

Approved, S.J. 518
On Calendar, S.J. 508

FILED MAR 4 1994 HJ. 1684

SENATE FILE 2279 Sub. for.
BY COMMITTEE ON COMMERCE HF. 2395

(SUCCESSOR TO SSB 2244) ✓

(COMPANION TO LSB 4186HV)

S.J. 793

H.J. 1684

Passed Senate, Date 3-22-94 Passed House, Date 4-15-94

Vote: Ayes 47 Nays 0 Vote: Ayes 95 Nays 0

Approved 5-10-94

A BILL FOR

1 An Act amending the Uniform Commercial Code relating to
2 negotiable instruments, and bank deposits and collections, and
3 repealing sections.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

S.F. 2279

1 Section 1. Section 9E.9, subsection 5, Code 1993, is
2 amended to read as follows:

3 5. In making or noting a protest of a negotiable
4 instrument, the notarial officer must determine the matters
5 set forth whether there is evidence of dishonor as provided in
6 section 554-3509 554.3505.

7 Sec. 2. Section 533.43, subsection 3, Code 1993, is
8 amended to read as follows:

9 3. The share draft is payable to a member of the credit
10 union, or to a member of the family of the issuer of the share
11 draft, or to a business in which the issuer of the share draft
12 has an interest. However, the exception contained in this
13 subsection does not apply to any person referred to in this
14 subsection if the person is a holder in due course, as
15 provided in chapter 554, article 3, ~~and with respect to a~~
16 ~~share draft which is issued prior to the expiration of one~~
17 ~~year after April 13, 1979, the person shall not be denied the~~
18 ~~rights of a holder in due course of the share draft solely on~~
19 ~~the grounds that the share draft fails to meet the~~
20 ~~requirements of section 554-3104, subsection 1, paragraph "d".~~

21 Sec. 3. Section 537.3211, Code 1993, is amended to read as
22 follows:

23 537.3211 NOTICE OF CONSUMER PAPER.

24 Every note which is a negotiable instrument pursuant to as
25 provided in section 554.3104 taken in a consumer credit
26 transaction, if the writing requires or provides for a
27 signature of the consumer, shall conspicuously show on its
28 face the following: "This is a consumer credit transaction."

29 Sec. 4. Section 539.1, Code 1993, is amended to read as
30 follows:

31 539.1 ASSIGNMENT OF NONNEGOTIABLE INSTRUMENTS.

32 Bonds, due bills, and all instruments by which the maker
33 promises to pay another, without words of negotiability, a sum
34 of money, or by which the maker promises to pay a sum of money
35 in property or labor, or to pay or deliver any property or

1 labor, or acknowledges any money, labor, or property to be
2 due, are assignable by endorsement on the instrument, or by
3 other writing. The assignee, including a person who takes
4 assignment for collection in the regular course of business,
5 has a right of action on them in the assignee's own name,
6 subject to any defense or counterclaim which the maker or
7 debtor had against an assignor of the instrument before notice
8 of the assignment. In case of conflict between this section
9 and ~~Uniform-Commercial-Code~~, sections 554.3805, 554.5116 or
10 and 554.9318, these sections 554.5116 and 554.9318 control.

11 Sec. 5. Section 539.2, Code 1993, is amended to read as
12 follows:

13 539.2 ASSIGNMENT PROHIBITED BY INSTRUMENT.

14 When by the terms of an instrument its assignment is
15 prohibited, an assignment thereof shall nevertheless be valid,
16 but the maker may make use of any defense or counterclaim
17 against the assignee which the maker may have against any
18 assignor thereof before notice of such assignment is given to
19 the maker in writing. In case of conflict between this
20 section and ~~Uniform-Commercial-Code~~, sections 554.3805,
21 554.5116 or and 554.9318, these sections 554.5116 and 554.9318
22 control.

23 Sec. 6. Section 554.1201, subsections 20, 24, and 43, Code
24 1993, are amended to read as follows:

25 20. ~~"Holder" means a person who is in possession of a~~
26 ~~document of title or an instrument or a certificated~~
27 ~~investment security drawn, issued, or endorsed to that person~~
28 ~~or to that person's order or to bearer or in blank with~~
29 respect to a negotiable instrument, means the person in
30 possession if the instrument is payable to bearer or, in the
31 case of an instrument payable to an identified person, if the
32 identified person is in possession. "Holder" with respect to
33 a document of title means the person in possession if the
34 goods are deliverable to bearer or to the order of the person
35 in possession.

1 24. "Money" means a medium of exchange authorized or
2 adopted by a domestic or foreign government ~~as-a-part-of-its~~
3 currency and includes a monetary unit of account established
4 by an intergovernmental organization or by agreement between
5 two or more nations.

6 43. "Unauthorized" signature or-endorsement means one made
7 without actual, implied, or apparent authority and includes a
8 forgery.

9 Sec. 7. Section 554.1207, Code 1993, is amended to read as
10 follows:

11 554.1207 PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF
12 RIGHTS.

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

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

20 Sec. 8. Section 554.2103, subsection 3, Code 1993, is
21 amended to read as follows:

22 3. The following definitions in other Articles apply to
23 this Article:

24 "Check".	Section 554.3104.
25 "Consignee".	Section 554.7102.
26 "Consignor".	Section 554.7102.
27 "Consumer goods".	Section 554.9109.
28 "Dishonor".	Section 554.3507
29	<u>554.3502.</u>
30 "Draft".	Section 554.3104.

31 Sec. 9. Section 554.2511, subsection 3, Code 1993, is
32 amended to read as follows:

33 3. Subject to the provisions of this chapter on the effect
34 of an instrument on an obligation (section ~~554.3802~~ 554.3310),
35 payment by check is conditional and is defeated as between the

1 parties by dishonor of the check on due presentment.

2

UNIFORM COMMERCIAL CODE

3

ARTICLE 3 - NEGOTIABLE INSTRUMENTS

4

PART 1

5

GENERAL PROVISIONS AND DEFINITIONS

6

Sec. 10. NEW SECTION. 554.3101 SHORT TITLE. This

7 Article may be cited as Uniform Commercial Code -- Negotiable
8 Instruments.

9

Sec. 11. NEW SECTION. 554.3102 SUBJECT MATTER.

10

1. This Article applies to negotiable instruments. It
11 does not apply to money, to payment orders governed by Article
12 8, or to securities governed by Article 12.

13

2. If there is conflict between this Article and Article 9
14 or 12, Articles 9 and 12 govern.

15

3. Regulations of the Board of Governors of the Federal
16 Reserve System and operating circulars of the Federal Reserve
17 Banks supersede any inconsistent provision of this Article to
18 the extent of the inconsistency.

19

Sec. 12. NEW SECTION. 554.3103 DEFINITIONS.

20

1. In this Article:

21

a. "Acceptor" means a drawee who has accepted a draft.

22

b. "Drawee" means a person ordered in a draft to make
23 payment.

24

c. "Drawer" means a person who signs or is identified in a
25 draft as a person ordering payment.

26

d. "Good faith" means honesty in fact and the observance
27 of reasonable commercial standards of fair dealing.

28

e. "Maker" means a person who signs or is identified in a
29 note as a person undertaking to pay.

30

f. "Order" means a written instruction to pay money signed
31 by the person giving the instruction. The instruction may be
32 addressed to any person, including the person giving the
33 instruction, or to one or more persons jointly or in the
34 alternative but not in succession. An authorization to pay is
35 not an order unless the person authorized to pay is also

1 instructed to pay.

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

13 h. "Party" means a party to an instrument.

14 i. "Promise" means a written undertaking to pay money
15 signed by the person undertaking to pay. An acknowledgment of
16 an obligation by the obligor is not a promise unless the
17 obligor also undertakes to pay the obligation.

18 j. "Prove" with respect to a fact means to meet the burden
19 of establishing the fact (section 554.1201, subsection 8).

20 k. "Remitter" means a person who purchases an instrument
21 from its issuer if the instrument is payable to an identified
22 person other than the purchaser.

23 2. Other definitions applying to this Article and the
24 sections in which they appear are:

25 "Acceptance".	Section 554.3409.
26 "Accommodated party".	Section 554.3419.
27 "Accommodation party".	Section 554.3419.
28 "Alteration".	Section 554.3407.
29 "Anomalous endorsement".	Section 554.3205.
30 "Blank endorsement".	Section 554.3205.
31 "Cashier's check".	Section 554.3104.
32 "Certificate of deposit".	Section 554.3104.
33 "Certified check".	Section 554.3409.
34 "Check".	Section 554.3104.
35 "Consideration".	Section 554.3303.

1 "Draft".	Section 554.3104.
2 "Holder in due course".	Section 554.3302.
3 "Incomplete instrument".	Section 554.3115.
4 "Endorsement".	Section 554.3204.
5 "Endorser".	Section 554.3204.
6 "Instrument".	Section 554.3104.
7 "Issue".	Section 554.3105.
8 "Issuer".	Section 554.3105.
9 "Negotiable instrument".	Section 554.3104.
10 "Negotiation".	Section 554.3201.
11 "Note".	Section 554.3104.
12 "Payable at a definite time".	Section 554.3108.
13 "Payable on demand".	Section 554.3108.
14 "Payable to bearer".	Section 554.3109.
15 "Payable to order".	Section 554.3109.
16 "Payment".	Section 554.3602.
17 "Person entitled to enforce".	Section 554.3301.
18 "Presentment".	Section 554.3501.
19 "Reacquisition".	Section 554.3207.
20 "Special endorsement".	Section 554.3205.
21 "Teller's check".	Section 554.3104.
22 "Transfer of instrument".	Section 554.3203.
23 "Traveler's check".	Section 554.3104.
24 "Value".	Section 554.3303.
25 3. The following definitions in other Articles apply to	
26 this Article:	
27 "Bank".	Section 554.4105.
28 "Banking day".	Section 554.4104.
29 "Clearing house".	Section 554.4104.
30 "Collecting bank".	Section 554.4105.
31 "Depositary bank".	Section 554.4105.
32 "Documentary draft".	Section 554.4104.
33 "Intermediary bank".	Section 554.4105.
34 "Item".	Section 554.4104.
35 "Payor bank".	Section 554.4105.

1 "Suspends payments". Section 554.4104.

2 4. In addition, Article 1 contains general definitions and
3 principles of construction and interpretation applicable
4 throughout this Article.

5 Sec. 13. NEW SECTION. 554.3104 NEGOTIABLE INSTRUMENT.

6 1. Except as provided in subsections 3 and 4, "negotiable
7 instrument" means an unconditional promise or order to pay a
8 fixed amount of money, with or without interest or other
9 charges described in the promise or order, if it:

10 a. is payable to bearer or to order at the time it is
11 issued or first comes into possession of a holder;

12 b. is payable on demand or at a definite time; and

13 c. does not state any other undertaking or instruction by
14 the person promising or ordering payment to do any act in
15 addition to the payment of money, but the promise or order may
16 contain (i) an undertaking or power to give, maintain, or
17 protect collateral to secure payment, (ii) an authorization or
18 power to the holder to confess judgment or realize on or
19 dispose of collateral, or (iii) a waiver of the benefit of any
20 law intended for the advantage or protection of an obligor.

21 2. "Instrument" means a negotiable instrument.

22 3. An order that meets all of the requirements of
23 subsection 1, except paragraph "a", and otherwise falls within
24 the definition of "check" in subsection 6 is a negotiable
25 instrument and a check.

26 4. A promise or order other than a check is not an
27 instrument if, at the time it is issued or first comes into
28 possession of a holder, it contains a conspicuous statement,
29 however expressed, to the effect that the promise or order is
30 not negotiable or is not an instrument governed by this
31 Article.

32 5. An instrument is a "note" if it is a promise and is a
33 "draft" if it is an order. If an instrument falls within the
34 definition of both "note" and "draft," a person entitled to
35 enforce the instrument may treat it as either.

1 6. "Check" means (i) a draft, other than a documentary
2 draft, payable on demand and drawn on a bank or (ii) a
3 cashier's check or teller's check. An instrument may be a
4 check even though it is described on its face by another term,
5 such as "money order."

6 7. "Cashier's check" means a draft with respect to which
7 the drawer and drawee are the same bank or branches of the
8 same bank.

9 8. "Teller's check" means a draft drawn by a bank (i) on
10 another bank, or (ii) payable at or through a bank.

11 9. "Traveler's check" means an instrument that (i) is
12 payable on demand, (ii) is drawn on or payable at or through a
13 bank, (iii) is designated by the term "traveler's check" or by
14 a substantially similar term, and (iv) requires, as a
15 condition to payment, a countersignature by a person whose
16 specimen signature appears on the instrument.

17 10. "Certificate of deposit" means an instrument
18 containing an acknowledgment by a bank that a sum of money has
19 been received by the bank and a promise by the bank to repay
20 the sum of money. A certificate of deposit is a note of the
21 bank.

22 Sec. 14. NEW SECTION. 554.3105 ISSUE OF INSTRUMENT.

23 1. "Issue" means the first delivery of an instrument by
24 the maker or drawer, whether to a holder or nonholder, for the
25 purpose of giving rights on the instrument to any person.

26 2. An unissued instrument, or an unissued incomplete
27 instrument that is completed, is binding on the maker or
28 drawer, but nonissuance is a defense. An instrument that is
29 conditionally issued or is issued for a special purpose is
30 binding on the maker or drawer, but failure of the condition
31 or special purpose to be fulfilled is a defense.

32 3. "Issuer" applies to issued and unissued instruments and
33 means a maker or drawer of an instrument.

34 Sec. 15. NEW SECTION. 554.3106 UNCONDITIONAL PROMISE OR
35 ORDER.

1 1. Except as provided in this section, for the purposes of
2 section 554.3104, subsection 1, a promise or order is
3 unconditional unless it states (i) an express condition to
4 payment, (ii) that the promise or order is subject to or
5 governed by another writing, or (iii) that rights or
6 obligations with respect to the promise or order are stated in
7 another writing. A reference to another writing does not of
8 itself make the promise or order conditional.

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

14 3. If a promise or order requires, as a condition to
15 payment, a countersignature by a person whose specimen
16 signature appears on the promise or order, the condition does
17 not make the promise or order conditional for the purposes of
18 section 554.3104, subsection 1. If the person whose specimen
19 signature appears on an instrument fails to countersign the
20 instrument, the failure to countersign is a defense to the
21 obligation of the issuer, but the failure does not prevent a
22 transferee of the instrument from becoming a holder of the
23 instrument.

24 4. If a promise or order at the time it is issued or first
25 comes into possession of a holder contains a statement,
26 required by applicable statutory or administrative law, to the
27 effect that the rights of a holder or transferee are subject
28 to claims or defenses that the issuer could assert against the
29 original payee, the promise or order is not thereby made
30 conditional for the purposes of section 554.3104, subsection
31 1; but if the promise or order is an instrument, there cannot
32 be a holder in due course of the instrument.

33 Sec. 16. NEW SECTION. 554.3107 INSTRUMENT PAYABLE IN
34 FOREIGN MONEY.

35 Unless the instrument otherwise provides, an instrument

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

6 Sec. 17. NEW SECTION. 554.3108 PAYABLE ON DEMAND OR AT
7 DEFINITE TIME.

8 1. A promise or order is "payable on demand" if it (i)
9 states that it is payable on demand or at sight, or otherwise
10 indicates that it is payable at the will of the holder, or
11 (ii) does not state any time of payment.

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

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

26 Sec. 18. NEW SECTION. 554.3109 PAYABLE TO BEARER OR TO
27 ORDER.

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

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

32 b. does not state a payee; or

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

1 2. A promise or order that is not payable to bearer is
2 payable to order if it is payable (i) to the order of an
3 identified person or (ii) to an identified person or order. A
4 promise or order that is payable to order is payable to the
5 identified person.

6 3. An instrument payable to bearer may become payable to
7 an identified person if it is specially endorsed pursuant to
8 section 554.3205, subsection 1. An instrument payable to an
9 identified person may become payable to bearer if it is
10 endorsed in blank pursuant to section 554.3205, subsection 2.

11 Sec. 19. NEW SECTION. 554.3110 IDENTIFICATION OF PERSON
12 TO WHOM INSTRUMENT IS PAYABLE.

13 1. The person to whom an instrument is initially payable
14 is determined by the intent of the person, whether or not
15 authorized, signing as, or in the name or behalf of, the
16 issuer of the instrument. The instrument is payable to the
17 person intended by the signer even if that person is
18 identified in the instrument by a name or other identification
19 that is not that of the intended person. If more than one
20 person signs in the name or behalf of the issuer of an
21 instrument and all the signers do not intend the same person
22 as payee, the instrument is payable to any person intended by
23 one or more of the signers.

24 2. If the signature of the issuer of an instrument is made
25 by automated means, such as a check-writing machine, the payee
26 of the instrument is determined by the intent of the person
27 who supplied the name or identification of the payee, whether
28 or not authorized to do so.

29 3. A person to whom an instrument is payable may be
30 identified in any way, including by name, identifying number,
31 office, or account number. For the purpose of determining the
32 holder of an instrument, the following rules apply:

33 a. If an instrument is payable to an account and the
34 account is identified only by number, the instrument is
35 payable to the person to whom the account is payable. If an

1 instrument is payable to an account identified by number and
2 by the name of a person, the instrument is payable to the
3 named person, whether or not that person is the owner of the
4 account identified by number.

5 b. if an instrument is payable to:

6 (1) a trust, an estate, or a person described as trustee
7 or representative of a trust or estate, the instrument is
8 payable to the trustee, the representative, or a successor of
9 either, whether or not the beneficiary or estate is also
10 named;

11 (2) a person described as agent or similar representative
12 of a named or identified person, the instrument is payable to
13 the represented person, the representative, or a successor of
14 the representative;

15 (3) a fund or organization that is not a legal entity, the
16 instrument is payable to a representative of the members of
17 the fund or organization; or

18 (4) an office or to a person described as holding an
19 office, the instrument is payable to the named person, the
20 incumbent of the office, or a successor to the incumbent.

21 4. If an instrument is payable to two or more persons
22 alternatively, it is payable to any of them and may be
23 negotiated, discharged, or enforced by any or all of them in
24 possession of the instrument. If an instrument is payable to
25 two or more persons not alternatively, it is payable to all of
26 them and may be negotiated, discharged, or enforced only by
27 all of them. If an instrument payable to two or more persons
28 is ambiguous as to whether it is payable to the persons
29 alternatively, the instrument is payable to the persons
30 alternatively.

31 Sec. 20. NEW SECTION. 554.3111 PLACE OF PAYMENT.

32 Except as otherwise provided for items in Article 4, an
33 instrument is payable at the place of payment stated in the
34 instrument. If no place of payment is stated, an instrument
35 is payable at the address of the drawee or maker stated in the

1 instrument. If no address is stated, the place of payment is
2 the place of business of the drawee or maker. If a drawee or
3 maker has more than one place of business, the place of
4 payment is any place of business of the drawee or maker chosen
5 by the person entitled to enforce the instrument. If the
6 drawee or maker has no place of business, the place of payment
7 is the residence of the drawee or maker.

8 Sec. 21. NEW SECTION. 554.3112 INTEREST.

9 1. Unless otherwise provided in the instrument, (i) an
10 instrument is not payable with interest, and (ii) interest on
11 an interest-bearing instrument is payable from the date of the
12 instrument.

13 2. Interest may be stated in an instrument as a fixed or
14 variable amount of money or it may be expressed as a fixed or
15 variable rate or rates. The amount or rate of interest may be
16 stated or described in the instrument in any manner and may
17 require reference to information not contained in the
18 instrument. If an instrument provides for interest, but the
19 amount of interest payable cannot be ascertained from the
20 description, interest is payable at the judgment rate in
21 effect at the place of payment of the instrument and at the
22 time interest first accrues.

23 Sec. 22. NEW SECTION. 554.3113 DATE OF INSTRUMENT.

24 1. An instrument may be antedated or postdated. The date
25 stated determines the time of payment if the instrument is
26 payable at a fixed period after date. Except as provided in
27 section 554.4401, subsection 3, an instrument payable on
28 demand is not payable before the date of the instrument.

29 2. If an instrument is undated, its date is the date of
30 its issue or, in the case of an unissued instrument, the date
31 it first comes into possession of a holder.

32 Sec. 23. NEW SECTION. 554.3114 CONTRADICTORY TERMS OF
33 INSTRUMENT.

34 If an instrument contains contradictory terms, typewritten
35 terms prevail over printed terms, handwritten terms prevail

1 over both, and words prevail over numbers.

2 Sec. 24. NEW SECTION. 554.3115 INCOMPLETE INSTRUMENT.

3 1. "Incomplete instrument" means a signed writing, whether
4 or not issued by the signer, the contents of which show at the
5 time of signing that it is incomplete but that the signer
6 intended it to be completed by the addition of words or
7 numbers.

8 2. Subject to subsection 3, if an incomplete instrument is
9 an instrument under section 554.3104, it may be enforced
10 according to its terms if it is not completed, or according to
11 its terms as augmented by completion. If an incomplete
12 instrument is not an instrument under section 554.3104, but,
13 after completion, the requirements of section 554.3104 are
14 met, the instrument may be enforced according to its terms as
15 augmented by completion.

16 3. If words or numbers are added to an incomplete
17 instrument without authority of the signer, there is an
18 alteration of the incomplete instrument under section
19 554.3407.

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

23 Sec. 25. NEW SECTION. 554.3116 JOINT AND SEVERAL
24 LIABILITY -- CONTRIBUTION.

25 1. Except as otherwise provided in the instrument, two or
26 more persons who have the same liability on an instrument as
27 makers, drawers, acceptors, endorsers who endorse as joint
28 payees, or anomalous endorsers are jointly and severally
29 liable in the capacity in which they sign.

30 2. Except as provided in section 554.3419, subsection 5,
31 or by agreement of the affected parties, a party having joint
32 and several liability who pays the instrument is entitled to
33 receive from any party having the same joint and several
34 liability contribution in accordance with applicable law.

35 3. Discharge of one party having joint and several

1 liability by a person entitled to enforce the instrument does
2 not affect the right under subsection 2 of a party having the
3 same joint and several liability to receive contribution from
4 the party discharged.

5 Sec. 26. NEW SECTION. 554.3117 OTHER AGREEMENTS
6 AFFECTING INSTRUMENT.

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

17 Sec. 27. NEW SECTION. 554.3118 STATUTE OF LIMITATIONS.

18 1. Except as provided in subsection 5, an action to
19 enforce the obligation of a party to pay a note payable at a
20 definite time must be commenced within six years after the due
21 date or dates stated in the note or, if a due date is
22 accelerated, within six years after the accelerated due date.

23 2. Except as provided in subsection 4 or 5, if demand for
24 payment is made to the maker of a note payable on demand, an
25 action to enforce the obligation of a party to pay the note
26 must be commenced within six years after the demand. If no
27 demand for payment is made to the maker, an action to enforce
28 the note is barred if neither principal nor interest on the
29 note has been paid for a continuous period of ten years.

30 3. Except as provided in subsection 4, an action to
31 enforce the obligation of a party to an unaccepted draft to
32 pay the draft must be commenced within three years after
33 dishonor of the draft or ten years after the date of the
34 draft, whichever period expires first.

35 4. An action to enforce the obligation of the acceptor of

1 a certified check or the issuer of a teller's check, cashier's
2 check, or traveler's check must be commenced within three
3 years after demand for payment is made to the acceptor or
4 issuer, as the case may be.

5 5. An action to enforce the obligation of a party to a
6 certificate of deposit to pay the instrument must be commenced
7 within six years after demand for payment is made to the
8 maker, but if the instrument states a due date and the maker
9 is not required to pay before that date, the six-year period
10 begins when a demand for payment is in effect and the due date
11 has passed.

12 6. An action to enforce the obligation of a party to pay
13 an accepted draft, other than a certified check, must be
14 commenced (i) within six years after the due date or dates
15 stated in the draft or acceptance if the obligation of the
16 acceptor is payable at a definite time, or (ii) within six
17 years after the date of the acceptance if the obligation of
18 the acceptor is payable on demand.

19 7. Unless governed by other law regarding claims for
20 indemnity or contribution, an action (i) for conversion of an
21 instrument, for money had and received, or like action based
22 on conversion, (ii) for breach of warranty, or (iii) to
23 enforce an obligation, duty, or right arising under this
24 Article and not governed by this section must be commenced
25 within three years after the cause of action accrues.

