

12A: 3-101

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(UCC--negotiable instruments)

NJSA: 12A:3-101 et. seq.

LAWS OF: 1995 CHAPTER: 28

BILL NO: S344

SPONSOR(S): Gormley

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: ---

SENATE: State Management

AMENDED DURING PASSAGE: Yes Amendments during passage
First reprint enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: January 10, 1995

SENATE: November 10, 1994

DATE OF APPROVAL: February 15, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: Yes

HEARINGS: No

Report, referred to in sponsor's statement:
974.901 New Jersey Law Revision Commission.
L446 Annual report...1992.
[see pp. 6 & 7 and Appendix E--attached]

KBG:pp

DEPOSITORY COPY
Do Not Remove From Library

[FIRST REPRINT]

SENATE, No. 344

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Senator GORMLEY

1 AN ACT concerning commercial transactions, replacing chapters
2 3 and 4 of Title 12A of the New Jersey Statutes, and revising
3 various parts of the statutory law.

4
5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. Chapter 3 of Title 12A of the New Jersey Statutes (N.J.S.
8 12A:3-101 through 12A:3-805, including any amendments or
9 supplements thereto) is repealed and replaced as follows:

10

11

12

CHAPTER 3 - NEGOTIABLE INSTRUMENTS

13

14

PART 1

15

GENERAL PROVISIONS AND DEFINITIONS

16

17

12A:3-101. Short Title.

18

This chapter may be cited as Uniform Commercial Code --
19 Negotiable Instruments.

20

12A:3-102. Subject Matter.

21

a. This chapter applies to negotiable instruments. It does not
22 apply to money, to payment orders governed by chapter 4A, or to
23 securities governed by chapter 8.

24

b. If there is conflict between this chapter and chapter 4 or 9,
25 chapters 4 and 9 govern.

26

c. Regulations of the Board of Governors of the Federal
27 Reserve System and operating circulars of the Federal Reserve
28 Banks supersede any inconsistent provision of this chapter to the
29 extent of the inconsistency.

30

12A:3-103. Definitions.

31

a. As used in this chapter:

32

(1) "Acceptor" means a drawee who has accepted a draft.

33

(2) "Drawee" means a person ordered in a draft to make
34 payment.

35

(3) "Drawer" means a person who signs or is identified in a
36 draft as a person ordering payment.

37

(4) "Good faith" means honesty in fact and the observance
38 of reasonable commercial standards of fair dealing.

39

(5) "Maker" means a person who signs or is identified in a
40 note as a person undertaking to pay.

41

(6) "Order" means a written instruction to pay money signed
42 by the person giving the instruction. The instruction may be
43 addressed to any person, including the person giving the
44 instruction, or to one or more persons jointly or in the alternative
45 but not in succession. An authorization to pay is not an order
46 unless the person authorized to pay is also instructed to pay.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
Senate SSM committee amendments adopted October 3, 1994.

1 (7) "Ordinary care" in the case of a person engaged in
 2 business means observance of reasonable commercial standards,
 3 prevailing in the area in which the person is located, with respect
 4 to the business in which the person is engaged. In the case of a
 5 bank that takes an instrument for processing for collection or
 6 payment by automated means, reasonable commercial standards
 7 do not require the bank to examine the instrument if the failure
 8 to examine does not violate the bank's prescribed procedures and
 9 the bank's procedures do not vary unreasonably from general
 10 banking usage not disapproved by this chapter or chapter 4.

11 (8) "Party" means a party to an instrument.

12 (9) "Promise" means a written undertaking to pay money
 13 signed by the person undertaking to pay. An acknowledgment of
 14 an obligation by the obligor is not a promise unless the obligor
 15 also undertakes to pay the obligation.

16 (10) "Prove" with respect to a fact means to meet the
 17 burden of establishing the fact (12A:1-201(8)).

18 (11) "Remitter" means a person who purchases an
 19 instrument from its issuer if the instrument is payable to an
 20 identified person other than the purchaser.

21 b. Other definitions applying to this chapter and the sections
 22 in which they appear are:

23	"Acceptance"	12A:3-409
24	"Accommodated party"	12A:3-419
25	"Accommodation party"	12A:3-419
26	"Alteration"	12A:3-407
27	"Anomalous indorsement"	12A:3-205
28	"Blank indorsement"	12A:3-205
29	"Cashier's check"	12A:3-104
30	"Certificate of deposit"	12A:3-104
31	"Certified check"	12A:3-409
32	"Check"	12A:3-104
33	"Consideration"	12A:3-303
34	"Draft"	12A:3-104
35	"Holder in due course"	12A:3-302
36	"Incomplete instrument"	12A:3-115
37	"Indorsement"	12A:3-204
38	"Indorser"	12A:3-204
39	"Instrument"	12A:3-104
40	"Issue"	12A:3-105
41	"Issuer"	12A:3-105
42	"Negotiable instrument"	12A:3-104
43	"Negotiation"	12A:3-201
44	"Note"	12A:3-104
45	"Payable at a definite time"	12A:3-108
46	"Payable on demand"	12A:3-108
47	"Payable to bearer"	12A:3-109
48	"Payable to order"	12A:3-109
49	"Payment"	12A:3-602
50	"Person entitled to enforce"	12A:3-301
51	"Presentment"	12A:3-501
52	"Reacquisition"	12A:3-207
53	"Special indorsement"	12A:3-205
54	"Teller's check"	12A:3-104

1	"Transfer of instrument".....	12A:3-203
2	"Traveler's check".....	12A:3-104
3	"Value".....	12A:3-303
4	c. The following definitions in other chapters apply to this	
5	chapter:	
6	"Bank".....	12A:4-105
7	"Banking day".....	12A:4-104
8	"Clearing house".....	12A:4-104
9	"Collecting bank".....	12A:4-105
10	"Depository bank".....	12A:4-105
11	"Documentary draft".....	12A:4-104
12	"Intermediary bank".....	12A:4-105
13	"Item".....	12A:4-104
14	"Payor bank".....	12A:4-105
15	"Suspends payments".....	12A:4-104
16	d. In addition, chapter 1 contains general definitions and	
17	principles of construction and interpretation applicable	
18	throughout this chapter.	
19	12A:3-104. Negotiable Instrument.	
20	a. Except as provided in subsections c. and d. of this section,	
21	"negotiable instrument" means an unconditional promise or order	
22	to pay a fixed amount of money, with or without interest or other	
23	charges described in the promise or order, if it:	
24	(1) is payable to bearer or to order at the time it is issued or	
25	first comes into possession of a holder;	
26	(2) is payable on demand or at a definite time; and	
27	(3) does not state any other undertaking or instruction by the	
28	person promising or ordering payment to do any act in addition to	
29	the payment of money, but the promise or order may contain an	
30	undertaking or power to give, maintain, or protect collateral to	
31	secure payment, an authorization or power to the holder to	
32	confess judgment or realize on or dispose of collateral, or a	
33	waiver of the benefit of any law intended for the advantage or	
34	protection of an obligor.	
35	b. "Instrument" means a negotiable instrument.	
36	c. An order that meets all of the requirements of subsection a.	
37	of this section, except paragraph (1), and otherwise falls within	
38	the definition of "check" in subsection f. of this section is a	
39	negotiable instrument and a check.	
40	d. A promise or order other than a check is not an instrument	
41	if, at the time it is issued or first comes into possession of a	
42	holder, it contains a conspicuous statement, however expressed,	
43	to the effect that the promise or order is not negotiable or is not	
44	an instrument governed by this chapter.	
45	e. An instrument is a "note" if it is a promise and is a "draft"	
46	if it is an order. If an instrument falls within the definition of	
47	both "note" and "draft," a person entitled to enforce the	
48	instrument may treat it as either.	
49	f. "Check" means a draft, other than a documentary draft,	
50	payable on demand and drawn on a bank or a cashier's check or	
51	teller's check. An instrument may be a check even though it is	
52	described on its face by another term, such as "money order."	
53	g. "Cashier's check" means a draft with respect to which the	
54	drawer and drawee are the same bank or branches of the same	

1 bank.

2 h. "Teller's check" means a draft drawn by a bank on another
3 bank, or payable at or through a bank.

4 i. "Traveler's check" means an instrument that is payable on
5 demand, is drawn on or payable at or through a bank, is
6 designated by the term "traveler's check" or by a substantially
7 similar term, and requires, as a condition to payment, a
8 countersignature by a person whose specimen signature appears
9 on the instrument.

10 j. "Certificate of deposit" means an instrument containing an
11 acknowledgment by a bank that a sum of money has been
12 received by the bank and a promise by the bank to repay the sum
13 of money. A certificate of deposit is a note of the bank.

14 12A:3-105. Issue of Instrument.

15 a. "Issue" means the first delivery of an instrument by the
16 maker or drawer, whether to a holder or nonholder, for the
17 purpose of giving rights on the instrument to any person.

18 b. An unissued instrument, or an unissued incomplete
19 instrument that is completed, is binding on the maker or drawer,
20 but nonissuance is a defense. An instrument that is conditionally
21 issued or is issued for a special purpose is binding on the maker or
22 drawer, but failure of the condition or special purpose to be
23 fulfilled is a defense.

24 c. "Issuer" applies to issued and unissued instruments and
25 means a maker or drawer of an instrument.

26 12A:3-106. Unconditional Promise or Order.

27 a. Except as provided in this section, for the purposes of
28 subsection a. of 12A:3-104, a promise or order is unconditional
29 unless it states an express condition to payment, that the promise
30 or order is subject to or governed by another writing, or that
31 rights or obligations with respect to the promise or order are
32 stated in another writing. A reference to another writing does
33 not of itself make the promise or order conditional.

34 b. A promise or order is not made conditional by a reference
35 to another writing for a statement of rights with respect to
36 collateral, prepayment, or acceleration, or because payment is
37 limited to resort to a particular fund or source.

38 c. If a promise or order requires, as a condition to payment, a
39 countersignature by a person whose specimen signature appears
40 on the promise or order, the condition does not make the promise
41 or order conditional for the purposes of subsection a. of
42 12A:3-104. If the person whose specimen signature appears on an
43 instrument fails to countersign the instrument, the failure to
44 countersign is a defense to the obligation of the issuer, but the
45 failure does not prevent a transferee of the instrument from
46 becoming a holder of the instrument.

47 d. If a promise or order at the time it is issued or first comes
48 into possession of a holder contains a statement, required by
49 applicable statutory or administrative law, to the effect that the
50 rights of a holder or transferee are subject to claims or defenses
51 that the issuer could assert against the original payee, the
52 promise or order is not thereby made conditional for the purposes
53 of subsection a. of 12A:3-104; but if the promise or order is an
54 instrument, there cannot be a holder in due course of the

1 instrument.

2 12A:3-107. Instrument Payable in Foreign Money.

3 Unless the instrument otherwise provides, an instrument that
4 states the amount payable in foreign money may be paid in the
5 foreign money or in an equivalent amount in dollars calculated by
6 using the current bank-offered spot rate at the place of payment
7 for the purchase of dollars on the day on which the instrument is
8 paid.

9 12A:3-108. Payable on Demand or at Definite Time.

10 a. A promise or order is "payable on demand" if it states that
11 it is payable on demand or at sight, or otherwise indicates that it
12 is payable at the will of the holder, or does not state any time of
13 payment.

14 b. A promise or order is "payable at a definite time" if it is
15 payable on elapse of a definite period of time after sight or
16 acceptance or at a fixed date or dates or at a time or times
17 readily ascertainable at the time the promise or order is issued,
18 subject to rights of prepayment, acceleration, extension at the
19 option of the holder, or extension to a further definite time at
20 the option of the maker or acceptor or automatically upon or
21 after a specified act or event.

22 c. If an instrument, payable at a fixed date, is also payable
23 upon demand made before the fixed date, the instrument is
24 payable on demand until the fixed date and, if demand for
25 payment is not made before that date, becomes payable at a
26 definite time on the fixed date.

27 12A:3-109. Payable to Bearer or to Order.

28 a. A promise or order is payable to bearer if it:

29 (1) states that it is payable to bearer or to the order of
30 bearer or otherwise indicates that the person in possession of the
31 promise or order is entitled to payment;

32 (2) does not state a payee; or

33 (3) states that it is payable to or to the order of cash or
34 otherwise indicates that it is not payable to an identified person.

35 b. A promise or order that is not payable to bearer is payable
36 to order if it is payable to the order of an identified person or to
37 an identified person or order. A promise or order that is payable
38 to order is payable to the identified person.

39 c. An instrument payable to bearer may become payable to an
40 identified person if it is specially indorsed pursuant to subsection
41 a. of 12A:3-205. An instrument payable to an identified person
42 may become payable to bearer if it is indorsed in blank pursuant
43 to subsection b. of 12A:3-205.

44 12A:3-110. Identification of Person to Whom Instrument is
45 Payable.

46 a. The person to whom an instrument is initially payable is
47 determined by the intent of the person, whether or not
48 authorized, signing as, or in the name or behalf of, the issuer of
49 the instrument. The instrument is payable to the person intended
50 by the signer even if that person is identified in the instrument by
51 a name or other identification that is not that of the intended
52 person. If more than one person signs in the name or behalf of
53 the issuer of an instrument and all the signers do not intend the
54 same person as payee, the instrument is payable to any person

1 intended by one or more of the signers.

2 b. If the signature of the issuer of an instrument is made by
3 automated means, such as a check-writing machine, the payee of
4 the instrument is determined by the intent of the person who
5 supplied the name or identification of the payee, whether or not
6 authorized to do so.

7 c. A person to whom an instrument is payable may be
8 identified in any way, including by name, identifying number,
9 office, or account number. For the purpose of determining the
10 holder of an instrument, the following rules apply:

11 (1) If an instrument is payable to an account and the account
12 is identified only by number, the instrument is payable to the
13 person to whom the account is payable. If an instrument is
14 payable to an account identified by number and by the name of a
15 person, the instrument is payable to the named person, whether
16 or not that person is the owner of the account identified by
17 number.

18 (2) If an instrument is payable to:

19 (a) a trust, an estate, or a person described as trustee or
20 representative of a trust or estate, the instrument is payable to
21 the trustee, the representative, or a successor of either, whether
22 or not the beneficiary or estate is also named;

23 (b) a person described as agent or similar representative of
24 a named or identified person, the instrument is payable to the
25 represented person, the representative, or a successor of the
26 representative;

27 (c) a fund or organization that is not a legal entity, the
28 instrument is payable to a representative of the members of the
29 fund or organization; or

30 (d) an office or to a person described as holding an office,
31 the instrument is payable to the named person, the incumbent of
32 the office, or a successor to the incumbent.

33 d. If an instrument is payable alternatively to two or more
34 persons, it is payable to any of them and may be negotiated,
35 discharged, or enforced by any or all of them in possession of the
36 instrument. If an instrument is not payable alternatively to two
37 or more persons, it is payable to all of them and may be
38 negotiated, discharged, or enforced only by all of them. If an
39 instrument payable to two or more persons is ambiguous as to
40 whether it is payable to the persons alternatively, the instrument
41 is payable to the persons alternatively.

42 12A:3-111. Place of Payment.

43 Except as otherwise provided for items in chapter 4, an
44 instrument is payable at the place of payment stated in the
45 instrument. If no place of payment is stated, an instrument is
46 payable at the address of the drawee or maker stated in the
47 instrument. If no address is stated, the place of payment is the
48 place of business of the drawee or maker. If a drawee or maker
49 has more than one place of business, the place of payment is any
50 place of business of the drawee or maker chosen by the person
51 entitled to enforce the instrument. If the drawee or maker has
52 no place of business, the place of payment is the residence of the
53 drawee or maker.

54 12A:3-112. Interest.

1 a. Unless otherwise provided in the instrument, an instrument
2 is not payable with interest, and interest on an interest-bearing
3 instrument is payable from the date of the instrument.

4 b. Interest may be stated in an instrument as a fixed or
5 variable amount of money or it may be expressed as a fixed or
6 variable rate or rates. The amount or rate of interest may be
7 stated or described in the instrument in any manner and may
8 require reference to information not contained in the
9 instrument. If an instrument provides for interest, but the
10 amount of interest payable cannot be ascertained from the
11 description, interest is payable at the judgment rate in effect at
12 the place of payment of the instrument and at the time interest
13 first accrues.

14 12A:3-113. Date of Instrument.

15 a. An instrument may be antedated or postdated. The date
16 stated determines the time of payment if the instrument is
17 payable at a fixed period after date. Except as provided in
18 subsection c. of 12A:4-401, an instrument payable on demand is
19 not payable before the date of the instrument.

20 b. If an instrument is undated, its date is the date of its issue
21 or, in the case of an unissued instrument, the date it first comes
22 into possession of a holder.

23 12A:3-114. Contradictory Terms of Instrument.

24 If an instrument contains contradictory terms, typewritten
25 terms prevail over printed terms, handwritten terms prevail over
26 both, and words prevail over numbers.

27 12A:3-115. Incomplete Instrument.

28 a. "Incomplete instrument" means a signed writing, whether or
29 not issued by the signer, the contents of which show at the time
30 of signing that it is incomplete but that the signer intended it to
31 be completed by the addition of words or numbers.

32 b. Subject to subsection c. of this section, if an incomplete
33 instrument is an instrument under 12A:3-104, it may be enforced
34 according to its terms if it is not completed, or according to its
35 terms as augmented by completion. If an incomplete instrument
36 is not an instrument under 12A:3-104, but, after completion, the
37 requirements of 12A:3-104 are met, the instrument may be
38 enforced according to its terms as augmented by completion.

39 c. If words or numbers are added to an incomplete instrument
40 without authority of the signer, there is an alteration of the
41 incomplete instrument under 12A:3-407.

42 d. The burden of establishing that words or numbers were
43 added to an incomplete instrument without authority of the
44 signer is on the person asserting the lack of authority.

45 12A:3-116. Joint and Several Liability; Contribution.

46 a. Except as otherwise provided in the instrument, two or
47 more persons who have the same liability on an instrument as
48 makers, drawers, acceptors, indorsers who indorse as joint
49 payees, or anomalous indorsers are jointly and severally liable in
50 the capacity in which they sign.

51 b. Except as provided in subsection e. of 12A:3-419 or by
52 agreement of the affected parties, a party having joint and
53 several liability who pays the instrument is entitled to receive
54 from any party having the same joint and several liability

1 contribution in accordance with applicable law.

2 c. Discharge of one party having joint and several liability by a
3 person entitled to enforce the instrument does not affect the
4 right under subsection b. of this section of a party having the
5 same joint and several liability to receive contribution from the
6 party discharged.

7 12A:3-117. Other Agreements Affecting Instrument.

8 Subject to applicable law regarding exclusion of proof of
9 contemporaneous or previous agreements, the obligation of a
10 party to an instrument to pay the instrument may be modified,
11 supplemented, or nullified by a separate agreement of the obligor
12 and a person entitled to enforce the instrument, if the instrument
13 is issued or the obligation is incurred in reliance on the
14 agreement or as part of the same transaction giving rise to the
15 agreement. To the extent an obligation is modified,
16 supplemented, or nullified by an agreement under this section,
17 the agreement is a defense to the obligation.

18 12A:3-118. Statute of Limitations.

19 a. Except as provided in subsection e. of this section, an action
20 to enforce the obligation of a party to pay a note payable at a
21 definite time must be commenced within six years after the due
22 date or dates stated in the note or, if a due date is accelerated,
23 within six years after the accelerated due date.

24 b. Except as provided in subsection d. or e. of this section, if
25 demand for payment is made to the maker of a note payable on
26 demand, an action to enforce the obligation of a party to pay the
27 note must be commenced within six years after the demand. If
28 no demand for payment is made to the maker, an action to
29 enforce the note is barred if neither principal nor interest on the
30 note has been paid for a continuous period of 10 years.

31 c. Except as provided in subsection d. of this section, an action
32 to enforce the obligation of a party to an unaccepted draft to pay
33 the draft must be commenced within three years after dishonor
34 of the draft or 10 years after the date of the draft, whichever
35 period expires first.

36 d. An action to enforce the obligation of the acceptor of a
37 certified check or the issuer of a teller's check, cashier's check,
38 or traveler's check must be commenced within three years after
39 demand for payment is made to the acceptor or issuer, as the
40 case may be.

41 e. An action to enforce the obligation of a party to a
42 certificate of deposit to pay the instrument must be commenced
43 within six years after demand for payment is made to the maker,
44 but if the instrument states a due date and the maker is not
45 required to pay before that date, the six-year period begins when
46 a demand for payment is in effect and the due date has passed.

47 f. An action to enforce the obligation of a party to pay an
48 accepted draft, other than a certified check, must be commenced
49 within six years after the due date or dates stated in the draft or
50 acceptance if the obligation of the acceptor is payable at a
51 definite time, or within six years after the date of the
52 acceptance if the obligation of the acceptor is payable on demand.

53 g. Unless governed by other law regarding claims for
54 indemnity or contribution, an action for conversion of an

1 instrument, for money had and received, or like action based on
2 conversion, for breach of warranty, or to enforce an obligation,
3 duty, or right arising under this chapter and not governed by this
4 section must be commenced within three years after the cause of
5 action accrues.

6 12A:3-119. Notice of Right to Defend Action.

7 In an action for breach of an obligation for which a third person
8 is answerable over pursuant to this chapter or chapter 4 of Title
9 12A of the New Jersey Statutes, the defendant may give the third
10 person written notice of the litigation, and the person notified
11 may then give similar notice to any other person who is
12 answerable over. If the notice states that the person notified
13 may come in and defend and that failure to do so will bind the
14 person notified in an action later brought by the person giving the
15 notice as to any determination of fact common to the two
16 litigations, the person notified is so bound unless after reasonable
17 receipt of the notice the person notified does come in and defend.

18
19 PART 2

20 NEGOTIATION, TRANSFER, AND INDORSEMENT

21
22 12A:3-201. Negotiation.

23 a. "Negotiation" means a transfer of possession, whether
24 voluntary or involuntary, of an instrument by a person other than
25 the issuer to a person who thereby becomes its holder.

26 b. Except for negotiation by a remitter, if an instrument is
27 payable to an identified person, negotiation requires transfer of
28 possession of the instrument and its indorsement by the holder. If
29 an instrument is payable to bearer, it may be negotiated by
30 transfer of possession alone.

