

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Beebe**

A Bill ACT 540 OF 1991
SENATE BILL 39

For An Act To Be Entitled

8 "AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE BY ADDING A
9 CHAPTER ON FUNDS TRANSFERS; AND FOR OTHER PURPOSES."

10
11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

12
13 SECTION 1. Title 4 of the Arkansas Code is hereby amended by inserting
14 an additional chapter immediately following Chapter 4 to read as follows:

15 "CHAPTER 4A. FUNDS TRANSFERS

16 PART 1 -- SUBJECT MATTER AND DEFINITIONS

17
18 § 4-4A-101. Short title.

19 This Chapter may be cited as 'Uniform Commercial Code--Funds
20 Transfers'.

21
22 § 4-4A-102. Subject matter.

23 Except as otherwise provided in § 4-4A-108, this Chapter applies to
24 funds transfers defined in § 4-4A-104.

25
26 § 4-4A-103. Payment order - Definitions.

27 (a) In this Chapter:

28 (1) 'Payment order' means an instruction of a sender to a
29 receiving bank, transmitted orally, electronically, or in writing, to pay, or
30 to cause another bank to pay, a fixed or determinable amount of money to a
31 beneficiary if:

32 (i) the instruction does not state a condition to payment to
33 the beneficiary other than time of payment,

34 (ii) the receiving bank is to be reimbursed by debiting an
35 account of, or otherwise receiving payment from, the sender, and

36 (iii) the instruction is transmitted by the sender directly

1 to the receiving bank or to an agent, funds-transfer system, or communication
2 system for transmittal to the receiving bank.

3 (2) 'Beneficiary' means the person to be paid by the
4 beneficiary's bank.

5 (3) 'Beneficiary's bank' means the bank identified in a payment
6 order in which an account of the beneficiary is to be credited pursuant to the
7 order or which otherwise is to make payment to the beneficiary if the order
8 does not provide for payment to an account.

9 (4) 'Receiving bank' means the bank to which the sender's
10 instruction is addressed.

11 (5) 'Sender' means the person giving the instruction to the
12 receiving bank.

13 (b) If an instruction complying with subsection (a)(1) is to make more
14 than one (1) payment to a beneficiary, the instruction is a separate payment
15 order with respect to each payment.

16 (c) A payment order is issued when it is sent to the receiving bank.
17

18 § 4-4A-104. Funds transfer - Definitions.

19 In this Chapter:

20 (a) 'Funds transfer' means the series of transactions, beginning with
21 the originator's payment order, made for the purpose of making payment to the
22 beneficiary of the order. The term includes any payment order issued by the
23 originator's bank or an intermediary bank intended to carry out the
24 originator's payment order. A funds transfer is completed by acceptance by
25 the beneficiary's bank of a payment order for the benefit of the beneficiary
26 of the originator's payment order.

27 (b) 'Intermediary bank' means a receiving bank other than the
28 originator's bank or the beneficiary's bank.

29 (c) 'Originator' means the sender of the first payment order in a
30 funds transfer.

31 (d) 'Originator's bank' means (i) the receiving bank to which the
32 payment order of the originator is issued if the originator is not a bank, or
33 (ii) the originator if the originator is a bank.

34

35 § 4-4A-105. Other definitions.

1 (a) In this Chapter:

2 (1) 'Authorized account' means a deposit account of a customer
3 in a bank designated by the customer as a source of payment of payment orders
4 issued by the customer to the bank. If a customer does not so designate an
5 account, any account of the customer is an authorized account if payment of a
6 payment order from that account is not inconsistent with a restriction on the
7 use of that account.

8 (2) 'Bank' means a person engaged in the business of banking and
9 includes a savings bank, savings and loan association, credit union, and trust
10 company. A branch or separate office of a bank is a separate bank for
11 purposes of this Chapter.

12 (3) 'Customer' means a person, including a bank, having an
13 account with a bank or from whom a bank has agreed to receive payment orders.

14 (4) 'Funds-transfer business day' of a receiving bank means the
15 part of a day during which the receiving bank is open for the receipt,
16 processing, and transmittal of payment orders and cancellations and amendments
17 of payment orders.

18 (5) 'Funds-transfer system' means a wire transfer network,
19 automated clearing house, or other communication system of a clearing house or
20 other association of banks through which a payment order by a bank may be
21 transmitted to the bank to which the order is addressed.

22 (6) 'Good faith' means honesty in fact and the observance of
23 reasonable commercial standards of fair dealing.

24 (7) 'Prove' with respect to a fact means to meet the burden of
25 establishing the fact (§ 4-1-201(8)).

26 (b) Other definitions applying to this Chapter and the sections in
27 which they appear are:

28 'Acceptance.' § 4-4A-209.

29 'Beneficiary.' § 4-4A-103.

30 'Beneficiary's bank.' § 4-4A-103.

31 'Executed.' § 4-4A-301.

32 'Execution date.' § 4-4A-301.

33 'Funds transfer.' § 4-4A-104.

34 'Funds-transfer system rule.' § 4-4A-501.

35 'Intermediary bank.' § 4-4A-104.

- 1 'Originator.' § 4-4A-104.
- 2 'Originator's bank.' § 4-4A-104.
- 3 'Payment by beneficiary's bank to beneficiary.' § 4-4A-405.
- 4 'Payment by originator to beneficiary.' § 4-4A-406.
- 5 'Payment by sender to receiving bank.' § 4-4A-403.
- 6 'Payment date.' § 4-4A-401.
- 7 'Payment order.' § 4-4A-103.
- 8 'Receiving bank.' § 4-4A-103.
- 9 'Security procedure.' § 4-4A-201.
- 10 'Sender.' § 4-4A-103.

11 (c) The following definitions in Chapter 4 apply to this Chapter:

- 12 'Clearing house.' § 4-4-104.
- 13 'Item.' § 4-4-104.
- 14 'Suspends payments.' § 4-4-104.

15 (d) In addition Chapter 1 of this title contains general definitions
16 and principles of construction and interpretation applicable throughout this
17 Chapter.

18

19 § 4-4A-106. Time payment order is received.

20 (a) The time of receipt of a payment order or communication cancelling
21 or amending a payment order is determined by the rules applicable to receipt
22 of a notice stated in § 4-1-201(27). A receiving bank may fix a cut-off time
23 or times on a funds-transfer business day for the receipt and processing of
24 payment orders and communications cancelling or amending payment orders.
25 Different cut-off times may apply to payment orders, cancellations, or
26 amendments, or to different categories of payment orders, cancellations, or
27 amendments. A cut-off time may apply to senders generally or different cut-
28 off times may apply to different senders or categories of payment orders. If
29 a payment order or communication cancelling or amending a payment order is
30 received after the close of a funds-transfer business day or after the
31 appropriate cut-off time on a funds-transfer business day, the receiving bank
32 may treat the payment order or communication as received at the opening of the
33 next funds-transfer business day.

34 (b) If this Chapter refers to an execution date or payment date or
35 states a day on which a receiving bank is required to take action, and the

1 date or day does not fall on a funds-transfer business day, the next day that
2 is a funds-transfer business day is treated as the date or day stated, unless
3 the contrary is stated in this Chapter.

