

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

**A BILL ACT 572 OF 1991**  
**SENATE BILL 420**

**For An Act To Be Entitled**

8 "AN ACT TO AMEND CERTAIN PROVISIONS OF CHAPTERS 1 (GENERAL  
9 PROVISIONS), 3 (COMMERCIAL PAPER), AND 4 (BANK DEPOSITS  
10 AND COLLECTIONS) OF THE UNIFORM COMMERCIAL CODE."

11

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

13

14 SECTION 1. Arkansas Code Annotated § 4-1-201(20) is hereby amended to  
15 read as follows:

16 "(20) 'Holder', with respect to a negotiable instrument, means the  
17 person in possession if the instrument is payable to bearer or, in the case of  
18 an instrument payable to an identified person, if the identified person is in  
19 possession. 'Holder', with respect to a document of title, means the person  
20 in possession if the goods are deliverable to bearer or to the order of the  
21 person in possession."

22

23 SECTION 2. Arkansas Code Annotated § 4-1-201(24) is hereby amended to  
24 read as follows:

25 "(24) 'Money' means a medium of exchange authorized or adopted by a  
26 domestic or foreign government and includes a monetary unit of account  
27 established by an intergovernmental organization or by agreement between two  
28 or more nations."

29

30 SECTION 3. Arkansas Code Annotated § 4-1-201(43) and (44) are hereby  
31 amended to read as follows:

32 "(43) 'Unauthorized' signature means one made without actual, implied,  
33 or apparent authority and includes a forgery.

34 (44) 'Value'. Except as otherwise provided with respect to negotiable  
35 instruments and bank collections (§§ 4-3-303, 4-4-210, and 4-4-211) a person  
36 gives 'value' for rights if he acquires them:

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

5 (b) As security for or in total or partial satisfaction of a  
6 preexisting claim; or

7 (c) By accepting delivery pursuant to a preexisting contract for  
8 purchase; or

9 (d) Generally, in return for any consideration sufficient to support a  
10 simple contract."

11

12 SECTION 4. Arkansas Code Annotated § 4-1-207 is hereby amended to read  
13 as follows:

14 "§ 4-1-207. Performance or acceptance under reservation of rights.

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

19 (2) Subsection (1) does not apply to an accord and satisfaction."  
20

21 SECTION 5. Title 4 of the Arkansas Code Annotated is hereby amended by  
22 inserting a new Chapter 3 to read as follows:

23

"CHAPTER 3

24

NEGOTIABLE INSTRUMENTS

25

PART 1 -- GENERAL PROVISIONS AND DEFINITIONS

26

27 § 4-3-101. Short title.

28 This Chapter may be cited as 'Uniform Commercial Code -- Negotiable  
29 Instruments'.

30 § 4-3-102. Subject matter.

31 (a) This Chapter applies to negotiable instruments. It does not apply  
32 to money, to payment orders governed by § 4-4A-101 et seq., or to securities  
33 governed by § 4-8-101 et seq.

34 (b) If there is conflict between this Chapter and § 4-4-101 et seq. or  
35 4-9-101, §§4-4-101 et seq. and 4-9-101 et seq. govern.

1 (c) Regulations of the Board of Governors of the Federal Reserve System  
2 and operating circulars of the Federal Reserve banks supersede any  
3 inconsistent provision of this Chapter to the extent of the inconsistency.

4 § 4-3-103. Definitions.

5 (a) In this Chapter:

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

7 (2) 'Drawee' means a person ordered in a draft to make payment.

8 (3) 'Drawer' means a person who signs or is identified in a draft as a  
9 person ordering payment.

10 (4) 'Good faith' means honesty in fact and the observance of  
11 reasonable commercial standards of fair dealing.

12 (5) 'Maker' means a person who signs or is identified in a note as a  
13 person undertaking to pay.

14 (6) 'Order' means a written instruction to pay money signed by the  
15 person giving the instruction. The instruction may be addressed to any  
16 person, including the person giving the instruction, or to one (1) or more  
17 persons jointly or in the alternative but not in succession. An authorization  
18 to pay is not an order unless the person authorized to pay is also instructed  
19 to pay.

20 (7) 'Ordinary care' in the case of a person engaged in business means  
21 observance of reasonable commercial standards, prevailing in the area in which  
22 the person is located, with respect to the business in which the person is  
23 engaged. In the case of a bank that takes an instrument for processing for  
24 collection or payment by automated means, reasonable commercial standards do  
25 not require the bank to examine the instrument if the failure to examine does  
26 not violate the bank's prescribed procedures and the bank's procedures do not  
27 vary unreasonably from general banking usage not disapproved by this Chapter  
28 or § 4-4-101 et seq.

29 (8) 'Party' means a party to an instrument.

30 (9) 'Promise' means a written undertaking to pay money signed by the  
31 person undertaking to pay. An acknowledgment of an obligation by the obligor  
32 is not a promise unless the obligor also undertakes to pay the obligation.

33 (10) 'Prove' with respect to a fact means to meet the burden of  
34 establishing the fact (§ 4-1-201(8)).

35 (11) 'Remitter' means a person who purchases an instrument from its

1 issuer if the instrument is payable to an identified person other than the  
2 purchaser.

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

- 5 'Acceptance.' § 4-3-409.
- 6 'Accommodated party.' § 4-3-419.
- 7 'Accommodation party.' § 4-3-419.
- 8 'Alteration.' § 4-3-407.
- 9 'Anomalous indorsement.' § 4-3-205.
- 10 'Blank indorsement.' § 4-3-205.
- 11 'Cashier's check.' § 4-3-104.
- 12 'Certificate of deposit.' § 4-3-104.
- 13 'Certified check.' § 4-3-409.
- 14 'Check.' § 4-3-104.
- 15 'Consideration.' § 4-3-303.
- 16 'Draft.' § 4-3-104.
- 17 'Holder in due course.' § 4-3-302.
- 18 'Incomplete instrument.' § 4-3-115.
- 19 'Indorsement.' § 4-3-204.
- 20 'Indorser.' § 4-3-204.
- 21 'Instrument.' § 4-3-104.
- 22 'Issue.' § 4-3-105.
- 23 'Issuer.' § 4-3-105.
- 24 'Negotiable instrument.' § 4-3-104.
- 25 'Negotiation.' § 4-3-201.
- 26 'Note.' § 4-3-104.
- 27 'Payable at a definite time.' § 4-3-108.
- 28 'Payable on demand.' § 4-3-108.
- 29 'Payable to bearer.' § 4-3-109.
- 30 'Payable to order.' § 4-3-109.
- 31 'Payment.' § 4-3-602.
- 32 'Person entitled to enforce.' § 4-3-301.
- 33 'Presentment.' § 4-3-501.
- 34 'Reacquisition.' § 4-3-207.
- 35 'Special indorsement.' § 4-3-205.

- 1 'Teller's check.' § 4-3-104.
- 2 'Transfer of instrument.' § 4-3-203.
- 3 'Traveler's check.' § 4-3-104.
- 4 'Value.' § 4-3-303.

5 (c) The following definitions in other Chapters of this subtitle apply  
6 to this Chapter:

- 7 'Bank.' § 4-4-105.
- 8 'Banking day.' § 4-4-104.
- 9 'Clearing house.' § 4-4-104.
- 10 'Collecting bank.' § 4-4-105.
- 11 'Depository bank.' § 4-4-105.
- 12 'Documentary draft.' § 4-4-104.
- 13 'Intermediary bank.' § 4-4-105.
- 14 'Item.' § 4-4-104.
- 15 'Payor bank.' § 4-4-105.
- 16 'Suspends payments.' § 4-4-104.

17 (d) In addition, Chapter 1 of this subtitle contains general defini-  
18 tions and principles of construction and interpretation applicable throughout  
19 this Chapter.

20 § 4-3-104. Negotiable instrument.

21 (a) Except as provided in subsections (c) and (d), 'negotiable  
22 instrument' means an unconditional promise or order to pay a fixed amount of  
23 money, with or without interest or other charges described in the promise or  
24 order, if it:

25 (1) Is payable to bearer or to order at the time it is issued or first  
26 comes into possession of a holder;

27 (2) Is payable on demand or at a definite time; and

28 (3) Does not state any other undertaking or instruction by the person  
29 promising or ordering payment to do any act in addition to the payment of  
30 money, but the promise or order may contain (i) an undertaking or power to  
31 give, maintain, or protect collateral to secure payment, (ii) an authorization  
32 or power to the holder to confess judgment or realize on or dispose of  
33 collateral, or (iii) a waiver of the benefit of any law intended for the  
34 advantage or protection of an obligor.

35 (b) 'Instrument' means a negotiable instrument.

1 (c) An order that meets all of the requirements of subsection (a),  
2 except paragraph (1), and otherwise falls within the definition of 'check' in  
3 subsection (f) is a negotiable instrument and a check.

4 (d) A promise or order other than a check is not an instrument if, at  
5 the time it is issued or first comes into possession of a holder, it contains  
6 a conspicuous statement, however expressed, to the effect that the promise or  
7 order is not negotiable or is not an instrument governed by this Chapter.

8 (e) An instrument is a 'note' if it is a promise and is a 'draft' if  
9 it is an order. If an instrument falls within the definition of both 'note'  
10 and 'draft,' a person entitled to enforce the instrument may treat it as  
11 either.

12 (f) 'Check' means (i) a draft, other than a documentary draft, payable  
13 on demand and drawn on a bank or (ii) a cashier's check or teller's check. An  
14 instrument may be a check even though it is described on its face by another  
15 term, such as 'money order.'

16 (g) 'Cashier's check' means a draft with respect to which the drawer  
17 and drawee are the same bank or branches of the same bank.

18 (h) 'Teller's check' means a draft drawn by a bank (i) on another  
19 bank, or (ii) payable at or through a bank.

20 (i) 'Traveler's check' means an instrument that (i) is payable on  
21 demand, (ii) is drawn on or payable at or through a bank, (iii) is designated  
22 by the term 'traveler's check' or by a substantially similar term, and (iv)  
23 requires, as a condition to payment, a countersignature by a person whose  
24 specimen signature appears on the instrument.

25 (j) 'Certificate of deposit' means an instrument containing an  
26 acknowledgment by a bank that a sum of money has been received by the bank and  
27 a promise by the bank to repay the sum of money. A certificate of deposit is  
28 a note of the bank.

29 § 4-3-105. Issue of instrument.

30 (a) 'Issue' means the first delivery of an instrument by the maker or  
31 drawer, whether to a holder or nonholder, for the purpose of giving rights on  
32 the instrument to any person.

33 (b) An unissued instrument, or an unissued incomplete instrument that  
34 is completed, is binding on the maker or drawer, but nonissuance is a defense.  
35 An instrument that is conditionally issued or is issued for a special purpose

1 is binding on the maker or drawer, but failure of the condition or special  
2 purpose to be fulfilled is a defense.

3 (c) 'Issuer' applies to issued and unissued instruments and means a  
4 maker or drawer of an instrument.

5 § 4-3-106. Unconditional promise or order.

6 (a) Except as provided in this section, for the purposes of § 4-  
7 3-104(a), a promise or order is unconditional unless it states (i) an express  
8 condition to payment, (ii) that the promise or order is subject to or governed  
9 by another writing, or (iii) that rights or obligations with respect to the  
10 promise or order are stated in another writing. A reference to another  
11 writing does not of itself make the promise or order conditional.

12 (b) A promise or order is not made conditional (i) by a reference to  
13 another writing for a statement of rights with respect to collateral,  
14 prepayment, or acceleration, or (ii) because payment is limited to resort to a  
15 particular fund or source.

16 (c) If a promise or order requires, as a condition to payment, a  
17 countersignature by a person whose specimen signature appears on the promise  
18 or order, the condition does not make the promise or order conditional for the  
19 purposes of § 4-3-104(a). If the person whose specimen signature appears on  
20 an instrument fails to countersign the instrument, the failure to countersign  
21 is a defense to the obligation of the issuer, but the failure does not prevent  
22 a transferee of the instrument from becoming a holder of the instrument.

23 (d) If a promise or order at the time it is issued or first comes into  
24 possession of a holder contains a statement, required by applicable statutory  
25 or administrative law, to the effect that the rights of a holder or transferee  
26 are subject to claims or defenses that the issuer could assert against the  
27 original payee, the promise or order is not thereby made conditional for the  
28 purposes of § 4-3-104(a); but if the promise or order is an instrument, there  
29 cannot be a holder in due course of the instrument.

30 § 4-3-107. Instrument payable in foreign money.

31 Unless the instrument otherwise provides, an instrument that states the  
32 amount payable in foreign money may be paid in the foreign money or in an  
33 equivalent amount in dollars calculated by using the current bank offered spot  
34 rate at the place of payment for the purchase of dollars on the day on which  
35 the instrument is paid.

1 § 4-3-108. Payable on demand or at definite time.

2 (a) A promise or order is 'payable on demand' if it (i) states that it  
3 is payable on demand or at sight, or otherwise indicates that it is payable at  
4 the will of the holder, or (ii) does not state any time of payment.

5 (b) A promise or order is 'payable at a definite time' if it is  
6 payable on elapse of a definite period of time after sight or acceptance or at  
7 a fixed date or dates or at a time or times readily ascertainable at the time  
8 the promise or order is issued, subject to rights of (i) prepayment, (ii)  
9 acceleration, (iii) extension at the option of the holder, or (iv) extension  
10 to a further definite time at the option of the maker or acceptor or  
11 automatically upon or after a specified act or event.

12 (c) If an instrument, payable at a fixed date, is also payable upon  
13 demand made before the fixed date, the instrument is payable on demand until  
14 the fixed date and, if demand for payment is not made before that date,  
15 becomes payable at a definite time on the fixed date.

16 § 4-3-109. Payable to bearer or to order.

17 (a) A promise or order is payable to bearer if it:

18 (1) States that it is payable to bearer or to the order of bearer or  
19 otherwise indicates that the person in possession of the promise or order is  
20 entitled to payment;

21 (2) Does not state a payee; or

22 (3) States that it is payable to or to the order of cash or otherwise  
23 indicates that it is not payable to an identified person.

24 (b) A promise or order that is not payable to bearer is payable to  
25 order if it is payable (i) to the order of an identified person or (ii) to an  
26 identified person or order. A promise or order that is payable to order is  
27 payable to the identified person.

28 (c) An instrument payable to bearer may become payable to an identified  
29 person if it is specially indorsed pursuant to § 4-3-205(a). An instrument  
30 payable to an identified person may become payable to bearer if it is indorsed  
31 in blank pursuant to § 4-3-205(b).

32 § 4-3-110. Identification of person to whom instrument is payable.

33 (a) The person to whom an instrument is initially payable is determined  
34 by the intent of the person, whether or not authorized, signing as, or in the  
35 name or behalf of, the issuer of the instrument. The instrument is payable to

1 the person intended by the signer even if that person is identified in the  
2 instrument by a name or other identification that is not that of the intended  
3 person. If more than one (1) person signs in the name or behalf of the issuer  
4 of an instrument and all the signers do not intend the same person as payee,  
5 the instrument is payable to any person intended by one (1) or more of the  
6 signers.

