



## 104TH GENERAL ASSEMBLY

### State of Illinois

2025 and 2026

HB0029

Introduced 1/9/2025, by Rep. Daniel Didech

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Uniform Special Deposits Act. Provides that the Act applies to a special deposit under an account agreement that states the intention of the parties to establish a 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 the State. Provides that 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. Provides that, unless the account agreement provides otherwise, a bank is obligated to pay a beneficiary if there are sufficient actually and finally collected funds in the balance of the special deposit. Provides that a court may enjoin a bank 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.

LRB104 03181 SPS 13202 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Uniform Special Deposits Act.

6 Section 2. Definitions. In this Act:

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

8 (A) is in a record between a bank and one or more  
9 depositors;

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

12 (C) states the intention of the parties to  
13 establish a special deposit governed by this Act.

14 (2) "Bank" means a person engaged in the business of  
15 banking and includes a savings bank, savings and loan  
16 association, credit union, trust company, and a bank as  
17 defined in the Illinois Banking Act. Each branch or  
18 separate office of a bank is a separate bank for the  
19 purpose of this Act.

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

21 (1) is identified as a beneficiary in an account  
22 agreement; or

23 (2) if not identified as a beneficiary in an

1 account agreement, may be entitled to payment from a  
2 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  
6 stated in an account agreement that is not certain to  
7 occur but must occur before the bank is obligated to pay a  
8 beneficiary.

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

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

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

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

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

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

21 (i) if the bank:

22 (I) has established a reasonable routine  
23 for communicating material information to an  
24 individual to whom the bank has assigned  
25 responsibility for the special deposit; and

26 (II) maintains reasonable compliance with

1           the routine, actual knowledge of the fact by  
2           that individual; or

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

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

13                 (A) a contingency has occurred; and

14                 (B) the bank has knowledge the contingency has  
15          occurred.

16          "Obligation to pay a beneficiary" has a corresponding  
17          meaning.

18          (10) "Permissible purpose" means a governmental,  
19          regulatory, commercial, charitable, or testamentary  
20          objective of the parties stated in an account agreement.

21          The term includes an objective to:

22                 (A) hold funds:

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

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

26                         (iii) that may be distributed to a person as

1 remuneration, retirement or other benefit, or  
2 compensation under a judgment, consent decree,  
3 court order, or other decision of a tribunal; or

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

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

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

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

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

21 (11) "Person" means an individual, estate, business or  
22 nonprofit entity, government or governmental subdivision,  
23 agency, or instrumentality, or other legal entity. The term  
24 includes a protected series, however denominated, of an entity  
25 if the protected series is established under law that limits,  
26 or limits if conditions specified under law are satisfied, the

1 ability of a creditor of the entity or of any other protected  
2 series of the entity to satisfy a claim from assets of the  
3 protected series.

4 (12) "Record" means information:

5 (A) inscribed on a tangible medium; or

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

8 (13) "Special deposit" means a deposit that satisfies  
9 Section 5.

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

15 Section 3. Scope; choice of law; forum.

16 (a) This Act applies to a special deposit under an account  
17 agreement that states the intention of the parties to  
18 establish a special deposit governed by this Act, regardless  
19 of whether a party to the account agreement or a transaction  
20 related to the special deposit, or the special deposit itself,  
21 has a reasonable relation to this State.

22 (b) The parties to an account agreement may choose a forum  
23 in this State for settling a dispute arising out of the special  
24 deposit, regardless of whether a party to the account  
25 agreement or a transaction related to the special deposit, or

1 the special deposit itself, has a reasonable relation to this  
2 State.

3 (c) This Act does not affect:

4 (1) a right or obligation relating to a deposit other  
5 than a special deposit under this Act; or

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

8 Section 4. Variation by agreement or amendment.

9 (a) The effect of Sections 2 through 6, 8 through 11, and  
10 14 may not be varied by agreement, except as provided in those  
11 Sections. Subject to subsection (b), the effect of Sections 7,  
12 12, and 13 may be varied by agreement.

