



# Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

## RHODE ISLAND COMMISSION ON UNIFORM STATE LAWS

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February 11, 2025

House Corporations Committee  
Rhode Island House of Representatives

Re: Uniform Special Deposits Act- testimony in support of H5332

Dear Chair Solomon, Vice Chair O'Brien, and Members of the Rhode Island House Committee on Corporations,

Thank you for the opportunity to testify in support of H 5332 which adopts the Uniform Special Deposits Act. I am a Rhode Island legislature appointed member of the Uniform Law Commission (ULC) and recently served as Chair of the ULC's Drafting Committee which wrote this Uniform Special Deposits Act. A copy of the Act, as well as other supporting materials can be found on the Uniform Law Commission's website [www.uniformlaws.org](http://www.uniformlaws.org). I have also submitted these materials to the House electronically.

The Uniform Law Commission (ULC) is a state-supported organization that was established in 1892 and provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC commissioners are practicing lawyers, judges, legislators and legislative staff, and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands. ULC commissioners donate thousands of hours of legal work, without compensation, to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

The Uniform Special Deposits Act (the "Act"), as adopted by H 5332, is the result of a multiyear, collaborative drafting process with input from leading experts in commercial law and the financial services industry. The Act provides clarity to an area of law that has been uncertain for a number of years.

Special deposits are banking products that have different characteristics than other deposit accounts like checking or savings deposits. One might think of this device as in the nature of a protected escrow account. Special deposits are established for a particular purpose, and a beneficiary's entitlement to payment is determined only after a contingency has occurred. That contingency could be the closing of a sale of real estate, the distribution of funds to class members after the court approves of the settlement of a class action, or the distribution of a commercial tenant's security deposit when the leasehold ends. These deposits ensure funds will be available to the person entitled to them in the future.

Special deposits serve an important function in commerce and industry. They are safe, secure, and efficient. Safety and security are provided by a regulated bank, banking regulation (including the regulators), and perhaps deposit insurance. Efficiency is provided by the simplicity

of the deposit account mechanism, its relatively low cost, and the fact that banks typically provide a return on the principal balance of deposits in the form of interest. Parties using a special deposit expect that, when the contingency occurs, the money will be there to pay.

While they are a vital component of our banking infrastructure, legal uncertainties have caused many to avoid using special deposits. These uncertainties thwart the parties' expectations that funds in a special deposit will be available to them once the contingency has occurred. Historically courts have attempted to fashion protections through, among other measures, common law referring to special deposits. Case law has analogized special deposits to a trust, bailment, or custody arrangement. However, these characterizations are anachronistic in the context of modern banking and do not reflect how the special deposit is used in practice. The attributes that make a deposit "special," that is, the rights of the parties interested in the special deposit, are also uncertain under current law.

The key objectives of H 5332 are to: (1) preserve and protect the important functionality of the special deposit by eliminating the legal uncertainties that inhibit use; (2) honor the expectations of the parties; (3) build on existing law applicable to general deposits in the 50 states; (4) disrupt existing law as little as possible; and (5) deliver narrowly-tailored solutions to cure four problems that can frustrate the expectations of parties electing to use a special deposit.

These are the areas where the common law needs to be improved:

### ***Identification of the Special Deposit***

The Act clarifies the defining characteristics of a special, as opposed to general, deposit. Under the Act, a special deposit must be (i) designated as "special" in an account agreement governing the deposit at a bank, (ii) for the benefit of at least two beneficiaries, (iii) denominated in money, (iv) for a permissible purpose identified in the account agreement, and (v) subject to a contingency specified in the account agreement that is not certain to occur, but if it does occur, creates the bank's obligation to pay a beneficiary. If all those characteristics are present, the deposit is a special deposit.

The requirement that the special deposit serve a permissible purpose is a crucial feature of the Act. It prevents the special deposit from being used inappropriately for fraudulent or abusive purposes—for example, to hinder or defraud creditors. A permissible purpose is defined as "a governmental, regulatory, commercial, charitable, or testamentary objective of the parties stated in the account agreement." A special deposit must serve a permissible purpose from creation until termination. If the special deposit ceases to serve such a purpose before termination, the protections of the Act will not apply to any future funds deposited in the account. In addition, the Act ensures that a deposit or transfer voidable under other law is not protected by designating it as a special deposit.

### ***Bankruptcy of the Depositor***

The Act also clarifies the treatment of a special deposit in the event of a depositor's bankruptcy. Under the current law of most states, a depositor's rights in its bank accounts upon filing a bankruptcy proceeding become vulnerable to being drawn into the bankruptcy estate. Thus, an intended special deposit of that bankrupt depositor, without the benefit of the special deposit law device, could be "swept" into the bankruptcy estate. *Markel Insurance Company v. Origin Bancorp, Inc.*, 663 F.Supp.3d 670 (ND Tex. Mar. 2023); *In re Urb. Commons 2 W. LLC*, 648 B.R. 530 (Bankr. S.D.N.Y. 2023).

For example, imagine a commercial office building where the landlord requires tenants to pre-pay rent as a security deposit. The landlord may put each tenant's security deposit into a single, commingled account. If there is no damage to the property at the end of the lease, the security deposit is due to the tenant. If the landlord declares bankruptcy, the tenant's security deposit could be caught up in the bankruptcy proceeding. The Act will prevent this outcome and ensure funds remain available for the tenant.

