
SENATE BILL 5801

State of Washington

68th Legislature

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By Senators Dozier, Pedersen, Hunt, Mullet, and J. Wilson; by request of Uniform Law Commission

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1 AN ACT Relating to the uniform special deposits act; adding a new
2 chapter to Title 32 RCW; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** SHORT TITLE. This act may be known and
5 cited as the uniform special deposits act.

6 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
7 section apply throughout this chapter unless the context clearly
8 requires otherwise.

9 (1) "Account agreement" means an agreement that:

10 (a) Is in a record between a bank and one or more depositors;

11 (b) May have one or more beneficiaries as additional parties; and

12 (c) States the intention of the parties to establish a special
13 deposit governed by this chapter.

14 (2) "Bank" means a person engaged in the business of banking and
15 includes a savings bank, savings and loan association, credit union,
16 trust company, and banks as defined in RCW 30A.38.005. Each branch or
17 separate office of a bank is a separate bank for the purpose of this
18 chapter.

19 (3) "Beneficiary" means a person that:

20 (a) Is identified as a beneficiary in an account agreement; or

1 (b) If not identified as a beneficiary in an account agreement,
2 may be entitled to payment from a special deposit:

3 (i) Under the account agreement; or

4 (ii) On termination of the special deposit.

5 (4) "Contingency" means an event or circumstance stated in an
6 account agreement that is not certain to occur but must occur before
7 the bank is obligated to pay a beneficiary.

8 (5) "Creditor process" means attachment, garnishment, levy,
9 notice of lien, sequestration, or similar process issued by or on
10 behalf of a creditor or other claimant.

11 (6) "Depositor" means a person that establishes or funds a
12 special deposit.

13 (7) "Good faith" means honesty in fact and observance of
14 reasonable commercial standards of fair dealing.

15 (8) "Knowledge" of a fact means:

16 (a) With respect to a beneficiary, actual knowledge of the fact;
17 or

18 (b) With respect to a bank holding a special deposit:

19 (i) If the bank:

20 (A) Has established a reasonable routine for communicating
21 material information to an individual to whom the bank has assigned
22 responsibility for the special deposit; and

23 (B) Maintains reasonable compliance with the routine, actual
24 knowledge of the fact by that individual; or

25 (ii) If the bank has not established and maintained reasonable
26 compliance with a routine described in (b)(i) of this subsection (8)
27 or otherwise exercised due diligence, implied knowledge of the fact
28 that would have come to the attention of an individual to whom the
29 bank has assigned responsibility for the special deposit.

30 (9)(a) "Obligated to pay a beneficiary" means a beneficiary is
31 entitled under the account agreement to receive from the bank a
32 payment when:

33 (i) A contingency has occurred; and

34 (ii) The bank has knowledge the contingency has occurred.

35 (b) "Obligation to pay a beneficiary" has a corresponding
36 meaning.

37 (10) "Permissible purpose" means a governmental, regulatory,
38 commercial, charitable, or testamentary objective of the parties
39 stated in an account agreement. The term includes an objective to:

40 (a) Hold funds:

1 (i) In escrow, including for a purchase and sale, lease, buyback,
2 or other transaction;

3 (ii) As a security deposit of a tenant;

4 (iii) That may be distributed to a person as remuneration,
5 retirement or other benefit, or compensation under a judgment,
6 consent decree, court order, or other decision of a tribunal; or

7 (iv) For distribution to a defined class of persons after
8 identification of the class members and their interest in the funds;

9 (b) Provide assurance with respect to an obligation created by
10 contract, such as earnest money to ensure a transaction closes;

11 (c) Settle an obligation that arises in the operation of a
12 payment system, securities settlement system, or other financial
13 market infrastructure;

14 (d) Provide assurance with respect to an obligation that arises
15 in the operation of a payment system, securities settlement system,
16 or other financial market infrastructure; or

17 (e) Hold margin, other cash collateral, or funds that support the
18 orderly functioning of financial market infrastructure or the
19 performance of an obligation with respect to the infrastructure.

