

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 1288

INTRODUCER: Judiciary Committee and Senator Boyd

SUBJECT: Assets of an Estate in Administration

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Schrader</u>	<u>Knudson</u>	<u>BI</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1288 amends s. 69.031, F.S., to repeal the requirements that a savings and loan be a member of the Federal Savings and Loan Insurance Corporation and doing business in the state in order to qualify as a depository institution for court-appointed fiduciaries. The Federal Savings and Loan Insurance Corporation was dissolved in 1989, making compliance with that requirement impossible.

The bill is effective July 1, 2021.

II. Present Situation:

Courts are commonly called on to assume control over a person's property. The most common form of this is probate, but other common areas include guardianship and receivership. The trial judge does not have the time or expertise to inventory, manage, and distribute such property, and consequently a fiduciary is appointed. These court-appointed fiduciaries are known by many names, including personal representative, guardian, curator, executor, administrator, trustee, or receiver. Current law provides numerous safeguards to guard against theft or mismanagement of property by a court-appointed fiduciary. A common safeguard is a requirement that a court-appointed fiduciary post a surety bond. A surety bond "is a promise to be liable for the debt, default, or failure of another. It is a three-party contract by which one party (the surety)

guarantees the performance or obligations of a second party (the principal) to a third party (the obligee).”¹

Surety bonds can be expensive and reduce the amount that the heirs, beneficiaries and creditors may receive from an estate, trust or individual.² Further, there are circumstances where a bond can be difficult to obtain or may not be available at any cost.³ Current law at s. 69.031, F.S., gives the court an alternative safeguard applicable to all court-appointed fiduciaries – the use of a depository account. A depository account may be used where “the size of the bond . . . is burdensome or for other cause.” Where a depository account is used, the property of the estate is deposited with a bank, trust company, or savings and loan. Court approval is required for every distribution from a depository account.⁴

A depository account must be placed with a bank, trust company, or savings and loan association “(which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state)” designated by the court, consideration being given to any bank, trust company or savings and loan association proposed by the officer.⁵

The requirement that a savings and loan be a member of the Federal Savings and Loan Insurance Corporation is problematic. The Federal Savings and Loan Insurance Corporation was dissolved in 1989.⁶ The requirement that a savings and loan must be doing business in the state is unique to savings and loan institutions, there is no similar requirement applicable to a bank or trust company appointed by the court as a depository institution.

III. Effect of Proposed Changes:

The bill amends s. 69.031, F.S., to remove the requirements that a savings and loan be a member of the Federal Savings and Loan Insurance Corporation and be doing business in the state in order to qualify as a depository institution for court-appointed fiduciaries.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

¹ *What are Surety Bonds*, National Association of Surety Bond Producers, <https://www.nasbp.org/getabond/about-surety> (last visited March 13, 2021).

² *Fiduciary Bonds—Who Needs Them*, XI National Law Review 72, available at: <https://www.natlawreview.com/article/fiduciary-bonds-who-needs-them> (August 3, 2015).

³ *Id.*

⁴ See *Gale v. Harbor Fed. Sav. & Loan*, 571 So. 2d 114 (Fla. 4th DCA 1990), where the court drew a distinction between a custodial account and an account placed pursuant to s. 69.031, F.S., in regards to restrictions on withdrawals.

⁵ Section 69.031(1), F.S.

⁶ Pub. L. No. 101–73, 103 Stat. 183 (August 9, 1989).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 69.031 of the Florida Statutes.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 9, 2020:

The bill as filed only repealed the requirement that a savings and loan be a member of Federal Savings and Loan Insurance Corporation. The committee substitute also repeals

the requirement that a savings and loan institution be doing business in the state in order to qualify as a depository institution.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