7 (b) If the signature of the issuer of an instrument is made by  
8 automated means, such as a check-writing machine, the payee of the instrument  
9 is determined by the intent of the person who supplied the name or  
10 identification of the payee, whether or not authorized to do so.

11 (c) A person to whom an instrument is payable may be identified in any  
12 way, including by name, identifying number, office, or account number. For  
13 the purpose of determining the holder of an instrument, the following rules  
14 apply:

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

21 (2) If an instrument is payable to:

22 (i) A trust, an estate, or a person described as trustee or  
23 representative of a trust or estate, the instrument is payable to the trustee,  
24 the representative, or a successor of either, whether or not the beneficiary  
25 or estate is also named;

26 (ii) A person described as agent or similar representative of a  
27 named or identified person, the instrument is payable to the represented  
28 person, the representative, or a successor of the representative;

29 (iii) A fund or organization that is not a legal entity, the  
30 instrument is payable to a representative of the members of the fund or  
31 organization; or

32 (iv) An office or to a person described as holding an office, the  
33 instrument is payable to the named person, the incumbent of the office, or a  
34 successor to the incumbent.

35 (d) If an instrument is payable to two (2) or more persons

1 alternatively, it is payable to any of them and may be negotiated, discharged,  
2 or enforced by any or all of them in possession of the instrument. If an  
3 instrument is payable to two (2) or more persons not alternatively, it is  
4 payable to all of them and may be negotiated, discharged, or enforced only by  
5 all of them. If an instrument payable to two (2) or more persons is ambiguous  
6 as to whether it is payable to the persons alternatively, the instrument is  
7 payable to the persons alternatively.

8       § 4-3-111. Place of payment.

9       Except as otherwise provided for items in § 4-4-101 et seq., an  
10 instrument is payable at the place of payment stated in the instrument. If no  
11 place of payment is stated, an instrument is payable at the address of the  
12 drawee or maker stated in the instrument. If no address is stated, the place  
13 of payment is the place of business of the drawee or maker. If a drawee or  
14 maker has more than one (1) place of business, the place of payment is any  
15 place of business of the drawee or maker chosen by the person entitled to  
16 enforce the instrument. If the drawee or maker has no place of business, the  
17 place of payment is the residence of the drawee or maker.

18       § 4-3-112. Interest.

19       (a) Unless otherwise provided in the instrument, (i) an instrument is  
20 not payable with interest, and (ii) interest on an interest-bearing instrument  
21 is payable from the date of the instrument.

22       (b) Interest may be stated in an instrument as a fixed or variable  
23 amount of money or it may be expressed as a fixed or variable rate or rates.  
24 The amount or rate of interest may be stated or described in the instrument in  
25 any manner and may require reference to information not contained in the  
26 instrument. If an instrument provides for interest, but the amount of  
27 interest payable cannot be ascertained from the description, interest is  
28 payable at the judgment rate in effect at the place of payment of the instru-  
29 ment and at the time interest first accrues.

30       § 4-3-113. Date of instrument.

31       (a) An instrument may be antedated or postdated. The date stated  
32 determines the time of payment if the instrument is payable at a fixed period  
33 after date. Except as provided in § 4-4-401 (c), an instrument payable on  
34 demand is not payable before the date of the instrument.

35       (b) If an instrument is undated, its date is the date of its issue or,

1 in the case of an unissued instrument, the date it first comes into possession  
2 of a holder.

3 § 4-3-114. Contradictory terms of instrument.

4 If an instrument contains contradictory terms, typewritten terms prevail  
5 over printed terms, handwritten terms prevail over both, and words prevail  
6 over numbers.

7 § 4-3-115. Incomplete instrument.

8 (a) 'Incomplete instrument' means a signed writing, whether or not  
9 issued by the signer, the contents of which show at the time of signing that  
10 it is incomplete but that the signer intended it to be completed by the  
11 addition of words or numbers.

12 (b) Subject to subsection (c), if an incomplete instrument is an  
13 instrument under § 4-3-104, it may be enforced according to its terms if it is  
14 not completed, or according to its terms as augmented by completion. If an  
15 incomplete instrument is not an instrument under § 4-3-104, but, after  
16 completion, the requirements of § 4-3-104 are met, the instrument may be  
17 enforced according to its terms as augmented by completion.

18 (c) If words or numbers are added to an incomplete instrument without  
19 authority of the signer, there is an alteration of the incomplete instrument  
20 under § 4-3-407.

21 (d) The burden of establishing that words or numbers were added to an  
22 incomplete instrument without authority of the signer is on the person  
23 asserting the lack of authority.

24 § 4-3-116. Joint and several liability; contribution.

25 (a) Except as otherwise provided in the instrument, two (2) or more  
26 persons who have the same liability on an instrument as makers, drawers,  
27 acceptors, indorsers who indorse as joint payees, or anomalous indorsers are  
28 jointly and severally liable in the capacity in which they sign.

29 (b) Except as provided in § 4-3-419(e) or by agreement of the affected  
30 parties, a party having joint and several liability who pays the instrument is  
31 entitled to receive from any party having the same joint and several liability  
32 contribution in accordance with applicable law.

33 (c) Discharge of one (1) party having joint and several liability by a  
34 person entitled to enforce the instrument does not affect the right under  
35 subsection (b) of a party having the same joint and several liability to

1 receive contribution from the party discharged.

2 § 4-3-117. Other agreements affecting instrument.

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

12 § 4-3-118. Statute of limitations.

13 (a) Except as provided in subsection (e), an action to enforce the  
14 obligation of a party to pay a note payable at a definite time must be  
15 commenced within six (6) years after the due date or dates stated in the note  
16 or, if a due date is accelerated, within six (6) years after the accelerated  
17 due date.

18 (b) Except as provided in subsection (d) or (e), if demand for payment  
19 is made to the maker of a note payable on demand, an action to enforce the  
20 obligation of a party to pay the note must be commenced within six (6) years  
21 after the demand. If no demand for payment is made to the maker, an action to  
22 enforce the note is barred if neither principal nor interest on the note has  
23 been paid for a continuous period of ten (10) years.

24 (c) Except as provided in subsection (d), an action to enforce the  
25 obligation of a party to an unaccepted draft to pay the draft must be  
26 commenced within three (3) years after dishonor of the draft or ten (10) years  
27 after the date of the draft, whichever period expires first.

28 (d) An action to enforce the obligation of the acceptor of a certified  
29 check or the issuer of a teller's check, cashier's check, or traveler's check  
30 must be commenced within three (3) years after demand for payment is made to  
31 the acceptor or issuer, as the case may be.

32 (e) An action to enforce the obligation of a party to a certificate of  
33 deposit to pay the instrument must be commenced within six (6) years after  
34 demand for payment is made to the maker, but if the instrument states a due  
35 date and the maker is not required to pay before that date, the six-year

1 period begins when a demand for payment is in effect and the due date has  
2 passed.

3 (f) An action to enforce the obligation of a party to pay an accepted  
4 draft, other than a certified check, must be commenced (i) within six (6)  
5 years after the due date or dates stated in the draft or acceptance if the  
6 obligation of the acceptor is payable at a definite time, or (ii) within six  
7 (6) years after the date of the acceptance if the obligation of the acceptor  
8 is payable on demand.

9 (g) Unless governed by other law regarding claims for indemnity or  
10 contribution, an action (i) for conversion of an instrument, for money had and  
11 received, or like action based on conversion, (ii) for breach of warranty, or  
12 (iii) to enforce an obligation, duty, or right arising under this Chapter and  
13 not governed by this section must be commenced within three (3) years after  
14 the cause of action accrues.

15 § 4-3-119. Notice of right to defend action.

16 In an action for breach of an obligation for which a third person is  
17 answerable over pursuant to this Chapter or § 4-4-101 et seq. the defendant  
18 may give the third person written notice of the litigation, and the person  
19 notified may then give similar notice to any other person who is answerable  
20 over. If the notice states (i) that the person notified may come in and  
21 defend and (ii) that failure to do so will bind the person notified in an  
22 action later brought by the person giving the notice as to any determination  
23 of fact common to the two (2) litigations, the person notified is so bound  
24 unless after seasonable receipt of the notice the person notified does come in  
25 and defend.

26

27 PART 2 -- NEGOTIATION, TRANSFER, AND INDORSEMENT

28

29 § 4-3-201. Negotiation.

30 (a) 'Negotiation' means a transfer of possession, whether voluntary or  
31 involuntary, of an instrument by a person other than the issuer to a person  
32 who thereby becomes its holder.

33 (b) Except for negotiation by a remitter, if an instrument is payable  
34 to an identified person, negotiation requires transfer of possession of the  
35 instrument and its indorsement by the holder. If an instrument is payable to

1 bearer, it may be negotiated by transfer of possession alone.

2 § 4-3-202. Negotiation subject to rescission.

3 (a) Negotiation is effective even if obtained (i) from an infant, a  
4 corporation exceeding its powers, or a person without capacity, (ii) by fraud,  
5 duress, or mistake, or (iii) in breach of duty or as part of an illegal  
6 transaction.

7 (b) To the extent permitted by other law, negotiation may be rescinded  
8 or may be subject to other remedies, but those remedies may not be asserted  
9 against a subsequent holder in due course or a person paying the instrument in  
10 good faith and without knowledge of facts that are a basis for rescission or  
11 other remedy.

12 § 4-3-203. Transfer of instrument -- rights acquired by transfer.

13 (a) An instrument is transferred when it is delivered by a person other  
14 than its issuer for the purpose of giving to the person receiving delivery the  
15 right to enforce the instrument.

16 (b) Transfer of an instrument, whether or not the transfer is a  
17 negotiation, vests in the transferee any right of the transferor to enforce  
18 the instrument, including any right as a holder in due course, but the  
19 transferee cannot acquire rights of a holder in due course by a transfer,  
20 directly or indirectly, from a holder in due course if the transferee engaged  
21 in fraud or illegality affecting the instrument.

22 (c) Unless otherwise agreed, if an instrument is transferred for value  
23 and the transferee does not become a holder because of lack of indorsement by  
24 the transferor, the transferee has a specifically enforceable right to the  
25 unqualified indorsement of the transferor, but negotiation of the instrument  
26 does not occur until the indorsement is made.

27 (d) If a transferor purports to transfer less than the entire  
28 instrument, negotiation of the instrument does not occur. The transferee  
29 obtains no rights under this Chapter and has only the rights of a partial  
30 assignee.

31 § 4-3-204. Indorsement.

32 (a) 'Indorsement' means a signature, other than that of a signer as  
33 maker, drawer, or acceptor, that alone or accompanied by other words is made  
34 on an instrument for the purpose of (i) negotiating the instrument, (ii)  
35 restricting payment of the instrument, or (iii) incurring indorser's liability

1 on the instrument, but regardless of the intent of the signer, a signature and  
2 its accompanying words is an indorsement unless the accompanying words, terms  
3 of the instrument, place of the signature, or other circumstances unambiguous-  
4 ly indicate that the signature was made for a purpose other than indorsement.  
5 For the purpose of determining whether a signature is made on an instrument,  
6 a paper affixed to the instrument is a part of the instrument.

7 (b) 'Indorser' means a person who makes an indorsement.

8 (c) For the purpose of determining whether the transferee of an  
9 instrument is a holder, an indorsement that transfers a security interest in  
10 the instrument is effective as an unqualified indorsement of the instrument.

11 (d) If an instrument is payable to a holder under a name that is not  
12 the name of the holder, indorsement may be made by the holder in the name  
13 stated in the instrument or in the holder's name or both, but signature in  
14 both names may be required by a person paying or taking the instrument for  
15 value or collection.

16 § 4-3-205. Special indorsement -- blank indorsement -- anomalous  
17 indorsement.

18 (a) If an indorsement is made by the holder of an instrument, whether  
19 payable to an identified person or payable to bearer, and the indorsement  
20 identifies a person to whom it makes the instrument payable, it is a 'special  
21 indorsement.' When specially indorsed, an instrument becomes payable to the  
22 identified person and may be negotiated only by the indorsement of that  
23 person. The principles stated in § 4-3-110 apply to special indorsements.

24 (b) If an indorsement is made by the holder of an instrument and it is  
25 not a special indorsement, it is a 'blank indorsement.' When indorsed in  
26 blank, an instrument becomes payable to bearer and may be negotiated by  
27 transfer of possession alone until specially indorsed.

28 (c) The holder may convert a blank indorsement that consists only of a  
29 signature into a special indorsement by writing, above the signature of the  
30 indorser, words identifying the person to whom the instrument is made payable.

31 (d) 'Anomalous indorsement' means an indorsement made by a person who  
32 is not the holder of the instrument. An anomalous indorsement does not affect  
33 the manner in which the instrument may be negotiated.

34 § 4-3-206. Restrictive indorsement.

35 (a) An indorsement limiting payment to a particular person or otherwise

1 prohibiting further transfer or negotiation of the instrument is not effective  
2 to prevent further transfer or negotiation of the instrument.

3 (b) An indorsement stating a condition to the right of the indorsee to  
4 receive payment does not affect the right of the indorsee to enforce the  
5 instrument. A person paying the instrument or taking it for value or  
6 collection may disregard the condition, and the rights and liabilities of  
7 that person are not affected by whether the condition has been fulfilled.

8 (c) If an instrument bears an indorsement (i) described in § 4-  
9 4-201(b), or (ii) in blank or to a particular bank using the words 'for  
10 deposit,' 'for collection,' or other words indicating a purpose of having the  
11 instrument collected by a bank for the indorser or for a particular account,  
12 the following rules apply:

13 (1) A person, other than a bank, who purchases the instrument when so  
14 indorsed converts the instrument unless the amount paid for the instrument is  
15 received by the indorser or applied consistently with the indorsement.

16 (2) A depository bank that purchases the instrument or takes it for  
17 collection when so indorsed converts the instrument unless the amount paid by  
18 the bank with respect to the instrument is received by the indorser or applied  
19 consistently with the indorsement.

20 (3) A payor bank that is also the depository bank or that takes the  
21 instrument for immediate payment over the counter from a person other than a  
22 collecting bank converts the instrument unless the proceeds of the instrument  
23 are received by the indorser or applied consistently with the indorsement.

24 (4) Except as otherwise provided in paragraph (3), a payor bank or  
25 intermediary bank may disregard the indorsement and is not liable if the  
26 proceeds of the instrument are not received by the indorser or applied  
27 consistently with the indorsement.

28 (d) Except for an indorsement covered by subsection (c), if an  
29 instrument bears an indorsement using words to the effect that payment is to  
30 be made to the indorsee as agent, trustee, or other fiduciary for the benefit  
31 of the indorser or another person, the following rules apply:

32 (1) Unless there is notice of breach of fiduciary duty as provided in §  
33 4-3-307, a person who purchases the instrument from the indorsee or takes the  
34 instrument from the indorsee for collection or payment may pay the proceeds of  
35 payment or the value given for the instrument to the indorsee without regard

1 to whether the indorsee violates a fiduciary duty to the indorser.

2 (2) A subsequent transferee of the instrument or person who pays the  
3 instrument is neither given notice nor otherwise affected by the restriction  
4 in the indorsement unless the transferee or payor knows that the fiduciary  
5 dealt with the instrument or its proceeds in breach of fiduciary duty.