20 (11) "Person" means an individual, estate, business or nonprofit
21 entity, government or governmental subdivision, agency, or
22 instrumentality, or other legal entity. The term includes a protected
23 series, however denominated, of an entity if the protected series is
24 established under law that limits, or limits if conditions specified
25 under law are satisfied, the ability of a creditor of the entity or
26 of any other protected series of the entity to satisfy a claim from
27 assets of the protected series.

28 (12) "Record" means information:

29 (a) Inscribed on a tangible medium; or

30 (b) Stored in an electronic or other medium and retrievable in
31 perceivable form.

32 (13) "Special deposit" means a deposit that satisfies section 5
33 of this act.

34 (14) "State" means a state of the United States, the District of
35 Columbia, Puerto Rico, the United States Virgin Islands, or any other
36 territory or possession subject to the jurisdiction of the United
37 States. The term includes an agency or instrumentality of the state.

38 NEW SECTION. **Sec. 3.** SCOPE, CHOICE OF LAW, AND FORUM. (1) This
39 chapter applies to a special deposit under an account agreement that

1 states the intention of the parties to establish a special deposit
2 governed by this chapter, regardless of whether a party to the
3 account agreement or a transaction related to the special deposit, or
4 the special deposit itself, has a reasonable relation to Washington
5 state.

6 (2) The parties to an account agreement may choose a forum in
7 this state for settling a dispute arising out of the special deposit,
8 regardless of whether a party to the account agreement or a
9 transaction related to the special deposit, or the special deposit
10 itself, has a reasonable relation to this state.

11 (3) This chapter does not affect:

12 (a) A right or obligation relating to a deposit other than a
13 special deposit under this chapter; or

14 (b) The voidability of a deposit or transfer that is fraudulent
15 or voidable under other law.

16 NEW SECTION. **Sec. 4.** VARIATION BY AGREEMENT OR AMENDMENT. (1)

17 The effect of sections 2 through 6, 8 through 11, and 14 of this act
18 may not be varied by agreement, except as provided in those sections.
19 Subject to subsection (2) of this section, the effect of sections 7,
20 12, and 13 of this act may be varied by agreement.

21 (2) A provision in an account agreement or other record that
22 substantially excuses liability or substantially limits remedies for
23 failure to perform an obligation under this chapter is not sufficient
24 to vary the effect of a provision of this chapter.

25 (3) If a beneficiary is a party to an account agreement, the bank
26 and the depositor may amend the agreement without the consent of the
27 beneficiary only if the agreement expressly permits the amendment.

28 (4) If a beneficiary is not a party to an account agreement and
29 the bank and the depositor know the beneficiary has knowledge of the
30 agreement's terms, the bank and the depositor may amend the agreement
31 without the consent of the beneficiary only if the amendment does not
32 adversely and materially affect a payment right of the beneficiary.

33 (5) If a beneficiary is not a party to an account agreement and
34 the bank and the depositor do not know whether the beneficiary has
35 knowledge of the agreement's terms, the bank and the depositor may
36 amend the agreement without the consent of the beneficiary only if
37 the amendment is made in good faith.

1 NEW SECTION. **Sec. 5.** REQUIREMENTS FOR SPECIAL DEPOSIT. A

2 deposit is a special deposit if it is:

3 (1) A deposit of funds in a bank under an account agreement;

4 (2) For the benefit of at least two beneficiaries, one or more of
5 which may be a depositor;

6 (3) Denominated in a medium of exchange that is currently
7 authorized or adopted by a domestic or foreign government;

8 (4) For a permissible purpose stated in the account agreement;
9 and

10 (5) Subject to a contingency.

11 NEW SECTION. **Sec. 6.** PERMISSIBLE PURPOSE. (1) A special deposit
12 must serve at least one permissible purpose stated in the account
13 agreement from the time the special deposit is created in the account
14 agreement until termination of the special deposit.

15 (2) If, before termination of the special deposit, the bank or a
16 court determines the special deposit no longer satisfies subsection
17 (1) of this section, sections 8 through 11 of this act cease to apply
18 to any funds deposited in the special deposit after the special
19 deposit ceases to satisfy subsection (1) of this section.

