

Written Testimony in Support of SB 2123:
The Uniform Special Deposits Act

Chairman Barta and Members of the Committee,

For the record, I am Rick Clayburgh, President and CEO of the North Dakota Banker's Association. The NDBA supports the enactment of Senate Bill 2123, the Uniform Special Deposits Act (USDA). The USDA was finalized by the Uniform Law Commission in 2023 and is endorsed by the American College of Commercial Financial Lawyers.

In short, SB 2123 addresses "special deposits," which are deposits of money at a bank created for a particular purpose where the person entitled to the money is not determined until the occurrence of a specified event occurs.

Legal uncertainties and inconsistencies regarding special deposits have led parties to avoid using them. The uniform law provides legal clarity as to the use of special deposits. Importantly, the act reduces legal uncertainties related to the attributes that make a deposit "special" and the rights of the parties interested in the special deposit, their respective creditors, and the bank holding the special deposit prior to the resolution of the contingency.

The Special Deposits Act specifically provides the following:

1. **Opt-In:** The USDA is applicable only if the parties to the account agreement have opted in, meaning the bank and its customer have elected that the deposit is special and will receive statutory coverage. In the absence of an agreed "opt-in", the statute does not apply.
2. **Clearly Designates Bank's Legal Role:** The USDA specifies that the relationship between the bank and beneficiary is a debtor-creditor relationship rather than a fiduciary relationship.
3. **Protects Deposits from Creditors:** Neither a depositor nor a beneficiary has a property interest in a special deposit. Any property interest with respect to a special deposit is only in the right to receive payment if the bank is obligated to pay a beneficiary and not in the special deposit itself. This prevents special deposits from being drawn into bankruptcy and other creditor proceedings and processes.
4. **Protects Banks:** To induce banks to offer special deposit products, the act limits consequential damages against a bank holding a special deposit.
5. **Reduced Litigation Risks:** Clear guidelines on the rights and responsibilities of all parties involved in special deposits reduce the likelihood of disputes and litigation.
6. **Legal Consistency Across Jurisdictions:** For banks operating in multiple states, the USDA's uniform provisions eliminate the complexity of navigating varying state laws. This simplifies compliance and enhances operational efficiency.