

Insights

New Indiana Law Will Clarify How Financial Institutions May Make Changes to Deposit Account Agreements

March 13, 2024

By: Brett J. Ashton, Libby Yin Goodknight, Scott S. Morrisson, and Kay Dee Baird

Indiana House Bill 1284 was signed into law by Governor Eric Holcomb this week and becomes effective on July 1, 2024. This new law provides much needed clarity to Indiana financial institutions seeking to ensure the enforceability of amendments to their deposit account agreements. This Client Alert will summarize the new law and discuss what it means for your financial institution.

House Bill 1284 is in direct response to the opinions issued by the Indiana Supreme Court in *Land v. IU Credit Union*, 218 N.E.3d 1282 (Ind. 2023), *aff'd on rehearing*, 226 N.E.3d 194 (Ind. 2024). In *Land*, the Supreme Court adopted Section 69 of the Restatement (Second) of Contracts, which addresses situations in which silence or inaction can be deemed acceptance of a change to an agreement. The Supreme Court held that the credit union in *Land* could not rely on their members' continued use of their account after the 30-day opt-out period had expired as evidence of acceptance of an amendment to the account agreement that added an arbitration clause. Instead, the Supreme Court held that evidence of an objective manifestation of the members' intent to accept the change was required.

The ultimate holding in *Land* was admittedly narrow given that the credit union's account agreement did not contain any language suggesting silence or continued use of the account would result in acceptance of future modifications. However, the Supreme Court's analysis raised significant concerns regarding the practical challenges Indiana financial institutions would face in implementing amendments to their account agreements and establishing their depositors' acceptance of those provisions. House Bill 1284 addresses this dilemma by adding new language to the Indiana Code that provides:

A deposit account agreement may be changed or amended from time to time, subject to the terms of the deposit account agreement. A depositor's continued maintenance of a deposit account after the effective date of any change or amendment to the deposit account agreement, as described in a written notice provided by the depository financial institution to the depositor, constitutes prima facie evidence of the depositor's intent to accept the change or amendment for which notice was provided.

The bill further defines "written notice" to mean a notice that is in writing, provided to the depositor in any manner in which the depositor has agreed to receive notices, and sent at least 30 days prior to the effective date of any change or amendment to the deposit account agreement.

The impact of House Bill 1284 to your financial institution will depend not only on the language in your current deposit account agreement, but also on how you have implemented changes to your deposit account agreement from the time someone opened their account with you. At a minimum, any future changes to your deposit account agreement should entail advance written notice of the changes at least 30 days before the amendments go into effect.

It is important to note that the issues addressed by House Bill 1284 should not be confused with the related issues that were raised in another recent Supreme Court case involving an amendment to a deposit account agreement,



Decker v. Star Financial Group, Inc., 204 N.E.3d 918 (Ind. 2023). House Bill 1284 focuses, as did *Land*, on the manner in which depositors accept changes to the account agreement. *Decker*, in turn, discussed the scope of the amendments and whether changes are permissible under the account agreement's change-in-terms provision. If you have not reviewed your deposit account agreements for compliance with the holding in *Decker*, you should do so prior to making any further changes to the agreements.

Krieg DeVault's **Financial Institutions** attorneys are available to provide specific guidance as to the impact of House Bill 1284 on your institution, and to assist in the process required to amend your deposit account agreements moving forward.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.