31 12A:3-202. Negotiation Subject to Rescission.

32 a. Negotiation is effective even if obtained from an infant, a
33 corporation exceeding its powers, or a person without capacity,
34 by fraud, duress, or mistake, or in breach of duty or as part of an
35 illegal transaction.

36 b. To the extent permitted by other law, negotiation may be
37 rescinded or may be subject to other remedies, but those
38 remedies may not be asserted against a subsequent holder in due
39 course or a person paying the instrument in good faith and
40 without knowledge of facts that are a basis for rescission or other
41 remedy.

42 12A:3-203. Transfer of Instrument; Rights Acquired by
43 Transfer.

44 a. An instrument is transferred when it is delivered by a
45 person other than its issuer for the purpose of giving to the
46 person receiving delivery the right to enforce the instrument.

47 b. Transfer of an instrument, whether or not the transfer is a
48 negotiation, vests in the transferee any right of the transferor to
49 enforce the instrument, including any right as a holder in due
50 course, but the transferee cannot acquire rights of a holder in due
51 course by a transfer, directly or indirectly, from a holder in due
52 course if the transferee engaged in fraud or illegality affecting
53 the instrument.

54 c. Unless otherwise agreed, if an instrument is transferred for

1 value and the transferee does not become a holder because of
2 lack of indorsement by the transferor, the transferee has a
3 specifically enforceable right to the unqualified indorsement of
4 the transferor, but negotiation of the instrument does not occur
5 until the indorsement is made.

6 d. If a transferor purports to transfer less than the entire
7 instrument, negotiation of the instrument does not occur. The
8 transferee obtains no rights under this chapter and has only the
9 rights of a partial assignee.

10 12A:3-204. Indorsement.

11 a. "Indorsement" means a signature, other than that of a
12 signer as maker, drawer, or acceptor, that alone or accompanied
13 by other words is made on an instrument for the purpose of
14 negotiating the instrument, restricting payment of the
15 instrument, or incurring indorser's liability on the instrument,
16 but regardless of the intent of the signer, a signature and its
17 accompanying words is an indorsement unless the accompanying
18 words, terms of the instrument, place of the signature, or other
19 circumstances unambiguously indicate that the signature was
20 made for a purpose other than indorsement. For the purpose of
21 determining whether a signature is made on an instrument, a
22 paper affixed to the instrument is a part of the instrument.

23 b. "Indorser" means a person who makes an indorsement.

24 c. For the purpose of determining whether the transferee of an
25 instrument is a holder, an indorsement that transfers a security
26 interest in the instrument is effective as an unqualified
27 indorsement of the instrument.

28 d. If an instrument is payable to a holder under a name that is
29 not the name of the holder, indorsement may be made by the
30 holder in the name stated in the instrument or in the holder's
31 name or both, but signature in both names may be required by a
32 person paying or taking the instrument for value or collection.

33 12A:3-205. Special Indorsement; Blank Indorsement;
34 Anomalous Indorsement.

35 a. If an indorsement is made by the holder of an instrument,
36 whether payable to an identified person or payable to bearer, and
37 the indorsement identifies a person to whom it makes the
38 instrument payable, it is a "special indorsement." When specially
39 indorsed, an instrument becomes payable to the identified person
40 and may be negotiated only by the indorsement of that person.
41 The principles stated in 12A:3-110 apply to special indorsements.

42 b. If an indorsement is made by the holder of an instrument
43 and it is not a special indorsement, it is a "blank indorsement."
44 When indorsed in blank, an instrument becomes payable to bearer
45 and may be negotiated by transfer of possession alone until
46 specially indorsed.

47 c. The holder may convert a blank indorsement that consists
48 only of a signature into a special indorsement by writing, above
49 the signature of the indorser, words identifying the person to
50 whom the instrument is made payable.

51 d. "Anomalous indorsement" means an indorsement made by a
52 person who is not the holder of the instrument. An anomalous
53 indorsement does not affect the manner in which the instrument
54 may be negotiated.

- 1 12A:3-206. Restrictive Indorsement.
- 2 a. An indorsement limiting payment to a particular person or
3 otherwise prohibiting further transfer or negotiation of the
4 instrument is not effective to prevent further transfer or
5 negotiation of the instrument.
- 6 b. An indorsement stating a condition to the right of the
7 indorsee to receive payment does not affect the right of the
8 indorsee to enforce the instrument. A person paying the
9 instrument or taking it for value or collection may disregard the
10 condition, and the rights and liabilities of that person are not
11 affected by whether the condition has been fulfilled.
- 12 c. If an instrument bears an indorsement described in
13 subsection b. of 12A:4-201, or in blank or to a particular bank
14 using the words "for deposit," "for collection," or other words
15 indicating a purpose of having the instrument collected by a bank
16 for the indorser or for a particular account, the following rules
17 apply:
- 18 (1) A person, other than a bank, who purchases the
19 instrument when so indorsed converts the instrument unless the
20 amount paid for the instrument is received by the indorser or
21 applied consistently with the indorsement.
- 22 (2) A depository bank that purchases the instrument or takes
23 it for collection when so indorsed converts the instrument unless
24 the amount paid by the bank with respect to the instrument is
25 received by the indorser or applied consistently with the
26 indorsement.
- 27 (3) A payor bank that is also the depository bank or that
28 takes the instrument for immediate payment over the counter
29 from a person other than a collecting bank converts the
30 instrument unless the proceeds of the instrument are received by
31 the indorser or applied consistently with the indorsement.
- 32 (4) Except as otherwise provided in paragraph (3) of
33 subsection c. of this section, a payor bank or intermediary bank
34 may disregard the indorsement and is not liable if the proceeds of
35 the instrument are not received by the indorser or applied
36 consistently with the indorsement.
- 37 d. Except for an indorsement covered by subsection c. of this
38 section, if an instrument bears an indorsement using words to the
39 effect that payment is to be made to the indorsee as agent,
40 trustee, or other fiduciary for the benefit of the indorser or
41 another person, the following rules apply:
- 42 (1) Unless there is notice of breach of fiduciary duty as
43 provided in 12A:3-307, a person who purchases the instrument
44 from the indorsee or takes the instrument from the indorsee for
45 collection or payment may pay the proceeds of payment or the
46 value given for the instrument to the indorsee without regard to
47 whether the indorsee violates a fiduciary duty to the indorser.
- 48 (2) A subsequent transferee of the instrument or person who
49 pays the instrument is neither given notice nor otherwise
50 affected by the restriction in the indorsement unless the
51 transferee or payor knows that the fiduciary dealt with the
52 instrument or its proceeds in breach of fiduciary duty.
- 53 e. The presence on an instrument of an indorsement to which
54 this section applies does not prevent a purchaser of the

1 instrument from becoming a holder in due course of the
2 instrument unless the purchaser is a converter under subsection c.
3 of this section or has notice or knowledge of breach of fiduciary
4 duty as stated in subsection d. of this section.

5 f. In an action to enforce the obligation of a party to pay the
6 instrument, the obligor has a defense if payment would violate an
7 indorsement to which this section applies and the payment is not
8 permitted by this section.

9 12A:3-207. Reacquisition.

10 Reacquisition of an instrument occurs if it is transferred to a
11 former holder, by negotiation or otherwise. A former holder who
12 reacquires the instrument may cancel indorsements made after
13 the reacquirer first became a holder of the instrument. If the
14 cancellation causes the instrument to be payable to the
15 reacquirer or to bearer, the reacquirer may negotiate the
16 instrument. An indorser whose indorsement is canceled is
17 discharged, and the discharge is effective against any subsequent
18 holder.

19
20 PART 3

21 ENFORCEMENT OF INSTRUMENTS

22
23 12A:3-301. Person Entitled to Enforce Instrument.

24 "Person entitled to enforce" an instrument means the holder of
25 the instrument, a nonholder in possession of the instrument who
26 has the rights of a holder, or a person not in possession of the
27 instrument who is entitled to enforce the instrument pursuant to
28 12A:3-309 or subsection d. of 12A:3-418. A person may be a
29 person entitled to enforce the instrument even though the person
30 is not the owner of the instrument or is in wrongful possession of
31 the instrument.

32 12A:3-302. Holder in Due Course.

33 a. Subject to subsection c. of this section and subsection d. of
34 12A:3-106, "holder in due course" means the holder of an
35 instrument if:

36 (1) the instrument when issued or negotiated to the holder
37 does not bear such apparent evidence of forgery or alteration or
38 is not otherwise so irregular or incomplete as to call into question
39 its authenticity; and

40 (2) the holder took the instrument for value, in good faith,
41 without notice that the instrument is overdue or has been
42 dishonored or that there is an uncured default with respect to
43 payment of another instrument issued as part of the same series,
44 without notice that the instrument contains an unauthorized
45 signature or has been altered, without notice of any claim to the
46 instrument described in 12A:3-306, and without notice that any
47 party has a defense or claim in recoupment described in
48 subsection a. of 12A:3-305.

49 b. Notice of discharge of a party, other than discharge in an
50 insolvency proceeding, is not notice of a defense under subsection
51 a. of this section, but discharge is effective against a person who
52 became a holder in due course with notice of the discharge.
53 Public filing or recording of a document does not of itself
54 constitute notice of a defense, claim in recoupment, or claim to

1 the instrument.

2 c. Except to the extent a transferor or predecessor in interest
3 has rights as a holder in due course, a person does not acquire
4 rights of a holder in due course of an instrument taken by legal
5 process or by purchase in an execution, bankruptcy, or creditor's
6 sale or similar proceeding, by purchase as part of a bulk
7 transaction not in ordinary course of business of the transferor,
8 or as the successor in interest to an estate or other organization.

9 d. If, under paragraph (1) of subsection a. of 12A:3-303, the
10 promise of performance that is the consideration for an
11 instrument has been partially performed, the holder may assert
12 rights as a holder in due course of the instrument only to the
13 fraction of the amount payable under the instrument equal to the
14 value of the partial performance divided by the value of the
15 promised performance.

16 e. If the person entitled to enforce an instrument has only a
17 security interest in the instrument and the person obliged to pay
18 the instrument has a defense, claim in recoupment, or claim to
19 the instrument that may be asserted against the person who
20 granted the security interest, the person entitled to enforce the
21 instrument may assert rights as a holder in due course only to an
22 amount payable under the instrument which, at the time of
23 enforcement of the instrument, does not exceed the amount of
24 the unpaid obligation secured.

25 f. To be effective, notice must be received at a time and in a
26 manner that gives a reasonable opportunity to act on it.

27 g. This section is subject to any law limiting status as a holder
28 in due course in particular classes of transactions.

29 12A:3-303. Value and Consideration.

30 a. An instrument is issued or transferred for value if:

31 (1) the instrument is issued or transferred for a promise of
32 performance, to the extent the promise has been performed;

33 (2) the transferee acquires a security interest or other lien in
34 the instrument other than a lien obtained by judicial proceeding;

35 (3) the instrument is issued or transferred as payment of, or
36 as security for, an antecedent claim against any person, whether
37 or not the claim is due;

38 (4) the instrument is issued or transferred in exchange for a
39 negotiable instrument; or

40 (5) the instrument is issued or transferred in exchange for
41 the incurring of an irrevocable obligation to a third party by the
42 person taking the instrument.

43 b. "Consideration" means any consideration sufficient to
44 support a simple contract. The drawer or maker of an instrument
45 has a defense if the instrument is issued without consideration. If
46 an instrument is issued for a promise of performance, the issuer
47 has a defense to the extent performance of the promise is due
48 and the promise has not been performed. If an instrument is
49 issued for value as stated in subsection a. of this section, the
50 instrument is also issued for consideration.

51 12A:3-304. Overdue Instrument.

52 a. An instrument payable on demand becomes overdue at the
53 earliest of the following times:

54 (1) on the day after the day demand for payment is duly

1 made;

2 (2) if the instrument is a check, 90 days after its date; or

3 (3) if the instrument is not a check, when the instrument has

4 been outstanding for a period of time after its date which is

5 unreasonably long under the circumstances of the particular case

6 in light of the nature of the instrument and usage of the trade.

7 b. With respect to an instrument payable at a definite time the

8 following rules apply:

9 (1) If the principal is payable in installments and a due date

10 has not been accelerated, the instrument becomes overdue upon

11 default under the instrument for nonpayment of an installment,

12 and the instrument remains overdue until the default is cured.

13 (2) If the principal is not payable in installments and the due

14 date has not been accelerated, the instrument becomes overdue

15 on the day after the due date.

16 (3) If a due date with respect to principal has been

17 accelerated, the instrument becomes overdue on the day after

18 the accelerated due date.

19 c. Unless the due date of principal has been accelerated, an

20 instrument does not become overdue if there is default in

21 payment of interest but no default in payment of principal.

22 12A:3-305. Defenses and Claims in Recoupment.

23 a. Except as stated in subsection b. of this section, the right to

24 enforce the obligation of a party to pay an instrument is subject

25 to the following:

26 (1) a defense of the obligor based on infancy of the obligor to

27 the extent it is a defense to a simple contract, duress, lack of

28 legal capacity, or illegality of the transaction which, under other

29 law, nullifies the obligation of the obligor, fraud that induced the

30 obligor to sign the instrument with neither knowledge nor

31 reasonable opportunity to learn of its character or its essential

32 terms, or discharge of the obligor in insolvency proceedings;

33 (2) a defense of the obligor stated in another section of this

34 chapter or a defense of the obligor that would be available if the

35 person entitled to enforce the instrument were enforcing a right

36 to payment under a simple contract; and

37 (3) a claim in recoupment of the obligor against the original

38 payee of the instrument if the claim arose from the transaction

39 that gave rise to the instrument; but the claim of the obligor may

40 be asserted against a transferee of the instrument only to reduce

41 the amount owing on the instrument at the time the action is

42 brought.

43 b. The right of a holder in due course to enforce the obligation

44 of a party to pay the instrument is subject to defenses of the

45 obligor stated in paragraph (1) of subsection a. of this section, but

46 is not subject to defenses of the obligor stated in paragraph (2) of

47 subsection a. of this section or claims in recoupment stated in

48 paragraph (3) of subsection a. of this section against a person

49 other than the holder.

50 c. Except as stated in subsection d. of this section, in an

51 action to enforce the obligation of a party to pay the instrument,

52 the obligor may not assert against the person entitled to enforce

53 the instrument a defense, claim in recoupment, or claim to the

54 instrument (12A:3-306) of another person, but the other person's

1 claim to the instrument may be asserted by the obligor if the
2 other person is joined in the action and personally asserts the
3 claim against the person entitled to enforce the instrument. An
4 obligor is not obliged to pay the instrument if the person seeking
5 enforcement of the instrument does not have rights of a holder in
6 due course and the obligor proves that the instrument is a lost or
7 stolen instrument.

8 d. In an action to enforce the obligation of an accommodation
9 party to pay an instrument, the accommodation party may assert
10 against the person entitled to enforce the instrument any defense
11 or claim in recoupment under subsection a. of this section that
12 the accommodated party could assert against the person entitled
13 to enforce the instrument, except the defenses of discharge in
14 insolvency proceedings, infancy, and lack of legal capacity.

15 12A:3-306. Claims to an Instrument.

16 A person taking an instrument, other than a person having
17 rights of a holder in due course, is subject to a claim of a
18 property or possessory right in the instrument or its proceeds,
19 including a claim to rescind a negotiation and to recover the
20 instrument or its proceeds. A person having rights of a holder in
21 due course takes free of the claim to the instrument.

22 12A:3-307. Notice of Breach of Fiduciary Duty.

23 a. As used in this section:

24 (1) "Fiduciary" means an agent, trustee, partner, corporate
25 officer or director, or other representative owing a fiduciary duty
26 with respect to an instrument.

27 (2) "Represented person" means the principal, beneficiary,
28 partnership, corporation, or other person to whom the duty stated
29 in paragraph (1) is owed.

30 b. If an instrument is taken from a fiduciary for payment or
31 collection or for value, the taker has knowledge of the fiduciary
32 status of the fiduciary, and the represented person makes a claim
33 to the instrument or its proceeds on the basis that the transaction
34 of the fiduciary is a breach of fiduciary duty, the following rules
35 apply:

36 (1) Notice of breach of fiduciary duty by the fiduciary is
37 notice of the claim of the represented person.

38 (2) In the case of an instrument payable to the represented
39 person or the fiduciary as such, the taker has notice of the breach
40 of fiduciary duty if the instrument is taken in payment of or as
41 security for a debt known by the taker to be the personal debt of
42 the fiduciary, taken in a transaction known by the taker to be for
43 the personal benefit of the fiduciary, or deposited to an account
44 other than an account of the fiduciary, as such, or an account of
45 the represented person.

46 (3) If an instrument is issued by the represented person or
47 the fiduciary as such, and made payable to the fiduciary
48 personally, the taker does not have notice of the breach of
49 fiduciary duty unless the taker knows of the breach of fiduciary
50 duty.

51 (4) If an instrument is issued by the represented person or
52 the fiduciary as such, to the taker as payee, the taker has notice
53 of the breach of fiduciary duty if the instrument is taken in
54 payment of or as security for a debt known by the taker to be the

1 personal debt of the fiduciary, taken in a transaction known by
2 the taker to be for the personal benefit of the fiduciary, or
3 deposited to an account other than an account of the fiduciary, as
4 such, or an account of the represented person.

5 12A:3-308. Proof of Signatures and Status as Holder in Due
6 Course.

7 a. In an action with respect to an instrument, the authenticity
8 of, and authority to make, each signature on the instrument is
9 admitted unless specifically denied in the pleadings. If the
10 validity of a signature is denied in the pleadings, the burden of
11 establishing validity is on the person claiming validity, but the
12 signature is presumed to be authentic and authorized unless the
13 action is to enforce the liability of the purported signer and the
14 signer is dead or incompetent at the time of trial of the issue of
15 validity of the signature. If an action to enforce the instrument
16 is brought against a person as the undisclosed principal of a
17 person who signed the instrument as a party to the instrument,
18 the plaintiff has the burden of establishing that the defendant is
19 liable on the instrument as a represented person under subsection
20 a. of 12A:3-402.

21 b. If the validity of signatures is admitted or proved and there
22 is compliance with subsection a. of this section, a plaintiff
23 producing the instrument is entitled to payment if the plaintiff
24 proves entitlement to enforce the instrument under 12A:3-301,
25 unless the defendant proves a defense or claim in recoupment. If
26 a defense or claim in recoupment is proved, the right to payment
27 of the plaintiff is subject to the defense or claim, except to the
28 extent the plaintiff proves that the plaintiff has rights of a holder
29 in due course which are not subject to the defense or claim.

30 12A:3-309. Enforcement of Lost, Destroyed, or Stolen
31 Instrument.

32 a. A person not in possession of an instrument is entitled to
33 enforce the instrument if the person was in possession of the
34 instrument and entitled to enforce it when loss of possession
35 occurred, the loss of possession was not the result of a transfer
36 by the person or a lawful seizure, and the person cannot
37 reasonably obtain possession of the instrument because the
38 instrument was destroyed, its whereabouts cannot be determined,
39 or it is in the wrongful possession of an unknown person or a
40 person that cannot be found or is not amenable to service of
41 process.

42 b. A person seeking enforcement of an instrument under
43 subsection a. of this section must prove the terms of the
44 instrument and the person's right to enforce the instrument. If
45 that proof is made, 12A:3-308 applies to the case as if the person
46 seeking enforcement had produced the instrument. The court
47 may not enter judgment in favor of the person seeking
48 enforcement unless it finds that the person required to pay the
49 instrument is adequately protected against loss that might occur
50 by reason of a claim by another person to enforce the
51 instrument. Adequate protection may be provided by any
52 reasonable means.

53 12A:3-310. Effect of Instrument on Obligation for Which
54 Taken.

- 1 a. Unless otherwise agreed, if a certified check, cashier's
2 check, or teller's check is taken for an obligation, the obligation
3 is discharged to the same extent that discharge would result if an
4 amount of money equal to the amount of the instrument were
5 taken in payment of the obligation. Discharge of the obligation
6 does not affect any liability that the obligor may have as an
7 indorser of the instrument.
- 8 b. Unless otherwise agreed and except as provided in
9 subsection a. of this section, if a note or an uncertified check is
10 taken for an obligation, the obligation is suspended to the same
11 extent the obligation would be discharged if an amount of money
12 equal to the amount of the instrument were taken, and the
13 following rules apply:
- 14 (1) In the case of an uncertified check, suspension of the
15 obligation continues until dishonor of the check or until it is paid
16 or certified. Payment or certification of the check results in
17 discharge of the obligation to the extent of the amount of the
18 check.
- 19 (2) In the case of a note, suspension of the obligation
20 continues until dishonor of the note or until it is paid. Payment
21 of the note results in discharge of the obligation to the extent of
22 the payment.
- 23 (3) Except as provided in paragraph (4) of this subsection b.,
24 if the check or note is dishonored and the obligee of the
25 obligation for which the instrument was taken is the person
26 entitled to enforce the instrument, the obligee may enforce
27 either the instrument or the obligation. In the case of an
28 instrument of a third person which is negotiated to the obligee by
29 the obligor, discharge of the obligor on the instrument also
30 discharges the obligation.
- 31 (4) If the person entitled to enforce the instrument taken for
32 an obligation is a person other than the obligee, the obligee may
33 not enforce the obligation to the extent the obligation is
34 suspended. If the obligee is the person entitled to enforce the
35 instrument but no longer has possession of it because it was lost,
36 stolen, or destroyed, the obligation may not be enforced to the
37 extent of the amount payable on the instrument, and to that
38 extent the obligee's rights against the obligor are limited to
39 enforcement of the instrument.
- 40 c. If an instrument other than one described in subsection a. or
41 b. of this section is taken for an obligation, the effect is that
42 stated in subsection a. of this section if the instrument is one on
43 which a bank is liable as maker or acceptor, or that stated in
44 subsection b. of this section in any other case.
- 45 12A:3-311. Accord and Satisfaction by Use of Instrument.
- 46 a. If a person against whom a claim is asserted proves that
47 that person in good faith tendered an instrument to the claimant
48 as full satisfaction of the claim, the amount of the claim was
49 unliquidated or subject to a bona fide dispute, and the claimant
50 obtained payment of the instrument, the following subsections
51 shall apply.
- 52 b. Unless subsection c. of this section applies, the claim is
53 discharged if the person against whom the claim is asserted
54 proves that the instrument or an accompanying written

1 communication contained a conspicuous statement to the effect
2 that the instrument was tendered as full satisfaction of the claim.

