

An Act

ENROLLED SENATE
BILL NO. 1819

By: Hall of the Senate

and

Lepak of the House

An Act relating to banking; creating the Uniform Special Deposits Act; providing short title; defining terms; providing scope of act; allowing for agreements to be amended under certain circumstances; specifying what makes a special deposit; permitting termination of accounts under certain circumstances; providing conditions under which a bank may distribute funds to a beneficiary; specifying deposit interests; requiring certain conditions for creditor process; allowing relief; providing conditions for recoupment by a bank; specifying fiduciary duties of bank under this act; setting time frame and provisions for termination of accounts; permitting uniformity of implementation of act by law; providing for codification; and providing an effective date.

SUBJECT: Special deposits

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910 of Title 6, unless there is created a duplication in numbering, reads as follows:

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.1 of Title 6, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Account agreement" means an agreement that:

- a. is in a record between a bank 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 pursuant to this act;

2. "Bank" means a person engaged in the business of banking including, but not limited to, a savings bank, savings and loan association, credit union, trust company, or bank as defined in Section 102 of Title 6 of the Oklahoma Statutes. Each branch or separate office of a bank is a separate bank for the purpose of this act;

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:
 - (1) under the account agreement, or
 - (2) 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 shall occur before the bank is obligated to pay a beneficiary;

5. "Creditor process" means attachment, garnishment, levy, notice of lien, sequestration, or a 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 bank holding a special deposit:

(1) if the bank:

(a) has established a reasonable routine for communicating material information to an individual to whom the bank has assigned responsibility for the special deposit, and

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

(2) if the bank has not established and maintained reasonable compliance with a routine described in division (1) of this subparagraph or otherwise exercised due diligence, implied knowledge of the fact that would have come to the attention of an individual to whom the bank 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 bank a payment when:

a. a contingency has occurred, and

b. the bank has knowledge the contingency has occurred.

An "obligation to pay a beneficiary" shall mean the same;

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:

- (1) in escrow, including for a purchase and sale, lease, buyback, or other transaction,
- (2) as a security deposit of a tenant,
- (3) 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
- (4) 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 may include 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 as specified in Section 5 of this act; and

14. "State" means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States, including an agency or instrumentality of the state.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.2 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. This act shall apply to a special deposit under an account agreement that states the intention of the parties to establish a special deposit governed by this 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. This shall not affect:

1. A right or obligation relating to a deposit other than a special deposit under this act; or

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.3 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. The effect of Sections 2 through 6, 8 through 11, and Section 13 of this act may not be varied by agreement, except as provided in those sections. Subject to subsection B of this section, the effects 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 this act is not sufficient to vary the effect of a provision of this act.

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.4 of Title 6, unless there is created a duplication in numbering, reads as follows:

A deposit is a special deposit if it is:

1. A deposit of funds in a bank under an account agreement;
2. For the benefit of at least two (2) beneficiaries, one or more of whom 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.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.5 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. A special deposit shall 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 a special deposit, the bank or a court determined the special deposit no longer satisfies subsection A of this section, Sections 8 through 11 of this act cease to apply to any funds deposited in the special deposit after the special deposit ceases to satisfy subsection A of this section.

C. If, before termination of a special deposit, the bank determines the special deposit no longer satisfies subsection A of this section, the bank may take action it believes is necessary under the circumstances, including terminating the special deposit.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.6 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. Unless the account agreement provides otherwise, the bank 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 of this section, 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 bank'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 bank obligated to pay a beneficiary is immediately due and payable.

E. The bank may discharge its obligation under this section by:

1. Crediting another transaction account of the beneficiary; or
2. Taking other action that:
 - a. is permitted under the account agreement for the bank to obtain a discharge, or
 - b. otherwise would constitute a discharge under law.

F. If the bank obligated to pay a beneficiary has incurred an obligation to discharge that obligation of another person, the obligation of the other person is discharged if action by the bank under subsection E of this section would constitute a discharge of the obligation of the other person under law that determined whether an obligation is satisfied.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.7 of Title 6, unless there is created a duplication in numbering, reads as follows:

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

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.8 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. Subject to subsection B of this section, creditor process with respect to a special deposit is not enforceable against the bank holding the special deposit.

B. Creditor process is enforceable against the bank holding a special deposit with respect to an amount the bank is obligated to pay a beneficiary or a depositor if the process:

1. Is served on the bank;
2. Provides sufficient information to permit the bank to identify the depositor or the beneficiary from the bank's book and records; and
3. Gives the bank a reasonable opportunity to act on the process.

C. Creditor process served on a bank before it is enforceable against the bank under subsection B of this section does not create a right of the creditor against the bank or a duty of the bank 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 bank.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.9 of Title 6, unless there is created a duplication in numbering, reads as follows:

A court may enjoin, or grant similar relief that would have the effect of enjoining, 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.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.10 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B or C of this section, a bank may not exercise a right of recoupment or set off against a special deposit.

B. An account agreement may authorize the bank to debit the special deposit:

1. When the bank 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 bank that relates to an overdraft in the special deposit;

3. For costs incurred by the bank that relate directly to the special deposit; or

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

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

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.11 of Title 6, unless there is created a duplication in numbering, reads as follows:

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

B. When the bank holding a special deposit becomes obligated to pay a beneficiary, a debtor-creditor relationship arises between the bank and beneficiary.

C. The bank holding a special deposit has a duty to a beneficiary to comply with the account agreement and this act.

D. If the bank holding a special deposit does not comply with the account agreement or this act, the bank 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 bank is not liable for consequential, special, or punitive damages.

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

F. If the account agreement requires payment on presentation of a record, the bank shall determine within a reasonable amount of time whether the record is sufficient to require payment. If the agreement requires action by the bank on presentation of a record, the bank 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 bank is not required to determine whether a permissible purpose stated in the agreement continues to exist.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.12 of Title 6, unless there is created a duplication in numbering, reads as follows:

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

B. Unless otherwise provided in the account agreement, if the bank cannot identify or locate a beneficiary entitled to payment

when the special deposit is terminated, and a balance remains in the special deposit, the bank shall pay the balance to the depositor or depositors as a beneficiary or beneficiaries.

C. A bank that pays the remaining balance as provided under subsection B of this section has no further obligation with respect to the special deposit.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.13 of Title 6, unless there is created a duplication in numbering, reads as follows:

Title 12A of the Oklahoma Statutes, 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, principle and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy, supplement this act except to the extent inconsistent with this act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.14 of Title 6, unless there is created a duplication in numbering, reads as follows:

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

SECTION 16. This act shall become effective November 1, 2024.

Passed the Senate the 14th day of March, 2024.

Presiding Officer of the Senate

Passed the House of Representatives the 18th day of April, 2024.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____