4

5 § 4-4A-107. Federal Reserve regulations and operating circulars.

6 Regulations of the Board of Governors of the Federal Reserve System and
7 operating circulars of the Federal Reserve banks supersede any inconsistent
8 provision of this Chapter to the extent of the inconsistency.

9

10 § 4-4A-108. Exclusion of consumer transactions governed by federal law.

11 This Chapter does not apply to a funds transfer any part of which is
12 governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law
13 95-630, 92 Stat. 3728, 15 U.S.C. § 1693 et seq.) as amended from time to time.

14

15 PART 2--ISSUE AND ACCEPTANCE OF PAYMENT ORDER

16

17 § 4-4A-201. Security procedure.

18 'Security procedure' means a procedure established by agreement of a
19 customer and a receiving bank for the purpose of (i) verifying that a payment
20 order or communication amending or cancelling a payment order is that of the
21 customer, or (ii) detecting error in the transmission or the content of the
22 payment order or communication. A security procedure may require the use of
23 algorithms or other codes, identifying words or numbers, encryption, callback
24 procedures, or similar security devices. Comparison of a signature on a
25 payment order or communication with an authorized specimen signature of the
26 customer is not by itself a security procedure.

27

28 § 4-4A-202. Authorized and verified payment orders.

29 (a) A payment order received by the receiving bank is the authorized
30 order of the person identified as sender if that person authorized the order
31 or is otherwise bound by it under the law of agency.

32 (b) If a bank and its customer have agreed that the authenticity of
33 payment orders issued to the bank in the name of the customer as sender will
34 be verified pursuant to a security procedure, a payment order received by the
35 receiving bank is effective as the order of the customer, whether or not

1 authorized, if (i) the security procedure is a commercially reasonable method
2 of providing security against unauthorized payment orders, and (ii) the bank
3 proves that it accepted the payment order in good faith and in compliance with
4 the security procedure and any written agreement or instruction of the
5 customer restricting acceptance of payment orders issued in the name of the
6 customer. The bank is not required to follow an instruction that violates a
7 written agreement with the customer or notice of which is not received at a
8 time and in a manner affording the bank a reasonable opportunity to act on it
9 before the payment order is accepted.

10 (c) Commercial reasonableness of a security procedure is a question of
11 law to be determined by considering the wishes of the customer expressed to
12 the bank, the circumstances of the customer known to the bank, including the
13 size, type, and frequency of payment orders normally issued by the customer to
14 the bank, alternative security procedures offered to the customer, and
15 security procedures in general use by customers and receiving banks similarly
16 situated. A security procedure is deemed to be commercially reasonable if (i)
17 the security procedure was chosen by the customer after the bank offered, and
18 the customer refused, a security procedure that was commercially reasonable
19 for that customer, and (ii) the customer expressly agreed in writing to be
20 bound by any payment order, whether or not authorized, issued in its name and
21 accepted by the bank in compliance with the security procedure chosen by the
22 customer.

23 (d) The term 'sender' in this Chapter includes the customer in whose
24 name a payment order is issued if the order is the authorized order of the
25 customer under subsection (a), or it is effective as the order of the customer
26 under subsection (b).

27 (e) This section applies to amendments and cancellations of payment
28 orders to the same extent it applies to payment orders.

29 (f) Except as provided in this section and in § 4-4A-203(a)(1), rights
30 and obligations arising under this section or § 4-4A-203 may not be varied by
31 agreement.

32

33 § 4-4A-203. Unenforceability of certain verified payment orders.

34 (a) If an accepted payment order is not, under § 4-4A-202(a), an
35 authorized order of a customer identified as sender, but is effective as an

1 order of the customer pursuant to § 4-4A-202(b), the following rules apply:

2 (1) By express written agreement, the receiving bank may limit
3 the extent to which it is entitled to enforce or retain payment of the payment
4 order.

5 (2) The receiving bank is not entitled to enforce or retain
6 payment of the payment order if the customer proves that the order was not
7 caused, directly or indirectly, by a person (i) entrusted at any time with
8 duties to act for the customer with respect to payment orders or the security
9 procedure, or (ii) who obtained access to transmitting facilities of the
10 customer or who obtained, from a source controlled by the customer and without
11 authority of the receiving bank, information facilitating breach of the
12 security procedure, regardless of how the information was obtained or whether
13 the customer was at fault. Information includes any access device, computer
14 software, or the like.

15 (b) This section applies to amendments of payment orders to the same
16 extent it applies to payment orders.

17

18 § 4-4A-204. Refund of payment and duty of customer to report with
19 respect to unauthorized payment order.

20 (a) If a receiving bank accepts a payment order issued in the name of
21 its customer as sender which is (i) not authorized and not effective as the
22 order of the customer under § 4-4A-202, or (ii) not enforceable, in whole or
23 in part, against the customer under § 4-4A-203, the bank shall refund any
24 payment of the payment order received from the customer to the extent the bank
25 is not entitled to enforce payment and shall pay interest on the refundable
26 amount calculated from the date the bank received payment to the date of the
27 refund. However, the customer is not entitled to interest from the bank on
28 the amount to be refunded if the customer fails to exercise ordinary care to
29 determine that the order was not authorized by the customer and to notify the
30 bank of the relevant facts within a reasonable time not exceeding ninety (90)
31 days after the date the customer received notification from the bank that the
32 order was accepted or that the customer's account was debited with respect to
33 the order. The bank is not entitled to any recovery from the customer on
34 account of a failure by the customer to give notification as stated in this
35 section.

1 (b) Reasonable time under subsection (a) may be fixed by agreement as
2 stated in § 4-1-204(1), but the obligation of a receiving bank to refund
3 payment as stated in subsection (a) may not otherwise be varied by agreement.

4

5 § 4-4A-205. Erroneous payment orders.

6 (a) If an accepted payment order was transmitted pursuant to a security
7 procedure for the detection of error and the payment order (i) erroneously
8 instructed payment to a beneficiary not intended by the sender, (ii)
9 erroneously instructed payment in an amount greater than the amount intended
10 by the sender, or (iii) was an erroneously transmitted duplicate of a payment
11 order previously sent by the sender, the following rules apply:

12 (1) If the sender proves that the sender or a person acting on
13 behalf of the sender pursuant to § 4-4A-206 complied with the security
14 procedure and that the error would have been detected if the receiving bank
15 had also complied, the sender is not obliged to pay the order to the extent
16 stated in paragraphs (2) and (3).

17 (2) If the funds transfer is completed on the basis of an
18 erroneous payment order described in clause (i) or (iii) of subsection (a),
19 the sender is not obliged to pay the order and the receiving bank is entitled
20 to recover from the beneficiary any amount paid to the beneficiary to the
21 extent allowed by the law governing mistake and restitution.

22 (3) If the funds transfer is completed on the basis of a payment
23 order described in clause (ii) of subsection (a), the sender is not obliged to
24 pay the order to the extent the amount received by the beneficiary is greater
25 than the amount intended by the sender. In that case, the receiving bank is
26 entitled to recover from the beneficiary the excess amount received to the
27 extent allowed by the law governing mistake and restitution.