3 c. Subject to subsection d. of this section, a claim is not
4 discharged under subsection b. of this section if either of the
5 following applies:

6 (1) The claimant, if an organization, proves that within a
7 reasonable time before the tender, the claimant sent a
8 conspicuous statement to the person against whom the claim is
9 asserted that communications concerning disputed debts,
10 including an instrument tendered as full satisfaction of a debt,
11 are to be sent to a designated person, office, or place, and the
12 instrument or accompanying communication was not received by
13 that designated person, office, or place.

14 (2) The claimant, whether or not an organization, proves
15 that within 90 days after payment of the instrument, the
16 claimant tendered repayment of the amount of the instrument to
17 the person against whom the claim is asserted. This paragraph
18 does not apply if the claimant is an organization that sent a
19 statement complying with paragraph (1) of this subsection c.

20 d. A claim is discharged if the person against whom the claim
21 is asserted proves that within a reasonable time before collection
22 of the instrument was initiated, the claimant, or an agent of the
23 claimant having direct responsibility with respect to the disputed
24 obligation, knew that the instrument was tendered in full
25 satisfaction of the claim.

26

27

PART 4

28

LIABILITY OF PARTIES

29

30 12A:3-401. Signature.

31 a. A person is not liable on an instrument unless the person
32 signed the instrument, or the person is represented by an agent or
33 representative who signed the instrument and the signature is
34 binding on the represented person under 12A:3-402.

35 b. A signature may be made manually or by means of a device
36 or machine, and by the use of any name, including a trade or
37 assumed name, or by a word, mark, or symbol executed or
38 adopted by a person with present intention to authenticate a
39 writing.

40 12A:3-402. Signature by Representative.

41 a. If a person acting, or purporting to act, as a representative
42 signs an instrument by signing either the name of the represented
43 person or the name of the signer, the represented person is bound
44 by the signature to the same extent the represented person would
45 be bound if the signature were on a simple contract. If the
46 represented person is bound, the signature of the representative
47 is the "authorized signature of the represented person" and the
48 represented person is liable on the instrument, whether or not
49 identified in the instrument.

50 b. If a representative signs the name of the representative to
51 an instrument and the signature is an authorized signature of the
52 represented person, the following rules apply:

53 (1) If the form of the signature shows unambiguously that the
54 signature is made on behalf of the represented person who is

1 identified in the instrument, the representative is not liable on
2 the instrument.

3 (2) Subject to subsection c. of this section, if the form of the
4 signature does not show unambiguously that the signature is made
5 in a representative capacity or the represented person is not
6 identified in the instrument, the representative is liable on the
7 instrument to a holder in due course that took the instrument
8 without notice that the representative was not intended to be
9 liable on the instrument. With respect to any other person, the
10 representative is liable on the instrument unless the
11 representative proves that the original parties did not intend the
12 representative to be liable on the instrument.

13 c. If a representative signs the name of the representative as
14 drawer of a check without indication of the representative status
15 and the check is payable from an account of the represented
16 person who is identified on the check, the signer is not liable on
17 the check if the signature is an authorized signature of the
18 represented person.

19 12A:3-403. Unauthorized Signature.

20 a. Unless otherwise provided in this chapter or chapter 4 of
21 Title 12A of the New Jersey Statutes, an unauthorized signature
22 is ineffective except as the signature of the unauthorized signer
23 in favor of a person who in good faith pays the instrument or
24 takes it for value. An unauthorized signature may be ratified for
25 all purposes of this chapter.

26 b. If the signature of more than one person is required to
27 constitute the authorized signature of an organization, the
28 signature of the organization is unauthorized if one of the
29 required signatures is lacking.

30 c. The civil or criminal liability of a person who makes an
31 unauthorized signature is not affected by any provision of this
32 chapter which makes the unauthorized signature effective for the
33 purposes of this chapter.

34 12A:3-404. Impostors; Fictitious Payees.

35 a. If an impostor, by use of the mails or otherwise, induces the
36 issuer of an instrument to issue the instrument to the impostor,
37 or to a person acting in concert with the impostor, by
38 impersonating the payee of the instrument or a person authorized
39 to act for the payee, an indorsement of the instrument by any
40 person in the name of the payee is effective as the indorsement
41 of the payee in favor of a person who, in good faith, pays the
42 instrument or takes it for value or for collection.

43 b. If a person whose intent determines to whom an instrument
44 is payable (subsection a. or b. of 12A:3-110) does not intend the
45 person identified as payee to have any interest in the instrument,
46 or the person identified as payee of an instrument is a fictitious
47 person, the following rules apply until the instrument is
48 negotiated by special indorsement:

49 (1) Any person in possession of the instrument is its holder.

50 (2) An indorsement by any person in the name of the payee
51 stated in the instrument is effective as the indorsement of the
52 payee in favor of a person who, in good faith, pays the instrument
53 or takes it for value or for collection.

54 c. Under subsection a. or b. of this section, an indorsement is

1 made in the name of a payee if it is made in a name substantially
2 similar to that of the payee or the instrument, whether or not
3 indorsed, is deposited in a depository bank to an account in a
4 name substantially similar to that of the payee.

5 d. With respect to an instrument to which subsection a. or b.
6 of this section applies, if a person paying the instrument or taking
7 it for value or for collection fails to exercise ordinary care in
8 paying or taking the instrument and that failure substantially
9 contributes to loss resulting from payment of the instrument, the
10 person bearing the loss may recover from the person failing to
11 exercise ordinary care to the extent the failure to exercise
12 ordinary care contributed to the loss.

13 12A:3-405. Employer's Responsibility for Fraudulent
14 Indorsement by Employee.

15 a. As used in this section:

16 (1) "Employee" includes an independent contractor and
17 employee of an independent contractor retained by the employer.

18 (2) "Fraudulent indorsement" means, in the case of an
19 instrument payable to the employer, a forged indorsement
20 purporting to be that of the employer, or, in the case of an
21 instrument with respect to which the employer is the issuer, a
22 forged indorsement purporting to be that of the person identified
23 as payee.

24 (3) "Responsibility" with respect to instruments means
25 authority to: sign or indorse instruments on behalf of the
26 employer; process instruments received by the employer for
27 bookkeeping purposes, for deposit to an account, or for other
28 disposition; prepare or process instruments for issue in the name
29 of the employer; supply information determining the names or
30 addresses of payees of instruments to be issued in the name of
31 the employer; control the disposition of instruments to be issued
32 in the name of the employer; or act otherwise with respect to
33 instruments in a responsible capacity. "Responsibility" does not
34 include authority that merely allows an employee to have access
35 to instruments or blank or incomplete instrument forms that are
36 being stored or transported or are part of incoming or outgoing
37 mail, or similar access.

38 b. For the purpose of determining the rights and liabilities of a
39 person who, in good faith, pays an instrument or takes it for value
40 or for collection, if an employer entrusted an employee with
41 responsibility with respect to the instrument and the employee or
42 a person acting in concert with the employee makes a fraudulent
43 indorsement of the instrument, the indorsement is effective as
44 the indorsement of the person to whom the instrument is payable
45 if it is made in the name of that person. If the person paying the
46 instrument or taking it for value or for collection fails to
47 exercise ordinary care in paying or taking the instrument and that
48 failure substantially contributes to loss resulting from the fraud,
49 the person bearing the loss may recover from the person failing
50 to exercise ordinary care to the extent the failure to exercise
51 ordinary care contributed to the loss.

52 c. Under subsection b. of this section, an indorsement is made
53 in the name of the person to whom an instrument is payable if it
54 is made in a name substantially similar to the name of that

1 person or the instrument, whether or not indorsed, is deposited in
2 a depository bank to an account in a name substantially similar to
3 the name of that person.

4 12A:3-406. Negligence Contributing to Forged Signature or
5 Alteration of Instrument.

6 a. A person whose failure to exercise ordinary care
7 substantially contributes to an alteration of an instrument or to
8 the making of a forged signature on an instrument is precluded
9 from asserting the alteration or the forgery against a person who,
10 in good faith, pays the instrument or takes it for value or for
11 collection. ¹[A bank which pays a check on a forged signature
12 without an examination of the signature which would have
13 revealed the forgery may not assert this preclusion against a
14 person who complies with 12A:4-406.]¹

15 b. Under subsection a. of this section, if the person asserting
16 the preclusion fails to exercise ordinary care in paying or taking
17 the instrument and that failure substantially contributes to loss,
18 the loss is allocated between the person precluded and the person
19 asserting the preclusion according to the extent to which the
20 failure of each to exercise ordinary care contributed to the loss.

21 c. Under subsection a. of this section, the burden of proving
22 failure to exercise ordinary care is on the person asserting the
23 preclusion. ¹[The burden of proving that an examination of the
24 check would have revealed a forged signature is on the person
25 claiming that the preclusion does not apply.]¹ Under subsection
26 b. of this section, the burden of proving failure to exercise
27 ordinary care is on the person precluded.

28 12A:3-407. Alteration.

29 a. "Alteration" means an unauthorized change in an
30 instrument that purports to modify in any respect the obligation
31 of a party, or an unauthorized addition of words or numbers or
32 other change to an incomplete instrument relating to the
33 obligation of a party.

34 b. Except as provided in subsection c. of this section, an
35 alteration fraudulently made discharges a party whose obligation
36 is affected by the alteration unless that party assents or is
37 precluded from asserting the alteration. No other alteration
38 discharges a party, and the instrument may be enforced according
39 to its original terms.

40 c. A payor bank or drawee paying a fraudulently altered
41 instrument or a person taking it for value, in good faith and
42 without notice of the alteration, may enforce rights with respect
43 to the instrument according to its original terms, or in the case
44 of an incomplete instrument altered by unauthorized completion,
45 according to its terms as completed.

46 12A:3-408. Drawee not Liable on Unaccepted Draft.

47 A check or other draft does not of itself operate as an
48 assignment of funds in the hands of the drawee available for its
49 payment, and the drawee is not liable on the instrument until the
50 drawee accepts it.

51 12A:3-409. Acceptance of Draft; Certified Check.

52 a. "Acceptance" means the drawee's signed agreement to pay
53 a draft as presented. It must be written on the draft and may
54 consist of the drawee's signature alone. Acceptance may be

1 made at any time and becomes effective when notification
2 pursuant to instructions is given or the accepted draft is
3 delivered for the purpose of giving rights on the acceptance to
4 any person.

5 b. A draft may be accepted although it has not been signed by
6 the drawer, is otherwise incomplete, is overdue, or has been
7 dishonored.

8 c. If a draft is payable at a fixed period after sight and the
9 acceptor fails to date the acceptance, the holder may complete
10 the acceptance by supplying a date in good faith.

11 d. "Certified check" means a check accepted by the bank on
12 which it is drawn. Acceptance may be made as stated in
13 subsection a. of this section or by a writing on the check which
14 indicates that the check is certified. The drawee of a check has
15 no obligation to certify the check, and refusal to certify is not
16 dishonor of the check.

17 12A:3-410. Acceptance Varying Draft.

18 a. If the terms of a drawee's acceptance vary from the terms
19 of the draft as presented, the holder may refuse the acceptance
20 and treat the draft as dishonored. In that case, the drawee may
21 cancel the acceptance.

22 b. The terms of a draft are not varied by an acceptance to pay
23 at a particular bank or place in the United States, unless the
24 acceptance states that the draft is to be paid only at that bank or
25 place.

26 c. If the holder assents to an acceptance varying the terms of
27 a draft, the obligation of each drawer and indorser that does not
28 expressly assent to the acceptance is discharged.

29 12A:3-411. Refusal to Pay Cashier's Checks, Teller's Checks,
30 and Certified Checks.

31 a. As used in this section, "obligated bank" means the
32 acceptor of a certified check or the issuer of a cashier's check or
33 teller's check bought from the issuer.

34 b. If the obligated bank wrongfully refuses to pay a cashier's
35 check or certified check, stops payment of a teller's check, or
36 refuses to pay a dishonored teller's check, the person asserting
37 the right to enforce the check is entitled to compensation for
38 expenses and loss of interest resulting from the nonpayment and
39 may recover consequential damages if the obligated bank refuses
40 to pay after receiving notice of particular circumstances giving
41 rise to the damages.

42 c. Expenses or consequential damages under subsection b. of
43 this section are not recoverable if the refusal of the obligated
44 bank to pay occurs because the bank suspends payments, the
45 obligated bank asserts a claim or defense of the bank that it has
46 reasonable grounds to believe is available against the person
47 entitled to enforce the instrument, the obligated bank has a
48 reasonable doubt whether the person demanding payment is the
49 person entitled to enforce the instrument, or payment is
50 prohibited by law.

51 12A:3-412. Obligation of Issuer of Note or Cashier's Check.

52 The issuer of a note or cashier's check or other draft drawn on
53 the drawer is obliged to pay the instrument according to its terms
54 at the time it was issued or, if not issued, at the time it first

1 came into possession of a holder, or if the issuer signed an
2 incomplete instrument, according to its terms when completed,
3 to the extent stated in 12A:3-115 and 12A:3-407. The obligation
4 is owed to a person entitled to enforce the instrument or to an
5 indorser who paid the instrument under 12A:3-415.

6 12A:3-413. Obligation of Acceptor.

7 a. The acceptor of a draft is obliged to pay the draft according
8 to its terms at the time it was accepted, even though the
9 acceptance states that the draft is payable "as originally drawn"
10 or equivalent terms, if the acceptance varies the terms of the
11 draft, according to the terms of the draft as varied, or if the
12 acceptance is of a draft that is an incomplete instrument,
13 according to its terms when completed, to the extent stated in
14 12A:3-115 and 12A:3-407. The obligation is owed to a person
15 entitled to enforce the draft or to the drawer or an indorser who
16 paid the draft under 12A:3-414 or 12A:3-415.

17 b. If the certification of a check or other acceptance of a
18 draft states the amount certified or accepted, the obligation of
19 the acceptor is that amount. If the certification or acceptance
20 does not state an amount, the amount of the instrument is
21 subsequently raised, and the instrument is then negotiated to a
22 holder in due course, the obligation of the acceptor is the amount
23 of the instrument at the time it was taken by the holder in due
24 course.

25 12A:3-414. Obligation of Drawer.

26 a. This section does not apply to cashier's checks or other
27 drafts drawn on the drawer.

28 b. If an unaccepted draft is dishonored, the drawer is obliged
29 to pay the draft according to its terms at the time it was issued
30 or, if not issued, at the time it first came into possession of a
31 holder, or if the drawer signed an incomplete instrument,
32 according to its terms when completed, to the extent stated in
33 12A:3-115 and 12A:3-407. The obligation is owed to a person
34 entitled to enforce the draft or to an indorser who paid the draft
35 under 12A:3-415.

36 c. If a draft is accepted by a bank, the drawer is discharged,
37 regardless of when or by whom acceptance was obtained.

38 d. If a draft is accepted and the acceptor is not a bank, the
39 obligation of the drawer to pay the draft if the draft is
40 dishonored by the acceptor is the same as the obligation of an
41 indorser under subsections a. and c. of 12A:3-415.

42 e. If a draft states that it is drawn "without recourse" or
43 otherwise disclaims liability of the drawer to pay the draft, the
44 drawer is not liable under subsection b. of this section to pay the
45 draft if the draft is not a check. A disclaimer of the liability
46 stated in subsection b. of this section is not effective if the draft
47 is a check.

48 f. If a check is not presented for payment or given to a
49 depository bank for collection within 30 days after its date, the
50 drawee suspends payments after expiration of the 30-day period
51 without paying the check, and because of the suspension of
52 payments, the drawer is deprived of funds maintained with the
53 drawee to cover payment of the check, the drawer to the extent
54 deprived of funds may discharge its obligation to pay the check

- 1 by assigning to the person entitled to enforce the check the rights
2 of the drawer against the drawee with respect to the funds.
- 3 12A:3-415. Obligation of Indorser.
- 4 a. Subject to subsections b., c. and d. of this section and to
5 subsection d. of 12A:3-419, if an instrument is dishonored, an
6 indorser is obliged to pay the amount due on the instrument
7 according to the terms of the instrument at the time it was
8 indorsed, or if the indorser indorsed an incomplete instrument,
9 according to its terms when completed, to the extent stated in
10 12A:3-115 and 12A:3-407. The obligation of the indorser is owed
11 to a person entitled to enforce the instrument or to a subsequent
12 indorser who paid the instrument under this section.
- 13 b. If an indorsement states that it is made "without recourse"
14 or otherwise disclaims liability of the indorser, the indorser is not
15 liable under subsection a. of this section to pay the instrument.
- 16 c. If notice of dishonor of an instrument is required by
17 12A:3-503 and notice of dishonor complying with that section is
18 not given to an indorser, the liability of the indorser under
19 subsection a. of this section is discharged.
- 20 d. If a draft is accepted by a bank after an indorsement is
21 made, the liability of the indorser under subsection a. of this
22 section is discharged.
- 23 e. If an indorser of a check is liable under subsection a. of this
24 section and the check is not presented for payment, or given to a
25 depository bank for collection, within 30 days after the day the
26 indorsement was made, the liability of the indorser under
27 subsection a. of this section is discharged.
- 28 12A:3-416. Transfer Warranties.
- 29 a. A person who transfers an instrument for consideration
30 warrants to the transferee and, if the transfer is by indorsement,
31 to any subsequent transferee that:
- 32 (1) the warrantor is a person entitled to enforce the
33 instrument;
- 34 (2) all signatures on the instrument are authentic and
35 authorized;
- 36 (3) the instrument has not been altered;
- 37 (4) the instrument is not subject to a defense or claim in
38 recoupment of any party which can be asserted against the
39 warrantor; and
- 40 (5) the warrantor has no knowledge of any insolvency
41 proceeding commenced with respect to the maker or acceptor or,
42 in the case of an unaccepted draft, the drawer.
- 43 b. A person to whom the warranties under subsection a. are
44 made and who took the instrument in good faith may recover
45 from the warrantor as damages for breach of warranty an amount
46 equal to the loss suffered as a result of the breach, but not more
47 than the amount of the instrument plus expenses and loss of
48 interest incurred as a result of the breach.
- 49 c. The warranties stated in subsection a. of this section cannot
50 be disclaimed with respect to checks. Unless notice of a claim
51 for breach of warranty is given to the warrantor within 30 days
52 after the claimant has reason to know of the breach and the
53 identity of the warrantor, the liability of the warrantor under
54 subsection b. of this section is discharged to the extent of any

1 loss caused by the delay in giving notice of the claim.

2 d. A cause of action for breach of warranty under this section
3 accrues when the claimant has reason to know of the breach.

4 12A:3-417. Presentment Warranties.

5 a. If an unaccepted draft is presented to the drawee for
6 payment or acceptance and the drawee pays or accepts the draft,
7 the person obtaining payment or acceptance, at the time of
8 presentment, and a previous transferor of the draft, at the time
9 of transfer, warrant to the drawee making payment or accepting
10 the draft in good faith that:

11 (1) the warrantor is, or was, at the time the warrantor
12 transferred the draft, a person entitled to enforce the draft or
13 authorized to obtain payment or acceptance of the draft on
14 behalf of a person entitled to enforce the draft;

15 (2) the draft has not been altered; and

16 (3) the warrantor has no knowledge that the signature of the
17 drawer of the draft is unauthorized.

18 b. A drawee making payment may recover from any warrantor
19 damages for breach of warranty equal to the amount paid by the
20 drawee less the amount the drawee received or is entitled to
21 receive from the drawer because of the payment. In addition, the
22 drawee is entitled to compensation for expenses and loss of
23 interest resulting from the breach. The right of the drawee to
24 recover damages under this subsection is not affected by any
25 failure of the drawee to exercise ordinary care in making
26 payment. If the drawee accepts the draft, breach of warranty is
27 a defense to the obligation of the acceptor. If the acceptor
28 makes payment with respect to the draft, the acceptor is entitled
29 to recover from any warrantor for breach of warranty the
30 amounts stated in this subsection.

31 c. If a drawee asserts a claim for breach of warranty under
32 subsection a. of this section based on an unauthorized
33 indorsement of the draft or an alteration of the draft, the
34 warrantor may defend by proving that the indorsement is
35 effective under 12A:3-404 or 12A:3-405 or the drawer is
36 precluded under 12A:3-406 or 12A:4-406 from asserting against
37 the drawee the unauthorized indorsement or alteration.

38 d. If a dishonored draft is presented for payment to the drawer
39 or an indorser or any other instrument is presented for payment
40 to a party obliged to pay the instrument, and payment is
41 received, the following rules apply:

42 (1) The person obtaining payment and a prior transferor of
43 the instrument warrant to the person making payment in good
44 faith that the warrantor is, or was, at the time the warrantor
45 transferred the instrument, a person entitled to enforce the
46 instrument or authorized to obtain payment on behalf of a person
47 entitled to enforce the instrument.

48 (2) The person making payment may recover from any
49 warrantor for breach of warranty an amount equal to the amount
50 paid plus expenses and loss of interest resulting from the breach.