26 Sec. 28. NEW SECTION. 554.3119 NOTICE OF RIGHT TO DEFEND
27 ACTION.

28 In an action for breach of an obligation for which a third
29 person is answerable over pursuant to this Article or Article
30 4, the defendant may give the third person written notice of
31 the litigation, and the person notified may then give similar
32 notice to any other person who is answerable over. If the
33 notice states (i) that the person notified may come in and
34 defend and (ii) that failure to do so will bind the person
35 notified in an action later brought by the person giving the

1 notice as to any determination of fact common to the two
2 litigations, the person notified is so bound unless after
3 seasonable receipt of the notice the person notified does come
4 in and defend.

5

PART 2

6

NEGOTIATION, TRANSFER, AND ENDORSEMENT

7

Sec. 29. NEW SECTION. 554.3201 NEGOTIATION.

8 1. "Negotiation" means a transfer of possession, whether
9 voluntary or involuntary, of an instrument by a person other
10 than the issuer to a person who thereby becomes its holder.

11 2. Except for negotiation by a remitter, if an instrument
12 is payable to an identified person, negotiation requires
13 transfer of possession of the instrument and its endorsement
14 by the holder. If an instrument is payable to bearer, it may
15 be negotiated by transfer of possession alone.

16 Sec. 30. NEW SECTION. 554.3202 NEGOTIATION SUBJECT TO
17 RESCISSION.

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

22 2. To the extent permitted by other law, negotiation may
23 be rescinded or may be subject to other remedies, but those
24 remedies may not be asserted against a subsequent holder in
25 due course or a person paying the instrument in good faith and
26 without knowledge of facts that are a basis for rescission or
27 other remedy.

28 Sec. 31. NEW SECTION. 554.3203 TRANSFER OF INSTRUMENT --
29 RIGHTS ACQUIRED BY TRANSFER.

30 1. An instrument is transferred when it is delivered by a
31 person other than its issuer for the purpose of giving to the
32 person receiving delivery the right to enforce the instrument.

33 2. Transfer of an instrument, whether or not the transfer
34 is a negotiation, vests in the transferee any right of the
35 transferor to enforce the instrument, including any right as a

1 holder in due course, but the transferee cannot acquire rights
2 of a holder in due course by a transfer, directly or
3 indirectly, from a holder in due course if the transferee
4 engaged in fraud or illegality affecting the instrument.

5 3. Unless otherwise agreed, if an instrument is
6 transferred for value and the transferee does not become a
7 holder because of lack of endorsement by the transferor, the
8 transferee has a specifically enforceable right to the
9 unqualified endorsement of the transferor, but negotiation of
10 the instrument does not occur until the endorsement is made.

11 4. If a transferor purports to transfer less than the
12 entire instrument, negotiation of the instrument does not
13 occur. The transferee obtains no rights under this Article
14 and has only the rights of a partial assignee.

15 Sec. 32. NEW SECTION. 554.3204 ENDORSEMENT.

16 1. "Endorsement" means a signature, other than that of a
17 signer as maker, drawer, or acceptor, that alone or
18 accompanied by other words is made on an instrument for the
19 purpose of (i) negotiating the instrument, (ii) restricting
20 payment of the instrument, or (iii) incurring endorser's
21 liability on the instrument, but regardless of the intent of
22 the signer, a signature and its accompanying words is an
23 endorsement unless the accompanying words, terms of the
24 instrument, place of the signature, or other circumstances
25 unambiguously indicate that the signature was made for a
26 purpose other than endorsement. For the purpose of
27 determining whether a signature is made on an instrument, a
28 paper affixed to the instrument is a part of the instrument.

29 2. "Endorser" means a person who makes an endorsement.

30 3. For the purpose of determining whether the transferee
31 of an instrument is a holder, an endorsement that transfers a
32 security interest in the instrument is effective as an
33 unqualified endorsement of the instrument.

34 4. If an instrument is payable to a holder under a name
35 that is not the name of the holder, endorsement may be made by

1 the holder in the name stated in the instrument or in the
2 holder's name or both, but signature in both names may be
3 required by a person paying or taking the instrument for value
4 or collection.

5 Sec. 33. NEW SECTION. 554.3205 SPECIAL ENDORSEMENT --
6 BLANK ENDORSEMENT -- ANOMALOUS ENDORSEMENT.

7 1. If an endorsement is made by the holder of an
8 instrument, whether payable to an identified person or payable
9 to bearer, and the endorsement identifies a person to whom it
10 makes the instrument payable, it is a "special endorsement."
11 When specially endorsed, an instrument becomes payable to the
12 identified person and may be negotiated only by the
13 endorsement of that person. The principles stated in section
14 554.3110 apply to special endorsements.

15 2. If an endorsement is made by the holder of an
16 instrument and it is not a special endorsement, it is a "blank
17 endorsement." When endorsed in blank, an instrument becomes
18 payable to bearer and may be negotiated by transfer of
19 possession alone until specially endorsed.

20 3. The holder may convert a blank endorsement that
21 consists only of a signature into a special endorsement by
22 writing, above the signature of the endorser, words
23 identifying the person to whom the instrument is made payable.

24 4. "Anomalous endorsement" means an endorsement made by a
25 person who is not the holder of the instrument. An anomalous
26 endorsement does not affect the manner in which the instrument
27 may be negotiated.

28 Sec. 34. NEW SECTION. 554.3206 RESTRICTIVE ENDORSEMENT.

29 1. An endorsement limiting payment to a particular person
30 or otherwise prohibiting further transfer or negotiation of
31 the instrument is not effective to prevent further transfer or
32 negotiation of the instrument.

33 2. An endorsement stating a condition to the right of the
34 endorsee to receive payment does not affect the right of the
35 endorsee to enforce the instrument. A person paying the

1 instrument or taking it for value or collection may disregard
2 the condition, and the rights and liabilities of that person
3 are not affected by whether the condition has been fulfilled.

4 3. If an instrument bears an endorsement (i) described in
5 section 554.4201, subsection 2, or (ii) in blank or to a
6 particular bank using the words "for deposit," "for
7 collection," or other words indicating a purpose of having the
8 instrument collected by a bank for the endorser or for a
9 particular account, the following rules apply:

10 a. A person, other than a bank, who purchases the
11 instrument when so endorsed converts the instrument unless the
12 amount paid for the instrument is received by the endorser or
13 applied consistently with the endorsement.

14 b. A depository bank that purchases the instrument or
15 takes it for collection when so endorsed converts the
16 instrument unless the amount paid by the bank with respect to
17 the instrument is received by the endorser or applied
18 consistently with the endorsement.

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

24 d. Except as otherwise provided in paragraph c, a payor
25 bank or intermediary bank may disregard the endorsement and is
26 not liable if the proceeds of the instrument are not received
27 by the endorser or applied consistently with the endorsement.

28 4. Except for an endorsement covered by subsection 3, if
29 an instrument bears an endorsement using words to the effect
30 that payment is to be made to the endorsee as agent, trustee,
31 or other fiduciary for the benefit of the endorser or another
32 person, the following rules apply:

33 a. Unless there is notice of breach of fiduciary duty as
34 provided in section 554.3307, a person who purchases the
35 instrument from the endorsee or takes the instrument from the

1 endorsee for collection or payment may pay the proceeds of
2 payment or the value given for the instrument to the endorsee
3 without regard to whether the endorsee violates a fiduciary
4 duty to the endorser.

5 b. A subsequent transferee of the instrument or person who
6 pays the instrument is neither given notice nor otherwise
7 affected by the restriction in the endorsement unless the
8 transferee or payor knows that the fiduciary dealt with the
9 instrument or its proceeds in breach of fiduciary duty.

10 5. The presence on an instrument of an endorsement to
11 which this section applies does not prevent a purchaser of the
12 instrument from becoming a holder in due course of the
13 instrument unless the purchaser is a converter under
14 subsection 3 or has notice or knowledge of breach of fiduciary
15 duty as stated in subsection 4.

16 6. In an action to enforce the obligation of a party to
17 pay the instrument, the obligor has a defense if payment would
18 violate an endorsement to which this section applies and the
19 payment is not permitted by this section.

20 Sec. 35. NEW SECTION. 554.3207 REACQUISITION.

21 Reacquisition of an instrument occurs if it is transferred
22 to a former holder, by negotiation or otherwise. A former
23 holder who reacquires the instrument may cancel endorsements
24 made after the reacquirer first became a holder of the
25 instrument. If the cancellation causes the instrument to be
26 payable to the reacquirer or to bearer, the reacquirer may
27 negotiate the instrument. An endorser whose endorsement is
28 cancelled is discharged, and the discharge is effective
29 against any subsequent holder.

30

PART 3

31

ENFORCEMENT OF INSTRUMENTS

32 Sec. 36. NEW SECTION. 554.3301 PERSON ENTITLED TO
33 ENFORCE INSTRUMENT.

34 "Person entitled to enforce" an instrument means (i) the
35 holder of the instrument, (ii) a nonholder in possession of

1 the instrument who has the rights of a holder, or (iii) a
2 person not in possession of the instrument who is entitled to
3 enforce the instrument pursuant to section 554.3309 or
4 554.3418, subsection 4. A person may be a person entitled to
5 enforce the instrument even though the person is not the owner
6 of the instrument or is in wrongful possession of the
7 instrument.

8 Sec. 37. NEW SECTION. 554.3302 HOLDER IN DUE COURSE.

9 1. Subject to subsection 3 and section 554.3106,
10 subsection 4, "holder in due course" means the holder of an
11 instrument if:

12 a. the instrument when issued or negotiated to the holder
13 does not bear such apparent evidence of forgery or alteration
14 or is not otherwise so irregular or incomplete as to call into
15 question its authenticity; and

16 b. the holder took the instrument (i) for value, (ii) in
17 good faith, (iii) without notice that the instrument is
18 overdue or has been dishonored or that there is an uncured
19 default with respect to payment of another instrument issued
20 as part of the same series, (iv) without notice that the
21 instrument contains an unauthorized signature or has been
22 altered, (v) without notice of any claim to the instrument
23 described in section 554.3306, and (vi) without notice that
24 any party has a defense or claim in recoupment described in
25 section 554.3305, subsection 1.

26 2. Notice of discharge of a party, other than discharge in
27 an insolvency proceeding, is not notice of a defense under
28 subsection 1, but discharge is effective against a person who
29 became a holder in due course with notice of the discharge.
30 Public filing or recording of a document does not of itself
31 constitute notice of a defense, claim in recoupment, or claim
32 to the instrument.

33 3. Except to the extent a transferor or predecessor in
34 interest has rights as a holder in due course, a person does
35 not acquire rights of a holder in due course of an instrument

1 taken (i) by legal process or by purchase in an execution,
2 bankruptcy, or creditor's sale or similar proceeding, (ii) by
3 purchase as part of a bulk transaction not in ordinary course
4 of business of the transferor, or (iii) as the successor in
5 interest to an estate or other organization.

6 4. If, under section 554.3303, subsection 1, paragraph
7 "a", the promise of performance that is the consideration for
8 an instrument has been partially performed, the holder may
9 assert rights as a holder in due course of the instrument only
10 to the fraction of the amount payable under the instrument
11 equal to the value of the partial performance divided by the
12 value of the promised performance.

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

23 6. To be effective, notice must be received at a time and
24 in a manner that gives a reasonable opportunity to act on it.

25 7. This section is subject to any law limiting status as a
26 holder in due course in particular classes of transactions.

27 Sec. 38. NEW SECTION. 554.3303 VALUE AND CONSIDERATION.

28 1. An instrument is issued or transferred for value if:

29 a. the instrument is issued or transferred for a promise
30 of performance, to the extent the promise has been performed;

31 b. the transferee acquires a security interest or other
32 lien in the instrument other than a lien obtained by judicial
33 proceeding;

34 c. the instrument is issued or transferred as payment of,
35 or as security for, an antecedent claim against any person,

1 whether or not the claim is due;

2 d. the instrument is issued or transferred in exchange for
3 a negotiable instrument; or

4 e. the instrument is issued or transferred in exchange for
5 the incurring of an irrevocable obligation to a third party by
6 the person taking the instrument.

7 2. "Consideration" means any consideration sufficient to
8 support a simple contract. The drawer or maker of an
9 instrument has a defense if the instrument is issued without
10 consideration. If an instrument is issued for a promise of
11 performance, the issuer has a defense to the extent
12 performance of the promise is due and the promise has not been
13 performed. If an instrument is issued for value as stated in
14 subsection 1, the instrument is also issued for consideration.

15 Sec. 39. NEW SECTION. 554.3304 OVERDUE INSTRUMENT.

16 1. An instrument payable on demand becomes overdue at the
17 earliest of the following times:

18 a. on the day after the day demand for payment is duly
19 made;

20 b. if the instrument is a check, ninety days after its
21 date; or

22 c. if the instrument is not a check, when the instrument
23 has been outstanding for a period of time after its date which
24 is unreasonably long under the circumstances of the particular
25 case in light of the nature of the instrument and usage of the
26 trade.

27 2. With respect to an instrument payable at a definite
28 time the following rules apply:

29 a. If the principal is payable in installments and a due
30 date has not been accelerated, the instrument becomes overdue
31 upon default under the instrument for nonpayment of an
32 installment, and the instrument remains overdue until the
33 default is cured.

34 b. If the principal is not payable in installments and the
35 due date has not been accelerated, the instrument becomes

1 overdue on the day after the due date.

2 c. If a due date with respect to principal has been
3 accelerated, the instrument becomes overdue on the day after
4 the accelerated due date.

5 3. Unless the due date of principal has been accelerated,
6 an instrument does not become overdue if there is default in
7 payment of interest but no default in payment of principal.

8 Sec. 40. NEW SECTION. 554.3305 DEFENSES AND CLAIMS IN
9 RECOUPMENT.

10 1. Except as stated in subsection 2, the right to enforce
11 the obligation of a party to pay an instrument is subject to
12 the following:

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

21 b. a defense of the obligor stated in another section of
22 this Article or a defense of the obligor that would be
23 available if the person entitled to enforce the instrument
24 were enforcing a right to payment under a simple contract; and

25 c. a claim in recoupment of the obligor against the
26 original payee of the instrument if the claim arose from the
27 transaction that gave rise to the instrument; but the claim of
28 the obligor may be asserted against a transferee of the
29 instrument only to reduce the amount owing on the instrument
30 at the time the action is brought.

31 2. The right of a holder in due course to enforce the
32 obligation of a party to pay the instrument is subject to
33 defenses of the obligor stated in subsection 1, paragraph "a",
34 but is not subject to defenses of the obligor stated in
35 subsection 1, paragraph "b", or claims in recoupment stated in

1 subsection 1, paragraph "c", against a person other than the
2 holder.

3 3. Except as stated in subsection 4, in an action to
4 enforce the obligation of a party to pay the instrument, the
5 obligor may not assert against the person entitled to enforce
6 the instrument a defense, claim in recoupment, or claim to the
7 instrument (section 554.3306) of another person, but the other
8 person's claim to the instrument may be asserted by the
9 obligor if the other person is joined in the action and
10 personally asserts the claim against the person entitled to
11 enforce the instrument. An obligor is not obliged to pay the
12 instrument if the person seeking enforcement of the instrument
13 does not have rights of a holder in due course and the obligor
14 proves that the instrument is a lost or stolen instrument.

15 4. In an action to enforce the obligation of an
16 accommodation party to pay an instrument, the accommodation
17 party may assert against the person entitled to enforce the
18 instrument any defense or claim in recoupment under subsection
19 1 that the accommodated party could assert against the person
20 entitled to enforce the instrument, except the defenses of
21 discharge in insolvency proceedings, infancy, and lack of
22 legal capacity.

23 Sec. 41. NEW SECTION. 554.3306 CLAIMS TO AN INSTRUMENT.

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

31 Sec. 42. NEW SECTION. 554.3307 NOTICE OF BREACH OF
32 FIDUCIARY DUTY.

33 1. In this section:

34 a. "Fiduciary" means an agent, trustee, partner, corporate
35 officer or director, or other representative owing a fiduciary

1 duty with respect to an instrument.

2 b. "Represented person" means the principal, beneficiary,
3 partnership, corporation, or other person to whom the duty
4 stated in paragraph "a" is owed.

5 2. If (i) an instrument is taken from a fiduciary for
6 payment or collection or for value, (ii) the taker has
7 knowledge of the fiduciary status of the fiduciary, and (iii)
8 the represented person makes a claim to the instrument or its
9 proceeds on the basis that the transaction of the fiduciary is
10 a breach of fiduciary duty, the following rules apply:

11 a. Notice of breach of fiduciary duty by the fiduciary is
12 notice of the claim of the represented person.

13 b. In the case of an instrument payable to the represented
14 person or the fiduciary as such, the taker has notice of the
15 breach of fiduciary duty if the instrument is (i) taken in
16 payment of or as security for a debt known by the taker to be
17 the personal debt of the fiduciary, (ii) taken in a
18 transaction known by the taker to be for the personal benefit
19 of the fiduciary, or (iii) deposited to an account other than
20 an account of the fiduciary, as such, or an account of the
21 represented person.

22 c. If an instrument is issued by the represented person or
23 the fiduciary as such, and made payable to the fiduciary
24 personally, the taker does not have notice of the breach of
25 fiduciary duty unless the taker knows of the breach of
26 fiduciary duty.

27 d. If an instrument is issued by the represented person or
28 the fiduciary as such, to the taker as payee, the taker has
29 notice of the breach of fiduciary duty if the instrument is
30 (i) taken in payment of or as security for a debt known by the
31 taker to be the personal debt of the fiduciary, (ii) taken in
32 a transaction known by the taker to be for the personal
33 benefit of the fiduciary, or (iii) deposited to an account
34 other than an account of the fiduciary, as such, or an account
35 of the represented person.

1 Sec. 43. NEW SECTION. 554.3308 PROOF OF SIGNATURES AND
2 STATUS AS HOLDER IN DUE COURSE.

3 1. In an action with respect to an instrument, the
4 authenticity of, and authority to make, each signature on the
5 instrument is admitted unless specifically denied in the
6 pleadings. If the validity of a signature is denied in the
7 pleadings, the burden of establishing validity is on the
8 person claiming validity, but the signature is presumed to be
9 authentic and authorized unless the action is to enforce the
10 liability of the purported signer and the signer is dead or
11 incompetent at the time of trial of the issue of validity of
12 the signature. If an action to enforce the instrument is
13 brought against a person as the undisclosed principal of a
14 person who signed the instrument as a party to the instrument,
15 the plaintiff has the burden of establishing that the
16 defendant is liable on the instrument as a represented person
17 under section 554.3402, subsection 1.

18 2. If the validity of signatures is admitted or proved and
19 there is compliance with subsection 1, a plaintiff producing
20 the instrument is entitled to payment if the plaintiff proves
21 entitlement to enforce the instrument under section 554.3301,
22 unless the defendant proves a defense or claim in recoupment.
23 If a defense or claim in recoupment is proved, the right to
24 payment of the plaintiff is subject to the defense or claim,
25 except to the extent the plaintiff proves that the plaintiff
26 has rights of a holder in due course which are not subject to
27 the defense or claim.

28 Sec. 44. NEW SECTION. 554.3309 ENFORCEMENT OF LOST,
29 DESTROYED, OR STOLEN INSTRUMENT.

30 1. A person not in possession of an instrument is entitled
31 to enforce the instrument if: (i) the person was in
32 possession of the instrument and entitled to enforce it when
33 loss of possession occurred, (ii) the loss of possession was
34 not the result of a transfer by the person or a lawful
35 seizure, and (iii) the person cannot reasonably obtain

1 possession of the instrument because the instrument was
2 destroyed, its whereabouts cannot be determined, or it is in
3 the wrongful possession of an unknown person or a person that
4 cannot be found or is not amenable to service of process.

5 2. A person seeking enforcement of an instrument under
6 subsection 1 must prove the terms of the instrument and the
7 person's right to enforce the instrument. If that proof is
8 made, section 554.3308 applies to the case as if the person
9 seeking enforcement had produced the instrument. The court
10 may not enter judgment in favor of the person seeking
11 enforcement unless it finds that the person required to pay
12 the instrument is adequately protected against loss that might
13 occur by reason of a claim by another person to enforce the
14 instrument. Adequate protection may be provided by any
15 reasonable means.

16 Sec. 45. NEW SECTION. 554.3310 EFFECT OF INSTRUMENT ON
17 OBLIGATION FOR WHICH TAKEN.

18 1. Unless otherwise agreed, if a certified check,
19 cashier's check, or teller's check is taken for an obligation,
20 the obligation is discharged to the same extent discharge
21 would result if an amount of money equal to the amount of the
22 instrument were taken in payment of the obligation. Discharge
23 of the obligation does not affect any liability that the
24 obligor may have as an endorser of the instrument.

25 2. Unless otherwise agreed and except as provided in
26 subsection 1, if a note or an uncertified check is taken for
27 an obligation, the obligation is suspended to the same extent
28 the obligation would be discharged if an amount of money equal
29 to the amount of the instrument were taken, and the following
30 rules apply:

31 a. In the case of an uncertified check, suspension of the
32 obligation continues until dishonor of the check or until it
33 is paid or certified. Payment or certification of the check
34 results in discharge of the obligation to the extent of the
35 amount of the check.

1 b. In the case of a note, suspension of the obligation
2 continues until dishonor of the note or until it is paid.
3 Payment of the note results in discharge of the obligation to
4 the extent of the payment.

5 c. Except as provided in paragraph "d", if the check or
6 note is dishonored and the obligee of the obligation for which
7 the instrument was taken is the person entitled to enforce the
8 instrument, the obligee may enforce either the instrument or
9 the obligation. In the case of an instrument of a third
10 person which is negotiated to the obligee by the obligor,
11 discharge of the obligor on the instrument also discharges the
12 obligation.

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

23 3. If an instrument other than one described in subsection
24 1 or 2 is taken for an obligation, the effect is (i) that
25 stated in subsection 1 if the instrument is one on which a
26 bank is liable as maker or acceptor, or (ii) that stated in
27 subsection 2 in any other case.

28 Sec. 46. NEW SECTION. 554.3311 ACCORD AND SATISFACTION
29 BY USE OF INSTRUMENT.

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

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

6 3. Subject to subsection 4, a claim is not discharged
7 under subsection 2 if either of the following applies:

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

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

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

28 Sec. 47. NEW SECTION. 554.3312 LOST, DESTROYED, OR
29 STOLEN CASHIER'S CHECK, TELLER'S CHECK, OR CERTIFIED CHECK.

30 1. In this section:

31 a. "Check" means a cashier's check, teller's check, or
32 certified check.

33 b. "Claimant" means a person who claims the right to
34 receive the amount of a cashier's check, teller's check, or
35 certified check that was lost, destroyed, or stolen.

1 c. "Declaration of loss" means a written statement, made
2 under penalty of perjury, to the effect that (i) the declarer
3 lost possession of a check, (ii) the declarer is the drawer or
4 payee of the check, in the case of a certified check, or the
5 remitter or payee of the check, in the case of a cashier's
6 check or teller's check, (iii) the loss of possession was not
7 the result of a transfer by the declarer or a lawful seizure,
8 and (iv) the declarer cannot reasonably obtain possession of
9 the check because the check was destroyed, its whereabouts
10 cannot be determined, or it is in the wrongful possession of
11 an unknown person or a person that cannot be found or is not
12 amenable to service of process.

13 d. "Obligated bank" means the issuer of a cashier's check
14 or teller's check or the acceptor of a certified check.

15 2. A claimant may assert a claim to the amount of a check
16 by a communication to the obligated bank describing the check
17 with reasonable certainty and requesting payment of the amount
18 of the check, if (i) the claimant is the drawer or payee of a
19 certified check or the remitter or payee of a cashier's check
20 or teller's check, (ii) the communication contains or is
21 accompanied by a declaration of loss of the claimant with
22 respect to the check, (iii) the communication is received at a
23 time and in a manner affording the bank a reasonable time to
24 act on it before the check is paid, and (iv) the claimant
25 provides reasonable identification if requested by the
26 obligated bank. Delivery of a declaration of loss is a
27 warranty of the truth of the statements made in the
28 declaration. If a claim is asserted in compliance with this
29 subsection, the following rules apply:

30 a. The claim becomes enforceable at the later of (i) the
31 time the claim is asserted, or (ii) the ninetieth day
32 following the date of the check, in the case of a cashier's
33 check or teller's check, or the ninetieth day following the
34 date of the acceptance, in the case of a certified check.

