

HOUSE BILL 2118

By Sexton

AN ACT to amend Tennessee Code Annotated, Title 3, Chapter 5; Title 4, Chapter 4; Title 45, Chapter 2; Title 45, Chapter 3 and Title 45, Chapter 4, relative to financial institutions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-2-703, is amended by deleting from subdivision (f)(2) the words, "during the owner's lifetime" and by substituting instead the words, "during the lifetime of one or more owners".

SECTION 2. Tennessee Code Annotated, Title 45, Chapter 2, Part 7, is amended by adding the following new sections:

45-2-711. Payment and Negotiation of Check when no estate has been opened or the estate has been closed.

(a)

(1) Notwithstanding § 30-2-317, where no executor or administrator of a decedent has qualified and given notice of the person's qualifications to the bank, or where the qualified executor or administrator of a decedent has been discharged and a check or checks made payable to the decedent is presented to the bank for payment or collection, the bank may, in its discretion, and at any time after ninety (90) days from the death of the deceased, negotiate or send for collection and pay out the proceeds of one or more checks made payable to the deceased, whether written or electronic, all sums that do not exceed two thousand five hundred dollars (\$2,500) in the aggregate:

(A) To the executor named in any will known to the bank whether probated or not;

(B) To any personal representative appointed by a court whether active or discharged; or

(C) In the absence of knowledge of a purported will naming a surviving executor or an administrator to the:

(i) Surviving spouse; or

(ii) Next of kin.

(2) In the case of conflicting claims, the order of priority shall be that set out in subdivision (a)(1).

(b) The receipt of any, guardian, administrator or executor, duly appointed or qualified by the courts of this state, or any other state, or of any spouse or next of kin acknowledging the negotiation, payment or transfer of funds of a check, standing in the name of the person whose estate the fiduciary represents, shall be a good and sufficient acquittance for payment or transfer and shall constitute a valid defense in favor of the bank against the demands or claims of all parties.

(c) The negotiation or payment of a check under this section without an endorsement of the payee or with the endorsement of a person authorized by this section to negotiate the check shall not be a violation of or give rise to any claim under title 47, chapters 3 or 4.

(d) No bank shall be liable for damages, penalty or tax by reason of any payment made pursuant to this section.

45-2-712. Acknowledgement or Affidavit; Guaranty

(a) A bank shall require any persons seeking to cash checks payable to a decedent as provided in § 45-2-711 to deliver to the bank an affidavit, given under the penalty of perjury, in a form acceptable to the bank that, at the minimum, contains the following:

- (1) The name of the decedent;
- (2) The decedent's date of death;
- (3) The amount and payor of any checks, if the funds are from checks or electronic payments;
- (4) The identity of the creditor or creditors to whom the funds are to be paid, if the funds are to be paid directly to a creditor of the decedent or the decedent's estate;
- (5) If the funds are to be paid other than to a creditor of the decedent or the decedent's estate, the affiant shall:

(A) Identify the decedent's surviving spouse and heirs at law, and provide their residence addresses; and

(B) Affirmatively state that:

(i) There are no unpaid creditors of the decedent;

(ii) There are no unpaid income, gift, estate, inheritance or other transfer taxes owed by the decedent or the estate of the decedent; and

(iii) The funds distributed to the affiant will be distributed by the affiant as provided in any will or testamentary document or in appropriate shares to the decedent's heirs at law.

(b) A bank may, in its discretion, require any persons seeking to collect monies from a deceased depositor's account or accounts, as provided in § 45-2-708, to deliver to the bank an affidavit, given under penalty of perjury in a form acceptable to the bank as provided in subsection (a).

(c) A bank may require any person who obtains funds from a deposit account pursuant to § 45-2-708 or to negotiate checks pursuant to § 45-2-711 to provide an indemnity and guarantee to the bank in the amount of the funds obtained.

SECTION 3. Tennessee Code Annotated, Title 45, Chapter 3, Part 5, is amended by adding the following new sections:

45-3-524. Payment and Negotiation of Check when no estate has been opened or the estate has been closed.

(a)

(1) Notwithstanding § 30-2-317, where no executor or administrator of a decedent has qualified and given notice of the person's qualifications to the savings institution, or where the qualified executor or administrator of a decedent has been discharged and a check or checks made payable to the decedent is presented to the savings institution for payment or collection, the savings institution may, in its discretion, and at any time after ninety (90) days from the death of the deceased, negotiate or send for collection and pay out the proceeds of one or more checks made payable to the deceased, whether written or electronic, all sums that do not exceed two thousand five hundred dollars (\$2,500) in the aggregate:

(A) To the executor named in any will known to the savings institution whether probated or not;

(B) To any personal representative appointed by a court whether active or discharged; or

(C) In the absence of knowledge of a purported will naming a surviving executor or an administrator to the:

(i) Surviving spouse; or

(ii) Next of kin.

(2) In the case of conflicting claims, the order of priority shall be that set out in subdivision (a)(1).

(b) The receipt of any, guardian, administrator or executor, duly appointed or qualified by the courts of this state, or any other state, or of any spouse or next of kin acknowledging the negotiation, payment or transfer of funds of a check, standing in the name of the person whose estate the fiduciary represents, shall be a good and sufficient acquittance for payment or transfer and shall constitute a valid defense in favor of the savings institution against the demands or claims of all parties.

(c) The negotiation or payment of a check under this section without an endorsement of the payee or with the endorsement of a person authorized by this section to negotiate the check shall not be a violation of or give rise to any claim under title 47, chapters 3 or 4.

(d) No savings institution shall be liable for damages, penalty or tax by reason of any payment made pursuant to this section.

45-3-525. Acknowledgement or Affidavit; Guaranty

(a) A savings institution shall require any persons seeking to cash checks payable to a decedent as provided in § 45-2-711 to deliver to the savings institution an affidavit, given under the penalty of perjury, in a form acceptable to the savings institution or in a form that, at the minimum, contains the following:

(1) The name of the decedent;

(2) The decedent's date of death;

(3) The amount and payor of any checks, if the funds are from checks or electronic payments;

(4) The identity of the creditor or creditors to whom the funds are to be paid, if the funds are to be paid directly to a creditor of the decedent or the decedent's estate;

(5) If the funds are to be paid other than to a creditor of the decedent or the decedent's estate, the affiant shall:

(A) Identify the decedent's surviving spouse and heirs at law, and provide their residence addresses; and

(B) Affirmatively state that:

(i) There are no unpaid creditors of the decedent;

(ii) There are no unpaid income, gift, estate, inheritance or other transfer taxes owed by the decedent or the estate of the decedent; and

(iii) The funds distributed to the affiant will be distributed by the affiant as provided in any will or testamentary document or in appropriate shares to the decedent's heirs at law.

(b) A savings institution may, in its discretion, require any persons seeking to collect monies from a deceased depositor's account or accounts, as provided in § 45-2-708, to deliver to the savings institution an affidavit, given under penalty of perjury in a form acceptable to the savings institution as provided in subsection (a).

(c) A savings institution may require any person who obtains funds from a deposit account pursuant to § 45-2-708 or to negotiate checks pursuant to § 45-2-711 to provide an indemnity and guarantee to the savings institution in the amount of the funds obtained.

SECTION 4. Tennessee Code Annotated, Section 45-4-406, is amended by:

(1) Deleting the “and” at the end of subdivision (1);

(2) Deleting the period at the end of subdivision (2) and by substituting a semicolon and the word “and”; and

(3) By adding as a new subdivision (3) the following:

(3) Sections 45-2-711 and 45-2-712 relating to payment of checks.

SECTION 5. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.