28 (b) If (i) the sender of an erroneous payment order described in
29 subsection (a) is not obliged to pay all or part of the order, and (ii) the
30 sender receives notification from the receiving bank that the order was
31 accepted by the bank or that the sender's account was debited with respect to
32 the order, the sender has a duty to exercise ordinary care, on the basis of
33 information available to the sender, to discover the error with respect to the
34 order and to advise the bank of the relevant facts within a reasonable time,
35 not exceeding ninety (90) days, after the bank's notification was received by

1 the sender. If the bank proves that the sender failed to perform that duty,
2 the sender is liable to the bank for the loss the bank proves it incurred as a
3 result of the failure, but the liability of the sender may not exceed the
4 amount of the sender's order.

5 (c) This section applies to amendments to payment orders to the same
6 extent it applies to payment orders.

7

8 § 4-4A-206. Transmission of payment order through funds-transfer or
9 other communication system.

10 (a) If a payment order addressed to a receiving bank is transmitted to
11 a funds-transfer system or other third-party communication system for
12 transmittal to the bank, the system is deemed to be an agent of the sender for
13 the purpose of transmitting the payment order to the bank. If there is a
14 discrepancy between the terms of the payment order transmitted to the system
15 and the terms of the payment order transmitted by the system to the bank, the
16 terms of the payment order of the sender are those transmitted by the system.
17 This section does not apply to a funds-transfer system of the Federal Reserve
18 banks.

19 (b) This section applies to cancellations and amendments of payment
20 orders to the same extent it applies to payment orders.

21

22 § 4-4A-207. Misdescription of beneficiary.

23 (a) Subject to subsection (b), if, in a payment order received by the
24 beneficiary's bank, the name, bank account number, or other identification of
25 the beneficiary refers to a nonexistent or unidentifiable person or account,
26 no person has rights as a beneficiary of the order and acceptance of the order
27 cannot occur.

28 (b) If a payment order received by the beneficiary's bank identifies
29 the beneficiary both by name and by an identifying or bank account number and
30 the name and number identify different persons, the following rules apply:

31 (1) Except as otherwise provided in subsection (c), if the
32 beneficiary's bank does not know that the name and number refer to different
33 persons, it may rely on the number as the proper identification of the
34 beneficiary of the order. The beneficiary's bank need not determine whether
35 the name and number refer to the same person.

1 (2) If the beneficiary's bank pays the person identified by name
2 or knows that the name and number identify different persons, no person has
3 rights as beneficiary except the person paid by the beneficiary's bank if that
4 person was entitled to receive payment from the originator of the funds
5 transfer. If no person has rights as beneficiary, acceptance of the order
6 cannot occur.

7 (c) If (i) a payment order described in subsection (b) is accepted,
8 (ii) the originator's payment order described the beneficiary inconsistently
9 by name and number, and (iii) the beneficiary's bank pays the person
10 identified by number as permitted by subsection (b)(1), the following rules
11 apply:

12 (1) If the originator is a bank, the originator is obliged to pay
13 its order.

14 (2) If the originator is not a bank and proves that the person
15 identified by number was not entitled to receive payment from the originator,
16 the originator is not obliged to pay its order unless the originator's bank
17 proves that the originator, before acceptance of the originator's order, had
18 notice that payment of a payment order issued by the originator might be made
19 by the beneficiary's bank on the basis of an identifying or bank account
20 number even if it identifies a person different from the named beneficiary.
21 Proof of notice may be made by any admissible evidence. The originator's bank
22 satisfies the burden of proof if it proves that the originator, before the
23 payment order was accepted, signed a writing stating the information to which
24 the notice relates.

25 (d) In a case governed by subsection (b)(1), if the beneficiary's bank
26 rightfully pays the person identified by number and that person was not
27 entitled to receive payment from the originator, the amount paid may be
28 recovered from that person to the extent allowed by the law governing mistake
29 and restitution as follows:

30 (1) If the originator is obliged to pay its payment order as
31 stated in subsection (c), the originator has the right to recover.

32 (2) If the originator is not a bank and is not obliged to pay its
33 payment order, the originator's bank has the right to recover.

34

35 § 4-4A-208. Misdescription of intermediary bank or beneficiary's bank.

1 (a) This subsection applies to a payment order identifying an
2 intermediary bank or the beneficiary's bank only by an identifying number.

3 (1) The receiving bank may rely on the number as the proper
4 identification of the intermediary or beneficiary's bank and need not
5 determine whether the number identifies a bank.

6 (2) The sender is obliged to compensate the receiving bank for
7 any loss and expenses incurred by the receiving bank as a result of its
8 reliance on the number in executing or attempting to execute the order.

9 (b) This subsection applies to a payment order identifying an
10 intermediary bank or the beneficiary's bank both by name and an identifying
11 number if the name and number identify different persons.

12 (1) If the sender is a bank, the receiving bank may rely on the
13 number as the proper identification of the intermediary or beneficiary's bank
14 if the receiving bank, when it executes the sender's order, does not know that
15 the name and number identify different persons. The receiving bank need not
16 determine whether the name and number refer to the same person or whether the
17 number refers to a bank. The sender is obliged to compensate the receiving
18 bank for any loss and expenses incurred by the receiving bank as a result of
19 its reliance on the number in executing or attempting to execute the order.

20 (2) If the sender is not a bank and the receiving bank proves
21 that the sender, before the payment order was accepted, had notice that the
22 receiving bank might rely on the number as the proper identification of the
23 intermediary or beneficiary's bank even if it identifies a person different
24 from the bank identified by name, the rights and obligations of the sender and
25 the receiving bank are governed by subsection (b)(1), as though the sender
26 were a bank. Proof of notice may be made by any admissible evidence. The
27 receiving bank satisfies the burden of proof if it proves that the sender,
28 before the payment order was accepted, signed a writing stating the
29 information to which the notice relates.

30 (3) Regardless of whether the sender is a bank, the receiving
31 bank may rely on the name as the proper identification of the intermediary or
32 beneficiary's bank if the receiving bank, at the time it executes the sender's
33 order, does not know that the name and number identify different persons. The
34 receiving bank need not determine whether the name and number refer to the
35 same person.

1 (4) If the receiving bank knows that the name and number identify
2 different persons, reliance on either the name or the number in executing the
3 sender's payment order is a breach of the obligation stated in § 4-
4 4A-302(a)(1).

5

6 § 4-4A-209. Acceptance of payment order.

7 (a) Subject to subsection (d), a receiving bank other than the
8 beneficiary's bank accepts a payment order when it executes the order.