6 (e) The presence on an instrument of an indorsement to which this  
7 section applies does not prevent a purchaser of the instrument from becoming a  
8 holder in due course of the instrument unless the purchaser is a converter  
9 under subsection (c) or has notice or knowledge of breach of fiduciary duty as  
10 stated in subsection (d).

11 (f) In an action to enforce the obligation of a party to pay the  
12 instrument, the obligor has a defense if payment would violate an indorsement  
13 to which this section applies and the payment is not permitted by this  
14 section.

15 § 4-3-207. Reacquisition.

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

23

24 PART 3 -- ENFORCEMENT OF INSTRUMENTS

25

26 § 4-3-301. Person entitled to enforce instrument.

27 'Person entitled to enforce' an instrument means (i) the holder of the  
28 instrument, (ii) a nonholder in possession of the instrument who has the  
29 rights of a holder, or (iii) a person not in possession of the instrument who  
30 is entitled to enforce the instrument pursuant to § 4-3-309 or § 4-3-418(d).  
31 A person may be a person entitled to enforce the instrument even though the  
32 person is not the owner of the instrument or is in wrongful possession of the  
33 instrument.

34 § 4-3-302. Holder in due course.

35 (a) Subject to subsection (c) and § 4-3-106 (d), 'holder in due

1 course' means the holder of an instrument if:

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

5       (2) The holder took the instrument (i) for value, (ii) in good faith,  
6 (iii) without notice that the instrument is overdue or has been dishonored or  
7 that there is an uncured default with respect to payment of another instrument  
8 issued as part of the same series, (iv) without notice that the instrument  
9 contains an unauthorized signature or has been altered, (v) without notice of  
10 any claim to the instrument described in § 4-3-306, and (vi) without notice  
11 that any party has a defense or claim in recoupment described in § 4-3-305(a).

12       (b) Notice of discharge of a party, other than discharge in an  
13 insolvency proceeding, is not notice of a defense under subsection (a), but  
14 discharge is effective against a person who became a holder in due course with  
15 notice of the discharge. Public filing or recording of a document does not of  
16 itself constitute notice of a defense, claim in recoupment, or claim to the  
17 instrument.

18       (c) Except to the extent a transferor or predecessor in interest has  
19 rights as a holder in due course, a person does not acquire rights of a holder  
20 in due course of an instrument taken (i) by legal process or by purchase in an  
21 execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by  
22 purchase as part of a bulk transaction not in ordinary course of business of  
23 the transferor, or (iii) as the successor in interest to an estate or other  
24 organization.

25       (d) If, under § 4-3-303(a)(1), the promise of performance that is the  
26 consideration for an instrument has been partially performed, the holder may  
27 assert rights as a holder in due course of the instrument only to the fraction  
28 of the amount payable under the instrument equal to the value of the partial  
29 performance divided by the value of the promised performance.

30       (e) If (i) the person entitled to enforce an instrument has only a  
31 security interest in the instrument and (ii) the person obliged to pay the  
32 instrument has a defense, claim in recoupment, or claim to the instrument that  
33 may be asserted against the person who granted the security interest, the  
34 person entitled to enforce the instrument may assert rights as a holder in due  
35 course only to an amount payable under the instrument which, at the time of

1 enforcement of the instrument, does not exceed the amount of the unpaid  
2 obligation secured.

3 (f) To be effective, notice must be received at a time and in a manner  
4 that gives a reasonable opportunity to act on it.

5 (g) This section is subject to any law limiting status as a holder in  
6 due course in particular classes of transactions.

7 § 4-3-303. Value and consideration.

8 (a) An instrument is issued or transferred for value if:

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

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

13 (3) The instrument is issued or transferred as payment of, or as  
14 security for, an antecedent claim against any person, whether or not the claim  
15 is due;

16 (4) The instrument is issued or transferred in exchange for a  
17 negotiable instrument; or

18 (5) The instrument is issued or transferred in exchange for the  
19 incurring of an irrevocable obligation to a third party by the person taking  
20 the instrument.

21 (b) 'Consideration' means any consideration sufficient to support a  
22 simple contract. The drawer or maker of an instrument has a defense if the  
23 instrument is issued without consideration. If an instrument is issued for a  
24 promise of performance, the issuer has a defense to the extent performance of  
25 the promise is due and the promise has not been performed. If an instrument  
26 is issued for value as stated in subsection (a), the instrument is also issued  
27 for consideration.

28 § 4-3-304. Overdue instrument.

29 (a) An instrument payable on demand becomes overdue at the earliest of  
30 the following times:

31 (1) On the day after the day demand for payment is duly made;

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

33 (3) If the instrument is not a check, when the instrument has been  
34 outstanding for a period of time after its date which is unreasonably long  
35 under the circumstances of the particular case in light of the nature of the

1 instrument and usage of the trade.

2 (b) With respect to an instrument payable at a definite time the  
3 following rules apply:

4 (1) If the principal is payable in installments and a due date has not  
5 been accelerated, the instrument becomes overdue upon default under the  
6 instrument for nonpayment of an installment, and the instrument remains  
7 overdue until the default is cured.

8 (2) If the principal is not payable in installments and the due date  
9 has not been accelerated, the instrument becomes overdue on the day after the  
10 due date.

11 (3) If a due date with respect to principal has been accelerated, the  
12 instrument becomes overdue on the day after the accelerated due date.

13 (c) Unless the due date of principal has been accelerated, an  
14 instrument does not become overdue if there is default in payment of interest  
15 but no default in payment of principal.

16 § 4-3-305. Defenses and claims in recoupment.

17 (a) Except as stated in subsection (b), the right to enforce the  
18 obligation of a party to pay an instrument is subject to the following:

19 (1) A defense of the obligor based on (i) infancy of the obligor to the  
20 extent it is a defense to a simple contract, (ii) duress, lack of legal  
21 capacity, or illegality of the transaction which, under other law, nullifies  
22 the obligation of the obligor, (iii) fraud that induced the obligor to sign  
23 the instrument with neither knowledge nor reasonable opportunity to learn of  
24 its character or its essential terms, or (iv) discharge of the obligor in  
25 insolvency proceedings;

26 (2) A defense of the obligor stated in another section of this Chapter  
27 or a defense of the obligor that would be available if the person entitled to  
28 enforce the instrument were enforcing a right to payment under a simple  
29 contract; and

30 (3) A claim in recoupment of the obligor against the original payee of  
31 the instrument if the claim arose from the transaction that gave rise to the  
32 instrument; but the claim of the obligor may be asserted against a transferee  
33 of the instrument only to reduce the amount owing on the instrument at the  
34 time the action is brought.

35 (b) The right of a holder in due course to enforce the obligation of a

1 party to pay the instrument is subject to defenses of the obligor stated in  
2 subsection (a) (1), but is not subject to defenses of the obligor stated in  
3 subsection (a) (2) or claims in recoupment stated in subsection (a) (3) against  
4 a person other than the holder.

5 (c) Except as stated in subsection (d), in an action to enforce the  
6 obligation of a party to pay the instrument, the obligor may not assert  
7 against the person entitled to enforce the instrument a defense, claim in  
8 recoupment, or claim to the instrument (§ 4-3-306) of another person, but the  
9 other person's claim to the instrument may be asserted by the obligor if the  
10 other person is joined in the action and personally asserts the claim against  
11 the person entitled to enforce the instrument. An obligor is not obliged to  
12 pay the instrument if the person seeking enforcement of the instrument does  
13 not have rights of a holder in due course and the obligor proves that the  
14 instrument is a lost or stolen instrument.

15 (d) In an action to enforce the obligation of an accommodation party to  
16 pay an instrument, the accommodation party may assert against the person  
17 entitled to enforce the instrument any defense or claim in recoupment under  
18 subsection (a) that the accommodated party could assert against the person  
19 entitled to enforce the instrument, except the defenses of discharge in  
20 insolvency proceedings, infancy, and lack of legal capacity.

21 § 4-3-306. Claims to an instrument.

22 A person taking an instrument, other than a person having rights of a  
23 holder in due course, is subject to a claim of a property or possessory right  
24 in the instrument or its proceeds, including a claim to rescind a negotiation  
25 and to recover the instrument or its proceeds. A person having rights of a  
26 holder in due course takes free of the claim to the instrument.

27 § 4-3-307. Notice of breach of fiduciary duty.

28 (a) In this section:

29 (1) 'Fiduciary' means an agent, trustee, partner, corporate officer or  
30 director, or other representative owing a fiduciary duty with respect to an  
31 instrument.

32 (2) 'Represented person' means the principal, beneficiary,  
33 partnership, corporation, or other person to whom the duty stated in paragraph  
34 (1) is owed.

35 (b) If (i) an instrument is taken from a fiduciary for payment or

1 collection or for value, (ii) the taker has knowledge of the fiduciary status  
2 of the fiduciary, and (iii) the represented person makes a claim to the  
3 instrument or its proceeds on the basis that the transaction of the fiduciary  
4 is a breach of fiduciary duty, the following rules apply:

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

7 (2) In the case of an instrument payable to the represented person or  
8 the fiduciary as such, the taker has notice of the breach of fiduciary duty if  
9 the instrument is (i) taken in payment of or as security for a debt known by  
10 the taker to be the personal debt of the fiduciary, (ii) taken in a  
11 transaction known by the taker to be for the personal benefit of the  
12 fiduciary, or (iii) deposited to an account other than an account of the  
13 fiduciary, as such, or an account of the represented person.

14 (3) If an instrument is issued by the represented person or the  
15 fiduciary as such, and made payable to the fiduciary personally, the taker  
16 does not have notice of the breach of fiduciary duty unless the taker knows of  
17 the breach of fiduciary duty.

18 (4) If an instrument is issued by the represented person or the  
19 fiduciary as such, to the taker as payee, the taker has notice of the breach  
20 of fiduciary duty if the instrument is (i) taken in payment of or as security  
21 for a debt known by the taker to be the personal debt of the fiduciary, (ii)  
22 taken in a transaction known by the taker to be for the personal benefit of  
23 the fiduciary, or (iii) deposited to an account other than an account of the  
24 fiduciary, as such, or an account of the represented person.

25 § 4-3-308. Proof of signatures and status as holder in due course.

26 (a) In an action with respect to an instrument, the authenticity of,  
27 and authority to make, each signature on the instrument is admitted unless  
28 specifically denied in the pleadings. If the validity of a signature is  
29 denied in the pleadings, the burden of establishing validity is on the person  
30 claiming validity, but the signature is presumed to be authentic and  
31 authorized unless the action is to enforce the liability of the purported  
32 signer and the signer is dead or incompetent at the time of trial of the issue  
33 of validity of the signature. If an action to enforce the instrument is  
34 brought against a person as the undisclosed principal of a person who signed  
35 the instrument as a party to the instrument, the plaintiff has the burden of

1 establishing that the defendant is liable on the instrument as a represented  
2 person under § 4-3-402(a).

3 (b) If the validity of signatures is admitted or proved and there is  
4 compliance with subsection (a), a plaintiff producing the instrument is  
5 entitled to payment if the plaintiff proves entitlement to enforce the  
6 instrument under § 4-3-301, unless the defendant proves a defense or claim in  
7 recoupment. If a defense or claim in recoupment is proved, the right to  
8 payment of the plaintiff is subject to the defense or claim, except to the  
9 extent the plaintiff proves that the plaintiff has rights of a holder in due  
10 course which are not subject to the defense or claim.

11 § 4-3-309. Enforcement of lost, destroyed, or stolen instrument.

12 (a) A person not in possession of an instrument is entitled to enforce  
13 the instrument if (i) the person was in possession of the instrument and  
14 entitled to enforce it when loss of possession occurred, (ii) the loss of  
15 possession was not the result of a transfer by the person or a lawful seizure,  
16 and (iii) the person cannot reasonably obtain possession of the instrument  
17 because the instrument was destroyed, its whereabouts cannot be determined, or  
18 it is in the wrongful possession of an unknown person or a person that cannot  
19 be found or is not amenable to service of process.

20 (b) A person seeking enforcement of an instrument under subsection (a)  
21 must prove the terms of the instrument and the person's right to enforce the  
22 instrument. If that proof is made, § 4-3-308 applies to the case as if the  
23 person seeking enforcement had produced the instrument. The court may not  
24 enter judgment in favor of the person seeking enforcement unless it finds that  
25 the person required to pay the instrument is adequately protected against loss  
26 that might occur by reason of a claim by another person to enforce the  
27 instrument. Adequate protection may be provided by any reasonable means.

28 § 4-3-310. Effect of instrument on obligation for which taken.

29 (a) Unless otherwise agreed, if a certified check, cashier's check, or  
30 teller's check is taken for an obligation, the obligation is discharged to the  
31 same extent discharge would result if an amount of money equal to the amount  
32 of the instrument were taken in payment of the obligation. Discharge of the  
33 obligation does not affect any liability that the obligor may have as an  
34 indorser of the instrument.

35 (b) Unless otherwise agreed and except as provided in subsection (a),

1 if a note or an uncertified check is taken for an obligation, the obligation  
2 is suspended to the same extent the obligation would be discharged if an  
3 amount of money equal to the amount of the instrument were taken, and the  
4 following rules apply:

5       (1) In the case of an uncertified check, suspension of the obligation  
6 continues until dishonor of the check or until it is paid or certified.  
7 Payment or certification of the check results in discharge of the obligation  
8 to the extent of the amount of the check.

9       (2) In the case of a note, suspension of the obligation continues until  
10 dishonor of the note or until it is paid. Payment of the note results in  
11 discharge of the obligation to the extent of the payment.

12       (3) Except as provided in paragraph (4), if the check or note is  
13 dishonored and the obligee of the obligation for which the instrument was  
14 taken is the person entitled to enforce the instrument, the obligee may  
15 enforce either the instrument or the obligation. In the case of an instrument  
16 of a third person which is negotiated to the obligee by the obligor, discharge  
17 of the obligor on the instrument also discharges the obligation.

18       (4) If the person entitled to enforce the instrument taken for an  
19 obligation is a person other than the obligee, the obligee may not enforce the  
20 obligation to the extent the obligation is suspended. If the obligee is the  
21 person entitled to enforce the instrument but no longer has possession of it  
22 because it was lost, stolen, or destroyed, the obligation may not be enforced  
23 to the extent of the amount payable on the instrument, and to that extent the  
24 obligee's rights against the obligor are limited to enforcement of the  
25 instrument.

26       (c) If an instrument other than one described in subsection (a) or (b)  
27 is taken for an obligation, the effect is (i) that stated in subsection (a) if  
28 the instrument is one on which a bank is liable as maker or acceptor, or (ii)  
29 that stated in subsection (b) in any other case.

30       § 4-3-311. Accord and satisfaction by use of instrument.

31       (a) If a person against whom a claim is asserted proves that (i) that  
32 person in good faith tendered an instrument to the claimant as full  
33 satisfaction of the claim, (ii) the amount of the claim was unliquidated or  
34 subject to a bona fide dispute, and (iii) the claimant obtained payment of the  
35 instrument, the following subsections apply.

1 (b) Unless subsection (c) applies, the claim is discharged if the  
2 person against whom the claim is asserted proves that the instrument or an  
3 accompanying written communication contained a conspicuous statement to the  
4 effect that the instrument was tendered as full satisfaction of the claim.

