



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

111 N. Wabash Ave.
Suite 1010
Chicago, IL 60602
(312) 450-6600 tel
www.uniformlaws.org

New Hampshire House Committee on Commerce and Consumer Affairs
Room 229, South Building
1 Granite Place
Concord, New Hampshire 03301

January 29, 2026

Dear Chair Hunt, Vice Chair Potucek, and Members of the New Hampshire House of Representatives Committee on Commerce and Consumer Affairs,

Thank you for the opportunity to provide more information on House Bill 1502, which would adopt the Uniform Special Deposits Act in New Hampshire. A copy of the Act, as well as other supporting materials can be found on the Uniform Law Commission's website www.uniformlaws.org.

The Uniform Law Commission (ULC) is a 134-year-old state-supported organization. We are a group of volunteer attorneys that provide 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 House Bill 1502, 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 House Bill 1502 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 defraud or evade 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 384-H: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 384-H: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 384-H: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.

Those are just a few benefits offered by the Uniform Special Deposit Act. Thank you for your time and consideration of this Act.

Sincerely,

Kari Bearman,
Legislative Counsel
Uniform Law Commission

**Section By Section Summary of the Uniform Special Deposits Act as Adopted by New
Hampshire House Bill 1502 of 2026**

Section 384-H:1. Short Title

States the short title of the legislation.

Section 384-H:2. Definitions

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

Section 384-H: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 384-H: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 384-H:7. Payment to Beneficiary by Bank
- Section 384-H:12. the Duties and Liability
- Section 384-H:13. the Term and Termination of a special deposit

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

- Section 384-H:2. Definitions
- Section 384-H:3. Choice of Law, Scope, and Forum
- Section 384-H:4. Variation by Agreement or Amendment
- Section 384-H:5. Requirements for Special Deposits
- Section 384-H:6. Permissible Purpose
- Section 384-H:8. Property Interest of Depositor or Beneficiary
- Section 384-H:9. When Creditor Process is Enforceable Against Bank
- Section 384-H:10. Injunction or Similar Relief
- Section 384-H:11. Recoupment or Set Off
- Section 384-H:14. Principles of Law and Equity

Section 384-H: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 384-H: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. As defined by Section 2, the Permissible Purpose requirement prevents the special deposit from being used inappropriately for fraudulent or abusive purposes, such as to hinder or defraud creditors.

Section 384-H: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 384-H: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 384-H: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 384-H: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 384-H: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 384-H: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 384-H: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 384-H: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 384-H: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 384-H:16. Transitional Provision

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

Section 384-H:17. Severability

Contains a general severability clause.



WHY NEW HAMPSHIRE SHOULD CONSIDER ADOPTING 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 New Hampshire should consider adopting 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.



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.

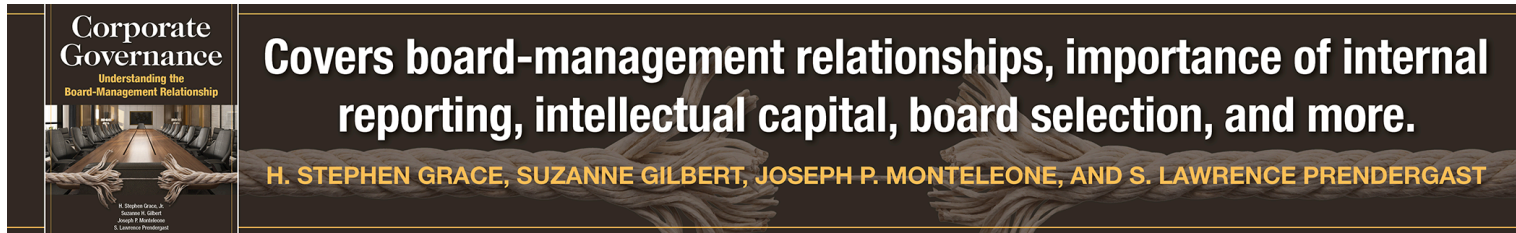
Second, the Act clarifies the treatment of a special deposit in the event of the bankruptcy of a depositor. Under the current law of many states, it is unclear whether funds deposited into a special deposit could be swept into the bankruptcy estate of the person who deposited them. A special deposit 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.