51 e. The warranties stated in subsections a. and d. of this section
52 cannot be disclaimed with respect to checks. Unless notice of a
53 claim for breach of warranty is given to the warrantor within 30
54 days after the claimant has reason to know of the breach and the

- 1 identity of the warrantor, the liability of the warrantor under
2 subsection b. or d. of this section is discharged to the extent of
3 any loss caused by the delay in giving notice of the claim.
- 4 f. A cause of action for breach of warranty under this section
5 accrues when the claimant has reason to know of the breach.
- 6 12A:3-418. Payment or Acceptance by Mistake.
- 7 a. Except as provided in subsection c. of this section, if the
8 drawee of a draft pays or accepts the draft and the drawee acted
9 on the mistaken belief that payment of the draft had not been
10 stopped pursuant to 12A:4-403 or the signature of the drawer of
11 the draft was authorized, the drawee may recover the amount of
12 the draft from the person to whom or for whose benefit payment
13 was made or, in the case of acceptance, may revoke the
14 acceptance. Rights of the drawee under this subsection are not
15 affected by failure of the drawee to exercise ordinary care in
16 paying or accepting the draft.
- 17 b. Except as provided in subsection c. of this section, if an
18 instrument has been paid or accepted by mistake and the case is
19 not covered by subsection a. of this section, the person paying or
20 accepting may, to the extent permitted by the law governing
21 mistake and restitution, recover the payment from the person to
22 whom or for whose benefit payment was made or in the case of
23 acceptance, may revoke the acceptance.
- 24 c. The remedies provided by subsection a. or b. of this
25 subsection may not be asserted against a person who took the
26 instrument in good faith and for value or who in good faith
27 changed position in reliance on the payment or acceptance. This
28 subsection does not limit remedies provided by 12A:3-417 or
29 12A:4-407.
- 30 d. Notwithstanding 12A:4-215, if an instrument is paid or
31 accepted by mistake and the payor or acceptor recovers payment
32 or revokes acceptance under subsection a. or b. of this section,
33 the instrument is deemed not to have been paid or accepted and
34 is treated as dishonored, and the person from whom payment is
35 recovered has rights as a person entitled to enforce the
36 dishonored instrument.
- 37 12A:3-419. Instruments Signed for Accommodation.
- 38 a. If an instrument is issued for value given for the benefit of
39 a party to the instrument ("accommodated party") and another
40 party to the instrument ("accommodation party") signs the
41 instrument for the purpose of incurring liability on the instrument
42 without being a direct beneficiary of the value given for the
43 instrument, the instrument is signed by the accommodation party
44 "for accommodation."
- 45 b. An accommodation party may sign the instrument as maker,
46 drawer, acceptor, or indorser and, subject to subsection d. of this
47 section, is obliged to pay the instrument in the capacity in which
48 the accommodation party signs. The obligation of an
49 accommodation party may be enforced notwithstanding any
50 statute of frauds and whether or not the accommodation party
51 receives consideration for the accommodation.
- 52 c. A person signing an instrument is presumed to be an
53 accommodation party and there is notice that the instrument is
54 signed for accommodation if the signature is an anomalous

1 indorsement or is accompanied by words indicating that the
2 signer is acting as surety or guarantor with respect to the
3 obligation of another party to the instrument. Except as provided
4 in 12A:3-605, the obligation of an accommodation party to pay
5 the instrument is not affected by the fact that the person
6 enforcing the obligation had notice when the instrument was
7 taken by that person that the accommodation party signed the
8 instrument for accommodation.

9 d. If the signature of a party to an instrument is accompanied
10 by words indicating unambiguously that the party is guaranteeing
11 collection rather than payment of the obligation of another party
12 to the instrument, the signer is obliged to pay the amount due on
13 the instrument to a person entitled to enforce the instrument
14 only if execution of judgment against the other party has been
15 returned unsatisfied, the other party is insolvent or in an
16 insolvency proceeding, the other party cannot be served with
17 process, or it is otherwise apparent that payment cannot be
18 obtained from the other party.

19 e. An accommodation party who pays the instrument is
20 entitled to reimbursement from the accommodated party and is
21 entitled to enforce the instrument against the accommodated
22 party. An accommodated party who pays the instrument has no
23 right of recourse against, and is not entitled to contribution from,
24 an accommodation party.

25 12A:3-420. Conversion of Instrument.

26 a. The law applicable to conversion of personal property
27 applies to instruments. An instrument is also converted if it is
28 taken by transfer, other than a negotiation, from a person not
29 entitled to enforce the instrument or a bank makes or obtains
30 payment with respect to the instrument for a person not entitled
31 to enforce the instrument or receive payment. An action for
32 conversion of an instrument may not be brought by the issuer or
33 acceptor of the instrument or a payee or indorsee who did not
34 receive delivery of the instrument either directly or through
35 delivery to an agent or a co-payee.

36 b. In an action under subsection a. of this section, the measure
37 of liability is presumed to be the amount payable on the
38 instrument, but recovery may not exceed the amount of the
39 plaintiff's interest in the instrument.

40 c. A representative, other than a depository bank, who has in
41 good faith dealt with an instrument or its proceeds on behalf of
42 one who was not the person entitled to enforce the instrument is
43 not liable in conversion to that person beyond the amount of any
44 proceeds that it has not paid out.

45
46 PART 5
47 DISHONOR
48

49 12A:3-501. Presentment.

50 a. "Presentment" means a demand made by or on behalf of a
51 person entitled to enforce an instrument to pay the instrument
52 made to the drawee or a party obliged to pay the instrument or,
53 in the case of a note or accepted draft payable at a bank, to the
54 bank, or to accept a draft made to the drawee.

1 b. The following rules are subject to chapter 4, agreement of
2 the parties, and clearing-house rules and the like:

3 (1) Presentment may be made at the place of payment of the
4 instrument and must be made at the place of payment if the
5 instrument is payable at a bank in the United States; may be
6 made by any commercially reasonable means, including an oral,
7 written, or electronic communication; is effective when the
8 demand for payment or acceptance is received by the person to
9 whom presentment is made; and is effective if made to any one
10 of two or more makers, acceptors, drawees, or other payors.

11 (2) Upon demand of the person to whom presentment is
12 made, the person making presentment must exhibit the
13 instrument, give reasonable identification and, if presentment is
14 made on behalf of another person, reasonable evidence of
15 authority to do so, and sign a receipt on the instrument for any
16 payment made or surrender the instrument if full payment is
17 made.

18 (3) Without dishonoring the instrument, the party to whom
19 presentment is made may return the instrument for lack of a
20 necessary indorsement, or refuse payment or acceptance for
21 failure of the presentment to comply with the terms of the
22 instrument, an agreement of the parties, or other applicable law
23 or rule.

24 (4) The party to whom presentment is made may treat
25 presentment as occurring on the next business day after the day
26 of presentment if the party to whom presentment is made has
27 established a cut-off hour not earlier than 2 p.m. for the receipt
28 and processing of instruments presented for payment or
29 acceptance and presentment is made after the cut-off hour.

30 12A:3-502. Dishonor.

31 a. Dishonor of a note is governed by the following rules:

32 (1) If the note is payable on demand, the note is dishonored if
33 presentment is duly made to the maker and the note is not paid
34 on the day of presentment.

35 (2) If the note is not payable on demand and is payable at or
36 through a bank or the terms of the note require presentment, the
37 note is dishonored if presentment is duly made and the note is not
38 paid on the day it becomes payable or the day of presentment,
39 whichever is later.

40 (3) If the note is not payable on demand and paragraph (2)
41 does not apply, the note is dishonored if it is not paid on the day
42 it becomes payable.

43 b. Dishonor of an unaccepted draft other than a documentary
44 draft is governed by the following rules:

45 (1) If a check is duly presented for payment to the payor
46 bank otherwise than for immediate payment over the counter, the
47 check is dishonored if the payor bank makes timely return of the
48 check or sends timely notice of dishonor or nonpayment under
49 12A:4-301 or 12A:4-302, or becomes accountable for the amount
50 of the check under 12A:4-302.

51 (2) If a draft is payable on demand and paragraph (1) does not
52 apply, the draft is dishonored if presentment for payment is duly
53 made to the drawee and the draft is not paid on the day of
54 presentment.

- 1 (3) If a draft is payable on a date stated in the draft, the
2 draft is dishonored if presentment for payment is duly made to
3 the drawee and payment is not made on the day the draft
4 becomes payable or the day of presentment, whichever is later,
5 or presentment for acceptance is duly made before the day the
6 draft becomes payable and the draft is not accepted on the day of
7 presentment.
- 8 (4) If a draft is payable on elapse of a period of time after
9 sight or acceptance, the draft is dishonored if presentment for
10 acceptance is duly made and the draft is not accepted on the day
11 of presentment.
- 12 c. Dishonor of an unaccepted documentary draft occurs
13 according to the rules stated in paragraphs (2), (3) and (4) of
14 subsection b. of this section, except that payment or acceptance
15 may be delayed without dishonor until no later than the close of
16 the third business day of the drawee following the day on which
17 payment or acceptance is required by those paragraphs.
- 18 d. Dishonor of an accepted draft is governed by the following
19 rules:
- 20 (1) If the draft is payable on demand, the draft is dishonored
21 if presentment for payment is duly made to the acceptor and the
22 draft is not paid on the day of presentment.
- 23 (2) If the draft is not payable on demand, the draft is
24 dishonored if presentment for payment is duly made to the
25 acceptor and payment is not made on the day it becomes payable
26 or the day of presentment, whichever is later.
- 27 e. In any case in which presentment is otherwise required for
28 dishonor under this section and presentment is excused under
29 12A:3-504, dishonor occurs without presentment if the
30 instrument is not duly accepted or paid.
- 31 f. If a draft is dishonored because timely acceptance of the
32 draft was not made and the person entitled to demand acceptance
33 consents to a late acceptance, from the time of acceptance the
34 draft is treated as never having been dishonored.
- 35 12A:3-503. Notice of Dishonor.
- 36 a. The obligation of an indorser stated in subsection a. of
37 12A:3-415 and the obligation of a drawer stated in subsection d.
38 of 12A:3-414 may not be enforced unless the indorser or drawer
39 is given notice of dishonor of the instrument complying with this
40 section or notice of dishonor is excused under subsection b. of
41 12A:3-504.
- 42 b. Notice of dishonor may be given by any person; may be
43 given by any commercially reasonable means, including an oral,
44 written, or electronic communication; and is sufficient if it
45 reasonably identifies the instrument and indicates that the
46 instrument has been dishonored or has not been paid or accepted.
47 Return of an instrument given to a bank for collection is
48 sufficient notice of dishonor.
- 49 c. Subject to subsection c. of 12A:3-504, with respect to an
50 instrument taken for collection by a collecting bank, notice of
51 dishonor must be given by the bank before midnight of the next
52 banking day following the banking day on which the bank receives
53 notice of dishonor of the instrument, or by any other person
54 within 30 days following the day on which the person receives

1 notice of dishonor. With respect to any other instrument, notice
2 of dishonor must be given within 30 days following the day on
3 which dishonor occurs.

4 12A:3-504. Excused Presentment and Notice of Dishonor.

5 a. Presentment for payment or acceptance of an instrument is
6 excused if the person entitled to present the instrument cannot
7 with reasonable diligence make presentment, the maker or
8 acceptor has repudiated an obligation to pay the instrument or is
9 dead or in insolvency proceedings, by the terms of the instrument
10 presentment is not necessary to enforce the obligation of
11 indorsers or the drawer, the drawer or indorser whose obligation
12 is being enforced has waived presentment or otherwise has no
13 reason to expect or right to require that the instrument be paid
14 or accepted, or the drawer instructed the drawee not to pay or
15 accept the draft or the drawee was not obligated to the drawer to
16 pay the draft.

17 b. Notice of dishonor is excused if by the terms of the
18 instrument notice of dishonor is not necessary to enforce the
19 obligation of a party to pay the instrument, or the party whose
20 obligation is being enforced waived notice of dishonor. A waiver
21 of presentment is also a waiver of notice of dishonor.

22 c. Delay in giving notice of dishonor is excused if the delay
23 was caused by circumstances beyond the control of the person
24 giving the notice and the person giving the notice exercised
25 reasonable diligence after the cause of the delay ceased to
26 operate.

27 12A:3-505. Evidence of Dishonor.

28 a. The following are admissible as evidence and create a
29 presumption of dishonor and of any notice of dishonor stated:

30 (1) a document regular in form as provided in subsection b. of
31 this section which purports to be a protest;

32 (2) a purported stamp or writing of the drawee, payor bank,
33 or presenting bank on or accompanying the instrument stating
34 that acceptance or payment has been refused unless reasons for
35 the refusal are stated and the reasons are not consistent with
36 dishonor;

37 (3) a book or record of the drawee, payor bank, or collecting
38 bank, kept in the usual course of business which shows dishonor,
39 even if there is no evidence of who made the entry.

40 b. A protest is a certificate of dishonor made by a United
41 States consul or vice consul, or a notary public or other person
42 authorized to administer oaths by the law of the place where
43 dishonor occurs. It may be made upon information satisfactory to
44 that person. The protest must identify the instrument and certify
45 either that presentment has been made or, if not made, the
46 reason why it was not made, and that the instrument has been
47 dishonored by nonacceptance or nonpayment. The protest may
48 also certify that notice of dishonor has been given to some or all
49 parties.

50

51

PART 6

52

DISCHARGE AND PAYMENT

53

54

12A:3-601. Discharge and Effect of Discharge.

1 a. The obligation of a party to pay the instrument is
2 discharged as stated in this chapter or by an act or agreement
3 with the party which would discharge an obligation to pay money
4 under a simple contract.

5 b. Discharge of the obligation of a party is not effective
6 against a person acquiring rights of a holder in due course of the
7 instrument without notice of the discharge.

8 12A:3-602. Payment.

9 a. Subject to subsection b. of this section, an instrument is
10 paid to the extent payment is made by or on behalf of a party
11 obliged to pay the instrument, and to a person entitled to enforce
12 the instrument. To the extent of the payment, the obligation of
13 the party obliged to pay the instrument is discharged even though
14 payment is made with knowledge of a claim to the instrument
15 under 12A:3-306 by another person.

16 b. The obligation of a party to pay the instrument is not
17 discharged under subsection a. of this section if:

18 (1) a claim to the instrument under 12A:3-306 is enforceable
19 against the party receiving payment and payment is made with
20 knowledge by the payor that payment is prohibited by injunction
21 or similar process of a court of competent jurisdiction, or in the
22 case of an instrument other than a cashier's check, teller's
23 check, or certified check, the party making payment accepted,
24 from the person having a claim to the instrument, indemnity
25 against loss resulting from refusal to pay the person entitled to
26 enforce the instrument; or

27 (2) the person making payment knows that the instrument is
28 a stolen instrument and pays a person it knows is in wrongful
29 possession of the instrument.

30 12A:3-603. Tender of Payment.

31 a. If tender of payment of an obligation to pay an instrument
32 is made to a person entitled to enforce the instrument, the effect
33 of tender is governed by principles of law applicable to tender of
34 payment under a simple contract.

35 b. If tender of payment of an obligation to pay an instrument
36 is made to a person entitled to enforce the instrument and the
37 tender is refused, there is discharge, to the extent of the amount
38 of the tender, of the obligation of an indorser or accommodation
39 party having a right of recourse with respect to the obligation to
40 which the tender relates.

41 c. If tender of payment of an amount due on an instrument is
42 made to a person entitled to enforce the instrument, the
43 obligation of the obligor to pay interest after the due date on the
44 amount tendered is discharged. If presentment is required with
45 respect to an instrument and the obligor is able and ready to pay
46 on the due date at every place of payment stated in the
47 instrument, the obligor is deemed to have made tender of
48 payment on the due date to the person entitled to enforce the
49 instrument.

50 12A:3-604. Discharge by Cancellation or Renunciation.

51 a. A person entitled to enforce an instrument, with or without
52 consideration, may discharge the obligation of a party to pay the
53 instrument by an intentional voluntary act, such as surrender of
54 the instrument to the party, destruction, mutilation, or

- 1 cancellation of the instrument, cancellation or striking out of the
2 party's signature, or the addition of words to the instrument
3 indicating discharge, or by agreeing not to sue or otherwise
4 renouncing rights against the party by a signed writing.
- 5 b. Cancellation or striking out of an indorsement pursuant to
6 subsection a. of this section does not affect the status and rights
7 of a party derived from the indorsement.
- 8 12A:3-605. Discharge of Indorsers and Accommodation Parties.
- 9 a. In this section, the term "indorser" includes a drawer having
10 the obligation described in subsection d. of 12A:3-414.
- 11 b. Discharge, under 12A:3-604, of the obligation of a party to
12 pay an instrument does not discharge the obligation of an indorser
13 or accommodation party having a right of recourse against the
14 discharged party.
- 15 c. If a person entitled to enforce an instrument agrees, with or
16 without consideration, to an extension of the due date of the
17 obligation of a party to pay the instrument, the extension
18 discharges an indorser or accommodation party having a right of
19 recourse against the party whose obligation is extended to the
20 extent the indorser or accommodation party proves that the
21 extension caused loss to the indorser or accommodation party
22 with respect to the right of recourse.
- 23 d. If a person entitled to enforce an instrument agrees, with or
24 without consideration, to a material modification of the
25 obligation of a party other than an extension of the due date, the
26 modification discharges the obligation of an indorser or
27 accommodation party having a right of recourse against the
28 person whose obligation is modified to the extent the
29 modification causes loss to the indorser or accommodation party
30 with respect to the right of recourse. The loss suffered by the
31 indorser or accommodation party as a result of the modification
32 is equal to the amount of the right of recourse unless the person
33 enforcing the instrument proves that no loss was caused by the
34 modification or that the loss caused by the modification was an
35 amount less than the amount of the right of recourse.
- 36 e. If the obligation of a party to pay an instrument is secured
37 by an interest in collateral and a person entitled to enforce the
38 instrument impairs the value of the interest in collateral, the
39 obligation of an indorser or accommodation party having a right
40 of recourse against the obligor is discharged to the extent of the
41 impairment. The value of an interest in collateral is impaired to
42 the extent the value of the interest is reduced to an amount less
43 than the amount of the right of recourse of the party asserting
44 discharge, or the reduction in value of the interest causes an
45 increase in the amount by which the amount of the right of
46 recourse exceeds the value of the interest. The burden of proving
47 impairment is on the party asserting discharge.
- 48 f. If the obligation of a party is secured by an interest in
49 collateral not provided by an accommodation party and a person
50 entitled to enforce the instrument impairs the value of the
51 interest in collateral, the obligation of any party who is jointly
52 and severally liable with respect to the secured obligation is
53 discharged to the extent the impairment causes the party
54 asserting discharge to pay more than that party would have been

1 obliged to pay, taking into account rights of contribution, if
2 impairment had not occurred. If the party asserting discharge is
3 an accommodation party not entitled to discharge under
4 subsection e. of this section, the party is deemed to have a right
5 to contribution based on joint and several liability rather than a
6 right to reimbursement. The burden of proving impairment is on
7 the party asserting discharge.

8 g. Under subsection e. or f. of this section, impairing value of
9 an interest in collateral includes failure to obtain or maintain
10 perfection or recordation of the interest in collateral, release of
11 collateral without substitution of collateral of equal value,
12 failure to perform a duty to preserve the value of collateral
13 owed, under chapter 9 or other law, to a debtor or surety or other
14 person secondarily liable, or failure to comply with applicable law
15 in disposing of collateral.

16 h. An accommodation party is not discharged under subsection
17 c., d. or e. of this section unless the person entitled to enforce
18 the instrument knows of the accommodation or has notice under
19 subsection c. of 12A:3-419 that the instrument was signed for
20 accommodation.

21 i. A party is not discharged under this section if the party
22 asserting discharge consents to the event or conduct that is the
23 basis of the discharge, or the instrument or a separate agreement
24 of the party provides for waiver of discharge under this section
25 either specifically or by general language indicating that parties
26 waive defenses based on suretyship or impairment of collateral.

27

28 2. Chapter 4 of Title 12A of the New Jersey Statutes
29 (N.J.S.12A:4-101 through 12A:4-504, including any amendments
30 thereto and P.L.1964, c.166, s.6 (C.12A:4-109)) is repealed and
31 replaced as follows:

32

33 CHAPTER 4 - BANK DEPOSITS AND COLLECTIONS

34

35 12A:4-101. Short Title.

36 This chapter may be cited as Uniform Commercial Code --
37 Bank Deposits and Collections.

38 12A:4-102. Applicability.

39 a. To the extent that items within this chapter are also within
40 chapters 3 and 8, they are subject to those chapters. If there is
41 conflict, this chapter governs chapter 3, but chapter 8 governs
42 this chapter.

43 b. The liability of a bank for action or non-action with respect
44 to an item handled by it for purposes of presentment, payment, or
45 collection is governed by the law of the place where the bank is
46 located. In the case of action or non-action by or at a branch or
47 separate office of a bank, its liability is governed by the law of
48 the place where the branch or separate office is located.

49 12A:4-103. Variation by Agreement; Measure of Damages;
50 Action Constituting Ordinary Care.

51 a. The effect of the provisions of this chapter may be varied
52 by agreement, but the parties to the agreement cannot disclaim a
53 bank's responsibility for its lack of good faith or failure to
54 exercise ordinary care or limit the measure of damages for the

- 1 lack or failure. However, the parties may determine by
2 agreement the standards by which the bank's responsibility is to
3 be measured if those standards are not manifestly unreasonable.
- 4 b. Federal Reserve regulations and operating circulars,
5 clearing-house rules, and the like, have the effect of agreements
6 under subsection a. of this section, whether or not specifically
7 assented to by all parties interested in items handled.
- 8 c. Action or non-action approved by this chapter or pursuant
9 to Federal Reserve regulations or operating circulars is the
10 exercise of ordinary care and, in the absence of special
11 instructions, action or non-action consistent with clearing-house
12 rules and the like or with a general banking usage not disapproved
13 by this chapter, is prima facie the exercise of ordinary care.
- 14 d. The specification or approval of certain procedures by this
15 chapter is not disapproval of other procedures that may be
16 reasonable under the circumstances.
- 17 e. The measure of damages for failure to exercise ordinary
18 care in handling an item is the amount of the item reduced by an
19 amount that could not have been realized by the exercise of
20 ordinary care. If there is also bad faith it includes any other
21 damages the party suffered as a proximate consequence.
- 22 12A:4-104. Definitions and Index of Definitions.
- 23 a. In this chapter, unless the context otherwise requires:
- 24 (1) "Account" means any deposit or credit account with a
25 bank, including a demand, time, savings, passbook, share draft, or
26 like account, other than an account evidenced by a certificate of
27 deposit;
- 28 (2) "Afternoon" means the period of a day between noon and
29 midnight;
- 30 (3) "Banking day" means the part of a day on which a bank is
31 open to the public for carrying on substantially all of its banking
32 functions;
- 33 (4) "Clearing house" means an association of banks or other
34 payors regularly clearing items;
- 35 (5) "Customer" means a person having an account with a
36 bank or for whom a bank has agreed to collect items, including a
37 bank that maintains an account at another bank;
- 38 (6) "Documentary draft" means a draft to be presented for
39 acceptance or payment if specified documents, certificated
40 securities (12A:8-102) or instructions for uncertificated
41 securities (12A:8-308), or other certificates, statements, or the
42 like are to be received by the drawee or other payor before
43 acceptance or payment of the draft;
- 44 (7) "Draft" means a draft as defined in 12A:3-104 or an
45 item, other than an instrument, that is an order.
- 46 (8) "Drawee" means a person ordered in a draft to make
47 payment.
- 48 (9) "Item" means an instrument or a promise or order to pay
49 money handled by a bank for collection or payment. The term
50 does not include a payment order governed by chapter 4A or a
51 credit or debit card slip;
- 52 (10) "Midnight deadline" with respect to a bank is midnight
53 on its next banking day following the banking day on which it
54 receives the relevant item or notice or from which the time for

1 taking action commences to run, whichever is later;

2 (11) "Settle" means to pay in cash, by clearing-house
3 settlement, in a charge or credit or by remittance, or otherwise
4 as agreed. A settlement may be either provisional or final.

