

LEGISLATURE OF NEBRASKA  
ONE HUNDRED NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 231**

FINAL READING

Introduced by Hallstrom, 1; DeBoer, 10.

Read first time January 14, 2025

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to banking and finance; to adopt the Uniform
- 2 Special Deposits Act.
- 3 Be it enacted by the people of the State of Nebraska,

1        **Section 1.** Sections 1 to 16 of this act shall be known and may be  
2 cited as the Uniform Special Deposits Act.

3        **Sec. 2.** In the Uniform Special Deposits Act:

4        (1) Account agreement means an agreement that:

5        (A) is in a record between a financial institution and one or more  
6 depositors;

7        (B) may have one or more beneficiaries as additional parties; and

8        (C) states the intention of the parties to establish a special  
9 deposit governed by the act.

10       (2) Financial institution means a bank, savings bank, building and  
11 loan association, savings and loan association, or credit union, whether  
12 chartered by the United States, the Department of Banking and Finance, or  
13 a foreign state agency; any other similar organization which is covered  
14 by federal deposit insurance; a trust company; or a digital asset  
15 depository that is not a digital asset depository institution.

16       (3) Beneficiary means a person that:

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

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

20       (i) under the account agreement; or

21       (ii) on termination of the special deposit.

22       (4) Contingency means an event or circumstance stated in an account  
23 agreement that is not certain to occur but must occur before the  
24 financial institution is obligated to pay a beneficiary.

25       (5) Creditor process means attachment, garnishment, levy, notice of  
26 lien, sequestration, or similar process issued by or on behalf of a  
27 creditor or other claimant.

28       (6) Depositor means a person that establishes or funds a special  
29 deposit.

30       (7) Good faith means honesty in fact and observance of reasonable  
31 commercial standards of fair dealing.

1       (8) Knowledge of a fact means:

2       (A) with respect to a beneficiary, actual knowledge of the fact; or

3       (B) with respect to a financial institution holding a special  
4 deposit:

5       (i) if the financial institution:

6       (I) has established a reasonable routine for communicating material  
7 information to an individual to whom the financial institution has  
8 assigned responsibility for the special deposit; and

9       (II) maintains reasonable compliance with the routine, actual  
10 knowledge of the fact by that individual; or

11       (ii) if the financial institution has not established and maintained  
12 reasonable compliance with a routine described in clause (i) or otherwise  
13 exercised due diligence, implied knowledge of the fact that would have  
14 come to the attention of an individual to whom the financial institution  
15 has assigned responsibility for the special deposit.

16       (9) Obligated to pay a beneficiary means a beneficiary is entitled  
17 under the account agreement to receive from the financial institution a  
18 payment when:

19       (A) a contingency has occurred; and

20       (B) the financial institution has knowledge the contingency has  
21 occurred. Obligation to pay a beneficiary has a corresponding meaning.

22       (10) Permissible purpose means a governmental, regulatory,  
23 commercial, charitable, or testamentary objective of the parties stated  
24 in an account agreement. The term includes an objective to:

25       (A) hold funds:

26       (i) in escrow, including for a purchase and sale, lease, buyback, or  
27 other transaction;

28       (ii) as a security deposit of a tenant;

29       (iii) that may be distributed to a person as remuneration,  
30 retirement or other benefit, or compensation under a judgment, consent  
31 decree, court order, or other decision of a tribunal; or

1        (iv) for distribution to a defined class of persons after  
2 identification of the class members and their interest in the funds;

3        (B) provide assurance with respect to an obligation created by  
4 contract, such as earnest money to ensure a transaction closes;

5        (C) settle an obligation that arises in the operation of a payment  
6 system, securities settlement system, or other financial market  
7 infrastructure;

8        (D) provide assurance with respect to an obligation that arises in  
9 the operation of a payment system, securities settlement system, or other  
10 financial market infrastructure; or

11        (E) hold margin, other cash collateral, or funds that support the  
12 orderly functioning of financial market infrastructure or the performance  
13 of an obligation with respect to the infrastructure.

14        (11) Person means an individual, estate, business or nonprofit  
15 entity, government or governmental subdivision, agency, or  
16 instrumentality, or other legal entity. The term includes a protected  
17 series, however denominated, of an entity if the protected series is  
18 established under law that limits, or limits if conditions specified  
19 under law are satisfied, the ability of a creditor of the entity or of  
20 any other protected series of the entity to satisfy a claim from assets  
21 of the protected series.

22        (12) Record means information:

23        (A) inscribed on a tangible medium; or

24        (B) stored in an electronic or other medium and retrievable in  
25 perceivable form.

26        (13) Special deposit means a deposit that satisfies section 5 of  
27 this act.

28        (14) State means a state of the United States, the District of  
29 Columbia, Puerto Rico, the United States Virgin Islands, or any other  
30 territory or possession subject to the jurisdiction of the United States.  
31 The term includes an agency or instrumentality of the state.

