

1 (ii) If not identified as a beneficiary in an account agreement, may be entitled to payment
2 from a special deposit:

3 (A) Under the account agreement; or
4 (B) On termination of the special deposit.

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

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

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

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

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

13 (i) With respect to a beneficiary, actual knowledge of the fact; or
14 (ii) With respect to a bank holding a special deposit:

15 (A) If the bank:

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

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

20 (B) If the bank has not established and maintained reasonable compliance with a routine
21 described in subsection (8)(ii)(A)(I) of this section or otherwise exercised due diligence, implied
22 knowledge of the fact that would have come to the attention of an individual to whom the bank has
23 assigned responsibility for the special deposit.

24 (9) "Obligated to pay a beneficiary" or "obligation to pay a beneficiary" means a
25 beneficiary is entitled under the account agreement to receive from the bank a payment when:

26 (i) A contingency has occurred; and
27 (ii) The bank has knowledge the contingency has occurred.

28 (10) "Permissible purpose" means a governmental, regulatory, commercial, charitable, or
29 testamentary objective of the parties stated in an account agreement. The term includes an objective
30 to:

31 (i) Hold funds:

32 (A) In escrow, including for a purchase and sale, lease, buyback, or other transaction;
33 (B) As a security deposit of a tenant;
34 (C) That may be distributed to a person as remuneration, retirement or other benefit, or

1 compensation under a judgment, consent decree, court order, or other decision of a tribunal; or

2 (D) For distribution to a defined class of persons after identification of the class members
3 and their interest in the funds;

4 (ii) Provide assurance with respect to an obligation created by contract, such as earnest
5 money to ensure a transaction closes;

6 (iii) Settle an obligation that arises in the operation of a payment system, securities
7 settlement system, or other financial market infrastructure;

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

10 (v) Hold margin, other cash collateral, or funds that support the orderly functioning of
11 financial market infrastructure or the performance of an obligation with respect to the
12 infrastructure.

13 (11) "Person" means an individual, estate, business or nonprofit entity, government or
14 governmental subdivision, agency, or instrumentality, or other legal entity. The term includes a
15 protected series, however denominated, of an entity if the protected series is established under law
16 that limits, or limits if conditions specified under law are satisfied, the ability of a creditor of the
17 entity or of any other protected series of the entity to satisfy a claim from assets of the protected
18 series.

19 (12) "Record" means information:

20 (i) Inscribed on a tangible medium; or

21 (ii) Stored in an electronic or other medium and retrievable in perceivable form.

22 (13) "Special deposit" means a deposit that satisfies §19-35-5.

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

26 **19-35-3. Scope, choice of law, and forum.**

27 (a) This chapter applies to a special deposit under an account agreement that states the
28 intention of the parties to establish a special deposit governed by this chapter, regardless of whether
29 a party to the account agreement or a transaction related to the special deposit, or the special deposit
30 itself, has a reasonable relation to this state.

31 (b) The parties to an account agreement may choose a forum in this state for settling a
32 dispute arising out of the special deposit, regardless of whether a party to the account agreement or
33 a transaction related to the special deposit, or the special deposit itself, has a reasonable relation to
34 this state.

1 (c) This chapter does not affect:

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

3 or

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

5 **19-35-4. Variation by agreement or amendment.**

6 (a) The effect of §§ 19-35-2 through 19-35-6, §§ 19-35-8 through 19-35-11, and § 19-35-
7 14 shall not be varied by agreement, except as provided in those sections. Subject to subsection (b)
8 of this section, the effect of §§ 19-35-7, 19-35-12, and 19-35-13 may be varied by agreement.

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

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

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

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

23 **19-35-5. Requirements for special deposit.**

24 A deposit is a special deposit if it is:

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

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

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

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

31 (5) Subject to a contingency.

32 **19-35-6. Permissible purpose.**

33 (a) A special deposit shall serve at least one permissible purpose stated in the account
34 agreement from the time the special deposit is created in the account agreement until termination

1 of the special deposit.

2 (b) If, before termination of the special deposit, the bank or a court determines the special
3 deposit no longer satisfies subsection (a) of this section, §§ 19-35-8 through 19-35-11 cease to
4 apply to any funds deposited in the special deposit after the special deposit ceases to satisfy
5 subsection (a) of this section.

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

9 **19-35-7. Payment to beneficiary by bank.**

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

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

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

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

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

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

25 (2) Taking other action that:

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

27 (ii) Otherwise would constitute a discharge under law.

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

32 **19-35-8. Property interest of depositor or beneficiary.**

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

34 (b) Any property interest with respect to a special deposit is only in the right to receive

1 payment if the bank is obligated to pay a beneficiary and not in the special deposit itself. Any
2 property interest under this subsection is determined by this chapter.

3 **19-35-9. When creditor process is enforceable against bank.**

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

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

8 (1) Is served on the bank;

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

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

12 (c) Creditor process served on a bank before it is enforceable against the bank under
13 subsection (b) of this section does not create a right of the creditor against the bank or a duty of the
14 bank to the creditor. Rhode Island general laws shall determine whether creditor process creates a
15 lien enforceable against the beneficiary on a contingent interest of a beneficiary, including a
16 depositor as a beneficiary, even if not enforceable against the bank.

17 **19-35-10. Injunction or similar relief.**

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

21 **19-35-11. Recoupment or set off.**

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

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

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

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

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

29 (4) To reverse an earlier credit posted by the bank to the balance of the special deposit
30 account, if the reversal occurs under an event or circumstance warranted under Rhode Island
31 general laws governing mistake and restitution.

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

34 **19-35-12. 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 as set forth in this chapter.

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

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

18 **19-35-13. Term and termination.**

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

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

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

27 **19-35-14. Principles of law and equity.**

28 The Rhode Island general laws regarding consumer protection, banking deposits, escheat
29 and abandoned or unclaimed property, equity, contracts, principal and agent, estoppel, fraud,
30 misrepresentation, duress, coercion, mistake, and bankruptcy, supplement this chapter except to the
31 extent that any statute is inconsistent with this chapter.

32 **19-35-15. Uniformity of application and construction.**

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

1 **19-35-16. Transitional provision.**

2 This chapter applies to:

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

5 (2) A deposit made under an agreement executed before the effective date of this chapter,
6 if:

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

9 (ii) The special deposit referenced in the amended agreement satisfies § 19-35-5.

10 **19-35-17. Severability clause.**

11 If a provision of this chapter or its application to a person or circumstance is held invalid,
12 the invalidity does not affect any other provision or application of this chapter that can be given
13 effect without the invalid provision.

14 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FINANCIAL INSTITUTIONS -- THE RHODE ISLAND SPECIAL DEPOSITS
ACT

- 1 This act would establish the Rhode Island Special Deposits Act to be governed by an
- 2 account agreement between the bank and the depositor or its beneficiary.
- 3 This act would take effect upon passage.

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