

STORAGE NAME: h1735s1.fs

DATE: March 22, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS**

BILL #: CS/HB 1735

RELATING TO: Banking

SPONSOR(S): Committee on Financial Services and Representative C. Green

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 8 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

CURRENT FLORIDA LAW:

- 1) provides that deposits in trust must be paid by banks to named beneficiaries upon the death of a named trustee, and also makes a separate provision for the disposition of pay-on-death accounts (which by definition include deposits in trust) upon the death of the account owner;
- 2) provides a definition for banker's bank, which limits the provision of services by such a bank to only approved or chartered financial institutions and their officers, directors, and employees; and
- 3) provides that unissued capital stock may be issued, by banks or trust companies, to declare or pay a stock dividend with the approval of the Department of Banking and Finance.

The bill would repeal the statutory provision dealing with deposits in trust, and create an expression of legislative intent that all deposits in trust are deemed pay-on-death accounts. In addition, the bill would expand the definition of a banker's bank, by allowing such a bank to provide services to, and on behalf of, financial institutions that have not received final regulatory approval, but have reached a point in the approval process where the prospect of final approval is almost certain. Finally, the bill would require stock dividends paid by the issuance of previously unissued stock to conform to statutes dealing with shares of capital stock and dividends and surplus.

The bill would have no fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Currently, Florida Statutes contain two provisions which govern the disposition of certain deposits upon the death of the depositor. These statutory provisions include sections dealing separately with deposits in trust and pay-on-death accounts. In addition, Florida statutes provide a definition of a "banker's bank" which limits the class of customers to which the banker's bank is authorized to provide services. Florida statutes also allow banks or trust companies to declare or pay a stock dividend by issuing previously unissued capital stock.

Disposition of Deposits

Section 655.81, F.S. (deposits in trust), provides that deposits made by any person describing himself or herself as a trustee, without further written notice of the existence and terms of a legally valid trust, may be paid by the institution to the person for whom the deposit was stated to have been made, in the event the person described as the trustee dies. The section further provides that in the case of a credit union, deposits may be held in the name of a member in trust for a beneficiary. That beneficiary, however, unless a member of the credit union in his or her own right, will not incur the duties or privileges of membership.

In addition, s. 655.82, F.S. (pay-on-death accounts), governs the disposition of accounts which are designated "pay-on-death." That section defines a "pay-on-death designation" as the designation of:

- 1) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or
- 2) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

The section further defines a “beneficiary” as “a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as a trustee.”

Since s. 655.82(3)(b), F.S., provides that “[in an account with a pay-on-death designation, ... on the death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries,” deposits in trust contemplated by s. 655.81, F.S., also fall within the operation of s. 655.82, F.S., dealing with pay-on-death accounts, in that deposits in trust must be paid to surviving beneficiaries upon the death of a named trustee.

According to proponents of the bill and the Department of Banking and Finance, deposits in trust generate documentary and record keeping costs associated with the application of probate laws. In contrast, deposits in pay-on-death accounts pass directly to a beneficiary by operation of law, and like deposits passing to a surviving owner of a joint account with right of survivorship, are not subject to probate. Furthermore, both the department and bill proponents maintain that operation of the statutory provision dealing with pay-on-death accounts, which the legislature passed in 1994, was meant to include deposits in trust.

Banker’s Banks

A banker’s bank, as defined by s. 658.12(3), F.S., “means a bank insured by the Federal Deposit Insurance Corporation, or a holding company which owns or controls such an insured bank, when the stock of such bank or holding company is owned exclusively by other banks and such bank or holding company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees.”

These banker’s banks (only one operates in Florida) exist solely to serve smaller community banks. According to the Department of Banking and Finance (department), in some cases, banker’s banks were providing loans both to, and on behalf of, banks that had not yet secured final regulatory approval. It is the department’s position that this practice is of questionable legality.

According to the department, unchartered organizations not only borrow from banker’s banks, but also contract with the banker’s bank to loan money on their behalf. Once the organization receives final regulatory approval, and has sufficient capital, it purchases the outstanding loans from the banker’s bank. This practice allows a new financial institution to immediately own debt as assets upon officially opening for business.

Stock Dividends

Newly formed banks and trust companies must submit articles of incorporation containing, among other things, the amount of capital stock that is authorized. Florida statutes allow banks or trust companies to issue less than all of this authorized capital stock with the approval of the department. Statutes further provide that once a bank or trust company elects to withhold a portion of its capital stock, the unissued stock may be issued later only for specified purposes. These purposes are:

- 1) To provide for stock options;
- 2) To declare or pay a stock dividend, with the approval of the department; or
- 3) To increase the capital of the bank or trust company, with the approval of the department.

