

1

Special Deposits Act Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor:

2

LONG TITLE**General Description:**

This bill enacts the Uniform Special Deposits Act.

Highlighted Provisions:

This bill:

- 8 ▶ defines terms;
- 9 ▶ establishes the scope of the Uniform Special Deposits Act;
- 10 ▶ allows parties to an agreement under the Uniform Special Deposits Act to choose a forum
- 11 in Utah for settling a dispute, regardless of whether the dispute occurred in Utah;
- 12 ▶ provides that sections of the Uniform Special Deposits Act may vary by agreement or
- 13 amendment;
- 14 ▶ establishes requirements for a special deposit;
- 15 ▶ requires that a special deposit serve a permissible purpose;
- 16 ▶ provides the conditions under which a bank shall pay a beneficiary funds in the balance of
- 17 a special deposit;
- 18 ▶ establishes the interest of a depositor or beneficiary in a special deposit;
- 19 ▶ allows a court to grant relief to prevent a bank from paying a depositor or beneficiary of a
- 20 special deposit if a payment would result in fraud;
- 21 ▶ provides that except in certain circumstances, a bank may not exercise a right of
- 22 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
- 25 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
- 28 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
- 30 invalid.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 ENACTS:

37 **7-28-101**, Utah Code Annotated 1953

38 **7-28-102**, Utah Code Annotated 1953

39 **7-28-103**, Utah Code Annotated 1953

40 **7-28-104**, Utah Code Annotated 1953

41 **7-28-105**, Utah Code Annotated 1953

42 **7-28-106**, Utah Code Annotated 1953

43 **7-28-107**, Utah Code Annotated 1953

44 **7-28-108**, Utah Code Annotated 1953

45 **7-28-109**, Utah Code Annotated 1953

46 **7-28-110**, Utah Code Annotated 1953

47 **7-28-111**, Utah Code Annotated 1953

48 **7-28-112**, Utah Code Annotated 1953

49 **7-28-113**, Utah Code Annotated 1953

50 **7-28-114**, Utah Code Annotated 1953

51 **7-28-115**, Utah Code Annotated 1953

52 **7-28-116**, Utah Code Annotated 1953

53

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

55 Section 1. Section **7-28-101** is enacted to read:

56 **CHAPTER 28. UNIFORM SPECIAL DEPOSITS ACT**

57 **7-28-101 . Definitions.**

58 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
63 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
66 company.
- 67 (c) Each branch or separate office of a bank is a separate bank for the purpose of this
68 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
72 from a special deposit:
- 73 (i) under the account agreement; or
74 (ii) on termination of the special deposit.
- 75 (4) "Contingency" means an event or circumstance stated in an account agreement that is
76 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
78 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
81 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
87 to an individual to whom the bank has assigned responsibility for the special
88 deposit; and
- 89 (B) maintains reasonable compliance with the routine, actual knowledge of the
90 fact by that individual; or
- 91 (ii) if the bank has not established and maintained reasonable compliance with a
92 routine described in Subsection (8)(b)(i) or otherwise exercised due diligence,
93 implied knowledge of the fact that would have come to the attention of an
94 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
96 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,
100 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
104 transaction;
- 105 (B) as a security deposit of a tenant;
- 106 (C) that may be distributed to a person as remuneration, retirement or other
107 benefit, or compensation under a judgment, consent decree, court order, or
108 other decision of a tribunal; or
- 109 (D) for distribution to a defined class of persons after identification of the class
110 members and the class members' interest in the funds;
- 111 (ii) provide assurance with respect to an obligation created by contract, such as
112 earnest money to ensure a transaction closes;
- 113 (iii) settle an obligation that arises in the operation of a payment system, securities
114 settlement system, or other financial market infrastructure;
- 115 (iv) provide assurance with respect to an obligation that arises in the operation of a
116 payment system, securities settlement system, or other financial market
117 infrastructure; or
- 118 (v) hold margin, other cash collateral, or funds that support the orderly functioning of
119 financial market infrastructure or the performance of an obligation with respect to
120 the infrastructure.
- 121 (11)(a) "Person" means an individual, estate, business or nonprofit entity, government or
122 governmental subdivision, agency, or instrumentality, or other legal entity.
- 123 (b) "Person" includes a protected series, however denominated, of an entity if the
124 protected series is established under law that limits, or limits if conditions specified
125 under law are satisfied, the ability of a creditor of the entity or of any other protected
126 series of the entity to satisfy a claim from assets of the protected series.
- 127 (12) "Record" means information:
- 128 (a) inscribed on a tangible medium; or
- 129 (b) stored in an electronic or other medium and retrievable in perceivable form.
- 130 (13) "Special deposit" means a deposit that satisfies Section 7-28-104.
- 131 (14)(a) "State" means a state of the United States, the District of Columbia, Puerto Rico,
132 the United States Virgin Islands, or any other territory or possession subject to the