35 b. Until the claim becomes enforceable, it has no legal

1 effect and the obligated bank may pay the check or, in the
2 case of a teller's check, may permit the drawee to pay the
3 check. Payment to a person entitled to enforce the check
4 discharges all liability of the obligated bank with respect to
5 the check.

6 c. If the claim becomes enforceable before the check is
7 presented for payment, the obligated bank is not obliged to
8 pay the check.

9 d. When the claim becomes enforceable, the obligated bank
10 becomes obliged to pay the amount of the check to the claimant
11 if payment of the check has not been made to a person entitled
12 to enforce the check. Subject to section 554.4302, subsection
13 1, paragraph "a", payment to the claimant discharges all
14 liability of the obligated bank with respect to the check.

15 3. If the obligated bank pays the amount of a check to a
16 claimant under subsection 2, paragraph "b", subparagraph (4)
17 and the check is presented for payment by a person having
18 rights of a holder in due course, the claimant is obliged to
19 (i) refund the payment to the obligated bank if the check is
20 paid, or (ii) pay the amount of the check to the person having
21 rights of a holder in due course if the check is dishonored.

22 4. If a claimant has the right to assert a claim under
23 subsection 2 and is also a person entitled to enforce a
24 cashier's check, teller's check, or certified check which is
25 lost, destroyed, or stolen, the claimant may assert rights
26 with respect to the check either under this section or section
27 554.3309.

28 PART 4

29 LIABILITY OF PARTIES

30 Sec. 48. NEW SECTION. 554.3401 SIGNATURE.

31 1. A person is not liable on an instrument unless (i) the
32 person signed the instrument, or (ii) the person is
33 represented by an agent or representative who signed the
34 instrument and the signature is binding on the represented
35 person under section 554.3402.

1 2. A signature may be made (i) manually or by means of a
2 device or machine, and (ii) by the use of any name, including
3 a trade or assumed name, or by a word, mark, or symbol
4 executed or adopted by a person with present intention to
5 authenticate a writing.

6 Sec. 49. NEW SECTION. 554.3402 SIGNATURE BY
7 REPRESENTATIVE.

8 1. If a person acting, or purporting to act, as a
9 representative signs an instrument by signing either the name
10 of the represented person or the name of the signer, the
11 represented person is bound by the signature to the same
12 extent the represented person would be bound if the signature
13 were on a simple contract. If the represented person is
14 bound, the signature of the representative is the "authorized
15 signature of the represented person" and the represented
16 person is liable on the instrument, whether or not identified
17 in the instrument.

18 2. If a representative signs the name of the
19 representative to an instrument and the signature is an
20 authorized signature of the represented person, the following
21 rules apply:

22 a. If the form of the signature shows unambiguously that
23 the signature is made on behalf of the represented person who
24 is identified in the instrument, the representative is not
25 liable on the instrument.

26 b. Subject to subsection 3, if (i) the form of the
27 signature does not show unambiguously that the signature is
28 made in a representative capacity or (ii) the represented
29 person is not identified in the instrument, the representative
30 is liable on the instrument to a holder in due course that
31 took the instrument without notice that the representative was
32 not intended to be liable on the instrument. With respect to
33 any other person, the representative is liable on the
34 instrument unless the representative proves that the original
35 parties did not intend the representative to be liable on the

1 instrument.

2 3. If a representative signs the name of the
3 representative as drawer of a check without indication of the
4 representative status and the check is payable from an account
5 of the represented person who is identified on the check, the
6 signer is not liable on the check if the signature is an
7 authorized signature of the represented person.

8 Sec. 50. NEW SECTION. 554.3403 UNAUTHORIZED SIGNATURE.

9 1. Unless otherwise provided in this Article or Article 4,
10 an unauthorized signature is ineffective except as the
11 signature of the unauthorized signer in favor of a person who
12 in good faith pays the instrument or takes it for value. An
13 unauthorized signature may be ratified for all purposes of
14 this Article.

15 2. If the signature of more than one person is required to
16 constitute the authorized signature of an organization, the
17 signature of the organization is unauthorized if one of the
18 required signatures is lacking.

19 3. The civil or criminal liability of a person who makes
20 an unauthorized signature is not affected by any provision of
21 this Article which makes the unauthorized signature effective
22 for the purposes of this Article.

23 Sec. 51. NEW SECTION. 554.3404 IMPOSTORS -- FICTITIOUS
24 PAYEES.

25 1. If an impostor, by use of the mails or otherwise,
26 induces the issuer of an instrument to issue the instrument to
27 the impostor, or to a person acting in concert with the
28 impostor, by impersonating the payee of the instrument or a
29 person authorized to act for the payee, an endorsement of the
30 instrument by any person in the name of the payee is effective
31 as the endorsement of the payee in favor of a person who, in
32 good faith, pays the instrument or takes it for value or for
33 collection.

34 2. If (i) a person whose intent determines to whom an
35 instrument is payable (section 554.3110, subsection 1 or 2)

1 does not intend the person identified as payee to have any
2 interest in the instrument, or (ii) the person identified as
3 payee of an instrument is a fictitious person, the following
4 rules apply until the instrument is negotiated by special
5 endorsement:

6 a. Any person in possession of the instrument is its
7 holder.

8 b. An endorsement by any person in the name of the payee
9 stated in the instrument is effective as the endorsement of
10 the payee in favor of a person who, in good faith, pays the
11 instrument or takes it for value or for collection.

12 3. Under subsection 1 or 2, an endorsement is made in the
13 name of a payee if (i) it is made in a name substantially
14 similar to that of the payee or (ii) the instrument, whether
15 or not endorsed, is deposited in a depository bank to an
16 account in a name substantially similar to that of the payee.

17 4. With respect to an instrument to which subsection 1 or
18 2 applies, if a person paying the instrument or taking it for
19 value or for collection fails to exercise ordinary care in
20 paying or taking the instrument and that failure substantially
21 contributes to loss resulting from payment of the instrument,
22 the person bearing the loss may recover from the person
23 failing to exercise ordinary care to the extent the failure to
24 exercise ordinary care contributed to the loss.

25 Sec. 52. NEW SECTION. 554.3405 EMPLOYER'S RESPONSIBILITY
26 FOR FRAUDULENT ENDORSEMENT BY EMPLOYEE.

27 1. In this section:

28 a. "Employee" includes an independent contractor and
29 employee of an independent contractor retained by the
30 employer.

31 b. "Fraudulent endorsement" means (i) in the case of an
32 instrument payable to the employer, a forged endorsement
33 purporting to be that of the employer, or (ii) in the case of
34 an instrument with respect to which the employer is the
35 issuer, a forged endorsement purporting to be that of the

1 person identified as payee.

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

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

32 3. Under subsection 2, an endorsement is made in the name
33 of the person to whom an instrument is payable if (i) it is
34 made in a name substantially similar to the name of that
35 person or (ii) the instrument, whether or not endorsed, is

1 deposited in a depository bank to an account in a name
2 substantially similar to the name of that person.

3 Sec. 53. NEW SECTION. 554.3406 NEGLIGENCE CONTRIBUTING
4 TO FORGED SIGNATURE OR ALTERATION OF INSTRUMENT.

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

11 2. Under subsection 1, if the person asserting the
12 preclusion fails to exercise ordinary care in paying or taking
13 the instrument and that failure substantially contributes to
14 loss, the loss is allocated between the person precluded and
15 the person asserting the preclusion according to the extent to
16 which the failure of each to exercise ordinary care
17 contributed to the loss.

18 3. Under subsection 1, the burden of proving failure to
19 exercise ordinary care is on the person asserting the
20 preclusion. Under subsection 2, the burden of proving failure
21 to exercise ordinary care is on the person precluded.

22 Sec. 54. NEW SECTION. 554.3407 ALTERATION.

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

28 2. Except as provided in subsection 3, an alteration
29 fraudulently made discharges a party whose obligation is
30 affected by the alteration unless that party assents or is
31 precluded from asserting the alteration. No other alteration
32 discharges a party, and the instrument may be enforced
33 according to its original terms.

34 3. A payor bank or drawee paying a fraudulently altered
35 instrument or a person taking it for value, in good faith and

1 without notice of the alteration, may enforce rights with
2 respect to the instrument (i) according to its original terms,
3 or (ii) in the case of an incomplete instrument altered by
4 unauthorized completion, according to its terms as completed.

5 Sec. 55. NEW SECTION. 554.3408 DRAWEE NOT LIABLE ON
6 UNACCEPTED DRAFT.

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

11 Sec. 56. NEW SECTION. 554.3409 ACCEPTANCE OF DRAFT --
12 CERTIFIED CHECK.

13 1. "Acceptance" means the drawee's signed agreement to pay
14 a draft as presented. It must be written on the draft and may
15 consist of the drawee's signature alone. Acceptance may be
16 made at any time and becomes effective when notification
17 pursuant to instructions is given or the accepted draft is
18 delivered for the purpose of giving rights on the acceptance
19 to any person.

20 2. A draft may be accepted although it has not been signed
21 by the drawer, is otherwise incomplete, is overdue, or has
22 been dishonored.

23 3. If a draft is payable at a fixed period after sight and
24 the acceptor fails to date the acceptance, the holder may
25 complete the acceptance by supplying a date in good faith.

26 4. "Certified check" means a check accepted by the bank on
27 which it is drawn. Acceptance may be made as stated in
28 subsection 1 or by a writing on the check which indicates that
29 the check is certified. The drawee of a check has no
30 obligation to certify the check, and refusal to certify is not
31 dishonor of the check.

32 Sec. 57. NEW SECTION. 554.3410 ACCEPTANCE VARYING DRAFT.

33 1. If the terms of a drawee's acceptance vary from the
34 terms of the draft as presented, the holder may refuse the
35 acceptance and treat the draft as dishonored. In that case,

1 the drawee may cancel the acceptance.

2 2. The terms of a draft are not varied by an acceptance to
3 pay at a particular bank or place in the United States, unless
4 the acceptance states that the draft is to be paid only at
5 that bank or place.

6 3. If the holder assents to an acceptance varying the
7 terms of a draft, the obligation of each drawer and endorser
8 that does not expressly assent to the acceptance is
9 discharged.

10 Sec. 58. NEW SECTION. 554.3411 REFUSAL TO PAY CASHIER'S
11 CHECKS, TELLER'S CHECKS, AND CERTIFIED CHECKS.

12 1. In this section, "obligated bank" means the acceptor of
13 a certified check or the issuer of a cashier's check or
14 teller's check bought from the issuer.

15 2. If the obligated bank wrongfully (i) refuses to pay a
16 cashier's check or certified check, (ii) stops payment of a
17 teller's check, or (iii) refuses to pay a dishonored teller's
18 check, the person asserting the right to enforce the check is
19 entitled to compensation for expenses and loss of interest
20 resulting from the nonpayment and may recover consequential
21 damages if the obligated bank refuses to pay after receiving
22 notice of particular circumstances giving rise to the damages.

23 3. Expenses or consequential damages under subsection 2
24 are not recoverable if the refusal of the obligated bank to
25 pay occurs because (i) the bank suspends payments, (ii) the
26 obligated bank asserts a claim or defense of the bank that it
27 has reasonable grounds to believe is available against the
28 person entitled to enforce the instrument, (iii) the obligated
29 bank has a reasonable doubt whether the person demanding
30 payment is the person entitled to enforce the instrument, or
31 (iv) payment is prohibited by law.

32 Sec. 59. NEW SECTION. 554.3412 OBLIGATION OF ISSUER OF
33 NOTE OR CASHIER'S CHECK.

34 The issuer of a note or cashier's check or other draft
35 drawn on the drawer is obliged to pay the instrument (i)

1 according to its terms at the time it was issued or, if not
2 issued, at the time it first came into possession of a holder,
3 or (ii) if the issuer signed an incomplete instrument,
4 according to its terms when completed, to the extent stated in
5 sections 554.3115 and 554.3407. The obligation is owed to a
6 person entitled to enforce the instrument or to an endorser
7 who paid the instrument under section 554.3415.

8 Sec. 60. NEW SECTION. 554.3413 OBLIGATION OF ACCEPTOR.

9 1. The acceptor of a draft is obliged to pay the draft (i)
10 according to its terms at the time it was accepted, even
11 though the acceptance states that the draft is payable "as
12 originally drawn" or equivalent terms, (ii) if the acceptance
13 varies the terms of the draft, according to the terms of the
14 draft as varied, or (iii) if the acceptance is of a draft that
15 is an incomplete instrument, according to its terms when
16 completed, to the extent stated in sections 554.3115 and
17 554.3407. The obligation is owed to a person entitled to
18 enforce the draft or to the drawer or an endorser who paid the
19 draft under section 554.3414 or 554.3415.

20 2. If the certification of a check or other acceptance of
21 a draft states the amount certified or accepted, the
22 obligation of the acceptor is that amount. If (i) the
23 certification or acceptance does not state an amount, (ii) the
24 amount of the instrument is subsequently raised, and (iii) the
25 instrument is then negotiated to a holder in due course, the
26 obligation of the acceptor is the amount of the instrument at
27 the time it was taken by the holder in due course.

28 Sec. 61. NEW SECTION. 554.3414 OBLIGATION OF DRAWER.

29 1. This section does not apply to cashier's checks or
30 other drafts drawn on the drawer.

31 2. If an unaccepted draft is dishonored, the drawer is
32 obliged to pay the draft (i) according to its terms at the
33 time it was issued or, if not issued, at the time it first
34 came into possession of a holder, or (ii) if the drawer signed
35 an incomplete instrument, according to its terms when

1 completed, to the extent stated in sections 554.3115 and
2 554.3407. The obligation is owed to a person entitled to
3 enforce the draft or to an endorser who paid the draft under
4 section 554.3415.

5 3. If a draft is accepted by a bank, the drawer is
6 discharged, regardless of when or by whom acceptance was
7 obtained.

8 4. If a draft is accepted and the acceptor is not a bank,
9 the obligation of the drawer to pay the draft if the draft is
10 dishonored by the acceptor is the same as the obligation of an
11 endorser under section 554.3415, subsections 1 and 3.

12 5. If a draft states that it is drawn "without recourse"
13 or otherwise disclaims liability of the drawer to pay the
14 draft, the drawer is not liable under subsection 2 to pay the
15 draft if the draft is not a check. A disclaimer of the
16 liability stated in subsection 2 is not effective if the draft
17 is a check.

18 6. If (i) a check is not presented for payment or given to
19 a depository bank for collection within thirty days after its
20 date, (ii) the drawee suspends payments after expiration of
21 the thirty-day period without paying the check, and (iii)
22 because of the suspension of payments, the drawer is deprived
23 of funds maintained with the drawee to cover payment of the
24 check, the drawer to the extent deprived of funds may
25 discharge its obligation to pay the check by assigning to the
26 person entitled to enforce the check the rights of the drawer
27 against the drawee with respect to the funds.

28 Sec. 62. NEW SECTION. 554.3415 OBLIGATION OF ENDORSER.

29 1. Subject to subsections 2, 3, and 4 and to section
30 554.3419, subsection 3, if an instrument is dishonored, an
31 endorser is obliged to pay the amount due on the instrument
32 (i) according to the terms of the instrument at the time it
33 was endorsed, or (ii) if the endorser endorsed an incomplete
34 instrument, according to its terms when completed, to the
35 extent stated in sections 554.3115 and 554.3407. The

1 obligation of the endorser is owed to a person entitled to
2 enforce the instrument or to a subsequent endorser who paid
3 the instrument under this section.

4 2. If an endorsement states that it is made "without
5 recourse" or otherwise disclaims liability of the endorser,
6 the endorser is not liable under subsection 1 to pay the
7 instrument.

8 3. If notice of dishonor of an instrument is required by
9 section 554.3503 and notice of dishonor complying with that
10 section is not given to an endorser, the liability of the
11 endorser under subsection 1 is discharged.

12 4. If a draft is accepted by a bank after an endorsement
13 is made, the liability of the endorser under subsection 1 is
14 discharged.

15 5. If an endorser of a check is liable under subsection 1
16 and the check is not presented for payment, or given to a
17 depository bank for collection, within thirty days after the
18 day the endorsement was made, the liability of the endorser
19 under subsection 1 is discharged.

20 Sec. 63. NEW SECTION. 554.3416 TRANSFER WARRANTIES.

21 1. A person who transfers an instrument for consideration
22 warrants to the transferee and, if the transfer is by
23 endorsement, to any subsequent transferee that:

24 a. the warrantor is a person entitled to enforce the
25 instrument;

26 b. all signatures on the instrument are authentic and
27 authorized;

28 c. the instrument has not been altered;

29 d. the instrument is not subject to a defense or claim in
30 recoupment of any party which can be asserted against the
31 warrantor; and

32 e. the warrantor has no knowledge of any insolvency
33 proceeding commenced with respect to the maker or acceptor or,
34 in the case of an unaccepted draft, the drawer.

35 2. A person to whom the warranties under subsection 1 are

1 made and who took the instrument in good faith may recover
2 from the warrantor as damages for breach of warranty an amount
3 equal to the loss suffered as a result of the breach, but not
4 more than the amount of the instrument plus expenses and loss
5 of interest incurred as a result of the breach.

6 3. The warranties stated in subsection 1 cannot be
7 disclaimed with respect to checks. Unless notice of a claim
8 for breach of warranty is given to the warrantor within thirty
9 days after the claimant has reason to know of the breach and
10 the identity of the warrantor, the liability of the warrantor
11 under subsection 2 is discharged to the extent of any loss
12 caused by the delay in giving notice of the claim.

13 4. A cause of action for breach of warranty under this
14 section accrues when the claimant has reason to know of the
15 breach.

16 Sec. 64. NEW SECTION. 554.3417 PRESENTMENT WARRANTIES.

17 1. If an unaccepted draft is presented to the drawee for
18 payment or acceptance and the drawee pays or accepts the
19 draft, (i) the person obtaining payment or acceptance, at the
20 time of presentment, and (ii) a previous transferor of the
21 draft, at the time of transfer, warrant to the drawee making
22 payment or accepting the draft in good faith that:

23 a. the warrantor is, or was, at the time the warrantor
24 transferred the draft, a person entitled to enforce the draft
25 or authorized to obtain payment or acceptance of the draft on
26 behalf of a person entitled to enforce the draft;

27 b. the draft has not been altered; and

28 c. the warrantor has no knowledge that the signature of
29 the drawer of the draft is unauthorized.

30 2. A drawee making payment may recover from any warrantor
31 damages for breach of warranty equal to the amount paid by the
32 drawee less the amount the drawee received or is entitled to
33 receive from the drawer because of the payment. In addition,
34 the drawee is entitled to compensation for expenses and loss
35 of interest resulting from the breach. The right of the

1 drawee to recover damages under this subsection is not
2 affected by any failure of the drawee to exercise ordinary
3 care in making payment. If the drawee accepts the draft,
4 breach of warranty is a defense to the obligation of the
5 acceptor. If the acceptor makes payment with respect to the
6 draft, the acceptor is entitled to recover from any warrantor
7 for breach of warranty the amounts stated in this subsection.

8 3. If a drawee asserts a claim for breach of warranty
9 under subsection 1 based on an unauthorized endorsement of the
10 draft or an alteration of the draft, the warrantor may defend
11 by proving that the endorsement is effective under section
12 554.3404 or 554.3405 or the drawer is precluded under section
13 554.3406 or 554.4406 from asserting against the drawee the
14 unauthorized endorsement or alteration.

15 4. If (i) a dishonored draft is presented for payment to
16 the drawer or an endorser or (ii) any other instrument is
17 presented for payment to a party obliged to pay the
18 instrument, and (iii) payment is received, the following rules
19 apply:

20 a. The person obtaining payment and a prior transferor of
21 the instrument warrant to the person making payment in good
22 faith that the warrantor is, or was, at the time the warrantor
23 transferred the instrument, a person entitled to enforce the
24 instrument or authorized to obtain payment on behalf of a
25 person entitled to enforce the instrument.

26 b. The person making payment may recover from any
27 warrantor for breach of warranty an amount equal to the amount
28 paid plus expenses and loss of interest resulting from the
29 breach.

30 5. The warranties stated in subsections 1 and 4 cannot be
31 disclaimed with respect to checks. Unless notice of a claim
32 for breach of warranty is given to the warrantor within thirty
33 days after the claimant has reason to know of the breach and
34 the identity of the warrantor, the liability of the warrantor
35 under subsection 2 or 4 is discharged to the extent of any

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

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

5 Sec. 65. NEW SECTION. 554.3418 PAYMENT OR ACCEPTANCE BY
6 MISTAKE.

7 1. Except as provided in subsection 3, if the drawee of a
8 draft pays or accepts the draft and the drawee acted on the
9 mistaken belief that (i) payment of the draft had not been
10 stopped pursuant to section 554.4403 or (ii) the signature of
11 the drawer of the draft was authorized, the drawee may recover
12 the amount of the draft from the person to whom or for whose
13 benefit payment was made or, in the case of acceptance, may
14 revoke the acceptance. Rights of the drawee under this
15 subsection are not affected by failure of the drawee to
16 exercise ordinary care in paying or accepting the draft.

17 2. Except as provided in subsection 3, if an instrument
18 has been paid or accepted by mistake and the case is not
19 covered by subsection 1, the person paying or accepting may,
20 to the extent permitted by the law governing mistake and
21 restitution, (i) recover the payment from the person to whom
22 or for whose benefit payment was made or (ii) in the case of
23 acceptance, may revoke the acceptance.

24 3. The remedies provided by subsection 1 or 2 may not be
25 asserted against a person who took the instrument in good
26 faith and for value or who in good faith changed position in
27 reliance on the payment or acceptance. This subsection does
28 not limit remedies provided by section 554.3417 or 554.4407.

29 4. Notwithstanding section 554.4215, if an instrument is
30 paid or accepted by mistake and the payor or acceptor recovers
31 payment or revokes acceptance under subsection 1 or 2, the
32 instrument is deemed not to have been paid or accepted and is
33 treated as dishonored, and the person from whom payment is
34 recovered has rights as a person entitled to enforce the
35 dishonored instrument.

1 Sec. 66. NEW SECTION. 554.3419 INSTRUMENTS SIGNED FOR
2 ACCOMMODATION.

3 1. If an instrument is issued for value given for the
4 benefit of a party to the instrument ("accommodated party")
5 and another party to the instrument ("accommodation party")
6 signs the instrument for the purpose of incurring liability on
7 the instrument without being a direct beneficiary of the value
8 given for the instrument, the instrument is signed by the
9 accommodation party "for accommodation."

10 2. An accommodation party may sign the instrument as
11 maker, drawer, acceptor, or endorser and, subject to
12 subsection 4, is obliged to pay the instrument in the capacity
13 in which the accommodation party signs. The obligation of an
14 accommodation party may be enforced notwithstanding any
15 statute of frauds and whether or not the accommodation party
16 receives consideration for the accommodation.

17 3. A person signing an instrument is presumed to be an
18 accommodation party and there is notice that the instrument is
19 signed for accommodation if the signature is an anomalous
20 endorsement or is accompanied by words indicating that the
21 signer is acting as surety or guarantor with respect to the
22 obligation of another party to the instrument. Except as
23 provided in section 554.3605, the obligation of an
24 accommodation party to pay the instrument is not affected by
25 the fact that the person enforcing the obligation had notice
26 when the instrument was taken by that person that the
27 accommodation party signed the instrument for accommodation.

28 4. If the signature of a party to an instrument is
29 accompanied by words indicating unambiguously that the party
30 is guaranteeing collection rather than payment of the
31 obligation of another party to the instrument, the signer is
32 obliged to pay the amount due on the instrument to a person
33 entitled to enforce the instrument only if (i) execution of
34 judgment against the other party has been returned
35 unsatisfied, (ii) the other party is insolvent or in an

1 insolvency proceeding, (iii) the other party cannot be served
2 with process, or (iv) it is otherwise apparent that payment
3 cannot be obtained from the other party.

