

## CHAPTER 2020-110

### Committee Substitute for Committee Substitute for House Bill No. 1439

An act relating to bank property of deceased account holders; amending s. 655.059, F.S.; specifying that a financial institution is not prohibited from disclosing specified information and providing copies of specified affidavits to certain persons relating to deceased account holders; creating s. 735.303, F.S.; providing definitions; authorizing a financial institution to pay funds on deposit in certain accounts to a specified family member of a decedent without any court proceeding, order, or judgment under certain circumstances; requiring the family member to provide the financial institution a certified copy of the decedent's death certificate and a specified affidavit in order to receive the funds; providing an affidavit form that the family member may use; providing that the financial institution has no duty to make certain determinations; specifying that a person does not have a right or cause of action against a financial institution for taking certain actions or for failing to take certain actions; providing liability for the family member who withdraws funds; requiring a financial institution to maintain a copy or image of the affidavit for a specified time; authorizing the financial institution to provide copies of the affidavit to certain persons; providing penalties; creating s. 735.304, F.S.; providing that specified types of personal property are not subject to probate administration or formal proceedings under certain circumstances; providing that specified persons may request distribution of a decedent's assets by affidavit through an informal application under certain circumstances; providing requirements for such affidavits; requiring certain actions relating to the decedent's creditors; providing requirements for service of the affidavit on specified persons; authorizing the court to approve the payment, transfer, disposition, delivery, or assignment of personal property under certain circumstances; providing discharge from liability for certain individuals and entities under certain circumstances; providing certain bona fide purchasers protection from specified claims of creditors and from rights of spouses, beneficiaries, and heirs of decedents; providing for liability against certain personal property for a specified time; authorizing specified creditors to enforce claims and to be awarded costs under certain circumstances; providing liability of recipients of the decedent's personal property under certain circumstances; providing a limitation on liability of the decedent's estate and recipients of the estate under certain circumstances; providing an exception; authorizing specified heirs or devisees of a decedent to enforce all rights in proceedings under certain circumstances; providing for the award of costs and reasonable attorney fees under certain circumstances; providing an effective date.

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

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

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

(2)

(b) The books and records pertaining to trust accounts and the deposit accounts and loans of depositors, borrowers, members, and stockholders of any financial institution shall be kept confidential by the financial institution and its directors, officers, and employees and may not be released except upon express authorization of the account holder as to her or his own accounts, loans, or voting rights. However, information relating to any loan made by a financial institution may be released without the borrower's authorization in a manner prescribed by the board of directors for the purpose of meeting the needs of commerce and for fair and accurate credit information. Information may also be released, without the authorization of a member or depositor but in a manner prescribed by the board of directors, to verify or corroborate the existence or amount of a customer's or member's account when such information is reasonably provided to meet the needs of commerce and to ensure accurate credit information. In addition, a financial institution, affiliate, and its subsidiaries, and any holding company of the financial institution or subsidiary of such holding company, may furnish to one another information relating to their customers or members, subject to the requirement that each corporation receiving information that is confidential maintain the confidentiality of such information and not provide or disclose such information to any unaffiliated person or entity. Notwithstanding this paragraph, this subsection does not prohibit:

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

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

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

4. A financial institution from disclosing the existence of and amounts on deposit in any individual account of a decedent to a petitioner that filed with the court a petition pursuant to s. 734.1025 or s. 735.203, or to an affiant that filed with the court an affidavit for disposition without administration pursuant to s. 735.301 or s. 735.304.

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

735.303 Payment to successor without court proceedings.—

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

(a) “Family member” means:

1. The surviving spouse of the decedent;

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

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

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

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

(2) A financial institution in this state may pay to the family member of a decedent, without any court proceeding, order, or judgment, the funds on deposit in all qualified accounts of the decedent at the financial institution if the total amount of the combined funds in the qualified accounts at the financial institution do not exceed an aggregate total of \$1,000. The financial institution may not make such payment earlier than 6 months after the date of the decedent’s death.

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

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

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

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

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

(b) The date of death and the address of the decedent’s last residence.

(c) A statement attesting that the total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of \$1,000.

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

(e) A statement acknowledging that the affiant has no knowledge of the existence of any last will and testament or other document or agreement relating to the distribution of the decedent’s estate.

(f) 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.

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

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

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

AFFIDAVIT UNDER SECTION 735.303, FLORIDA STATUTES, TO OBTAIN BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ... (Name of decedent)...

State of .....

County of .....

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

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

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

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

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

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

(b) As shown in the certified death certificate, the date of death of the decedent was ...(date of death)..., and the address of the decedent’s last residence was ...(address of last residence)....

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

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

(e) The affiant has no knowledge of any last will and testament or other document or agreement relating to the distribution of the decedent’s estate.

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

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

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

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

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

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

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

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

(5) The financial institution is not required to determine whether the contents of the sworn affidavit are truthful. The payment of the funds by the financial institution to the affiant constitutes the financial institution’s full

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

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

(7) The financial institution shall maintain a copy or an image of the affidavit in accordance with its customary retention policies. If a surviving spouse or descendant 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 surviving spouse or descendant of the decedent.

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

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

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

(1) No administration shall be required or formal proceedings instituted upon the estate of a decedent who has died intestate leaving only personal property exempt under the provisions of s. 732.402, personal property exempt from the claims of creditors under the Florida Constitution, and nonexempt personal property the value of which does not exceed the sum of \$10,000 and the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness, provided the decedent has been deceased for more than 1 year and no administration of the decedent's estate is pending in this state.

(2) Any heir at law of the decedent entitled to a share of the intestate estate pursuant to s. 732.102 or s. 732.103 may by affidavit request distribution of assets of the decedent through informal application under this section. The affidavit must be signed and verified by the surviving spouse, if any, and any heirs at law, except that joinder in the affidavit is not required of an heir who will receive a full intestate share under the proposed distribution of the personal property. Before the filing of the affidavit, the affiant must make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, and the proposed distribution must make provision for payment of those creditors to the extent that assets are available or the creditors must consent to the proposed distribution. The affidavit must be served in the manner of formal notice upon all heirs at law who have not joined in the affidavit; upon all known or reasonably

ascertainable creditors of the decedent; and, if the decedent at the time of death was over the age of 55 years of age, upon the Agency for Health Care Administration.

(3) If the court is satisfied that subsection (1) is applicable and the affidavit filed by the heir at law meets the requirements of subsection (2), the court, by letter or other writing under the seal of the court, may authorize the payment, transfer, disposition, delivery, or assignment of the tangible or intangible personal property to those persons entitled.

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

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

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

(d) Recipients of the decedent's personal property under this section shall be personally liable for a pro rata share of all lawful claims against the estate of the decedent, but only to the extent of the value on the date of distribution of the personal property actually received by each recipient, exclusive of the property exempt from claims of creditors under the constitution and statutes of Florida.

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

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

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

Approved by the Governor June 27, 2020.

Filed in Office Secretary of State June 27, 2020.