133 jurisdiction of the United States.

134 (b) "State" includes an agency or instrumentality of the state.

135 Section 2. Section **7-28-102** is enacted to read:

136 **7-28-102 . Scope -- Choice of law -- Forum.**

137 (1) This chapter applies to a special deposit under an account agreement that states the
138 intention of the parties to establish a special deposit governed by this chapter, regardless
139 of whether a party to the account agreement or a transaction related to the special
140 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
142 dispute arising out of the special deposit, regardless of whether a party to the account
143 agreement or a transaction related to the special deposit, or the special deposit itself, has
144 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
147 chapter; or

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

149 Section 3. Section **7-28-103** is enacted to read:

150 **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
152 7-28-110, and Section 7-28-113 may not be varied by agreement, except as provided
153 in those sections.

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

156 (2) A provision in an account agreement or other record that substantially excuses liability
157 or substantially limits remedies for failure to perform an obligation under this chapter is
158 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
160 amend the agreement without the consent of the beneficiary only if the agreement
161 expressly permits the amendment.

162 (4) If a beneficiary is not a party to an account agreement and the bank and the depositor
163 know the beneficiary has knowledge of the agreement's terms, the bank and the
164 depositor may amend the agreement without the consent of the beneficiary only if the
165 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

167 not know whether the beneficiary has knowledge of the agreement's terms, the bank and
168 the depositor may amend the agreement without the consent of the beneficiary only if
169 the amendment is made in good faith.

170 Section 4. Section **7-28-104** is enacted to read:

171 **7-28-104 . Requirements for special deposit.**

172 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
176 domestic or foreign government;
177 (4) for a permissible purpose stated in the account agreement; and
178 (5) subject to a contingency.

179 Section 5. Section **7-28-105** is enacted to read:

180 **7-28-105 . Permissible purpose.**

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

191 Section 6. Section **7-28-106** is enacted to read:

192 **7-28-106 . Payment to beneficiary by bank.**

- 193 (1) Unless the account agreement provides otherwise, the bank is obligated to pay a
194 beneficiary if there are sufficient actually and finally collected funds in the balance of
195 the special deposit.
196 (2) Except as provided in Subsection (3), the obligation to pay the beneficiary is excused if
197 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
199 special deposit are insufficient to cover an obligation to pay a beneficiary, a
200 beneficiary may elect to be paid the funds that are available or, if there is more than

- 201 one beneficiary, a pro rata share of the funds available.
- 202 (b) Payment to the beneficiary making the election under this Subsection (3) discharges
 203 the bank's obligation to pay a beneficiary and does not constitute an accord and
 204 satisfaction with respect to another person obligated to the beneficiary.
- 205 (4) Unless the account agreement provides otherwise, the obligation of the bank obligated
 206 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
 213 obligation of another person, the obligation of the other person is discharged if action by
 214 the bank under Subsection (5) would constitute a discharge of the obligation of the other
 215 person under law that determines whether an obligation is satisfied.

