

HOUSE BILL REPORT

ESSB 5801

As Passed House:
February 28, 2024

Title: An act relating to the uniform special deposits act.

Brief Description: Concerning special deposits.

Sponsors: Senate Committee on Business, Financial Services, Gaming & Trade (originally sponsored by Senators Dozier, Pedersen, Hunt, Mullet and Wilson, J.; by request of Uniform Law Commission).

Brief History:

Committee Activity:

Consumer Protection & Business: 2/14/24, 2/16/24 [DP].

Floor Activity:

Passed House: 2/28/24, 96-0.

Brief Summary of Engrossed Substitute Bill

- Establishes the Uniform Special Deposits Act, which establishes requirements and protections for special deposits.
- Establishes certain restrictions for how special deposits are handled during a creditor process.
- Prohibits a bank from seeking a right of recoupment or set off against a special deposit, except for specific exceptions.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: Do pass. Signed by 11 members: Representatives Walen, Chair; Reeves, Vice Chair; Robertson, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Chapman, Connors, Donaghy, Hackney, Ryu, Sandlin and Santos.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Megan Mulvihill (786-7304).

Background:

Special Deposits.

A special deposit is an account at a bank that holds funds that may be paid upon the occurrence of one or more contingencies.

Washington Uniform Law Commission.

The Washington Uniform Law Commission (WULC) consists of seven members and was established by state statute. The WULC belongs to the National Conference of Commissioners of Uniform State Laws—also known as the Uniform Law Commission (ULC). The WULC's duty is to identify laws in which uniformity among the states and other jurisdictions is desirable and practicable, and the United States Congress lacks jurisdiction to act, or it is preferable that several states enact the laws. Annually, the WULC recommends to the Legislature these uniform acts for approval and adoption.

Summary of Bill:

The Uniform Special Deposits Act (SDA) is established.

A special deposit is:

- a deposit of funds in a bank under an account agreement;
- for the benefit of at least two beneficiaries, one or more which may be a depositor;
- denominated in a medium of exchange that is currently authorized or adopted by a domestic or foreign government;
- for a permissible purpose stated in the account agreement; and
- subject to a contingency.

Permissible Purpose.

A special deposit must serve at least one permissible purpose stated in the account agreement from the time it is created until termination. A permissible purpose means a governmental, regulatory, commercial, charitable, or testamentary objective of the parties and includes an objective to:

- hold funds: (1) in escrow; (2) as a security deposit of a tenant; (3) that may be distributed to a person as remuneration, retirement, or compensation under a judgment, consent decree, court order, or other decisions of a tribunal; or (4) for distribution to a defined class of people;
- provide assurance with respect to an obligation created by contract, such as earnest money, to ensure a transaction closes;
- settle an obligation that arises in the operation of a payment system, securities settlement system, or other financial market infrastructure;
- provide assurance with respect to an obligation that arises in the operation of a payment system, securities settlement system, or other financial market infrastructure;

or

- hold margin, other cash collateral, or funds that support the orderly functioning of financial market infrastructure or the performance of an obligation with respect to the infrastructure.

If, before termination, the bank or a court determines the special deposit is no longer serving its permissible purpose, parts of the SDA no longer apply and the bank may terminate the special deposit. Unless otherwise provided in the account agreement, a special deposit terminates five years after the date it was first funded. If the bank cannot identify or locate a beneficiary entitled to payment when the special deposit is terminated and a balance remains, the bank must pay the balance to the depositor.

Bank Duties and Liabilities.

A bank does not have a fiduciary duty to any person with respect to a special deposit. When the bank is obligated to pay a beneficiary, a debtor-creditor relationship arises between the bank and the beneficiary. A bank is obligated to pay a beneficiary if there are sufficient funds in the special deposit, unless the account agreement provides otherwise. The obligation to pay the beneficiary is excused if the funds are insufficient; however, the beneficiary may elect to receive the available funds and, if there is more than one beneficiary, a pro rata share of the funds available.

The bank has a duty to comply with the account agreement and the SDA. If the bank does not comply, the bank is liable to a depositor or beneficiary only for damages proximately caused by the noncompliance and not consequential, special, or punitive damages. If an account agreement requires payment upon presentation of a record, the bank must determine whether the record is sufficient to require payment. Unless the account agreement provides otherwise, the bank is not required to determine whether a permissible purpose continues to exist.

Forum for Disputes.

To settle a dispute arising out of a special deposit, the parties to an account agreement may choose a forum for settling the dispute in Washington, regardless of whether the account agreement or the parties involved have a reasonable relation to Washington, provided there is approval of a presiding officer.

Property Interest.

Neither a depositor nor a beneficiary has a property interest in a special deposit. Any property interest with respect to a special deposit is only in the right to receive payment if the bank is obligated to pay a beneficiary and not in the special deposit itself.

Creditor Process.

A creditor process, such as garnishment, lien, or other similar process by or on behalf of a creditor, is not enforceable against the bank holding the special deposit. Only the amount obligated to a beneficiary may be enforceable in a creditor process against a bank if the

bank is served, if sufficient evidence is provided to permit the bank to identify the depositor or the beneficiary from the bank's books and records, and the creditor gives the bank a reasonable opportunity to act on the creditor process.

Injunction or Similar Relief.

A court may instruct a bank not to pay a beneficiary or depositor if the payment constitutes or facilitates material fraud.

Right of Recoupment or Setoff.

A bank may not exercise a right of recoupment or setoff against a special deposit except for the following circumstances:

- An account agreement authorizes the bank to debit the special deposit:
 - when the bank becomes obligated to pay a beneficiary in an amount that does not exceed the amount necessary to discharge the obligation;
 - for an overdraft fee in the special deposit account;
 - for costs incurred by the bank that relate directly to the special deposit; or
 - to reverse an earlier credit posted by the bank to the balance of the special deposit account, if the reversal occurs under an event or circumstance warranted under another law governing mistake and restitution.
- The bank holding a special deposit may exercise a right of recoupment or setoff against an obligation to pay a beneficiary, even if the bank funds payment from the special deposit.

Application.

Special deposit account agreements made on or after July 1, 2024, are subject to the SDA. In addition, an account agreement executed before July 1, 2024, may be subject to the SDA if all parties agree and the special deposit satisfies the statutory requirements to be considered a special deposit.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony:

(In support) The term special deposits is not one that registers with many people. Special deposits are different from general deposits because the beneficiary is not known until a contingency occurs. The expectation is that when a contingency does occur, the money will be there to pay the beneficiary, and these regulations help to ensure that happens. There were four problems identified that this legislation attempts to resolve. First, there is confusing case law, and it is unclear how to successfully create a special deposit. Second, there is a risk of the deposit becoming part of a bankruptcy if the depositor is insolvent.

Third, a special deposit could be attached to a creditor proceeding. Fourth, a bank might attempt to exercise a right of recoupment or setoff. This legislation provides clear rules about how to create special deposits, and it ensures there are no property rights in a special deposit until a contingency is resolved. Special deposits will be protected from credit processes. The bill does not require existing deposits or newly created deposits to become special deposits. This is strictly opt in and must be agreed upon by the parties involved. Special deposits have not been used correctly in the past, and this outlines what banks can and cannot do, thereby increasing competence in special deposits.

(Opposed) None.

Persons Testifying: Senator Perry Dozier, prime sponsor; Kari Bearman, Uniform Law Commission; and Michael Wiseman, Uniform Special Deposits Act Drafting Committee.

Persons Signed In To Testify But Not Testifying: None.