

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 231

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 bank and one or more depositors;

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

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

9 (2) Bank means a person engaged in the business of banking and
10 includes a savings bank, savings and loan association, credit union, and
11 trust company. Each branch or separate office of a bank is a separate
12 bank for the purposes of the act.

13 (3) Beneficiary means a person that:

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

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

17 (i) under the account agreement; or

18 (ii) on termination of the special deposit.

19 (4) Contingency means an event or circumstance stated in an account
20 agreement that is not certain to occur but must occur before the bank is
21 obligated to pay a beneficiary.

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

25 (6) Depositor means a person that establishes or funds a special
26 deposit.

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

29 (8) Knowledge of a fact means:

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

31 (B) with respect to a bank holding a special deposit:

1 (i) if the bank:

2 (I) has established a reasonable routine for communicating material
3 information to an individual to whom the bank has assigned responsibility
4 for the special deposit; and

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

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

12 (9) Obligated to pay a beneficiary means a beneficiary is entitled
13 under the account agreement to receive from the bank a payment when:

14 (A) a contingency has occurred; and

15 (B) the bank has knowledge the contingency has occurred. Obligation
16 to pay a beneficiary has a corresponding meaning.

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

20 (A) hold funds:

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

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

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

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

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

31 (C) settle an obligation that arises in the operation of a payment

1 system, securities settlement system, or other financial market
2 infrastructure;

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

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

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

17 (12) Record means information:

18 (A) inscribed on a tangible medium; or

19 (B) stored in an electronic or other medium and retrievable in
20 perceivable form.

21 (13) Special deposit means a deposit that satisfies section 5 of
22 this act.

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

27 **Sec. 3.** (a) The Uniform Special Deposits Act applies to a special
28 deposit under an account agreement that states the intention of the
29 parties to establish a special deposit governed by the act, regardless of
30 whether a party to the account agreement or a transaction related to the
31 special deposit, or the special deposit itself, has a reasonable relation

1 to this state.

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

7 (c) The act does not affect:

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

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

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

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

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

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

28 (e) If a beneficiary is not a party to an account agreement and the
29 bank and the depositor do not know whether the beneficiary has knowledge
30 of the agreement's terms, the bank and the depositor may amend the
31 agreement without the consent of the beneficiary only if the amendment is

1 made in good faith.

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

3 (1) a deposit of funds in a bank under an account agreement;

4 (2) for the benefit of at least two beneficiaries, one or more of

5 which may be a depositor;

6 (3) denominated in a medium of exchange that is currently authorized

7 or adopted by a domestic or foreign government;

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

9 (5) subject to a contingency.

10 **Sec. 6.** (a) A special deposit must serve at least one permissible
11 purpose stated in the account agreement from the time the special deposit
12 is created in the account agreement until termination of the special
13 deposit.

14 (b) If, before termination of the special deposit, the bank or a
15 court determines the special deposit no longer satisfies subsection (a),
16 sections 8 to 11 of this act cease to apply to any funds deposited in the
17 special deposit after the special deposit ceases to satisfy subsection
18 (a).

19 (c) If, before termination of a special deposit, the bank determines
20 the special deposit no longer satisfies subsection (a), the bank may take
21 action it believes is necessary under the circumstances, including
22 terminating the special deposit.

23 **Sec. 7.** (a) Unless the account agreement provides otherwise, the
24 bank is obligated to pay a beneficiary if there are sufficient actually
25 and finally collected funds in the balance of the special deposit.

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

29 (c) Unless the account agreement provides otherwise, if the funds
30 available in the special deposit are insufficient to cover an obligation
31 to pay a beneficiary, a beneficiary may elect to be paid the funds that

1 are available or, if there is more than one beneficiary, a pro rata share
2 of the funds available. Payment to the beneficiary making the election
3 under this subsection discharges the bank's obligation to pay a
4 beneficiary and does not constitute an accord and satisfaction with
5 respect to another person obligated to the beneficiary.