### ***Premature Creditor Process***

Third, the Act provides certainty about the applicability of creditor process on a special deposit. Under current law, there is considerable uncertainty as to whether a creditor of a debtor who is a potential payee from a special deposit may either attach the special deposit or reach the special deposit with a temporary restraining order or injunction. After all, the identity of the ultimate beneficiary has not been determined at the time the special deposit is established because the contingency has not yet occurred. Creditor process can therefore "freeze" a special deposit and interfere with the intended purpose.

Section 19-35-9 provides that creditor process is not enforceable against the bank holding the special deposit, except in limited circumstances. It may well be enforceable against the bank holding a special deposit with respect to any amount that it must pay to a beneficiary after determination of the contingency, but the special deposit itself is fully protected until that contingency is determined. Section 19-35-10 eliminates the ability of creditors to use an injunction or temporary restraining order to achieve the same or a similar outcome.

### ***Bank Setoffs***

The Act also addresses whether the bank holding the special deposit can exercise a right of set off or recoupment that is unrelated to any payment to a beneficiary or to the special deposit itself. Section 19-35-11 provides that a bank may not use special deposits to satisfy unrelated debts. There are certain exceptions dealing with fees associated with the special deposit, and situations where an accounting offset is needed to remedy a mistaken credit to the special deposit account. However, the general rule is clear — there is no threat from recoupment or setoff, and the special deposit is protected.

### ***Self-Imposed Limitations of the Uniform Special Deposits Act***

The Act contains several self-imposed limitations. Importantly, the Act was drafted with a "minimalist" philosophy and addresses only specific uncertainties existing under current law. The Act does not duplicate the law governing deposits generally and, instead, alleviates the problems in existing law that cause uncertainty around special deposits. This enables the Act to operate in conjunction with existing commercial law and embraces the parties' freedom to contract.

Another important limitation of the Act is its "opt-in" nature. The bank and its customer must elect to treat the deposit as a special deposit to be covered by the Uniform Special Deposits Act. This permits existing relationships to continue undisturbed. Parties can also amend existing agreements to be covered by the Act if the relationship satisfies the Act's criteria to establish a special deposit.

Additionally, the Act does not address the insolvency of the bank holding a special deposit, for two reasons. First, bank insolvency law regarding special deposits is clear and well-developed. Second, bank insolvency law has largely become the product of federal law. State law, including the Act, can only perform a limited role.

Finally, the Act does not require banks to offer a special deposit product. Some banks may decide that this will not be among their offered suite of products or that they will only offer such a product under limited circumstances.

## **Conclusion**

The Uniform Special Deposits Act is intended not to introduce new legal concepts, but rather to eliminate uncertainty that attaches to the use of special deposits under existing law and therefore help ensure that the expectations of parties entering into those transactions are met.

Please note that this same bill was passed by the Rhode Island House in your legislative session last year, but did not make it through the Senate. Nothing has changed in the text. You should also be aware that this Uniform Special Deposits Act has now been enacted in Washington State, Colorado, Oklahoma and Delaware and has been introduced in New York, Massachusetts, Nebraska, Arizona, North Dakota, the District of Columbia and at least 15 other states.

Those are just a few benefits offered by the Uniform Special Deposit Act. I thank you for your time and respectfully urge the Committee to report favorably on House Bill 5332.

Sincerely,

Patrick A. Guida

**Section by Section Summary of the Uniform Special Deposits Act as Adopted in Rhode Island H 5332**

**Section 19-35-1. Title**

States the short title of the legislation.

**Section 19-35-2. Definitions**

Contains the key terms used throughout the act including: “account agreement,” “bank,” “beneficiary,” “depositor,” “knowledge,” and “permissible purpose.”

**Section 19-35-3. Scope; Choice of Law; Forum**

Sets forth the scope of the Act. The Act applies to a special deposit where the account agreement states the intent of the parties to establish a special deposit. The Act is an opt-in statute; parties to the account agreement must affirmatively decide to apply its protections. Parties can select to be governed by the laws of any state that has enacted the Act, even without any relation between such state and the parties, the forum state, special deposit or any related transaction. Parties have the same flexibility in choice of forum for the resolution of disputes.

**Section 19-35-4. Variation by Agreement or Amendment**

Sets forth which sections of the act may be varied by agreement and which sections may not be varied by agreement.

*May be Amended in the Account Agreement:*

- Section 19-35-7. Payment to Beneficiary by Bank
- Section 19-35-12. the Duties and Liability
- Section 19-35-13. the Term and Termination of a special deposit

*May Not Be Amended in the Account Agreement (with limited exceptions):*

- Section 19-35-2. Definitions
- Section 19-35-3. Choice of Law, Scope, and Forum
- Section 19-35-4. Variation by Agreement or Amendment
- Section 19-35-5. Requirements for Special Deposits
- Section 19-35-6. Permissible Purpose
- Section 19-35-8. Property Interest of Depositor or Beneficiary
- Section 19-35- 9. When Creditor Process is Enforceable Against Bank
- Section 19-35-10. Injunction or Similar Relief
- Section 19-35-11. Recoupment or Set Off
- Section 19-35-14. Principles of Law and Equity

**Section 19-35-5. Requirements for Special Deposit**

Sets forth the requirements for a special deposit. In order for a deposit to be a special deposit, the deposit must be: (1) designated as “special” in the account agreement governing the deposit at the bank; (2) for the benefit of at least two beneficiaries (one or more of which may be a depositor); (3) denominated in money; (4) for a permissible purpose; and (5) subject to a

contingency that is not certain to occur, but if it does occur, creates the bank's obligation to pay a beneficiary.

