

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2745

By Delegates W. Clark, Hall, and Williams

[Introduced February 21, 2025; referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §31A-9-1, §31A-9-2, §31A-9-3, §31A-9-4, §31A-9-5, §31A-9-6, §31A-9-7,
 3 §31A-9-8, §31A-9-9, §31A-9-10, §31A-9-11, §31A-9-12, §31A-9-13, §31A-9-14, §31A-9-
 4 15, and §31A-9-16, all relating to the Uniform Special Deposits Act; providing citation;
 5 defining terms; providing for applicability to special deposits in certain circumstances;
 6 providing exceptions; allowing variation by agreement or amendment; setting forth
 7 requirements for a special deposit; requiring permissible purpose for special deposit;
 8 allowing termination of special deposit in certain circumstances; describing when bank is
 9 obligated to pay beneficiary; clarifying who has a property interest in special deposit;
 10 providing for creditor process enforceability in certain circumstances; permitting
 11 injunctive or similar relief by court; generally prohibiting recoupment or set off against
 12 special deposit; providing exceptions to prohibition on recoupment or set off against
 13 special deposit; describing duties and liability of bank holding special deposit;
 14 terminating special deposit after five years unless otherwise agreed; providing for
 15 payment of remaining balance; providing for supplementation of article by specified West
 16 Virginia laws; providing for promotion of uniformity; and providing applicability after
 17 effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. THE UNIFORM SPECIAL DEPOSITS ACT.

§31A-9-1. Title.

1 This article may be cited as the Uniform Special Deposits Act.

§31A-9-2. Definitions.

1 In this article:

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

3 (A) Is in a record between a bank and one or more depositors;

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

5 (C) States the intention of the parties to establish a special deposit governed by this
6 article.

7 (2) "Bank" means a person engaged in the business of banking and includes a savings
8 bank, savings and loan association, credit union, trust company, and a bank as defined in §31A-
9 1-2 of this code. Each branch or separate office of a bank is a separate bank for the purpose of
10 this article.

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

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

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

15 (i) Under the account agreement; or

16 (ii) On termination of the special deposit.

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

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

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

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

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

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

26 (B) With respect to a bank holding a special deposit:

27 (i) If the bank:

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

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

32 (ii) If the bank has not established and maintained reasonable compliance with a routine
33 described in subparagraph (i) of this paragraph or otherwise exercised due diligence, implied
34 knowledge of the fact that would have come to the attention of an individual to whom the bank
35 has assigned responsibility for the special deposit.

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

38 (A) A contingency has occurred; and

39 (B) The bank has knowledge the contingency has occurred.

40 (10) "Obligation to pay a beneficiary" has a corresponding meaning.

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

44 (A) Hold funds:

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

46 (ii) As a security deposit of a tenant;

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

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

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

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

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

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

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

66 (13) "Record" means information:

67 (A) Inscribed on a tangible medium; or

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

69 (14) "Special deposit" means a deposit that satisfies §31A-9-5 of this code.

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

§31A-9-3. Scope; choice of Law; forum.

1 (a) This article applies to a special deposit under an account agreement that states the
2 intention of the parties to establish a special deposit governed by this article, regardless of
3 whether a party to the account agreement or a transaction related to the special deposit, or the
4 special deposit itself, has a reasonable relation to this state.

5 (b) The parties to an account agreement may choose a forum in this state for settling a
6 dispute arising out of the special deposit, regardless of whether a party to the account

7 agreement or a transaction related to the special deposit, or the special deposit itself, has a
8 reasonable relation to this state.

9 (c) This article does not affect:

10 (1) A right or obligation relating to a deposit other than a special deposit under this
11 article; or

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

§31A-9-4. Variation by agreement or amendment.

1 (a) The effect of §31A-9-2 through §31A-9-6, §31A-9-8 through §31A-9-11, and §31A-9-
2 14 of this code may not be varied by agreement, except as provided in those sections. Subject
3 to subsection (b) of this section, the effect of §31A-9-7, §31A-9-12, and §31A-9-13 of this code
4 may be varied by agreement.

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

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

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

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

§31A-9-5. Requirements for special deposit.

1 A deposit is a special deposit if it is:

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

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

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

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

7 (5) Subject to a contingency.

§31A-9-6. Permissible purpose.

1 (a) A special deposit must serve at least one permissible purpose stated in the account
2 agreement from the time the special deposit is created in the account agreement until
3 termination of the special deposit.

4 (b) If, before termination of the special deposit, the bank or a court determines the
5 special deposit no longer satisfies subsection (a) of this section, the provisions of §31A-9-8
6 through §31A-9-11 of this code cease to apply to any funds deposited in the special deposit after
7 the special deposit ceases to satisfy subsection (a) of this section.

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

§31A-9-7. Payment to beneficiary by bank.

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

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

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

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

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

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

17 (2) Taking other action that:

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

19 (B) Otherwise would constitute a discharge under law.

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

§31A-9-8 Property interest of depositor or beneficiary.

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

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

§31A-9-9. When creditor process enforceable against bank.

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

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

5 (1) Is served on the bank;

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

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

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

§31A-9-10. Injunction or similar relief.

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

§31A-9-11. Recoupment or set off.

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

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

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

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

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

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

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

§31A-9-12. 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 and this article.

6 (d) If the bank holding a special deposit does not comply with the account agreement or
7 this article, the bank is liable to a depositor or beneficiary only for damages proximately caused
8 by the noncompliance. Except as provided by other law of this state, the bank is not liable for
9 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
15 relying in good faith on the genuineness of the record if the record appears on its face to be
16 genuine.

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

§31A-9-13. Term and termination.

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

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

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

§31A-9-14. Principles of law and equity.

1 The provisions of Chapter 46 and Chapter 46A of this code, law governing deposits
2 generally, law related to escheat and abandoned or unclaimed property, and the principles of
3 law and equity, including law related to capacity to contract, principal and agent, estoppel, fraud,
4 misrepresentation, duress, coercion, mistake, and bankruptcy, supplement this article except to
5 the extent inconsistent with this article.

§31A-9-15. Uniformity of application and construction.

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

§31A-9-16. Transitional provision.

1 This article applies to:

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

4 (2) A deposit made under an agreement executed before enactment of this article, if:

5 (A) All parties entitled to amend the agreement agree to make the deposit a special
6 deposit governed by this article; and

7 (B) The special deposit referenced in the amended agreement satisfies §31A-9-5 of this
8 code.

NOTE: The purpose of this bill is to provide for the creation of the Uniform Special Deposits Act.

This bill was recommended for passage during the 2025 legislative session by the Commission on Interstate Cooperation.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.