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**ENGROSSED SUBSTITUTE SENATE BILL 5801**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

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

READ FIRST TIME 01/15/24.

1       AN ACT Relating to the uniform special deposits act; adding a new  
2 chapter to Title 30A 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" has the same meaning as "financial institution" in RCW  
15 30A.22.040. Each branch or separate office of a bank is a separate  
16 bank for the purpose of this chapter.

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

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

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

1 (i) Under the account agreement; or  
2 (ii) On termination of the special deposit.

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

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

9 (6) "Depositor" means a person that establishes or funds a  
10 special deposit.

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

13 (8) "Knowledge" of a fact means:  
14 (a) With respect to a beneficiary, actual knowledge of the fact;  
15 or  
16 (b) With respect to a bank holding a special deposit:  
17 (i) If the bank:  
18 (A) Has established a reasonable routine for communicating  
19 material information to an individual to whom the bank has assigned  
20 responsibility for the special deposit; and  
21 (B) Maintains reasonable compliance with the routine, actual  
22 knowledge of the fact by that individual; or  
23 (ii) If the bank has not established and maintained reasonable  
24 compliance with a routine described in (b)(i) of this subsection (8)  
25 or otherwise exercised due diligence, implied knowledge of the fact  
26 that would have come to the attention of an individual to whom the  
27 bank has assigned responsibility for the special deposit.

28 (9)(a) "Obligated to pay a beneficiary" means a beneficiary is  
29 entitled under the account agreement to receive from the bank a  
30 payment when:  
31 (i) A contingency has occurred; and  
32 (ii) The bank has knowledge the contingency has occurred.

33 (b) "Obligation to pay a beneficiary" has a corresponding  
34 meaning.

35 (10) "Permissible purpose" means a governmental, regulatory,  
36 commercial, charitable, or testamentary objective of the parties  
37 stated in an account agreement. The term includes an objective to:  
38 (a) Hold funds:  
39 (i) In escrow, including for a purchase and sale, lease, buyback,  
40 or other transaction;

- 1 (ii) As a security deposit of a tenant;
- 2 (iii) That may be distributed to a person as remuneration,  
3 retirement or other benefit, or compensation under a judgment,  
4 consent decree, court order, or other decision of a tribunal; or
- 5 (iv) For distribution to a defined class of persons after  
6 identification of the class members and their interest in the funds;
- 7 (b) Provide assurance with respect to an obligation created by  
8 contract, such as earnest money to ensure a transaction closes;
- 9 (c) Settle an obligation that arises in the operation of a  
10 payment system, securities settlement system, or other financial  
11 market infrastructure;
- 12 (d) Provide assurance with respect to an obligation that arises  
13 in the operation of a payment system, securities settlement system,  
14 or other financial market infrastructure; or
- 15 (e) Hold margin, other cash collateral, or funds that support the  
16 orderly functioning of financial market infrastructure or the  
17 performance of an obligation with respect to the infrastructure.
- 18 (11) "Person" means an individual, estate, business or nonprofit  
19 entity, government or governmental subdivision, agency, or  
20 instrumentality, or other legal entity. The term includes a protected  
21 series, however denominated, of an entity if the protected series is  
22 established under law that limits, or limits if conditions specified  
23 under law are satisfied, the ability of a creditor of the entity or  
24 of any other protected series of the entity to satisfy a claim from  
25 assets of the protected series.
- 26 (12) "Record" means information:
- 27 (a) Inscribed on a tangible medium; or
- 28 (b) Stored in an electronic or other medium and retrievable in  
29 perceivable form.
- 30 (13) "Special deposit" means a deposit that satisfies section 5  
31 of this act.
- 32 (14) "State" means a state of the United States, the District of  
33 Columbia, Puerto Rico, the United States Virgin Islands, or any other  
34 territory or possession subject to the jurisdiction of the United  
35 States. The term includes an agency or instrumentality of the state.

36 NEW SECTION. **Sec. 3.** SCOPE, CHOICE OF LAW, AND FORUM. (1) This  
37 chapter applies to a special deposit under an account agreement that  
38 states the intention of the parties to establish a special deposit  
39 governed by this chapter, regardless of whether a party to the

1 account agreement or a transaction related to the special deposit, or  
2 the special deposit itself, has a reasonable relation to Washington  
3 state.

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

10 (3) This chapter does not affect:

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

13 (b) Previously established common law or application of statutes  
14 regarding deposits other than special deposits under this chapter; or

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

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

18 The effect of sections 2 through 6, 8 through 11, and 14 of this act  
19 may not be varied by agreement, except as provided in those sections.  
20 Subject to subsection (2) of this section, the effect of sections 7,  
21 12, and 13 of this act may be varied by agreement.

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

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

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

34 (5) If a beneficiary is not a party to an account agreement and  
35 the bank and the depositor do not know whether the beneficiary has  
36 knowledge of the agreement's terms, the bank and the depositor may  
37 amend the agreement without the consent of the beneficiary only if  
38 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 30A RCW, to be codified between  
22 chapters 30A.22 and 30A.32 RCW.

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