4 5. An accommodation party who pays the instrument is
5 entitled to reimbursement from the accommodated party and is
6 entitled to enforce the instrument against the accommodated
7 party. An accommodated party who pays the instrument has no
8 right of recourse against, and is not entitled to contribution
9 from, an accommodation party.

10 Sec. 67. NEW SECTION. 554.3420 CONVERSION OF INSTRUMENT.

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

21 2. In an action under subsection 1, the measure of
22 liability is presumed to be the amount payable on the
23 instrument, but recovery may not exceed the amount of the
24 plaintiff's interest in the instrument.

25 3. A representative, other than a depository bank, who has
26 in good faith dealt with an instrument or its proceeds on
27 behalf of one who was not the person entitled to enforce the
28 instrument is not liable in conversion to that person beyond
29 the amount of any proceeds that it has not paid out.

30 PART 5

31 DISHONOR

32 Sec. 68. NEW SECTION. 554.3501 PRESENTMENT.

33 1. "Presentment" means a demand made by or on behalf of a
34 person entitled to enforce an instrument (i) to pay the
35 instrument made to the drawee or a party obliged to pay the

1 instrument or, in the case of a note or accepted draft payable
2 at a bank, to the bank, or (ii) to accept a draft made to the
3 drawee.

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

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

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

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

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

34 Sec. 69. NEW SECTION. 554.3502 DISHONOR.

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

1 a. If the note is payable on demand, the note is
2 dishonored if presentment is duly made to the maker and the
3 note is not paid on the day of presentment.

4 b. If the note is not payable on demand and is payable at
5 or through a bank or the terms of the note require
6 presentment, the note is dishonored if presentment is duly
7 made and the note is not paid on the day it becomes payable or
8 the day of presentment, whichever is later.

9 c. If the note is not payable on demand and paragraph "b"
10 does not apply, the note is dishonored if it is not paid on
11 the day it becomes payable.

12 2. Dishonor of an unaccepted draft other than a
13 documentary draft is governed by the following rules:

14 a. If a check is duly presented for payment to the payor
15 bank otherwise than for immediate payment over the counter,
16 the check is dishonored if the payor bank makes timely return
17 of the check or sends timely notice of dishonor or nonpayment
18 under section 554.4301 or 554.4302, or becomes accountable for
19 the amount of the check under section 554.4302.

20 b. If a draft is payable on demand and paragraph a does
21 not apply, the draft is dishonored if presentment for payment
22 is duly made to the drawee and the draft is not paid on the
23 day of presentment.

24 c. If a draft is payable on a date stated in the draft,
25 the draft is dishonored if (i) presentment for payment is duly
26 made to the drawee and payment is not made on the day the
27 draft becomes payable or the day of presentment, whichever is
28 later, or (ii) presentment for acceptance is duly made before
29 the day the draft becomes payable and the draft is not
30 accepted on the day of presentment.

31 d. If a draft is payable on elapse of a period of time
32 after sight or acceptance, the draft is dishonored if
33 presentment for acceptance is duly made and the draft is not
34 accepted on the day of presentment.

35 3. Dishonor of an unaccepted documentary draft occurs

1 according to the rules stated in subsection 2, paragraphs "b",
2 "c", and "d", except that payment or acceptance may be delayed
3 without dishonor until no later than the close of the third
4 business day of the drawee following the day on which payment
5 or acceptance is required by those paragraphs.

6 4. Dishonor of an accepted draft is governed by the
7 following rules:

8 a. If the draft is payable on demand, the draft is
9 dishonored if presentment for payment is duly made to the
10 acceptor and the draft is not paid on the day of presentment.

11 b. If the draft is not payable on demand, the draft is
12 dishonored if presentment for payment is duly made to the
13 acceptor and payment is not made on the day it becomes payable
14 or the day of presentment, whichever is later.

15 5. In any case in which presentment is otherwise required
16 for dishonor under this section and presentment is excused
17 under section 554.3504, dishonor occurs without presentment if
18 the instrument is not duly accepted or paid.

19 6. If a draft is dishonored because timely acceptance of
20 the draft was not made and the person entitled to demand
21 acceptance consents to a late acceptance, from the time of
22 acceptance the draft is treated as never having been
23 dishonored.

24 Sec. 70. NEW SECTION. 554.3503 NOTICE OF DISHONOR.

25 1. The obligation of an endorser stated in section
26 554.3415, subsection 1 and the obligation of a drawer stated
27 in section 554.3414, subsection 4, may not be enforced unless
28 (i) the endorser or drawer is given notice of dishonor of the
29 instrument complying with this section or (ii) notice of
30 dishonor is excused under section 554.3504, subsection 2.

31 2. Notice of dishonor may be given by any person; may be
32 given by any commercially reasonable means, including an oral,
33 written, or electronic communication; and is sufficient if it
34 reasonably identifies the instrument and indicates that the
35 instrument has been dishonored or has not been paid or

1 accepted. Return of an instrument given to a bank for
2 collection is sufficient notice of dishonor.

3 3. Subject to section 554.3504, subsection 3, with respect
4 to an instrument taken for collection by a collecting bank,
5 notice of dishonor must be given (i) by the bank before
6 midnight of the next banking day following the banking day on
7 which the bank receives notice of dishonor of the instrument,
8 or (ii) by any other person within thirty days following the
9 day on which the person receives notice of dishonor. With
10 respect to any other instrument, notice of dishonor must be
11 given within thirty days following the day on which dishonor
12 occurs.

13 Sec. 71. NEW SECTION. 554.3504 EXCUSED PRESENTMENT AND
14 NOTICE OF DISHONOR.

15 1. Presentment for payment or acceptance of an instrument
16 is excused if (i) the person entitled to present the
17 instrument cannot with reasonable diligence make presentment,
18 (ii) the maker or acceptor has repudiated an obligation to pay
19 the instrument or is dead or in insolvency proceedings, (iii)
20 by the terms of the instrument presentment is not necessary to
21 enforce the obligation of endorsers or the drawer, (iv) the
22 drawer or endorser whose obligation is being enforced has
23 waived presentment or otherwise has no reason to expect or
24 right to require that the instrument be paid or accepted, or
25 (v) the drawer instructed the drawee not to pay or accept the
26 draft or the drawee was not obligated to the drawer to pay the
27 draft.

28 2. Notice of dishonor is excused if (i) by the terms of
29 the instrument notice of dishonor is not necessary to enforce
30 the obligation of a party to pay the instrument, or (ii) the
31 party whose obligation is being enforced waived notice of
32 dishonor. A waiver of presentment is also a waiver of notice
33 of dishonor.

34 3. Delay in giving notice of dishonor is excused if the
35 delay was caused by circumstances beyond the control of the

1 person giving the notice and the person giving the notice
2 exercised reasonable diligence after the cause of the delay
3 ceased to operate.

4 Sec. 72. NEW SECTION. 554.3505 EVIDENCE OF DISHONOR.

5 1. The following are admissible as evidence and create a
6 presumption of dishonor and of any notice of dishonor stated:

7 a. a document regular in form as provided in subsection 2
8 which purports to be a protest;

9 b. a purported stamp or writing of the drawee, payor bank,
10 or presenting bank on or accompanying the instrument stating
11 that acceptance or payment has been refused unless reasons for
12 the refusal are stated and the reasons are not consistent with
13 dishonor;

14 c. a book or record of the drawee, payor bank, or
15 collecting bank, kept in the usual course of business which
16 shows dishonor, even if there is no evidence of who made the
17 entry.

18 2. A protest is a certificate of dishonor made by a United
19 States consul or vice consul, or a notary public or other
20 person authorized to administer oaths by the law of the place
21 where dishonor occurs. It may be made upon information
22 satisfactory to that person. The protest must identify the
23 instrument and certify either that presentment has been made
24 or, if not made, the reason why it was not made, and that the
25 instrument has been dishonored by nonacceptance or nonpayment.
26 The protest may also certify that notice of dishonor has been
27 given to some or all parties.

28 PART 6
29 DISCHARGE AND PAYMENT

30 Sec. 73. NEW SECTION. 554.3601 DISCHARGE AND EFFECT OF
31 DISCHARGE.

32 1. The obligation of a party to pay the instrument is
33 discharged as stated in this Article or by an act or agreement
34 with the party which would discharge an obligation to pay
35 money under a simple contract.

1 2. Discharge of the obligation of a party is not effective
2 against a person acquiring rights of a holder in due course of
3 the instrument without notice of the discharge.

4 Sec. 74. NEW SECTION. 554.3602 PAYMENT.

5 1. Subject to subsection 2, an instrument is paid to the
6 extent payment is made (i) by or on behalf of a party obliged
7 to pay the instrument, and (ii) to a person entitled to
8 enforce the instrument. To the extent of the payment, the
9 obligation of the party obliged to pay the instrument is
10 discharged even though payment is made with knowledge of a
11 claim to the instrument under section 554.3306 by another
12 person.

13 2. The obligation of a party to pay the instrument is not
14 discharged under subsection 1 if:

15 a. a claim to the instrument under section 554.3306 is
16 enforceable against the party receiving payment and (i)
17 payment is made with knowledge by the payor that payment is
18 prohibited by injunction or similar process of a court of
19 competent jurisdiction, or (ii) in the case of an instrument
20 other than a cashier's check, teller's check, or certified
21 check, the party making payment accepted, from the person
22 having a claim to the instrument, indemnity against loss
23 resulting from refusal to pay the person entitled to enforce
24 the instrument; or

25 b. the person making payment knows that the instrument is
26 a stolen instrument and pays a person it knows is in wrongful
27 possession of the instrument.

28 Sec. 75. NEW SECTION. 554.3603 TENDER OF PAYMENT.

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

33 2. If tender of payment of an obligation to pay an
34 instrument is made to a person entitled to enforce the
35 instrument and the tender is refused, there is discharge, to

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

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

13 Sec. 76. NEW SECTION. 554.3604 DISCHARGE BY CANCELLATION
14 OR RENUNCIATION.

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

24 2. Cancellation or striking out of an endorsement pursuant
25 to subsection 1 does not affect the status and rights of a
26 party derived from the endorsement.

27 Sec. 77. NEW SECTION. 554.3605 DISCHARGE OF ENDORSERS
28 AND ACCOMMODATION PARTIES.

29 1. In this section, the term "endorser" includes a drawer
30 having the obligation described in section 554.3414,
31 subsection 4.

32 2. Discharge, under section 554.3604, of the obligation of
33 a party to pay an instrument does not discharge the obligation
34 of an endorser or accommodation party having a right of
35 recourse against the discharged party.

1 3. If a person entitled to enforce an instrument agrees,
2 with or without consideration, to an extension of the due date
3 of the obligation of a party to pay the instrument, the
4 extension discharges an endorser or accommodation party having
5 a right of recourse against the party whose obligation is
6 extended to the extent the endorser or accommodation party
7 proves that the extension caused loss to the endorser or
8 accommodation party with respect to the right of recourse.

9 4. If a person entitled to enforce an instrument agrees,
10 with or without consideration, to a material modification of
11 the obligation of a party other than an extension of the due
12 date, the modification discharges the obligation of an
13 endorser or accommodation party having a right of recourse
14 against the person whose obligation is modified to the extent
15 the modification causes loss to the endorser or accommodation
16 party with respect to the right of recourse. The loss
17 suffered by the endorser or accommodation party as a result of
18 the modification is equal to the amount of the right of
19 recourse unless the person enforcing the instrument proves
20 that no loss was caused by the modification or that the loss
21 caused by the modification was an amount less than the amount
22 of the right of recourse.

23 5. If the obligation of a party to pay an instrument is
24 secured by an interest in collateral and a person entitled to
25 enforce the instrument impairs the value of the interest in
26 collateral, the obligation of an endorser or accommodation
27 party having a right of recourse against the obligor is
28 discharged to the extent of the impairment. The value of an
29 interest in collateral is impaired to the extent (i) the value
30 of the interest is reduced to an amount less than the amount
31 of the right of recourse of the party asserting discharge, or
32 (ii) the reduction in value of the interest causes an increase
33 in the amount by which the amount of the right of recourse
34 exceeds the value of the interest. The burden of proving
35 impairment is on the party asserting discharge.

1 6. If the obligation of a party is secured by an interest
2 in collateral not provided by an accommodation party and a
3 person entitled to enforce the instrument impairs the value of
4 the interest in collateral, the obligation of any party who is
5 jointly and severally liable with respect to the secured
6 obligation is discharged to the extent the impairment causes
7 the party asserting discharge to pay more than that party
8 would have been obliged to pay, taking into account rights of
9 contribution, if impairment had not occurred. If the party
10 asserting discharge is an accommodation party not entitled to
11 discharge under subsection 5, the party is deemed to have a
12 right to contribution based on joint and several liability
13 rather than a right to reimbursement. The burden of proving
14 impairment is on the party asserting discharge.

15 7. Under subsection 5 or 6, impairing value of an interest
16 in collateral includes (i) failure to obtain or maintain
17 perfection or recordation of the interest in collateral, (ii)
18 release of collateral without substitution of collateral of
19 equal value, (iii) failure to perform a duty to preserve the
20 value of collateral owed, under Article 9 or other law, to a
21 debtor or surety or other person secondarily liable, or (iv)
22 failure to comply with applicable law in disposing of
23 collateral.

24 8. An accommodation party is not discharged under
25 subsection 3, 4, or 5 unless the person entitled to enforce
26 the instrument knows of the accommodation or has notice under
27 section 554.3419, subsection 3, that the instrument was signed
28 for accommodation.

29 9. A party is not discharged under this section if (i) the
30 party asserting discharge consents to the event or conduct
31 that is the basis of the discharge, or (ii) the instrument or
32 a separate agreement of the party provides for waiver of
33 discharge under this section either specifically or by general
34 language indicating that parties waive defenses based on
35 suretyship or impairment of collateral.

1 Sec. 78. Section 554.4101, Code 1993, is amended to read
2 as follows:

3 554.4101 SHORT TITLE.

4 This Article ~~shall be known and~~ may be cited as Uniform
5 Commercial Code -- Bank Deposits and Collections.

6 Sec. 79. Section 554.4102, Code 1993, is amended to read
7 as follows:

8 554.4102 APPLICABILITY.

9 1. To the extent that items within this Article are also
10 within ~~the scope of~~ Articles 3 and 8, they are subject to the
11 provisions of those Articles. ~~In the event of~~ If there is
12 conflict, the provisions of this Article ~~govern those of~~
13 governs Article 3, ~~but the provisions of~~ Article 8 govern
14 those of governs this Article.

15 2. The liability of a bank for action or nonaction with
16 respect to ~~any~~ an item handled by it for purposes of
17 presentment, payment, or collection is governed by the law of
18 the place where the bank is located. In the case of action or
19 nonaction by or at a branch or separate office of a bank, its
20 liability is governed by the law of the place where the branch
21 or separate office is located.

22 Sec. 80. Section 554.4103, Code 1993, is amended to read
23 as follows:

24 554.4103 VARIATION BY AGREEMENT -- MEASURE OF DAMAGES --
25 CERTAIN ACTION CONSTITUTING ORDINARY CARE.

26 1. The effect of the provisions of this Article may be
27 varied by agreement ~~except that no agreement can,~~ but the
28 parties to the agreement cannot disclaim a bank's
29 responsibility for its own lack of good faith or failure to
30 exercise ordinary care or ~~can~~ limit the measure of damages for
31 such the lack or failure, ~~but.~~ However, the parties may
32 determine by agreement ~~determine~~ the standards by which such
33 the bank's responsibility is to be measured if such those
34 standards are not manifestly unreasonable.

35 2. Federal Reserve regulations and operating ~~letters~~

1 circulars, clearing house rules, and the like, have the effect
2 of agreements under subsection 1, whether or not specifically
3 assented to by all parties interested in items handled.

4 3. Action or nonaction approved by this Article or
5 pursuant to Federal Reserve regulations or operating ~~letters~~
6 ~~constitutes~~ circulars is the exercise of ordinary care and, in
7 the absence of special instructions, action or nonaction
8 consistent with clearing house rules and the like or with a
9 general banking usage not disapproved by this Article, is
10 prima facie constitutes the exercise of ordinary care.

11 4. The specification or approval of certain procedures by
12 this Article ~~does-not-constitute~~ is not disapproval of other
13 procedures which that may be reasonable under the
14 circumstances.

15 5. The measure of damages for failure to exercise ordinary
16 care in handling an item is the amount of the item reduced by
17 an amount which that could not have been realized by the use
18 exercise of ordinary care, ~~and where.~~ If there is also bad
19 faith it includes any other damages, ~~if any,~~ suffered by the
20 party suffered as a proximate consequence.

21 Sec. 81. Section 554.4104, Code 1993, is amended to read
22 as follows:

23 554.4104 DEFINITIONS AND INDEX OF DEFINITIONS.

24 1. In this Article, unless the context otherwise requires:

25 a. "Account" means any deposit or credit account with a
26 bank ~~and includes,~~ including a checking, time, interest or
27 savings-account demand, time, savings, passbook, share draft,
28 or like account, other than an account evidenced by a
29 certificate of deposit;

30 b. "Afternoon" means the period of a day between noon and
31 midnight;

32 c. "Banking day" means that the part of any a day on which
33 a bank is open to the public for carrying on substantially all
34 of its banking functions but for the purposes of determining a
35 bank's midnight deadline, shall not include Saturday, Sunday,

1 or any holiday when the federal reserve banks are not
2 performing check clearing functions;

3 d. "Clearing house" means any an association of banks or
4 other payors regularly clearing items;

5 e. "Customer" means any a person having an account with a
6 bank or for whom a bank has agreed to collect items and
7 includes, including a bank carrying that maintains an account
8 with at another bank;

9 f. "Documentary draft" means any-negotiable-or
10 nonnegotiable-draft-with-accompanying-documents,-securities-or
11 other-papers-to-be-delivered-against-honor-of-the-draft a
12 draft to be presented for acceptance or payment if specified
13 documents, certified securities (section 554.8102) or
14 instructions for uncertified securities (section 554.8102) or
15 other certificates, statements, or the like are to be received
16 by the drawee or other payor before acceptance or payment of
17 the draft;

18 g. "Draft" means a draft as defined in section 554.3104 or
19 an item, other than an instrument, that is an order;

20 h. "Drawer" means a person ordered in a draft to make
21 payment;

22 i. "Item" means any-instrument-for-the-payment-of-money
23 even-though-it-is-not-negotiable-but-does-not-include-money an
24 instrument or a promise or order to pay money handled by a
25 bank for collection or payment. The term does not include a
26 payment order governed by Article 12 or a credit or debit card
27 slip;

28 h j. "Midnight deadline" with respect to a bank is
29 midnight on its next banking day following the banking day on
30 which it receives the relevant item or notice or from which
31 the time for taking action commences to run, whichever is
32 later;

33 i.---"Properly-payable"-includes-the-availability-of-funds
34 for-payment-at-the-time-of-decision-to-pay-or-dishonor;

35 j k. "Settle" means to pay in cash, by clearing house

1 settlement, in a charge or credit or by remittance, or
2 otherwise as instructed agreed. A settlement may be either
3 provisional or final;

4 k 1. "Suspends payments" with respect to a bank means that
5 it has been closed by order of the supervisory authorities,
6 that a public officer has been appointed to take it over, or
7 that it ceases or refuses to make payments in the ordinary
8 course of business.

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

11 "Agreement for electronic presentment".	Section 554.4110.
12 "Bank".	Section 554.4105.
13 "Collecting bank".	Section 554.4105.
14 "Depositary bank".	Section 554.4105.
15 "Intermediary bank".	Section 554.4105.
16 "Payor bank".	Section 554.4105.
17 "Presenting bank".	Section 554.4105.
18 "Remitting bank"-----	Section 554.4105.
19 <u>"Presentment notice".</u>	Section 554.4105.

20 3. The following definitions in other Articles apply to
21 this Article:

22 "Acceptance".	Section 554.3410 554.3409.
23	
24 <u>"Alteration".</u>	Section 554.3407.
25 <u>"Cashiers check".</u>	Section 554.3104.
26 <u>"Certificate of deposit".</u>	Section 554.3104.
27 "Certification"-----	Section 554.3411.
28 "Certified check".	Section 554.3409.
29 "Check".	Section 554.3104.
30 "Draft".	Section 554.3104.
31 <u>"Good faith".</u>	Section 554.3103.
32 "Holder in due course".	Section 554.3302.
33 <u>"Instrument".</u>	Section 554.3104.
34 "Notice of dishonor".	Section 554.3500 554.3503.
35	

1	"Order".	Section 554.3103.
2	"Ordinary care".	Section 554.3103.
3	"Person entitle to enforce".	Section 554.3301.
4	"Presentment".	Section 554.3504
5		554.3501.
6	"Protest".	Section 554.3509.
7	"Secondary-party".	Section 554.3102.
8	"Promise".	Section 554.3103.
9	"Prove".	Section 554.3103.
10	"Teller's check".	Section 554.3104.
11	"Unauthorized signature".	Section 554.3403.

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

15 Sec. 82. Section 554.4105, Code 1993, is amended to read
 16 as follows:

17 554.4105 "BANK" -- "DEPOSITARY BANK" -- "INTERMEDIARY
 18 BANK" -- "COLLECTING BANK" -- "PAYOR BANK" -- "PRESENTING
 19 BANK"----"REMITTING-BANK".

20 In this Article unless the context otherwise requires:

21 1. "Bank" means a person engaged in the business of
 22 banking, including a savings bank, savings and loan
 23 association, credit union, or trust company;

24 a 2. "Depositary bank" means the first bank to which take
 25 an item is transferred for collection even though it is also
 26 the payor bank, unless the item is presented for immediate
 27 payment over the counter;

28 b 3. "Payor bank" means a bank by which an item is payable
 29 as drawn or accepted that is the drawee of the draft;

30 c 4. "Intermediary bank" means any a bank to which an item
 31 is transferred in course of collection except the depositary
 32 or payor bank;

33 d 5. "Collecting bank" means any a bank handling the an
 34 item for collection except the payor bank;

35 e 6. "Presenting bank" means any a bank presenting an item

1 except a payor bank;

2 ~~f. -- "Remitting-bank" means any payor or intermediary bank~~
3 ~~remitting for an item.~~

4 Sec. 83. Section 554.4106, Code 1993, is amended to read
5 as follows:

6 554.4106 SEPARATE OFFICE OF A BANK.

7 A branch or separate office of a bank is a separate bank
8 for the purpose of computing the time within which and
9 determining the place at or to which action may be taken or
10 notices or orders ~~shall~~ must be given under this Article and
11 under Article 3.

12 Sec. 84. Section 554.4107, Code 1993, is amended to read
13 as follows:

14 554.4107 TIME OF RECEIPT OF ITEMS.

15 1. For the purpose of allowing time to process items,
16 prove balances, and make the necessary entries on its books to
17 determine its position for the day, a bank may fix an
18 afternoon hour of two P.M. or later as a cutoff hour for the
19 handling of money and items and the making of entries on its
20 books.

21 2. ~~Any~~ An item or deposit of money received on any day
22 after a cutoff hour so fixed or after the close of the banking
23 day may be treated as being received at the opening of the
24 next banking day.

25 Sec. 85. Section 554.4108, Code 1993, is amended to read
26 as follows:

27 554.4108 DELAYS.

28 1. Unless otherwise instructed, a collecting bank in a
29 good faith effort to secure payment ~~may, in the case~~ of a
30 specific items item drawn on a payor other than a bank, and
31 with or without the approval of any person involved, may
32 wave, modify, or extend time limits imposed or permitted by
33 this chapter for a period not ~~in excess of an~~ exceeding two
34 additional banking day days without discharge of secondary
35 ~~parties and without~~ drawers or endorsers or liability to its

1 transferor or ~~any~~ a prior party.

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

10 Sec. 86. NEW SECTION. 554.4110 ELECTRONIC PRESENTMENT.

11 1. "Agreement for electronic presentment" means an
12 agreement, clearing-house rule, or federal reserve regulation
13 or operating circular, providing that presentment of an item
14 may be made by transmission of an image of an item or
15 information describing the item ("presentment notice") rather
16 than delivery of the item itself. The agreement may provide
17 for procedures governing retention, presentment, payment,
18 dishonor, and other matters concerning items subject to the
19 agreement.