9 (b) Subject to subsections (c) and (d), a beneficiary's bank accepts a
10 payment order at the earliest of the following times:

11 (1) When the bank (i) pays the beneficiary as stated in § 4-
12 4A-405(a) or § 4-4A-405(b), or (ii) notifies the beneficiary of receipt of the
13 order or that the account of the beneficiary has been credited with respect to
14 the order unless the notice indicates that the bank is rejecting the order or
15 that funds with respect to the order may not be withdrawn or used until
16 receipt of payment from the sender of the order;

17 (2) When the bank receives payment of the entire amount of the
18 sender's order pursuant to § 4-4A-403(a)(1) or § 4-4A-403(a)(2); or

19 (3) The opening of the next funds-transfer business day of the
20 bank following the payment date of the order if, at that time, the amount of
21 the sender's order is fully covered by a withdrawable credit balance in an
22 authorized account of the sender or the bank has otherwise received full
23 payment from the sender, unless the order was rejected before that time or is
24 rejected within (i) one (1) hour after that time, or (ii) one (1) hour after
25 the opening of the next business day of the sender following the payment date
26 if that time is later. If notice of rejection is received by the sender after
27 the payment date and the authorized account of the sender does not bear
28 interest, the bank is obliged to pay interest to the sender on the amount of
29 the order for the number of days elapsing after the payment date to the day
30 the sender receives notice or learns that the order was not accepted, counting
31 that day as an elapsed day. If the withdrawable credit balance during that
32 period falls below the amount of the order, the amount of interest payable is
33 reduced accordingly.

34 (c) Acceptance of a payment order cannot occur before the order is
35 received by the receiving bank. Acceptance does not occur under subsection

1 (b) (2) or (b) (3) if the beneficiary of the payment order does not have an
2 account with the receiving bank, the account has been closed, or the receiving
3 bank is not permitted by law to receive credits for the beneficiary's account.

4 (d) A payment order issued to the originator's bank cannot be accepted
5 until the payment date if the bank is the beneficiary's bank, or the execution
6 date if the bank is not the beneficiary's bank. If the originator's bank
7 executes the originator's payment order before the execution date or pays the
8 beneficiary of the originator's payment order before the payment date and the
9 payment order is subsequently cancelled pursuant to § 4-4A-211(b), the bank
10 may recover from the beneficiary any payment received to the extent allowed by
11 the law governing mistake and restitution.

12

13 § 4-4A-210. Rejection of payment order.

14 (a) A payment order is rejected by the receiving bank by a notice of
15 rejection transmitted to the sender orally, electronically, or in writing. A
16 notice of rejection need not use any particular words and is sufficient if it
17 indicates that the receiving bank is rejecting the order or will not execute
18 or pay the order. Rejection is effective when the notice is given if
19 transmission is by a means that is reasonable in the circumstances. If notice
20 of rejection is given by a means that is not reasonable, rejection is
21 effective when the notice is received. If an agreement of the sender and
22 receiving bank establishes the means to be used to reject a payment order, (i)
23 any means complying with the agreement is reasonable and (ii) any means not
24 complying is not reasonable unless no significant delay in receipt of the
25 notice resulted from the use of the noncomplying means.

26 (b) This subsection applies if a receiving bank other than the
27 beneficiary's bank fails to execute a payment order despite the existence on
28 the execution date of a withdrawable credit balance in an authorized account
29 of the sender sufficient to cover the order. If the sender does not receive
30 notice of rejection of the order on the execution date and the authorized
31 account of the sender does not bear interest, the bank is obliged to pay
32 interest to the sender on the amount of the order for the number of days
33 elapsing after the execution date to the earlier of the day the order is
34 cancelled pursuant to § 4-4A-211(d) or the day the sender receives notice or
35 learns that the order was not executed, counting the final day of the period

1 as an elapsed day. If the withdrawable credit balance during that period
2 falls below the amount of the order, the amount of interest is reduced
3 accordingly.

4 (c) If a receiving bank suspends payments, all unaccepted payment
5 orders issued to it are deemed rejected at the time the bank suspends
6 payments.

7 (d) Acceptance of a payment order precludes a later rejection of the
8 order. Rejection of a payment order precludes a later acceptance of the
9 order.

10

11 § 4-4A-211. Cancellation and amendment of payment order.

12 (a) A communication of the sender of a payment order cancelling or
13 amending the order may be transmitted to the receiving bank orally,
14 electronically, or in writing. If a security procedure is in effect between
15 the sender and the receiving bank, the communication is not effective to
16 cancel or amend the order unless the communication is verified pursuant to the
17 security procedure or the bank agrees to the cancellation or amendment.

18 (b) Subject to subsection (a), a communication by the sender cancelling
19 or amending a payment order is effective to cancel or amend the order if
20 notice of the communication is received at a time and in a manner affording
21 the receiving bank a reasonable opportunity to act on the communication before
22 the bank accepts the payment order.

23 (c) After a payment order has been accepted, cancellation or amendment
24 of the order is not effective unless the receiving bank agrees or a funds-
25 transfer system rule allows cancellation or amendment without agreement of the
26 bank.

27 (1) With respect to a payment order accepted by a receiving bank
28 other than the beneficiary's bank, cancellation or amendment is not effective
29 unless a conforming cancellation or amendment of the payment order issued by
30 the receiving bank is also made.

31 (2) With respect to a payment order accepted by the beneficiary's
32 bank, cancellation or amendment is not effective unless the order was issued
33 in execution of an unauthorized payment order, or because of a mistake by a
34 sender in the funds transfer which resulted in the issuance of a payment order
35 (i) that is a duplicate of a payment order previously issued by the sender,

1 (ii) that orders payment to a beneficiary not entitled to receive payment from
2 the originator, or (iii) that orders payment in an amount greater than the
3 amount the beneficiary was entitled to receive from the originator. If the
4 payment order is cancelled or amended, the beneficiary's bank is entitled to
5 recover from the beneficiary any amount paid to the beneficiary to the extent
6 allowed by the law governing mistake and restitution.

7 (d) An unaccepted payment order is cancelled by operation of law at the
8 close of the fifth funds-transfer business day of the receiving bank after the
9 execution date or payment date of the order.

10 (e) A cancelled payment order cannot be accepted. If an accepted
11 payment order is cancelled, the acceptance is nullified and no person has any
12 right or obligation based on the acceptance. Amendment of a payment order is
13 deemed to be cancellation of the original order at the time of amendment and
14 issue of a new payment order in the amended form at the same time.

15 (f) Unless otherwise provided in an agreement of the parties or in a
16 funds-transfer system rule, if the receiving bank, after accepting a payment
17 order, agrees to cancellation or amendment of the order by the sender or is
18 bound by a funds-transfer system rule allowing cancellation or amendment
19 without the bank's agreement, the sender, whether or not cancellation or
20 amendment is effective, is liable to the bank for any loss and expenses,
21 including reasonable attorney's fees, incurred by the bank as a result of the
22 cancellation or amendment or attempted cancellation or amendment.

23 (g) A payment order is not revoked by the death or legal incapacity of
24 the sender unless the receiving bank knows of the death or of an adjudication
25 of incapacity by a court of competent jurisdiction and has reasonable
26 opportunity to act before acceptance of the order.

27 (h) A funds-transfer system rule is not effective to the extent it
28 conflicts with subsection (c) (2).

29

30 § 4-4A-212. Liability and duty of receiving bank regarding unaccepted
31 payment order.