5 (12) "Suspends payments" with respect to a bank means that
6 it has been closed by order of the supervisory authorities, that a
7 public officer has been appointed to take it over, or that it ceases
8 or refuses to make payments in the ordinary course of business.

9 b. Other definitions applying to this chapter and the sections
10 in which they appear are:

11	"Agreement for electronic presentment....	12A:4-110
12	"Bank".....	12A:4-105
13	"Collecting bank".....	12A:4-105
14	"Depository bank".....	12A:4-105
15	"Intermediary bank".....	12A:4-105
16	"Payor bank".....	12A:4-105
17	"Presenting bank".....	12A:4-105
18	"Presentment notice".....	12A:4-110

19 c. The following definitions in other chapters apply to this
20 chapter:

21	"Acceptance".....	12A:3-409
22	"Alteration".....	12A:3-407
23	"Cashier's check".....	12A:3-104
24	"Certificate of deposit".....	12A:3-104
25	"Certified check".....	12A:3-409
26	"Check".....	12A:3-104
27	"Good faith".....	12A:3-103
28	"Holder in due course".....	12A:3-302
29	"Instrument".....	12A:3-104
30	"Notice of dishonor".....	12A:3-503
31	"Order".....	12A:3-103
32	"Ordinary care".....	12A:3-103
33	"Person entitled to enforce".....	12A:3-301
34	"Presentment".....	12A:3-501
35	"Promise".....	12A:3-103
36	"Prove".....	12A:3-103
37	"Teller's check".....	12A:3-104
38	"Unauthorized signature".....	12A:3-403

39 d. In addition, chapter 1 contains general definitions and
40 principles of construction and interpretation applicable
41 throughout this chapter.

42 12A:4-105. "Bank"; "Depository Bank"; "Payor Bank";
43 "Intermediary Bank"; "Collecting Bank"; "Presenting Bank".

44 As used in this chapter:

45 a. "Bank" means a person engaged in the business of banking,
46 including a savings bank, savings and loan association, credit
47 union, or trust company.

48 b. "Depository bank" means the first bank to take an item
49 even though it is also the payor bank, unless the item is presented
50 for immediate payment over the counter;

51 c. "Payor bank" means a bank that is the drawee of a draft;

52 d. "Intermediary bank" means a bank to which an item is
53 transferred in course of collection except the depository or payor
54 bank;

1 e. "Collecting bank" means a bank handling an item for
2 collection except the payor bank;

3 f. "Presenting bank" means a bank presenting an item except a
4 payor bank.

5 12A:4-106. Payable Through or Payable At Bank; Collecting
6 Bank.

7 a. If an item states that it is "payable through" a bank
8 identified in the item, the item designates the bank as a
9 collecting bank and does not by itself authorize the bank to pay
10 the item, and the item may be presented for payment only by or
11 through the bank.

12 b. If an item states that it is "payable at" a bank identified in
13 the item, the item is equivalent to a draft drawn on the bank.

14 c. If a draft names a nonbank drawee and it is unclear whether
15 a bank named in the draft is a co-drawee or a collecting bank,
16 the bank is a collecting bank.

17 12A:4-107. Separate Office of Bank.

18 A branch or separate office of a bank is a separate bank for the
19 purpose of computing the time within which and determining the
20 place at or to which action may be taken or notice or orders must
21 be given under this chapter and under chapter 3.

22 12A:4-108. Time of Receipt of Items.

23 a. For the purpose of allowing time to process items, prove
24 balances, and make the necessary entries on its books to
25 determine its position for the day, a bank may fix an afternoon
26 hour of 2 P.M. or later as a cut-off hour for the handling of
27 money and items and the making of entries on its books.

28 b. An item or deposit of money received on any day after a
29 cutoff hour so fixed or after the close of the banking day may be
30 treated as being received at the opening of the next banking day.

31 12A:4-109. Delays.

32 a. Unless otherwise instructed, a collecting bank in a good
33 faith effort to secure payment of a specific item drawn on a
34 payor other than a bank, and with or without the approval of any
35 person involved, may waive, modify, or extend time limits
36 imposed or permitted by Title 12A for a period not exceeding two
37 additional banking days without discharge of drawers or indorsers
38 or liability to its transferor or a prior party.

39 b. Delay by a collecting bank or payor bank beyond time limits
40 prescribed or permitted by Title 12A or by instructions is excused
41 if the delay is caused by interruption of communication or
42 computer facilities, suspension of payments by another bank, war,
43 emergency conditions, failure of equipment, or other
44 circumstances beyond the control of the bank, and the bank
45 exercises such diligence as the circumstances require.

46 12A:4-110. Electronic Presentment.

47 a. "Agreement for electronic presentment" means an
48 agreement, clearing-house rule, or Federal Reserve regulation or
49 operating circular, providing that presentment of an item may be
50 made by transmission of an image of an item or information
51 describing the item ("presentment notice") rather than delivery
52 of the item itself. The agreement may provide for procedures
53 governing retention, presentment, payment, dishonor, and other
54 matters concerning items subject to the agreement.

1 b. Presentment of an item pursuant to an agreement for
2 presentment is made when the presentment notice is received.

3 c. If presentment is made by presentment notice, a reference
4 to "item" or "check" in this chapter means the presentment
5 notice unless the context otherwise indicates.

6 12A:4-111. Statute of Limitations.

7 An action to enforce an obligation, duty, or right arising under
8 this chapter must be commenced within three years after the
9 cause of action accrues.

10 12A:4-201. Status of Collecting Bank as Agent and Provisional
11 Status of Credits; Applicability of Chapter; Item Indorsed "Pay
12 Any Bank."

13 a. Unless a contrary intent clearly appears and before the time
14 that a settlement given by a collecting bank for an item is or
15 becomes final, the bank, with respect to the item, is an agent or
16 sub-agent of the owner of the item and any settlement given for
17 the item is provisional. This provision applies regardless of the
18 form of indorsement or lack of indorsement and even though
19 credit given for the item is subject to immediate withdrawal as
20 of right or is in fact withdrawn; but the continuance of ownership
21 of an item by its owner and any rights of the owner to proceeds
22 of the item are subject to rights of a collecting bank, such as
23 those resulting from outstanding advances on the item and rights
24 of recoupment or setoff. If an item is handled by banks for
25 purposes of presentment, payment, collection, or return, the
26 relevant provisions of this chapter apply even though action of
27 the parties clearly establishes that a particular bank has
28 purchased the item and is the owner of it.

29 b. After an item has been indorsed with the words "pay any
30 bank" or the like, only a bank may acquire the rights of a holder
31 until the item has been:

32 (1) returned to the customer initiating collection; or

33 (2) specially indorsed by a bank to a person who is not a bank.

34 12A:4-202. Responsibility for Collection or Return; When
35 Action is Timely.

36 a. A collecting bank must exercise ordinary care in:

37 (1) presenting an item or sending it for presentment;

38 (2) sending notice of dishonor or nonpayment or returning an
39 item other than a documentary draft to the bank's transferor
40 after learning that the item has not been paid or accepted, as the
41 case may be;

42 (3) settling for an item when the bank receives final
43 settlement; and

44 (4) notifying its transferor of any loss or delay in transit
45 within a reasonable time after discovery thereof.

46 b. A collecting bank exercises ordinary care under subsection
47 a. of this section by taking proper action before its midnight
48 deadline following receipt of an item, notice, or settlement.
49 Taking proper action within a reasonably longer time may
50 constitute the exercise of ordinary care, but the bank has the
51 burden of establishing timeliness.

52 c. Subject to paragraph (1) of subsection a. of this section, a
53 bank is not liable for the insolvency, neglect, misconduct,
54 mistake, or default of another bank or person or for loss or

- 1 destruction of an item in the possession of others or in transit.
- 2 12A:4-203. Effect of Instructions.
- 3 Subject to the provisions of chapter 3 concerning conversion of
4 instruments (12A:3-420) and restrictive indorsements
5 (12A:3-206), only a collecting bank's transferor can give
6 instructions that affect the bank or constitute notice to it, and a
7 collecting bank is not liable to prior parties for any action taken
8 pursuant to the instructions or in accordance with any agreement
9 with its transferor.
- 10 12A:4-204. Methods of Sending and Presenting; Sending
11 Directly to Payor Bank.
- 12 a. A collecting bank shall send items by a reasonably prompt
13 method, taking into consideration relevant instructions, the
14 nature of the item, the number of those items on hand, the cost
15 of collection involved, and the method generally used by it or
16 others to present those items.
- 17 b. A collecting bank may send:
- 18 (1) an item directly to the payor bank;
- 19 (2) an item to a nonbank payor if authorized by its
20 transferor; and
- 21 (3) an item other than documentary drafts to a nonbank
22 payor, if authorized by Federal Reserve regulation or operating
23 circular, clearing-house rule, or the like.
- 24 c. Presentment may be made by a presenting bank at a place
25 where the payor bank or other payor has requested that
26 presentment be made.
- 27 12A:4-205. Depository Bank Holder of Unindorsed Item.
- 28 If a customer delivers an item to a depository bank for
29 collection:
- 30 a. the depository bank becomes a holder of the item at the
31 time it receives the item for collection if the customer at the
32 time of delivery was a holder of the item, whether or not the
33 customer indorses the item, and, if the bank satisfies the other
34 requirements of 12A:3-302, it is a holder in due course; and
- 35 b. the depository bank warrants to collecting banks, the payor
36 bank or other payor, and the drawer that the amount of the item
37 was paid to the customer or deposited to the customer's account.
- 38 12A:4-206. Transfer Between Banks.
- 39 Any agreed method that identifies the transferor bank is
40 sufficient for the item's further transfer to another bank.
- 41 12A:4-207. Transfer Warranties.
- 42 a. A customer or collecting bank that transfers an item and
43 receives a settlement or other consideration warrants to the
44 transferee and to any subsequent collecting bank that:
- 45 (1) the warrantor is a person entitled to enforce the item;
- 46 (2) all signatures on the item are authentic and authorized;
- 47 (3) the item has not been altered;
- 48 (4) the item is not subject to a defense or claim in
49 recoupment under subsection a. of 12A:3-305 of any party that
50 can be asserted against the warrantor; and
- 51 (5) the warrantor has no knowledge of any insolvency
52 proceeding commenced with respect to the maker or acceptor or,
53 in the case of an unaccepted draft, the drawer.
- 54 b. If an item is dishonored, a customer or collecting bank

1 transferring the item and receiving settlement or other
2 consideration is obliged to pay the amount due on the item
3 according to the terms of the item at the time it was transferred,
4 or if the transfer was of an incomplete item, according to its
5 terms when completed as stated in 12A:3-115 and 12A:3-407.
6 The obligation of a transferor is owed to the transferee and to
7 any subsequent collecting bank that takes the item in good faith.
8 A transferor cannot disclaim its obligation under this subsection
9 by an indorsement stating that it is made "without recourse" or
10 otherwise disclaiming liability.

11 c. A person to whom the warranties under subsection (a) are
12 made and who took the item in good faith may recover from the
13 warrantor as damages for breach of warranty an amount equal to
14 the loss suffered as a result of the breach, but not more than the
15 amount of the item plus expenses and loss of interest incurred as
16 a result of the breach.

17 d. The warranties stated in subsection a. of this section cannot
18 be disclaimed with respect to checks. Unless notice of a claim
19 for breach of warranty is given to the warrantor within 30 days
20 after the claimant has reason to know of the breach and the
21 identity of the warrantor, the warrantor is discharged to the
22 extent of any loss caused by the delay in giving notice of the
23 claim.

24 e. A cause of action for breach of warranty under this section
25 accrues when the claimant has reason to know of the breach.

26 12A:4-208. Presentment Warranties.

27 a. If an unaccepted draft is presented to the drawee for
28 payment or acceptance and the drawee pays or accepts the draft,
29 the person obtaining payment or acceptance, at the time of
30 presentment, and a previous transferor of the draft, at the time
31 of transfer, warrant to the drawee that pays or accepts the draft
32 in good faith that:

33 (1) the warrantor is, or was, at the time the warrantor
34 transferred the draft, a person entitled to enforce the draft or
35 authorized to obtain payment or acceptance of the draft on
36 behalf of a person entitled to enforce the draft;

37 (2) the draft has not been altered; and

38 (3) the warrantor has no knowledge that the signature of the
39 purported drawer of the draft is unauthorized.

40 b. A drawee making payment may recover from a warrantor
41 damages for breach of warranty equal to the amount paid by the
42 drawee less the amount the drawee received or is entitled to
43 receive from the drawer because of the payment. In addition, the
44 drawee is entitled to compensation for expenses and loss of
45 interest resulting from the breach. The right of the drawee to
46 recover damages under this subsection is not affected by any
47 failure of the drawee to exercise ordinary care in making
48 payment. If the drawee accepts the draft breach of warranty is a
49 defense to the obligation of the acceptor, and if the acceptor
50 makes payment with respect to the draft, the acceptor is entitled
51 to recover from a warrantor for breach of warranty the amounts
52 stated in this subsection.

53 c. If a drawee asserts a claim for breach of warranty under
54 subsection a. of this section based on an unauthorized

1 indorsement of the draft or an alteration of the draft, the
2 warrantor may defend by proving that the indorsement is
3 effective under 12A:3-404 or 12A:3-405 or the drawer is
4 precluded under 12A:3-406 or 12A:4-406 from asserting against
5 the drawee the unauthorized indorsement or alteration.

6 d. If a dishonored draft is presented for payment to the drawer
7 or an indorser or any other item is presented for payment to a
8 party obliged to pay the item, and the item is paid, the person
9 obtaining payment and a prior transferor of the item warrant to
10 the person making payment in good faith that the warrantor is, or
11 was, at the time the warrantor transferred the item, a person
12 entitled to enforce the item or authorized to obtain payment on
13 behalf of a person entitled to enforce the item. The person
14 making payment may recover from any warrantor for breach of
15 warranty an amount equal to the amount paid plus expenses and
16 loss of interest resulting from the breach.

17 e. The warranties stated in subsections a. and d. of this section
18 cannot be disclaimed with respect to checks. Unless notice of a
19 claim for breach of warranty is given to the warrantor within 30
20 days after the claimant has reason to know of the breach and the
21 identity of the warrantor, the warrantor is discharged to the
22 extent of any loss caused by the delay in giving notice of the
23 claim.

24 f. A cause of action for breach of warranty under this section
25 accrues when the claimant has reason to know of the breach.

26 12A:4-209. Encoding and Retention Warranties.

27 a. A person who encodes information on or with respect to an
28 item after issue warrants to any subsequent collecting bank and
29 to the payor bank or other payor that the information is correctly
30 encoded. If the customer of a depository bank encodes, that bank
31 also makes the warranty.

32 b. A person who undertakes to retain an item pursuant to an
33 agreement for electronic presentment warrants to any subsequent
34 collecting bank and to the payor bank or other payor that
35 retention and presentment of the item comply with the
36 agreement. If a customer of a depository bank undertakes to
37 retain an item, that bank also makes this warranty.

38 c. A person to whom warranties are made under this section
39 and who took the item in good faith may recover from the
40 warrantor as damages for breach of warranty an amount equal to
41 the loss suffered as a result of the breach, plus expenses and loss
42 of interest incurred as a result of the breach.

43 12A:4-210. Security Interest of Collecting Bank in Items,
44 Accompanying Documents and Proceeds.

45 a. A collecting bank has a security interest in an item and any
46 accompanying documents or the proceeds of either:

47 (1) in case of an item deposited in an account, to the extent
48 to which credit given for the item has been withdrawn or applied;

49 (2) in case of an item for which it has given credit available
50 for withdrawal as of right, to the extent of the credit given,
51 whether or not the credit is drawn upon or there is a right of
52 charge-back; or

53 (3) if it makes an advance on or against the item.

54 b. If credit given for several items received at one time or

1 pursuant to a single agreement is withdrawn or applied in part,
2 the security interest remains upon all the items, any
3 accompanying documents or the proceeds of either. For the
4 purpose of this section, credits first given are first withdrawn.

5 c. Receipt by a collecting bank of a final settlement for an
6 item is a realization on its security interest in the item,
7 accompanying documents, and proceeds. As long as the bank does
8 not receive final settlement for the item or give up possession of
9 the item or accompanying documents for purposes other than
10 collection, the security interest continues to that extent and is
11 subject to chapter 9, but:

12 (1) no security agreement is necessary to make the security
13 interest enforceable (12A:9-203(1)(a));

14 (2) no filing is required to perfect the security interest; and

15 (3) the security interest has priority over conflicting
16 perfected security interests in the item, accompanying
17 documents, or proceeds.

18 12A:4-211. When Bank Gives Value for Purposes of Holder in
19 Due Course.

20 For purposes of determining its status as a holder in due
21 course, a bank has given value to the extent it has a security
22 interest in an item, if the bank otherwise complies with the
23 requirements of 12A:3-302 on what constitutes a holder in due
24 course.

25 12A:4-212. Presentment by Notice of Item not Payable By,
26 Through, or At Bank; Liability of Drawer or Indorser.

27 a. Unless otherwise instructed, a collecting bank may present
28 an item not payable by, through, or at a bank by sending to the
29 party to accept or pay a written notice that the bank holds the
30 item for acceptance or payment. The notice must be sent in time
31 to be received on or before the day when presentment is due and
32 the bank must meet any requirement of the party to accept or
33 pay under 12A:3-501 by the close of the bank's next banking day
34 after it knows of the requirement.

35 b. If presentment is made by notice and payment, acceptance,
36 or request for compliance with a requirement under 12A:3-501 is
37 not received by the close of business on the day after maturity
38 or, in the case of demand items, by the close of business on the
39 third banking day after notice was sent, the presenting bank may
40 treat the item as dishonored and charge any drawer or indorser by
41 sending it notice of the facts.

42 12A:4-213. Medium and Time of Settlement by Bank.

43 a. With respect to settlement by a bank, the medium and time
44 of settlement may be prescribed by Federal Reserve regulations
45 or circulars, clearing-house rules, and the like, or agreement. In
46 the absence of such prescription:

47 (1) the medium of settlement is cash or credit to an account
48 in a Federal Reserve bank of or specified by the person to receive
49 settlement; and

50 (2) the time of settlement, is:

51 (a) with respect to tender of settlement by cash, a
52 cashier's check, or teller's check, when the cash or check is sent
53 or delivered;

54 (b) with respect to tender of settlement by credit in an

- 1 account in a Federal Reserve Bank, when the credit is made;
- 2 (c) with respect to tender of settlement by a credit or
3 debit to an account in a bank, when the credit or debit is made
4 or, in the case of tender of settlement by authority to charge an
5 account, when the authority is sent or delivered; or
- 6 (d) with respect to tender of settlement by a funds
7 transfer, when payment is made pursuant to subsection a. of
8 12A:4A-406 (pending in the Legislature as Assembly, No.)
9 (C.12A:4A-1 et seq.) to the person receiving settlement.
- 10 b. If the tender of settlement is not by a medium authorized
11 by subsection a. of this section or the time of settlement is not
12 fixed by subsection a. of this section, no settlement occurs until
13 the tender of settlement is accepted by the person receiving
14 settlement.
- 15 c. If settlement for an item is made by cashier's check or
16 teller's check and the person receiving settlement, before its
17 midnight deadline:
- 18 (1) presents or forwards the check for collection, settlement
19 is final when the check is finally paid; or
- 20 (2) fails to present or forward the check for collection,
21 settlement is final at the midnight deadline of the person
22 receiving settlement.
- 23 d. If settlement for an item is made by giving authority to
24 charge the account of the bank giving settlement in the bank
25 receiving settlement, settlement is final when the charge is made
26 by the bank receiving settlement if there are funds available in
27 the account for the amount of the item.
- 28 12A:4-214. Right of Charge-Back or Refund; Liability of
29 Collecting Bank; Return of Item.
- 30 a. If a collecting bank has made provisional settlement with its
31 customer for an item and fails by reason of dishonor, suspension
32 of payments by a bank, or otherwise to receive settlement for the
33 item which is or becomes final, the bank may revoke the
34 settlement given by it, charge back the amount of any credit
35 given for the item to its customer's account, or obtain refund
36 from its customer, whether or not it is able to return the items,
37 if by its midnight deadline or within a longer reasonable time
38 after it learns the facts it returns the item or sends notification
39 of the facts. If the return or notice is delayed beyond the bank's
40 midnight deadline or a longer reasonable time after it learns the
41 facts, the bank may revoke the settlement, charge back the
42 credit, or obtain refund from its customer, but it is liable for any
43 loss resulting from the delay. These rights to revoke, charge
44 back, and obtain refund terminate if and when a settlement for
45 the item received by the bank is or becomes final.
- 46 b. A collecting bank returns an item when it is sent or
47 delivered to the bank's customer or transferor or pursuant to its
48 instructions.
- 49 c. A depository bank that is also the payor may charge back
50 the amount of an item to its customer's account or obtain refund
51 in accordance with the section governing return of an item
52 received by a payor bank for credit on its books (12A:4-301).
- 53 d. The right to charge back is not affected by:
- 54 (1) previous use of a credit given for the item; or