#### **Section 19-35-6. Permissible Purpose**

States that a special deposit must serve at least one permissible purpose stated in the account agreement from the time the special deposit is created until it is terminated. If the bank or a court determines that the special deposit no longer serves a permissible purpose before the termination of the special deposit, the protections of the Act cease to apply to the special deposit and the bank may take actions it believes necessary, including terminating the special deposit.

#### **Section 19-35-7. Payment to Beneficiary by Bank** *(May be amended by agreement)*

Provides that a bank is obligated to pay a beneficiary (unless stated otherwise) if there are sufficient funds in the balance of the special deposit. The bank's debt to the beneficiary accrues when a bank is obligated to pay a beneficiary (i.e., when the contingency has been determined and the bank has knowledge of the determination). A bank is not obligated to pay a beneficiary if there are not sufficient funds in the special deposit account.

Provides a default rule that when funds in a special deposit are insufficient to pay a beneficiary in full, the beneficiary may elect to receive the available funds and that payment discharges the bank's obligation to pay the beneficiary. The obligation is immediately due and payable unless the account agreement provides otherwise.

#### **Section 19-35-8. Property Interest of Depositor or Beneficiary**

Contains one of the key protective provisions of the Act that makes the special deposit "bankruptcy remote" from the depositor. Neither a depositor nor a beneficiary has a property interest in a special deposit before the outcome of the contingency is determined. Any property interest is the right to receive future payment once the bank becomes obligated to pay a beneficiary and not a right to the special deposit itself.

#### **Section 19-35-9. When Creditor Process Enforceable Against Bank**

This provision protects the special deposit from creditor process that might cause the bank holding the special deposit to "freeze" all or part of the special deposit, which would disable the special deposit from performing its permissible purpose. Creditor process is only enforceable if process is served on the bank and provides sufficient information to identify the depositor or beneficiary, and the bank has reasonable opportunity to act on the process.

#### **Section 19-35-10. Injunction or Similar Relief**

Prevents creditors and other parties from seeking a temporary restraining order or preliminary injunction against a bank holding a special deposit. This section avoids that result and creates a safeguard for situations involving potential fraud that is modeled after Section 5-109(b) of the Uniform Commercial Code.

#### **Section 19-35-11. Recoupment or Set Off**

Establishes that a bank may not exercise a right of recoupment or set off against a special deposit, with limited exceptions, including for unpaid fees with respect to a special deposit or when a bank needs to remedy a mistaken credit.

**Section 19-35-12. Duties and Liability of Bank** *(May be amended by agreement)*

Clarifies that a bank does not have a fiduciary duty to any person with respect to the special deposit. A debtor-creditor relationship is established between the bank and its customer. The ultimate obligation of a bank holding a special deposit will be due to a beneficiary (which could be a depositor) once the occurrence of a contingency is determined.

Also codifies current commercial practice where the bank holding the special deposit will rely upon a record, if it, rather than a third party, is to determine the contingency. A bank does not have a duty under the Uniform Special Deposits Act to make such a determination, but it may be required under other law to make such a determination (for example, to determine under federal or state anti-money laundering law if a special deposit violates prohibitions against money laundering), or it may be required to act because another person has made such a determination under other law, including a court of competent jurisdiction.

**Section 19-35-13. Term and Termination** *(May be amended by agreement)*

Provides default rules. In the event the account agreement does not provide a termination provision, a special deposit terminates five years after the date the special deposit was first funded. Also contains a right of remission.

**Section 19-35-14. Principles of Law and Equity**

Specifies that the Uniform Special Deposits Act is supplemented by current law (UCC, consumer protection law, law governing deposits generally, law related to escheat and abandoned or unclaimed property) except to the extent those laws are inconsistent with this act.

**Section 19-35-15. Uniformity of Application and Construction**

Contains the standard section in all uniform acts providing that courts must construe the chapter to promote uniformity among the enacting states.

**Section 19-35-16. Transitional Provision**

Provides that this Act applies to a special deposit made under an account agreement executed on or after the effective date.



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ANALYSIS

## What's Special About Special Deposits? The New Uniform Special Deposits Act

In their Secured Transactions column, Barbara M. Goodstein and Adam C. Wolk, discuss the Uniform Special Deposits Act. The act aims to create a set of “clear and executable” rules to govern bank deposits that involve at least two beneficiaries (one of whom may be the depositor) where “the identity of the person entitled to payment is not determined until the occurrence of a contingency identified at the time the deposit is created.”