32 If a receiving bank fails to accept a payment order that it is obliged
33 by express agreement to accept, the bank is liable for breach of the agreement
34 to the extent provided in the agreement or in this Chapter, but does not
35 otherwise have any duty to accept a payment order or, before acceptance, to

1 take any action, or refrain from taking action, with respect to the order
2 except as provided in this Chapter or by express agreement. Liability based
3 on acceptance arises only when acceptance occurs as stated in § 4-4A-209, and
4 liability is limited to that provided in this Chapter. A receiving bank is
5 not the agent of the sender or beneficiary of the payment order it accepts, or
6 of any other party to the funds transfer, and the bank owes no duty to any
7 party to the funds transfer except as provided in this Chapter or by express
8 agreement.

9

10 PART 3--EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

11

12 § 4-4A-301. Execution and execution date.

13 (a) A payment order is 'executed' by the receiving bank when it issues
14 a payment order intended to carry out the payment order received by the bank.
15 A payment order received by the beneficiary's bank can be accepted but cannot
16 be executed.

17 (b) 'Execution date' of a payment order means the day on which the
18 receiving bank may properly issue a payment order in execution of the sender's
19 order. The execution date may be determined by instruction of the sender but
20 cannot be earlier than the day the order is received and, unless otherwise
21 determined, is the day the order is received. If the sender's instruction
22 states a payment date, the execution date is the payment date or an earlier
23 date on which execution is reasonably necessary to allow payment to the
24 beneficiary on the payment date.

25

26 § 4-4A-302. Obligations of receiving bank in execution of payment
27 order.

28 (a) Except as provided in subsections (b) through (d), if the receiving
29 bank accepts a payment order pursuant to § 4-4A-209(a), the bank has the
30 following obligations in executing the order:

31 (1) The receiving bank is obliged to issue, on the execution
32 date, a payment order complying with the sender's order and to follow the
33 sender's instructions concerning (i) any intermediary bank or funds-transfer
34 system to be used in carrying out the funds transfer, or (ii) the means by
35 which payment orders are to be transmitted in the funds transfer. If the

1 originator's bank issues a payment order to an intermediary bank, the
2 originator's bank is obliged to instruct the intermediary bank according to
3 the instruction of the originator. An intermediary bank in the funds transfer
4 is similarly bound by an instruction given to it by the sender of the payment
5 order it accepts.

6 (2) If the sender's instruction states that the funds transfer is
7 to be carried out telephonically or by wire transfer or otherwise indicates
8 that the funds transfer is to be carried out by the most expeditious means,
9 the receiving bank is obliged to transmit its payment order by the most
10 expeditious available means, and to instruct any intermediary bank
11 accordingly. If a sender's instruction states a payment date, the receiving
12 bank is obliged to transmit its payment order at a time and by means
13 reasonably necessary to allow payment to the beneficiary on the payment date
14 or as soon thereafter as is feasible.

15 (b) Unless otherwise instructed, a receiving bank executing a payment
16 order may (i) use any funds-transfer system if use of that system is
17 reasonable in the circumstances, and (ii) issue a payment order to the
18 beneficiary's bank or to an intermediary bank through which a payment order
19 conforming to the sender's order can expeditiously be issued to the
20 beneficiary's bank if the receiving bank exercises ordinary care in the
21 selection of the intermediary bank. A receiving bank is not required to
22 follow an instruction of the sender designating a funds-transfer system to be
23 used in carrying out the funds transfer if the receiving bank, in good faith,
24 determines that it is not feasible to follow the instruction or that following
25 the instruction would unduly delay completion of the funds transfer.

26 (c) Unless subsection (a)(2) applies or the receiving bank is otherwise
27 instructed, the bank may execute a payment order by transmitting its payment
28 order by first class mail or by any means reasonable in the circumstances. If
29 the receiving bank is instructed to execute the sender's order by transmitting
30 its payment order by a particular means, the receiving bank may issue its
31 payment order by the means stated or by any means as expeditious as the means
32 stated.

33 (d) Unless instructed by the sender, (i) the receiving bank may not
34 obtain payment of its charges for services and expenses in connection with the
35 execution of the sender's order by issuing a payment order in an amount equal

1 to the amount of the sender's order less the amount of the charges, and (ii)
2 may not instruct a subsequent receiving bank to obtain payment of its charges
3 in the same manner.

4

5 § 4-4A-303. Erroneous execution of payment order.

6 (a) A receiving bank that (i) executes the payment order of the sender
7 by issuing a payment order in an amount greater than the amount of the
8 sender's order, or (ii) issues a payment order in execution of the sender's
9 order and then issues a duplicate order, is entitled to payment of the amount
10 of the sender's order under § 4-4A-402(c) if that subsection is otherwise
11 satisfied. The bank is entitled to recover from the beneficiary of the
12 erroneous order the excess payment received to the extent allowed by the law
13 governing mistake and restitution.

14 (b) A receiving bank that executes the payment order of the sender by
15 issuing a payment order in an amount less than the amount of the sender's
16 order is entitled to payment of the amount of the sender's order under § 4-
17 4A-402(c) if (i) that subsection is otherwise satisfied and (ii) the bank
18 corrects its mistake by issuing an additional payment order for the benefit of
19 the beneficiary of the sender's order. If the error is not corrected, the
20 issuer of the erroneous order is entitled to receive or retain payment from
21 the sender of the order it accepted only to the extent of the amount of the
22 erroneous order. This subsection does not apply if the receiving bank
23 executes the sender's payment order by issuing a payment order in an amount
24 less than the amount of the sender's order for the purpose of obtaining
25 payment of its charges for services and expenses pursuant to instruction of
26 the sender.

27 (c) If a receiving bank executes the payment order of the sender by
28 issuing a payment order to a beneficiary different from the beneficiary of the
29 sender's order and the funds transfer is completed on the basis of that error,
30 the sender of the payment order that was erroneously executed and all previous
31 senders in the funds transfer are not obliged to pay the payment orders they
32 issued. The issuer of the erroneous order is entitled to recover from the
33 beneficiary of the order the payment received to the extent allowed by the law
34 governing mistake and restitution.

35

1 § 4-4A-304. Duty of sender to report erroneously executed payment
2 order.

3 If the sender of a payment order that is erroneously executed as stated
4 in § 4-4A-303 receives notification from the receiving bank that the order was
5 executed or that the sender's account was debited with respect to the order,
6 the sender has a duty to exercise ordinary care to determine, on the basis of
7 information available to the sender, that the order was erroneously executed
8 and to notify the bank of the relevant facts within a reasonable time not
9 exceeding ninety (90) days after the notification from the bank was received
10 by the sender. If the sender fails to perform that duty, the bank is not
11 obliged to pay interest on any amount refundable to the sender under § 4-
12 4A-402(d) for the period before the bank learns of the execution error. The
13 bank is not entitled to any recovery from the sender on account of a failure
14 by the sender to perform the duty stated in this section.

15

16 § 4-4A-305. Liability for late or improper execution or failure to
17 execute payment order.