5 (c) Subject to subsection (d), a claim is not discharged under  
6 subsection (b) if either of the following applies:

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

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

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

24

25 PART 4 -- LIABILITY OF PARTIES

26

27 § 4-3-401. Signature.

28 (a) A person is not liable on an instrument unless (i) the person  
29 signed the instrument, or (ii) the person is represented by an agent or  
30 representative who signed the instrument and the signature is binding on the  
31 represented person under § 4-3-402.

32 (b) A signature may be made (i) manually or by means of a device or  
33 machine, and (ii) by the use of any name, including a trade or assumed name,  
34 or by a word, mark, or symbol executed or adopted by a person with present  
35 intention to authenticate a writing.

1           § 4-3-402. Signature by representative.

2           (a) If a person acting, or purporting to act, as a representative signs  
3 an instrument by signing either the name of the represented person or the name  
4 of the signer, the represented person is bound by the signature to the same  
5 extent the represented person would be bound if the signature were on a simple  
6 contract. If the represented person is bound, the signature of the  
7 representative is the 'authorized signature of the represented person' and  
8 the represented person is liable on the instrument, whether or not identified  
9 in the instrument.

10          (b) If a representative signs the name of the representative to an  
11 instrument and the signature is an authorized signature of the represented  
12 person, the following rules apply:

13           (1) If the form of the signature shows unambiguously that the signature  
14 is made on behalf of the represented person who is identified in the  
15 instrument, the representative is not liable on the instrument.

16           (2) Subject to subsection (c), if (i) the form of the signature does not  
17 show unambiguously that the signature is made in a representative capacity or  
18 (ii) the represented person is not identified in the instrument, the  
19 representative is liable on the instrument to a holder in due course that took  
20 the instrument without notice that the representative was not intended to be  
21 liable on the instrument. With respect to any other person, the  
22 representative is liable on the instrument unless the representative proves  
23 that the original parties did not intend the representative to be liable on  
24 the instrument.

25          (c) If a representative signs the name of the representative as drawer  
26 of a check without indication of the representative status and the check is  
27 payable from an account of the represented person who is identified on the  
28 check, the signer is not liable on the check if the signature is an authorized  
29 signature of the represented person.

30           § 4-3-403. Unauthorized signature.

31          (a) Unless otherwise provided in this Chapter or § 4-4-401 et seq., an  
32 unauthorized signature is ineffective except as the signature of the  
33 unauthorized signer in favor of a person who in good faith pays the instrument  
34 or takes it for value. An unauthorized signature may be ratified for all  
35 purposes of this Chapter.

1 (b) If the signature of more than one (1) person is required to  
2 constitute the authorized signature of an organization, the signature of the  
3 organization is unauthorized if one (1) of the required signatures is lacking.

4 (c) The civil or criminal liability of a person who makes an  
5 unauthorized signature is not affected by any provision of this Chapter which  
6 makes the unauthorized signature effective for the purposes of this Chapter.

7 § 4-3-404. Impostors -- Fictitious payees.

8 (a) If an impostor, by use of the mails or otherwise, induces the  
9 issuer of an instrument to issue the instrument to the impostor, or to a  
10 person acting in concert with the impostor, by impersonating the payee of the  
11 instrument or a person authorized to act for the payee, an indorsement of the  
12 instrument by any person in the name of the payee is effective as the  
13 indorsement of the payee in favor of a person who, in good faith, pays the  
14 instrument or takes it for value or for collection.

15 (b) If (i) a person whose intent determines to whom an instrument is  
16 payable (§ 4-3-110(a) or (b)) does not intend the person identified as payee  
17 to have any interest in the instrument, or (ii) the person identified as payee  
18 of an instrument is a fictitious person, the following rules apply until the  
19 instrument is negotiated by special indorsement:

20 (1) Any person in possession of the instrument is its holder;

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

25 (c) Under subsection (a) or (b), an indorsement is made in the name of  
26 a payee if (i) it is made in a name substantially similar to that of the payee  
27 or (ii) the instrument, whether or not indorsed, is deposited in a depository  
28 bank to an account in a name substantially similar to that of the payee.

29 (d) With respect to an instrument to which subsection (a) or (b)  
30 applies, if a person paying the instrument or taking it for value or for  
31 collection fails to exercise ordinary care in paying or taking the instrument  
32 and that failure substantially contributes to loss resulting from payment of  
33 the instrument, the person bearing the loss may recover from the person  
34 failing to exercise ordinary care to the extent the failure to exercise  
35 ordinary care contributed to the loss.

1           § 4-3-405. Employer's responsibility for fraudulent indorsement by  
2 employee.

3           (a) In this section:

4           (1) 'Employee' includes an independent contractor and employee of an  
5 independent contractor retained by the employer.

6           (2) 'Fraudulent indorsement' means (i) in the case of an instrument  
7 payable to the employer, a forged indorsement purporting to be that of the  
8 employer, or (ii) in the case of an instrument with respect to which the  
9 employer is the issuer, a forged indorsement purporting to be that of the  
10 person identified as payee.

11           (3) 'Responsibility' with respect to instruments means authority (i)  
12 to sign or indorse instruments on behalf of the employer, (ii) to process  
13 instruments received by the employer for bookkeeping purposes, for deposit to  
14 an account, or for other disposition, (iii) to prepare or process instruments  
15 for issue in the name of the employer, (iv) to supply information determining  
16 the names or addresses of payees of instruments to be issued in the name of  
17 the employer, (v) to control the disposition of instruments to be issued in  
18 the name of the employer, or (vi) to act otherwise with respect to instruments  
19 in a responsible capacity. 'Responsibility' does not include authority that  
20 merely allows an employee to have access to instruments or blank or incomplete  
21 instrument forms that are being stored or transported or are part of incoming  
22 or outgoing mail, or similar access.

23           (b) For the purpose of determining the rights and liabilities of a  
24 person who, in good faith, pays an instrument or takes it for value or for  
25 collection, if an employer entrusted an employee with responsibility with  
26 respect to the instrument and the employee or a person acting in concert with  
27 the employee makes a fraudulent indorsement of the instrument, the indorsement  
28 is effective as the indorsement of the person to whom the instrument is  
29 payable if it is made in the name of that person. If the person paying the  
30 instrument or taking it for value or for collection fails to exercise ordinary  
31 care in paying or taking the instrument and that failure substantially  
32 contributes to loss resulting from the fraud, the person bearing the loss may  
33 recover from the person failing to exercise ordinary care to the extent the  
34 failure to exercise ordinary care contributed to the loss.

35           (c) Under subsection (b), an indorsement is made in the name of the

1 person to whom an instrument is payable if (i) it is made in a name  
2 substantially similar to the name of that person or (ii) the instrument,  
3 whether or not indorsed, is deposited in a depository bank to an account in a  
4 name substantially similar to the name of that person.

5 § 4-3-406. Negligence contributing to forged signature or alteration of  
6 instrument.

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

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

17 (c) Under subsection (a), the burden of proving failure to exercise  
18 ordinary care is on the person asserting the preclusion. Under subsection  
19 (b), the burden of proving failure to exercise ordinary care is on the person  
20 precluded.

21 § 4-3-407. Alteration.

22 (a) 'Alteration' means (i) an unauthorized change in an instrument  
23 that purports to modify in any respect the obligation of a party, or (ii) an  
24 unauthorized addition of words or numbers or other change to an incomplete  
25 instrument relating to the obligation of a party.

26 (b) Except as provided in subsection (c), an alteration fraudulently  
27 made discharges a party whose obligation is affected by the alteration unless  
28 that party assents or is precluded from asserting the alteration. No other  
29 alteration discharges a party, and the instrument may be enforced according to  
30 its original terms.

31 (c) A payor bank or drawee paying a fraudulently altered instrument or  
32 a person taking it for value, in good faith and without notice of the  
33 alteration, may enforce rights with respect to the instrument (i) according to  
34 its original terms, or (ii) in the case of an incomplete instrument altered by  
35 unauthorized completion, according to its terms as completed.

1 § 4-3-408. Drawee not liable on unaccepted draft.

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

5 § 4-3-409. Acceptance of draft -- certified check.

6 (a) 'Acceptance' means the drawee's signed agreement to pay a draft as  
7 presented. It must be written on the draft and may consist of the drawee's  
8 signature alone. Acceptance may be made at any time and becomes effective  
9 when notification pursuant to instructions is given or the accepted draft is  
10 delivered for the purpose of giving rights on the acceptance to any person.

11 (b) A draft may be accepted although it has not been signed by the  
12 drawer, is otherwise incomplete, is overdue, or has been dishonored.

13 (c) If a draft is payable at a fixed period after sight and the  
14 acceptor fails to date the acceptance, the holder may complete the acceptance  
15 by supplying a date in good faith.

16 (d) 'Certified check' means a check accepted by the bank on which it  
17 is drawn. Acceptance may be made as stated in subsection (a) or by a writing  
18 on the check which indicates that the check is certified. The drawee of a  
19 check has no obligation to certify the check, and refusal to certify is not  
20 dishonor of the check.

21 § 4-3-410. Acceptance varying draft.

22 (a) If the terms of a drawee's acceptance vary from the terms of the  
23 draft as presented, the holder may refuse the acceptance and treat the draft  
24 as dishonored. In that case, the drawee may cancel the acceptance.

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

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

31 § 4-3-411. Refusal to pay cashier's checks, teller's checks, and  
32 certified checks.

33 (a) In this section, 'obligated bank' means the acceptor of a  
34 certified check or the issuer of a cashier's check or teller's check bought  
35 from the issuer.

1 (b) If the obligated bank wrongfully (i) refuses to pay a cashier's  
2 check or certified check, (ii) stops payment of a teller's check, or (iii)  
3 refuses to pay a dishonored teller's check, the person asserting the right to  
4 enforce the check is entitled to compensation for expenses and loss of  
5 interest resulting from the nonpayment and may recover consequential damages  
6 if the obligated bank refuses to pay after receiving notice of particular  
7 circumstances giving rise to the damages.

8 (c) Expenses or consequential damages under subsection (b) are not  
9 recoverable if the refusal of the obligated bank to pay occurs because (i) the  
10 bank suspends payments, (ii) the obligated bank asserts a claim or defense of  
11 the bank that it has reasonable grounds to believe is available against the  
12 person entitled to enforce the instrument, (iii) the obligated bank has a  
13 reasonable doubt whether the person demanding payment is the person entitled  
14 to enforce the instrument, or (iv) payment is prohibited by law.

15 § 4-3-412. Obligation of issuer of note or cashier's check.

16 The issuer of a note or cashier's check or other draft drawn on the  
17 drawer is obliged to pay the instrument (i) according to its terms at the time  
18 it was issued or, if not issued, at the time it first came into possession of  
19 a holder, or (ii) if the issuer signed an incomplete instrument, according to  
20 its terms when completed, to the extent stated in §§ 4-3-115 and 4-3-407. The  
21 obligation is owed to a person entitled to enforce the instrument or to an  
22 indorser who paid the instrument under § 4-3-415.

23 § 4-3-413. Obligation of acceptor.

24 (a) The acceptor of a draft is obliged to pay the draft (i) according  
25 to its terms at the time it was accepted, even though the acceptance states  
26 that the draft is payable 'as originally drawn' or equivalent terms, (ii) if  
27 the acceptance varies the terms of the draft, according to the terms of the  
28 draft as varied, or (iii) if the acceptance is of a draft that is an incom-  
29 plete instrument, according to its terms when completed, to the extent stated  
30 in §§ 4-3-115 and 4-3-407. The obligation is owed to a person entitled to  
31 enforce the draft or to the drawer or an indorser who paid the draft under §  
32 4-3-414 or 4-3-415.

33 (b) If the certification of a check or other acceptance of a draft  
34 states the amount certified or accepted, the obligation of the acceptor is  
35 that amount. If (i) the certification or acceptance does not state an amount,

1 (ii) the amount of the instrument is subsequently raised, and (iii) the  
2 instrument is then negotiated to a holder in due course, the obligation of the  
3 acceptor is the amount of the instrument at the time it was taken by the  
4 holder in due course.

5 § 4-3-414. Obligation of drawer.

6 (a) This section does not apply to cashier's checks or other drafts  
7 drawn on the drawer.

8 (b) If an unaccepted draft is dishonored, the drawer is obliged to pay  
9 the draft (i) according to its terms at the time it was issued or, if not  
10 issued, at the time it first came into possession of a holder, or (ii) if the  
11 drawer signed an incomplete instrument, according to its terms when completed,  
12 to the extent stated in §§ 4-3-115 and 4-3-407. The obligation is owed to a  
13 person entitled to enforce the draft or to an indorser who paid the draft  
14 under § 4-3-415.

15 (c) If a draft is accepted by a bank, the drawer is discharged,  
16 regardless of when or by whom acceptance was obtained.

17 (d) If a draft is accepted and the acceptor is not a bank, the  
18 obligation of the drawer to pay the draft if the draft is dishonored by the  
19 acceptor is the same as the obligation of an indorser under § 4-3-415(a) and  
20 (c).

21 (e) If a draft states that it is drawn 'without recourse' or otherwise  
22 disclaims liability of the drawer to pay the draft, the drawer is not liable  
23 under subsection (b) to pay the draft if the draft is not a check. A  
24 disclaimer of the liability stated in subsection (b) is not effective if the  
25 draft is a check.

26 (f) If (i) a check is not presented for payment or given to a  
27 depository bank for collection within thirty (30) days after its date, (ii)  
28 the drawee suspends payments after expiration of the thirty-day period without  
29 paying the check, and (iii) because of the suspension of payments, the drawer  
30 is deprived of funds maintained with the drawee to cover payment of the check,  
31 the drawer to the extent deprived of funds may discharge its obligation to pay  
32 the check by assigning to the person entitled to enforce the check the rights  
33 of the drawer against the drawee with respect to the funds.

34 § 4-3-415. Obligation of indorser.

35 (a) Subject to subsections (b), (c), and (d) and to § 4-3-419(d), if an

1 instrument is dishonored, an indorser is obliged to pay the amount due on the  
2 instrument (i) according to the terms of the instrument at the time it was  
3 indorsed, or (ii) if the indorser indorsed an incomplete instrument, according  
4 to its terms when completed, to the extent stated in §§ 4-3-115 and 4-3-407.  
5 The obligation of the indorser is owed to a person entitled to enforce the  
6 instrument or to a subsequent indorser who paid the instrument under this  
7 section.

8 (b) If an indorsement states that it is made 'without recourse' or  
9 otherwise disclaims liability of the indorser, the indorser is not liable  
10 under subsection (a) to pay the instrument.

11 (c) If notice of dishonor of an instrument is required by § 4-3-503 and  
12 notice of dishonor complying with that section is not given to an indorser,  
13 the liability of the indorser under subsection (a) is discharged.

14 (d) If a draft is accepted by a bank after an indorsement is made, the  
15 liability of the indorser under subsection (a) is discharged.

16 (e) If an indorser of a check is liable under subsection (a) and the  
17 check is not presented for payment, or given to a depository bank for  
18 collection, within thirty (30) days after the day the indorsement was made,  
19 the liability of the indorser under subsection (a) is discharged.