January 31, 2024 at 01:12 PM

Banking and Finance Laws

By Barbara M. Goodstein and Adam C. Wolk | January 31, 2024 at 01:12 PM



### Introduction

Last June this column discussed two federal court cases showing the challenges faced by lawyers in structuring bank deposit arrangements, such as trusts and escrows, free of bankruptcy risk of the depositor. (“[Trusts, Escrows and Property of the Estate \(or Not\)](#),” 269 N.Y.L.J. 109 (June 8, 2023)). These two decisions, one by a bankruptcy court in the Southern District of New York involving an attorney escrow account, and the other by a federal district court in the Northern District of Texas involving a trust arrangement, reached the same conclusion—namely that the cash at issue was subject to claims of the depositor’s creditors. These cases emphasize the continuing uncertainty across states of treatment of different structures intended to insulate cash from the risk of bankruptcy of its depositor. Fortunately, this uncertainty may soon be resolved by a uniform state statute proposed by the Uniform Law Commission.

### Who Is the Uniform Law Commission and What Is a Special Deposit?

The Uniform Law Commission (the ULC) (aka the National Conference of Commissioners on Uniform State Laws) consists of a group of lawyers appointed by state governments whose mission is to address uncertainties and promote uniformity among state laws. In July 2023, the ULC approved the Uniform Special Deposits Act (the USDA or the act). The act aims to create a set of “clear and executable” rules to govern bank deposits that involve at least two beneficiaries (one of whom may be the depositor) where “the identity of the person entitled to payment is not determined until the occurrence of a contingency identified at the time the deposit is created.” The act uses the term “special deposits” to describe these arrangements. According to the ULC, special deposits are deposits that may seem to operate like a trust, bailment or other custody arrangement, but are expressly not those types of structures. In its Prefatory Note, the ULC points to what it calls “old case law” providing that banks hold special deposits “in custody.” Instead, the ULS flatly states that this practice is not followed, and to the contrary describes bailments as “anachronistic” and “not feasible in modern banking practice.”

The ULC also says that special deposits are not trusts and therefore do not create a fiduciary duty on the part of the bank. Instead, the commentary notes, the relationship between bank and beneficiary is that of debtor-creditor and if parties wish a trust relationship they need a trust agreement rather than an account agreement.



But then, what exactly is a “special” deposit under the act? The definition itself is simple. A special deposit is a deposit that satisfies Section 5 of the act. Under Section 5, a deposit qualifies as a special deposit if it is a deposit of “funds in a bank under an account agreement ... for the benefit of at least two beneficiaries, one or more of which may be a depositor,” is denominated in a government-approved medium of exchange (following the UCC definition of “money”) for a “permissible purpose” that is stated in the account agreement, and subject to a “contingency.”

The term “account agreement” is defined in the act as a “record” between a bank and at least one depositor (and that may have additional beneficiaries) that specifically states the parties’ intent to establish a special deposit governed by the act—a so-called “opt-in” provision (similar to the NYUCC Article 8 opt-in under Section 8-103(c) for partnership or limited liability company interests). Parties also have the ability to retroactively amend existing agreements to be covered by the act, so long as the agreements meet the criteria outlined within the act to establish a special deposit. Importantly, if parties prefer to rely on common law to govern their special deposits, they may continue to do so.

Because special deposits receive certain protections under the act, drafters considered that the mechanism may be used for fraudulent purposes and accordingly created certain safeguards, one of which is the “permissible purpose” requirement. This requirement, contained in Section 2 of the Act, requires that special deposit be created solely for a “permissible purpose”—defined as “a governmental, regulatory, commercial, charitable, or testamentary objective of the parties stated in the account agreement.” It then provides a nonexclusive “white list” of examples of a permissible purpose, including escrows for purchase and sale transactions, holding tenant security deposits, litigation settlements, salary and other employee benefit payments pending distribution, liquidity reserves or credit support for transaction participants, settling and assuring payment of obligations with respect to cash margin and other cash collateral in supporting the “orderly function of financial market infrastructure.”

This purpose must be served from the creation of the special deposit until its termination. If the special deposit ceases to serve this purpose before termination, the protections of the act will not apply to any funds deposited in the account from the point it ceases to serve the permissible purpose.

“Contingency” is defined as “an event of circumstance stated in an account agreement that is not certain to occur but “must occur before the bank is obligated to pay a beneficiary.” The act commentary specifically states that the passage of time, without being subject to another event or criteria, will not be a contingency.

If these qualifications are met, the funds are considered a “special” deposit to be governed under the act. If one of these requirements is not met, the funds may still be considered a special deposit under common law but will not be covered by the act.

While special deposits are expressly not custody arrangements, they are similar in purpose in that under the act, the deposits must be established for a particular purpose and the funds within the accounts can only be drawn when a pre-determined contingency has occurred, like payment of a purchase price in a transaction closing. Note that given the identity of the beneficiary of a special deposit is in some cases not known unless and until the contingency event has actually occurred, the creditor in the debtor-creditor relationship with the bank in that deposit is also only determinable upon the occurrence of that contingency event.

## **What Are the Problems Being Addressed by the Act?**

The USDA seeks to minimize the legal uncertainties associated with the special deposit without disrupting current law. The commentary identifies four what it describes as “mischiefs,” meaning key uncertainties, that it is targeting, consisting of (1) the definition of what constitutes a “special” deposit (discussed above); (2) the treatment of a special deposit in the event the depositor faces bankruptcy; (3) the treatment of a special deposit account in the event of a creditor judgment against a beneficiary; and (4) the treatment of a special deposit with respect to a bank’s right to set-off or recoupment. Part (1) is discussed above; we discuss parts (2), (3) and (4) below.