(<https://www.americanbar.org/products/inv/book/438458294/>).

Bankruptcy & Finance (<https://businesslawtoday.org/practice-area/bankruptcy-finance/>).

Uniform Special Deposits Act Briefing



8 Min Read

By: [Patrick A. Guida](/author/patrick-a-guida/) (</author/patrick-a-guida/>), [Thomas C. Baxter, Jr.](/author/thomascbaxterjr/) (</author/thomascbaxterjr/>), [Michael M. Wiseman](/author/michael-m-wiseman/) (</author/michael-m-wiseman/>), [Danielle B. Abada](/author/danielle-b-abada/) (</author/danielle-b-abada/>)
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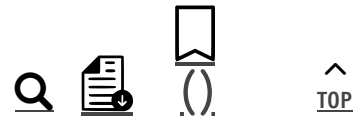
The [Uniform Special Deposits Act](https://www.uniformlaws.org/committees/community-home?CommunityKey=36c7493b-d503-40e7-a74c-018a850ef519) (<https://www.uniformlaws.org/committees/community-home?CommunityKey=36c7493b-d503-40e7-a74c-018a850ef519>) ("USDA" or the "Act") is a product of the Uniform Law Commission and was approved at its 2023 Annual Meeting. After consideration and deliberation by the Uniform Law Commission's Special Deposits Committee, the Uniform Special Deposits Act was drafted to provide clarity on an area of law that has been subject to uncertainty for a number of years.

Special deposits, as the name suggests, are a “special” type of deposit that has different characteristics than other deposits, such as checking or savings deposits. Unlike deposits that are payable on a customer’s order, special deposits are established for a particular purpose, and a beneficiary becomes entitled to payment after a determination is made that a specified contingency has occurred. Special deposits play an important role in commerce and industry and ensure that funds deposited will be available to the person entitled to them in the future once their established purpose has been satisfied. They can serve a variety of parties in a range of contexts, but their use has been diminished by a small number of legal uncertainties, the collective significance of which is large. For example, in the past, case law has described special deposits or special accounts as akin to trust, bailment, or custody arrangements, but they are not used that way in practice.

The USDA establishes a framework under state laws for interested parties to utilize special deposits with a greater understanding of how such deposits will be treated under various circumstances. The Act was drafted utilizing a “minimalist” philosophy, and the drafters sought only to address specific uncertainties that exist under current law. As a result, the Act does not disrupt existing law but rather builds on it, and it leaves matters not addressed by the Act to be governed by general laws already governing deposits or contractual arrangements.

Importantly, the USDA is an “opt-in” statute, which means that parties intending to enter into a special deposit must specify in the agreement establishing the special deposit that they intend to be covered by the USDA as enacted in a particular state. This feature of the Act permits existing relationships to continue undisturbed, and permits parties to choose to utilize the protections provided by the USDA when they wish, so parties can choose to utilize the protections for certain deposit products and not others. Parties are also permitted to amend existing agreements to be covered by the USDA after enactment if they satisfy the criteria to establish a special deposit under the Act.

business law today (https://businesslawtoday.org/2023/01/uniform-special-deposits-act/) There are four key legal uncertainties that the USDA is designed to remedy by establishing rules to eliminate the legal uncertainties without interfering with other aspects of laws governing deposits.



First, the “opt-in” characteristic performs a kind of double duty in the USDA. As described above, it enables freedom of contract—the parties establishing the special deposit decide whether the arrangement will be governed by contract law or by the USDA. In addition, the “opt-in” is the mechanism identifying the deposit as “special” and subject to the select set of rules set out in the USDA. A deposit designated as “special” and subject to the USDA must satisfy the objective criteria in Section 5 of the Act, which include that it 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, which also has a specific definition in the Act that could include a person who establishes the special deposit even without funding it), (iii) denominated in money (defined in the Act as “a medium of exchange that is currently authorized or adopted by a domestic or foreign government,” which is borrowed from the Uniform Commercial Code), (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.