20 § 4-3-416. Transfer warranties.

21 (a) A person who transfers an instrument for consideration warrants to  
22 the transferee and, if the transfer is by indorsement, to any subsequent  
23 transferee that:

24 (1) The warrantor is a person entitled to enforce the instrument;

25 (2) All signatures on the instrument are authentic and authorized;

26 (3) The instrument has not been altered;

27 (4) The instrument is not subject to a defense or claim in recoupment  
28 of any party which can be asserted against the warrantor; and

29 (5) The warrantor has no knowledge of any insolvency proceeding  
30 commenced with respect to the maker or acceptor or, in the case of an  
31 unaccepted draft, the drawer.

32 (b) A person to whom the warranties under subsection (a) are made and  
33 who took the instrument in good faith may recover from the warrantor as  
34 damages for breach of warranty an amount equal to the loss suffered as a  
35 result of the breach, but not more than the amount of the instrument plus

1 expenses and loss of interest incurred as a result of the breach.

2 (c) The warranties stated in subsection (a) cannot be disclaimed with  
3 respect to checks. Unless notice of a claim for breach of warranty is given  
4 to the warrantor within thirty (30) days after the claimant has reason to know  
5 of the breach and the identity of the warrantor, the liability of the  
6 warrantor under subsection (b) is discharged to the extent of any loss caused  
7 by the delay in giving notice of the claim.

8 (d) A cause of action for breach of warranty under this section accrues  
9 when the claimant has reason to know of the breach.

10 § 4-3-417. Presentment warranties.

11 (a) If an unaccepted draft is presented to the drawee for payment or  
12 acceptance and the drawee pays or accepts the draft, (i) the person obtaining  
13 payment or acceptance, at the time of presentment, and (ii) a previous  
14 transferor of the draft, at the time of transfer, warrant to the drawee making  
15 payment or accepting the draft in good faith that:

16 (1) The warrantor is, or was, at the time the warrantor transferred the  
17 draft, a person entitled to enforce the draft or authorized to obtain payment  
18 or acceptance of the draft on behalf of a person entitled to enforce the  
19 draft;

20 (2) The draft has not been altered; and

21 (3) The warrantor has no knowledge that the signature of the drawer of  
22 the draft is unauthorized.

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

34 (c) If a drawee asserts a claim for breach of warranty under subsection  
35 (a) based on an unauthorized indorsement of the draft or an alteration of the

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

5 (d) If (i) a dishonored draft is presented for payment to the drawer or  
6 an indorser or (ii) any other instrument is presented for payment to a party  
7 obliged to pay the instrument, and (iii) payment is received, the following  
8 rules apply:

9 (1) The person obtaining payment and a prior transferor of the  
10 instrument warrant to the person making payment in good faith that the  
11 warrantor is, or was, at the time the warrantor transferred the instrument, a  
12 person entitled to enforce the instrument or authorized to obtain payment on  
13 behalf of a person entitled to enforce the instrument;

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

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

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

25 § 4-3-418. Payment or acceptance by mistake.

26 (a) Except as provided in subsection (c), if the drawee of a draft pays  
27 or accepts the draft and the drawee acted on the mistaken belief that (i)  
28 payment of the draft had not been stopped pursuant to § 4-4-403 or (ii) the  
29 signature of the drawer of the draft was authorized, the drawee may recover  
30 the amount of the draft from the person to whom or for whose benefit payment  
31 was made or, in the case of acceptance, may revoke the acceptance. Rights of  
32 the drawee under this subsection are not affected by failure of the drawee to  
33 exercise ordinary care in paying or accepting the draft.

34 (b) Except as provided in subsection (c), if an instrument has been  
35 paid or accepted by mistake and the case is not covered by subsection (a), the

1 person paying or accepting may, to the extent permitted by the law governing  
2 mistake and restitution, (i) recover the payment from the person to whom or  
3 for whose benefit payment was made or (ii) in the case of acceptance, may  
4 revoke the acceptance.

5 (c) The remedies provided by subsection (a) or (b) may not be asserted  
6 against a person who took the instrument in good faith and for value or who in  
7 good faith changed position in reliance on the payment or acceptance. This  
8 subsection does not limit remedies provided by § 4-3-417 or § 4-4-407.

9 (d) Notwithstanding § 4-4-215, if an instrument is paid or accepted by  
10 mistake and the payor or acceptor recovers payment or revokes acceptance under  
11 subsection (a) or (b), the instrument is deemed not to have been paid or  
12 accepted and is treated as dishonored, and the person from whom payment is  
13 recovered has rights as a person entitled to enforce the dishonored  
14 instrument.

15 § 4-3-419. Instruments signed for accommodation.

16 (a) If an instrument is issued for value given for the benefit of a  
17 party to the instrument (accommodated party) and another party to the  
18 instrument (accommodation party) signs the instrument for the purpose of  
19 incurring liability on the instrument without being a direct beneficiary of  
20 the value given for the instrument, the instrument is signed by the  
21 accommodation party for accommodation.

22 (b) An accommodation party may sign the instrument as maker, drawer,  
23 acceptor, or indorser and, subject to subsection (d), is obliged to pay the  
24 instrument in the capacity in which the accommodation party signs. The  
25 obligation of an accommodation party may be enforced notwithstanding any  
26 statute of frauds and whether or not the accommodation party receives  
27 consideration for the accommodation.

28 (c) A person signing an instrument is presumed to be an accommodation  
29 party and there is notice that the instrument is signed for accommodation if  
30 the signature is an anomalous indorsement or is accompanied by words  
31 indicating that the signer is acting as surety or guarantor with respect to  
32 the obligation of another party to the instrument. Except as provided in § 4-  
33 3-605, the obligation of an accommodation party to pay the instrument is not  
34 affected by the fact that the person enforcing the obligation had notice when  
35 the instrument was taken by that person that the accommodation party signed

1 the instrument for accommodation.

2 (d) If the signature of a party to an instrument is accompanied by  
3 words indicating unambiguously that the party is guaranteeing collection  
4 rather than payment of the obligation of another party to the instrument, the  
5 signer is obliged to pay the amount due on the instrument to a person entitled  
6 to enforce the instrument only if (i) execution of judgment against the other  
7 party has been returned unsatisfied, (ii) the other party is insolvent or in  
8 an insolvency proceeding, (iii) the other party cannot be served with process,  
9 or (iv) it is otherwise apparent that payment cannot be obtained from the  
10 other party.

11 (e) An accommodation party who pays the instrument is entitled to  
12 reimbursement from the accommodated party and is entitled to enforce the  
13 instrument against the accommodated party. An accommodated party who pays the  
14 instrument has no right of recourse against, and is not entitled to  
15 contribution from, an accommodation party.

16 § 4-3-420. Conversion of instrument.

17 (a) The law applicable to conversion of personal property applies to  
18 instruments. An instrument is also converted if it is taken by transfer,  
19 other than a negotiation, from a person not entitled to enforce the instrument  
20 or a bank makes or obtains payment with respect to the instrument for a person  
21 not entitled to enforce the instrument or receive payment. An action for  
22 conversion of an instrument may not be brought by (i) the issuer or acceptor  
23 of the instrument or (ii) a payee or indorsee who did not receive delivery of  
24 the instrument either directly or through delivery to an agent or a co-payee.

25 (b) In an action under subsection (a), the measure of liability is  
26 presumed to be the amount payable on the instrument, but recovery may not  
27 exceed the amount of the plaintiff's interest in the instrument.

28 (c) A representative, other than a depositary bank, who has in good  
29 faith dealt with an instrument or its proceeds on behalf of one who was not  
30 the person entitled to enforce the instrument is not liable in conversion to  
31 that person beyond the amount of any proceeds that it has not paid out.

32

33 PART 5 -- DISHONOR

34

35 § 4-3-501. Presentment.

1 (a) 'Presentment' means a demand made by or on behalf of a person  
2 entitled to enforce an instrument (i) to pay the instrument made to the drawee  
3 or a party obliged to pay the instrument or, in the case of a note or accepted  
4 draft payable at a bank, to the bank, or (ii) to accept a draft made to the  
5 drawee.

6 (b) The following rules are subject to Chapter 4 of this subtitle,  
7 agreement of the parties, and clearinghouse rules and the like:

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

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

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

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

31 § 4-3-502. Dishonor.

32 (a) Dishonor of a note is governed by the following rules:

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

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

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

7           (b) Dishonor of an unaccepted draft other than a documentary draft is  
8 governed by the following rules:

9           (1) If a check is duly presented for payment to the payor bank otherwise  
10 than for immediate payment over the counter, the check is dishonored if the  
11 payor bank makes timely return of the check or sends timely notice of dishonor  
12 or nonpayment under §§ 4-4-301 or 4-4-302, or becomes accountable for the  
13 amount of the check under § 4-4-302.

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

17           (3) If a draft is payable on a date stated in the draft, the draft is  
18 dishonored if (i) presentment for payment is duly made to the drawee and  
19 payment is not made on the day the draft becomes payable or the day of  
20 presentment, whichever is later, or (ii) presentment for acceptance is duly  
21 made before the day the draft becomes payable and the draft is not accepted on  
22 the day of presentment.

23           (4) If a draft is payable on elapse of a period of time after sight or  
24 acceptance, the draft is dishonored if presentment for acceptance is duly made  
25 and the draft is not accepted on the day of presentment.

26           (c) Dishonor of an unaccepted documentary draft occurs according to the  
27 rules stated in subsections (b)(2), (3), and (4), except that payment or  
28 acceptance may be delayed without dishonor until no later than the close of  
29 the third business day of the drawee following the day on which payment or  
30 acceptance is required by those paragraphs.

31           (d) Dishonor of an accepted draft is governed by the following rules:

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

35           (2) If the draft is not payable on demand, the draft is dishonored if

1 presentment for payment is duly made to the acceptor and payment is not made  
2 on the day it becomes payable or the day of presentment, whichever is later.

3 (e) In any case in which presentment is otherwise required for dishonor  
4 under this section and presentment is excused under § 4-3-504, dishonor occurs  
5 without presentment if the instrument is not duly accepted or paid.

6 (f) If a draft is dishonored because timely acceptance of the draft was  
7 not made and the person entitled to demand acceptance consents to a late  
8 acceptance, from the time of acceptance the draft is treated as never having  
9 been dishonored.

10 § 4-3-503. Notice of dishonor.

11 (a) The obligation of an indorser stated in § 4-3-415(a) and the  
12 obligation of a drawer stated in § 4-3-414(d) may not be enforced unless (i)  
13 the indorser or drawer is given notice of dishonor of the instrument complying  
14 with this section or (ii) notice of dishonor is excused under § 4-3-504(b).

15 (b) Notice of dishonor may be given by any person; may be given by any  
16 commercially reasonable means, including an oral, written, or electronic  
17 communication; and is sufficient if it reasonably identifies the instrument  
18 and indicates that the instrument has been dishonored or has not been paid or  
19 accepted. Return of an instrument given to a bank for collection is  
20 sufficient notice of dishonor.

21 (c) Subject to § 4-3-504(c), with respect to an instrument taken for  
22 collection by a collecting bank, notice of dishonor must be given (i) by the  
23 bank before midnight of the next banking day following the banking day on  
24 which the bank receives notice of dishonor of the instrument, or (ii) by any  
25 other person within thirty (30) days following the day on which the person  
26 receives notice of dishonor. With respect to any other instrument, notice of  
27 dishonor must be given within thirty (30) days following the day on which  
28 dishonor occurs.

29 § 4-3-504. Excused presentment and notice of dishonor.

30 (a) Presentment for payment or acceptance of an instrument is excused  
31 if (i) the person entitled to present the instrument cannot with reasonable  
32 diligence make presentment, (ii) the maker or acceptor has repudiated an  
33 obligation to pay the instrument or is dead or in insolvency proceedings,  
34 (iii) by the terms of the instrument presentment is not necessary to enforce  
35 the obligation of indorsers or the drawer, (iv) the drawer or indorser whose

1 obligation is being enforced has waived presentment or otherwise has no reason  
2 to expect or right to require that the instrument be paid or accepted, or (v)  
3 the drawer instructed the drawee not to pay or accept the draft or the drawee  
4 was not obligated to the drawer to pay the draft.

5 (b) Notice of dishonor is excused if (i) by the terms of the instrument  
6 notice of dishonor is not necessary to enforce the obligation of a party to  
7 pay the instrument, or (ii) the party whose obligation is being enforced  
8 waived notice of dishonor. A waiver of presentment is also a waiver of notice  
9 of dishonor.

10 (c) Delay in giving notice of dishonor is excused if the delay was  
11 caused by circumstances beyond the control of the person giving the notice and  
12 the person giving the notice exercised reasonable diligence after the cause of  
13 the delay ceased to operate.

14 § 4-3-505. Evidence of dishonor.

15 (a) The following are admissible as evidence and create a presumption  
16 of dishonor and of any notice of dishonor stated:

17 (1) A document regular in form as provided in subsection (b) which  
18 purports to be a protest;

19 (2) A purported stamp or writing of the drawee, payor bank, or  
20 presenting bank on or accompanying the instrument stating that acceptance or  
21 payment has been refused unless reasons for the refusal are stated and the  
22 reasons are not consistent with dishonor;

23 (3) A book or record of the drawee, payor bank, or collecting bank,  
24 kept in the usual course of business which shows dishonor, even if there is no  
25 evidence of who made the entry.

26 (b) A protest is a certificate of dishonor made by a United States  
27 consul or vice consul, or a notary public or other person authorized to  
28 administer oaths by the law of the place where dishonor occurs. It may be  
29 made upon information satisfactory to that person. The protest must identify  
30 the instrument and certify either that presentment has been made or, if not  
31 made, the reason why it was not made, and that the instrument has been  
32 dishonored by nonacceptance or nonpayment. The protest may also certify that  
33 notice of dishonor has been given to some or all parties.

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PART 6 -- DISCHARGE AND PAYMENT

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§ 4-3-601. Discharge and effect of discharge.

(a) The obligation of a party to pay the instrument is discharged as stated in this Chapter or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

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

§ 4-3-602. Payment.

(a) Subject to subsection (b), an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under § 4-3-306 by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) if:

(1) A claim to the instrument under § 4-3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

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

§ 4-3-603. Tender of payment.

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

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused,

1 there is discharge, to the extent of the amount of the tender, of the  
2 obligation of an indorser or accommodation party having a right of recourse  
3 with respect to the obligation to which the tender relates.

4 (c) If tender of payment of an amount due on an instrument is made to a  
5 person entitled to enforce the instrument, the obligation of the obligor to  
6 pay interest after the due date on the amount tendered is discharged. If  
7 presentment is required with respect to an instrument and the obligor is able  
8 and ready to pay on the due date at every place of payment stated in the  
9 instrument, the obligor is deemed to have made tender of payment on the due  
10 date to the person entitled to enforce the instrument.

11 § 4-3-604. Discharge by cancellation or renunciation.

12 (a) A person entitled to enforce an instrument, with or without  
13 consideration, may discharge the obligation of a party to pay the instrument  
14 (i) by an intentional voluntary act, such as surrender of the instrument to  
15 the party, destruction, mutilation, or cancellation of the instrument,  
16 cancellation or striking out of the party's signature, or the addition of  
17 words to the instrument indicating discharge, or (ii) by agreeing not to sue  
18 or otherwise renouncing rights against the party by a signed writing.