18 (a) If a funds transfer is completed but execution of a payment order
19 by the receiving bank in breach of § 4-4A-302 results in delay in payment to
20 the beneficiary, the bank is obliged to pay interest to either the originator
21 or the beneficiary of the funds transfer for the period of delay caused by the
22 improper execution. Except as provided in subsection (c), additional damages
23 are not recoverable.

24 (b) If execution of a payment order by a receiving bank in breach of §
25 4-4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to
26 use an intermediary bank designated by the originator, or (iii) issuance of a
27 payment order that does not comply with the terms of the payment order of the
28 originator, the bank is liable to the originator for its expenses in the funds
29 transfer and for incidental expenses and interest losses, to the extent not
30 covered by subsection (a), resulting from the improper execution. Except as
31 provided in subsection (c), additional damages are not recoverable.

32 (c) In addition to the amounts payable under subsections (a) and (b),
33 damages, including consequential damages, are recoverable to the extent
34 provided in an express written agreement of the receiving bank.

35 (d) If a receiving bank fails to execute a payment order it was obliged

1 by express agreement to execute, the receiving bank is liable to the sender
2 for its expenses in the transaction and for incidental expenses and interest
3 losses resulting from the failure to execute. Additional damages, including
4 consequential damages, are recoverable to the extent provided in an express
5 written agreement of the receiving bank, but are not otherwise recoverable.

6 (e) Reasonable attorney's fees are recoverable if demand for
7 compensation under subsection (a) or (b) is made and refused before an action
8 is brought on the claim. If a claim is made for breach of an agreement under
9 subsection (d) and the agreement does not provide for damages, reasonable
10 attorney's fees are recoverable if demand for compensation under subsection
11 (d) is made and refused before an action is brought on the claim.

12 (f) Except as stated in this section, the liability of a receiving bank
13 under subsections (a) and (b) may not be varied by agreement.

14

15

PART 4--PAYMENT

16

17 § 4-4A-401. Payment date.

18 'Payment date' of a payment order means the day on which the amount of
19 the order is payable to the beneficiary by the beneficiary's bank. The
20 payment date may be determined by instruction of the sender but cannot be
21 earlier than the day the order is received by the beneficiary's bank and,
22 unless otherwise determined, is the day the order is received by the
23 beneficiary's bank.

24

25 § 4-4A-402. Obligation of sender to pay receiving bank.

26 (a) This section is subject to §§ 4-4A-205 and 4-4A-207.

27 (b) With respect to a payment order issued to the beneficiary's bank,
28 acceptance of the order by the bank obliges the sender to pay the bank the
29 amount of the order, but payment is not due until the payment date of the
30 order.

31 (c) This subsection is subject to subsection (e) and to § 4-4A-303.
32 With respect to a payment order issued to a receiving bank other than the
33 beneficiary's bank, acceptance of the order by the receiving bank obliges the
34 sender to pay the bank the amount of the sender's order. Payment by the
35 sender is not due until the execution date of the sender's order. The

1 obligation of that sender to pay its payment order is excused if the funds
2 transfer is not completed by acceptance by the beneficiary's bank of a payment
3 order instructing payment to the beneficiary of that sender's payment order.

4 (d) If the sender of a payment order pays the order and was not obliged
5 to pay all or part of the amount paid, the bank receiving payment is obliged
6 to refund payment to the extent the sender was not obliged to pay. Except as
7 provided in §§ 4-4A-204 and 4-4A-304, interest is payable on the refundable
8 amount from the date of payment.

9 (e) If a funds transfer is not completed as stated in subsection (c)
10 and an intermediary bank is obliged to refund payment as stated in subsection
11 (d) but is unable to do so because not permitted by applicable law or because
12 the bank suspends payments, a sender in the funds transfer that executed a
13 payment order in compliance with an instruction, as stated in § 4-
14 4A-302(a)(1), to route the funds transfer through that intermediary bank is
15 entitled to receive or retain payment from the sender of the payment order
16 that it accepted. The first sender in the funds transfer that issued an
17 instruction requiring routing through that intermediary bank is subrogated to
18 the right of the bank that paid the intermediary bank to refund as stated in
19 subsection (d).

20 (f) The right of the sender of a payment order to be excused from the
21 obligation to pay the order as stated in subsection (c) or to receive refund
22 under subsection (d) may not be varied by agreement.

23

24 § 4-4A-403. Payment by sender to receiving bank.

25 (a) Payment of the sender's obligation under § 4-4A-402 to pay the
26 receiving bank occurs as follows:

27 (1) If the sender is a bank, payment occurs when the receiving
28 bank receives final settlement of the obligation through a Federal Reserve
29 Bank or through a funds-transfer system.

30 (2) If the sender is a bank and the sender (i) credited an
31 account of the receiving bank with the sender, or (ii) caused an account of
32 the receiving bank in another bank to be credited, payment occurs when the
33 credit is withdrawn or, if not withdrawn, at midnight of the day on which the
34 credit is withdrawable and the receiving bank learns of that fact.

35 (3) If the receiving bank debits an account of the sender with

1 the receiving bank, payment occurs when the debit is made to the extent the
2 debit is covered by a withdrawable credit balance in the account.

3 (b) If the sender and receiving bank are members of a funds-transfer
4 system that nets obligations multilaterally among participants, the receiving
5 bank receives final settlement when settlement is complete in accordance with
6 the rules of the system. The obligation of the sender to pay the amount of a
7 payment order transmitted through the funds-transfer system may be satisfied,
8 to the extent permitted by the rules of the system, by setting off and
9 applying against the sender's obligation the right of the sender to receive
10 payment from the receiving bank of the amount of any other payment order
11 transmitted to the sender by the receiving bank through the funds-transfer
12 system. The aggregate balance of obligations owed by each sender to each
13 receiving bank in the funds-transfer system may be satisfied, to the extent
14 permitted by the rules of the system, by setting off and applying against that
15 balance the aggregate balance of obligations owed to the sender by other
16 members of the system. The aggregate balance is determined after the right of
17 setoff stated in the second sentence of this subsection has been exercised.

18 (c) If two (2) banks transmit payment orders to each other under an
19 agreement that settlement of the obligations of each bank to the other under §
20 4-4A-402 will be made at the end of the day or other period, the total amount
21 owed with respect to all orders transmitted by one (1) bank shall be set off
22 against the total amount owed with respect to all orders transmitted by the
23 other bank. To the extent of the setoff, each bank has made payment to the
24 other.

25 (d) In a case not covered by subsection (a), the time when payment of
26 the sender's obligation under § 4-4A-402(b) or § 4-4A-402(c) occurs is
27 governed by applicable principles of law that determine when an obligation is
28 satisfied.

29

30 § 4-4A-404. Obligation of beneficiary's bank to pay and give notice to
31 beneficiary.

32 (a) Subject to §§ 4-4A-211(e), 4-4A-405(d), and 4-4A-405(e), if a
33 beneficiary's bank accepts a payment order, the bank is obliged to pay the
34 amount of the order to the beneficiary of the order. Payment is due on the
35 payment date of the order, but if acceptance occurs on the payment date after

1 the close of the funds-transfer business day of the bank, payment is due on
2 the next funds-transfer business day. If the bank refuses to pay after demand
3 by the beneficiary and receipt of notice of particular circumstances that will
4 give rise to consequential damages as a result of nonpayment, the beneficiary
5 may recover damages resulting from the refusal to pay to the extent the bank
6 had notice of the damages, unless the bank proves that it did not pay because
7 of a reasonable doubt concerning the right of the beneficiary to payment.