What treatment will the special deposit receive in the event of a depositor bankruptcy? Section 8 of the act is

described by the drafters as one of the key protective provisions of the USDA. That section states that neither the depositor nor a beneficiary (which may include the depositor) has any property interest in a special deposit and that the only property interest relating to a special deposit is the right of the beneficiary to receive payment from such deposit assuming the bank is obligated to make such payment. This means that once transferred to the special deposit, the funds would no longer be considered a part of the depositor's estate for bankruptcy purposes and that the special deposit would be considered "bankruptcy remote" from the depositor. This does not, however, prevent the depositor from receiving funds if it becomes in fact the beneficiary.

What treatment will the special deposit receive in the event of a creditor judgment against a beneficiary? The act works to protect the special deposit from attacks by creditors and ensures that the funds are not drawn into an unrelated conflict. Section 9 of the act makes clear that the "creditor process with respect to a special deposit is not enforceable against the bank holding the special deposit." Thus, while a creditor may be able to attach a lien to any interest an indebted beneficiary may have to its portion of the funds, which would only apply to funds received by the beneficiary once the contingency event has taken place.

Lastly, what treatment will the special deposit receive with respect to a bank's right of set-off or recoupment? Set-off is a bank's right to seize a debtor's deposits in an amount necessary to satisfy the claim of the bank against the depositor in an unrelated transaction and recoupment is its right to seize deposits to satisfy claims in a related transaction. The act addresses concerns regarding both of these rights of banks by eliminating them entirely. There are some explicit, limited exceptions, including unpaid fees with respect to a special deposit or if a bank needs to remedy a mistaken credit to the special deposit balance. Despite these exceptions, the act is clear that the overarching rule is the special deposit is protected from recoupment or set-off. What the act also does make clear, however, is that once the contingency has occurred and the beneficiary is determined (meaning the bank's obligation to pay the beneficiary has accrued), the bank has the right to exercise recoupment or set-off against such beneficiary even if the bank funds its claim from the special deposit.

## **What Are Incentives to a Bank to Offer a Special Deposit?**

Another key feature of the act are the incentives it provides to banks to offer a special deposit. First, the Act clarifies that the bank holding a special deposit only owes a duty to its customers, who would be the depositor and the beneficiary, and owes no duty to any third parties. This protects banks from tort claims by non-customers who may have faced indirect harm as a result of bank action. Second, the act protects the bank from liability for consequential, special or punitive damages. Third, the act enables the bank to rely on the genuineness of records presented by the parties in order to open their special deposit. Fourth, the act exculpates the bank from having to determine whether the customer is meeting the "permissible purpose" criteria unless the account agreement provides otherwise (although it may nevertheless have such duty under other laws). Fourth, the act makes it clear that the bank has no fiduciary duty to any person in connection with a special deposit and that its relationship with the beneficiaries is solely that of debtor-creditor. Finally, since parties are incentivized to take advantage of the act's protections when documenting their transactions, banks that offer special deposits are more likely to be chosen for their savvy customers' transactions.

## **Choice of Law**

One additional useful feature of the act for both depositors and banks alike is its liberal choice of law and forum rules. Under Section 3, parties can select the governing law and forum of the state specified in the account agreement, regardless of whether that state has a reasonable relationship to the parties, the transaction or the deposit. In other words, the parties can select any jurisdiction that has adopted the USDA as its choice of law and forum under the account agreement, without restriction (similar to the choice of law and forum provisions under UCC 5-116(a) relating to liabilities of certain parties in connection with a letter of credit). Of course, there may be legal restrictions outside of the act against choosing that particular jurisdiction for purposes of forum or choice of law and query as to whether you could bind non-parties.

As noted above, the act was approved by the Uniform Law Commission in July 2023 and is currently being rolled out to the various state legislatures, although it is still in the early stages of adoption. As of publication of this column, the act has been introduced in the legislatures of three states—Oklahoma, Washington and West Virginia. The good news, as noted above, is that once it is adopted by any state, it is available for transactions if such state is designated as the governing law in the account agreement choice of law provision.

## **Conclusion**

Cash deposits to address certain contingencies are clearly a common feature of commercial transactions. The USDA has the potential to bring clarity to the legal treatment of these deposits, specifically as to what protections will and won't apply to their usage. In so doing, the act also wisely includes incentives to banks to move forward with this important vehicle. We hope and expect the finance industry will be able to take advantage of this opportunity.

**Barbara M. Goodstein** and **Adam C. Wolk** are partners in the banking and finance practice at the New York office of *Mayer Brown*. **Payal C. Sampat**, an associate in the firm's New York office, assisted in the preparation of this article.

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## WHY RHODE ISLAND SHOULD ADOPT THE UNIFORM SPECIAL DEPOSITS ACT

A special deposit is a deposit of money at a bank where the person entitled to the money is only determined after a contingency occurs. Special deposits perform important work in commerce and industry throughout the United States. For example, consider a security deposit paid by a tenant to a landlord, or the deposit to an account that will fund the payment to members of a court-approved class action settlement. Special deposits could serve a variety of parties in business, commerce, and other various contexts, but legal uncertainties have led many to avoid using them.