19 (b) Cancellation or striking out of an indorsement pursuant to  
20 subsection (a) does not affect the status and rights of a party derived from  
21 the indorsement.

22 § 4-3-605. Discharge of indorsers and accommodation parties.

23 (a) In this section, the term 'indorser' includes a drawer having the  
24 obligation described in § 4-3-414(d).

25 (b) Discharge, under § 4-3-604, of the obligation of a party to pay an  
26 instrument does not discharge the obligation of an indorser or accommodation  
27 party having a right of recourse against the discharged party.

28 (c) If a person entitled to enforce an instrument agrees, with or  
29 without consideration, to an extension of the due date of the obligation of a  
30 party to pay the instrument, the extension discharges an indorser or  
31 accommodation party having a right of recourse against the party whose  
32 obligation is extended to the extent the indorser or accommodation party  
33 proves that the extension caused loss to the indorser or accommodation party  
34 with respect to the right of recourse.

35 (d) If a person entitled to enforce an instrument agrees, with or

1 without consideration, to a material modification of the obligation of a party  
2 other than an extension of the due date, the modification discharges the  
3 obligation of an indorser or accommodation party having a right of recourse  
4 against the person whose obligation is modified to the extent the modification  
5 causes loss to the indorser or accommodation party with respect to the right  
6 of recourse. The loss suffered by the indorser or accommodation party as a  
7 result of the modification is equal to the amount of the right of recourse  
8 unless the person enforcing the instrument proves that no loss was caused by  
9 the modification or that the loss caused by the modification was an amount  
10 less than the amount of the right of recourse.

11 (e) If the obligation of a party to pay an instrument is secured by an  
12 interest in collateral and a person entitled to enforce the instrument impairs  
13 the value of the interest in collateral, the obligation of an indorser or  
14 accommodation party having a right of recourse against the obligor is  
15 discharged to the extent of the impairment. The value of an interest in  
16 collateral is impaired to the extent (i) the value of the interest is reduced  
17 to an amount less than the amount of the right of recourse of the party  
18 asserting discharge, or (ii) the reduction in value of the interest causes an  
19 increase in the amount by which the amount of the right of recourse exceeds  
20 the value of the interest. The burden of proving impairment is on the party  
21 asserting discharge.

22 (f) If the obligation of a party is secured by an interest in  
23 collateral not provided by an accommodation party and a person entitled to  
24 enforce the instrument impairs the value of the interest in collateral, the  
25 obligation of any party who is jointly and severally liable with respect to  
26 the secured obligation is discharged to the extent the impairment causes the  
27 party asserting discharge to pay more than that party would have been obliged  
28 to pay, taking into account rights of contribution, if impairment had not  
29 occurred. If the party asserting discharge is an accommodation party not  
30 entitled to discharge under subsection (e), the party is deemed to have a  
31 right to contribution based on joint and several liability rather than a right  
32 to reimbursement. The burden of proving impairment is on the party asserting  
33 discharge.

34 (g) Under subsection (e) or (f), impairing value of an interest in  
35 collateral includes (i) failure to obtain or maintain perfection or

1 recordation of the interest in collateral, (ii) release of collateral without  
2 substitution of collateral of equal value, (iii) failure to perform a duty to  
3 preserve the value of collateral owed, under Chapter 9 of this subtitle or  
4 other law, to a debtor or surety or other person secondarily liable, or (iv)  
5 failure to comply with applicable law in disposing of collateral.

6 (h) An accommodation party is not discharged under subsections (c),  
7 (d), or (e) unless the person entitled to enforce the instrument knows of the  
8 accommodation or has notice under § 4-3-419 (c) that the instrument was signed  
9 for accommodation.

10 (i) A party is not discharged under this section if: (i) The party  
11 asserting discharge consents to the event or conduct that is the basis of the  
12 discharge; or (ii) The instrument or a separate agreement of the party  
13 provides for waiver of discharge under this section either specifically or by  
14 general language indicating that parties waive defenses based on suretyship or  
15 impairment of collateral."

16

17 SECTION 6. Chapter 4 of Title 4 of the Arkansas Code Annotated is  
18 hereby amended to read as follows:

19

"Chapter 4

20

BANK DEPOSITS AND COLLECTIONS

21

PART 1 -- GENERAL PROVISIONS AND DEFINITIONS

22

23 § 4-4-101. Short title.

24 This Chapter may be cited as 'Uniform Commercial Code -- Bank Deposits  
25 and Collections'.

26 § 4-4-102. Applicability.

27 (a) To the extent that items within this Chapter are also within  
28 Chapters 3 and 8 of this subtitle, they are subject to those Chapters. If  
29 there is conflict, this Chapter governs Chapter 3, but Chapter 8 governs this  
30 Chapter.

31 (b) The liability of a bank for action or nonaction with respect to an  
32 item handled by it for purposes of presentment, payment, or collection is  
33 governed by the law of the place where the bank is located. In the case of  
34 action or nonaction by or at a branch or separate office of a bank, its  
35 liability is governed by the law of the place where the branch or separate

1 office is located.

2 § 4-4-103. Variation by agreement -- measure of damages -- action  
3 constituting ordinary care.

4 (a) The effect of the provisions of this Chapter may be varied by  
5 agreement, but the parties to the agreement cannot disclaim a bank's  
6 responsibility for its lack of good faith or failure to exercise ordinary care  
7 or limit the measure of damages for the lack or failure. However, the parties  
8 may determine by agreement the standards by which the bank's responsibility is  
9 to be measured if those standards are not manifestly unreasonable.

10 (b) Federal Reserve regulations and operating circulars, clearinghouse  
11 rules, and the like have the effect of agreements under subsection (a), whether  
12 or not specifically assented to by all parties interested in items handled.

13 (c) Action or nonaction approved by this Chapter or pursuant to Federal  
14 Reserve regulations or operating circulars is the exercise of ordinary care  
15 and, in the absence of special instructions, action or nonaction consistent  
16 with clearinghouse rules and the like or with a general banking usage not  
17 disapproved by this Chapter, is prima facie the exercise of ordinary care.

18 (d) The specification or approval of certain procedures by this Chapter  
19 is not disapproval of other procedures that may be reasonable under the  
20 circumstances.

21 (e) The measure of damages for failure to exercise ordinary care in  
22 handling an item is the amount of the item reduced by an amount that could not  
23 have been realized by the exercise of ordinary care. If there is also bad  
24 faith, it includes any other damages the party suffered as a proximate  
25 consequence.

26 § 4-4-104. Definitions and index of definitions.

27 (a) In this Chapter, unless the context otherwise requires:

28 (1) 'Account' means any deposit or credit account with a bank,  
29 including a demand, time, savings, passbook, share draft, or like account,  
30 other than an account evidenced by a certificate of deposit;

31 (2) 'Afternoon' means the period of a day between noon and midnight;

32 (3) 'Banking day' means the part of a day on which a bank is open to  
33 the public for carrying on substantially all of its banking functions;

34 (4) 'Clearinghouse' means an association of banks or other payors  
35 regularly clearing items;

1           (5) 'Customer' means a person having an account with a bank or for  
2 whom a bank has agreed to collect items , including a bank that maintains an  
3 account at another bank;

4           (6) 'Documentary draft' means a draft to be presented for acceptance  
5 or payment if specified documents, certificated securities (§ 4-8-102) or  
6 instructions for uncertificated securities (§ 4-8-308), or other certificates,  
7 statements, or the like are to be received by the drawee or other payor before  
8 acceptance or payment of the draft;

9           (7) 'Draft' means a draft as defined in § 4-3-104 or an item, other  
10 than an instrument, that is an order;

11          (8) 'Drawee' means a person ordered in a draft to make payment;

12          (9) 'Item' means an instrument or a promise or order to pay money  
13 handled by a bank for collection or payment. The term does not include a  
14 payment order governed by Chapter 4A of this subtitle or a credit or debit  
15 card slip;

16          (10) 'Midnight deadline' with respect to a bank is midnight on its  
17 next banking day following the banking day on which it receives the relevant  
18 item or notice or from which the time for taking action commences to run,  
19 whichever is later;

20          (11) 'Settle' means to pay in cash, by clearinghouse settlement, in a  
21 charge or credit or by remittance, or otherwise as agreed. A settlement may  
22 be either provisional or final;

23          (12) 'Suspends payments' with respect to a bank means that it has been  
24 closed by order of the supervisory authorities, that a public officer has been  
25 appointed to take it over, or that it ceases or refuses to make payments in  
26 the ordinary course of business.

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

29 'Agreement for electronic presentment.' § 4-4-110.

30 'Bank.' § 4-4-105.

31 'Collecting bank.' § 4-4-105.

32 'Depository bank.' § 4-4-105.

33 'Intermediary bank.' § 4-4-105.

34 'Payor bank.' § 4-4-105.

35 'Presenting bank.' § 4-4-105.

1 'Presentment notice.' § 4-4-110.

2 (c) The following definitions in other Chapters of this subtitle apply  
3 to this Chapter:

4 'Acceptance.' § 4-3-409.

5 'Alteration.' § 4-3-407.

6 'Cashier's check' § 4-3-104.

7 'Certificate of deposit.' § 4-3-104.

8 'Certified check.' § 4-3-409.

9 'Check.' § 4-3-104.

10 'Good faith.' § 4-3-103.

11 'Holder in due course.' § 4-3-302.

12 'Instrument.' § 4-3-104.

13 'Notice of dishonor.' § 4-3-503.

14 'Order.' § 4-3-103.

15 'Ordinary care.' § 4-3-103.

16 'Person entitled to enforce.' § 4-3-301.

17 'Presentment.' § 4-3-501.

18 'Promise.' § 4-3-103.

19 'Prove.' § 4-3-103.

20 'Teller's check.' § 4-3-104.

21 'Unauthorized signature.' § 4-3-403.

22 (d) In addition, Chapter 1 of this subtitle contains general  
23 definitions and principles of construction and interpretation applicable  
24 throughout this Chapter.

25 § 4-4-105. 'Bank' -- 'depository bank' -- 'payor bank' -- 'interme-  
26 diary bank' -- 'collecting bank' -- 'presenting bank'.

27 In this Chapter:

28 (1) 'Bank' means a person engaged in the business of banking, includ-  
29 ing a savings bank, savings and loan association, credit union, or trust  
30 company.

31 (2) 'Depository bank' means the first bank to take an item even though  
32 it is also the payor bank, unless the item is presented for immediate payment  
33 over the counter;

34 (3) 'Payor bank' means a bank that is the drawee of a draft;

35 (4) 'Intermediary bank' means a bank to which an item is transferred

1 in course of collection except the depository or payor bank;

2 (5) 'Collecting bank' means a bank handling an item for collection  
3 except the payor bank;

4 (6) 'Presenting bank' means a bank presenting an item except a payor  
5 bank.

6 § 4-4-106. Payable through or payable at bank -- collecting bank.

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

11 (b) If an item states that it is 'payable at' a bank identified in the  
12 item, (i) the item designates the bank as a collecting bank and does not by  
13 itself authorize the bank to pay the item, and (ii) the item may be presented  
14 for payment only by or through the bank.

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

18 § 4-4-107. Separate office of a bank.

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

23 § 4-4-108. Time of receipt of items.

24 (a) For the purpose of allowing time to process items, prove balances,  
25 and make the necessary entries on its books to determine its position for the  
26 day, a bank may fix an afternoon hour of 2:00 p.m. or later as a cutoff hour  
27 for the handling of 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 cutoff hour  
29 so fixed or after the close of the banking day may be treated as being  
30 received at the opening of the next banking day.

31 § 4-4-109. Delays.

32 (a) Unless otherwise instructed, a collecting bank in a good faith  
33 effort to secure payment of a specific item drawn on a payor other than a  
34 bank, and with or without the approval of any person involved, may waive,  
35 modify, or extend time limits imposed or permitted by this subtitle for a

1 period not exceeding two (2) additional banking days without discharge of  
2 drawers or indorsers or liability to its transferor or a prior party.

3 (b) Delay by a collecting bank or payor bank beyond time limits  
4 prescribed or permitted by this subtitle or by instructions is excused if (i)  
5 the delay is caused by interruption of communication or computer facilities,  
6 suspension of payments by another bank, war, emergency conditions, failure of  
7 equipment, or other circumstances beyond the control of the bank , and (ii)  
8 the bank exercises such diligence as the circumstances require.

9 § 4-4-110. Electronic presentment.

10 (a) 'Agreement for electronic presentment' means an agreement,  
11 clearinghouse rule, or Federal Reserve regulation or operating circular,  
12 providing that presentment of an item may be made by transmission of an image  
13 of an item or information describing the item ('presentment notice') rather  
14 than delivery of the item itself. The agreement may provide for procedures  
15 governing retention, presentment, payment, dishonor, and other matters  
16 concerning items subject to the agreement.

17 (b) Presentment of an item pursuant to an agreement for presentment is  
18 made when the presentment notice is received.

19 (c) If presentment is made by presentment notice, a reference to  
20 'item' or 'check' in this Chapter means the presentment notice unless the  
21 context otherwise indicates.

22 § 4-4-111. Statute of limitations.

23 An action to enforce an obligation, duty, or right arising under this  
24 Chapter must be commenced within three (3) years after the cause of action  
25 accrues.

26 § 4-4-201. Status of collecting bank as agent and provisional status of  
27 credits -- applicability of chapter -- item indorsed 'pay any bank'.

28 (a) Unless a contrary intent clearly appears and before the time that a  
29 settlement given by a collecting bank for an item is or becomes final, the  
30 bank, with respect to the item, is an agent or subagent of the owner of the  
31 item and any settlement given for the item is provisional. This provision  
32 applies regardless of the form of indorsement or lack of indorsement and even  
33 though credit given for the item is subject to immediate withdrawal as of  
34 right or is in fact withdrawn; but the continuance of ownership of an item by  
35 its owner and any rights of the owner to proceeds of the item are subject to

1 rights of a collecting bank, such as those resulting from outstanding advances  
2 on the item and rights of recoupment or setoff. If an item is handled by  
3 banks for purposes of presentment, payment, collection, or return, the  
4 relevant provisions of this Chapter apply even though action of the parties  
5 clearly establishes that a particular bank has purchased the item and is the  
6 owner of it.

7 (b) After an item has been indorsed with the words 'pay any bank' or  
8 the like, only a bank may acquire the rights of a holder until the item has  
9 been:

- 10 (1) Returned to the customer initiating collection; or
- 11 (2) Specially indorsed by a bank to a person who is not a bank.

12 § 4-4-202. Responsibility for collection or return -- when action  
13 timely.

14 (a) A collecting bank must exercise ordinary care in:

- 15 (1) Presenting an item or sending it for presentment;
- 16 (2) Sending notice of dishonor or nonpayment or returning an item other  
17 than a documentary draft to the bank's transferor after learning that the item  
18 has not been paid or accepted, as the case may be;
- 19 (3) Settling for an item when the bank receives final settlement; and
- 20 (4) Notifying its transferor of any loss or delay in transit within a  
21 reasonable time after discovery thereof.

