

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**

# A Bill

**HOUSE BILL**

4 **By: Representatives Dawson and Shaver**

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## **For An Act To Be Entitled**

8 "AN ACT TO AUTHORIZE AGENCY DESIGNATION ON CERTIFICATES OF  
9 DEPOSIT."

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### **Subtitle**

12 "TO AUTHORIZE AGENCY DESIGNATION ON CERTIFICATES OF  
13 DEPOSIT."

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15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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17 SECTION 1. DEFINITIONS. In this act:

18 (1) "Account" means a contract of deposit between a depositor and a  
19 financial institution, and includes a checking account, savings account,  
20 certificate of deposit, and share account.

21 (2) "Agent" means a person authorized to make account transactions for  
22 a party.

23 (3) "Beneficiary" means a person named as one to whom sums on deposit  
24 in an account are payable on request after death of all parties or for whom a  
25 party is named as trustee.

26 (4) "Devisee" means any person designated in a will to receive a  
27 testamentary disposition of real or personal property.

28 (5) "Financial institution" means an organization authorized to do  
29 business under state or federal laws relating to financial institutions, and  
30 includes a bank, trust company, savings bank, building and loan association,  
31 savings and loan company or association, and credit union.

32 (6) "Party" means a person who, by the terms of an account, has a  
33 present right, subject to request, to payment from the account other than as a  
34 beneficiary or agent.

35 (7) "Payment" of sums on deposit includes withdrawal, payment to a

1 party or third person pursuant to check or other request, and a pledge of sums  
2 on deposit by a party, or a set-off, reduction, or other disposition of all or  
3 part of an account pursuant to a pledge.

4 (8) "Person" means an individual, a corporation, an organization, or  
5 other legal entity.

6 (9) "Personal representative" includes executor, administrator,  
7 successor personal representative, special administrator, and persons who  
8 perform substantially the same function under the law governing their status.

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10 SECTION 2. SCOPE OF ACT.

11 (a) This act applies to accounts in this State.

12 (b) This act does not apply to (i) an account established for a  
13 partnership, joint venture, or other organization for a business purpose, (ii)  
14 an account controlled by one or more persons as an agent or trustee for a  
15 corporation, unincorporated association, or charitable or civic organization,  
16 or (iii) a fiduciary or trust account in which the relationship is established  
17 other than by the terms of the account.

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19 SECTION 3. FORMS.

20 A contract of deposit that substantially contains the following form  
21 establishes an agency account and the account is governed by the provisions of  
22 this act applicable to agency accounts:

23 AGENCY (POWER OF ATTORNEY) DESIGNATION

24 Agents may make account transactions for parties but have no ownership or  
25 rights at death unless named as POD beneficiaries.

26 [To Add Agency Designation To Account, Name One Or More Agents]:

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28 [Select One And Initial]:

29 \_\_\_\_\_ AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

30 \_\_\_\_\_ AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

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32 SECTION 4. DESIGNATION OF AGENT.

33 (a) Unless the terms of an agency designation provide that the  
34 authority of the agent terminates on disability or incapacity of a party, the  
35 agent's authority survives disability and incapacity. The agent may act for a

1 disabled or incapacitated party until the authority of the agent is  
2 terminated.

3 (b) Death of the sole party or last surviving party terminates the  
4 authority of an agent.

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6 SECTION 5. An agent in an account with an agency designation has no  
7 beneficial right to sums on deposit.

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9 SECTION 6. PAYMENT TO DESIGNATED AGENT. On request of an agent under  
10 an agency designation for an account, a financial institution may, unless it  
11 knows or has reason to know that the authority of agency has terminated, pay  
12 to the agent sums on deposit in the account.

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14 SECTION 7. PAYMENT TO MINOR. If a financial institution is required or  
15 permitted to make payment pursuant to this act to a minor designated as a  
16 beneficiary, payment may be made pursuant to the Uniform Transfers to Minors  
17 Act.

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19 SECTION 8. DISCHARGE.

20 (a) Payment made pursuant to this act in accordance with an agency of  
21 account discharges the financial institution from all claims for amounts so  
22 paid, whether or not the payment is consistent with the beneficial ownership  
23 of the account as between parties, beneficiaries, or their successors.  
24 Payment may be made whether or not a party, beneficiary, or agent is disabled,  
25 incapacitated, or deceased when payment is requested, received, or made.

26 (b) Protection under this section does not extend to payments made  
27 after a financial institution has received written notice from a party, or  
28 from the personal representative, surviving spouse, or heir or devisee of a  
29 deceased party, to the effect that payments in accordance with the terms of  
30 the agency account should not be permitted, and the financial institution has  
31 had a reasonable opportunity to act on it when the payment is made. Unless  
32 the notice is withdrawn by the person giving it, the successor of any deceased  
33 party must concur in a request for payment if the financial institution is to  
34 be protected under this section. Unless a financial institution has been  
35 served with process in an action or proceeding, no other notice or other

1 information shown to have been available to the financial institution affects  
2 its right to protection under this section.

3 (c) A financial institution that receives written notice pursuant to  
4 this section or otherwise has reason to believe that a dispute exists as to  
5 the rights of the parties may refuse, without liability, to make payments in  
6 accordance with the terms of the agency account.

7 (d) Protection of a financial institution under this section does not  
8 affect the rights of parties in disputes between themselves or their  
9 successors concerning the beneficial ownership of sums on deposit in agency  
10 accounts or payments made from agency accounts.

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12 SECTION 9. SET-OFF. Without qualifying any other statutory right to  
13 set-off or lien and subject to any contractual provision, if a party is  
14 indebted to a financial institution, the financial institution has a right to  
15 set-off against the agency account. The amount of the agency account subject  
16 to set-off is the proportion to which the party is, or immediately before  
17 death was, beneficially entitled or, in the absence of proof of that  
18 proportion, an equal share with all parties.

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20 SECTION 10. All provisions of this act of a general and permanent  
21 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
22 Code Revision Commission shall incorporate the same in the Code.

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24 SECTION 11. If any provision of this act or the application thereof to  
25 any person or circumstance is held invalid, such invalidity shall not affect  
26 other provisions or applications of the act which can be given effect without  
27 the invalid provision or application, and to this end the provisions of this  
28 act are declared to be severable.

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30 SECTION 12. This act is supplemental to all laws pertaining to the  
31 deposit of funds in financial institutions.

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33 SECTION 13. EFFECTIVE DATE AND TRANSITIONAL PROVISIONS.

34 (a) This act takes effect September 1, 1993.

35 (b) On the effective date of this act:

1           (1) An act done before the effective date and any accrued right  
2 is not impaired by this act. If a right is acquired, extinguished, or barred  
3 on the expiration of a prescribed period of time that has commenced to run by  
4 the provisions of any statute before the effective date, the provisions shall  
5 remain in force with respect to that right.

6           (2) Any rule of construction or presumption provided in this act  
7 applies to accounts established before the effective date unless there is a  
8 clear indication of a contrary intent.

9           (c) The rights of a party, beneficiary, or creditor in an account  
10 established before the effective date of this act are governed by the law  
11 applicable before the effective date for a period of one year after the  
12 effective date and thereafter are governed by this act.

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