

SB0294 compared with SB0294S01

- 19 ▶ allows a court to grant relief to prevent a bank from paying a depositor or beneficiary of a special deposit if a payment would result in fraud;
- 21 ▶ provides that except in certain circumstances, a bank may not exercise a right of recoupment or set off against a special deposit;
- 23 ▶ establishes the duties and liabilities of a bank in regards to a special deposit;
- 24 ▶ provides that a special deposit terminates five years after the date on which the special deposit was first funded;
- 26 ▶ describes the application of governing law over special deposits;
- 27 ▶ provides that the provisions of this act only apply to an agreement executed after the effective date of this bill, unless the parties to a special deposit amend the agreement; {and}
- 29 ▶ provides that the provisions of this act are severable if a provision of the act is found invalid{-} ;
- 31 ▶ **establishes the scope of the Uniform Mortgage Modification Act;**
- 32 ▶ **codifies the types of modifications that may be made to a mortgage loan that will not materially prejudice interest holders; and**
- 34 ▶ **contains safe harbor provisions for mortgage modifications that do not materially prejudice the holders of a junior interest.**

36 Money Appropriated in this Bill:

37 None

38 Other Special Clauses:

39 None

41 ENACTS:

42 **7-28-101** , Utah Code Annotated 1953 , Utah Code Annotated 1953

43 **7-28-102** , Utah Code Annotated 1953 , Utah Code Annotated 1953

44 **7-28-103** , Utah Code Annotated 1953 , Utah Code Annotated 1953

45 **7-28-104** , Utah Code Annotated 1953 , Utah Code Annotated 1953

46 **7-28-105** , Utah Code Annotated 1953 , Utah Code Annotated 1953

47 **7-28-106** , Utah Code Annotated 1953 , Utah Code Annotated 1953

48 **7-28-107** , Utah Code Annotated 1953 , Utah Code Annotated 1953

49 **7-28-108** , Utah Code Annotated 1953 , Utah Code Annotated 1953

50 **7-28-109** , Utah Code Annotated 1953 , Utah Code Annotated 1953

51 **7-28-110** , Utah Code Annotated 1953 , Utah Code Annotated 1953

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52 7-28-111 , Utah Code Annotated 1953 , Utah Code Annotated 1953

53 7-28-112 , Utah Code Annotated 1953 , Utah Code Annotated 1953

54 7-28-113 , Utah Code Annotated 1953 , Utah Code Annotated 1953

55 7-28-114 , Utah Code Annotated 1953 , Utah Code Annotated 1953

56 7-28-115 , Utah Code Annotated 1953 , Utah Code Annotated 1953

57 7-28-116 , Utah Code Annotated 1953 , Utah Code Annotated 1953

58 **70D-4-101 , Utah Code Annotated 1953 , Utah Code Annotated 1953**

59 **70D-4-201 , Utah Code Annotated 1953 , Utah Code Annotated 1953**

60 **70D-4-301 , Utah Code Annotated 1953 , Utah Code Annotated 1953**

61 **70D-4-401 , Utah Code Annotated 1953 , Utah Code Annotated 1953**

62 **70D-4-501 , Utah Code Annotated 1953 , Utah Code Annotated 1953**

63 **70D-4-601 , Utah Code Annotated 1953 , Utah Code Annotated 1953**

64

65 *Be it enacted by the Legislature of the state of Utah:*

66 Section 1. Section 1 is enacted to read:

67 **7-28-101. Definitions.**

28. UNIFORM SPECIAL DEPOSITS ACT

As used in this chapter:

59 (1) "Account agreement" means an agreement that:

60 (a) is in a record between a bank and one or more depositors;

61 (b) may have one or more beneficiaries as additional parties; and

62 (c) states the intention of the parties to establish a special deposit governed by this chapter.

64 (2)

(a) "Bank" means a person engaged in the business of banking.

65 (b) "Bank" includes a savings bank, savings and loan association, credit union, and trust company.

67 (c) Each branch or separate office of a bank is a separate bank for the purpose of this chapter.

