

ENGROSSED LEGISLATIVE BILL 231

Introduced by Hallstrom, 1; DeBoer, 10.

A BILL FOR AN ACT relating to banking and finance; to adopt the Uniform Special Deposits Act.

Be it enacted by the people of the State of Nebraska,

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

Sec. 2. In the Uniform Special Deposits Act:

(1) Account agreement means an agreement that:

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

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

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

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

(3) Beneficiary means a person that:

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

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

(i) under the account agreement; or

(ii) on termination of the special deposit.

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

(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.

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

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

(8) Knowledge of a fact means:

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

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

(i) if the financial institution:

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

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

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

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

(A) a contingency has occurred; and

(B) the financial institution has knowledge the contingency has occurred.

Obligation to pay a beneficiary has a corresponding meaning.

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

(A) hold funds:

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

(ii) as a security deposit of a tenant;

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

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

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

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

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

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

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

(12) Record means information:

(A) inscribed on a tangible medium; or

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

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

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

an agency or instrumentality of the state.

Sec. 3. (a) The Uniform Special Deposits Act applies to a special deposit under an account agreement that states the intention of the parties to establish a special deposit governed by the act, 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.

(b) 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.

(c) The act does not affect:

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

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

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

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

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

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

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

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

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

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

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

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

(5) subject to a contingency.

Sec. 6. (a) 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.

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

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

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

(b) Except as provided in subsection (c), the obligation to pay the

beneficiary is excused if the funds available in the special deposit are insufficient to cover such payment.

(c) 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. Payment to the beneficiary making the election under this subsection discharges the financial institution's obligation to pay a beneficiary and does not constitute an accord and satisfaction with respect to another person obligated to the beneficiary.

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

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

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

(2) taking other action that:

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

(ii) otherwise would constitute a discharge under law.

(f) If the financial institution 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 financial institution under subsection (e) would constitute a discharge of the obligation of the other person under law that determines whether an obligation is satisfied.

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

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

this subsection is determined under other law.

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

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

(1) is served on the financial institution;

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

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

(c) Creditor process served on a financial institution before it is enforceable against the financial institution under subsection (b) does not create a right of the creditor against the financial institution or a duty of the financial institution to the creditor. 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 financial institution.

Sec. 10. A court may enjoin, or grant similar relief that would have the effect of enjoining, a financial institution 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.

Sec. 11. (a) Except as provided in subsection (b) or (c), a financial institution may not exercise a right of recoupment or set off against a special deposit.

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

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

obligation;

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

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

(4) to reverse an earlier credit posted by the financial institution 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.

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

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

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

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

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

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

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

the financial institution on presentation of a record, the financial institution is not liable for relying in good faith on the genuineness of the record if the record appears on its face to be genuine.

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

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

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

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

Sec. 14. The Uniform Commercial Code, consumer protection law, law governing deposits 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 the Uniform Special Deposits Act except to the extent inconsistent with the act.

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

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

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

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

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

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

PRESIDENT OF THE LEGISLATURE

*THIS IS TO CERTIFY that the within LB 231 was passed by the One Hundred Ninth
Legislature of Nebraska at its First Session on the day
of 20.....*

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR