

**HB 1502 - AS INTRODUCED**

2026 SESSION

26-2491

07/09

HOUSE BILL            **1502**

AN ACT                governing special bank and credit union deposits.

SPONSORS:            Rep. Hunt, Ches. 14

COMMITTEE:          Commerce and Consumer Affairs

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ANALYSIS

This bill regulates deposits held at banks and credit unions that are used for a specific, contingent purpose on behalf of a beneficiary.

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Explanation:        Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty-Six*

AN ACT governing special bank and credit union deposits.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Chapter; Uniform Special Deposits Act. Amend RSA by inserting after chapter 384-G the  
2 following new chapter:

3 CHAPTER 384-H

4 UNIFORM SPECIAL DEPOSITS ACT

5 384-H:1 Short Title. This chapter may be known and cited as the "Uniform Special Deposits  
6 Act".

7 384-H:2 Definitions. In this chapter:

8 I. "Account agreement" means an agreement that:

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

10 (b) May have one or more beneficiaries as additional parties; and

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

13 II. "Bank" means a person engaged in the business of banking and includes a savings bank,  
14 savings and loan association, and credit union. The term includes a bank as defined in RSA 383-A:2-  
15 201(3). Each branch or separate office of a bank is a separate bank for the purpose of this chapter.

16 III. "Beneficiary" means a person that:

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

18 (b) If not identified as a beneficiary in an account agreement, may be entitled to  
19 payment from a special deposit:

20 (1) Under the account agreement; or

21 (2) On termination of the special deposit.

22 IV. "Contingency" means an event or circumstance stated in an account agreement that is  
23 not certain to occur but must occur before the bank is obligated to pay a beneficiary.

24 V. "Creditor process" means attachment, garnishment, levy, notice of lien, sequestration, or  
25 similar process issued by or on behalf of a creditor or other claimant.

26 VI. "Depositor" means a person that establishes or funds a special deposit.

27 VII. "Good faith" means honesty in fact and observance of reasonable commercial standards  
28 of fair dealing.

29 VIII. "Knowledge" of a fact means:

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

31 (b) With respect to a bank holding a special deposit:

1                   (1) If the bank:

2                   (A) Has established a reasonable routine for communicating material  
3 information to an individual to whom the bank has assigned responsibility for the special deposit;  
4 and

5                   (B) Maintains reasonable compliance with the routine, actual knowledge of the  
6 fact by that individual; or

7                   (2) If the bank has not established and maintained reasonable compliance with a  
8 routine described in subparagraph (1)(A) or otherwise exercised due diligence, implied knowledge of  
9 the fact that would have come to the attention of an individual to whom the bank has assigned  
10 responsibility for the special deposit.

11                  IX. "Obligated to pay a beneficiary" means a beneficiary is entitled under the account  
12 agreement to receive from the bank a payment when:

13                   (a) A contingency has occurred; and

14                   (b) The bank has knowledge the contingency has occurred.

15                  IX-a. "Obligation to pay a beneficiary" has a corresponding meaning to the definition of  
16 "obligated to pay a beneficiary" under paragraph IX.

17                  X. "Permissible purpose" means a governmental, regulatory, commercial, charitable, or  
18 testamentary objective of the parties stated in an account agreement. The term includes an objective  
19 to:

20                   (a) Hold funds:

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

22                   (2) As a security deposit of a tenant;

23                   (3) That may be distributed to a person as remuneration, retirement or other  
24 benefit, or compensation under a judgment, consent decree, court order, or other decision of a  
25 tribunal; or

26                   (4) For distribution to a defined class of persons after identification of the class  
27 members and their interest in the funds;

28                   (b) Provide assurance with respect to an obligation created by contract, such as earnest  
29 money to ensure a transaction closes;

30                   (c) Settle an obligation that arises in the operation of a payment system, securities  
31 settlement system, or other financial market infrastructure;

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

34                   (e) Hold margin, other cash collateral, or funds that support the orderly functioning of  
35 financial market infrastructure or the performance of an obligation with respect to the  
36 infrastructure.

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

7 XII. "Record" means information:

8 (a) Inscribed on a tangible medium; or

9 (b) Stored in an electronic or other medium and retrievable in perceivable form.

10 XIII. "Special deposit" means a deposit that satisfies RSA 384-H:5. The term shall not  
11 include a "special deposit" within the meaning of RSA 383-B:6-602.

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

15 384-H:3 Scope; Choice of Law; Forum.