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

70 (a) is identified as a beneficiary in an account agreement; or

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

73 (i) under the account agreement; or

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- 74 (ii) on termination of the special deposit.
- 75 (4) "Contingency" means an event or circumstance stated in an account agreement that is not certain to
occur but shall occur before the bank is obligated to pay a beneficiary.
- 77 (5) "Creditor process" means attachment, garnishment, levy, notice of lien, sequestration, or similar
process issued by or on behalf of a creditor or other claimant.
- 79 (6) "Depositor" means a person that establishes or funds a special deposit.
- 80 (7) "Good faith" means honesty in fact and observance of reasonable commercial standards of fair
dealing.
- 82 (8) "Knowledge of a fact" means:
- 83 (a) with respect to a beneficiary, actual knowledge of the fact; or
- 84 (b) with respect to a bank holding a special deposit:
- 85 (i) if the bank:
- 86 (A) has established a reasonable routine for communicating material information to an individual to
whom the bank has assigned responsibility for the special deposit; and
- 89 (B) maintains reasonable compliance with the routine, actual knowledge of the fact by that individual;
or
- 91 (ii) if the bank has not established and maintained reasonable compliance with a routine described in
Subsection (8)(b)(i) or otherwise exercised due diligence, implied knowledge of the fact that would
have come to the attention of an individual to whom the bank has assigned responsibility for the
special deposit.
- 95 (9) "Obligated to pay a beneficiary" means a beneficiary is entitled under the account agreement to
receive from the bank a payment when:
- 97 (a) a contingency has occurred; and
- 98 (b) the bank has knowledge the contingency has occurred.
- 99 (10)
- (a) "Permissible purpose" means a governmental, regulatory, commercial, charitable, or testamentary
objective of the parties stated in an account agreement.
- 101 (b) "Permissible purpose" includes an objective to:
- 102 (i) hold funds:
- 103 (A) in escrow, including for a purchase and sale, lease, buyback, or other transaction;
- 105 (B) as a security deposit of a tenant;

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- 106 (C) that may be distributed to a person as remuneration, retirement or other benefit, or compensation
109 under a judgment, consent decree, court order, or other decision of a tribunal; or
- 111 (D) for distribution to a defined class of persons after identification of the class members and the class
113 members' interest in the funds;
- 115 (ii) provide assurance with respect to an obligation created by contract, such as earnest money to ensure
118 a transaction closes;
- 121 (iii) settle an obligation that arises in the operation of a payment system, securities settlement system, or
123 other financial market infrastructure;
- 125 (iv) provide assurance with respect to an obligation that arises in the operation of a payment system,
128 securities settlement system, or other financial market infrastructure; or
- 130 (v) hold margin, other cash collateral, or funds that support the orderly functioning of financial market
131 infrastructure or the performance of an obligation with respect to the infrastructure.
- 132 (11)
- 133 (a) "Person" means an individual, estate, business or nonprofit entity, government or governmental
134 subdivision, agency, or instrumentality, or other legal entity.
- 135 (b) "Person" includes a protected series, however denominated, of an entity if the protected series is
136 established under law that limits, or limits if conditions specified under law are satisfied, the ability
137 of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets
138 of the protected series.
- 139 (12) "Record" means information:
- 140 (a) inscribed on a tangible medium; or
- 141 (b) stored in an electronic or other medium and retrievable in perceivable form.
- 142 (13) "Special deposit" means a deposit that satisfies Section 7-28-104.
- 143 (14)
- 144 (a) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States
145 Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.
- 146 (b) "State" includes an agency or instrumentality of the state.
- 147 Section 2. Section 2 is enacted to read:
- 148 **7-28-102. Scope -- Choice of law -- Forum.**
- 149 (1) This chapter applies to a special deposit under an account agreement that states the intention of the
150 parties to establish a special deposit governed by this chapter, regardless of whether a party to the

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account agreement or a transaction related to the special deposit, or the special deposit itself, has a reasonable relation to this state.

141 (2) The parties to an account agreement may choose a forum in this state for settling a dispute arising
out of the special deposit, regardless of whether a party to the account agreement or a transaction
related to the special deposit, or the special deposit itself, has a reasonable relation to this state.

145 (3) This chapter does not affect:

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

148 (b) the voidability of a deposit or transfer that is fraudulent or voidable under other law.

160 Section 3. Section 3 is enacted to read:

161 **7-28-103. Variation by agreement or amendment.**

151 (1)

(a) The effect of Sections 7-28-101 through 7-28-105, Sections 7-28-107 through 7-28-110, and Section
7-28-113 may not be varied by agreement, except as provided in those sections.

154 (b) Subject to Subsection (2), the effect of Sections 7-28-106, 7-28-111, and 7-28-112 may be varied by
agreement.

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

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

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

166 (5) If a beneficiary is not a party to an account agreement and the bank and the depositor do not know
whether the beneficiary has knowledge of the agreement's terms, the bank and the depositor may
amend the agreement without the consent of the beneficiary only if the amendment is made in good
faith.

