

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2388

SPONSOR: Banking and Insurance Committee and Senator King

SUBJECT: Banking

DATE: March 27, 2000

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Florida law presently 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.

The Banking Code provides a definition for a “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.

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 authorize a banker's bank to provide services to, and on behalf of, financial institutions 1) that have not received final regulatory approval, but have received conditional or preliminary approval, or 2) that have filed articles of incorporation or 3) has received capital funds in an amount not less than the minimum capitalization requirements. In addition, a banker's bank would be allowed to provide services to organizers of a financial institution that has not received conditional regulatory approval provided such services are limited to the financing of expenses related to organizing such institution or constructing such institution.

The bill also authorizes a bank or trust company to pay a stock dividend, without the department's approval, if the bank or trust company complies with the provisions of s. 658.37, F.S.

This bill substantially amends the following sections of the Florida Statutes: 658.12, 658.165, and 658.34. This bill repeals section 655.81, Florida Statutes.

## II. Present Situation:

### Disposition of Deposits

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.

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 “[i]n 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**

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. 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.” Under the provisions of s. 658.165, F.S., a banker's bank is generally subject to the provisions of the financial institutions codes and rules, except as otherwise specifically provided.

Banker's banks (one operates in Florida) exist solely to serve smaller community banks. According to the Department of Banking and Finance, 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 and recognize these debts as assets upon officially opening for business.

### **Stock Dividends**

Under the provisions of s. 658.34, F.S., relating to the issuance of capital stock shares, with the approval of the department, a bank may issues less than all of the number of authorized shares; however, such authorized but unissued shares may be issued to provide stock options, as provided in s. 658.35, F.S.; to declare or pay a stock dividend with the approval of the department; or to increase the capital of the bank or trust company, with the approval of the department.

Section 658.37, F.S., authorizes the directors of any bank or trust company to declare dividends based upon the aggregate of the net profits of that period combined with its retained net profits.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 658.12, F.S., to allow banker's banks to provide services to financial institutions rather than depository institutions. The term, “depository institutions,” is not defined in the Banking Code. The term, “financial institution,” is defined to include state and federal associations, banks, savings banks, trust companies, international bank agency, or credit union.

**Section 2.** Amends s. 658.165, F.S., relating to banker's banks, to expand the class of entities to which a bank, or bank holding company and its subsidiaries, could provide services and still fall within the statutory definition of a “banker's bank.” The section authorizes a banker's bank to provide services to, and on behalf of, financial institutions 1) that have not received final regulatory approval, but have received conditional or preliminary approval, or 2) that have filed articles of incorporation or 3) that have received capital funds in an amount not less than the minimum capitalization requirements. In addition, a banker's bank would be allowed to provide services to organizers of a financial institution that has not received conditional regulatory approval provided such services are limited to the financing of expenses related to organizing such institution or constructing such institution.

**Sections 3 and 4.** Repeals s. 655.81, F.S., pertaining to deposits in trust, and enacts 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. The 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. These section would take effect July 1, 2000.

**Section 5.** Amends s. 658.34, F.S., relating to the issuance of stock dividends, to allow a bank or trust company to declare or pay dividends if it the meets the provisions of this section and eliminates the requirement that such a bank or trust company must obtain approval by the department of this transaction.

**Section 6.** Except as otherwise provided in this act, this act shall take effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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 codify the current practices of banker's banks, which lend to, and on behalf of, certain unchartered organizations, enhancing the possibility of their survival as new banks.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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