16 I. This chapter shall apply to a special deposit under an account agreement that states the  
17 intention of the parties to establish a special deposit governed by this chapter, regardless of whether  
18 a party to the account agreement or a transaction related to the special deposit, or the special  
19 deposit itself, has a reasonable relation to this state.

20 II. The parties to an account agreement may choose a forum in this state for settling a  
21 dispute arising out of the special deposit, regardless of whether a party to the account agreement or  
22 a transaction related to the special deposit, or the special deposit itself, has a reasonable relation to  
23 this state.

24 III. This section shall not affect:

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

27 (b) The voidability of a deposit or transfer that is fraudulent or voidable under any other  
28 law.

29 384-H:4 Variation by Agreement or Amendment.

30 I. The effects of RSA 384-H:2 through 384-H:6, 384-H:8 through 384-H:11, and 384-H:14  
31 shall not be varied by agreement, except as provided in those sections. Subject to paragraph II, the  
32 effects of RSA 384-H:7, 384-H:12, and 384-H:13 may be varied by agreement.

33 II. A provision in an account agreement or other record that substantially excuses liability  
34 or substantially limits remedies for failure to perform an obligation under this chapter shall be  
35 insufficient to vary the effect of a provision of this chapter.

1           III. If a beneficiary is a party to an account agreement, the bank and the depositor may  
2 amend the agreement without the consent of the beneficiary only if the agreement expressly permits  
3 the amendment.

4           IV. If a beneficiary is not a party to an account agreement and the bank and the depositor  
5 know the beneficiary has knowledge of the agreement's terms, the bank and the depositor may  
6 amend the agreement without the consent of the beneficiary only if the amendment does not  
7 adversely and materially affect a payment right of the beneficiary.

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

12           384-H:5 Requirements for Special Deposit. A deposit shall qualify as a special deposit if it is:

13           I. A deposit of funds in a bank under an account agreement;

14           II. For the benefit of at least 2 beneficiaries, one or more of which may be a depositor;

15           III. Denominated in a medium of exchange that is currently authorized or adopted by a  
16 domestic or foreign government;

17           IV. For a permissible purpose stated in the account agreement; and

18           V. Subject to a contingency.

19           384-H:6 Permissible Purpose.

20           I. A special deposit shall serve at least one permissible purpose stated in the account  
21 agreement from the time the special deposit is created in the account agreement until termination of  
22 the special deposit.

23           II. If, before termination of the special deposit, the bank or a court determines the special  
24 deposit no longer satisfies paragraph I, RSA 384-H:8 through RSA 384-H:11 shall cease to apply to  
25 any funds deposited in the special deposit after the special deposit ceases to satisfy paragraph I.

26           III. If, before termination of a special deposit, the bank determines the special deposit no  
27 longer satisfies paragraph I, the bank may take action it believes is necessary under the  
28 circumstances, including terminating the special deposit.

29           384-H:7 Payment to Beneficiary by Bank.

30           I. Unless the account agreement provides otherwise, the bank shall be obligated to pay a  
31 beneficiary if there are sufficient actually and finally collected funds in the balance of the special  
32 deposit.

33           II. Except as provided in paragraph III, the obligation to pay the beneficiary shall be  
34 excused if the funds available in the special deposit are insufficient to cover such payment.

35           III. Unless the account agreement provides otherwise, if the funds available in the special  
36 deposit are insufficient to cover an obligation to pay a beneficiary, a beneficiary may elect to be paid  
37 the funds that are available or, if there is more than one beneficiary, a pro rata share of the funds

1 available. Payment to the beneficiary making the election under this paragraph shall discharge the  
2 bank's obligation to pay a beneficiary and shall not constitute an accord and satisfaction with respect  
3 to another person obligated to the beneficiary.

4 IV. Unless the account agreement provides otherwise, the obligation of the bank obligated to  
5 pay a beneficiary shall be immediately due and payable.

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

7 (a) Crediting another transaction account of the beneficiary; or

8 (b) Taking other action that:

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

10 (2) Otherwise would constitute a discharge under law.

11 VII. If the bank obligated to pay a beneficiary has incurred an obligation to discharge the  
12 obligation of another person, the obligation of the other person shall be discharged if action by the  
13 bank under paragraph V would constitute a discharge of the obligation of the other person under law  
14 that determines whether an obligation is satisfied.

15 384-H:8 Property Interest of Depositor or Beneficiary.