1       **Sec. 3.** (a) The Uniform Special Deposits Act applies to a special  
2 deposit under an account agreement that states the intention of the  
3 parties to establish a special deposit governed by the act, regardless of  
4 whether a party to the account agreement or a transaction related to the  
5 special deposit, or the special deposit itself, has a reasonable relation  
6 to this state.

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

12       (c) The act does not affect:

13       (1) a right or obligation relating to a deposit other than a special  
14 deposit under the act; or

15       (2) the voidability of a deposit or transfer that is fraudulent or  
16 voidable under other law.

17       **Sec. 4.** (a) The effect of sections 2 to 6, 8 to 11, and 14 of this  
18 act may not be varied by agreement, except as provided in those sections.  
19 Subject to subsection (b), the effect of sections 7, 12, and 13 of this  
20 act may be varied by agreement.

21       (b) A provision in an account agreement or other record that  
22 substantially excuses liability or substantially limits remedies for  
23 failure to perform an obligation under the Uniform Special Deposits Act  
24 is not sufficient to vary the effect of a provision of the act.

25       (c) If a beneficiary is a party to an account agreement, the  
26 financial institution and the depositor may amend the agreement without  
27 the consent of the beneficiary only if the agreement expressly permits  
28 the amendment.

29       (d) If a beneficiary is not a party to an account agreement and the  
30 financial institution and the depositor know the beneficiary has  
31 knowledge of the agreement's terms, the financial institution and the

1 depositor may amend the agreement without the consent of the beneficiary  
2 only if the amendment does not adversely and materially affect a payment  
3 right of the beneficiary.

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

9 **Sec. 5.** A deposit is a special deposit if it is:

10 (1) a deposit of funds in a financial institution under an account  
11 agreement;

12 (2) for the benefit of at least two beneficiaries, one or more of  
13 which may be a depositor;

14 (3) denominated in a medium of exchange that is currently authorized  
15 or adopted by a domestic or foreign government;

16 (4) for a permissible purpose stated in the account agreement; and

17 (5) subject to a contingency.

18 **Sec. 6.** (a) A special deposit must serve at least one permissible  
19 purpose stated in the account agreement from the time the special deposit  
20 is created in the account agreement until termination of the special  
21 deposit.

22 (b) If, before termination of the special deposit, the financial  
23 institution or a court determines the special deposit no longer satisfies  
24 subsection (a), sections 8 to 11 of this act cease to apply to any funds  
25 deposited in the special deposit after the special deposit ceases to  
26 satisfy subsection (a).

27 (c) If, before termination of a special deposit, the financial  
28 institution determines the special deposit no longer satisfies subsection  
29 (a), the financial institution may take action it believes is necessary  
30 under the circumstances, including terminating the special deposit.

31 **Sec. 7.** (a) Unless the account agreement provides otherwise, the

1 financial institution is obligated to pay a beneficiary if there are  
2 sufficient actually and finally collected funds in the balance of the  
3 special deposit.

4 (b) Except as provided in subsection (c), the obligation to pay the  
5 beneficiary is excused if the funds available in the special deposit are  
6 insufficient to cover such payment.

7 (c) Unless the account agreement provides otherwise, if the funds  
8 available in the special deposit are insufficient to cover an obligation  
9 to pay a beneficiary, a beneficiary may elect to be paid the funds that  
10 are available or, if there is more than one beneficiary, a pro rata share  
11 of the funds available. Payment to the beneficiary making the election  
12 under this subsection discharges the financial institution's obligation  
13 to pay a beneficiary and does not constitute an accord and satisfaction  
14 with respect to another person obligated to the beneficiary.

15 (d) Unless the account agreement provides otherwise, the obligation  
16 of the financial institution obligated to pay a beneficiary is  
17 immediately due and payable.

18 (e) The financial institution may discharge its obligation under  
19 this section by:

20 (1) crediting another transaction account of the beneficiary; or

21 (2) taking other action that:

22 (i) is permitted under the account agreement for the financial  
23 institution to obtain a discharge; or

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

25 (f) If the financial institution obligated to pay a beneficiary has  
26 incurred an obligation to discharge the obligation of another person, the  
27 obligation of the other person is discharged if action by the financial  
28 institution under subsection (e) would constitute a discharge of the  
29 obligation of the other person under law that determines whether an  
30 obligation is satisfied.

31 **Sec. 8.** (a) Neither a depositor nor a beneficiary has a property

1 interest in a special deposit.

2 (b) Any property interest with respect to a special deposit is only  
3 in the right to receive payment if the financial institution is obligated  
4 to pay a beneficiary and not in the special deposit itself. Any property  
5 interest under this subsection is determined under other law.

6 **Sec. 9.** (a) Subject to subsection (b), creditor process with  
7 respect to a special deposit is not enforceable against the financial  
8 institution holding the special deposit.