- 1 (2) failure by any bank to exercise ordinary care with respect
2 to the item, but a bank so failing remains liable.
- 3 e. A failure to charge back or claim refund does not affect
4 other rights of the bank against the customer or any other party.
- 5 f. If credit is given in dollars as the equivalent of the value of
6 an item payable in foreign money, the dollar amount of any
7 charge-back or refund must be calculated on the basis of the
8 bank-offered spot rate for the foreign money prevailing on the
9 day when the person entitled to the charge-back or refund learns
10 that it will not receive payment in ordinary course.
- 11 12A:4-215. Final Payment of Item by Payor Bank; When
12 Provisional Debits and Credits Become Final; When Certain
13 Credits become Available for Withdrawal.
- 14 a. An item is finally paid by a payor bank when the bank has
15 first done any of the following:
- 16 (1) paid the item in cash;
- 17 (2) settled for the item without having a right to revoke the
18 settlement under statute, clearing-house rule, or agreement; or
- 19 (3) made a provisional settlement for the item and failed to
20 revoke the settlement in the time and manner permitted by
21 statute, clearing-house rule, or agreement.
- 22 b. If provisional settlement for an item does not become final,
23 the item is not finally paid.
- 24 c. If provisional settlement for an item between the presenting
25 and payor banks is made through a clearing house or by debits or
26 credits in an account between them, then to the extent that
27 provisional debits or credits for the item are entered in accounts
28 between the presenting and payor banks or between the
29 presenting and successive prior collecting banks seriatim, they
30 become final upon final payment of the items by the payor bank.
- 31 d. If a collecting bank receives a settlement for an item which
32 is or becomes final, the bank is accountable to its customer for
33 the amount of the item and any provisional credit given for the
34 item in an account with its customer becomes final.
- 35 e. Subject to applicable law stating a time for availability of
36 funds and any right of the bank to apply the credit to an
37 obligation of the customer, credit given by a bank for an item in
38 a customer's account becomes available for withdrawal as of
39 right:
- 40 (1) if the bank has received a provisional settlement for the
41 item, when the settlement becomes final and the bank has had a
42 reasonable time to receive return of the item and the item has
43 not been received within that time;
- 44 (2) if the bank is both the depository bank and the payor
45 bank, and the item is finally paid, at the opening of the bank's
46 second banking day following receipt of the item.
- 47 f. Subject to applicable law stating a time for availability of
48 funds and any right of a bank to apply a deposit to an obligation
49 of the depositor, a deposit of money becomes available for
50 withdrawal as of right at the opening of the bank's next banking
51 day after receipt of the deposit.
- 52 12A:4-216. Insolvency and Preference.
- 53 a. If an item is in or comes into the possession of a payor or
54 collecting bank that suspends payment and the item has not been

- 1 finally paid, the item must be returned by the receiver, trustee,
2 or agent in charge of the closed bank to the presenting bank or
3 the closed bank's customer.
- 4 b. If a payor bank finally pays an item and suspends payments
5 without making a settlement for the item with its customer or
6 the presenting bank which settlement is or becomes final, the
7 owner of the item has a preferred claim against the payor bank.
- 8 c. If a payor bank gives or a collecting bank gives or receives a
9 provisional settlement for an item and thereafter suspends
10 payments, the suspension does not prevent or interfere with the
11 settlement's becoming final if the finality occurs automatically
12 upon the lapse of certain time or the happening of certain events.
- 13 d. If a collecting bank receives from subsequent parties
14 settlement for an item, which settlement is or becomes final and
15 the bank suspends payments without making a settlement for the
16 item with its customer which settlement is or becomes final, the
17 owner of the item has a preferred claim against the collecting
18 bank.
- 19 12A:4-301. Deferred Posting; Recovery of Payment by Return
20 of Items; Time of Dishonor; Return of Items by Payor Bank.
- 21 a. If a payor bank settles for a demand item other than a
22 documentary draft presented otherwise than for immediate
23 payment over the counter before midnight of the banking day of
24 receipt, the payor bank may revoke the settlement and recover
25 the settlement if, before it has made final payment and before its
26 midnight deadline, it
- 27 (1) returns the item; or
28 (2) sends written notice of dishonor or nonpayment if the
29 item is unavailable for return.
- 30 b. If a demand item is received by a payor bank for credit on
31 its books, it may return the item or send notice of dishonor and
32 may revoke any credit given or recover the amount thereof
33 withdrawn by its customer, if it acts within the time limit and in
34 the manner specified in subsection a. of this section.
- 35 c. Unless previous notice of dishonor has been sent, an item is
36 dishonored at the time when for purposes of dishonor it is
37 returned or a notice is sent in accordance with this section.
- 38 d. An item is returned:
- 39 (1) as to an item presented through a clearing house, when it
40 is delivered to the presenting or last collecting bank or to the
41 clearing house or is sent or delivered in accordance with
42 clearing-house rules; or
43 (2) in all other cases, when it is sent or delivered to the
44 bank's customer or transferor or pursuant to instructions.
- 45 12A:4-302. Payor Bank's Responsibility for Late Return of
46 Item.
- 47 a. If an item is presented to and received by a payor bank, the
48 bank is accountable for the amount of:
- 49 (1) a demand item, other than a documentary draft, whether
50 properly payable or not, if the bank, in any case in which it is not
51 also the depositary bank, retains the item beyond midnight of the
52 banking day of receipt without settling for it or, whether or not it
53 is also the depositary bank, does not pay or return the item or
54 send notice of dishonor until after its midnight deadline; or

- 1 (2) any other properly payable item unless, within the time
2 allowed for acceptance or payment of that item, the bank either
3 accepts or pays the item or returns it and accompanying
4 documents.
- 5 b. The liability of a payor bank to pay an item pursuant to
6 subsection a. of this section is subject to defenses based on
7 breach of a presentment warranty (12A:4-208) or proof that the
8 person seeking enforcement of the liability presented or
9 transferred the item for the purpose of defrauding the payor bank.
- 10 12A:4-303. When Items are Subject to Notice, Stop-payment
11 Order, Legal Process, or Setoff; Order in Which Items May Be
12 Charged or Certified.
- 13 a. Any knowledge, notice, or stop-payment order received by,
14 legal process served upon, or setoff exercised by a payor bank
15 comes too late to terminate, suspend, or modify the bank's right
16 or duty to pay an item or to charge its customer's account for
17 the item if the knowledge, notice, stop-payment order, or legal
18 process is received or served and a reasonable time for the bank
19 to act thereon expires or the setoff is exercised after the earliest
20 of the following:
- 21 (1) the bank accepts or certifies the item;
22 (2) the bank pays the item in cash;
23 (3) the bank settles for the item without having a right to
24 revoke the settlement under statute, clearing-house rule, or
25 agreement;
26 (4) the bank becomes accountable for the amount of the item
27 under 12A:4-302 dealing with the payor bank's responsibility for
28 late return of items; or
29 (5) with respect to checks, a cutoff hour no earlier than one
30 hour after the opening of the next banking day after the banking
31 day on which the bank received the check and no later than the
32 close of that next banking day or, if no cutoff hour is fixed, the
33 close of the next banking day after the banking day on which the
34 bank received the check.
- 35 b. Subject to subsection a. of this section, items may be
36 accepted, paid, certified, or charged to the indicated account of
37 its customer in any order.
- 38 12A:4-401. When Bank May Charge Customer's Account.
- 39 a. A bank may charge against the account of a customer an
40 item that is properly payable from that account even though the
41 charge creates an overdraft. An item is properly payable if it is
42 ¹[in accordance with any agreement between the customer and
43 bank and is either (1)]¹ authorized by the customer¹[, or (2) bears
44 the customer's facsimile signature made by mechanical means
45 used by the customer to authorize payment] and is in accordance
46 with any agreement between the customer and bank¹.
- 47 b. A customer is not liable for the amount of an overdraft if
48 the customer neither signed the item nor benefited from the
49 proceeds of the item.
- 50 c. A bank may charge against the account of a customer a
51 check that is otherwise properly payable from the account, even
52 though payment was made before the date of the check, unless
53 the customer has given notice to the bank of the postdating
54 describing the check with reasonable certainty. The notice is

1 effective for the period stated in subsection b. of 12A:4-403 for
2 stop-payment orders, and must be received at such time and in
3 such manner as to afford the bank a reasonable opportunity to act
4 on it before the bank takes any action with respect to the check
5 described in 12A:4-303. If a bank charges against the account of
6 a customer a check before the date stated in the notice of
7 postdating, the bank is liable for damages for the loss resulting
8 from its act. The loss may include damages for dishonor of
9 subsequent items under 12A:4-402.

10 d. A bank that in good faith makes payment to a holder may
11 charge the indicated account of its customer according to:

12 (1) the original terms of the altered item; or

13 (2) the terms of the completed item, even though the bank
14 knows the item has been completed unless the bank has notice
15 that the completion was improper.

16 12A:4-402. Bank's Liability to Customer for Wrongful
17 Dishonor; Time of Determining Insufficiency of Account.

18 a. Except as otherwise provided in this chapter, a payor bank
19 wrongfully dishonors an item if it dishonors an item that is
20 properly payable, but a bank may dishonor an item that would
21 create an overdraft unless it has agreed to pay the overdraft.

22 b. A payor bank is liable to its customer for damages
23 proximately caused by the wrongful dishonor of an item.
24 Liability is limited to actual damages proved and may include
25 damages for an arrest or prosecution of the customer or other
26 consequential damages. Whether any consequential damages are
27 proximately caused by the wrongful dishonor is a question of fact
28 to be determined in each case.

29 c. A payor bank's determination of the customer's account
30 balance on which a decision to dishonor for insufficiency of
31 available funds is based may be made at any time between the
32 time the item is received by the payor bank and the time that the
33 payor bank returns the item or gives notice in lieu of return, and
34 no more than one determination need be made. If, at the election
35 of the payor bank, a subsequent balance determination is made
36 for the purpose of reevaluating the bank's decision to dishonor
37 the item, the account balance at that time is determinative of
38 whether a dishonor for insufficiency of available funds is
39 wrongful.

40 12A:4-403. Customer's Right to Stop Payment; Burden of
41 Proof of Loss.

42 a. A customer or any person authorized to draw on the account
43 if there is more than one person may stop payment of any item
44 drawn on the customer's account or close the account by an
45 order to the bank describing the item or account with reasonable
46 certainty received at a time and in a manner that affords the
47 bank a reasonable opportunity to act on it before any action is
48 taken by the bank pursuant to 12A:4-303 with respect to the item
49 described. If the signature of more than one person is required to
50 draw on an account, any person whose signature is required may
51 stop payment or close the account.

52 b. A stop-payment order is effective for six months, but it
53 lapses after 14 calendar days if the original order was oral and
54 was not confirmed in writing within that period. A stop-payment

1 order may be renewed for additional six-month periods by a
2 writing given to the bank within a period during which the
3 stop-payment order is effective.

4 c. The burden of establishing the fact and amount of loss
5 resulting from the payment of an item contrary to a
6 stop-payment order or order to close an account is on the
7 customer. The loss from payment of an item contrary to a
8 stop-payment order may include damages for dishonor of
9 subsequent items under 12A:4-402.

10 12A:4-404. Bank not Obligated to Pay Check More Than Six
11 Months Old.

12 A bank is under no obligation to a customer having a checking
13 account to pay a check, other than a certified check, which is
14 presented more than six months after its date, but it may charge
15 its customer's account for a payment made thereafter in good
16 faith.

17 12A:4-405. Death or Incompetence of Customer.

18 a. A payor or collecting bank's authority to accept, pay, or
19 collect an item or to account for proceeds of its collection, if
20 otherwise effective, is not rendered ineffective by incompetence
21 of a customer of either bank existing at the time the item is
22 issued or its collection is undertaken if the bank does not know of
23 an adjudication of incompetence. Neither death nor
24 incompetence of a customer revokes the authority to accept, pay,
25 collect, or account until the bank knows of the fact of death or of
26 an adjudication of incompetence and has reasonable opportunity
27 to act on it.

28 b. Even with knowledge, a bank may for 10 days after the date
29 of death pay or certify checks drawn on or before that date
30 unless ordered to stop payment by a person claiming an interest
31 in the account.

32 12A:4-406. Customer's Duty to Discover and Report
33 Unauthorized Signature or Alteration.

34 a. A bank that sends or makes available to a customer a
35 statement of account showing payment of items for the account
36 shall either return or make available to the customer the items
37 paid or provide information in the statement of account
38 sufficient to allow the customer reasonably to identify the items
39 paid.

40 The statement of account provides sufficient information if the
41 item is described by item number, amount, and date of payment.

42 b. If the items are not returned to the customer, the person
43 retaining the items shall either retain the items or, if the items
44 are destroyed, maintain the capacity to furnish legible copies of
45 the items until the expiration of seven years after receipt of the
46 items. A customer may request an item from the bank that paid
47 the item, and that bank must provide in a reasonable time either
48 the item or, if the item has been destroyed or is not otherwise
49 obtainable, a legible copy of the item.

50 c. If a bank sends or makes available a statement of account
51 or items pursuant to subsection a. of this section, the customer
52 must exercise reasonable promptness in examining the statement
53 or the items to determine whether any payment was not
54 authorized because of an alteration of an item or because a

1 purported signature by or on behalf of the customer was not
2 authorized. If, based on the statement or items provided, the
3 customer should reasonably have discovered the unauthorized
4 payment, the customer must promptly notify the bank of the
5 relevant facts.

6 d. If the bank proves that the customer failed, with respect to
7 an item, to comply with the duties imposed on the customer by
8 subsection c. of this section, the customer is precluded from
9 asserting against the bank:

10 (1) the customer's unauthorized signature or any alteration
11 on the item, if the bank also proves that it suffered a loss by
12 reason of the failure; and

13 (2) the customer's unauthorized signature or alteration by
14 the same wrongdoer on any other item paid in good faith by the
15 bank if the payment was made before the bank received notice
16 from the customer of the unauthorized signature or alteration
17 and after the customer had been afforded a reasonable period of
18 time, not exceeding 30 days, in which to examine the item or
19 statement of account and notify the bank.

20 e. If subsection d. of this section applies and the customer
21 proves that the bank failed to exercise ordinary care in paying
22 the item and that the failure substantially contributed to loss, the
23 loss is allocated between the customer precluded and the bank
24 asserting the preclusion according to the extent to which the
25 failure of the customer to comply with subsection c. of this
26 section and the failure of the bank to exercise ordinary care
27 contributed to the loss. If the customer proves that the bank did
28 not pay the item in good faith, the preclusion under subsection d.
29 of this section does not apply.

30 f. Without regard to care or lack of care of either the
31 customer or the bank, a customer who does not within one year
32 after the statement or items are made available to the customer
33 (subsection a. of this section) discover and report the customer's
34 unauthorized signature on or any alteration on the item is
35 precluded from asserting against the bank the unauthorized
36 signature or alteration. If there is a preclusion under this
37 subsection, the payor bank may not recover for breach of
38 warranty under 12A:4-208 with respect to the unauthorized
39 signature or alteration to which the preclusion applies.

40 12A:4-407. Payor Bank's Right to Subrogation on Improper
41 Payment.

42 If a payor bank has paid an item over the order of the drawer
43 or maker to stop payment, or after an account has been closed, or
44 otherwise under circumstances giving a basis for objection by the
45 drawer or maker, to prevent unjust enrichment and only to the
46 extent necessary to prevent loss to the bank by reason of its
47 payment of the item, the payor bank is subrogated to the rights:

48 a. of any holder in due course on the item against the drawer or
49 maker;

50 b. of the payee or any other holder of the item against the
51 drawer or maker either on the item or under the transaction out
52 of which the item arose; and

53 c. of the drawer or maker against the payee or any other holder
54 of the item with respect to the transaction out of which the item

1 arose.

2 12A:4-501. Handling of Documentary Drafts; Duty to Send for
3 Presentment and to Notify Customer of Dishonor.

4 A bank that takes a documentary draft for collection shall
5 present or send the draft and accompanying documents for
6 presentment and, upon learning that the draft has not been paid
7 or accepted in due course, shall seasonably notify its customer of
8 the fact even though it may have discounted or bought the draft
9 or extended credit available for withdrawal as of right.

10 12A:4-502. Presentment of "On Arrival" Drafts.

11 If a draft or the relevant instructions require presentment "on
12 arrival," "when goods arrive" or the like, the collecting bank
13 need not present until in its judgment a reasonable time for
14 arrival of the goods has expired. Refusal to pay or accept
15 because the goods have not arrived is not dishonor; the bank must
16 notify its transferor of the refusal but need not present the draft
17 again until it is instructed to do so or learns of the arrival of the
18 goods.

19 12A:4-503. Responsibility of Presenting Bank for Documents
20 and Goods; Report of Reasons for Dishonor; Referee in Case of
21 Need.

22 a. Unless otherwise instructed and except as provided in
23 chapter 5 of Title 12A, a bank presenting a documentary draft:

24 (1) must deliver the documents to the drawee on acceptance
25 of the draft if it is payable more than three days after
26 presentment; otherwise, only on payment; and

27 (2) upon dishonor, either in the case of presentment for
28 acceptance or presentment for payment, may seek and follow
29 instructions from any referee in case of need designated in the
30 draft or, if the presenting bank does not choose to utilize the
31 referee's services, it must use diligence and good faith to
32 ascertain the reason for dishonor, must notify its transferor of
33 the dishonor and of the results of its effort to ascertain the
34 reasons therefor, and must request instructions.

35 b. A presenting bank is under no obligation with respect to
36 goods represented by the documents except to follow any
37 reasonable instructions seasonably received; it has a right to
38 reimbursement for any expense incurred in following instructions
39 and to prepayment of or indemnity for those expenses.

40 12A:4-504. Privilege of Presenting Bank to Deal with Goods;
41 Security Interest for Expenses.

42 a. A presenting bank that, following the dishonor of a
43 documentary draft, has seasonably requested instructions but
44 does not receive them within a reasonable time may store, sell,
45 or otherwise deal with the goods in any reasonable manner.

46 b. For its reasonable expenses incurred by action under
47 subsection a. of this section, the presenting bank has a lien upon
48 the goods or their proceeds, which may be foreclosed in the same
49 manner as an unpaid seller's lien.

50 3. N.J.S. 12A:1-201 is amended to read as follows:

51 12A:1-201. General Definitions.

52 Subject to additional definitions contained in the subsequent
53 chapters of this act which are applicable to specific chapters or
54 subchapters thereof, and unless the context otherwise requires, in

1 this act:

2 (1) "Action" in the sense of a judicial proceeding includes
3 recoupment, counterclaim, set-off, suit in equity and any other
4 proceedings in which rights are determined.

5 (2) "Aggrieved party" means a party entitled to resort to a
6 remedy.

7 (3) "Agreement" means the bargain of the parties in fact as
8 found in their language or by implication from other
9 circumstances including course of dealing or usage of trade or
10 course of performance as provided in this act (12A:1-205 and
11 2-208). Whether an agreement has legal consequences is
12 determined by the provisions in this act, if applicable; otherwise
13 by the law of contracts (12A:1-103). (Compare "Contract.")

14 (4) "Bank" means any person engaged in the business of
15 banking.

16 (5) "Bearer" means the person in possession of an instrument,
17 document of title, or certificated security payable to bearer or
18 indorsed in blank.

19 (6) "Bill of lading" means a document evidencing the receipt
20 of goods for shipment issued by a person engaged in the business
21 of transporting or forwarding goods, and includes an airbill.

22 "Airbill" means a document serving for air transportation as a
23 bill of lading does for marine or rail transportation, and includes
24 an air consignment note or air waybill.

25 (7) "Branch" includes a separately incorporated foreign branch
26 of a bank.

27 (8) "Burden of establishing" a fact means the burden of
28 persuading the triers of fact that the existence of the fact is
29 more probable than its nonexistence.

30 (9) "Buyer in ordinary course of business" means a person who
31 in good faith and without knowledge that the sale to him is in
32 violation of the ownership rights or security interest of a third
33 party in the goods buys in ordinary course from a person in the
34 business of selling goods of that kind but does not include a
35 pawnbroker. All persons who sell minerals or the like (including
36 oil and gas) at wellhead or minehead shall be deemed to be
37 persons in the business of selling goods of that kind. "Buying"
38 may be for cash or by exchange of other property or on secured
39 or unsecured credit and includes receiving goods or documents of
40 title under a pre-existing contract for sale but does not include a
41 transfer in bulk or as security for or in total or partial
42 satisfaction of a money debt.

43 (10) "Conspicuous": A term or cause is conspicuous when it is
44 so written that a reasonable person against whom it is to operate
45 ought to have noticed it. A printed heading in capitals (as:
46 NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language
47 in the body of a form is "conspicuous" if it is in larger or other
48 contrasting type or color. But in a telegram any stated term is
49 "conspicuous." Whether a term or clause is "conspicuous" or not
50 is for decision by the court.

51 (11) "Contract" means the total legal obligation which results
52 from the parties' agreement as affected by this act and any
53 other applicable rules of law. (Compare "Agreement.")