22 (b) A collecting bank exercises ordinary care under subsection (a) by  
23 taking proper action before its midnight deadline following receipt of an  
24 item, notice, or settlement. Taking proper action within a reasonably longer  
25 time may constitute the exercise of ordinary care, but the bank has the burden  
26 of establishing timeliness.

27 (c) Subject to subsection (a)(1), a bank is not liable for the  
28 insolvency, neglect, misconduct, mistake, or default of another bank or person  
29 or for loss or destruction of an item in the possession of others or in  
30 transit.

31 § 4-4-203. Effect of instructions.

32 Subject to Chapter 3 of this subtitle concerning conversion of  
33 instruments (§ 4-3-420) and restrictive indorsements (§ 4-3-206), only a  
34 collecting bank's transferor can give instructions that affect the bank or  
35 constitute notice to it, and a collecting bank is not liable to prior parties

1 for any action taken pursuant to the instructions or in accordance with any  
2 agreement with its transferor.

3 § 4-4-204. Methods of sending and presenting -- sending directly to  
4 payor bank.

5 (a) A collecting bank shall send items by a reasonably prompt method,  
6 taking into consideration relevant instructions, the nature of the item, the  
7 number of those items on hand, the cost of collection involved, and the method  
8 generally used by it or others to present those items.

9 (b) A collecting bank may send:

10 (1) An item directly to the payor bank;

11 (2) An item to a nonbank payor if authorized by its transferor; and

12 (3) An item other than documentary drafts to a nonbank payor, if  
13 authorized by Federal Reserve regulation or operating circular, clearinghouse  
14 rule, or the like.

15 (c) Presentment may be made by a presenting bank at a place where the  
16 payor bank or other payor has requested that presentment be made.

17 § 4-4-205. Depository bank holder of unindorsed item.

18 If a customer delivers an item to a depository bank for collection:

19 (1) The depository bank becomes a holder of the item at the time it  
20 receives the item for collection if the customer at the time of delivery was a  
21 holder of the item, whether or not the customer indorses the item, and, if the  
22 bank satisfies the other requirements of § 4-3-302, it is a holder in due  
23 course; and

24 (2) The depository bank warrants to collecting banks, the payor bank or  
25 other payor, and the drawer that the amount of the item was paid to the  
26 customer or deposited to the customer's account.

27 § 4-4-206. Transfer between banks.

28 Any agreed method that identifies the transferor bank is sufficient for  
29 the item's further transfer to another bank.

30 § 4-4-207. Transfer warranties.

31 (a) A customer or collecting bank that transfers an item and receives a  
32 settlement or other consideration warrants to the transferee and to any  
33 subsequent collecting bank that:

34 (1) The warrantor is a person entitled to enforce the item;

35 (2) All signatures on the item are authentic and authorized;

1           (3) The item has not been altered;

2           (4) The item is not subject to a defense or claim in recoupment (§ 4-  
3 3-305(a)) of any party that can be asserted against the warrantor; and

4           (5) The warrantor has no knowledge of any insolvency proceeding  
5 commenced with respect to the maker or acceptor or, in the case of an  
6 unaccepted draft, the drawer.

7           (b) If an item is dishonored, a customer or collecting bank  
8 transferring the item and receiving settlement or other consideration is  
9 obliged to pay the amount due on the item (i) according to the terms of the  
10 item at the time it was transferred, or (ii) if the transfer was of an  
11 incomplete item, according to its terms when completed as stated in §§ 4-3-115  
12 and 4-3-407. The obligation of a transferor is owed to the transferee and to  
13 any subsequent collecting bank that takes the item in good faith. A  
14 transferor cannot disclaim its obligation under this subsection by an indorse-  
15 ment stating that it is made 'without recourse' or otherwise disclaiming  
16 liability.

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

22           (d) The warranties stated in subsection (a) cannot be disclaimed with  
23 respect to checks. Unless notice of a claim for breach of warranty is given  
24 to the warrantor within thirty (30) days after the claimant has reason to know  
25 of the breach and the identity of the warrantor, the warrantor is discharged  
26 to the extent of any loss caused by the delay in giving notice of the claim.

27           (e) A cause of action for breach of warranty under this section accrues  
28 when the claimant has reason to know of the breach.

29           § 4-4-208. Presentment warranties.

30           (a) If an unaccepted draft is presented to the drawee for payment or  
31 acceptance and the drawee pays or accepts the draft, (i) the person obtaining  
32 payment or acceptance, at the time of presentment, and (ii) a previous  
33 transferor of the draft, at the time of transfer, warrant to the drawee that  
34 pays or accepts the draft in good faith that:

35           (1) The warrantor is, or was, at the time the warrantor transferred the

1 draft, a person entitled to enforce the draft or authorized to obtain payment  
2 or acceptance of the draft on behalf of a person entitled to enforce the  
3 draft;

4 (2) The draft has not been altered; and

5 (3) The warrantor has no knowledge that the signature of the purported  
6 drawer of the draft is unauthorized.

7 (b) A drawee making payment may recover from a warrantor damages for  
8 breach of warranty equal to the amount paid by the drawee less the amount the  
9 drawee received or is entitled to receive from the drawer because of the  
10 payment. In addition, the drawee is entitled to compensation for expenses and  
11 loss of interest resulting from the breach. The right of the drawee to  
12 recover damages under this subsection is not affected by any failure of the  
13 drawee to exercise ordinary care in making payment. If the drawee accepts the  
14 draft (i) breach of warranty is a defense to the obligation of the acceptor,  
15 and (ii) if the acceptor makes payment with respect to the draft, the acceptor  
16 is entitled to recover from a warrantor for breach of warranty the amounts  
17 stated in this subsection.

18 (c) If a drawee asserts a claim for breach of warranty under subsection  
19 (a) based on an unauthorized indorsement of the draft or an alteration of the  
20 draft, the warrantor may defend by proving that the indorsement is effective  
21 under §§ 4-3-404 or 4-3-405 or the drawer is precluded under §§ 4-3-406 or 4-  
22 4-406 from asserting against the drawee the unauthorized indorsement or  
23 alteration.

24 (d) If (i) a dishonored draft is presented for payment to the drawer or  
25 an indorser or (ii) any other item is presented for payment to a party obliged  
26 to pay the item, and the item is paid, the person obtaining payment and a  
27 prior transferor of the item warrant to the person making payment in good  
28 faith that the warrantor is, or was, at the time the warrantor transferred the  
29 item, a person entitled to enforce the item or authorized to obtain payment on  
30 behalf of a person entitled to enforce the item. The person making payment  
31 may recover from any warrantor for breach of warranty an amount equal to the  
32 amount paid plus expenses and loss of interest resulting from the breach.

33 (e) The warranties stated in subsections (a) and (d) cannot be  
34 disclaimed with respect to checks. Unless notice of a claim for breach of  
35 warranty is given to the warrantor within thirty (30) days after the claimant

1 has reason to know of the breach and the identity of the warrantor, the  
2 warrantor is discharged to the extent of any loss caused by the delay in  
3 giving notice of the claim.

4 (f) A cause of action for breach of warranty under this section accrues  
5 when the claimant has reason to know of the breach.

6 § 4-4-209. Encoding and retention warranties.

7 (a) A person who encodes information on or with respect to an item  
8 after issue warrants to any subsequent collecting bank and to the payor bank  
9 or other payor that the information is correctly encoded. If the customer of  
10 a depository bank encodes, that bank also makes the warranty.

11 (b) A person who undertakes to retain an item pursuant to an agreement  
12 for electronic presentment warrants to any subsequent collecting bank and to  
13 the payor bank or other payor that retention and presentment of the item  
14 comply with the agreement. If a customer of a depository bank undertakes to  
15 retain an item, that bank also makes this warranty.

16 (c) A person to whom warranties are made under this section and who  
17 took the item in good faith may recover from the warrantor as damages for  
18 breach of warranty an amount equal to the loss suffered as a result of the  
19 breach, plus expenses and loss of interest incurred as a result of the breach.

20 § 4-4-210. Security interest of collecting bank in items, accompanying  
21 documents, and proceeds.

22 (a) A collecting bank has a security interest in an item and any  
23 accompanying documents or the proceeds of either:

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

26 (2) In case of an item for which it has given credit available for  
27 withdrawal as of right, to the extent of the credit given, whether or not the  
28 credit is drawn upon or there is a right of charge-back; or

29 (3) If it makes an advance on or against the item.

30 (b) If credit given for several items received at one time or pursuant  
31 to a single agreement is withdrawn or applied in part, the security interest  
32 remains upon all the items, any accompanying documents or the proceeds of  
33 either. For the purpose of this section, credits first given are first  
34 withdrawn.

35 (c) Receipt by a collecting bank of a final settlement for an item is a

1 realization on its security interest in the item, accompanying documents, and  
2 proceeds. So long as the bank does not receive final settlement for the item  
3 or give up possession of the item or accompanying documents for purposes other  
4 than collection, the security interest continues to that extent and is subject  
5 to Chapter 9 of this subtitle, but:

6 (1) No security agreement is necessary to make the security interest  
7 enforceable (§ 4-9-203(1)(a));

8 (2) No filing is required to perfect the security interest; and

9 (3) The security interest has priority over conflicting perfected  
10 security interests in the item, accompanying documents, or proceeds.

11 § 4-4-211. When bank gives value for purposes of holder in due course.

12 For purposes of determining its status as a holder in due course, a bank  
13 has given value to the extent it has a security interest in an item, if the  
14 bank otherwise complies with the requirements of § 4-3-302 on what constitutes  
15 a holder in due course.

16 § 4-4-212. Presentment by notice of item not payable by, through, or at  
17 bank -- liability of drawer or indorser.

18 (a) Unless otherwise instructed, a collecting bank may present an item  
19 not payable by, through, or at a bank by sending to the party to accept or pay  
20 a written notice that the bank holds the item for acceptance or payment. The  
21 notice must be sent in time to be received on or before the day when  
22 presentment is due and the bank must meet any requirement of the party to  
23 accept or pay under § 4-3-501 by the close of the bank's next banking day  
24 after it knows of the requirement.

25 (b) If presentment is made by notice and payment, acceptance, or  
26 request for compliance with a requirement under § 4-3-501 is not received by  
27 the close of business on the day after maturity or, in the case of demand  
28 items, by the close of business on the third banking day after notice was  
29 sent, the presenting bank may treat the item as dishonored and charge any  
30 drawer or indorser by sending it notice of the facts.

31 § 4-4-213. Medium and time of settlement by bank.

32 (a) With respect to settlement by a bank, the medium and time of  
33 settlement may be prescribed by Federal Reserve regulations or circulars,  
34 clearinghouse rules, and the like, or agreement. In the absence of such  
35 prescription:

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

3 (2) The time of settlement, is:

4 (i) With respect to tender of settlement by cash, a cashier's  
5 check, or teller's check, when the cash or check is sent or delivered;

6 (ii) With respect to tender of settlement by credit in an account  
7 in a Federal Reserve Bank, when the credit is made;

8 (iii) With respect to tender of settlement by a credit or debit to  
9 an account in a bank, when the credit or debit is made or, in the case of  
10 tender of settlement by authority to charge an account, when the authority is  
11 sent or delivered; or

12 (iv) With respect to tender of settlement by a funds transfer,  
13 when payment is made pursuant to § 4-4A-406(a) to the person receiving  
14 settlement.

15 (b) If the tender of settlement is not by a medium authorized by  
16 subsection (a) or the time of settlement is not fixed by subsection (a), no  
17 settlement occurs until the tender of settlement is accepted by the person  
18 receiving settlement.

19 (c) If settlement for an item is made by cashier's check or teller's  
20 check and the person receiving settlement, before its midnight deadline:

21 (1) Presents or forwards the check for collection, settlement is final  
22 when the check is finally paid; or

23 (2) Fails to present or forward the check for collection, settlement is  
24 final at the midnight deadline of the person receiving settlement.

25 (d) If settlement for an item is made by giving authority to charge the  
26 account of the bank giving settlement in the bank receiving settlement,  
27 settlement is final when the charge is made by the bank receiving settlement  
28 if there are funds available in the account for the amount of the item.

29 § 4-4-214. Right of charge-back or refund -- liability of collecting  
30 bank -- return of item.

31 (a) If a collecting bank has made provisional settlement with its  
32 customer for an item and fails by reason of dishonor, suspension of payments  
33 by a bank, or otherwise to receive settlement for the item which is or becomes  
34 final, the bank may revoke the settlement given by it, charge back the amount  
35 of any credit given for the item to its customer's account, or obtain refund

1 from its customer, whether or not it is able to return the items, if by its  
2 midnight deadline or within a longer reasonable time after it learns the facts  
3 it returns the item or sends notification of the facts. If the return or  
4 notice is delayed beyond the bank's midnight deadline or a longer reasonable  
5 time after it learns the facts, the bank may revoke the settlement, charge  
6 back the credit, or obtain refund from its customer, but it is liable for any  
7 loss resulting from the delay. These rights to revoke, charge back, and  
8 obtain refund terminate if and when a settlement for the item received by the  
9 bank is or becomes final.

10 (b) A collecting bank returns an item when it is sent or delivered to  
11 the bank's customer or transferor or pursuant to its instructions.

12 (c) A depository bank that is also the payor may charge back the amount  
13 of an item to its customer's account or obtain refund in accordance with the  
14 section governing return of an item received by a payor bank for credit on its  
15 books (§ 4-4-301).

16 (d) The right to charge back is not affected by:

17 (1) Previous use of a credit given for the item; or

18 (2) Failure by any bank to exercise ordinary care with respect to the  
19 item, but a bank so failing remains liable.

20 (e) A failure to charge-back or claim refund does not affect other  
21 rights of the bank against the customer or any other party.

22 (f) If credit is given in dollars as the equivalent of the value of an  
23 item payable in foreign money, the dollar amount of any charge-back or refund  
24 must be calculated on the basis of the bank-offered spot rate for the foreign  
25 money prevailing on the day when the person entitled to the charge-back or  
26 refund learns that it will not receive payment in ordinary course.

27 § 4-4-215. Final payment of item by payor bank -- when provisional  
28 debits and credits become final -- when certain credits become available for  
29 withdrawal.

30 (a) An item is finally paid by a payor bank when the bank has first  
31 done any of the following:

32 (1) Paid the item in cash;

33 (2) Settled for the item without having a right to revoke the  
34 settlement under statute, clearinghouse rule, or agreement; or

35 (3) Made a provisional settlement for the item and failed to revoke the

1 settlement in the time and manner permitted by statute, clearinghouse rule, or  
2 agreement.

3 (b) If provisional settlement for an item does not become final, the  
4 item is not finally paid.

5 (c) If provisional settlement for an item between the presenting and  
6 payor banks is made through a clearinghouse or by debits or credits in an  
7 account between them, then to the extent that provisional debits or credits  
8 for the item are entered in accounts between the presenting and payor banks or  
9 between the presenting and successive prior collecting banks seriatim, they  
10 become final upon final payment of the items by the payor bank.

11 (d) If a collecting bank receives a settlement for an item which is or  
12 becomes final, the bank is accountable to its customer for the amount of the  
13 item and any provisional credit given for the item in an account with its  
14 customer becomes final.