The permissible purpose requirement is an important feature of the USDA that prevents the special deposit from being used inappropriately for fraudulent or abusive purposes—for example, to defraud creditors. A permissible purpose is defined in Section 2 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. In addition, a deposit or transfer that is fraudulent would not be for a permissible purpose, and the voidability of the deposit under other law would not be affected by the USDA.



(L) depositor. Under current law, there may be uncertainty as to 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 USDA is “bankruptcy remote” because Section 8 provides that neither a depositor nor a beneficiary has a property interest in a special deposit. 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. The USDA protects the special deposit, but not the accrued “payable” to a beneficiary after the contingency is determined.

Third, the Act provides clarity on the applicability of creditor process to a special deposit. Currently, the uncertainty as to whether a creditor can “freeze” a special deposit pending an adjudication by a court undermines the utility of the special deposit, because it could interfere with the purpose that the special deposit is designed to achieve. At the time the special deposit is established, the identity of the ultimate beneficiary has not yet been determined because the contingency has not yet occurred. Section 9 of the USDA 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 or a similar outcome. Like the provisions dealing with bankruptcy, the provisions dealing with creditor process protect the special deposit, but not an accrued payable to a beneficiary after the contingency is determined.

Fourth, the USDA 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

the provisions dealing with setoff protect the special deposit but not an accrued payable to a beneficiary after the contingency is determined.



The USDA creates a mechanism for parties to a commercial transaction to obtain a low-cost and safe return of earnest money and provides protection to parties seeking to deposit funds for particular purpose to be determined at a future point in time. The USDA also provides clarity to other aspects of a special deposit relationship that have been muddled in the case law, for example, by expressly providing that the relationship between the bank and a beneficiary is a debtor-creditor relationship and that a bank does not have a fiduciary duty to any person in connection with a special deposit. Section 12 of the Act includes additional clarifications on the scope of a bank's duties and liabilities, and to provide incentives such that banks will offer a special deposit product.

The four uncertainties described here require statutory solutions because they relate to third parties' interactions with a special deposit and cannot easily or effectively be addressed by contractual agreements between the parties. The USDA is narrowly tailored to cure these four mischiefs and eliminate uncertainty so that parties can utilize special deposits with greater confidence that their expectations will be met. In addition, creating clear rules should reduce litigation risks and expenses for the parties and banks.

The Act is intended to provide needed benefits to depositors, beneficiaries, and banks, and also to be fair to other creditors of the participants in the arrangement. The drafters considered a wide range of potential arrangements where a special deposit governed by the Act may be useful, and the statute was drafted to allow flexibility for the parties to create an account agreement reflecting the circumstances of their particular transaction. The USDA includes a list of sample permissible purposes that highlights some of the use cases for special deposits, and for the avoidance of doubt as to the permissibility of those use

business law today (https://businesslawtoday.org/2025/04/uniform-special-deposits-act-briefing/)

cases. But it is not an exclusive list, and in the time since the Uniform Special Deposits Act (https://businesslawtoday.org/2025/04/uniform-special-deposits-act-briefing/) was approved by the Uniform Law Commission, additional potential uses have been raised as well.

This article is related to a CLE program that took place during the ABA Business Law Section’s 2023 Fall Meeting. To learn more about this topic, [listen to a recording of the program, free for members \(https://bit.ly/CLE-Audio-Uniform-Special-Deposits-Act\)](https://bit.ly/CLE-Audio-Uniform-Special-Deposits-Act).

The views expressed in this article are the authors’ personal views and do not necessarily represent the views of the CFTC or the federal government.