20 (3) If, before termination of a special deposit, the bank
21 determines the special deposit no longer satisfies subsection (1) of
22 this section, the bank may take action it believes is necessary under
23 the circumstances, including terminating the special deposit.

24 NEW SECTION. **Sec. 7.** PAYMENT TO BENEFICIARY BY BANK. (1) Unless
25 the account agreement provides otherwise, the bank is obligated to
26 pay a beneficiary if there are sufficient actually and finally
27 collected funds in the balance of the special deposit.

28 (2) Except as provided in subsection (3) of this section, the
29 obligation to pay the beneficiary is excused if the funds available
30 in the special deposit are insufficient to cover such payment.

31 (3) Unless the account agreement provides otherwise, if the funds
32 available in the special deposit are insufficient to cover an
33 obligation to pay a beneficiary, a beneficiary may elect to be paid
34 the funds that are available or, if there is more than one
35 beneficiary, a pro rata share of the funds available. Payment to the
36 beneficiary making the election under this subsection discharges the
37 bank's obligation to pay a beneficiary and does not constitute an

1 accord and satisfaction with respect to another person obligated to
2 the beneficiary.

3 (4) Unless the account agreement provides otherwise, the
4 obligation of the bank obligated to pay a beneficiary is immediately
5 due and payable.

6 (5) The bank may discharge its obligation under this section by:

- 7 (a) Crediting another transaction account of the beneficiary; or
- 8 (b) Taking other action that:

9 (i) Is permitted under the account agreement for the bank to
10 obtain a discharge; or

11 (ii) Otherwise would constitute a discharge under law.

12 (6) If the bank obligated to pay a beneficiary has incurred an
13 obligation to discharge the obligation of another person, the
14 obligation of the other person is discharged if action by the bank
15 under subsection (5) of this section would constitute a discharge of
16 the obligation of the other person under law that determines whether
17 an obligation is satisfied.

18 NEW SECTION. **Sec. 8.** PROPERTY INTEREST OF DEPOSITOR OR
19 BENEFICIARY. (1) Neither a depositor nor a beneficiary has a property
20 interest in a special deposit.

21 (2) Any property interest with respect to a special deposit is
22 only in the right to receive payment if the bank is obligated to pay
23 a beneficiary and not in the special deposit itself. Any property
24 interest under this subsection is determined under other law.

25 NEW SECTION. **Sec. 9.** WHEN CREDITOR PROCESS ENFORCEABLE AGAINST
26 BANK. (1) Subject to subsection (2) of this section, creditor process
27 with respect to a special deposit is not enforceable against the bank
28 holding the special deposit.

29 (2) Creditor process is enforceable against the bank holding a
30 special deposit with respect to an amount the bank is obligated to
31 pay a beneficiary or a depositor if the process:

- 32 (a) Is served on the bank;
- 33 (b) Provides sufficient information to permit the bank to
34 identify the depositor or the beneficiary from the bank's books and
35 records; and

36 (c) Gives the bank a reasonable opportunity to act on the
37 process.

1 (3) Creditor process served on a bank before it is enforceable
2 against the bank under subsection (2) of this section does not create
3 a right of the creditor against the bank, or a duty of the bank to
4 the creditor. Other law determines whether creditor process creates a
5 lien enforceable against the beneficiary on a contingent interest of
6 a beneficiary, including a depositor as a beneficiary, even if not
7 enforceable against the bank.

8 NEW SECTION. **Sec. 10.** INJUNCTION OR SIMILAR RELIEF. A court may
9 enjoin, or grant similar relief that would have the effect of
10 enjoining, a bank from paying a depositor or beneficiary only if
11 payment would constitute a material fraud or facilitate a material
12 fraud with respect to a special deposit.

13 NEW SECTION. **Sec. 11.** RECOUPMENT OR SET OFF. (1) Except as
14 provided in subsection (2) or (3) of this section, a bank may not
15 exercise a right of recoupment or set off against a special deposit.

