  
266 deceased for more than 1 year and no administration of the  
267 decedent's estate is pending in this state or has been  
268 previously granted.

269 (2) Any heir at law of the decedent entitled to a share of  
270 the intestate estate pursuant to s. 732.102 or s. 732.103 may by  
271 affidavit request distribution of assets of the decedent through  
272 informal application under this section. The affidavit must be  
273 signed and verified by the surviving spouse, if any, and any  
274 heirs at law, except that joinder in the affidavit is not  
275 required of an heir who will receive a full intestate share  
276 under the proposed distribution of the personal property. Before  
277 the filing of the affidavit, the affiant must make a diligent  
278 search and reasonable inquiry for any known or reasonably  
279 ascertainable creditors, and the proposed distribution must make  
280 provision for payment of those creditors to the extent that  
281 assets are available or the creditors must consent to the  
282 proposed distribution. The affidavit must be served in the  
283 manner of formal notice upon all heirs at law who have not  
284 joined in the affidavit; upon all known or reasonably  
285 ascertainable creditors of the decedent; and, if the decedent at  
286 the time of death was over the age of 55 years of age, upon the  
287 Agency for Health Care Administration.

288 (3) If the court is satisfied that subsection (1) is  
289 applicable and the affidavit filed by the heir at law meets the  
290 requirements of subsection (2), the court, by letter or other

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291 writing under the seal of the court, may authorize the payment,  
292 transfer, disposition, delivery, or assignment of the tangible  
293 or intangible personal property to those persons entitled.

294 (a) Any individual, corporation, or other person paying,  
295 transferring, delivering, or assigning personal property under  
296 the authorization shall be forever discharged from liability  
297 thereon.

298 (b) Bona fide purchasers for value from those to whom  
299 personal property of the decedent has been paid, transferred,  
300 delivered, or assigned shall take the property free of all  
301 claims of creditors of the decedent and all rights of the  
302 surviving spouse and all other beneficiaries or heirs at law of  
303 the decedent.

304 (c) Personal property of the decedent that is not exempt  
305 from claims of creditors and that remains in the possession of  
306 those to whom it has been paid, delivered, transferred, or  
307 assigned shall continue to be liable for claims against the  
308 decedent until barred as provided in the Florida Probate Code.  
309 Any known or reasonably ascertainable creditor who did not  
310 consent to the proposed distribution and for whom provision for  
311 payment was not made may enforce the claim and, if the creditor  
312 prevails, shall be awarded costs, including reasonable attorney  
313 fees, against those who joined in the affidavit.

314 (d) Recipients of the decedent's personal property under  
315 this section shall be personally liable for a pro rata share of  
316 all lawful claims against the estate of the decedent, but only  
317 to the extent of the value on the date of distribution of the  
318 personal property actually received by each recipient, exclusive  
319 of the property exempt from claims of creditors under the State

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320 Constitution and Florida Statutes.

321 (e) Except as otherwise provided in s. 733.710, after 2  
322 years from the death of the decedent, neither the decedent's  
323 estate nor those to whom it may be distributed shall be liable  
324 for any claim against the decedent, unless within that time  
325 proceedings have been taken for the enforcement of the claim.

326 (f) Any heir or devisee of the decedent who was lawfully  
327 entitled to share in the estate but who was not included in the  
328 distribution under this section may enforce all rights in  
329 appropriate proceedings against those who signed the affidavit  
330 or received distribution of personal property and, if  
331 successful, shall be awarded costs including reasonable attorney  
332 fees as in chancery actions.

333 Section 4. This act shall take effect July 1, 2020.