By: [Patrick A. Guida \(/author/patrick-a-guida/\)](#), [Thomas C. Baxter, Jr. \(/author/thomascbaxterjr/\)](#), [Michael M. Wiseman \(/author/michael-m-wiseman/\)](#), [Danielle B. Abada \(/author/danielle-b-abada/\)](#)
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April 2, 2019

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(https://businesslawtoday.org/2019/04/rise-risk-management-financial-institutions-potential-unintended-consequence-diminution-legal-function/)

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

ANALYSIS

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

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

26-2491
07/09

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

CHAPTER 384-H

UNIFORM SPECIAL DEPOSITS ACT

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

384-H:2 Definitions. In this chapter:

I. "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 governed by this chapter.

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

III. "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.

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

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

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

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

VIII. "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 subparagraph (1)(A) 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.

IX. "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.

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

X. "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.

XI. "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity. The term includes 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.

XII. "Record" means information:

- (a) Inscribed on a tangible medium; or
- (b) Stored in an electronic or other medium and retrievable in perceivable form.

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

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

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

I. This chapter 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 chapter, 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.

II. 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.

III. This section shall not affect:

- (a) A right or obligation relating to a deposit other than a special deposit under this chapter; or
- (b) The voidability of a deposit or transfer that is fraudulent or voidable under any other law.

384-H:4 Variation by Agreement or Amendment.

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

II. 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 chapter shall be insufficient to vary the effect of a provision of this chapter.

III. 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.

IV. If a beneficiary is not a party to an account 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.

V. 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.

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

- I. A deposit of funds in a bank under an account agreement;
- II. For the benefit of at least 2 beneficiaries, one or more of which may be a depositor;
- III. Denominated in a medium of exchange that is currently authorized or adopted by a domestic or foreign government;
- IV. For a permissible purpose stated in the account agreement; and
- V. Subject to a contingency.

384-H:6 Permissible Purpose.

I. 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.

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

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

384-H:7 Payment to Beneficiary by Bank.

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

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

III. 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 paragraph shall discharge the bank’s obligation to pay a beneficiary and shall not constitute an accord and satisfaction with respect to another person obligated to the beneficiary.

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

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

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

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

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

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

II. Any property interest with respect to a special deposit shall be 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 paragraph is determined under other law.

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

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

II. Creditor process shall be 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:

- (a) Is served on the bank;
- (b) Provides sufficient information to permit the bank to identify the depositor or the beneficiary from the bank’s books and records; and
- (c) Gives the bank a reasonable opportunity to act on the process.

III. Creditor process served on a bank before it is enforceable against that bank under paragraph II shall not create a right of the creditor against the bank or a duty of the bank to the creditor. Other law shall determine 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.

384-H:10 Injunction or Similar Relief. 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.

384-H:11 Recoupment or Set Off.

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

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

- (a) When the bank becomes obligated to pay a beneficiary, in an amount that does not exceed the amount necessary to discharge the obligation;
- (b) For a fee assessed by the bank that relates to an overdraft in the special deposit account;
- (c) For costs incurred by the bank that relate directly to the special deposit; or
- (d) To reverse an earlier credit posted by the bank to the balance of the special deposit account, if the reversal occurs under an event or circumstance warranted under other law of this state governing mistake and restitution.

III. 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.

384-H:12 Duties and Liability of Bank.

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

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

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

IV. If a bank holding a special deposit does not comply with the account agreement or this chapter, the bank shall be 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 shall not be liable for consequential, special, or punitive damages.

V. A 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.

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

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

384-H:13 Term and Termination.

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

II. 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.

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

384-H:14 Principles of Law and Equity. The Uniform Commercial Code, RSA 382-A:9-101 to 382-A:9-628, and law governing consumer protection, 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, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy, may supplement this chapter except to the extent inconsistent with this chapter.

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

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

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

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

- (a) All parties entitled to amend the agreement agree to make the deposit a special deposit governed by this chapter; and
- (b) The special deposit referenced in the amended agreement satisfies RSA 384-H:5.

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

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