9 (b) Creditor process is enforceable against the financial  
10 institution holding a special deposit with respect to an amount the  
11 financial institution is obligated to pay a beneficiary or a depositor if  
12 the process:

13 (1) is served on the financial institution;

14 (2) provides sufficient information to permit the financial  
15 institution to identify the depositor or the beneficiary from the  
16 financial institution's books and records; and

17 (3) gives the financial institution a reasonable opportunity to act  
18 on the process.

19 (c) Creditor process served on a financial institution before it is  
20 enforceable against the financial institution under subsection (b) does  
21 not create a right of the creditor against the financial institution or a  
22 duty of the financial institution to the creditor. Other law determines  
23 whether creditor process creates a lien enforceable against the  
24 beneficiary on a contingent interest of a beneficiary, including a  
25 depositor as a beneficiary, even if not enforceable against the financial  
26 institution.

27 **Sec. 10.** A court may enjoin, or grant similar relief that would  
28 have the effect of enjoining, a financial institution from paying a  
29 depositor or beneficiary only if payment would constitute a material  
30 fraud or facilitate a material fraud with respect to a special deposit.

31 **Sec. 11.** (a) Except as provided in subsection (b) or (c), a



1 financial institution may not exercise a right of recoupment or set off  
2 against a special deposit.

3 (b) An account agreement may authorize the financial institution to  
4 debit the special deposit:

5 (1) when the financial institution becomes obligated to pay a  
6 beneficiary, in an amount that does not exceed the amount necessary to  
7 discharge the obligation;

8 (2) for a fee assessed by the financial institution that relates to  
9 an overdraft in the special deposit account;

10 (3) for costs incurred by the financial institution that relate  
11 directly to the special deposit; or

12 (4) to reverse an earlier credit posted by the financial institution  
13 to the balance of the special deposit account, if the reversal occurs  
14 under an event or circumstance warranted under other law of this state  
15 governing mistake and restitution.

16 (c) The financial institution holding a special deposit may exercise  
17 a right of recoupment or set off against an obligation to pay a  
18 beneficiary, even if the financial institution funds payment from the  
19 special deposit.

20 **Sec. 12.** (a) A financial institution does not have a fiduciary duty  
21 to any person with respect to a special deposit.

22 (b) When the financial institution holding a special deposit becomes  
23 obligated to pay a beneficiary, a debtor-creditor relationship arises  
24 between the financial institution and beneficiary.

25 (c) The financial institution holding a special deposit has a duty  
26 to a beneficiary to comply with the account agreement and the Uniform  
27 Special Deposits Act.

28 (d) If the financial institution holding a special deposit does not  
29 comply with the account agreement or the act, the financial institution  
30 is liable to a depositor or beneficiary only for damages proximately  
31 caused by the noncompliance. Except as provided by other law of this

1 state, the financial institution is not liable for consequential,  
2 special, or punitive damages.

3 (e) The financial institution holding a special deposit may rely on  
4 records presented in compliance with the account agreement to determine  
5 whether the financial institution is obligated to pay a beneficiary.

6 (f) If the account agreement requires payment on presentation of a  
7 record, the financial institution shall determine within a reasonable  
8 time whether the record is sufficient to require payment. If the  
9 agreement requires action by the financial institution on presentation of  
10 a record, the financial institution is not liable for relying in good  
11 faith on the genuineness of the record if the record appears on its face  
12 to be genuine.

13 (g) Unless the account agreement provides otherwise, the financial  
14 institution is not required to determine whether a permissible purpose  
15 stated in the agreement continues to exist.

16 **Sec. 13.** (a) Unless otherwise provided in the account agreement, a  
17 special deposit terminates five years after the date the special deposit  
18 was first funded.

19 (b) Unless otherwise provided in the account agreement, if the  
20 financial institution cannot identify or locate a beneficiary entitled to  
21 payment when the special deposit is terminated, and a balance remains in  
22 the special deposit, the financial institution shall pay the balance to  
23 the depositor or depositors as a beneficiary or beneficiaries.

24 (c) A financial institution that pays the remaining balance as  
25 provided under subsection (b) has no further obligation with respect to  
26 the special deposit.

27 **Sec. 14.** The Uniform Commercial Code, consumer protection law, law  
28 governing deposits generally, law related to escheat and abandoned or  
29 unclaimed property, and the principles of law and equity, including law  
30 related to capacity to contract, principal and agent, estoppel, fraud,  
31 misrepresentation, duress, coercion, mistake, and bankruptcy, supplement

1 the Uniform Special Deposits Act except to the extent inconsistent with  
2 the act.

3 **Sec. 15.** In applying and construing the Uniform Special Deposits  
4 Act, a court shall consider the promotion of uniformity of the law among  
5 jurisdictions that enact it.

6 **Sec. 16.** The Uniform Special Deposits Act applies to:

7 (1) a special deposit made under an account agreement executed on or  
8 after the effective date of this act; and

9 (2) a deposit made under an agreement executed before the effective  
10 date of this act, if:

11 (A) all parties entitled to amend the agreement agree to make the  
12 deposit a special deposit governed by the act; and

13 (B) the special deposit referenced in the amended agreement  
14 satisfies section 5 of this act.