216 Section 7. Section **7-28-107** is enacted to read:

217 **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
 220 receive payment if the bank is obligated to pay a beneficiary and not in the special
 221 deposit itself.
- 222 (b) Any property interest under this Subsection (2) is determined under other law.

223 Section 8. Section **7-28-108** is enacted to read:

224 **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
 226 enforceable against the bank holding the special deposit.
- 227 (2) Creditor process is enforceable against the bank holding a special deposit with respect
 228 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
 231 beneficiary from the bank's books and records; and
 232 (c) gives the bank a reasonable opportunity to act on the process.
- 233 (3)(a) Creditor process served on a bank before the creditor process is enforceable
 234 against the bank under Subsection (2) does not create a right of the creditor against

235 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
237 beneficiary on a contingent interest of a beneficiary, including a depositor as a
238 beneficiary, even if not enforceable against the bank.

239 Section 9. Section **7-28-109** is enacted to read:

240 **7-28-109 . Injunction or similar relief.**

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

244 Section 10. Section **7-28-110** is enacted to read:

245 **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
247 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
250 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
252 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
255 account, if the reversal occurs under an event or circumstance warranted under other
256 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
258 an obligation to pay a beneficiary, even if the bank funds payment from the special
259 deposit.

260 Section 11. Section **7-28-111** is enacted to read:

261 **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
264 debtor-creditor relationship arises between the bank and beneficiary.

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

267 (4)(a) If the bank holding a special deposit does not comply with the account agreement
268 or this chapter, the bank is liable to a depositor or beneficiary only for damages

- 269 proximately caused by the noncompliance.
- 270 (b) Except as provided by other law of this state, the bank is not liable for consequential,
- 271 special, or punitive damages.
- 272 (5) The bank holding a special deposit may rely on records presented in compliance with
- 273 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
- 275 shall determine within a reasonable time whether the record is sufficient to require
- 276 payment.
- 277 (b) If the agreement requires action by the bank on presentation of a record, the bank is
- 278 not liable for relying in good faith on the genuineness of the record if the record
- 279 appears on the record's face to be genuine.
- 280 (7) Unless the account agreement provides otherwise, the bank is not required to determine
- 281 whether a permissible purpose stated in the agreement continues to exist.

282 Section 12. Section **7-28-112** is enacted to read:

283 **7-28-112 . Term and termination.**

- 284 (1) Unless otherwise provided in the account agreement, a special deposit terminates five
- 285 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
- 287 locate a beneficiary entitled to payment when the special deposit is terminated, and a
- 288 balance remains in the special deposit, the bank shall pay the balance to the depositor or
- 289 depositors as a beneficiary or beneficiaries.
- 290 (3) A bank that pays the remaining balance as provided under Subsection (2) has no further
- 291 obligation with respect to the special deposit.

292 Section 13. Section **7-28-113** is enacted to read:

293 **7-28-113 . Principles of law and equity.**

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

295 generally, law related to escheat and abandoned or unclaimed property, and the principles of

296 law and equity, including law related to capacity to contract, principal and agent, estoppel,

297 fraud, misrepresentation, duress, coercion, mistake, and bankruptcy, supplement this chapter

298 except to the extent inconsistent with this chapter.

299 Section 14. Section **7-28-114** is enacted to read:

300 **7-28-114 . Uniformity of application and construction.**

301 In applying and construing this uniform act, a court shall consider the promotion of

302 uniformity of the law among jurisdictions that enact this uniform act.

303 Section 15. Section **7-28-115** is enacted to read:

304 **7-28-115 . Transitional provision.**

305 This chapter applies to:

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

307 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

310 deposit governed by this chapter; and

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

312 Section 16. Section **7-28-116** is enacted to read:

313 **7-28-116 . Severability.**

314 If a provision of this chapter or the chapter's application to a person or circumstance is

315 held invalid, the invalidity does not affect another provision or application that can be given

316 effect without the invalid provision.

317 Section 17. **Effective Date.**

318 This bill takes effect on May 7, 2025.