181 Section 4. Section 4 is enacted to read:

182 **7-28-104. Requirements for special deposit.**

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A deposit is a special deposit if the deposit is:

- 173 (1) a deposit of funds in a bank under an account agreement;
174 (2) for the benefit of at least two beneficiaries, one or more of which may be a depositor;
175 (3) denominated in a medium of exchange that is currently authorized or adopted by a domestic or
foreign government;
177 (4) for a permissible purpose stated in the account agreement; and
178 (5) subject to a contingency.

190 Section 5. Section **5** is enacted to read:

191 **7-28-105. Permissible purpose.**

- 181 (1) A special deposit must serve at least one permissible purpose stated in the account agreement from
the time the special deposit is created in the account agreement until termination of the special
deposit.
184 (2) If, before termination of the special deposit, the bank or a court determines the special deposit no
longer satisfies Subsection (1), Sections 7-28-107 through 7-28-110 cease to apply to any funds
deposited in the special deposit after the special deposit ceases to satisfy Subsection (1).
188 (3) If, before termination of a special deposit, the bank determines the special deposit no longer satisfies
Subsection (1), the bank may take action the bank believes is necessary under the circumstances,
including terminating the special deposit.

202 Section 6. Section **6** is enacted to read:

203 **7-28-106. Payment to beneficiary by bank.**

- 193 (1) Unless the account agreement provides otherwise, the bank is obligated to pay a beneficiary if there
are sufficient actually and finally collected funds in the balance of the special deposit.
196 (2) Except as provided in Subsection (3), the obligation to pay the beneficiary is excused if the funds
available in the special deposit are insufficient to cover such payment.
198 (3)
(a) Unless the account agreement provides otherwise, if the funds available in the special deposit are
insufficient to cover an obligation to pay a beneficiary, a beneficiary may elect to be paid the funds
that are available or, if there is more than one beneficiary, a pro rata share of the funds available.
202 (b) Payment to the beneficiary making the election under this Subsection (3) discharges the bank's
obligation to pay a beneficiary and does not constitute an accord and satisfaction with respect to
another person obligated to the beneficiary.

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205 (4) Unless the account agreement provides otherwise, the obligation of the bank obligated to pay a
beneficiary is immediately due and payable.

207 (5) The bank may discharge the bank's obligation under this section by:

208 (a) crediting another transaction account of the beneficiary; or

209 (b) taking other action that:

210 (i) is permitted under the account agreement for the bank to obtain a discharge; or

211 (ii) otherwise would constitute a discharge under law.

212 (6) If the bank obligated to pay a beneficiary has incurred an obligation to discharge the obligation
of another person, the obligation of the other person is discharged if action by the bank under
Subsection (5) would constitute a discharge of the obligation of the other person under law that
determines whether an obligation is satisfied.

227 Section 7. Section 7 is enacted to read:

228 **7-28-107. Property interest of depositor or beneficiary.**

218 (1) Neither a depositor nor a beneficiary has a property interest in a special deposit.

219 (2)

(a) Any property interest with respect to a special deposit is only in the right to receive payment if the
bank is obligated to pay a beneficiary and not in the special deposit itself.

222 (b) Any property interest under this Subsection (2) is determined under other law.

234 Section 8. Section 8 is enacted to read:

235 **7-28-108. When creditor process enforceable against bank.**

225 (1) Subject to Subsection (2), creditor process with respect to a special deposit is not enforceable
against the bank holding the special deposit.

227 (2) Creditor process is enforceable against the bank holding a special deposit with respect to an amount
the bank is obligated to pay a beneficiary or a depositor if the process:

229 (a) is served on the bank;

230 (b) provides sufficient information to permit the bank to identify the depositor or the beneficiary from
the bank's books and records; and

232 (c) gives the bank a reasonable opportunity to act on the process.

233 (3)

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(a) Creditor process served on a bank before the creditor process is enforceable against the bank under Subsection (2) does not create a right of the creditor against the bank or a duty of the bank to the creditor.

236 (b) Other law determines whether creditor process creates a lien enforceable against the beneficiary on a contingent interest of a beneficiary, including a depositor as a beneficiary, even if not enforceable against the bank.

250 Section 9. Section **9** is enacted to read:

251 **7-28-109. Injunction or similar relief.**

A court may enjoin, or grant similar relief that would have the effect of enjoining, a bank from paying a depositor or beneficiary only if payment would constitute a material fraud or facilitate a material fraud with respect to a special deposit.

