

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

# A Bill

HOUSE BILL 1084

4  
5 By: House Interim Committee on Insurance and Commerce  
6 By: Senate Interim Committee on Insurance and Commerce

## For An Act To Be Entitled

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8  
9 "AN ACT TO REENACT ARKANSAS CODE 23-32-2001 ET SEQ.  
10 PERTAINING TO AGENCY DESIGNATIONS ON CERTIFICATES OF  
11 DEPOSIT; AND FOR OTHER PURPOSES."

## Subtitle

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13  
14 "TO REENACT ARKANSAS CODE PERTAINING TO  
15 AGENCY DESIGNATIONS ON CERTIFICATES OF  
16 DEPOSIT."

17  
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19  
20 SECTION 1. Definitions.

21 In this act:

22 (1) "Account" means a contract of deposit between a depositor and a  
23 financial institution, and includes a checking account, savings account,  
24 certificate of deposit, and share account;

25 (2) "Agent" means a person authorized to make account transactions for a  
26 party;

27 (3) "Beneficiary" means a person named as one to whom sums on deposit in  
28 an account are payable on request after the death of all parties or for whom a  
29 party is named as trustee;

30 (4) "Devisee" means any person designated in a will to receive a  
31 testamentary disposition of real or personal property;

32 (5) "Financial institution" means an organization authorized to do  
33 business under state or federal laws relating to financial institutions, and  
34 includes a savings bank, building and loan association, savings and loan  
35 company or association, and credit union;

36 (6) "Party" means a person who, by the terms of an account, has a

1 present right, subject to request, to payment from the account other than as a  
2 beneficiary or agent;

3 (7) "Payment" of sums on deposit includes withdrawal, payment to a party  
4 or third person pursuant to check or other request, and a pledge of sums on  
5 deposit by a party, or a setoff, reduction, or other disposition of all or  
6 part of an account pursuant to a pledge;

7 (8) "Person" means an individual, a corporation, an organization, or  
8 other legal entity; and

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

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13 SECTION 2. Scope of act.

14 (a) This act applies to accounts in this state.

15 (b) This act does not apply to:

16 (1) An account established for a partnership, joint venture, or other  
17 organization for a business purpose;

18 (2) An account controlled by one (1) or more persons as an agent or  
19 trustee for a corporation, unincorporated association, or charitable or civic  
20 organization; or

21 (3) A fiduciary or trust account in which the relationship is  
22 established other than by the terms of the account.

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24 SECTION 3. Forms.

25 A contract of deposit that substantially contains the following form  
26 establishes an agency account, and the account is governed by the provisions  
27 of this act applicable to agency accounts:

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29 "AGENCY (POWER OF ATTORNEY) DESIGNATION

30 Agents may make account transactions for parties but have no ownership  
31 or rights at death unless named as POD beneficiaries. [To Add Agency  
32 Designation To Account, Name One Or More Agents].

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36 [Select One and Initial]:

1 AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES  
 2 AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES"

3

4 SECTION 4. Designation of agent.

5 (a) Unless the terms of an agency designation provide that the authority  
 6 of the agent terminates on disability or incapacity of a party, the agent\*s  
 7 authority survives disability and incapacity. The agent may act for a  
 8 disabled or incapacitated party until the authority of the agent is  
 9 terminated.

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

12 (c) An agent in an account with an agency designation has no beneficial  
 13 right to sums on deposit.

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15 SECTION 5. Payment to designated agent.

16 On request of an agent under an agency designation for an account, a  
 17 financial institution may, unless it actually knows that the authority of  
 18 agency has terminated, pay to the agent sums on deposit in the account.

19

20 SECTION 6. Payment to minor.

21 If a financial institution is required or permitted to make payment  
 22 pursuant to this act to a minor designated as a beneficiary, payment may be  
 23 made pursuant to the Uniform Transfers to Minors Act, § 9-26-201 et seq.

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25 SECTION 7. Discharge.

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

32 (b) Protection under this section does not extend to payments made after  
 33 a financial institution has received written notice from a party, or from the  
 34 personal representative, surviving spouse, or heir or devisee of a deceased  
 35 party, to the effect that payments in accordance with the terms of the agency  
 36 account should not be permitted and the financial institution has had a

1 reasonable opportunity to act on it when payment is made. Unless the notice  
 2 is withdrawn by the person giving it, the successor of any deceased party must  
 3 concur in a request for payment if the financial institution is to be  
 4 protected under this section. Unless a financial institution has been served  
 5 with process in an action or proceeding, no other notice or other information  
 6 shown to have been available to the financial institution affects its right to  
 7 protection under this section.

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

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

16

17 SECTION 8. Setoff.

18 Without qualifying any other statutory right to setoff or lien and  
 19 subject to any contractual provision, if a party is indebted to a financial  
 20 institution, the financial institution has a right to setoff against the  
 21 agency account. The amount of the agency account subject to setoff is the  
 22 proportion to which the party is, or immediately before death was,  
 23 beneficially entitled or, in the absence of proof of that proportion, an equal  
 24 share with all parties.

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26 SECTION 9. Effect on other laws.

27 This act is supplemental to all laws pertaining to the deposit of funds  
 28 in financial institutions.

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

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34 SECTION 11. If any provision of this act or the application thereof to  
 35 any person or circumstance is held invalid, such invalidity shall not affect  
 36 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this  
2 act are declared to be severable.

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4 SECTION 12. All laws and parts of laws in conflict with this act are  
5 hereby repealed.

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7 SECTION 13. EMERGENCY. It is hereby found and determined by the  
8 General Assembly that the Arkansas Banking Act of 1997 goes into effect on May  
9 31, 1997; that the law addressed by this act was repealed by the Arkansas  
10 Banking Act of 1997 for technical purposes; that this act will reenact that  
11 law with necessary changes; and that this act must go into effect on May 31,  
12 1997, in order to correlate with the Banking Act of 1997. Therefore an  
13 emergency is declared to exist and this act being immediately necessary for  
14 the preservation of the public peace, health and safety shall be in full force  
15 and effect from and after May 31, 1997.

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