13 (b) A provision in an account agreement or other record  
14 that substantially excuses liability or substantially limits  
15 remedies for failure to perform an obligation under this Act  
16 is not sufficient to vary the effect of a provision of this  
17 Act.

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

22 (d) If a beneficiary is not a party to an account agreement  
23 and the bank and the depositor know the beneficiary has  
24 knowledge of the agreement's terms, the bank and the depositor  
25 may amend the agreement without the consent of the beneficiary

1 only if the amendment does not adversely and materially affect  
2 a payment right of the beneficiary.

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

8 Section 5. Requirements for special deposit. A deposit is  
9 a special deposit if it is:

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

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

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

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

19 (5) subject to a contingency.

20 Section 6. Permissible purpose.

21 (a) A special deposit must serve at least one permissible  
22 purpose stated in the account agreement from the time the  
23 special deposit is created in the account agreement until  
24 termination of the special deposit.

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

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

10 Section 7. Payment to beneficiary by bank.

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

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

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

1 satisfaction with respect to another person obligated to the  
2 beneficiary.

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

6 (e) The bank may discharge its obligation under this  
7 Section by:

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

10 (2) taking other action that:

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

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

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

21 Section 8. Property interest of depositor or beneficiary.

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

24 (b) Any property interest with respect to a special  
25 deposit is only in the right to receive payment if the bank is

1 obligated to pay a beneficiary and not in the special deposit  
2 itself. Any property interest under this subsection is  
3 determined under other law.

4 Section 9. When creditor process enforceable against bank.

5 (a) Subject to subsection (b), creditor process with  
6 respect to a special deposit is not enforceable against the  
7 bank holding the special deposit.

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

11 (1) is served on the bank;

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

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

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

1           Section 10. Injunction or similar relief. A court may  
2           enjoin, or grant similar relief that would have the effect of  
3           enjoining, a bank from paying a depositor or beneficiary only  
4           if payment would constitute a material fraud or facilitate a  
5           material fraud with respect to a special deposit.

6           Section 11. Recoupment or set off.

7           (a) Except as provided in subsection (b) or (c), a bank may  
8           not exercise a right of recoupment or set off against a special  
9           deposit.

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

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

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

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

19                 (4) to reverse an earlier credit posted by the bank to  
20                 the balance of the special deposit account, if the  
21                 reversal occurs under an event or circumstance warranted  
22                 under other law of this State governing mistake and  
23                 restitution.

24          (c) The bank holding a special deposit may exercise a  
25          right of recoupment or set off against an obligation to pay a

1 beneficiary, even if the bank funds payment from the special  
2 deposit.

3 Section 12. Duties and liability of bank.

4 (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  
7 obligated to pay a beneficiary, a debtor-creditor relationship  
8 arises between the bank and beneficiary.

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

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

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

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

1 appears on its face to be genuine.

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

5 Section 13. Term and termination.

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

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

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

18 Section 14. Principles of law and equity. The Uniform  
19 Commercial Code, consumer protection law, law governing  
20 deposits generally, law related to escheat and abandoned or  
21 unclaimed property, and the principles of law and equity,  
22 including law related to capacity to contract, principal and  
23 agent, estoppel, fraud, misrepresentation, duress, coercion,  
24 mistake, and bankruptcy, supplement this Act except to the

1 extent inconsistent with this Act.

2 Section 15. Uniformity of application and construction. In  
3 applying and construing this uniform Act, a court shall  
4 consider the promotion of uniformity of the law among  
5 jurisdictions that enact it.

6 Section 16. Transitional provision. This Act applies to:

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

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

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

14 (B) the special deposit referenced in the amended  
15 agreement satisfies Section 5.

16 Section 17. Severability. If a provision of this Act or  
17 its application to a person or circumstance is held invalid,  
18 the invalidity does not affect another provision or  
19 application that can be given effect without the invalid  
20 provision.