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

22 3. If presentment is made by presentment notice, a
23 reference to "item" or "check" in the Article means the
24 presentment notice unless the context otherwise indicates.

25 Sec. 87. NEW SECTION. 554.4111 PAYABLE THROUGH OR
26 PAYABLE AT BANK -- COLLECTING BANK.

27 1. If an item states that it is "payable through" a bank
28 identified in the item, (i) the item designates the bank as a
29 collecting bank and does not by itself authorize the bank to
30 pay the time, and (ii) the item may be presented for payment
31 only by or through the bank.

32 2. If an item states that it is "payable at" a bank
33 identified in the item, the item is equivalent to a draft
34 drawn on the bank.

35 Sec. 88. NEW SECTION. 554.4112 STATUTE OF LIMITATIONS.

1 An action to enforce an obligation, duty, or right arising
2 under this Article must be commenced within three years after
3 the cause of action accrues.

4 Sec. 89. Section 554.4201, Code 1993, is amended to read
5 as follows:

6 554.4201 PRESUMPTION-AND-DURATION-OF-AGENCY STATUS OF
7 COLLECTING BANKS AS AGENT AND PROVISIONAL STATUS OF CREDITS --
8 APPLICABILITY OF ARTICLE -- ITEM ENDORSED "PAY ANY BANK".

9 1. Unless a contrary intent clearly appears and ~~prior-to~~
10 before the time that a settlement given by a collecting bank
11 for an item is or becomes final, ~~{subsection-3-of-section~~
12 ~~554.4211-and-sections-554.4212-and-554.4213}~~ the bank, with
13 respect to the item, is an agent or subagent of the owner of
14 the item and any settlement given for the item is provisional.
15 This provision applies regardless of the form of endorsement
16 or lack of endorsement and even though credit given for the
17 item is subject to immediate withdrawal as of right or is in
18 fact withdrawn; but the continuance of ownership of an item by
19 its owner and any rights of the owner to proceeds of the item
20 are subject to rights of a collecting bank, such as those
21 resulting from outstanding advances on the item and ~~valid~~
22 rights of recoupment or setoff. ~~When~~ if an item is handled by
23 banks for purposes of presentment, payment, and collection, or
24 return, the relevant provisions of this Article apply even
25 though action of the parties clearly establishes that a
26 particular bank has purchased the item and is the owner of it.

27 2. After an item has been endorsed with the words "pay any
28 bank" or the like, only a bank may acquire the rights of a
29 holder until the item has been:

30 a. ~~until-the-item-has-been~~ returned to the customer
31 initiating collection; or

32 b. ~~until-the-item-has-been~~ specially endorsed by a bank to
33 a person who is not a bank.

34 Sec. 90. Section 554.4202, Code 1993, is amended to read
35 as follows:

1 554.4202 RESPONSIBILITY FOR COLLECTION OR RETURN -- WHEN
2 ACTION SEASONABLE TIMELY.

3 1. A collecting bank must use exercise ordinary care in:

4 a. presenting an item or sending it for presentment; and

5 b. sending notice of dishonor or nonpayment or returning
6 an item other than a documentary draft to the bank's

7 transferor ~~or directly to the depository bank under subsection~~

8 ~~2 of section 554.4212~~ after learning that the item has not

9 been paid or accepted, as the case may be; and

10 c. settling for an item when the bank receives final
11 settlement; and

12 ~~d. making or providing for any necessary protest; and~~

13 ~~e. notifying its transferor of any loss or delay in~~
14 transit within a reasonable time after discovery thereof.

15 2. A collecting bank ~~taking proper action before its~~
16 ~~midnight deadline following receipt of an item, notice or~~

17 ~~payment acts seasonably; taking proper action within a~~
18 ~~reasonably longer time may be seasonable but the bank has the~~

19 ~~burden of so establishing~~ exercises ordinary care under

20 subsection 1 by taking proper action before its midnight

21 deadline following receipt of an item, notice, or settlement.

22 Taking proper action within a reasonably longer time may

23 constitute the exercise of ordinary care, but the bank has the

24 burden of establishing timeliness.

25 3. Subject to subsection 1, paragraph "a" a bank is not

26 liable for the insolvency, neglect, misconduct, mistake, or

27 default of another bank or person or for loss or destruction

28 of an item in the possession of others or in transit or in the

29 possession of others.

30 Sec. 91. Section 554.4203, Code 1993, is amended to read

31 as follows:

32 554.4203 EFFECT OF INSTRUCTIONS.

33 Subject to the provisions of Article 3 concerning

34 conversion of instruments (section 554.3419 554.3420) and the

35 ~~provisions of both Article 3 and this Article concerning~~

1 restrictive endorsements (section 554.3206) only a collecting
2 bank's transferor can give instructions ~~which~~ that affect the
3 bank or constitute notice to it, and a collecting bank is not
4 liable to prior parties for any action taken pursuant to ~~such~~
5 the instructions or in accordance with any agreement with its
6 transferor.

7 Sec. 92. Section 554.4204, Code 1993, is amended to read
8 as follows:

9 554.4204 METHODS OF SENDING AND PRESENTING -- SENDING
10 ~~DIRECT~~ DIRECTLY TO PAYOR BANK.

11 1. A collecting bank ~~must~~ shall send items by a reasonably
12 prompt method, taking into consideration any relevant
13 instructions, the nature of the item, the number of ~~such~~ those
14 items on hand, ~~and~~ the cost of collection involved, and the
15 method generally used by it or others to present ~~such~~ those
16 items.

17 2. A collecting bank may send:

18 a. any an item ~~direct~~ directly to the payor bank;

19 b. any an item to any a nonbank payor if authorized by its
20 transferor; and

21 c. any an item other than documentary drafts to any
22 nonbank payor, if authorized by Federal Reserve regulation or
23 operating ~~letter~~ circular, clearing house rule, or the like.

24 3. Presentment may be made by a presenting bank at a place
25 where the payor bank or other payor has requested that
26 presentment be made.

27 Sec. 93. Section 554.4205, Code 1993, is amended by
28 striking the section and inserting in lieu thereof the
29 following:

30 554.4205 DEPOSITORY BANK HOLDER OF UNINDORSED ITEM.

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

33 1. The depository bank becomes a holder of the item at the
34 time it receives the item for collection if the customer at
35 the time of delivery was a holder of the item, whether or not

1 the customer endorse the item, and, if the bank satisfies the
2 other requirements of section 554.3302, it is a holder in due
3 course; and

4 2. The depository bank warrants to collecting banks, the
5 payor bank or other payor, and the drawer that the amount of
6 the item was paid to the customer or deposited to the
7 customer's account.

8 Sec. 94. Section 554.4206, Code 1993, is amended to read
9 as follows:

10 554.4206 TRANSFER BETWEEN BANKS.

11 Any agreed method ~~which~~ that identifies the transferor bank
12 is sufficient for the item's further transfer to another bank.

13 Sec. 95. Section 554.4207, Code 1993, is amended by
14 striking the section and inserting in lieu thereof the
15 following:

16 554.4207 TRANSFER WARRANTIES.

17 1. A customer or collecting bank that transfers an item
18 and receives a settlement or other consideration warrants to
19 the transferee and to any subsequent collecting bank that:

20 a. the warrantor is a person entitled to enforce the item;

21 b. all signatures on the item are authentic and
22 authorized;

23 c. the item has not been altered;

24 d. the item is not subject to a defense or claim in
25 recoupment (section 554.3305, subsection 1) of any party than
26 can be asserted against the warrantor; and

27 e. the warrantor has no knowledge of any insolvency
28 proceeding commenced with respect to the maker or acceptor or,
29 in the case of an unaccepted draft, the drawer.

30 2. If an item is dishonored, a customer or collecting bank
31 transferring the item and receiving settlement or other
32 consideration is obliged to pay the amount due on the item (i)
33 according to the terms of the item at the time it was
34 transferred, or (ii) if the transfer was an incomplete item,
35 according to its terms when completed as stated in sections

1 554.3115 and 554.3407. The obligation of a transferor is owed
2 to the transferee and to any subsequent collecting bank that
3 takes the item in good faith. A transferor cannot disclaim
4 its obligation under this subsection by an endorsement stating
5 that it is made "without recourse" or otherwise disclaiming
6 liability.

7 3. A person to whom the warranties under subsection 1 are
8 made and who took the item in good faith may recover from the
9 warrantor as damages for breach of warranty an amount equal to
10 the loss suffered as a result of the breach, but not more than
11 the amount of the item plus expenses and loss of interest
12 incurred as a result of the breach.

13 4. The warranties stated in subsection 1 cannot be
14 disclaimed with respect to checks. Unless notice of a claim
15 for breach of warranty is given to the warrantor within thirty
16 days after the claimant has reason to know of the breach and
17 the identity of the warrantor, the warrantor is discharged to
18 the extent of any loss caused by the delay in giving notice of
19 the claim.

20 5. A cause of action for breach of warranty under this
21 section accrues when the claimant has reason to know of the
22 breach.

23 Sec. 96. Section 554.4208, Code 1993, is amended to read
24 as follows:

25 554.4208 SECURITY INTEREST OF COLLECTING BANK IN ITEMS,
26 ACCOMPANYING DOCUMENTS AND PROCEEDS.

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

29 a. in case of an item deposited in an account, to the
30 extent to which credit given for the item has been withdrawn
31 or applied;

32 b. in case of an item for which it has given credit
33 available for withdrawal as of right, to the extent of the
34 credit given whether or not the credit is drawn upon and
35 whether or not there is a right of charge-back; or

1 c. if it makes an advance on or against the item.

2 2. ~~When~~ If credit ~~which has been~~ given for several items
3 received at one time or pursuant to a single agreement is
4 withdrawn or applied in part, the security interest remains
5 upon all the items, any accompanying documents or the proceeds
6 of either. For the purpose of this section, credits first
7 given are first withdrawn.

8 3. Receipt by a collecting bank of a final settlement for
9 an item is a realization on its security interest in the item,
10 accompanying documents and proceeds. ~~To the extent and so~~ So
11 long as the bank does not receive final settlement for the
12 item or give up possession of the item or accompanying
13 documents for purposes other than collection, the security
14 interest continues to that extent and is subject to ~~the~~
15 ~~provisions of~~ Article 9 ~~except that, but:~~

16 a. no security agreement is necessary to make the security
17 interest enforceable (~~subsection 1-"b"~~ of section 554.9203
18 554.9203, subsection 1, paragraph "a"); and

19 b. no filing is required to perfect the security interest;
20 and

21 c. the security interest has priority over conflicting
22 perfected security interests in the item, accompanying
23 documents, or proceeds.

24 Sec. 97. Section 554.4209, Code 1993, is amended to read
25 as follows:

26 554.4209 WHEN BANK GIVES VALUE FOR PURPOSES OF HOLDER IN
27 DUE COURSE.

28 For purposes of determining its status as a holder in due
29 course, ~~the~~ a bank has given value to the extent ~~that~~ it has a
30 security interest in an item ~~provided that, if~~ the bank
31 otherwise complies with the requirements of section 554.3302
32 on what constitutes a holder in due course.

33 Sec. 98. Section 554.4210, Code 1993, is amended to read
34 as follows:

35 554.4210 PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY,

1 THROUGH OR AT A BANK -- LIABILITY OF SECONDARY PARTIES.

2 1. Unless otherwise instructed, a collecting bank may
3 present an item not payable by, through or at a bank by
4 sending to the party to accept or pay a written notice that
5 the bank holds the item for acceptance or payment. The notice
6 must be sent in time to be received on or before the day when
7 presentment is due and the bank must meet any requirement of
8 the party to accept or pay under section 554-3505 554.3501 by
9 the close of the bank's next banking day after it knows of the
10 requirement.

11 2. Where If presentment is made by notice and neither
12 honor-nor payment, acceptance, or request for compliance with
13 a requirement under section 554-3505 554.3501 is received by
14 the close of business on the day after maturity or, in the
15 case of demand items, by the close of business on the third
16 banking day after notice was sent, the presenting bank may
17 treat the item as dishonored and charge any secondary-party
18 drawer or endorser by sending the-secondary-party it notice of
19 the facts.

20 Sec. 99. Section 554.4211, Code 1993, is amended by
21 striking the section and inserting in lieu thereof the
22 following:

23 554.4211 MEDIUM AND TIME OF SETTLEMENT BY BANK.

24 1. With respect to settlement by a bank, the medium and
25 time for settlement may be prescribed by federal reserve
26 regulations or circulars, clearing-house rules, and the like,
27 or agreement. In the absence of such prescription:

28 a. the medium of settlement is cash or credit to an
29 account in a federal reserve bank of or specified by the
30 person to receive settlement; and

31 b. the time of settlement is:

32 (1) with respect to tender of settlement by cash, a
33 cashier's check, or teller's check, when the case or check is
34 sent or delivered.

35 (2) with respect to tender of settlement by credit in an

1 account in a federal reserve bank, when the credit is made.

2 (3) with respect to tender of settlement by a credit or
3 debit to an account in a bank, when the credit or debit made
4 or, in the case of tender of settlement by authority to charge
5 an account, when the authority is sent or delivered; or

6 (4) with respect to tender of settlement by a funds
7 transfer, when payment is made pursuant to section 554.12406,
8 subsection 1 to the person receiving the settlement.

9 2. If the tender of settlement is not by a medium
10 authorized by subsection 1 or the time of settlement is not
11 fixed by subsection 1, no settlement occurs until the tender
12 of settlement is accepted by the person receiving the
13 settlement.

14 3. If settlement for an item is made by cashier's check or
15 teller's check and the person receiving settlement, before its
16 midnight deadline:

17 a. presents or forwards the check for collection,
18 settlement is final when the check is finally paid; or

19 b. fails to present or forward the check for collection,
20 settlement is final at the midnight deadline of the person
21 receiving settlement.

22 4. If settlement for an item is made by giving authority
23 to charge the account of the bank giving settlement in the
24 bank receiving settlement, settlement is final when the charge
25 is made by the bank receiving settlement if there are funds
26 available in the account for the amount of the item.

27 Sec. 100. Section 554.4212, Code 1993, is amended to read
28 as follows:

29 554.4212 RIGHT OF CHARGE-BACK OR REFUND -- LIABILITY OF
30 COLLECTING BANK -- RETURN OF ITEM.

31 1. If a collecting bank has made provisional settlement
32 with its customer for an item and itself fails by reason of
33 dishonor, suspension of payments by a bank, or otherwise to
34 receive a settlement for the item which is or becomes final,
35 the bank may revoke the settlement given by it, charge back

1 the amount of any credit given for the item to its customer's
2 account, or obtain refund from its customer whether or not it
3 is able to return the ~~items~~ item, if by its midnight deadline
4 or within a longer reasonable time after it learns the facts
5 it returns the item or sends notification of the facts. If
6 the return or notice is delayed beyond the bank's midnight
7 deadline or a longer reasonable time after it learns the
8 facts, the bank may revoke the settlement, charge back the
9 credit, or obtain refund from its customer, but it is liable
10 for any loss resulting from the delay. These rights to
11 revoke, charge back and obtain refund terminate if and when a
12 settlement for the item received by the bank is or becomes
13 final (~~subsection 3 of section 554.4211 and subsections 2 and~~
14 ~~3 of section 554.4213~~).

15 ~~2. -- Within the time and manner prescribed by this section~~
16 ~~and section 554.4301, an intermediary or payor bank, as the~~
17 ~~case may be, may return an unpaid item directly to the~~
18 ~~depository bank and may send for collection a draft on the~~
19 ~~depository bank and obtain reimbursement. -- In such case, if~~
20 ~~the depository bank has received provisional settlement for~~
21 ~~the item, it must reimburse the bank drawing the draft and any~~
22 ~~provisional credits for the item between banks shall become~~
23 ~~and remain final.~~

24 2. A collecting bank returns an item when it is sent or
25 delivered to the bank's customer or transferor or pursuant to
26 its instructions.

27 3. A depository bank which that is also the payor may
28 charge back the amount of an item to its customer's account or
29 obtain refund in accordance with the section governing return
30 of an item received by a payor bank for credit on its books
31 (section 554.4301).

32 4. The right to charge-back is not affected by:

33 a. prior previous use of the a credit given for the item;
34 or

35 b. failure by any bank to exercise ordinary care with

1 respect to the item, but any a bank so failing remains liable.

2 5. A failure to charge-back or claim refund does not
3 affect other rights of the bank against the customer or any
4 other party.

5 6. If credit is given in dollars as the equivalent of the
6 value of an item payable in a foreign currency money, the
7 dollar amount of any charge-back or refund shall must be
8 calculated on the basis of the buying-sight bank-offered spot
9 rate for the foreign currency money prevailing on the day when
10 the person entitled to the charge-back or refund learns that
11 it will not receive payment in ordinary course.

12 Sec. 101. Section 554.4213, Code 1993, is amended to read
13 as follows:

14 554.4213 FINAL PAYMENT OF ITEM BY PAYOR BANK -- WHEN
15 PROVISIONAL DEBITS AND CREDITS BECOME FINAL -- WHEN CERTAIN
16 CREDITS BECOME AVAILABLE FOR WITHDRAWAL.

17 1. An item is finally paid by a payor bank when the bank
18 has first done any of the following, ~~whichever-happens-first~~:

19 a. paid the item in cash; or

20 b. settled for the item without reserving having a right
21 to revoke the settlement ~~and-without-having-such-right~~ under
22 statute, clearing house rule, or agreement; or

23 ~~c--completed-the-process-of-posting-the-item-to-the~~
24 ~~indicated-account-of-the-drawer,-maker-or-other-person-to-be~~
25 ~~charged-therewith,-or~~

26 d c. made a provisional settlement for the item and failed
27 to revoke the settlement in the time and manner permitted by
28 statute, clearing house rule, or agreement.

29 ~~Upon-a-final-payment-under-subparagraphs-"b,"-"c"-or-"d"~~
30 ~~the-payor-bank-shall-be-accountable-for-the-amount-of-the~~
31 ~~item.~~

32 2 3. If provisional settlement for an item between the
33 presenting and payor banks is made through a clearing house or
34 by debits or credits in an account between them, then to the
35 extent that provisional debits or credits for the item are

1 entered in accounts between the presenting and payor banks or
2 between the presenting and successive prior collecting banks
3 seriatim, they become final upon final payment of the item by
4 the payor bank.

5 3 4. If a collecting bank receives a settlement for an
6 item which is or becomes final ~~(subsection-3-of-section~~
7 ~~554.4211,--subsection-2-of-this-section)~~ the bank is
8 accountable to its customer for the amount of the item and any
9 provisional credit given for the item in an account with its
10 customer becomes final.

11 4 5. Subject to (i) applicable law stating a time for
12 availability of funds and (ii) any right of the bank to apply
13 the credit to an obligation of the customer, credit given by a
14 bank for an item in an-account-with-its-customer a customer's
15 account becomes available for withdrawal as of right:

16 a. ~~in-any-case-where~~ if the bank has received a
17 provisional settlement for the item, -- when such the
18 settlement becomes final and the bank has had a reasonable
19 time to ~~learn-that-the-settlement-is-final~~ receive return of
20 the item and the item has not been received in that time;

21 b. ~~in-any-case-where~~ if the bank is both a the depository
22 bank and a the payor bank, and the item is finally paid, -- at
23 the opening of the bank's second banking day following receipt
24 of the item.

25 5. ~~A-deposit-of-money-in-a-bank-is-final-when-made-but,~~
26 ~~subject~~ Subject to applicable law stating a time for
27 availability of funds and any right of the a bank to apply the
28 a deposit of money to an obligation of the customer, the
29 deposit becomes available for withdrawal as of right at the
30 opening of the bank's next banking day ~~following~~ after receipt
31 of the deposit.

32 Sec. 102. Section 554.4214, Code 1993, is amended to read
33 as follows:

34 554.4214 INSOLVENCY AND PREFERENCE.

35 1. Any if an item is in or coming comes into the

1 possession of a payor or collecting bank ~~which~~ that suspends
 2 payment and ~~which the item is~~ has not been finally paid shall,
 3 the item must be returned by the receiver, trustee, or agent
 4 in charge of the closed bank to the presenting bank or the
 5 closed bank's customer.

6 2. If a payor bank finally pays an item and suspends
 7 payments without making a settlement for the item with its
 8 customer or the presenting bank which settlement is or becomes
 9 final, the owner of the item has a preferred claim against the
 10 payor bank.

11 3. If a payor bank gives or a collecting bank gives or
 12 receives a provisional settlement for an item and thereafter
 13 suspends payments, the suspension does not prevent or
 14 interfere with the ~~settlement~~ settlements becoming final if
 15 ~~such the~~ such the finality occurs automatically upon the lapse of
 16 certain time or the happening of certain events (~~subsection-3~~
 17 ~~of-section-554:421:7-subsections-1-"d"7-2-and-3-of-section~~
 18 ~~554:421:3~~).

19 4. If a collecting bank receives from subsequent parties
 20 settlement for an item which settlement is or becomes final
 21 and the bank suspends payments without making a settlement for
 22 the item with its customer which settlement is or becomes
 23 final, the owner of the item has a preferred claim against
 24 ~~such the~~ the collecting bank.

25 Sec. 103. NEW SECTION. 554.4215 PRESENTMENT WARRANTIES.

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

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

1 b. the draft has not been altered; and
2 c. the warrantor has no knowledge that the signature of
3 the purported drawer of the draft is unauthorized.

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

18 3. If a drawee asserts a claim for breach of warranty
19 under subsection 1 based on an unauthorized endorsement of the
20 draft or an alteration of the draft, the warrantor may defend
21 by proving that the endorsement is effective under section
22 554.3404 or 554.3405 or the drawer is precluded under section
23 554.3406 or 554.4406 from asserting against the drawee the
24 unauthorized endorsement or alteration.

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

1 the breach.

2 5. The warranties stated in subsections 1 and 4 cannot be
3 disclaimed with respect to checks. Unless notice of a claim
4 for breach of warranty is given to the warrantor with thirty
5 days after the claimant has reason to know of the breach and
6 the identity of the warrantor, the warrantor is discharged to
7 the extent of any loss caused by the delay in giving notice of
8 the claim.

9 6. A cause of action for breach of warranty under this
10 section accrues when the claimant has reason to know of the
11 breach.

12 Sec. 104. NEW SECTION. 554.4216 ENCODING AND RETENTION
13 WARRANTIES.

14 1. A person who encodes information on or with respect to
15 an item after issue warrants to any subsequent collecting bank
16 and to the payor bank or other payor that the information is
17 correctly encoded. If the customer of a depository bank
18 encodes, that bank also makes the warranty.

19 2. A person who undertakes to retain an item pursuant to
20 an agreement for electronic presentment warrants to any
21 subsequent collecting bank and to the payor bank or other
22 payor that retention and presentment of the item comply with
23 the agreement. If a customer of a depository bank undertakes
24 to retain an item, that bank also makes this warranty.

25 3. A person to whom warranties are made under this section
26 and who took the item in good faith may recover from the
27 warrantor as damages for breach of warranty an amount equal to
28 the loss suffered as a result of the breach, plus expenses and
29 loss of interest incurred as a result of the breach.

30 Sec. 105. Section 554.4301, Code 1993, is amended to read
31 as follows:

32 554.4301 DEFERRED POSTING -- RECOVERY OF PAYMENT BY RETURN
33 OF ITEMS -- TIME OF DISHONOR -- RETURN OF ITEMS BY PAYOR BANK.

34 1. ~~Where an authorized settlement~~ If a payor settles for a
35 demand item (other than a documentary draft) ~~received by a~~

1 payor-bank presented otherwise than for immediate payment over
2 the counter ~~has-been-made~~ before midnight of the banking day
3 of receipt, the payor bank may revoke the settlement and
4 recover ~~any~~ the payment settlement if, before it has made
5 final payment (~~subsection-1-of-section-554-4213~~) and before
6 its midnight deadline, it

7 a. returns the item; or

8 b. sends written notice of dishonor or nonpayment if the
9 item is ~~held-for-protest-or-is-otherwise~~ unavailable for
10 return; and the item or notice includes the reason for
11 dishonor or nonpayment.