6 (d) Unless the account agreement provides otherwise, the obligation
7 of the bank obligated to pay a beneficiary is immediately due and
8 payable.

9 (e) The bank may discharge its obligation under this section by:

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

11 (2) taking other action that:

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

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

15 (f) If the bank obligated to pay a beneficiary has incurred an
16 obligation to discharge the obligation of another person, the obligation
17 of the other person is discharged if action by the bank under subsection
18 (e) would constitute a discharge of the obligation of the other person
19 under law that determines whether an obligation is satisfied.

20 **Sec. 8.** (a) Neither a depositor nor a beneficiary has a property
21 interest in a special deposit.

22 (b) Any property interest with respect to a special deposit is only
23 in the right to receive payment if the bank is obligated to pay a
24 beneficiary and not in the special deposit itself. Any property interest
25 under this subsection is determined under other law.

26 **Sec. 9.** (a) Subject to subsection (b), creditor process with
27 respect to a special deposit is not enforceable against the bank holding
28 the special deposit.

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

1 (1) is served on the bank;

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

4 (3) gives the bank a reasonable opportunity to act on the process.

5 (c) Creditor process served on a bank before it is enforceable
6 against the bank under subsection (b) does not create a right of the
7 creditor against the bank or a duty of the bank to the creditor. Other
8 law determines whether creditor process creates a lien enforceable
9 against the beneficiary on a contingent interest of a beneficiary,
10 including a depositor as a beneficiary, even if not enforceable against
11 the bank.

12 **Sec. 10.** A court may enjoin, or grant similar relief that would
13 have the effect of enjoining, a bank from paying a depositor or
14 beneficiary only if payment would constitute a material fraud or
15 facilitate a material fraud with respect to a special deposit.

16 **Sec. 11.** (a) Except as provided in subsection (b) or (c), a bank
17 may not exercise a right of recoupment or set off against a special
18 deposit.

19 (b) An account agreement may authorize the bank to debit the special
20 deposit:

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

24 (2) for a fee assessed by the bank that relates to an overdraft in
25 the special deposit account;

26 (3) for costs incurred by the bank that relate directly to the
27 special deposit; or

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

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

4 **Sec. 12.** (a) A bank does not have a fiduciary duty to any person
5 with respect to a special deposit.

6 (b) When the bank holding a special deposit becomes obligated to pay
7 a beneficiary, a debtor-creditor relationship arises between the bank and
8 beneficiary.

9 (c) The bank holding a special deposit has a duty to a beneficiary
10 to comply with the account agreement and the Uniform Special Deposits
11 Act.

12 (d) If the bank holding a special deposit does not comply with the
13 account agreement or the act, the bank is liable to a depositor or
14 beneficiary only for damages proximately caused by the noncompliance.
15 Except as provided by other law of this state, the bank is not liable for
16 consequential, special, or punitive damages.

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

20 (f) If the account agreement requires payment on presentation of a
21 record, the bank shall determine within a reasonable time whether the
22 record is sufficient to require payment. If the agreement requires action
23 by the bank on presentation of a record, the bank is not liable for
24 relying in good faith on the genuineness of the record if the record
25 appears on its face to be genuine.

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

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

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

6 **(c)** A bank that pays the remaining balance as provided under
7 subsection (b) has no further obligation with respect to the special
8 deposit.

9 **Sec. 14.** The Uniform Commercial Code, consumer protection law, law
10 governing deposits generally, law related to escheat and abandoned or
11 unclaimed property, and the principles of law and equity, including law
12 related to capacity to contract, principal and agent, estoppel, fraud,
13 misrepresentation, duress, coercion, mistake, and bankruptcy, supplement
14 the Uniform Special Deposits Act except to the extent inconsistent with
15 the act.

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

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

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

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

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

26 **(B)** the special deposit referenced in the amended agreement
27 satisfies section 5 of this act.