54 (12) "Creditor" includes a general creditor, a secured creditor,

- 1 a lien creditor and any representative of creditors, including an
2 assignee for the benefit of creditors, a trustee in bankruptcy, a
3 receiver in equity and an executor or administrator of an
4 insolvent debtor's or assignor's estate.
- 5 (13) "Defendant" includes a person in the position of defendant
6 in a cross-action or counterclaim.
- 7 (14) "Delivery" with respect to instruments, documents of
8 title, chattel paper, or certificated securities means voluntary
9 transfer of possession.
- 10 (15) "Document of title" includes bill of lading, dock warrant,
11 dock receipt, warehouse receipt, or order for the delivery of
12 goods, and also any other document which in the regular course of
13 business or financing is treated as adequately evidencing that the
14 person in possession of it is entitled to receive, hold and dispose
15 of the document and the goods it covers. To be a document of
16 title a document must purport to be issued by or addressed to a
17 bailee and purport to cover goods in the bailee's possession which
18 are either identified or are fungible portions of an identified mass.
- 19 (16) "Fault" means wrongful act, omission or breach.
- 20 (17) "Fungible" with respect to goods or securities means goods
21 or securities of which any unit is, by nature or usage of trade, the
22 equivalent of any other like unit. Goods which are not fungible
23 shall be deemed fungible for the purposes of this act to the
24 extent that under a particular agreement or document unlike
25 units are treated as equivalents.
- 26 (18) "Genuine" means free of forgery or counterfeiting.
- 27 (19) "Good faith" means honesty in fact in the conduct or
28 transaction concerned.
- 29 (20) ["Holder" means a person who is in possession of a
30 document of title or an instrument or a certificated investment
31 security drawn, issued, or indorsed to him or his order or to
32 bearer or in blank] "Holder," with respect to a negotiable
33 instrument, means the person in possession if the instrument is
34 payable to bearer or, in the case of an instrument payable to an
35 identified person, if the identified person is in possession.
36 "Holder" with respect to a document of title means the person in
37 possession if the goods are deliverable to bearer or to the order
38 of the person in possession.
- 39 (21) To "honor" is to pay or accept and pay, where a credit so
40 engages to purchase or discount a draft complying with the terms
41 of the credit.
- 42 (22) "Insolvency proceedings" includes any assignment for the
43 benefit of creditors or other proceedings intended to liquidate or
44 rehabilitate the estate of the person involved.
- 45 (23) A person is "insolvent" who either has ceased to pay his
46 debts in the ordinary course of business or cannot pay his debts as
47 they become due or is insolvent within the meaning of the federal
48 bankruptcy law.
- 49 (24) "Money" means a medium of exchange authorized or
50 adopted by a domestic or foreign government [as a part of its
51 currency] and includes a monetary unit of account established by
52 an intergovernmental organization or by agreement between two
53 or more nations.
- 54 (25) A person has "notice" of a fact when:

- 1 (a) He has actual knowledge of it; or
2 (b) He has received a notice or notification of it; or
3 (c) From all the facts and circumstances known to him at
4 the time in question he has reason to know that it exists.

5 A person "knows" or has "knowledge" of a fact when he has
6 actual knowledge of it. "Discover" or "learn" or a word or
7 phrase of similar import refers to knowledge rather than to
8 reason to know. The time and circumstances under which a
9 notice or notification may cease to be effective are not
10 determined by this act.

11 (26) A person "notifies" or "gives" a notice or notification to
12 another by taking such steps as may be reasonably required to
13 inform the other in ordinary course whether or not such other
14 actually comes to know of it. A person "receives" a notice or
15 notification when:

- 16 (a) It comes to his attention; or
17 (b) It is duly delivered at the place of business through which
18 the contract was made or at any other place held out by him as
19 the place for receipt of such communications.

20 (27) Notice, knowledge or a notice or notification received by
21 an organization is effective for a particular transaction from the
22 time when it is brought to the attention of the individual
23 conducting that transaction, and in any event from the time when
24 it would have been brought to his attention if the organization
25 had exercised due diligence. An organization exercises due
26 diligence if it maintains reasonable routines for communicating
27 significant information to the person conducting the transaction
28 and there is reasonable compliance with the routines. Due
29 diligence does not require an individual acting for the
30 organization to communicate information unless such
31 communication is part of his regular duties or unless he has
32 reason to know of the transaction and that the transaction would
33 be materially affected by the information.

34 (28) "Organization" includes a corporation, government or
35 governmental subdivision or agency, business trust, estate, trust,
36 partnership or association, two or more persons having a joint or
37 common interest, or any other legal or commercial entity.

38 (29) "Party," as distinct from "third party," means a person
39 who has engaged in a transaction or made an agreement within
40 this act.

41 (30) "Person" includes an individual or an organization (See
42 12A:1-102).

43 (31) "Presumption" or "presumed" means that the trier of fact
44 must find the existence of the fact presumed unless and until
45 evidence is introduced which would support a finding of its
46 nonexistence.

47 (32) "Purchase" includes taking by sale, discount, negotiation,
48 mortgage, pledge, lien, issue or reissue, gift or any other
49 voluntary transaction creating an interest in property.

50 (33) "Purchaser" means a person who takes by purchase.

51 (34) "Remedy" means any remedial right to which an aggrieved
52 party is entitled with or without resort to a tribunal.

53 (35) "Representative" includes an agent, an officer of a
54 corporation or association, and a trustee, executor or

1 administrator of an estate, or any other person empowered to act
2 for another.

3 (36) "Rights" includes remedies.

4 (37) "Security interest" means an interest in personal property
5 or fixtures which secures payment or performance of an
6 obligation. The retention or reservation of title by a seller of
7 goods notwithstanding shipment or delivery to the buyer
8 (12A:2-401) is limited in effect to a reservation of a "security
9 interest." The term also includes any interest of a buyer of
10 accounts or chattel paper which is subject to chapter 9. The
11 special property interest of a buyer of goods on identification of
12 such goods to a contract for sale under 12A:2-401 is not a
13 "security interest," but a buyer may also acquire a "security
14 interest" by complying with chapter 9. Unless a lease or
15 consignment is intended as security, reservation of title
16 thereunder is not a "security interest" but a consignment is in
17 any event subject to the provisions on consignment sales
18 (12A:2-326). Whether a lease is intended as security is to be
19 determined by the facts of each case; however, (a) the inclusion
20 of an option to purchase does not of itself make the lease one
21 intended for security, and (b) an agreement that upon compliance
22 with the terms of the lease the lessee shall become or has the
23 option to become the owner of the property for no additional
24 consideration or for a nominal consideration does make the lease
25 one intended for security.

26 (38) "Send" in connection with any writing or notice means to
27 deposit in the mail or deliver for transmission by any other usual
28 means of communication with postage or cost of transmission
29 provided for and properly addressed and in the case of an
30 instrument to an address specified thereon or otherwise agreed,
31 or if there be none to any address reasonable under the
32 circumstances. The receipt of any writing or notice within the
33 time at which it would have arrived if properly sent has the
34 effect of a proper sending.

35 (39) "Signed" includes any symbol executed or adopted by a
36 party with present intention to authenticate a writing.

37 (40) "Surety" includes guarantor.

38 (41) "Telegram" includes a message transmitted by radio,
39 teletype, cable, any mechanical method of transmission, or the
40 like.

41 (42) "Term" means that portion of an agreement which relates
42 to a particular matter.

43 (43) "Unauthorized" signature or indorsement means one made
44 without actual, implied, or apparent authority and includes a
45 forgery.

46 (44) "Value." Except as otherwise provided with respect to
47 negotiable instruments and bank collections (12A:3-303,
48 [12A:4-208 and 12A:4-209] 12A:4-210 and 12A:4-211) a person
49 gives "value" for rights if he acquires them:

50 (a) In return for a binding commitment to extend credit or
51 for the extension of immediately available credit whether or not
52 drawn upon and whether or not a charge-back is provided for in
53 the event of difficulties in collection; or

54 (b) As security for or in total or partial satisfaction of a

1 pre-existing claim; or

2 (c) By accepting delivery pursuant to a pre-existing contract
3 for purchase; or

4 (d) Generally, in return for any consideration sufficient to
5 support a simple contract.

6 (45) "Warehouse receipt" means a receipt issued by a person
7 engaged in the business of storing goods for hire.

8 (46) "Written" or "writing" includes printing, typewriting, or
9 any other intentional reduction to tangible form.

10 (cf: P.L. 1989, c.348 s.1)

11 4. N.J.S. 12A:1-207 is amended to read as follows:

12 12A:1-207. Performance or Acceptance Under Reservation of
13 Rights.

14 (1) A party who, with explicit reservation of rights, performs
15 or promises performance or assents to performance in a manner
16 demanded or offered by the other party does not thereby
17 prejudice the rights reserved. Such words as "without prejudice",
18 "under protest" or the like are sufficient.

19 (2) Subsection (1) does not apply to an accord and satisfaction.

20 (cf: N.J.S. 12A:1-207)

21 5. N.J.S.12A:2-103 is amended to read as follows:

22 12A:2-103. Definitions and Index of Definitions

23 (1) In this chapter unless the context otherwise requires

24 (a) "Buyer" means a person who buys or contracts to buy goods.

25 (b) "Good faith" in the case of a merchant means honesty in
26 fact and the observance of reasonable commercial standards of
27 fair dealing in the trade.

28 (c) "Receipt" of goods means taking physical possession of
29 them.

30 (d) "Seller" means a person who sells or contracts to sell goods.

31 (2) Other definitions applying to this Chapter or to specified
32 Subchapters thereof, and the sections in which they appear are:

33 "Acceptance". 12A:2-606.

34 "Banker's credit". 12A:2-325.

35 "Between merchants". 12A:2-104.

36 "Cancellation". 12A:2-106(4).

37 "Commercial unit". 12A:2-105.

38 "Confirmed credit". 12A:2-325.

39 "Conforming to contract". 12A:2-106.

40 "Contract for sale". 12A:2-106.

41 "Cover". 12A:2-712.

42 "Entrusting". 12A:2-403.

43 "Financing agency". 12A:2-104.

44 "Future goods". 12A:2-105.

45 "Goods". 12A:2-105.

46 "Identification". 12A:2-501.

47 "Installment contract". 12A:2-612.

48 "Letter of Credit". 12A:2-325.

49 "Lot". 12A:2-105.

50 "Merchant". 12A:2-104.

51 "Overseas". 12A:2-323.

52 "Person in position of seller". 12A:2-707.

53 "Present sale". 12A:2-106.

54 "Sale". 12A:2-106.

1 "Sale on approval". 12A:2-326.

2 "Sale or return". 12A:2-326.

3 "Termination". 12A:2-106.

4 (3) The following definitions in other Chapters apply to this
5 Chapter:

6 "Check". 12A:3-104.

7 "Consignee". 12A:7-102.

8 "Consignor". 12A:7-102.

9 "Consumer goods". 12A:9-109.

10 "Dishonor". [12A:3-507] 12A:3-502.

11 "Draft". 12A:3-104.

12 (4) In addition Chapter 1 contains general definitions and
13 principles of construction and interpretation applicable
14 throughout this Chapter.

15 (cf: N.J.S.12A:2-103)

16 6. N.J.S. 12A:2-511 is amended to read as follows:

17 12A:2-511. Tender of Payment by Buyer; Payment by Check.

18 (1) Unless otherwise agreed tender of payment is a condition
19 to the seller's duty to tender and complete any delivery.

20 (2) Tender of Payment is sufficient when made by any means
21 or in any manner current in the ordinary course of business unless
22 the seller demands payment in legal tender and gives any
23 extension of time reasonably necessary to procure it.

24 (3) Subject to the provisions of this Act on the effect of an
25 instrument on an obligation ([12A:3-802] 12A:3-310), payment by
26 check is conditional and is defeated as between the parties by
27 dishonor of the check on due presentment.

28 (cf: N.J.S.12A:2-511)

29 7. N.J.S. 12A:9-203 is amended to read as follows:

30 12A:9-203. Attachment and Enforceability of Security
31 Interest; Proceeds; Formal Requisites.

32 (1) Subject to the provisions of [12A:4-208] 12A:4-210 on the
33 security interest of a collecting bank, 12A:8-321 on security
34 interests in securities and 12A:9-113 on a security interest
35 arising under the chapter on sales, a security interest is not
36 enforceable against the debtor or third parties with respect to
37 the collateral and does not attach unless:

38 (a) The collateral is in the possession of the secured party
39 pursuant to agreement, or the debtor has signed a security
40 agreement which contains a description of the collateral and in
41 addition, when the security interest covers crops growing or to be
42 grown or timber to be cut, a description of the land concerned;

43 (b) Value has been given; and

44 (c) The debtor has rights in the collateral.

45 (2) A security interest attaches when it becomes enforceable
46 against the debtor with respect to the collateral. Attachment
47 occurs as soon as all of the events specified in subsection (1) have
48 taken place unless explicit agreement postpones the time of
49 attaching.

50 (3) Unless otherwise agreed a security agreement gives the
51 secured party the rights to proceeds provided by 12A:9-306.

52 (4) A transaction, although subject to this chapter, is also
53 subject to the provisions of those statutes set forth as saved from
54 repeal by this subtitle in section 12A:10-104, and in case of

1 conflict between the provisions of this chapter and any such
2 statute so saved from repeal, the provisions of such statute
3 control. Failure to comply with any such applicable statute has
4 only the effect which is specified therein.

5 (5) In case of conflict between this chapter and the provisions
6 of "The Credit Union Act of 1984," P.L.1984, c.171, ss.2 to 46
7 (C.17:13-79 to C.17:13-124), concerning a transaction subject to
8 this chapter and also subject to the provisions of "The Credit
9 Union Act of 1984," the provisions of "The Credit Union Act of
10 1984" shall control.
11 (cf: P.L.1989, c.348, s.50)

12 8. N.J.S. 12A:9-206 is amended to read as follows:

13 12A:9-206. Agreement Not to Assert Defenses Against
14 Assignee; Modification of Sales Warranties Where Security
15 Agreement Exists.

16 (1) Subject to any statute or decision which establishes a
17 different rule for buyers or lessees of consumer goods, an
18 agreement by a buyer or lessee that he will not assert against an
19 assignee any claim or defense which he may have against the
20 seller or lessor is enforceable by an assignee who takes his
21 assignment for value, in good faith and without notice of a claim
22 or defense, except as to defenses of a type which may be asserted
23 against a holder in due course of a negotiable instrument under
24 the chapter on [Commercial Paper] Negotiable Instruments
25 (chapter 3). A buyer who as part of one transaction signs both a
26 negotiable instrument and a security agreement makes such an
27 agreement.

28 (2) When a seller retains a purchase money security interest in
29 goods the chapter on Sales (chapter 2) governs the sale and any
30 disclaimer, limitation or modification of the seller's warranties.
31 (cf: P.L.1964, c.166, s.19)

32 9. N.J.S. 12A:9-302 is amended to read as follows:

33 12A:9-302. When Filing Is Required to Perfect Security
34 Interests; Security Interests to Which Filing Provisions of This
35 Chapter Do Not Apply.

36 (1) A financing statement shall be filed to perfect all security
37 interests except the following:

38 (a) A security interest in collateral in possession of the
39 secured party under 12A:9-305;

40 (b) A security interest temporarily perfected in instruments or
41 documents without delivery under 12A:9-304 or in proceeds for a
42 10-day period under 12A:9-306;

43 (c) A security interest created by an assignment of a
44 beneficial interest in a trust or a decedent's estate;

45 (d) A purchase money security interest in consumer goods; but
46 filing is required for a motor vehicle required to be registered;
47 and fixture filing is required for priority over conflicting
48 interests in fixtures to the extent provided in 12A:9-313;

49 (e) An assignment of accounts which does not alone or in
50 conjunction with other assignments to the same assignee transfer
51 a significant part of the outstanding accounts of the assignor;

52 (f) A security interest of a collecting bank ([12A:4-208]
53 12A:4-210) or in securities (12A:8-321) or arising under the
54 chapter on sales (see 12A:9-113) or covered in subsection (3) of

1 this section;

2 (g) An assignment for the benefit of all the creditors of the
3 transferor, and subsequent transfers by the assignee thereunder.

4 (2) If a secured party assigns a perfected security interest, no
5 filing under this chapter is required in order to continue the
6 perfected status of the security interest against creditors of and
7 transferees from the original debtor.

8 (3) The filing of a financing statement otherwise required by
9 this chapter is not necessary or effective to perfect a security
10 interest in property subject to:

11 (a) A statute or treaty of the United States which provides for
12 a national or international registration or a national or
13 international certificate of title or which specifies a place of
14 filing different from that specified in this chapter for filing of
15 the security interest; or

16 (b) The following statutes of this State:

17 R.S.39:10-1 to R.S.39:10-9 both inclusive;

18 P.L.1971, c.311 (C.39:10-9.1 and C.39:10-9.2);

19 R.S.39:10-10 to R.S.39:10-16 both inclusive;

20 R.S.39:10-18 to R.S.39:10-25 both inclusive;

21 but during any period in which collateral is inventory held for sale
22 by a person who is in the business of selling goods of that kind,
23 the filing provisions of this chapter (subchapter 4) apply to a
24 security interest in that collateral created by him as debtor; or

25 (c) A certificate of title statute of another jurisdiction under
26 the law of which indication of a security interest on the
27 certificate is required as a condition of perfection (subsection (2)
28 of 12A:9-103).

29 (4) Compliance with a statute or treaty described in subsection
30 (3) is equivalent to the filing of a financing statement under this
31 chapter, and a security interest in property subject to the statute
32 or treaty can be perfected only by compliance therewith except
33 as provided in 12A:9-103 on multiple state transactions.
34 Duration and renewal of perfection of a security interest
35 perfected by compliance with the statute or treaty are governed
36 by the provisions of the statute or treaty; in other respects the
37 security interest is subject to this chapter.

38 (cf: P.L.1989, c.348, s.51)

39 10. N.J.S.12A:9-312 is amended to read as follows:

40 12A:9-312. Priorities Among Conflicting Security Interests in
41 the Same Collateral.

42 (1) The rules of priority stated in other sections of this
43 subchapter and in the following sections shall govern when
44 applicable: [12A:4-208] 12A:4-210 with respect to the security
45 interests of collecting banks in items being collected,
46 accompanying documents and proceeds; 12A:9-103 on security
47 interests related to other jurisdictions; 12A:9-114 on
48 consignments.

49 (2) (Deleted by amendment, P.L.1962, c.203, s.4.)

50 (3) A perfected purchase money security interest in inventory
51 has priority over a conflicting security interest in the same
52 inventory and also has priority in identifiable cash proceeds
53 received on or before the delivery of the inventory to a buyer if:

54 (a) The purchase money security interest is perfected at the

1 time the debtor receives possession of the inventory; and

2 (b) The purchase money secured party gives notification in
3 writing to the holder of the conflicting security interest if the
4 holder had filed a financing statement covering the same types of
5 inventory (i) before the date of the filing made by the purchase
6 money secured party, or (ii) before the beginning of the 21-day
7 period where the purchase money security interest is temporarily
8 perfected without filing or possession (subsection (5) of
9 12A:9-304); and

10 (c) The holder of the conflicting security interest receives the
11 notification within five years before the debtor receives
12 possession of the inventory; and

13 (d) The notification states that the person giving the notice
14 has or expects to acquire a purchase money security interest in
15 inventory of the debtor, describing such inventory by item or
16 type.

17 (4) A purchase money security interest in collateral other than
18 inventory has priority over a conflicting security interest in the
19 same collateral or its proceeds if the purchase money security
20 interest is perfected at the time the debtor receives possession of
21 the collateral or within 10 days thereafter.

22 (5) In all cases not governed by other rules stated in this
23 section (including cases of purchase money security interests
24 which do not qualify for the special priorities set forth in
25 subsections (3) and (4) of this section), priority between
26 conflicting security interests in the same collateral shall be
27 determined according to the following rules:

28 (a) Conflicting security interests rank according to priority in
29 time of filing or perfection. Priority dates from the time a filing
30 is first made covering the collateral or the time the security
31 interest is first perfected, whichever is earlier, provided that
32 there is no period thereafter when there is neither filing nor
33 perfection.

34 (b) So long as conflicting security interests are unperfected,
35 the first to attach has priority.

36 (6) For the purposes of subsection (5) a date of filing or
37 perfection as to collateral is also a date of filing or perfection as
38 to proceeds.

39 (7) If future advances are made while a security interest is
40 perfected by filing, the taking of possession, or under 12A:8-321
41 on securities, the security interest has the same priority for the
42 purposes of subsection (5) with respect to the future advances as
43 it does with respect to the first advance. If a commitment is
44 made before or while the security interest is so perfected, the
45 security interest has the same priority with respect to advances,
46 made pursuant thereto. In other cases a perfected security
47 interest has priority from the date the advance is made.

48 (cf: P.L.1989, c.348, s.55)

49 11. N.J.S. 3B:14-58 is amended to read as follows:

50 3B:14-58. Deposit in fiduciary's personal account; liability of
51 bank receiving deposit and paying checks.

52 a. If a fiduciary makes a deposit in a bank to his personal
53 credit of checks drawn by him upon an account in his own name
54 as fiduciary, [or of checks payable to him as fiduciary,] or of

1 checks drawn by him upon an account in the name of his
2 principal, if he is empowered to draw thereon, [or of checks
3 payable to his principal and indorsed by him, if he is empowered
4 to indorse the checks,] or, except as provided in subsection b. of
5 this section, if he otherwise makes a deposit of funds held by him
6 as fiduciary, the bank receiving the deposit is not bound to
7 inquire whether the fiduciary is committing thereby a breach of
8 his obligation as fiduciary. The bank is authorized to pay the
9 amount of the deposit of any part thereof upon the personal
10 check of the fiduciary without being liable to the principal, unless
11 the bank receives the deposit or pays the check with actual
12 knowledge that the fiduciary is committing a breach of his
13 obligation as fiduciary in making the deposit or in drawing the
14 check, or with knowledge of facts that its action in receiving the
15 deposit of paying the check amounts to bad faith.

16 b. In the case of an instrument payable to the principal or the
17 fiduciary as fiduciary, the bank has notice of the breach of
18 fiduciary duty if the instrument is deposited to an account of the
19 principal or an account other than an account of the fiduciary, as
20 fiduciary.

21 (cf: N.J.S.3B:14-58)

22 12. Section 3 of P.L.1971, c.399 (C. 17:16C-38.2) is amended
23 to read as follows:

24 3. No retail installment contract shall require or entail the
25 execution of any note unless such note shall have printed the
26 words "CONSUMER NOTE" in 10-point bold type or larger on the
27 face thereof. Such a note with the words "CONSUMER NOTE"
28 printed thereon shall be subject to the terms and conditions of
29 the retail installment contract and shall not be a negotiable
30 instrument within the meaning of chapter 3 ([Commercial Paper]
31 Negotiable Instruments) N.J.S. 12A:3-101 et seq., or a security
32 interest within the meaning of chapter 9 (Secured Transactions)
33 N.J.S. 12A:9-101 et seq. of the Uniform Commercial Code. Any
34 subsequent holder of a consumer note shall be subject to all
35 claims and defenses of the retail buyer against the retail seller
36 arising out of the transaction but no such claim or defense may
37 be asserted against such holder in excess of the time sales price
38 under the retail installment contract for any sale, except that, in
39 the case of the sale of a new motor vehicle, as defined in R.S.
40 39:10-2, no claim or defense may be asserted against such holder
41 in excess of the time balance under the retail installment
42 contract. No claim or defense which the retail buyer may have
43 against the retail seller arising otherwise than out of the retail
44 installment contract or any separate instrument executed in
45 connection therewith shall be asserted against any subsequent
46 holder.