255 Section 10. Section **10** is enacted to read:

256 **7-28-110. Recoupment or set off.**

246 (1) Except as provided in Subsection (2) or (3), a bank may not exercise a right of recoupment or set off against a special deposit.

248 (2) An account agreement may authorize the bank to debit the special deposit:

249 (a) when the bank becomes obligated to pay a beneficiary, in an amount that does not exceed the amount necessary to discharge the obligation;

251 (b) for a fee assessed by the bank that relates to an overdraft in the special deposit account;

253 (c) for costs incurred by the bank that relate directly to the special deposit; or

254 (d) to reverse an earlier credit posted by the bank to the balance of the special deposit account, if the reversal occurs under an event or circumstance warranted under other law of this state governing mistake and restitution.

257 (3) The bank holding a special deposit may exercise a right of recoupment or set off against an obligation to pay a beneficiary, even if the bank funds payment from the special deposit.

271 Section 11. Section **11** is enacted to read:

272 **7-28-111. Duties and liability of bank.**

262 (1) A bank does not have a fiduciary duty to any person with respect to a special deposit.

263 (2) When the bank holding a special deposit becomes obligated to pay a beneficiary, a debtor-creditor relationship arises between the bank and beneficiary.

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(3) The bank holding a special deposit has a duty to a beneficiary to comply with the account agreement and this chapter.

267 (4)

(a) If the bank holding a special deposit does not comply with the account agreement or this chapter, the bank is liable to a depositor or beneficiary only for damages proximately caused by the noncompliance.

270 (b) Except as provided by other law of this state, the bank is not liable for consequential, special, or punitive damages.

272 (5) The bank holding a special deposit may rely on records presented in compliance with the account agreement to determine whether the bank is obligated to pay a beneficiary.

274 (6)

(a) If the account agreement requires payment on presentation of a record, the bank shall determine within a reasonable time whether the record is sufficient to require payment.

277 (b) If the agreement requires action by the bank on presentation of a record, the bank is not liable for relying in good faith on the genuineness of the record if the record appears on the record's face to be genuine.

280 (7) Unless the account agreement provides otherwise, the bank is not required to determine whether a permissible purpose stated in the agreement continues to exist.

293 Section 12. Section 12 is enacted to read:

294 **7-28-112. Term and termination.**

284 (1) Unless otherwise provided in the account agreement, a special deposit terminates five years after the date the special deposit was first funded.

286 (2) Unless otherwise provided in the account agreement, if the bank cannot identify or locate a beneficiary entitled to payment when the special deposit is terminated, and a balance remains in the special deposit, the bank shall pay the balance to the depositor or depositors as a beneficiary or beneficiaries.

290 (3) A bank that pays the remaining balance as provided under Subsection (2) has no further obligation with respect to the special deposit.

303 Section 13. Section 13 is enacted to read:

304 **7-28-113. Principles of law and equity.**

Title 70A, Uniform Commercial Code, consumer protection law, law governing deposits

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generally, law related to escheat and abandoned or unclaimed property, and the principles of law and equity, including law related to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy, supplement this chapter except to the extent inconsistent with this chapter.

310 Section 14. Section **14** is enacted to read:

311 **7-28-114. Uniformity of application and construction.**

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact this uniform act.

314 Section 15. Section **15** is enacted to read:

315 **7-28-115. Transitional provision.**

This chapter applies to:

306 (1) a special deposit made under an account agreement executed on or after May 7, 2025; and

308 (2) a deposit made under an agreement executed before May 7, 2025, if:

309 (a) all parties entitled to amend the agreement agree to make the deposit a special deposit governed by this chapter; and

311 (b) the special deposit referenced in the amended agreement satisfies Section 7-28-104.

323 Section 16. Section **16** is enacted to read:

324 **7-28-116. Severability.**

If a provision of this chapter or the chapter's application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.

328 Section 17. Section **17** is enacted to read:

70D-4-101. Definitions.

329a (1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

329c (2) "Financial covenant" means an undertaking to demonstrate an obligor's creditworthiness or the adequacy of security provided by an obligor.

329e (3) "Modification" includes change, amendment, revision, correction, addition, supplementation, elimination, waiver, and restatement.

329g (4)

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(a) "Mortgage" means an agreement that creates a consensual interest in real property to secure payment or performance of an obligation regardless of how the agreement is denominated, including a mortgage, deed of trust, trust deed, security deed, indenture, or deed to secure debt, and regardless of whether the agreement also creates a security interest in personal property.

329l (b) "Mortgage" does not include an agreement that creates a consensual interest to secure a liability owed by a unit owner to a condominium association, owners association, or cooperative housing association for association dues, fees, or assessments.