16 I. Neither a depositor nor a beneficiary shall have a property interest in a special deposit.

17 II. Any property interest with respect to a special deposit shall be only in the right to receive  
18 payment if the bank is obligated to pay a beneficiary and not in the special deposit itself. Any  
19 property interest under this paragraph is determined under other law.

20 384-H:9 When Creditor Process Enforceable Against Bank.

21 I. Subject to paragraph II, creditor process with respect to a special deposit shall not be  
22 enforceable against the bank holding the special deposit.

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

25 (a) Is served on the bank;

26 (b) Provides sufficient information to permit the bank to identify the depositor or the  
27 beneficiary from the bank's books and records; and

28 (c) Gives the bank a reasonable opportunity to act on the process.

29 III. Creditor process served on a bank before it is enforceable against that bank under  
30 paragraph II shall not create a right of the creditor against the bank or a duty of the bank to the  
31 creditor. Other law shall determine whether creditor process creates a lien enforceable against the  
32 beneficiary on a contingent interest of a beneficiary, including a depositor as a beneficiary, even if  
33 not enforceable against the bank.

34 384-H:10 Injunction or Similar Relief. A court may enjoin, or grant similar relief that would  
35 have the effect of enjoining, a bank from paying a depositor or beneficiary only if payment would  
36 constitute a material fraud or facilitate a material fraud with respect to a special deposit.

37 384-H:11 Recoupment or Set Off.

1 I. Except as provided in paragraph II or III, a bank shall not exercise a right of recoupment  
2 or set off against a special deposit.

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

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

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

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

14 384-H:12 Duties and Liability of Bank.

15 I. A bank shall not have a fiduciary duty to any person with respect to a special deposit.

16 II. When a bank holding a special deposit becomes obligated to pay a beneficiary, a debtor-  
17 creditor relationship shall arise between the bank and beneficiary.

18 III. A bank holding a special deposit shall have a duty to a beneficiary to comply with the  
19 account agreement and this chapter.

20 IV. If a bank holding a special deposit does not comply with the account agreement or this  
21 chapter, the bank shall be liable to a depositor or beneficiary only for damages proximately caused  
22 by the noncompliance. Except as provided by other law of this state, the bank shall not be liable for  
23 consequential, special, or punitive damages.

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

26 VI. If the account agreement requires payment on presentation of a record, a bank shall  
27 determine within a reasonable time whether the record is sufficient to require payment. If the  
28 agreement requires action by the bank on presentation of a record, the bank shall not be liable for  
29 relying in good faith on the genuineness of the record if the record appears on its face to be genuine.

30 VII. Unless the account agreement provides otherwise, a bank shall not be required to  
31 determine whether a permissible purpose stated in the agreement continues to exist.

32 384-H:13 Term and Termination.

33 I. Unless otherwise provided in the account agreement, a special deposit shall terminate 5  
34 years after the date the special deposit was first funded.

35 II. Unless otherwise provided in the account agreement, if the bank cannot identify or locate  
36 a beneficiary entitled to payment when the special deposit is terminated, and a balance remains in

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1 the special deposit, the bank shall pay the balance to the depositor or depositors as a beneficiary or  
2 beneficiaries.

3 III. A bank that pays the remaining balance as provided in this chapter has no further  
4 obligation with respect to the special deposit.

5 384-H:14 Principles of Law and Equity. The Uniform Commercial Code, RSA 382-A:9-101 to  
6 382-A:9-628, and law governing consumer protection, law governing deposits generally, law related  
7 to escheat and abandoned or unclaimed property, and the principles of law and equity, including law  
8 related to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress,  
9 coercion, mistake, and bankruptcy, may supplement this chapter except to the extent inconsistent  
10 with this chapter.

11 384-H:15 Uniformity of Application and Construction. In applying and construing this uniform  
12 act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

13 384-H:16 Transitional Provision. This chapter shall apply to:

14 I. A special deposit made under an account agreement executed on or after the effective date  
15 of this chapter; and

16 II. A deposit made under an agreement executed before the effective date of this chapter, if:

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

19 (b) The special deposit referenced in the amended agreement satisfies RSA 384-H:5.

20 384-H:17 Severability. The provisions of this chapter shall be severable. If any provision of this  
21 chapter or its application is held invalid, that invalidity shall not affect other provisions or  
22 applications that can be given effect without the invalid provision or application.

23 2 Effective Date. This act shall take effect 60 days after its passage.