16 (2) An account agreement may authorize the bank to debit the
17 special deposit:

18 (a) When the bank becomes obligated to pay a beneficiary, in an
19 amount that does not exceed the amount necessary to discharge the
20 obligation;

21 (b) For a fee assessed by the bank that relates to an overdraft
22 in the special deposit account;

23 (c) For costs incurred by the bank that relate directly to the
24 special deposit; or

25 (d) To reverse an earlier credit posted by the bank to the
26 balance of the special deposit account, if the reversal occurs under
27 an event or circumstance warranted under other law of this state
28 governing mistake and restitution.

29 (3) The bank holding a special deposit may exercise a right of
30 recoupment or set off against an obligation to pay a beneficiary,
31 even if the bank funds payment from the special deposit.

32 NEW SECTION. **Sec. 12.** DUTIES AND LIABILITY OF BANK. (1) A bank
33 does not have a fiduciary duty to any person with respect to a
34 special deposit.

35 (2) When the bank holding a special deposit becomes obligated to
36 pay a beneficiary, a debtor-creditor relationship arises between the
37 bank and beneficiary.

1 (3) The bank holding a special deposit has a duty to a
2 beneficiary to comply with the account agreement and this chapter.

3 (4) If the bank holding a special deposit does not comply with
4 the account agreement or this chapter, the bank is liable to a
5 depositor or beneficiary only for damages proximately caused by the
6 noncompliance. Except as provided by other law of this state, the
7 bank is not liable for consequential, special, or punitive damages.

8 (5) The bank holding a special deposit may rely on records
9 presented in compliance with the account agreement to determine
10 whether the bank is obligated to pay a beneficiary.

11 (6) If the account agreement requires payment on presentation of
12 a record, the bank shall determine within a reasonable time whether
13 the record is sufficient to require payment. If the agreement
14 requires action by the bank on presentation of a record, the bank is
15 not liable for relying in good faith on the genuineness of the record
16 if the record appears on its face to be genuine.

17 (7) Unless the account agreement provides otherwise, the bank is
18 not required to determine whether a permissible purpose stated in the
19 account agreement continues to exist.

20 NEW SECTION. **Sec. 13.** TERM AND TERMINATION. (1) Unless
21 otherwise provided in the account agreement, a special deposit
22 terminates five years after the date the special deposit was first
23 funded.

24 (2) Unless otherwise provided in the account agreement, if the
25 bank cannot identify or locate a beneficiary entitled to payment when
26 the special deposit is terminated, and a balance remains in the
27 special deposit, the bank shall pay the balance to the depositor or
28 depositors as a beneficiary or beneficiaries.

29 (3) A bank that pays the remaining balance as provided under
30 subsection (2) of this section has no further obligation with respect
31 to the special deposit.

32 NEW SECTION. **Sec. 14.** PRINCIPLES OF LAW AND EQUITY. Title 62A
33 RCW, consumer protection law, law governing deposits generally, law
34 related to escheat and abandoned or unclaimed property, and the
35 principles of law and equity, including law related to capacity to
36 contract, principal and agent, estoppel, fraud, misrepresentation,
37 duress, coercion, mistake, and bankruptcy, supplement this chapter,
38 except to the extent inconsistent with this chapter.

1 NEW SECTION. **Sec. 15.** UNIFORMITY AND APPLICATION AND
2 CONSTRUCTION. In applying and construing this uniform act, a court
3 shall consider the promotion of uniformity of the law among
4 jurisdictions that enact it.

5 NEW SECTION. **Sec. 16.** TRANSITIONAL PROVISION. This chapter
6 applies to:

7 (1) A special deposit made under an account agreement executed on
8 or after the effective date of this section; and

9 (2) A deposit made under an account agreement executed before the
10 effective date of this section, if:

11 (a) All parties entitled to amend the account agreement agree to
12 make the deposit a special deposit governed by this chapter; and

13 (b) The special deposit referenced in the amended account
14 agreement satisfies section 5 of this act.

15 NEW SECTION. **Sec. 17.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 18.** This act takes effect July 1, 2024.

20 NEW SECTION. **Sec. 19.** Sections 1 through 16 and 18 of this act
21 constitute a new chapter in Title 32 RCW.

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