

SENATE BILL REPORT

ESSB 5801

As Passed Senate, January 31, 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: Business, Financial Services, Gaming & Trade: 1/09/24, 1/11/24 [DPS, w/oRec].

Floor Activity: Passed Senate: 1/31/24, 47-1.

Brief Summary of Engrossed First Substitute Bill

- Provides statutory clarity on what may be considered a special deposit.
- Establishes that a special deposit is a debt owed to the beneficiary.
- Establishes certain restrictions around a special deposit during a creditor process.
- Clarifies a bank's rights for seeking recoupment on a debt when holding a special deposit.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Majority Report: That Substitute Senate Bill No. 5801 be substituted therefor, and the substitute bill do pass.

Signed by Senators Stanford, Chair; Frame, Vice Chair; Dozier, Ranking Member; Gildon, Lovick, MacEwen and Mullet.

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.

Minority Report: That it be referred without recommendation.

Signed by Senator Hasegawa.

Staff: Kellee Gunn (786-7429)

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, or ULC. The duty of the WULC is to identify laws in which uniformity of laws among the states and other jurisdictions is desirable and practicable and the United States Congress lacks jurisdiction to act, or it is preferable that the several states enact the laws. Annually, the WULC recommends to the Legislature these uniform acts for approval and adoption.

Summary of Engrossed First Substitute Bill: The Uniform Special Deposits Act (Act) is established. The Act provides statutory clarity on what may be considered a special deposit, establishes that a special deposit is a debt owed to the beneficiary, establishes that neither the depositor or the beneficiary has a property interest in a special deposit, establishes restrictions around a special deposit during a creditor process, and clarifies the rights of a bank to seek recoupment for a debt—or a right to set off—when holding a special deposit.

Special Deposit. A special deposit is:

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

A bank is obligated to pay a beneficiary of a special deposit unless the account agreement provides otherwise. The obligation to pay the beneficiary is excused if the funds are insufficient. A beneficiary may elect to be paid the funds available if insufficient or, if there is more than one beneficiary, a prorated share of the funds available unless stated otherwise in the account agreement.

A bank is defined as a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law.

Forum. 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 this state regardless of whether the

account agreement or the parties involved have a reasonable relation to this state, provided there is approval of a presiding officer.

Property Interest in a Special Deposit. Neither the depositor nor a beneficiary has a property interest in a special deposit. Any property interest is only in the right to receive payment if the bank is obligated to pay the beneficiary. Any property interest is determined by other law.

Creditor Process Not Enforceable Against a Bank. Creditor process, such as garnishment, lien, or similar process issued by or on behalf of a creditor, is not enforceable against the bank holding the special deposit. The amount obligated to a beneficiary may be enforceable against a bank only if the process is served to the bank, provides sufficient information to permit the bank to identify the depositor or the beneficiary from the bank's books and records, and gives the bank a reasonable opportunity to act on the process.

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

Recoupment of a Debt by a Bank. A bank may not exercise a right of recoupment or set off against a special deposit except for the following instances:

- an account agreement authorizes the bank to debit the special deposit:
 1. when the bank is obligated to pay a beneficiary;
 2. for an overdraft fee in the special deposit account;
 3. for costs incurred by the bank that relate to the special deposit; or
 4. to reverse an earlier credit posted by the bank to the balance of the special deposit account, if the reversal occurs warranted under law of this state regarding mistake or restitution; and
- the bank holding a special deposit may exercise a right of recoupment or set off an obligation to pay a beneficiary, even if the bank funds payment from the special deposit.

Application to New and Existing Special Deposits. Account agreements executed on or after the effective date are subject to the act. Deposits under an account agreement made before the effective date may be subject to the act if all parties agree and the special deposit satisfies the statutory requirements to be considered a special deposit.

The Act does not affect previously established common law or other application of law regarding deposits other than special deposits.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This was brought forth a few months ago. This bill clarifies some issues around special deposits. It is not requiring financial institutions to participate, but to opt in. Creates a clear rule around what a special deposit is. This account must be for the benefit of at least two people. This bill does not require existing deposits to become special deposits. This will increase confidence in these types of deposits. Have not heard any negative effects of this bill. This provides a tool for the banking industry to use if they choose to.

The Special Deposits Act (SDA) controls certain problematic issues regarding special deposits. It establishes what a special deposit is and is not. The SDA protects the deposit during a depositor's bankruptcy by establishing that they do not have a property interest in the special deposit. Under the SDA, if the account is a qualifying special deposit, tenants may have rights to their security deposits during a creditor process.

Additionally, the SDA provides bank rights from a set off right - or recoupment of the deposit.

This Act resolves mischiefs around the case law. If the bank wants the special deposit to be covered on the SDA, it is their choice. No bank is required to offer a special deposit. There are real measurable advantages to this bill.

Persons Testifying: PRO: Senator Perry Dozier, Prime Sponsor; Patrick Guida, Uniform Law Commission (Chair of the Uniform Special Deposits Act Drafting Committee); Thomas Baxter, Reporter to the Uniform Special Deposits Act Drafting Committee.

Persons Signed In To Testify But Not Testifying: No one.