12 2. If a demand item is received by a payor bank for credit
13 on its books, it may return such the item or send notice of
14 dishonor and may revoke any credit given or recover the amount
15 thereof withdrawn by its customer, if it acts within the time
16 limit and in the manner specified in ~~the-preceding~~ subsection
17 1.

18 3. Unless previous notice of dishonor has been sent, an
19 item is dishonored at the time when for purposes of dishonor
20 it is returned or notice sent, in accordance with this
21 section.

22 4. An item is returned:

23 a. as to an item ~~received~~ presented through a clearing
24 house, when it is delivered to the presenting or last
25 collecting bank or to the clearing house or is sent or
26 delivered in accordance with ~~its~~ clearing house rules; or

27 b. in all other cases, when it is sent or delivered to the
28 bank's customer or transferor or pursuant to that customer's
29 or transferor's instructions.

30 Sec. 106. Section 554.4302, Code 1993, is amended to read
31 as follows:

32 554.4302 PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF
33 ITEM.

34 1. ~~In-the-absence-of-a-valid-defense-such-as-breach-of-a~~
35 ~~presentment-warranty-(subsection-1-of-section-554-4207),~~

1 ~~settlement-effected-or-the-like,~~ if if an item is presented on
2 to and received by a payor bank, the bank is accountable for
3 the amount of:

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

11 b. any other properly payable item unless, within the time
12 allowed for acceptance or payment of that item, the bank
13 either accepts or pays the item or returns it and accompanying
14 documents.

15 2. The liability of a payor bank to pay an item pursuant
16 to subsection 1 is subject to defenses based on breach of a
17 presentment warranty (section 554.4208) or proof that the
18 person seeking enforcement of the liability presented or
19 transferred the item for the purpose of defrauding the payor
20 bank.

21 Sec. 107. Section 554.4303, Code 1993, is amended to read
22 as follows:

23 554.4303 WHEN ITEMS SUBJECT TO NOTICE, ~~STOP-ORDER~~ STOP-
24 PAYMENT ORDER, LEGAL PROCESS, OR SETOFF -- ORDER IN WHICH
25 ITEMS MAY BE CHARGED OR CERTIFIED.

26 1. Any knowledge, notice, or ~~stop-order~~ stop-payment order
27 received by, legal process served upon, or setoff exercised by
28 a payor bank, ~~whether-or-not-effective-under-other-rules-of~~
29 law comes too late to terminate, suspend, or modify the bank's
30 right or duty to pay an item or to charge its customer's
31 account for the item, ~~comes-too-late-to-so-terminate,-suspend~~
32 ~~or-modify-such-right-or-duty~~ if the knowledge, notice, stop
33 order stop-payment order, or legal process is received or
34 served and a reasonable time for the bank to act thereon
35 expires or the setoff is exercised after the ~~bank-has-done-any~~

1 earliest of the following:

2 a. ~~accepted-or-certified~~ the bank accepts or certifies the
3 item;

4 b. ~~paid~~ the bank pays the item in cash;

5 c. ~~settled~~ the bank settles for the item without ~~reserving~~
6 having a right to revoke the settlement ~~and-without-having~~
7 ~~such-right~~ under statute, clearing house rule, or agreement;

8 ~~d.--completed-the-process-of-posting-the-item-to-the~~
9 ~~indicated-account-of-the-drawer,-maker-or-other-person-to-be~~
10 ~~charged-therewith-or-otherwise-has-evidenced-by-examination-of~~
11 ~~such-indicated-account-and-by-action-its-decision-to-pay-the~~
12 item; or

13 e d. ~~become~~ the bank becomes accountable for the amount of
14 the item under ~~subsection-i-"d"-of-section-554.4213-and~~
15 section 554.4302 dealing with the payor bank's responsibility
16 for late return of items; or

17 e. with respect to checks, a cutoff hour no earlier than
18 one hour after the opening of the next banking day after the
19 banking day on which the bank received the check and no later
20 than the close of that next banking day or, if no cutoff hour
21 is fixed, the close of the next banking day after the banking
22 day on which the bank received the check.

23 2. Subject to ~~the-provisions-of~~ subsection 1 items may be
24 accepted, paid, certified or charged to the indicated account
25 of its customer in any order ~~convenient-to-the-bank.~~

26 Sec. 108. Section 554.4401, Code 1993, is amended to read
27 as follows:

28 554.4401 WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT.

29 1. ~~As-against-its-customer,-a~~ A bank may charge against
30 the customer's account any of a customer an item which that is
31 otherwise properly payable from that account even though the
32 charge creates an overdraft. An item is properly payable if
33 it is authorized by the customer and is in accordance with any
34 agreement between the customer and bank.

35 2. A customer is not liable for the amount of an overdraft

1 if the customer neither signed the item nor benefited from the
2 proceeds of the item.

3 3. A bank may charge against the account of a customer a
4 check that is otherwise properly payable from the account,
5 even though payment was made before the date of the check,
6 unless the customer has given notice to the bank of the
7 postdating describing the check with reasonable certainty.
8 The notice is effective for the period stated in section
9 554.4403, subsection 2, for stop-payment orders, and must be
10 received at such time and in such manner as to afford the bank
11 a reasonable opportunity to act on it before the bank takes
12 any action with respect to the check described in section
13 554.4303. If a bank charges against the account of a customer
14 a check before the date stated in the notice of postdating,
15 the bank is liable for damages for the loss resulting from its
16 act. The loss may include damages for dishonor of subsequent
17 items under section 554.4402.

18 2 4. A bank which that in good faith makes payment to a
19 holder may charge the indicated account of its customer
20 according to:

21 a. the original tenor terms of the customer's altered
22 item; or

23 b. the tenor terms of the customer's completed item, even
24 though the bank knows the item has been completed unless the
25 bank has notice that the completion was improper.

26 Sec. 109. Section 554.4402, Code 1993, is amended to read
27 as follows:

28 554.4402 BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL
29 DISHONOR -- TIME OF DETERMINING INSUFFICIENCY OF ACCOUNT.

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

35 2. A payor bank is liable to its customer for damages

1 proximately caused by the wrongful dishonor of an item. When
2 ~~the-dishonor-occurs-through-mistake-liability~~ Liability is
3 limited to actual damages proved, ~~if-so-proximately-caused~~
4 ~~and-proved-damages~~ and may include damages for an arrest or
5 prosecution of the customer or other consequential damages.
6 Whether any consequential damages are proximately caused by
7 the wrongful dishonor is a question of fact to be determined
8 in each case.

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

20 Sec. 110. Section 554.4403, Code 1993, is amended to read
21 as follows:

22 554.4403 CUSTOMER'S RIGHT TO STOP PAYMENT -- BURDEN OF
23 PROOF OF LOSS.

24 1. A customer ~~may-by-order-to-the-customer's-bank-stop~~
25 ~~payment-of-any-item-payable-for-the-customer's-account-but-the~~
26 ~~order-must-be~~ or any person authorized to draw on the account
27 if there is more than one person may stop payment of an item
28 drawn on the customer's account or close the account by an
29 order to the bank describing the item or account with
30 reasonable certainty received at such a time and in such a
31 manner as-to-afford that affords the bank a reasonable
32 opportunity to act on it ~~prior-to~~ before any action by the
33 bank with respect to the item described in section 554.4303.
34 If the signature of more than one person is required to draw
35 on an account, any of these persons may stop payment or close

1 the account.

2 2. ~~An oral order is binding upon the bank only for~~
3 ~~fourteen calendar days unless confirmed in writing within that~~
4 ~~period. A written order is effective for only six months~~
5 ~~unless renewed in writing~~ A stop-payment order is effective
6 for six months, but it lapses after fourteen calendar days if
7 the original order was oral and was not confirmed in writing
8 within that period. A stop-payment order may be renewed for
9 additional six-month periods by a writing given to the bank
10 within a period during which the stop-payment order is
11 effective.

12 3. The burden of establishing the fact and amount of loss
13 resulting from the payment of an item contrary to a ~~binding~~
14 ~~stop-payment~~ stop-payment order or order to close an account
15 is on the customer. The loss from payment of an item contrary
16 to a stop-payment order may include damages for dishonor of
17 subsequent items under section 554.4402.

18 Sec. 111. Section 554.4405, Code 1993, is amended to read
19 as follows:

20 554.4405 DEATH OR INCOMPETENCE OF CUSTOMER.

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

32 2. Even with knowledge, a bank may for ten days after the
33 date of death pay or certify checks drawn on or ~~prior to~~
34 before that date unless ordered to stop payment by a person
35 claiming an interest in the account.

1 Sec. 112. Section 554.4406, Code 1993, is amended to read
2 as follows:

3 554.4406 CUSTOMER'S DUTY TO DISCOVER AND REPORT
4 UNAUTHORIZED SIGNATURE OR ALTERATION.

5 1. ~~When a bank sends to its customer a statement of~~
6 ~~account accompanied by items paid in good faith in support of~~
7 ~~the debit entries or holds the statement and items pursuant to~~
8 ~~a request or instructions of its customer or otherwise in a~~
9 ~~reasonable manner makes the statement and items available to~~
10 ~~the customer, the customer must exercise reasonable care and~~
11 ~~promptness to examine the statement and items to discover the~~
12 ~~customer's unauthorized signature or any alteration on an item~~
13 ~~and must notify the bank promptly after discovery thereof. A~~
14 bank that sends or makes available to a customer a statement
15 of account showing payment of items for the account shall
16 either return or make available to the customer the items paid
17 or provide information in the statement of account sufficient
18 to allow the customer reasonably to identify the items paid.
19 The statement of account provides sufficient information, if
20 the item is described by item number, amount, and date of
21 payment.

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

31 3. If a bank sends or makes available a statement of
32 account or items pursuant to subsection 1, the customer must
33 exercise reasonable promptness in examining the statement or
34 the items to determine whether any payment was not authorized
35 because of an alteration of an item or because a purported

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

6 2 4. If the bank establishes proves that the customer
7 failed, with respect to an item, to comply with the duties
8 imposed on the customer by subsection 1 3 the customer is
9 precluded from asserting against the bank:

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

13 b. on the customer's unauthorized signature or alteration
14 by the same wrongdoer on any other item paid in good faith by
15 the bank after-the-first-item-and-statement-was-available-to
16 the-customer-for-a-reasonable-period-not-exceeding-fourteen
17 calendar-days-and-before-the-bank-receives-notification-from
18 the-customer-of-any-such-unauthorized-signature-or-alteration
19 if the payment was made before the bank received notice from
20 the customer of the unauthorized signature or alteration and
21 after the customer had been afforded a reasonable period of
22 time, not exceeding thirty days, in which to examine the item
23 or statement of account and notify the bank.

24 3---The-preclusion-under-subsection-2-does-not-apply-if-the
25 customer-establishes-lack-of-ordinary-care-on-the-part-of-the
26 bank-in-paying-the-item(s)-

27 5. If subsection 4 applies and the customer proves that
28 the bank failed to exercise ordinary care in payment the item
29 and that the failure substantial contributed to loss, the loss
30 is allocated between the customer precluded and the bank
31 asserting the preclusion according to the extent to which the
32 failure of the customer to comply with subsection 3 and the
33 failure of the bank to exercise ordinary care contributed to
34 the loss. If the customer proves that the bank did not pay
35 the item in good faith, the preclusion under subsection 4 does

1 not apply.

2 4 6. Without regard to care or lack of care of either the
3 customer or the bank, a customer who does not within one year
4 ~~from the time~~ after the statement and or items are made
5 available to the customer (subsection 1) discover and report
6 the customer's unauthorized signature on or any alteration on
7 ~~the face or back of the item or does not within three years~~
8 ~~from that time discover and report any unauthorized~~
9 endorsement on the item is precluded from asserting against
10 the bank ~~such the~~ unauthorized signature or ~~endorsement or~~
11 such alteration. If there is a preclusion under this
12 subsection, the payor bank may not recover for breach of
13 warranty under section 554.4208 with respect to the
14 unauthorized signature or alteration to which the preclusion
15 applies.

16 5. ~~If under this section a payor bank has a valid defense~~
17 ~~against a claim of a customer upon or resulting from payment~~
18 ~~of an item and waives or fails upon request to assert the~~
19 ~~defense the bank may not assert against any collecting bank or~~
20 ~~other prior party presenting or transferring the item a claim~~
21 ~~based upon the unauthorized signature or alteration giving~~
22 ~~rise to the customer's claim.~~

23 Sec. 113. Section 554.4407, Code 1993, is amended to read
24 as follows:

25 554.4407 PAYOR BANK'S RIGHT TO SUBROGATION ON IMPROPER
26 PAYMENT.

27 If a payor bank has paid an item over the stop-payment
28 order of the drawer or maker to stop payment, or after an
29 account has been closed, or otherwise under circumstances
30 giving a basis for objection by the drawer or maker, to
31 prevent unjust enrichment and only to the extent necessary to
32 prevent loss to the bank by reason of its payment of the item,
33 the payor bank ~~shall be~~ is subrogated to the rights

34 a. of any holder in due course on the item against the
35 drawer or maker; and

1 b. of the payee or any other holder of the item against
2 the drawer or maker either on the item or under the
3 transaction out of which the item arose; and

4 c. of the drawer or maker against the payee or any other
5 holder of the item with respect to the transaction out of
6 which the item arose.

7 Sec. 114. Section 554.4501, Code 1993, is amended to read
8 as follows:

9 554.4501 HANDLING OF DOCUMENTARY DRAFTS -- DUTY TO SEND
10 FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR.

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

18 Sec. 115. Section 554.4502, Code 1993, is amended to read
19 as follows:

20 554.4502 PRESENTMENT OF "ON ARRIVAL" DRAFTS.

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

29 Sec. 116. Section 554.4503, Code 1993, is amended to read
30 as follows:

31 554.4503 RESPONSIBILITY OF PRESENTING BANK FOR DOCUMENTS
32 AND GOODS -- REPORT OF REASONS FOR DISHONOR -- REFEREE IN CASE
33 OF NEED.

34 Unless otherwise instructed and except as provided in
35 Article 5, a bank presenting a documentary draft;

1 a. must deliver the documents to the drawee on acceptance
2 of the draft if it is payable more than three days after
3 presentment; otherwise, only on payment; and

4 b. upon dishonor, either in the case of presentment for
5 acceptance or presentment for payment, may seek and follow
6 instructions from any referee in case of need designated in
7 the draft or, if the presenting bank does not choose to
8 utilize the referee's services, it must use diligence and good
9 faith to ascertain the reason for dishonor, must notify its
10 transferor of the dishonor and of the results of its effort to
11 ascertain the reasons therefor, and must request instructions.

12 But However, the presenting bank is under no obligation
13 with respect to goods represented by the documents except to
14 follow any reasonable instructions seasonably received; it has
15 a right to reimbursement for any expense incurred in following
16 instructions and to prepayment of or indemnity for such those
17 expenses.

18 Sec. 117. Section 554.4504, subsection 1, Code 1993, is
19 amended to read as follows:

20 1. A presenting bank which that, following the dishonor of
21 a documentary draft, has seasonably requested instructions but
22 does not receive them within a reasonable time may store,
23 sell, or otherwise deal with the goods in any reasonable
24 manner.

25 Sec. 118. Section 554.5103, subsection 3, Code 1993, is
26 amended to read as follows:

27 3. Definitions in other Articles applying to this Article
28 and the sections in which they appear are:

29 "Accept" or "Acceptance".	Section 554.3410
30	<u>554.3409</u> .
31 "Contract for sale".	Section 554.2106.
32 "Draft".	Section 554.3104.
33 "Holder in due course".	Section 554.3302.
34 "Midnight deadline".	Section 554.4104.
35 "Security".	Section 554.8102.

1 Sec. 119. Section 554.9206, subsection 1, Code 1993, is
2 amended to read as follows:

3 1. Subject to any statute or decision which establishes a
4 different rule for buyers or lessees of consumer goods, an
5 agreement by a buyer or lessee that the buyer or lessee will
6 not assert against an assignee any claim or defense which the
7 buyer or lessee may have against the seller or lessor is
8 enforceable by an assignee who takes that assignee's
9 assignment for value, in good faith and without notice of a
10 claim or defense, except as to defenses of a type which may be
11 asserted against a holder in due course of a negotiable
12 instrument under the Article on Commercial-Paper Negotiable
13 Instruments (Article 3). A buyer who as part of one
14 transaction signs both a negotiable instrument and a security
15 agreement makes such an agreement.

16 Sec. 120. DIRECTION TO CODE EDITOR.

17 The Code editor is directed to renumber section 554.4215 to
18 section 554.4208 and renumber section 554.4216 to 554.4209,
19 renumber subsequent sections through section 554.4214
20 accordingly, and correct internal references.

21 Sec. 121. REPEALS

22 1. Sections 554.3101 through 554.3806, Code 1993, are
23 repealed.

24 2. Section 554.4109, Code 1993, is repealed.

25 EXPLANATION

26 This bill amends the chapter 554, the Uniform Commercial
27 Code, by rewriting Article 3 relating to commercial paper,
28 amends Article 4 relating to bank deposits and collections in
29 conformance with recommendations by the American law institute
30 and the national conference of commissioners on uniform state
31 laws, and provides conforming amendments to various sections
32 of the Code.

33 Part 1 of the new Article 3 establishes general provisions,
34 including definitions, requirements for the issuance and
35 payment of negotiable instruments, and liability parties

1 involved in a breach of an obligation arising from transaction
2 involving an instrument.

3 Part 2 provides for the negotiation, transfer, and
4 endorsement of negotiable instruments, including rights
5 acquired by transfer and reacquisitions. The bill includes
6 requirements regarding endorsements, including special and
7 blank endorsements, restrictive endorsements.

8 Part 3 provides for the enforcement of instruments, by
9 providing for the rights of holders of the instruments;
10 requirements relating to the transfer of instruments for value
11 and consideration; the payment of overdue instruments;
12 defenses and claims in recoupment; duties owed by fiduciaries;
13 evidence of lost, destroyed, or stolen instruments; the
14 discharge of obligations; and obligations occurring upon an
15 instrument's loss.

16 Part 4 provides for the liability of parties, including
17 requirements for signatures; the consequences of a fraudulent
18 endorsement or alterations; the acceptance of checks and other
19 drafts; the obligations of issuers, acceptors, drawers, and
20 endorsers; warranties; and the conversion of instruments.

21 Part 5 provides for the dishonor of instruments, including
22 requirements relating to presentment, and notice.

23 Part 6 provides for discharge and payment, including the
24 effect of discharge, and methods to accomplish discharge and
25 the tender of payment.

26 The bill also amends various sections in Article 4,
27 including sections providing for definitions, payment
28 requirements, presentment, a statute of limitations,
29 warranties, settlement, liability, the return of items, and
30 bank charges.

31 The bill directs the Code editor to make changes necessary
32 to conform the bill with the model act.

33 The bill repeals sections included within old Article 3 and
34 a provision in Article 4 relating to the process of posting of
35 a notice by a bank in determining to pay an item.

SENATE FILE 2279

S-5275

1 Amend Senate File 2279 as follows:

2 1. By striking page 15, line 17, through page 16,
3 line 25, and inserting the following:

4 "Sec. ____ . NEW SECTION. 554.3118 ACCRUAL OF
5 CAUSE OF ACTION.

6 1. A cause of action against a maker or an
7 acceptor accrues

8 a. In the case of a time instrument on the day
9 after maturity;

10 b. In the case of a demand instrument upon its
11 date or, if no date is stated, on the date of issue.

12 2. A cause of action against the obligor of a
13 demand or time certificate of deposit accrues upon
14 demand, but demand on a time certificate may not be
15 made until on or after the date of maturity.

16 3. A cause of action against a drawer of a draft
17 or an endorser of any instrument accrues upon demand
18 following dishonor of the instrument. Notice of
19 dishonor is a demand.

20 4. Unless an instrument provides otherwise,
21 interest runs at the rate provided by law for a
22 judgment

23 a. In the case of a maker, acceptor or other
24 primary obligor of a demand instrument, from the date
25 of demand;

26 b. In all other cases from the date of accrual of
27 the cause of action."

28 2. Page 33, by striking line 16 and inserting the
29 following: "claimant under subsection 2, paragraph
30 "d",".

31 3. Page 42, line 30, by striking the figure "3"
32 and inserting the following: "4".

33 4. Page 44, line 8, by striking the word "thirty"
34 and inserting the following: "sixty".

35 5. Page 45, line 32, by striking the word
36 "thirty" and inserting the following: "sixty".

37 6. Page 59, line 24, by striking the word
38 "requires:" and inserting the following: "requires:"

39 7. Page 60, line 13, by striking the word
40 "certified" and inserting the following:
41 "certificated".

42 8. Page 60, by striking line 14 and inserting the
43 following: "instructions for uncertificated
44 securities (section 554.8308) or".

45 9. Page 60, line 20, by striking the word
46 "Drawer" and inserting the following: "Drawee".

47 10. Page 61, by striking line 11 and inserting
48 the following:

49 "Agreement for electronic presentment". Section 554.4110."

50 11. Page 61, by striking line 12 and inserting

S-5275

S-5275

Page 2

1 the following:

2 "Bank". Section 554.4105."

3 12. Page 61, line 19, by striking the figure

4 "554.4105" and inserting the following: "554.4110".

5 13. Page 61, by striking line 26 and inserting

6 the following:

7 "Certificate of deposit". Section 554.3104."

8 14. Page 61, by striking line 28 and inserting

9 the following:

10 "Certified check". Section 554.3409."

11 15. Page 64, by striking lines 32 through 34 and

12 inserting the following:

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

19 3. If a draft names a nonbank drawee and it is
20 unclear whether a bank named in the draft is a co-
21 drawee or a collecting bank, the bank is a collecting
22 bank."

23 16. By striking page 64, line 35, through page
24 65, line 3.

25 17. Page 67, line 30, by striking the word
26 "UNINDORSED" and inserting the following:
27 "UNENDORSED".

28 18. Page 69, line 15, by striking the word
29 "thirty" and inserting the following: "sixty".

30 19. By striking page 70, line 35, through page
31 71, line 1, and inserting the following:

32 "PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY,
33 THROUGH, OR AT A BANK----; LIABILITY OF SECONDARY
34 PARTIES DRAWER OR ENDORSER."

35 20. Page 78, line 4, by striking the word
36 "thirty" and inserting the following: "sixty".

37 21. Page 80, line 17, by striking the figure
38 "554.4208" and inserting the following: "554.4215".

39 22. Page 85, line 25, by striking the word
40 "seven" and inserting the following: "eleven".

41 23. Page 86, line 22, by striking the word
42 "thirty" and inserting the following: "sixty".

43 24. Page 90, by inserting after line 15 the
44 following:

45 "Sec. ____ . NEW SECTION. 668.16 APPLICABILITY OF
46 THIS CHAPTER.

47 This chapter does not apply to Article 3 or 4 of
48 chapter 554."

49 25. Page 90, by striking lines 17 through 20 and
50 inserting the following:

S-5275

Page 3

1 "The Code editor, in cooperation with the
2 legislative service bureau and in conformity with the
3 policies of the legislative council, is directed to
4 renumber sections in this Act in conformance with the
5 numbering system included in the model Act as
6 recommended by the American law institute and national
7 conference of commissioners on uniform state laws, and
8 to correct internal references as necessary."

9 26. Page 90, by inserting after line 24 the
10 following:

11 "Sec. ____ . EFFECTIVE DATE. This Act takes effect
12 July 1, 1995."

13 27. Title page, line 3, by inserting after the
14 word "sections" the following: ", and providing an
15 effective date".

16 28. By renumbering as necessary.

By AL STURGEON

S-5275 FILED MARCH 22, 1994
ADOPTED

*Substituted for
H.F. 2395
H-15-94 (P. 1684)*

SENATE FILE **2279**
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 2244)
(COMPANION TO LSB 4186HV)

(AS AMENDED AND PASSED BY THE SENATE MARCH 22, 1994)

_____ - New Language by the Senate
* - Language Stricken by the Senate

Passed Senate, Date _____ Passed House ^(P. 1684) Date 4/15/94
Vote: Ayes _____ Nays _____ Vote: Ayes 95 Nays 0
Approved May 10, 1994

A BILL FOR

1 An Act amending the Uniform Commercial Code relating to
2 negotiable instruments, and bank deposits and collections, and
3 repealing sections, and providing an effective date.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20

S.F. 2279

1 Section 1. Section 9E.9, subsection 5, Code 1993, is
2 amended to read as follows:

3 5. In making or noting a protest of a negotiable
4 instrument, the notarial officer must determine ~~the matters~~
5 set-forth whether there is evidence of dishonor as provided in
6 section ~~554-3509~~ 554.3505.