47 (cf: P.L.1971, c.399, s.3)

48 13. Section 2 of P.L.1969, c.237 (C. 17:16C-64.2) is amended
49 to read as follows:

50 2. No home repair contract shall require or entail the
51 execution of any note unless such note shall have printed the
52 words "CONSUMER NOTE" in 10-point bold type or larger on the
53 face thereof. Such a note with the words "CONSUMER NOTE"
54 printed thereon shall be subject to the terms and conditions of

1 the home repair contract and shall not be a negotiable instrument
2 within the meaning of chapter 3 ([Commercial Paper] Negotiable
3 Instruments) of the Uniform Commercial Code, N.J.S. 12A:3-101
4 et seq.

5 (cf: P.L.1969, c.237, s.2)

6 14. Section 227 of P.L.1948, c.67 (C.17:9A-227) and Sections 1
7 through 5 of P.L.1951, c.166 (C.17:9A-229.1 through 229.5) are
8 repealed.

9 15. This act shall take effect on the first day of the first
10 calendar month which follows the 90th day after enactment.

11

12

13

14

15 Establishes rules for negotiable instruments and bank collections.

8 repealed.

9 15. This act shall take effect on the first day of the first
10 calendar month which follows the 90th day after enactment.

11
12
13
14

Sponsor STATEMENT *to* S 344 (1995)

15 This bill would enact revised Chapters 3 and 4 of the Uniform
16 Commercial Code promulgated by the National Conference of
17 Commissioners on Uniform State Laws and the American Law
18 Institute. The New Jersey Law Revision Commission studied the
19 proposed revised articles and recommends that the Legislature
20 enact them as amended and further recommends that the
21 Legislature enact conforming amendments and repeal
22 inconsistent banking statutes.

23 The revisions largely carry forward the central principles of
24 present law but resolve case law conflicts, accommodate
25 technological developments in banking practices, and, in response
26 to federal law, recognize the requirement for rapid funds
27 availability. The bill makes conforming amendments to Chapters
28 1, 2 and 9 of Title 12A, to Title 3B containing the Uniform
29 Fiduciaries Law and to Chapter 16C of Title 17 of the Revised
30 Statutes. The bill also repeals banking statutes found in Title
31 12A inconsistent with provisions of revised Chapters 3 and 4.

32 This bill closely follows the official text of the Uniform
33 Commercial Code, but nonuniform amendments modify two loss
34 allocation rules of the Code. Nonuniform 12A:3-406 does not
35 allow banks to raise the "preclusion" defense to a forged
36 instrument when the bank pays the check by automated means
37 providing that had the bank examined the instrument it would
38 have discovered the forgery. Nonuniform 12A:4-401 allows banks
39 to pay an item when it contains a facsimile signature made by
40 mechanical means providing the customer authorizes payment on
41 its facsimile signature.

42
43
44
45

46 Establishes rules for negotiable instruments and bank collections.

SENATE STATE MANAGEMENT, INVESTMENTS
AND FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

SENATE, No. 344

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 3, 1994

The Senate State Management, Investments and Financial Institutions Committee reports favorably and with committee amendments Senate, No. 344.

This bill enacts revised Chapters 3 and 4 of the Uniform Commercial Code promulgated by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. The revisions largely carry forward the central principles of present law but resolve case law conflicts, accommodate technological developments in banking practices and, in response to federal law, recognize the requirement for rapid funds availability. The bill makes conforming amendments to Chapters 1, 2 and 9 of Title 12A, to Title 3B containing the Uniform Fiduciaries Law and to Chapter 16C of Title 17C of the Revised Statutes. The bill also repeals banking statutes found in Title 17 inconsistent with provisions of revised Chapters 3 and 4.

COMMITTEE AMENDMENTS

The committee amended the bill to remove language concerning payment of checks which is not in the Uniform Commercial Code promulgated by the National Conference of Commissioners on Uniform State laws.

p. 6

E. Articles 3 and 4 of the Uniform Commercial Code

The Commission filed a Final Report and Recommendations Relating to Articles 3 and 4 of the Uniform Commercial Code (see Appendix E).

In 1991, the National Conference of Commissioners on Uniform State Laws and the American Law Institute approved Revised Article 3 and Amended Article 4 of the Uniform Commercial Code. The existing Articles 3 and 4 are part of the Uniform Commercial Code adopted by New Jersey in 1961. N.J.S. 12A:3-101 to 12A:4-506. Article 3 governs negotiable instruments and Article 4 governs bank collections. The Law Revision Commission studied the revised articles and has recommended that the Legislature adopt them with two non-uniform amendments. The non-uniform amendments modify the loss allocation rules of the revised articles.

p. 7

The Commission recommends an amendment to Section 3-406 of the Code to limit the customer's obligation to pay an unauthorized check even though the customer's negligence contributed to the forgery. Second, the Commission recommends an amendment to Section 4-401 of the Code to allow a bank to pay an item bearing a facsimile signature, whether authorized or not, provided the customer authorizes the bank to pay checks bearing the facsimile signature. The non-uniform amendments do not change the basic structure or concepts of the Code, nor do they upset balances struck by various parties who participated in the drafting process of the revised articles.

**REPORT AND RECOMMENDATIONS
RELATING TO ARTICLES 3 AND 4
OF THE UNIFORM COMMERCIAL CODE**

*Appendix E to Annual Report
of the New Jersey Revision Commission
1992.*

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575**

INTRODUCTION

The National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute have approved Revised Article 3 and Amended Article 4 of the Uniform Commercial Code (revised articles). Article 3 governs negotiable instruments and Article 4 governs bank collections. Both articles are part of the uniform commercial code adopted by New Jersey in 1961.¹ The New Jersey Law Revision Commission has studied the revised articles and recommends that the Legislature adopt them with two non-uniform amendments. The non-uniform amendments modify the loss allocation rules of the revised rules.

The present law of commercial paper and bank collections does not address the economic realities of the automated collection, process and payment of negotiable instruments. The revised articles respond to these economic realities and recognize the requirement of rapid funds availability. The revised articles also clarify ambiguities in existing statutory language and resolve disputes produced by case law. While there are conceptual differences between the present and revised articles, many current concepts are carried forward in the revisions.

The Prefatory Note to the revised articles identifies the benefits that the revisions confer on users, the public and the banks.² The benefits for users include: (1) direct suits, (2) an expanded definition of "good faith" to include "reasonable commercial standards of fair dealing," (3) improved loss rules for cashier's checks and (4) reduced risk of forming unintentional accord and satisfaction agreements.³ The benefits to the public include: (1) increased certainty in rules to allow better planning of financial transactions, (2) removal of impediments to automation, (3) lower costs by allowing banks to automate procedures and (4) reduced litigation flowing from certainty of rules.⁴ The benefits to banks include: (1) a new definition of "ordinary care" to exclude manual inspection of checks, (2) expansion of the *per se* negligence rules for employers, (3) truncation of bank statements and (4) certainty of obligations.⁵ The Commission found that, in general, the revised articles improve existing law for all parties.

However, the Commission recommends two changes in the Official Text. First, the Official Text slightly alters the loss allocation rule for checks containing a forged drawer's signature. The revised rules may increase the risk of loss for bank customers. As a result, the Commission recommends an amendment to Section 3-406 to limit the customer's obligation to pay an unauthorized check even though the customer's negligence contributed to the forgery. Second, the Official text does not address the question of whether a check containing a facsimile signature is a "properly payable"

1 N.J.S. 12A:3-101 to 12A:4-506.

2 U.C.C. Revised Article 3 and Amended Article 4, Prefatory Note 5-6 (1990 Official Text)(hereafter R.U.C.C.).

3 The term "direct suits" refers to actions between parties who do not deal directly with one another. The existing articles often prohibit actions between these remote parties. For example, under the present rules, a depository bank cannot sue a drawer based on its negligence for contributing to a forgery. Girard Bank v. Mount Holly State Bank, 474 F. Supp. 1225 (D.N.J. 1979) (creating a common law cause of action between depository bank and drawer of check). The revised rules allow depository banks to sue drawers of checks even though the latter do not deal often with the former. R.U.C.C. 4-208(c). In addition, payees can avoid "accord and satisfaction" by requiring the debtor to send payment to a specific office. R.U.C.C. 3-311(c)(1).

4 R.U.C.C., Prefatory Note at 5.

5 *Id.* at 7-8.

item when the signature is unauthorized, but is identical to the signature on file. The Commission recommends an amendment to Section 4-401 to allow a bank to pay an item bearing a facsimile signature, whether authorized or not, provided the customer authorizes the bank to pay checks bearing the facsimile signature.

The non-uniform amendments do not change the basic structure or concepts of the Code. Nor do they upset balances struck by various parties who participated in the drafting process of the revised articles. In the first instance, the proposed amendment carries forward the existing loss allocation rule for forged drawer signature checks. In the second instance, the proposed amendment clarifies the statutory language and intent of the revised articles. The need for the amendments outweighs the need for strict uniformity.

Nineteen states have adopted Revised Article 3 and Amended Article 4 as of October 26, 1992: Arkansas, California, Connecticut, Florida, Hawaii, Illinois, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Pennsylvania, Virginia and Wyoming. The revised articles also are pending before several other legislatures, and are expected to be enacted widely. New Jersey is one of the slowest states to adopt recommendations of the NCCUSL concerning the Code. The Commission urges the Legislature to act promptly to enact the revised articles. The lengthy drafting process achieved a consensus among various interest groups to facilitate adoption of the revised articles. In addition, the Commission has spent several months considering the impact of the revised articles on New Jersey law and has determined that they would improve existing law.

Loss Allocation and the Forged Drawer Signature

Loss allocation rules come into play when a person generates a loss by stealing funds from the check payment system. The loss allocation rules then fix liability on parties based on their role and conduct in the miscarried transaction. Since loss allocation rules dictate whether banks or customers take losses when transactions go awry, they have important public consequences. Assume, for example, that a customer has a checking account and loses some blank checks. A thief takes a blank check, completes the check for \$100 and signs the customer's name. The bank pays the check and charges the customer's account. Loss allocation rules determine who takes the loss in such a case – the bank or the customer.

a. Present law

A bank is entitled to pay a check only if it is a "properly payable" check.⁶ A check is "properly payable" when it is authorized by the customer and contains the customer's signature. This rule is based on the implied contract between the bank and customer providing that the bank has authority to charge the customer's account only when authorized to do so. An unauthorized signature is inoperative as that of the person whose name is signed unless the person ratifies the signature or is precluded from denying it.⁷ In the hypothetical, the check is not "properly payable" because it was signed by the thief, not the customer. The bank is not entitled to pay the check, and charge the customer's account, because the customer did not authorize the payment of the check.

6 N.J.S. 12A:4-401(a).

7 N.J.S. 12A:3-404(1).

However, the Code allows the bank to shift the risk of loss to the customer if his negligence substantially contributed to the making of the forged signature.⁸ This rule is known as the "preclusion defense." The customer is, in effect, precluded from denying the validity of the signature. An intervening theft does not break the chain of causation. Assuming the preclusion applies, because the customer's negligence substantially contributed to the forgery, then the customer bears the \$100 loss.

Notwithstanding the customer's negligence, the Code allows the customer to pass back the risk of loss to the bank if the customer shows that the bank was negligent in paying the check.⁹ The customer's assertion of contributory negligence, if successful, bars the bank's preclusion defense. In effect, the bank is precluded from raising the preclusion defense. One way of demonstrating that the bank acted negligently is to argue that the bank had a duty to compare the signature on the check with the signature on the signature card. Since the bank is presumed to know the customer's signature, the bank's failure to verify the validity of the signature may establish that the bank failed to exercise ordinary care in paying the check. In the hypothetical, if the customer proves the defense of contributory negligence, the bank takes the loss even though the customer was negligent.

Some recent cases acknowledge that, due to automation, banks no longer manually inspect the signatures on checks, and banks argue that they pay checks in good faith and in accordance with reasonable commercial standards if they pay them without signature review. For example, in Rhode Island Hosp. Trust Nat. Bank v. Zapata, the First Circuit Court of Appeals found that a bank which examined all signatures on checks greater than \$1,000, examined signatures on checks between \$100 and \$1,000 only if there was reason to suspect a problem and did not examine any signature on checks less than \$100, exercised ordinary care in paying an item.¹⁰ The Supreme Court of Tennessee in Vending Chattanooga v. Am. Nat. Bk. & Tr. adopted a similar line of reasoning.¹¹ Therefore, payment by a bank over a forged drawer signature may not constitute negligence even when the bank did not compare the signature on the check with the one on the signature card. New Jersey courts have not considered this issue. Reported cases to date have not imposed liability on the customer for a forged drawer signature unless there was an employer-employee or other close relationship between the drawer and forger.¹² However, given the widespread use of automation, it is possible that the New Jersey courts would follow the rationale of Zapata and Vending Chattanooga.

8 N.J.S. 12A:3-406 states "Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business."

9 N.J.S. 12A:3-406. "Of course negligence does not travel without its companion, contributory negligence and if both the customer and his bank are negligent, the two will usually offset one another and reopen the customer's claim on the forgery." White and Summers, Uniform Commercial Code 689 (3d ed. 1988). N.J.S. 12A:3-406 states a "payor who pays in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business."

10 848 F. 2d at 294 (1st Cir. 1988).

11 730 S.W. 2d at 628 (Tenn. 1987). See also Wilder Binding Co. v. Oak Park Trust and Savings Bank, 552 N.E. 2d 783 (Ill. 1990).

12 E.g., Brogan Cadillac v. Central Jersey Bk. & Tr., 183 N.J. Super. 333 (Law Div. 1981)(bank not liable to holder in due course for checks stolen and then forged in bank's name);

b. The revised articles

The revised articles track the present loss allocation scheme. However, the revised articles introduce two new concepts impacting liability of customers for losses due to forged drawer's signature checks. First, the revised rules adopt a comparative negligence standard to allocate loss between negligent parties.¹³ Comparative negligence assigns liability according to level of fault and rejects the "winner take all" approach. The comparative negligence approach is designed to reduce litigation on the theory that parties will settle disputes if they know that it is unlikely one party will take the loss if the suit is litigated. In contrast, the present loss allocation rule follows a "winner take all" approach; it imposes liability on the person in the best position to avoid the loss.¹⁴

Second, the revised rules redefine the bank's duty of ordinary care in paying a check.¹⁵ The new definition of ordinary care does not require a drawee bank using an automated payment procedure to examine the drawer's signature on checks. This definition establishes a new legal standard. Under present law, a bank's failure to examine the signature on a check prior to payment may constitute a failure to exercise ordinary care in the payment of the check. Since the bank's failure to sight review checks is often the only act of contributory negligence the customer may assert against the bank, the revised definition of ordinary care may alter the traditional liability of bank and customer on losses due to forged drawer signatures when the customer's negligence substantially contributes to making the forgery.

The revised rules, if applied to the above hypothetical, demonstrate such a result. Under the revised rules, assuming the bank proves that the customer's negligence substantially contributed to the making of the forged signature, the customer cannot argue that the bank's failure to examine the signature on the check with the signature on the signature card constitutes a failure to pay the check in accordance with reasonable commercial standards. The revised standard of ordinary care for the bank excludes a duty to examine the check before payment. The negligent customer takes the loss. Even if the bank fails to act with ordinary care in some other way, the customer and bank share the loss in proportion to their fault.

The Commission has determined that the possible increased risk of loss customers bear under the revised rules is unjustified. In many situations, some small act of negligence by the customer may contribute to a forged drawer signature on a check. Under the revised rules, banks will almost never be negligent in paying the check because they are not required to examine the check before payment. As a result, the cost of the forgery is placed on the customer in these cases. That result constitutes a change in current practice. The decision not to examine signatures on checks is sound, but the banks should bear the cost of that decision because they designed the automated payment system.

¹³ E.g., R.U.C.C. 3-404(d), R.U.C.C. 3-405(b), R.U.C.C. 3-406(b), and R.U.C.C. 4-406(e).

¹⁴ Rapson, Loss Allocation in Forgery and Fraud Cases: Significant Changes Under Revised Articles 3 and 4, 42 Ala. L. Rev. 435 (1991) where Mr. Rapson states "The guiding principle and rationale for the loss allocation rules of former Uniform Commercial Code ... Articles 3 and 4 was said to be that loss should be imposed upon the party best able or in the best position to avoid the loss."

¹⁵ R.U.C.C. 3-103(a)(7) provides, "In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4."

The available empirical data on bank losses due to fraud indicates that present practice of allocating loss resulting from forged drawer signature checks is efficient. In 1992, the Commission conducted a survey of New Jersey banks and found that losses due to forged drawer signature checks are small. Banks now pay this cost and spread these losses across the customer base. Because the existing practice works well, there is no reason to change it. As a result, the Commission recommends a change in the official text that would prevent the bank from raising the preclusion defense against a customer whose negligence substantially contributes to a forged drawer signature if an examination of the drawer's signature would have revealed the forgery. Section 3-406(a) is amended accordingly.

Automated Signing of Checks

Customers who sign checks by mechanical means pose special problems for banks attempting to verify whether the check is authorized. The bank cannot tell from an examination of the signature on the check whether the signature is a forgery. Yet, in the absence of negligence, the bank paying an unauthorized check bearing a facsimile signature cannot charge the customer's account because the check is not "properly payable." Even when the bank and customer agree that the bank is authorized to pay such checks, the courts are reluctant to enforce the agreement.¹⁶ Such contracts between customer and bank, it is argued, allow the bank to disclaim its obligations of good faith and ordinary care in violation of Section 4-103.

The Commission takes a different view. Use of facsimile signatures increases the risk that banks will pay unauthorized checks containing the approved signature because there is no way of determining the lack of authorization to pay. Checks containing facsimile signatures, whether authorized or not, are virtually identical on their face. Hence, the parties should be permitted to vary the rule imposing loss on the bank for payment of an unauthorized check. To the extent that this rule of liability is based on the premise that the bank has the capacity to ascertain the validity of the instruction to pay the check by knowing the customer's signature, the use of facsimile signatures undercuts the premise for the rule. A check containing an unauthorized facsimile signature should be considered a "properly payable" check provided a contract between the bank and customer allows the bank to pay checks containing facsimile signatures whether authorized or not. The amendment to Section 4-401 implements this view.

Non-Uniform Amendments

Amended Section 3-406. Negligence Contributing to Forged Signature or Alteration of Instrument.

(a) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection. A bank which pays a

¹⁶ *E.g. Mercantile Stores Co. v. Idaho First National Bank*, 102 Idaho 820, 641 P. 2d 1007 (Ct. App. 1982); and *Cumis Ins. Co. v. Girard Bank*, 522 F. Supp 414 (E.D. Pa. 1981). In both cases, despite corporate resolutions authorizing the banks to pay checks bearing facsimile signatures whether authorized or not, the courts refused to enforce the contracts.

check on a forged signature without an examination of the signature which would have revealed the forgery may not assert this preclusion against a person who complies with Section 4-406.

(b) Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. The burden of proving that an examination of the check would have revealed a forged signature is on the person claiming that the preclusion does not apply. Under subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded.

COMMENT

The last sentence of subsection (a) amends the official text of Section 3-406. The amendment stops a bank from raising the "preclusion" defense if an examination of the check would have revealed the forged signature. The amendment counterbalances the definition of "ordinary care" in Section 3-103(7) specifying that banks are not required to examine checks provided the checks are processed, collected or paid by automated means. The amendment does not allow banks, which elect to process, collect or pay checks by automated means, to preclude a customer from denying the forgery if the customer complies with the notification requirements of Section 4-406. If a hypothetical sight review would not have discovered the forged signature, then the bank may assert the preclusion defense against the customer whose negligence substantially contributed to the forgery. In the event the customer does not comply with Section 4-406, then the bank may assert the preclusion defense against the customer regardless of whether a hypothetical sight review would have revealed the forged signature.

In subsection (c), the person who claims that the bank may not raise the preclusion defense in a forged signature case bears the burden of proving that a hypothetical examination of the forged signature check by the bank would have revealed the forgery.

Amended Section 4-401. When Bank May Charge Customer's Account.

(a) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is in accordance with any agreement between the customer and bank and is either (1) authorized by the customer, or (2) bears the customer's facsimile signature made by mechanical means used by the customer to authorize payment.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in Section 4-403(b) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in Section 4-303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its

act. The loss may include damages for dishonor of subsequent items under Section 4-402.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(1) the original terms of the altered item; or

(2) the terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

COMMENT

The amendment to subsection (a) provides that an item is "properly payable" if it conforms to a contract between the bank and customer and "bears the customer's facsimile signature made by mechanical means used by the customer to authorize payment." The amendment allows parties to vary the rule that banks cannot pay an unauthorized item. Under the amendment, items containing facsimile signatures are "properly payable" if there is a contract between the bank and customer authorizing the bank to pay items containing the facsimile signatures whether authorized or not. The rationale for the rule is that the use of facsimile signatures prohibits the bank from determining the validity of the order to pay. A customer who authorizes payment of items by non-handwritten means bears the risk of loss for payment of unauthorized items when so agreed between the bank and customer. The amendment rejects the view of Cumis Ins. Co., v. Girard Bank, 522 F. Supp 414 (E.D. Pa. 1981). In Cumis, the court refused to enforce the deposit contract between the customer and bank which provided that the customer was liable for losses due to the unauthorized use of facsimile signatures. The court found that the deposit contract disclaimed the bank's responsibility for "its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure" in violation of Section 4-103(a). Based on these same reasons, the court also found that the deposit contract violated Section 1-102(3) and public policy.

The amendment to Section 4-401 alters the traditional "properly payable" rule when the customer authorizes the bank to pay checks bearing facsimile signatures made by mechanical means. The amendment is not inconsistent with the duty of good faith and ordinary care imposed on banks by Sections 1-102(3) and 4-103(a), and the deposit contract may not vary these basic Code rules. The amendment also does not extend to signatures that resemble the facsimile signature when the forgery was accomplished by non-mechanical means such as tracing. E.g., Mercantile Stores Co. v. Idaho First National Bank, 102 Idaho 820, 641 P. 2d 1007 (Ct. App. 1982).