329p (5) "Mortgage modification" means modification of:

329q (a) a mortgage;

329r (b) an agreement that creates an obligation, including a promissory note, loan agreement, or credit agreement; or

329t (c) an agreement that creates other security or credit enhancement for an obligation, including an assignment of leases or rents or a guaranty.

329v (6) "Obligation" means a debt or other duty or liability secured by a mortgage.

329w (7) "Obligor" means a person that:

329x (a) owes payment or performance of an obligation;

329y (b) signs a mortgage; or

329z (c) is otherwise accountable, or whose property serves as collateral, for payment or performance of an obligation.

329bb (8) "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, instrumentality, or other legal entity.

329dd (9) "Recognized index" means an index to which changes in the interest rate may be linked that is readily available to, and verifiable by, the obligor and is beyond the control of the person to whom the obligation is owed.

329gg (10) "Record" means information:

329hh (a) inscribed on a tangible medium; or

329ii (b) stored in an electronic or other medium and retrievable in perceivable form.

329jj (11) "Sign" means, with present intent to authenticate or adopt a record:

329kk (a) to execute or adopt a tangible symbol; or

329ll (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

329nn Section 18. Section **18** is enacted to read:

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70D-4-201. Scope.

- 330a (1) Except as provided in Subsection (3), this chapter applies to a mortgage modification.
- 330b (2) This chapter does not affect the following law of this state:
- 330c (a) law governing the required content of a mortgage;
- 330d (b) a statute of limitations or other law governing the expiration or termination of a right to enforce an obligation or a mortgage;
- 330f (c) a recording statute;
- 330g (d) a statute governing the priority of a tax lien or other governmental lien;
- 330h (e) a statute of frauds; or
- 330i (f) except as provided in Subsection 70D-4-301(2)(h), law governing the priority of a future advance.
- 330k (3) This chapter does not apply to:
- 330l (a) a release of, or addition to, property encumbered by a mortgage;
- 330m (b) a release of, addition of, or other change in an obligor; or
- 330n (c) an assignment or other transfer of a mortgage or an obligation.

330o Section 19. Section **19** is enacted to read:

70D-4-301. Effect of mortgage modification.

- 331a (1) For a mortgage modification described in Subsection (2):
- 331b (a) the mortgage continues to secure the obligation as modified;
- 331c (b) the priority of the mortgage is not affected by the modification;
- 331d (c) the mortgage retains the mortgage's priority regardless of whether a record of the mortgage modification is recorded; and
- 331f (d) the modification is not a novation.
- 331g (2) Subsection (1) applies to one or more of the following:
- 331h (a) an extension of the maturity date of an obligation;
- 331i (b) a decrease in the interest rate of an obligation;
- 331j (c) if there is any change as specified in Subsection (2)(c)(i) through (iv) that does not result in an increase in the interest rate as calculated on the date the modification becomes effective:
- 331m (i) a change to a different recognized index if the previous index is no longer available;
- 331o (ii) a change in the differential between the index and the interest rate;
- 331p (iii) a change from a floating or adjustable rate to a fixed rate; and
- 331q (iv) a change from a fixed rate to a floating or adjustable rate based on a recognized index;

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- 331s (d) a capitalization of unpaid interest or other unpaid obligation;
- 331t (e) a forgiveness, forbearance, or other reduction of principal, accrued interest, or other monetary obligation;
- 331v (f) a modification of a requirement for maintaining an escrow or reserve account for payment of an obligation, including taxes, insurance premiums, or another obligation;
- 331x (g) a modification of a requirement for acquiring or maintaining insurance;
- 331y (h) a modification of an existing condition to advance funds;
- 331z (i) a modification of a financial covenant; and
- 331aa (j) a modification of the payment amount or schedule resulting from another modification described in this Subsection (2).
- 331cc (3) The effect of a mortgage modification not described in Subsection (2) is governed by other law.

331ee Section 20. Section **20** is enacted to read:

70D-4-401. Uniformity of application and construction.

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

332c Section 21. Section **21** is enacted to read:

70D-4-501. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq. , but does not modify, limit, or supersede 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Sec. 7003(b).

333f Section 22. Section **22** is enacted to read:

70D-4-601. Transitional Provision.

This chapter applies to a mortgage modification made on or after May 7, 2025, regardless of when the mortgage or the obligation was created.

334c Section 23. **Effective date.**

Effective Date.

This bill takes effect on May 7, 2025.

3-7-25 11:13 AM