7 Sec. 2. Section 533.43, subsection 3, Code 1993, is
8 amended to read as follows:

9 3. The share draft is payable to a member of the credit
10 union, or to a member of the family of the issuer of the share
11 draft, or to a business in which the issuer of the share draft
12 has an interest. However, the exception contained in this
13 subsection does not apply to any person referred to in this
14 subsection if the person is a holder in due course, as
15 provided in chapter 554, article 3, ~~and with respect to a~~
16 ~~share draft which is issued prior to the expiration of one~~
17 ~~year after April 13, 1979, the person shall not be denied the~~
18 ~~rights of a holder in due course of the share draft solely on~~
19 ~~the grounds that the share draft fails to meet the~~
20 ~~requirements of section 554-3104, subsection 1, paragraph "d".~~

21 Sec. 3. Section 537.3211, Code 1993, is amended to read as
22 follows:

23 537.3211 NOTICE OF CONSUMER PAPER.

24 Every note which is a negotiable instrument ~~pursuant to as~~
25 provided in section 554.3104 taken in a consumer credit
26 transaction, if the writing requires or provides for a
27 signature of the consumer, shall conspicuously show on its
28 face the following: "This is a consumer credit transaction."

29 Sec. 4. Section 539.1, Code 1993, is amended to read as
30 follows:

31 539.1 ASSIGNMENT OF NONNEGOTIABLE INSTRUMENTS.

32 Bonds, due bills, and all instruments by which the maker
33 promises to pay another, without words of negotiability, a sum
34 of money, or by which the maker promises to pay a sum of money
35 in property or labor, or to pay or deliver any property or

1 labor, or acknowledges any money, labor, or property to be
2 due, are assignable by endorsement on the instrument, or by
3 other writing. The assignee, including a person who takes
4 assignment for collection in the regular course of business,
5 has a right of action on them in the assignee's own name,
6 subject to any defense or counterclaim which the maker or
7 debtor had against an assignor of the instrument before notice
8 of the assignment. In case of conflict between this section
9 and ~~Uniform-Commercial-Code~~, sections ~~554.3805~~, 554.5116 or
10 and 554.9318, these sections 554.5116 and 554.9318 control.

11 Sec. 5. Section 539.2, Code 1993, is amended to read as
12 follows:

13 539.2 ASSIGNMENT PROHIBITED BY INSTRUMENT.

14 When by the terms of an instrument its assignment is
15 prohibited, an assignment thereof shall nevertheless be valid,
16 but the maker may make use of any defense or counterclaim
17 against the assignee which the maker may have against any
18 assignor thereof before notice of such assignment is given to
19 the maker in writing. In case of conflict between this
20 section and ~~Uniform-Commercial-Code~~, sections ~~554.3805~~,
21 554.5116 or and 554.9318, these sections 554.5116 and 554.9318
22 control.

23 Sec. 6. Section 554.1201, subsections 20, 24, and 43, Code
24 1993, are amended to read as follows:

25 20. "Holder" means ~~a person who is in possession of a~~
26 ~~document of title or an instrument or a certificated~~
27 ~~investment security drawn, issued, or endorsed to that person~~
28 ~~or to that person's order or to bearer or in blank with~~
29 respect to a negotiable instrument, means the person in
30 possession if the instrument is payable to bearer or, in the
31 case of an instrument payable to an identified person, if the
32 identified person is in possession. "Holder" with respect to
33 a document of title means the person in possession if the
34 goods are deliverable to bearer or to the order of the person
35 in possession.

1 24. "Money" means a medium of exchange authorized or
2 adopted by a domestic or foreign government ~~as-a-part-of-its~~
3 currency and includes a monetary unit of account established
4 by an intergovernmental organization or by agreement between
5 two or more nations.

6 43. "Unauthorized" signature ~~or-endorsement~~ means one made
7 without actual, implied, or apparent authority and includes a
8 forgery.

9 Sec. 7. Section 554.1207, Code 1993, is amended to read as
10 follows:

11 554.1207 PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF
12 RIGHTS.

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

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

20 Sec. 8. Section 554.2103, subsection 3, Code 1993, is
21 amended to read as follows:

22 3. The following definitions in other Articles apply to
23 this Article:

- 24 "Check". Section 554.3104.
- 25 "Consignee". Section 554.7102.
- 26 "Consignor". Section 554.7102.
- 27 "Consumer goods". Section 554.9109.
- 28 "Dishonor". Section ~~554.3507~~
- 29 554.3502.
- 30 "Draft". Section 554.3104.

31 Sec. 9. Section 554.2511, subsection 3, Code 1993, is
32 amended to read as follows:

33 3. Subject to the provisions of this chapter on the effect
34 of an instrument on an obligation (section ~~554.3002~~ 554.3310),
35 payment by check is conditional and is defeated as between the

1 parties by dishonor of the check on due presentment.

2 UNIFORM COMMERCIAL CODE

3 ARTICLE 3 - NEGOTIABLE INSTRUMENTS

4 PART 1

5 GENERAL PROVISIONS AND DEFINITIONS

6 Sec. 10. NEW SECTION. 554.3101 SHORT TITLE. This
7 Article may be cited as Uniform Commercial Code -- Negotiable
8 Instruments.

9 Sec. 11. NEW SECTION. 554.3102 SUBJECT MATTER.

10 1. This Article applies to negotiable instruments. It
11 does not apply to money, to payment orders governed by Article
12 8, or to securities governed by Article 12.

13 2. If there is conflict between this Article and Article 9
14 or 12, Articles 9 and 12 govern.

15 3. Regulations of the Board of Governors of the Federal
16 Reserve System and operating circulars of the Federal Reserve
17 Banks supersede any inconsistent provision of this Article to
18 the extent of the inconsistency.

19 Sec. 12. NEW SECTION. 554.3103 DEFINITIONS.

20 1. In this Article:

21 a. "Acceptor" means a drawee who has accepted a draft.

22 b. "Drawee" means a person ordered in a draft to make
23 payment.

24 c. "Drawer" means a person who signs or is identified in a
25 draft as a person ordering payment.

26 d. "Good faith" means honesty in fact and the observance
27 of reasonable commercial standards of fair dealing.

28 e. "Maker" means a person who signs or is identified in a
29 note as a person undertaking to pay.

30 f. "Order" means a written instruction to pay money signed
31 by the person giving the instruction. The instruction may be
32 addressed to any person, including the person giving the
33 instruction, or to one or more persons jointly or in the
34 alternative but not in succession. An authorization to pay is
35 not an order unless the person authorized to pay is also

1 instructed to pay.

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

13 h. "Party" means a party to an instrument.

14 i. "Promise" means a written undertaking to pay money
15 signed by the person undertaking to pay. An acknowledgment of
16 an obligation by the obligor is not a promise unless the
17 obligor also undertakes to pay the obligation.

18 j. "Prove" with respect to a fact means to meet the burden
19 of establishing the fact (section 554.1201, subsection 8).

20 k. "Remitter" means a person who purchases an instrument
21 from its issuer if the instrument is payable to an identified
22 person other than the purchaser.

23 2. Other definitions applying to this Article and the
24 sections in which they appear are:

25 "Acceptance".	Section 554.3409.
26 "Accommodated party".	Section 554.3419.
27 "Accommodation party".	Section 554.3419.
28 "Alteration".	Section 554.3407.
29 "Anomalous endorsement".	Section 554.3205.
30 "Blank endorsement".	Section 554.3205.
31 "Cashier's check".	Section 554.3104.
32 "Certificate of deposit".	Section 554.3104.
33 "Certified check".	Section 554.3409.
34 "Check".	Section 554.3104.
35 "Consideration".	Section 554.3303.

1 "Draft".	Section 554.3104.
2 "Holder in due course".	Section 554.3302.
3 "Incomplete instrument".	Section 554.3115.
4 "Endorsement".	Section 554.3204.
5 "Endorser".	Section 554.3204.
6 "Instrument".	Section 554.3104.
7 "Issue".	Section 554.3105.
8 "Issuer".	Section 554.3105.
9 "Negotiable instrument".	Section 554.3104.
10 "Negotiation".	Section 554.3201.
11 "Note".	Section 554.3104.
12 "Payable at a definite time".	Section 554.3108.
13 "Payable on demand".	Section 554.3108.
14 "Payable to bearer".	Section 554.3109.
15 "Payable to order".	Section 554.3109.
16 "Payment".	Section 554.3602.
17 "Person entitled to enforce".	Section 554.3301.
18 "Presentment".	Section 554.3501.
19 "Reacquisition".	Section 554.3207.
20 "Special endorsement".	Section 554.3205.
21 "Teller's check".	Section 554.3104.
22 "Transfer of instrument".	Section 554.3203.
23 "Traveler's check".	Section 554.3104.
24 "Value".	Section 554.3303.
25 3. The following definitions in other Articles apply to	
26 this Article:	
27 "Bank".	Section 554.4105.
28 "Banking day".	Section 554.4104.
29 "Clearing house".	Section 554.4104.
30 "Collecting bank".	Section 554.4105.
31 "Depository bank".	Section 554.4105.
32 "Documentary draft".	Section 554.4104.
33 "Intermediary bank".	Section 554.4105.
34 "Item".	Section 554.4104.
35 "Payor bank".	Section 554.4105.

"Suspends payments".

Section 554.4104.

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 13. NEW SECTION. 554.3104 NEGOTIABLE INSTRUMENT.

1. Except as provided in subsections 3 and 4, "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- a. is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- b. is payable on demand or at a definite time; and
- c. does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

2. "Instrument" means a negotiable instrument.

3. An order that meets all of the requirements of subsection 1, except paragraph "a", and otherwise falls within the definition of "check" in subsection 6 is a negotiable instrument and a check.

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

5. An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

1 6. "Check" means (i) a draft, other than a documentary
2 draft, payable on demand and drawn on a bank or (ii) a
3 cashier's check or teller's check. An instrument may be a
4 check even though it is described on its face by another term,
5 such as "money order."

6 7. "Cashier's check" means a draft with respect to which
7 the drawer and drawee are the same bank or branches of the
8 same bank.

9 8. "Teller's check" means a draft drawn by a bank (i) on
10 another bank, or (ii) payable at or through a bank.

11 9. "Traveler's check" means an instrument that (i) is
12 payable on demand, (ii) is drawn on or payable at or through a
13 bank, (iii) is designated by the term "traveler's check" or by
14 a substantially similar term, and (iv) requires, as a
15 condition to payment, a countersignature by a person whose
16 specimen signature appears on the instrument.

17 10. "Certificate of deposit" means an instrument
18 containing an acknowledgment by a bank that a sum of money has
19 been received by the bank and a promise by the bank to repay
20 the sum of money. A certificate of deposit is a note of the
21 bank.

22 Sec. 14. NEW SECTION. 554.3105 ISSUE OF INSTRUMENT.

23 1. "Issue" means the first delivery of an instrument by
24 the maker or drawer, whether to a holder or nonholder, for the
25 purpose of giving rights on the instrument to any person.

26 2. An unissued instrument, or an unissued incomplete
27 instrument that is completed, is binding on the maker or
28 drawer, but nonissuance is a defense. An instrument that is
29 conditionally issued or is issued for a special purpose is
30 binding on the maker or drawer, but failure of the condition
31 or special purpose to be fulfilled is a defense.

32 3. "Issuer" applies to issued and unissued instruments and
33 means a maker or drawer of an instrument.

34 Sec. 15. NEW SECTION. 554.3106 UNCONDITIONAL PROMISE OR
35 ORDER.

1 1. Except as provided in this section, for the purposes of
2 section 554.3104, subsection 1, a promise or order is
3 unconditional unless it states (i) an express condition to
4 payment, (ii) that the promise or order is subject to or
5 governed by another writing, or (iii) that rights or
6 obligations with respect to the promise or order are stated in
7 another writing. A reference to another writing does not of
8 itself make the promise or order conditional.

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

14 3. If a promise or order requires, as a condition to
15 payment, a countersignature by a person whose specimen
16 signature appears on the promise or order, the condition does
17 not make the promise or order conditional for the purposes of
18 section 554.3104, subsection 1. If the person whose specimen
19 signature appears on an instrument fails to countersign the
20 instrument, the failure to countersign is a defense to the
21 obligation of the issuer, but the failure does not prevent a
22 transferee of the instrument from becoming a holder of the
23 instrument.

24 4. If a promise or order at the time it is issued or first
25 comes into possession of a holder contains a statement,
26 required by applicable statutory or administrative law, to the
27 effect that the rights of a holder or transferee are subject
28 to claims or defenses that the issuer could assert against the
29 original payee, the promise or order is not thereby made
30 conditional for the purposes of section 554.3104, subsection
31 1; but if the promise or order is an instrument, there cannot
32 be a holder in due course of the instrument.

33 Sec. 16. NEW SECTION. 554.3107 INSTRUMENT PAYABLE IN
34 FOREIGN MONEY.

35 Unless the instrument otherwise provides, an instrument

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

6 Sec. 17. NEW SECTION. 554.3108 PAYABLE ON DEMAND OR AT
7 DEFINITE TIME.

8 1. A promise or order is "payable on demand" if it (i)
9 states that it is payable on demand or at sight, or otherwise
10 indicates that it is payable at the will of the holder, or
11 (ii) does not state any time of payment.

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

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

26 Sec. 18. NEW SECTION. 554.3109 PAYABLE TO BEARER OR TO
27 ORDER.

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

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

32 b. does not state a payee; or

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

1 2. A promise or order that is not payable to bearer is
2 payable to order if it is payable (i) to the order of an
3 identified person or (ii) to an identified person or order. A
4 promise or order that is payable to order is payable to the
5 identified person.

6 3. An instrument payable to bearer may become payable to
7 an identified person if it is specially endorsed pursuant to
8 section 554.3205, subsection 1. An instrument payable to an
9 identified person may become payable to bearer if it is
10 endorsed in blank pursuant to section 554.3205, subsection 2.

11 Sec. 19. NEW SECTION. 554.3110 IDENTIFICATION OF PERSON
12 TO WHOM INSTRUMENT IS PAYABLE.

13 1. The person to whom an instrument is initially payable
14 is determined by the intent of the person, whether or not
15 authorized, signing as, or in the name or behalf of, the
16 issuer of the instrument. The instrument is payable to the
17 person intended by the signer even if that person is
18 identified in the instrument by a name or other identification
19 that is not that of the intended person. If more than one
20 person signs in the name or behalf of the issuer of an
21 instrument and all the signers do not intend the same person
22 as payee, the instrument is payable to any person intended by
23 one or more of the signers.

24 2. If the signature of the issuer of an instrument is made
25 by automated means, such as a check-writing machine, the payee
26 of the instrument is determined by the intent of the person
27 who supplied the name or identification of the payee, whether
28 or not authorized to do so.

29 3. A person to whom an instrument is payable may be
30 identified in any way, including by name, identifying number,
31 office, or account number. For the purpose of determining the
32 holder of an instrument, the following rules apply:

33 a. if an instrument is payable to an account and the
34 account is identified only by number, the instrument is
35 payable to the person to whom the account is payable. If an

1 instrument is payable to an account identified by number and
2 by the name of a person, the instrument is payable to the
3 named person, whether or not that person is the owner of the
4 account identified by number.

5 b. if an instrument is payable to:

6 (1) a trust, an estate, or a person described as trustee
7 or representative of a trust or estate, the instrument is
8 payable to the trustee, the representative, or a successor of
9 either, whether or not the beneficiary or estate is also
10 named;

11 (2) a person described as agent or similar representative
12 of a named or identified person, the instrument is payable to
13 the represented person, the representative, or a successor of
14 the representative;

15 (3) a fund or organization that is not a legal entity, the
16 instrument is payable to a representative of the members of
17 the fund or organization; or

18 (4) an office or to a person described as holding an
19 office, the instrument is payable to the named person, the
20 incumbent of the office, or a successor to the incumbent.

21 4. If an instrument is payable to two or more persons
22 alternatively, it is payable to any of them and may be
23 negotiated, discharged, or enforced by any or all of them in
24 possession of the instrument. If an instrument is payable to
25 two or more persons not alternatively, it is payable to all of
26 them and may be negotiated, discharged, or enforced only by
27 all of them. If an instrument payable to two or more persons
28 is ambiguous as to whether it is payable to the persons
29 alternatively, the instrument is payable to the persons
30 alternatively.

31 Sec. 20. NEW SECTION. 554.3111 PLACE OF PAYMENT.

32 Except as otherwise provided for items in Article 4, an
33 instrument is payable at the place of payment stated in the
34 instrument. If no place of payment is stated, an instrument
35 is payable at the address of the drawee or maker stated in the

1 instrument. If no address is stated, the place of payment is
2 the place of business of the drawee or maker. If a drawee or
3 maker has more than one place of business, the place of
4 payment is any place of business of the drawee or maker chosen
5 by the person entitled to enforce the instrument. If the
6 drawee or maker has no place of business, the place of payment
7 is the residence of the drawee or maker.

8 Sec. 21. NEW SECTION. 554.3112 INTEREST.

9 1. Unless otherwise provided in the instrument, (i) an
10 instrument is not payable with interest, and (ii) interest on
11 an interest-bearing instrument is payable from the date of the
12 instrument.

13 2. Interest may be stated in an instrument as a fixed or
14 variable amount of money or it may be expressed as a fixed or
15 variable rate or rates. The amount or rate of interest may be
16 stated or described in the instrument in any manner and may
17 require reference to information not contained in the
18 instrument. If an instrument provides for interest, but the
19 amount of interest payable cannot be ascertained from the
20 description, interest is payable at the judgment rate in
21 effect at the place of payment of the instrument and at the
22 time interest first accrues.

23 Sec. 22. NEW SECTION. 554.3113 DATE OF INSTRUMENT.

24 1. An instrument may be antedated or postdated. The date
25 stated determines the time of payment if the instrument is
26 payable at a fixed period after date. Except as provided in
27 section 554.4401, subsection 3, an instrument payable on
28 demand is not payable before the date of the instrument.

29 2. If an instrument is undated, its date is the date of
30 its issue or, in the case of an unissued instrument, the date
31 it first comes into possession of a holder.

32 Sec. 23. NEW SECTION. 554.3114 CONTRADICTIONARY TERMS OF
33 INSTRUMENT.

34 If an instrument contains contradictory terms, typewritten
35 terms prevail over printed terms, handwritten terms prevail

1 over both, and words prevail over numbers.

2 Sec. 24. NEW SECTION. 554.3115 INCOMPLETE INSTRUMENT.

3 1. "Incomplete instrument" means a signed writing, whether
4 or not issued by the signer, the contents of which show at the
5 time of signing that it is incomplete but that the signer
6 intended it to be completed by the addition of words or
7 numbers.

8 2. Subject to subsection 3, if an incomplete instrument is
9 an instrument under section 554.3104, it may be enforced
10 according to its terms if it is not completed, or according to
11 its terms as augmented by completion. If an incomplete
12 instrument is not an instrument under section 554.3104, but,
13 after completion, the requirements of section 554.3104 are
14 met, the instrument may be enforced according to its terms as
15 augmented by completion.

16 3. If words or numbers are added to an incomplete
17 instrument without authority of the signer, there is an
18 alteration of the incomplete instrument under section
19 554.3407.

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

23 Sec. 25. NEW SECTION. 554.3116 JOINT AND SEVERAL
24 LIABILITY -- CONTRIBUTION.

25 1. Except as otherwise provided in the instrument, two or
26 more persons who have the same liability on an instrument as
27 makers, drawers, acceptors, endorsers who endorse as joint
28 payees, or anomalous endorsers are jointly and severally
29 liable in the capacity in which they sign.

30 2. Except as provided in section 554.3419, subsection 5,
31 or by agreement of the affected parties, a party having joint
32 and several liability who pays the instrument is entitled to
33 receive from any party having the same joint and several
34 liability contribution in accordance with applicable law.

35 3. Discharge of one party having joint and several

1 liability by a person entitled to enforce the instrument does
2 not affect the right under subsection 2 of a party having the
3 same joint and several liability to receive contribution from
4 the party discharged.

5 Sec. 26. NEW SECTION. 554.3117 OTHER AGREEMENTS
6 AFFECTING INSTRUMENT.

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

17 Sec. 27. NEW SECTION. 554.3118 ACCRUAL OF CAUSE OF
18 ACTION.

19 1. A cause of action against a maker or an acceptor
20 accrues

21 a. In the case of a time instrument on the day after
22 maturity;

23 b. In the case of a demand instrument upon its date or, if
24 no date is stated, on the date of issue.

25 2. A cause of action against the obligor of a demand or
26 time certificate of deposit accrues upon demand, but demand on
27 a time certificate may not be made until on or after the date
28 of maturity.

29 3. A cause of action against a drawer of a draft or an
30 endorser of any instrument accrues upon demand following
31 dishonor of the instrument. Notice of dishonor is a demand.

32 4. Unless an instrument provides otherwise, interest runs
33 at the rate provided by law for a judgment

34 a. In the case of a maker, acceptor or other primary
35 obligor of a demand instrument, from the date of demand;

1 b. In all other cases from the date of accrual of the
2 cause of action.

3 Sec. 28. NEW SECTION. 554.3119 NOTICE OF RIGHT TO DEFEND
4 ACTION.

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

17

PART 2

18

NEGOTIATION, TRANSFER, AND ENDORSEMENT

19 Sec. 29. NEW SECTION. 554.3201 NEGOTIATION.

20 1. "Negotiation" means a transfer of possession, whether
21 voluntary or involuntary, of an instrument by a person other
22 than the issuer to a person who thereby becomes its holder.

23 2. Except for negotiation by a remitter, if an instrument
24 is payable to an identified person, negotiation requires
25 transfer of possession of the instrument and its endorsement
26 by the holder. If an instrument is payable to bearer, it may
27 be negotiated by transfer of possession alone.

28 Sec. 30. NEW SECTION. 554.3202 NEGOTIATION SUBJECT TO
29 RESCISSION.

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

34 2. To the extent permitted by other law, negotiation may
35 be rescinded or may be subject to other remedies, but those

1 remedies may not be asserted against a subsequent holder in
2 due course or a person paying the instrument in good faith and
3 without knowledge of facts that are a basis for rescission or
4 other remedy.

5 Sec. 31. NEW SECTION. 554.3203 TRANSFER OF INSTRUMENT --
6 RIGHTS ACQUIRED BY TRANSFER.

7 1. An instrument is transferred when it is delivered by a
8 person other than its issuer for the purpose of giving to the
9 person receiving delivery the right to enforce the instrument.

10 2. Transfer of an instrument, whether or not the transfer
11 is a negotiation, vests in the transferee any right of the
12 transferor to enforce the instrument, including any right as a
13 holder in due course, but the transferee cannot acquire rights
14 of a holder in due course by a transfer, directly or
15 indirectly, from a holder in due course if the transferee
16 engaged in fraud or illegality affecting the instrument.

17 3. Unless otherwise agreed, if an instrument is
18 transferred for value and the transferee does not become a
19 holder because of lack of endorsement by the transferor, the
20 transferee has a specifically enforceable right to the
21 unqualified endorsement of the transferor, but negotiation of
22 the instrument does not occur until the endorsement is made.

23 4. If a transferor purports to transfer less than the
24 entire instrument, negotiation of the instrument does not
25 occur. The transferee obtains no rights under this Article
26 and has only the rights of a partial assignee.

27 Sec. 32. NEW SECTION. 554.3204 ENDORSEMENT.

28 1. "Endorsement" means a signature, other than that of a
29 signer as maker, drawer, or acceptor, that alone or
30 accompanied by other words is made on an instrument for the
31 purpose of (i) negotiating the instrument, (ii) restricting
32 payment of the instrument, or (iii) incurring endorser's
33 liability on the instrument, but regardless of the intent of
34 the signer, a signature and its accompanying words is an
35 endorsement unless the accompanying words, terms of the

1 instrument, place of the signature, or other circumstances
2 unambiguously indicate that the signature was made for a
3 purpose other than endorsement. For the purpose of
4 determining whether a signature is made on an instrument, a
5 paper affixed to the instrument is a part of the instrument.