Florida law further provides rules governing the declaration of dividends and surplus. Section 658.37, F.S.

C. EFFECT OF PROPOSED CHANGES:

Disposition of Deposits

The bill would repeal s. 655.81, F.S., pertaining to deposits in trust, and would enact language expressing the legislature's intent that the pay-on-death account provisions of the Florida Statutes would apply to and govern deposits in trust. That intent language would further provide that references to the deposits in trust statute in any depository agreement would be interpreted as referring to the pay-on-death accounts statute. Only deposits made to an account created after December 31, 1994, would be affected by the bill's provisions.

The intent language provided by this bill may, upon the death of a named trustee, allow deposits in trust to pass directly to beneficiaries by operation of law, and could relieve financial institutions holding these accounts from certain record keeping burdens associated with probate.

Banker's Banks

The bill would expand the class of entities to which a banker's bank could provide services, and would authorize a banker's bank to provide services on behalf of these entities.

Under current law, a banker's bank is an FDIC insured bank or bank holding company that is owned exclusively by other banks, and that provides services exclusively for other depository institutions and their officers, directors, and employees. Section 658.12, F.S. The bill would, in addition, allow banker's banks to provide services for, or at the request of, financial institutions in other organizations¹ that have met three requirements. Such an organization must have:

- 1) received conditional regulatory approval from the appropriate state or federal agency;
- 2) filed articles of incorporation, association or an organization certificate as required by state or federal law; and
- 3) received enough funds to meet capitalization requirements set out in a notice or order granting conditional regulatory approval.

Furthermore, the bill would allow a banker's bank to provide services to the organizers of a proposed financial institution that has not received conditional regulatory approval, but only to the extent that such services are limited to financing its organization, or to expenses relating to the acquisition or construction of the institution's operating facilities and associated fixtures and equipment.

According to the Department of Banking and Finance, the bill would limit the provision of banker's bank services to unchartered organizations only after such unchartered

¹An "organization" is the term referring to a financial institution prior to final regulatory approval.

STORAGE NAME: h1735s1.fs

DATE: March 22, 2000

PAGE 5

organizations have reached a point in the regulatory approval process which virtually ensures ultimate regulatory approval.

Stock Dividends

The bill would eliminate the current requirement in s. 658.34(4), F.S., making approval of the department necessary for the issuance of previously unissued stock to declare or pay dividends. However, the bill would insert language in that section requiring dividends declared or paid from previously unissued stock to comply with provisions of ss. 658.34, (shares of capital stock) and 658.37, F.S., (dividends and surplus).

Under s. 658.37, F.S., directors of a bank or trust company may quarterly, semiannually, or annually declare dividends for some or all of the net profits, as they judge expedient. The directors may also declare dividends from retained profits from the preceding two years. However, the directors may not declare dividends from net profits retained from a period prior to the preceding two years without department approval. Thus, a bank or trust company would be required to seek department approval before issuing unissued stock to pay dividends only if the unissued stock constituted net profits from a period earlier than two years before the most recent quarterly, semiannual, or annual dividend period.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may relieve some of the administrative cost to financial institutions associated with record keeping made necessary by Florida's probate laws. In addition, the bill would make legitimate the practice of banker's banks, which lend to, and on behalf of, certain unchartered organizations, enhancing the possibility of their survival as new banks.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bill does not present constitutional issues.

B. RULE-MAKING AUTHORITY:

The bill does not expand or contract the rule-making authority of any agency.

C. OTHER COMMENTS:

Representatives of the Department of Banking and Finance have indicated that the department always approves the requests from banks to issue stock dividends and that other sections of the statutes provide adequate oversight authority for this practice.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 21, 2000, the Committee on Financial Services amended HB 1735 and adopted the amended bill as a committee substitute. The amendment:

- moves the language in the bill regarding banker's banks from the "definitions" section of Chapter 658, F.S., and places it in the section dealing with the formation of banker's banks;
- inserts a section amending s. 658.34(4), F.S., dealing with the circumstances under which a bank or trust company may issue authorized but unissued stock. (See Effect of Proposed Changes); and
- renumbers subsequent subsections.

STORAGE NAME: h1735s1.fs

DATE: March 22, 2000

PAGE 8

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

William C. Garner

Susan F. Cutchins