8 (b) If a payment order accepted by the beneficiary's bank instructs
9 payment to an account of the beneficiary, the bank is obliged to notify the
10 beneficiary of receipt of the order before midnight of the next funds-transfer
11 business day following the payment date. If the payment order does not
12 instruct payment to an account of the beneficiary, the bank is required to
13 notify the beneficiary only if notice is required by the order. Notice may be
14 given by first class mail or any other means reasonable in the circumstances.
15 If the bank fails to give the required notice, the bank is obliged to pay
16 interest to the beneficiary on the amount of the payment order from the day
17 notice should have been given until the day the beneficiary learned of receipt
18 of the payment order by the bank. No other damages are recoverable.
19 Reasonable attorney's fees are also recoverable if demand for interest is made
20 and refused before an action is brought on the claim.

21 (c) The right of a beneficiary to receive payment and damages as stated
22 in subsection (a) may not be varied by agreement or a funds-transfer system
23 rule. The right of a beneficiary to be notified as stated in subsection (b)
24 may be varied by agreement of the beneficiary or by a funds-transfer system
25 rule if the beneficiary is notified of the rule before initiation of the funds
26 transfer.

27

28 § 4-4A-405. Payment by beneficiary's bank to beneficiary.

29 (a) If the beneficiary's bank credits an account of the beneficiary of
30 a payment order, payment of the bank's obligation under § 4-4A-404(a) occurs
31 when and to the extent (i) the beneficiary is notified of the right to
32 withdraw the credit, (ii) the bank lawfully applies the credit to a debt of
33 the beneficiary, or (iii) funds with respect to the order are otherwise made
34 available to the beneficiary by the bank.

35 (b) If the beneficiary's bank does not credit an account of the

1 beneficiary of a payment order, the time when payment of the bank's obligation
2 under § 4-4A-404(a) occurs is governed by principles of law that determine
3 when an obligation is satisfied.

4 (c) Except as stated in subsections (d) and (e), if the beneficiary's
5 bank pays the beneficiary of a payment order under a condition to payment or
6 agreement of the beneficiary giving the bank the right to recover payment from
7 the beneficiary if the bank does not receive payment of the order, the
8 condition to payment or agreement is not enforceable.

9 (d) A funds-transfer system rule may provide that payments made to
10 beneficiaries of funds transfers made through the system are provisional until
11 receipt of payment by the beneficiary's bank of the payment order it accepted.
12 A beneficiary's bank that makes a payment that is provisional under the rule
13 is entitled to refund from the beneficiary if (i) the rule requires that both
14 the beneficiary and the originator be given notice of the provisional nature
15 of the payment before the funds transfer is initiated, (ii) the beneficiary,
16 the beneficiary's bank and the originator's bank agreed to be bound by the
17 rule, and (iii) the beneficiary's bank did not receive payment of the payment
18 order that it accepted. If the beneficiary is obliged to refund payment to
19 the beneficiary's bank, acceptance of the payment order by the beneficiary's
20 bank is nullified and no payment by the originator of the funds transfer to
21 the beneficiary occurs under § 4-4A-406.

22 (e) This subsection applies to a funds transfer that includes a payment
23 order transmitted over a funds-transfer system that (i) nets obligations
24 multilaterally among participants, and (ii) has in effect a loss-sharing
25 agreement among participants for the purpose of providing funds necessary to
26 complete settlement of the obligations of one (1) or more participants that do
27 not meet their settlement obligations. If the beneficiary's bank in the funds
28 transfer accepts a payment order and the system fails to complete settlement
29 pursuant to its rules with respect to any payment order in the funds transfer,
30 (i) the acceptance by the beneficiary's bank is nullified and no person has
31 any right or obligation based on the acceptance, (ii) the beneficiary's bank
32 is entitled to recover payment from the beneficiary, (iii) no payment by the
33 originator to the beneficiary occurs under § 4-4A-406, and (iv) subject to §
34 4-4A-402(e), each sender in the funds transfer is excused from its obligation
35 to pay its payment order under § 4-4A-402(c) because the funds transfer has

1 not been completed.

2

3 § 4-4A-406. Payment by originator to beneficiary; discharge of
4 underlying obligation.

5 (a) Subject to §§ 4-4A-211(e), 4-4A-405(d), and 4-4A-405(e), the
6 originator of a funds transfer pays the beneficiary of the originator's
7 payment order (i) at the time a payment order for the benefit of the
8 beneficiary is accepted by the beneficiary's bank in the funds transfer and
9 (ii) in an amount equal to the amount of the order accepted by the
10 beneficiary's bank, but not more than the amount of the originator's order.

11 (b) If payment under subsection (a) is made to satisfy an obligation,
12 the obligation is discharged to the same extent discharge would result from
13 payment to the beneficiary of the same amount in money, unless (i) the payment
14 under subsection (a) was made by a means prohibited by the contract of the
15 beneficiary with respect to the obligation, (ii) the beneficiary, within a
16 reasonable time after receiving notice of receipt of the order by the
17 beneficiary's bank, notified the originator of the beneficiary's refusal of
18 the payment, (iii) funds with respect to the order were not withdrawn by the
19 beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary
20 would suffer a loss that could reasonably have been avoided if payment had
21 been made by a means complying with the contract. If payment by the
22 originator does not result in discharge under this section, the originator is
23 subrogated to the rights of the beneficiary to receive payment from the
24 beneficiary's bank under § 4-4A-404(a).

25 (c) For the purpose of determining whether discharge of an obligation
26 occurs under subsection (b), if the beneficiary's bank accepts a payment order
27 in an amount equal to the amount of the originator's payment order less
28 charges of one (1) or more receiving banks in the funds transfer, payment to
29 the beneficiary is deemed to be in the amount of the originator's order unless
30 upon demand by the beneficiary the originator does not pay the beneficiary the
31 amount of the deducted charges.

32 (d) Rights of the originator or of the beneficiary of a funds transfer
33 under this section may be varied only by agreement of the originator and the
34 beneficiary.

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PART 5--MISCELLANEOUS PROVISIONS

§ 4-4A-501. Variation by agreement and effect of funds-transfer system rule.

(a) Except as otherwise provided in this Chapter, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) 'Funds-transfer system rule' means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Chapter, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Chapter and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in §§ 4-4A-404(c), 4-4A-405(d), and 4-4A-507(c).

§ 4-4A-502. Creditor process served on receiving bank; Setoff by beneficiary's bank.

(a) As used in this section, 'creditor process' means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the

1 bank accepts the payment order.

2 (c) If a beneficiary's bank has received a payment order for payment to
3 the beneficiary's account in the bank, the following rules apply:

4 (1) The bank may credit the beneficiary's account. The amount
5 credited may be set off against an obligation owed by the beneficiary to the
6 bank or may be applied to satisfy creditor process served on the bank with
7 respect to the account.