The Uniform Special Deposits Act (the “Act”) cures the legal uncertainties that prevent businesses and commercial actors from making full use of the special deposit. Under the Act, parties will be able to utilize special deposits with greater confidence that their expectations will be met. Below are some of the reasons why Rhode Island should adopt the Uniform Special Deposits Act.

- **The Act is an “opt in” statute.** The parties must specifically elect to be covered by the Act in their account agreement. This means parties can elect to utilize the protections for certain deposit products and not others. The optional nature of the Act allows banks to add special deposits to the suite of products they offer without impacting existing arrangements. A bank can choose when and to what extent it will offer a special deposit to customers.
- **The Act was drafted with a minimalist philosophy.** The Act does not duplicate provisions of law governing deposits generally. Instead, it remedies uncertainties in the law surrounding the special deposit. Existing commercial and consumer protection laws supplement the Act, except where inconsistent.
- **The Act prevents parties from using a special deposit to defraud or hinder creditors.** A special deposit must serve a specified permissible purpose from the time the deposit is created until termination. If the deposit ceases to serve a permissible purpose before termination, the protections of the Act fall away, and the funds are subject to the payee’s creditors. For example, a deposit or transfer that is fraudulent or voidable under other law is not protected.
- **Under the Act, a special deposit cannot be swept into the bankruptcy estate of the depositor if there is a bankruptcy filing.** Under the current law of many states, a depositor will have rights to the special deposit before the determination of a contingency that resolves ownership of all or part of the balance of a special deposit. The Act makes it clear that any property interest with respect to a special deposit is the right to receive payment after the occurrence of the contingency—there is no property interest in the special deposit itself.

- **The Act protects special deposits from premature creditor process.** Under current law, creditor process can “freeze” a special deposit and interfere with the purpose that the deposit is designed to achieve. When the special deposit is established, the identity of the bank’s ultimate creditor has not been determined. Under the Act, creditor process is only enforceable against the bank holding the special deposit after the determination of a contingency.
- **The Act protects the special deposit from the bank’s set off right.** Under current law of certain states, a bank might exercise a right of set off or recoupment that is unrelated to a payment to a beneficiary (or to the special deposit itself). This has discouraged some from using special deposits. The Act prevents the bank from exercising a right of set off or recoupment to its own advantage with respect to unrelated debtor-creditor relationships.

The Act also clarifies other aspects of a special deposit relationship that have been muddled in the case law. For example, it expressly provides that the relationship between the bank and a beneficiary is a debtor-creditor relationship and that bank does not have a fiduciary duty to any person in connection with a special deposit.



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## THE UNIFORM SPECIAL DEPOSITS ACT (2025)

### *- A Summary -*

The Uniform Law Commission drafted the Uniform Special Deposits Act (the “Act”) to provide clarity on an area of law that has been subject to uncertainty for many years. A special deposit is a deposit of money at a bank created for a particular purpose where the person entitled to the money is only determined after a specified event or contingency occurs.

Special deposits play an important role in commerce and industry, but their use has been diminished because of legal uncertainties. Various state laws improperly characterize special deposits as something akin to a trust, bailment, or agency – which do not accurately describe how special deposits are used in practice. Existing case law creates even more confusion because it refers to bank practices that are no longer followed.

The Act establishes a framework for banks and their customers to utilize special deposits with greater certainty of how such deposits will be treated under various circumstances. Importantly, the Act is an “opt in” statute. Banks and their customers must specify in their account agreement that they intend to be covered by the Uniform Special Deposits Act as enacted in a particular state. This feature permits existing relationships to continue undisturbed, and lets parties choose to utilize the protections provided by the Act when they wish. Matters not addressed by the Act are controlled by general laws already governing deposits or contractual arrangements.

The Act remedies four key legal uncertainties. First, the Act clarifies what a “special deposit” is. It establishes clear criteria for a deposit to be considered “special” under the Act. A special deposit must be (i) designated as “special” in an account agreement governing the deposit at a bank, (ii) for the benefit of at least two beneficiaries (one or more of which may be a depositor), (iii) denominated in money, (iv) for a permissible purpose identified in the account agreement, and (v) subject to a contingency specified in the account agreement that is not certain to occur, but if it does occur, creates the bank’s obligation to pay a beneficiary. If all those criteria are satisfied, the deposit is a special deposit.

Second, the Act clarifies the treatment of a special deposit in the event of the bankruptcy of a depositor. Under the current law of many states, it is unclear whether funds deposited into a special deposit could be swept into the bankruptcy estate of the person who deposited them. A special deposit under the Act is “bankruptcy remote” because Section 8 provides that neither a depositor nor a beneficiary has a property interest in a special deposit. No person is entitled to funds in a special deposit until the bank becomes obligated to pay a beneficiary. The only property interest that may arise with respect to a special deposit is in the right to receive payment from the bank after the occurrence of a contingency.

Third, the Act clarifies the applicability of creditor process on a special deposit. Under the current law, a creditor can freeze a special deposit and interfere with the purpose that the deposit is designed to achieve.