15 (e) Subject to (i) applicable law stating a time for availability of  
16 funds and (ii) any right of the bank to apply the credit to an obligation of  
17 the customer, credit given by a bank for an item in a customer's account  
18 becomes available for withdrawal as of right:

19 (1) If the bank has received a provisional settlement for the item, when  
20 the settlement becomes final and the bank has had a reasonable time to receive  
21 return of the item and the item has not been received within that time;

22 (2) If the bank is both the depositary bank and the payor bank, and the  
23 item is finally paid, at the opening of the bank's second banking day  
24 following receipt of the item.

25 (f) Subject to applicable law stating a time for availability of funds  
26 and any right of a bank to apply a deposit to an obligation of the depositor,  
27 a deposit of money becomes available for withdrawal as of right at the opening  
28 of the bank's next banking day after receipt of the deposit.

29 § 4-4-216. Insolvency and preference.

30 (a) If an item is in or comes into the possession of a payor or  
31 collecting bank that suspends payment and the item has not been finally paid,  
32 the item must be returned by the receiver, trustee, or agent in charge of the  
33 closed bank to the presenting bank or the closed bank's customer.

34 (b) If a payor bank finally pays an item and suspends payments without  
35 making a settlement for the item with its customer or the presenting bank

1 which settlement is or becomes final, the owner of the item has a preferred  
2 claim against the payor bank.

3 (c) If a payor bank gives or a collecting bank gives or receives a  
4 provisional settlement for an item and thereafter suspends payments, the  
5 suspension does not prevent or interfere with the settlement's becoming final  
6 if the finality occurs automatically upon the lapse of certain time or the  
7 happening of certain events .

8 (d) If a collecting bank receives from subsequent parties settlement  
9 for an item, which settlement is or becomes final and the bank suspends  
10 payments without making a settlement for the item with its customer which  
11 settlement is or becomes final, the owner of the item has a preferred claim  
12 against the collecting bank.

13 § 4-4-301. Deferred posting -- recovery of payment by return of items -  
14 - time of dishonor -- return of items by payor bank.

15 (a) If a payor bank settles for a demand item other than a documentary  
16 draft presented otherwise than for immediate payment over the counter before  
17 midnight of the banking day of receipt, the payor bank may revoke the  
18 settlement and recover the settlement if, before it has made final payment and  
19 before its midnight deadline, it:

20 (1) Returns the item; or

21 (2) Sends written notice of dishonor or nonpayment if the item is  
22 unavailable for return.

23 (b) If a demand item is received by a payor bank for credit on its  
24 books, it may return the item or send notice of dishonor and may revoke any  
25 credit given or recover the amount thereof withdrawn by its customer, if it  
26 acts within the time limit and in the manner specified in subsection (a).

27 (c) Unless previous notice of dishonor has been sent, an item is  
28 dishonored at the time when for purposes of dishonor it is returned or notice  
29 sent in accordance with this section.

30 (d) An item is returned:

31 (1) As to an item presented through a clearinghouse, when it is  
32 delivered to the presenting or last collecting bank or to the clearinghouse or  
33 is sent or delivered in accordance with clearinghouse rules; or

34 (2) In all other cases, when it is sent or delivered to the bank's  
35 customer or transferor or pursuant to instructions.

1 § 4-4-302. Payor bank's responsibility for late return of item.

2 (a) If an item is presented to and received by a payor bank, the bank  
3 is accountable for the amount of:

4 (1) A demand item, other than a documentary draft, whether properly  
5 payable or not, if the bank, in any case in which it is not also the  
6 depository bank, retains the item beyond midnight of the banking day of  
7 receipt without settling for it or, whether or not it is also the depository  
8 bank, does not pay or return the item or send notice of dishonor until after  
9 its midnight deadline; or

10 (2) Any other properly payable item unless, within the time allowed for  
11 acceptance or payment of that item, the bank either accepts or pays the item  
12 or returns it and accompanying documents.

13 (b) The liability of a payor bank to pay an item pursuant to subsection  
14 (a) is subject to defenses based on breach of a presentment warranty (§ 4-  
15 4-208) or proof that the person seeking enforcement of the liability presented  
16 or transferred the item for the purpose of defrauding the payor bank.

17 § 4-4-303. When items subject to notice, stop-payment order, legal  
18 process, or setoff -- order in which items may be charged or certified.

19 (a) Any knowledge, notice, or stop-payment order received by, legal  
20 process served upon, or setoff exercised by a payor bank comes too late to  
21 terminate, suspend, or modify the bank's right or duty to pay an item or to  
22 charge its customer's account for the item if the knowledge, notice, stop-  
23 payment order, or legal process is received or served and a reasonable time  
24 for the bank to act thereon expires or the setoff is exercised after the  
25 earliest of the following:

26 (1) The bank accepts or certifies the item;

27 (2) The bank pays the item in cash;

28 (3) The bank settles for the item without having a right to revoke the  
29 settlement under statute, clearinghouse rule, or agreement;

30 (4) The bank becomes accountable for the amount of the item under § 4-  
31 4-302 dealing with the payor bank's responsibility for late return of items;  
32 or

33 (5) With respect to checks, a cutoff hour no earlier than one (1) hour  
34 after the opening of the next banking day after the banking day on which the  
35 bank received the check and no later than the close of that next banking day

1 or, if no cutoff hour is fixed, the close of the next banking day after the  
2 banking day on which the bank received the check.

3 (b) Subject to subsection (a), items may be accepted, paid, certified,  
4 or charged to the indicated account of its customer in any order.

5 § 4-4-401. When bank may charge customer's account.

6 (a) A bank may charge against the account of a customer an item that is  
7 properly payable from that account even though the charge creates an  
8 overdraft. An item is properly payable if it is authorized by the customer  
9 and is in accordance with any agreement between the customer and bank.

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

12 (c) A bank may charge against the account of a customer a check that is  
13 otherwise properly payable from the account, even though payment was made  
14 before the date of the check, unless the customer has given notice to the bank  
15 of the postdating describing the check with reasonable certainty. The notice  
16 is effective for the period stated in § 4-4-403(b) for stop-payment orders,  
17 and must be received at such time and in such manner as to afford the bank a  
18 reasonable opportunity to act on it before the bank takes any action with  
19 respect to the check described in § 4-4-303. If a bank charges against the  
20 account of a customer a check before the date stated in the notice of postdat-  
21 ing, the bank is liable for damages for the loss resulting from its act. The  
22 loss may include damages for dishonor of subsequent items under § 4-4-402.

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

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

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

29 § 4-4-402. Bank's liability to customer for wrongful dishonor -- time  
30 of determining insufficiency of account.

31 (a) Except as otherwise provided in this Chapter, a payor bank  
32 wrongfully dishonors an item if it dishonors an item that is properly payable,  
33 but a bank may dishonor an item that would create an overdraft unless it has  
34 agreed to pay the overdraft.

35 (b) A payor bank is liable to its customer for damages proximately

1 caused by the wrongful dishonor of an item. Liability is limited to actual  
2 damages proved and may include damages for an arrest or prosecution of the  
3 customer or other consequential damages. Whether any consequential damages  
4 are proximately caused by the wrongful dishonor is a question of fact to be  
5 determined in each case.

6 (c) A payor bank's determination of the customer's account balance on  
7 which a decision to dishonor for insufficiency of available funds is based may  
8 be made at any time between the time the item is received by the payor bank  
9 and the time that the payor bank returns the item or gives notice in lieu of  
10 return, and no more than one determination need be made. If, at the election  
11 of the payor bank, a subsequent balance determination is made for the purpose  
12 of reevaluating the bank's decision to dishonor the item, the account balance  
13 at that time is determinative of whether a dishonor for insufficiency of  
14 available funds is wrongful.

15 § 4-4-403. Customer's right to stop payment -- burden of proof of loss.

16 (a) A customer or any person authorized to draw on the account if there  
17 is more than one person may stop payment of any item drawn on the customer's  
18 account or close the account by an order to the bank describing the item or  
19 account with reasonable certainty received at a time and in a manner that  
20 affords the bank a reasonable opportunity to act on it before any action by  
21 the bank with respect to the item described in § 4-4-303. If the signature of  
22 more than one person is required to draw on an account, any of these persons  
23 may stop payment or close the account.

24 (b) A stop-payment order is effective for six (6) months, but it lapses  
25 after fourteen (14) calendar days if the original order was oral and was not  
26 confirmed in writing within that period. A stop-payment order may be renewed  
27 for additional six-month periods by a writing given to the bank within a  
28 period during which the stop-payment order is effective.

29 (c) The burden of establishing the fact and amount of loss resulting  
30 from the payment of an item contrary to a stop-payment order or order to close  
31 an account is on the customer. The loss from payment of an item contrary to a  
32 stop-payment order may include damages for dishonor of subsequent items under  
33 § 4-4-402.

34 § 4-4-404. Bank not obliged to pay check more than six (6) months old.

35 A bank is under no obligation to a customer having a checking account to

1 pay a check, other than a certified check, which is presented more than six  
2 (6) months after its date, but it may charge its customer's account for a  
3 payment made thereafter in good faith.

4 § 4-4-405. Death or incompetence of customer.

5 (a) A payor or collecting bank's authority to accept, pay, or collect  
6 an item or to account for proceeds of its collection, if otherwise effective,  
7 is not rendered ineffective by incompetence of a customer of either bank  
8 existing at the time the item is issued or its collection is undertaken if the  
9 bank does not know of an adjudication of incompetence. Neither death nor  
10 incompetence of a customer revokes the authority to accept, pay, collect, or  
11 account until the bank knows of the fact of death or of an adjudication of  
12 incompetence and has reasonable opportunity to act on it.

13 (b) Even with knowledge, a bank may for ten (10) days after the date of  
14 death pay or certify checks drawn on or before that date unless ordered to  
15 stop payment by a person claiming an interest in the account.

16 § 4-4-406. Customer's duty to discover and report unauthorized signa-  
17 ture or alteration -- Comparative fault.

18 (a) A bank that sends or makes available to a customer a statement of  
19 account showing payment of items for the account shall either return or make  
20 available to the customer the items paid or provide information in the  
21 statement of account sufficient to allow the customer reasonably to identify  
22 the items paid. The statement of account provides sufficient information if  
23 the item is described by item number, amount, and date of payment.

24 (b) If the items are not returned to the customer, the person retaining  
25 the items shall either retain the items or, if the items are destroyed,  
26 maintain the capacity to furnish legible copies of the items until the  
27 expiration of seven (7) years after receipt of the items. A customer may  
28 request an item from the bank that paid the item, and that bank must provide  
29 in a reasonable time either the item or, if the item has been destroyed or is  
30 not otherwise obtainable, a legible copy of the item.

31 (c) If a bank sends or makes available a statement of account or items  
32 pursuant to subsection (a), the customer must exercise reasonable promptness  
33 in examining the statement or the items to determine whether any payment was  
34 not authorized because of an alteration of an item or because a purported  
35 signature by or on behalf of the customer was not authorized. If, based on

1 the statement or items provided, the customer should reasonably have  
2 discovered the unauthorized payment, the customer must promptly notify the  
3 bank of the relevant facts.

4 (d) If the bank proves that the customer failed, with respect to an  
5 item, to comply with the duties imposed on the customer by subsection (c), the  
6 customer is precluded from asserting against the bank:

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

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

15 (e) If subsection (d) applies and the customer proves that the bank  
16 failed to exercise ordinary care in paying the item and that the failure  
17 substantially contributed to loss, the loss is allocated between the customer  
18 precluded and the bank asserting the preclusion according to the extent to  
19 which the failure of the customer to comply with subsection (c) and the  
20 failure of the bank to exercise ordinary care contributed to the loss. If the  
21 customer proves that the bank did not pay the item in good faith, the preclu-  
22 sion under subsection (d) does not apply.

23 (f) Without regard to care or lack of care of either the customer or  
24 the bank, a customer who does not within one (1) year after the statement or  
25 items are made available to the customer (subsection (a)) discover and report  
26 the customer's unauthorized signature on or any alteration on the item is  
27 precluded from asserting against the bank the unauthorized signature or  
28 alteration. If there is a preclusion under this subsection, the payor bank  
29 may not recover for breach of warranty under § 4-4-208 with respect to the  
30 unauthorized signature or alteration to which the preclusion applies.

31 § 4-4-407. Payor bank's right to subrogation on improper payment.

32 If a payor bank has paid an item over the order of the drawer or maker  
33 to stop payment, or after an account has been closed, or otherwise under  
34 circumstances giving a basis for objection by the drawer or maker, to prevent  
35 unjust enrichment and only to the extent necessary to prevent loss to the bank

1 by reason of its payment of the item, the payor bank is subrogated to the  
2 rights:

3 (1) Of any holder in due course on the item against the drawer or maker;

4 (2) Of the payee or any other holder of the item against the drawer or  
5 maker either on the item or under the transaction out of which the item arose;  
6 and

7 (3) Of the drawer or maker against the payee or any other holder of the  
8 item with respect to the transaction out of which the item arose.

9 § 4-4-501. Handling of documentary drafts -- duty to send for  
10 presentment and to notify customer of dishonor.

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

16 § 4-4-502. Presentment of 'on arrival' drafts.

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

24 § 4-4-503. Responsibility of presenting bank for documents and goods --  
25 report of reasons for dishonor -- referee in case of need.

26 Unless otherwise instructed and except as provided in Chapter 5 of this  
27 subtitle, a bank presenting a documentary draft:

28 (1) Must deliver the documents to the drawee on acceptance of the draft  
29 if it is payable more than three (3) days after presentment; otherwise, only  
30 on payment; and

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

1 dishonor and of the results of its effort to ascertain the reasons therefor,  
2 and must request instructions. However, the presenting bank is under no  
3 obligation with respect to goods represented by the documents except to follow  
4 any reasonable instructions seasonably received; it has a right to reimburse-  
5 ment for any expense incurred in following instructions and to prepayment of  
6 or indemnity for those expenses.

7 § 4-4-504. Privilege of presenting bank to deal with goods -- security  
8 interest for expenses.

9 (a) A presenting bank that, following the dishonor of a documentary  
10 draft, has seasonably requested instructions but does not receive them within  
11 a reasonable time may store, sell, or otherwise deal with the goods in any  
12 reasonable manner.

13 (b) For its reasonable expenses incurred by action under subsection  
14 (a), the presenting bank has a lien upon the goods or their proceeds, which  
15 may be foreclosed in the same manner as an unpaid seller's lien."  
16

17 SECTION 7. All provisions of this act of a general and permanent nature  
18 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
19 Revision Commission shall incorporate the same in the Code.  
20

21 SECTION 8. If any provision of this act or the application thereof to  
22 any person or circumstance is held invalid, such invalidity shall not affect  
23 other provisions or applications of the act which can be given effect without  
24 the invalid provision or application, and to this end the provisions of this  
25 act are declared to be severable.  
26

27 SECTION 9. (a) Chapter 3 of Title 4 of the Arkansas Code Annotated is  
28 hereby *repealed*.

29 (b) All laws and parts of laws in conflict with this act are hereby  
30 repealed.

31 /s/Beebe

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33 APPROVED: 3-15-91  
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