8 (2) The bank may credit the beneficiary's account and allow
9 withdrawal of the amount credited unless creditor process with respect to the
10 account is served at a time and in a manner affording the bank a reasonable
11 opportunity to act to prevent withdrawal.

12 (3) If creditor process with respect to the beneficiary's account
13 has been served and the bank has had a reasonable opportunity to act on it,
14 the bank may not reject the payment order except for a reason unrelated to the
15 service of process.

16 (d) Creditor process with respect to a payment by the originator to the
17 beneficiary pursuant to a funds transfer may be served only on the
18 beneficiary's bank with respect to the debt owed by that bank to the
19 beneficiary. Any other bank served with the creditor process is not obliged
20 to act with respect to the process.

21

22 § 4-4A-503. Injunction or restraining order with respect to funds
23 transfer.

24 For proper cause and in compliance with applicable law, a court may
25 restrain (i) a person from issuing a payment order to initiate a funds
26 transfer, (ii) an originator's bank from executing the payment order of the
27 originator, or (iii) the beneficiary's bank from releasing funds to the
28 beneficiary or the beneficiary from withdrawing the funds. A court may not
29 otherwise restrain a person from issuing a payment order, paying or receiving
30 payment of a payment order, or otherwise acting with respect to a funds
31 transfer.

32

33 § 4-4A-504. Order in which items and payment orders may be charged to
34 account; Order of withdrawals from account.

35 (a) If a receiving bank has received more than one (1) payment order of

1 the sender or one (1) or more payment orders and other items that are payable
2 from the sender's account, the bank may charge the sender's account with
3 respect to the various orders and items in any sequence.

4 (b) In determining whether a credit to an account has been withdrawn by
5 the holder of the account or applied to a debt of the holder of the account,
6 credits first made to the account are first withdrawn or applied.

7

8 § 4-4A-505. Preclusion of objection to debit of customer's account.

9 If a receiving bank has received payment from its customer with respect
10 to a payment order issued in the name of the customer as sender and accepted
11 by the bank, and the customer received notification reasonably identifying the
12 order, the customer is precluded from asserting that the bank is not entitled
13 to retain the payment unless the customer notifies the bank of the customer's
14 objection to the payment within one (1) year after the notification was
15 received by the customer.

16

17 § 4-4A-506. Rate of interest.

18 (a) If, under this Chapter, a receiving bank is obliged to pay interest
19 with respect to a payment order issued to the bank, the amount payable may be
20 determined (i) by agreement of the sender and receiving bank, or (ii) by a
21 funds-transfer system rule if the payment order is transmitted through a
22 funds-transfer system.

23 (b) If the amount of interest is not determined by an agreement or rule
24 as stated in subsection (a), the amount is calculated by multiplying the
25 applicable Federal Funds rate by the amount on which interest is payable, and
26 then multiplying the product by the number of days for which interest is
27 payable. The applicable Federal Funds rate is the average of the Federal
28 Funds rates published by the Federal Reserve Bank of New York for each of the
29 days for which interest is payable divided by three hundred sixty (360). The
30 Federal Funds rate for any day on which a published rate is not available is
31 the same as the published rate for the next-preceding day for which there is a
32 published rate. If a receiving bank that accepted a payment order is required
33 to refund payment to the sender of the order because the funds transfer was
34 not completed, but the failure to complete was not due to any fault by the
35 bank, the interest payable is reduced by a percentage equal to the reserve

1 requirement on deposits of the receiving bank.

2

3 § 4-4A-507. Choice of law.

4 (a) The following rules apply unless the affected parties otherwise
5 agree or subsection (c) applies:

6 (1) The rights and obligations between the sender of a payment
7 order and the receiving bank are governed by the law of the jurisdiction in
8 which the receiving bank is located.

9 (2) The rights and obligations between the beneficiary's bank and
10 the beneficiary are governed by the law of the jurisdiction in which the
11 beneficiary's bank is located.

12 (3) The issue of when payment is made pursuant to a funds
13 transfer by the originator to the beneficiary is governed by the law of the
14 jurisdiction in which the beneficiary's bank is located.

15 (b) If the parties described in each paragraph of subsection (a) have
16 made an agreement selecting the law of a particular jurisdiction to govern
17 rights and obligations between each other, the law of that jurisdiction
18 governs those rights and obligations, whether or not the payment order or the
19 funds transfer bears a reasonable relation to that jurisdiction.

20 (c) A funds-transfer system rule may select the law of a particular
21 jurisdiction to govern (i) rights and obligations between participating banks
22 with respect to payment orders transmitted or processed through the system, or
23 (ii) the rights and obligations of some or all parties to a funds transfer any
24 part of which is carried out by means of the system. A choice of law made
25 pursuant to clause (i) is binding on participating banks. A choice of law
26 made pursuant to clause (ii) is binding on the originator, other sender, or a
27 receiving bank having notice that the funds-transfer system might be used in
28 the funds transfer and of the choice of law by the system when the originator,
29 other sender, or receiving bank issued or accepted a payment order. The
30 beneficiary of a funds transfer is bound by the choice of law if, when the
31 funds transfer is initiated, the beneficiary has notice that the funds-
32 transfer system might be used in the funds transfer and of the choice of law
33 by the system. The law of a jurisdiction selected pursuant to this subsection
34 may govern, whether or not that law bears a reasonable relation to the matter
35 in issue.

1 (d) In the event of inconsistency between an agreement under subsection
2 (b) and a choice-of-law rule under subsection (c), the agreement under
3 subsection (b) prevails.

4 (e) If a funds transfer is made by use of more than one (1) funds-
5 transfer system and there is inconsistency between choice-of-law rules of the
6 systems, the matter in issue is governed by the law of the selected
7 jurisdiction that has the most significant relationship to the matter in
8 issue."

9

10 SECTION 2. Arkansas Code 4-1-105 is hereby amended to read as follows:

11 "4-1-105. Territorial application of the subtitle - Parties' power to
12 choose applicable law.

13 (1) Except as provided hereafter in this section, when a transaction
14 bears a reasonable relation to this state and also to another state or nation,
15 the parties may agree that the law either of this state or of such other state
16 or nation shall govern their rights and duties. Failing such agreement, this
17 subtitle applies to transactions bearing an appropriate relation to this
18 state.

19 (2) Where one (1) of the following provisions of this subtitle
20 specifies the applicable law, that provision governs and a contrary agreement
21 is effective only to the extent permitted by the law (including the conflict
22 of laws rules) so specified:

23 Rights of creditors against sold goods, § 4-2-402;

24 Applicability of the chapter on bank deposits and collections,
25 § 4-4-102;

26 Bulk transfers subject to the chapter on bulk transfers, § 4-6-102;

27 Applicability of the chapter on investment securities, § 4-8-106;

28 Perfection provisions of the chapter on secured transactions, §
29 4-9-103;

30 Governing law in the Article on Funds Transfers, § 4-4A-507."

31

32 SECTION 3. All provisions of this act of a general and permanent nature
33 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
34 Revision Commission shall incorporate the same in the Code.

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