Section 9 of the Act provides that creditor process is not enforceable against the bank holding the special deposit, except in limited circumstances. Instead, creditor process may be enforceable against the bank holding a special deposit with respect to any amount that it must pay after the determination of a contingency, but not on the *special deposit itself*. Section 10 provides a similar limitation on using an injunction or temporary restraining order to achieve the same outcome.

Fourth, the Act provides clarity on the legality of the bank exercising a set off or right of recoupment against a special deposit that is unrelated to any payment to a beneficiary or the special deposit itself. Section 11 prohibits set off or recoupment except in limited circumstances.

Once a special deposit has been established under the Act, it creates an assignable and pledgeable interest for a beneficiary – a definite and clear right to payment upon the occurrence of a contingency and notice to the bank, where one may not otherwise exist. The Uniform Special Deposits Act creates a mechanism for parties to a commercial transaction to obtain a low cost and safe return on earnest money. The Uniform Special Deposits Act is narrowly tailored to cure these four legal uncertainties and eliminate doubts so that parties can utilize special deposits with greater confidence.

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2025

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A N A C T

RELATING TO FINANCIAL INSTITUTIONS -- THE RHODE ISLAND SPECIAL DEPOSITS  
ACT

Introduced By: Representative Jason Knight

Date Introduced: February 07, 2025

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 19 of the General Laws entitled "FINANCIAL INSTITUTIONS" is  
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 35

4 THE RHODE ISLAND SPECIAL DEPOSITS ACT

5 **19-35-1. Short title.**

6 This chapter shall be known and may be cited as the "Uniform Special Deposits Act."

7 **19-35-2. Definitions.**

8 As used in this chapter, the following words and terms have the following meanings:

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

10 (i) Is in a record between a bank and one or more depositors;

11 (ii) May have one or more beneficiaries as additional parties; and

12 (iii) States the intention of the parties to establish a special deposit governed by this chapter.

13 (2) "Bank" means a person engaged in the business of banking and includes a savings bank,  
14 savings and loan association, credit union, trust company, other financial institution as defined in  
15 this title, and other regulated institution as defined in this title. Each branch or separate office of a  
16 bank is a separate bank for the purpose of this chapter.

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

18 (i) Is identified as a beneficiary in an account agreement; or



1           (ii) If not identified as a beneficiary in an account agreement, may be entitled to payment  
2 from a special deposit:

3           (A) Under the account agreement; or  
4           (B) On termination of the special deposit.

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

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

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

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

12          (8) "Knowledge" of a fact means:

13           (i) With respect to a beneficiary, actual knowledge of the fact; or  
14           (ii) With respect to a bank holding a special deposit:

15           (A) If the bank:

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

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

20           (B) If the bank has not established and maintained reasonable compliance with a routine  
21 described in subsection (8)(ii)(A)(I) of this section or otherwise exercised due diligence, implied  
22 knowledge of the fact that would have come to the attention of an individual to whom the bank has  
23 assigned responsibility for the special deposit.

24          (9) "Obligated to pay a beneficiary" or "obligation to pay a beneficiary" means a  
25 beneficiary is entitled under the account agreement to receive from the bank a payment when:

26           (i) A contingency has occurred; and  
27           (ii) The bank has knowledge the contingency has occurred.

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

31           (i) Hold funds:

32           (A) In escrow, including for a purchase and sale, lease, buyback, or other transaction;  
33           (B) As a security deposit of a tenant;  
34           (C) That may be distributed to a person as remuneration, retirement or other benefit, or

1 compensation under a judgment, consent decree, court order, or other decision of a tribunal; or

2 (D) For distribution to a defined class of persons after identification of the class members  
3 and their interest in the funds;

4 (ii) Provide assurance with respect to an obligation created by contract, such as earnest  
5 money to ensure a transaction closes;

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

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

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

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

19 (12) "Record" means information:

20 (i) Inscribed on a tangible medium; or

21 (ii) Stored in an electronic or other medium and retrievable in perceivable form.

22 (13) "Special deposit" means a deposit that satisfies §19-35-5.

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

26 **19-35-3. Scope, choice of law, and forum.**

27 (a) This chapter applies to a special deposit under an account agreement that states the  
28 intention of the parties to establish a special deposit governed by this chapter, regardless of whether  
29 a party to the account agreement or a transaction related to the special deposit, or the special deposit  
30 itself, has a reasonable relation to this state.

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

1 (c) This chapter does not affect:

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

3 or

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

5 **19-35-4. Variation by agreement or amendment.**

6 (a) The effect of §§ 19-35-2 through 19-35-6, §§ 19-35-8 through 19-35-11, and § 19-35-  
7 14 shall not be varied by agreement, except as provided in those sections. Subject to subsection (b)  
8 of this section, the effect of §§ 19-35-7, 19-35-12, and 19-35-13 may be varied by agreement.

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

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

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

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

23 **19-35-5. Requirements for special deposit.**

24 A deposit is a special deposit if it is:

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

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

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

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

31 (5) Subject to a contingency.

32 **19-35-6. Permissible purpose.**

33 (a) A special deposit shall serve at least one permissible purpose stated in the account  
34 agreement from the time the special deposit is created in the account agreement until termination

1 of the special deposit.

2 (b) If, before termination of the special deposit, the bank or a court determines the special  
3 deposit no longer satisfies subsection (a) of this section, §§ 19-35-8 through 19-35-11 cease to  
4 apply to any funds deposited in the special deposit after the special deposit ceases to satisfy  
5 subsection (a) of this section.

6 (c) If, before termination of a special deposit, the bank determines the special deposit no  
7 longer satisfies subsection (a) of this section, the bank may take action it believes is necessary under  
8 the circumstances, including terminating the special deposit.

9 **19-35-7. Payment to beneficiary by bank.**

10 (a) Unless the account agreement provides otherwise, the bank is obligated to pay a  
11 beneficiary if there are sufficient actually and finally collected funds in the balance of the special  
12 deposit.

13 (b) Except as provided in subsection (c) of this section, the obligation to pay the beneficiary  
14 is excused if the funds available in the special deposit are insufficient to cover such payment.

15 (c) Unless the account agreement provides otherwise, if the funds available in the special  
16 deposit are insufficient to cover an obligation to pay a beneficiary, a beneficiary may elect to be  
17 paid the funds that are available or, if there is more than one beneficiary, a pro rata share of the  
18 funds available. Payment to the beneficiary making the election under this subsection discharges  
19 the bank's obligation to pay a beneficiary and does not constitute an accord and satisfaction with  
20 respect to another person obligated to the beneficiary.

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

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

24 (1) Crediting another transaction account of the beneficiary; or

25 (2) Taking other action that:

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

27 (ii) Otherwise would constitute a discharge under law.

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

32 **19-35-8. Property interest of depositor or beneficiary.**

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

34 (b) Any property interest with respect to a special deposit is only in the right to receive

1 payment if the bank is obligated to pay a beneficiary and not in the special deposit itself. Any  
2 property interest under this subsection is determined by this chapter.

3 **19-35-9. When creditor process is enforceable against bank.**

4 (a) Subject to subsection (b) of this section, creditor process with respect to a special  
5 deposit is not enforceable against the bank holding the special deposit.

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

8 (1) Is served on the bank;

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

11 (3) Gives the bank a reasonable opportunity to act on the process.

12 (c) Creditor process served on a bank before it is enforceable against the bank under  
13 subsection (b) of this section does not create a right of the creditor against the bank or a duty of the  
14 bank to the creditor. Rhode Island general laws shall determine whether creditor process creates a  
15 lien enforceable against the beneficiary on a contingent interest of a beneficiary, including a  
16 depositor as a beneficiary, even if not enforceable against the bank.

17 **19-35-10. Injunction or similar relief.**

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

21 **19-35-11. Recoupment or set off.**

22 (a) Except as provided in subsections (b) or (c) of this section, a bank may not exercise a  
23 right of recoupment or set off against a special deposit.

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

25 (1) When the bank becomes obligated to pay a beneficiary, in an amount that does not  
26 exceed the amount necessary to discharge the obligation;

27 (2) For a fee assessed by the bank that relates to an overdraft in the special deposit account;

28 (3) For costs incurred by the bank that relate directly to the special deposit; or

29 (4) To reverse an earlier credit posted by the bank to the balance of the special deposit  
30 account, if the reversal occurs under an event or circumstance warranted under Rhode Island  
31 general laws governing mistake and restitution.

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

34 **19-35-12. Duties and liability of bank.**

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

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

4 (c) The bank holding a special deposit has a duty to a beneficiary to comply with the  
5 account agreement as set forth in this chapter.

6 (d) If the bank holding a special deposit does not comply with the account agreement as  
7 set forth in this chapter, the bank is liable to a depositor or beneficiary only for damages proximately  
8 caused by the noncompliance. Except as provided by Rhode Island general laws, the bank is not  
9 liable for consequential, special, or punitive damages.

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

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

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

18 **19-35-13. Term and termination.**

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

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

25 (c) A bank that pays the remaining balance as provided under subsection (b) of this section  
26 has no further obligation with respect to the special deposit.

27 **19-35-14. Principles of law and equity.**

28 The Rhode Island general laws regarding consumer protection, banking deposits, escheat  
29 and abandoned or unclaimed property, equity, contracts, principal and agent, estoppel, fraud,  
30 misrepresentation, duress, coercion, mistake, and bankruptcy, supplement this chapter except to the  
31 extent that any statute is inconsistent with this chapter.

32 **19-35-15. Uniformity of application and construction.**

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

1           **19-35-16. Transitional provision.**

2           This chapter applies to:

3           (1) A special deposit made under an account agreement executed on or after the effective  
4 date of this chapter; and

5           (2) A deposit made under an agreement executed before the effective date of this chapter,  
6 if:

7           (i) All parties entitled to amend the agreement agree to make the deposit a special deposit  
8 governed by this chapter; and

9           (ii) The special deposit referenced in the amended agreement satisfies § 19-35-5.

10           **19-35-17. Severability clause.**

11           If a provision of this chapter or its application to a person or circumstance is held invalid,  
12 the invalidity does not affect any other provision or application of this chapter that can be given  
13 effect without the invalid provision.

14           SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO FINANCIAL INSTITUTIONS -- THE RHODE ISLAND SPECIAL DEPOSITS  
ACT

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- 1           This act would establish the Rhode Island Special Deposits Act to be governed by an
- 2           account agreement between the bank and the depositor or its beneficiary.
- 3           This act would take effect upon passage.

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