6 2. "Endorser" means a person who makes an endorsement.

7 3. For the purpose of determining whether the transferee
8 of an instrument is a holder, an endorsement that transfers a
9 security interest in the instrument is effective as an
10 unqualified endorsement of the instrument.

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

17 Sec. 33. NEW SECTION. 554.3205 SPECIAL ENDORSEMENT --
18 BLANK ENDORSEMENT -- ANOMALOUS ENDORSEMENT.

19 1. If an endorsement is made by the holder of an
20 instrument, whether payable to an identified person or payable
21 to bearer, and the endorsement identifies a person to whom it
22 makes the instrument payable, it is a "special endorsement."
23 When specially endorsed, an instrument becomes payable to the
24 identified person and may be negotiated only by the
25 endorsement of that person. The principles stated in section
26 554.3110 apply to special endorsements.

27 2. If an endorsement is made by the holder of an
28 instrument and it is not a special endorsement, it is a "blank
29 endorsement." When endorsed in blank, an instrument becomes
30 payable to bearer and may be negotiated by transfer of
31 possession alone until specially endorsed.

32 3. The holder may convert a blank endorsement that
33 consists only of a signature into a special endorsement by
34 writing, above the signature of the endorser, words
35 identifying the person to whom the instrument is made payable.

1 4. "Anomalous endorsement" means an endorsement made by a
2 person who is not the holder of the instrument. An anomalous
3 endorsement does not affect the manner in which the instrument
4 may be negotiated.

5 Sec. 34. NEW SECTION. 554.3206 RESTRICTIVE ENDORSEMENT.

6 1. An endorsement limiting payment to a particular person
7 or otherwise prohibiting further transfer or negotiation of
8 the instrument is not effective to prevent further transfer or
9 negotiation of the instrument.

10 2. An endorsement stating a condition to the right of the
11 endorsee to receive payment does not affect the right of the
12 endorsee to enforce the instrument. A person paying the
13 instrument or taking it for value or collection may disregard
14 the condition, and the rights and liabilities of that person
15 are not affected by whether the condition has been fulfilled.

16 3. If an instrument bears an endorsement (i) described in
17 section 554.4201, subsection 2, or (ii) in blank or to a
18 particular bank using the words "for deposit," "for
19 collection," or other words indicating a purpose of having the
20 instrument collected by a bank for the endorser or for a
21 particular account, the following rules apply:

22 a. A person, other than a bank, who purchases the
23 instrument when so endorsed converts the instrument unless the
24 amount paid for the instrument is received by the endorser or
25 applied consistently with the endorsement.

26 b. A depository bank that purchases the instrument or
27 takes it for collection when so endorsed converts the
28 instrument unless the amount paid by the bank with respect to
29 the instrument is received by the endorser or applied
30 consistently with the endorsement.

31 c. A payor bank that is also the depository bank or that
32 takes the instrument for immediate payment over the counter
33 from a person other than a collecting bank converts the
34 instrument unless the proceeds of the instrument are received
35 by the endorser or applied consistently with the endorsement.

1 d. Except as otherwise provided in paragraph c, a payor
2 bank or intermediary bank may disregard the endorsement and is
3 not liable if the proceeds of the instrument are not received
4 by the endorser or applied consistently with the endorsement.

5 4. Except for an endorsement covered by subsection 3, if
6 an instrument bears an endorsement using words to the effect
7 that payment is to be made to the endorsee as agent, trustee,
8 or other fiduciary for the benefit of the endorser or another
9 person, the following rules apply:

10 a. Unless there is notice of breach of fiduciary duty as
11 provided in section 554.3307, a person who purchases the
12 instrument from the endorsee or takes the instrument from the
13 endorsee for collection or payment may pay the proceeds of
14 payment or the value given for the instrument to the endorsee
15 without regard to whether the endorsee violates a fiduciary
16 duty to the endorser.

17 b. A subsequent transferee of the instrument or person who
18 pays the instrument is neither given notice nor otherwise
19 affected by the restriction in the endorsement unless the
20 transferee or payor knows that the fiduciary dealt with the
21 instrument or its proceeds in breach of fiduciary duty.

22 5. The presence on an instrument of an endorsement to
23 which this section applies does not prevent a purchaser of the
24 instrument from becoming a holder in due course of the
25 instrument unless the purchaser is a converter under
26 subsection 3 or has notice or knowledge of breach of fiduciary
27 duty as stated in subsection 4.

28 6. In an action to enforce the obligation of a party to
29 pay the instrument, the obligor has a defense if payment would
30 violate an endorsement to which this section applies and the
31 payment is not permitted by this section.

32 Sec. 35. NEW SECTION. 554.3207 REACQUISITION.

33 Reacquisition of an instrument occurs if it is transferred
34 to a former holder, by negotiation or otherwise. A former
35 holder who reacquires the instrument may cancel endorsements

1 made after the reacquirer first became a holder of the
2 instrument. If the cancellation causes the instrument to be
3 payable to the reacquirer or to bearer, the reacquirer may
4 negotiate the instrument. An endorser whose endorsement is
5 cancelled is discharged, and the discharge is effective
6 against any subsequent holder.

7

PART 3

8

ENFORCEMENT OF INSTRUMENTS

9 Sec. 36. NEW SECTION. 554.3301 PERSON ENTITLED TO
10 ENFORCE INSTRUMENT.

11 "Person entitled to enforce" an instrument means (i) the
12 holder of the instrument, (ii) a nonholder in possession of
13 the instrument who has the rights of a holder, or (iii) a
14 person not in possession of the instrument who is entitled to
15 enforce the instrument pursuant to section 554.3309 or
16 554.3418, subsection 4. A person may be a person entitled to
17 enforce the instrument even though the person is not the owner
18 of the instrument or is in wrongful possession of the
19 instrument.

20 Sec. 37. NEW SECTION. 554.3302 HOLDER IN DUE COURSE.

21 1. Subject to subsection 3 and section 554.3106,
22 subsection 4, "holder in due course" means the holder of an
23 instrument if:

24 a. the instrument when issued or negotiated to the holder
25 does not bear such apparent evidence of forgery or alteration
26 or is not otherwise so irregular or incomplete as to call into
27 question its authenticity; and

28 b. the holder took the instrument (i) for value, (ii) in
29 good faith, (iii) without notice that the instrument is
30 overdue or has been dishonored or that there is an uncured
31 default with respect to payment of another instrument issued
32 as part of the same series, (iv) without notice that the
33 instrument contains an unauthorized signature or has been
34 altered, (v) without notice of any claim to the instrument
35 described in section 554.3306, and (vi) without notice that

1 any party has a defense or claim in recoupment described in
2 section 554.3305, subsection 1.

3 2. Notice of discharge of a party, other than discharge in
4 an insolvency proceeding, is not notice of a defense under
5 subsection 1, but discharge is effective against a person who
6 became a holder in due course with notice of the discharge.
7 Public filing or recording of a document does not of itself
8 constitute notice of a defense, claim in recoupment, or claim
9 to the instrument.

10 3. Except to the extent a transferor or predecessor in
11 interest has rights as a holder in due course, a person does
12 not acquire rights of a holder in due course of an instrument
13 taken (i) by legal process or by purchase in an execution,
14 bankruptcy, or creditor's sale or similar proceeding, (ii) by
15 purchase as part of a bulk transaction not in ordinary course
16 of business of the transferor, or (iii) as the successor in
17 interest to an estate or other organization.

18 4. If, under section 554.3303, subsection 1, paragraph
19 "a", the promise of performance that is the consideration for
20 an instrument has been partially performed, the holder may
21 assert rights as a holder in due course of the instrument only
22 to the fraction of the amount payable under the instrument
23 equal to the value of the partial performance divided by the
24 value of the promised performance.

25 5. If (i) the person entitled to enforce an instrument has
26 only a security interest in the instrument and (ii) the person
27 obliged to pay the instrument has a defense, claim in
28 recoupment, or claim to the instrument that may be asserted
29 against the person who granted the security interest, the
30 person entitled to enforce the instrument may assert rights as
31 a holder in due course only to an amount payable under the
32 instrument which, at the time of enforcement of the
33 instrument, does not exceed the amount of the unpaid
34 obligation secured.

35 6. To be effective, notice must be received at a time and

1 in a manner that gives a reasonable opportunity to act on it.

2 7. This section is subject to any law limiting status as a
3 holder in due course in particular classes of transactions.

4 Sec. 38. NEW SECTION. 554.3303 VALUE AND CONSIDERATION.

5 1. An instrument is issued or transferred for value if:

6 a. the instrument is issued or transferred for a promise
7 of performance, to the extent the promise has been performed;

8 b. the transferee acquires a security interest or other
9 lien in the instrument other than a lien obtained by judicial
10 proceeding;

11 c. the instrument is issued or transferred as payment of,
12 or as security for, an antecedent claim against any person,
13 whether or not the claim is due;

14 d. the instrument is issued or transferred in exchange for
15 a negotiable instrument; or

16 e. the instrument is issued or transferred in exchange for
17 the incurring of an irrevocable obligation to a third party by
18 the person taking the instrument.

19 2. "Consideration" means any consideration sufficient to
20 support a simple contract. The drawer or maker of an
21 instrument has a defense if the instrument is issued without
22 consideration. If an instrument is issued for a promise of
23 performance, the issuer has a defense to the extent
24 performance of the promise is due and the promise has not been
25 performed. If an instrument is issued for value as stated in
26 subsection 1, the instrument is also issued for consideration.

27 Sec. 39. NEW SECTION. 554.3304 OVERDUE INSTRUMENT.

28 1. An instrument payable on demand becomes overdue at the
29 earliest of the following times:

30 a. on the day after the day demand for payment is duly
31 made;

32 b. if the instrument is a check, ninety days after its
33 date; or

34 c. if the instrument is not a check, when the instrument
35 has been outstanding for a period of time after its date which

1 is unreasonably long under the circumstances of the particular
2 case in light of the nature of the instrument and usage of the
3 trade.

4 2. With respect to an instrument payable at a definite
5 time the following rules apply:

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

11 b. If the principal is not payable in installments and the
12 due date has not been accelerated, the instrument becomes
13 overdue on the day after the due date.

14 c. If a due date with respect to principal has been
15 accelerated, the instrument becomes overdue on the day after
16 the accelerated due date.

17 3. Unless the due date of principal has been accelerated,
18 an instrument does not become overdue if there is default in
19 payment of interest but no default in payment of principal.

20 Sec. 40. NEW SECTION. 554.3305 DEFENSES AND CLAIMS IN
21 RECOUPMENT.

22 1. Except as stated in subsection 2, the right to enforce
23 the obligation of a party to pay an instrument is subject to
24 the following:

25 a. a defense of the obligor based on (i) infancy of the
26 obligor to the extent it is a defense to a simple contract,
27 (ii) duress, lack of legal capacity, or illegality of the
28 transaction which, under other law, nullifies the obligation
29 of the obligor, (iii) fraud that induced the obligor to sign
30 the instrument with neither knowledge nor reasonable
31 opportunity to learn of its character or its essential terms,

32 or (iv) discharge of the obligor in insolvency proceedings;
33 b. a defense of the obligor stated in another section of
34 this Article or a defense of the obligor that would be
35 available if the person entitled to enforce the instrument

1 were enforcing a right to payment under a simple contract; and
2 c. a claim in recoupment of the obligor against the
3 original payee of the instrument if the claim arose from the
4 transaction that gave rise to the instrument; but the claim of
5 the obligor may be asserted against a transferee of the
6 instrument only to reduce the amount owing on the instrument
7 at the time the action is brought.

8 2. The right of a holder in due course to enforce the
9 obligation of a party to pay the instrument is subject to
10 defenses of the obligor stated in subsection 1, paragraph "a",
11 but is not subject to defenses of the obligor stated in
12 subsection 1, paragraph "b", or claims in recoupment stated in
13 subsection 1, paragraph "c", against a person other than the
14 holder.

15 3. Except as stated in subsection 4, in an action to
16 enforce the obligation of a party to pay the instrument, the
17 obligor may not assert against the person entitled to enforce
18 the instrument a defense, claim in recoupment, or claim to the
19 instrument (section 554.3306) of another person, but the other
20 person's claim to the instrument may be asserted by the
21 obligor if the other person is joined in the action and
22 personally asserts the claim against the person entitled to
23 enforce the instrument. An obligor is not obliged to pay the
24 instrument if the person seeking enforcement of the instrument
25 does not have rights of a holder in due course and the obligor
26 proves that the instrument is a lost or stolen instrument.

27 4. In an action to enforce the obligation of an
28 accommodation party to pay an instrument, the accommodation
29 party may assert against the person entitled to enforce the
30 instrument any defense or claim in recoupment under subsection
31 1 that the accommodated party could assert against the person
32 entitled to enforce the instrument, except the defenses of
33 discharge in insolvency proceedings, infancy, and lack of
34 legal capacity.

35 Sec. 41. NEW SECTION. 554.3306 CLAIMS TO AN INSTRUMENT.

1 A person taking an instrument, other than a person having
2 rights of a holder in due course, is subject to a claim of a
3 property or possessory right in the instrument or its
4 proceeds, including a claim to rescind a negotiation and to
5 recover the instrument or its proceeds. A person having
6 rights of a holder in due course takes free of the claim to
7 the instrument.

8 Sec. 42. NEW SECTION. 554.3307 NOTICE OF BREACH OF
9 FIDUCIARY DUTY.

10 1. In this section:

11 a. "Fiduciary" means an agent, trustee, partner, corporate
12 officer or director, or other representative owing a fiduciary
13 duty with respect to an instrument.

14 b. "Represented person" means the principal, beneficiary,
15 partnership, corporation, or other person to whom the duty
16 stated in paragraph "a" is owed.

17 2. If (i) an instrument is taken from a fiduciary for
18 payment or collection or for value, (ii) the taker has
19 knowledge of the fiduciary status of the fiduciary, and (iii)
20 the represented person makes a claim to the instrument or its
21 proceeds on the basis that the transaction of the fiduciary is
22 a breach of fiduciary duty, the following rules apply:

23 a. Notice of breach of fiduciary duty by the fiduciary is
24 notice of the claim of the represented person.

25 b. In the case of an instrument payable to the represented
26 person or the fiduciary as such, the taker has notice of the
27 breach of fiduciary duty if the instrument is (i) taken in
28 payment of or as security for a debt known by the taker to be
29 the personal debt of the fiduciary, (ii) taken in a
30 transaction known by the taker to be for the personal benefit
31 of the fiduciary, or (iii) deposited to an account other than
32 an account of the fiduciary, as such, or an account of the
33 represented person.

34 c. If an instrument is issued by the represented person or
35 the fiduciary as such, and made payable to the fiduciary

1 personally, the taker does not have notice of the breach of
2 fiduciary duty unless the taker knows of the breach of
3 fiduciary duty.

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

13 Sec. 43. NEW SECTION. 554.3308 PROOF OF SIGNATURES AND
14 STATUS AS HOLDER IN DUE COURSE.

15 1. In an action with respect to an instrument, the
16 authenticity of, and authority to make, each signature on the
17 instrument is admitted unless specifically denied in the
18 pleadings. If the validity of a signature is denied in the
19 pleadings, the burden of establishing validity is on the
20 person claiming validity, but the signature is presumed to be
21 authentic and authorized unless the action is to enforce the
22 liability of the purported signer and the signer is dead or
23 incompetent at the time of trial of the issue of validity of
24 the signature. If an action to enforce the instrument is
25 brought against a person as the undisclosed principal of a
26 person who signed the instrument as a party to the instrument,
27 the plaintiff has the burden of establishing that the
28 defendant is liable on the instrument as a represented person
29 under section 554.3402, subsection 1.

30 2. If the validity of signatures is admitted or proved and
31 there is compliance with subsection 1, a plaintiff producing
32 the instrument is entitled to payment if the plaintiff proves
33 entitlement to enforce the instrument under section 554.3301,
34 unless the defendant proves a defense or claim in recoupment.
35 If a defense or claim in recoupment is proved, the right to

1 payment of the plaintiff is subject to the defense or claim,
2 except to the extent the plaintiff proves that the plaintiff
3 has rights of a holder in due course which are not subject to
4 the defense or claim.

5 Sec. 44. NEW SECTION. 554.3309 ENFORCEMENT OF LOST,
6 DESTROYED, OR STOLEN INSTRUMENT.

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

17 2. A person seeking enforcement of an instrument under
18 subsection 1 must prove the terms of the instrument and the
19 person's right to enforce the instrument. If that proof is
20 made, section 554.3308 applies to the case as if the person
21 seeking enforcement had produced the instrument. The court
22 may not enter judgment in favor of the person seeking
23 enforcement unless it finds that the person required to pay
24 the instrument is adequately protected against loss that might
25 occur by reason of a claim by another person to enforce the
26 instrument. Adequate protection may be provided by any
27 reasonable means.

28 Sec. 45. NEW SECTION. 554.3310 EFFECT OF INSTRUMENT ON
29 OBLIGATION FOR WHICH TAKEN.

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

1 obligor may have as an endorser of the instrument.

2 2. Unless otherwise agreed and except as provided in
3 subsection 1, if a note or an uncertified check is taken for
4 an obligation, the obligation is suspended to the same extent
5 the obligation would be discharged if an amount of money equal
6 to the amount of the instrument were taken, and the following
7 rules apply:

8 a. In the case of an uncertified check, suspension of the
9 obligation continues until dishonor of the check or until it
10 is paid or certified. Payment or certification of the check
11 results in discharge of the obligation to the extent of the
12 amount of the check.

13 b. In the case of a note, suspension of the obligation
14 continues until dishonor of the note or until it is paid.
15 Payment of the note results in discharge of the obligation to
16 the extent of the payment.

17 c. Except as provided in paragraph "d", if the check or
18 note is dishonored and the obligee of the obligation for which
19 the instrument was taken is the person entitled to enforce the
20 instrument, the obligee may enforce either the instrument or
21 the obligation. In the case of an instrument of a third
22 person which is negotiated to the obligee by the obligor,
23 discharge of the obligor on the instrument also discharges the
24 obligation.

25 d. If the person entitled to enforce the instrument taken
26 for an obligation is a person other than the obligee, the
27 obligee may not enforce the obligation to the extent the
28 obligation is suspended. If the obligee is the person
29 entitled to enforce the instrument but no longer has
30 possession of it because it was lost, stolen, or destroyed,
31 the obligation may not be enforced to the extent of the amount
32 payable on the instrument, and to that extent the obligee's
33 rights against the obligor are limited to enforcement of the
34 instrument.

35 3. If an instrument other than one described in subsection

1 1 or 2 is taken for an obligation, the effect is (i) that
2 stated in subsection 1 if the instrument is one on which a
3 bank is liable as maker or acceptor, or (ii) that stated in
4 subsection 2 in any other case.

5 Sec. 46. NEW SECTION. 554.3311 ACCORD AND SATISFACTION
6 BY USE OF INSTRUMENT.

7 1. If a person against whom a claim is asserted proves
8 that (i) that person in good faith tendered an instrument to
9 the claimant as full satisfaction of the claim, (ii) the
10 amount of the claim was unliquidated or subject to a bona fide
11 dispute, and (iii) the claimant obtained payment of the
12 instrument, the following subsections apply.

13 2. Unless subsection 3 applies, the claim is discharged if
14 the person against whom the claim is asserted proves that the
15 instrument or an accompanying written communication contained
16 a conspicuous statement to the effect that the instrument was
17 tendered as full satisfaction of the claim.

18 3. Subject to subsection 4, a claim is not discharged
19 under subsection 2 if either of the following applies:

20 a. The claimant, if an organization, proves that (i)
21 within a reasonable time before the tender, the claimant sent
22 a conspicuous statement to the person against whom the claim
23 is asserted that communications concerning disputed debts,
24 including an instrument tendered as full satisfaction of a
25 debt, are to be sent to a designated person, office, or place,
26 and (ii) the instrument or accompanying communication was not
27 received by that designated person, office, or place.

28 b. The claimant, whether or not an organization, proves
29 that within ninety days after payment of the instrument, the
30 claimant tendered repayment of the amount of the instrument to
31 the person against whom the claim is asserted. This paragraph
32 does not apply if the claimant is an organization that sent a
33 statement complying with paragraph "a" letter (i).

34 4. A claim is discharged if the person against whom the
35 claim is asserted proves that within a reasonable time before

1 collection of the instrument was initiated, the claimant, or
2 an agent of the claimant having direct responsibility with
3 respect to the disputed obligation, knew that the instrument
4 was tendered in full satisfaction of the claim.

5 Sec. 47. NEW SECTION. 554.3312 LOST, DESTROYED, OR
6 STOLEN CASHIER'S CHECK, TELLER'S CHECK, OR CERTIFIED CHECK.

7 1. In this section:

8 a. "Check" means a cashier's check, teller's check, or
9 certified check.

10 b. "Claimant" means a person who claims the right to
11 receive the amount of a cashier's check, teller's check, or
12 certified check that was lost, destroyed, or stolen.

13 c. "Declaration of loss" means a written statement, made
14 under penalty of perjury, to the effect that (i) the declarer
15 lost possession of a check, (ii) the declarer is the drawer or
16 payee of the check, in the case of a certified check, or the
17 remitter or payee of the check, in the case of a cashier's
18 check or teller's check, (iii) the loss of possession was not
19 the result of a transfer by the declarer or a lawful seizure,
20 and (iv) the declarer cannot reasonably obtain possession of
21 the check because the check was destroyed, its whereabouts
22 cannot be determined, or it is in the wrongful possession of
23 an unknown person or a person that cannot be found or is not
24 amenable to service of process.

25 d. "Obligated bank" means the issuer of a cashier's check
26 or teller's check or the acceptor of a certified check.

27 2. A claimant may assert a claim to the amount of a check
28 by a communication to the obligated bank describing the check
29 with reasonable certainty and requesting payment of the amount
30 of the check, if (i) the claimant is the drawer or payee of a
31 certified check or the remitter or payee of a cashier's check
32 or teller's check, (ii) the communication contains or is
33 accompanied by a declaration of loss of the claimant with
34 respect to the check, (iii) the communication is received at a
35 time and in a manner affording the bank a reasonable time to

1 act on it before the check is paid, and (iv) the claimant
2 provides reasonable identification if requested by the
3 obligated bank. Delivery of a declaration of loss is a
4 warranty of the truth of the statements made in the
5 declaration. If a claim is asserted in compliance with this
6 subsection, the following rules apply:

7 a. The claim becomes enforceable at the later of (i) the
8 time the claim is asserted, or (ii) the ninetieth day
9 following the date of the check, in the case of a cashier's
10 check or teller's check, or the ninetieth day following the
11 date of the acceptance, in the case of a certified check.

12 b. Until the claim becomes enforceable, it has no legal
13 effect and the obligated bank may pay the check or, in the
14 case of a teller's check, may permit the drawee to pay the
15 check. Payment to a person entitled to enforce the check
16 discharges all liability of the obligated bank with respect to
17 the check.

18 c. If the claim becomes enforceable before the check is
19 presented for payment, the obligated bank is not obliged to
20 pay the check.

21 d. When the claim becomes enforceable, the obligated bank
22 becomes obliged to pay the amount of the check to the claimant
23 if payment of the check has not been made to a person entitled
24 to enforce the check. Subject to section 554.4302, subsection
25 1, paragraph "a", payment to the claimant discharges all
26 liability of the obligated bank with respect to the check.

27 3. If the obligated bank pays the amount of a check to a
28 claimant under subsection 2, paragraph "d", and the check is
29 presented for payment by a person having rights of a holder in
30 due course, the claimant is obliged to (i) refund the payment
31 to the obligated bank if the check is paid, or (ii) pay the
32 amount of the check to the person having rights of a holder in
33 due course if the check is dishonored.

34 4. If a claimant has the right to assert a claim under
35 subsection 2 and is also a person entitled to enforce a

1 cashier's check, teller's check, or certified check which is
2 lost, destroyed, or stolen, the claimant may assert rights
3 with respect to the check either under this section or section
4 554.3309.

5 PART 4

6 LIABILITY OF PARTIES

7 Sec. 48. NEW SECTION. 554.3401 SIGNATURE.

8 1. A person is not liable on an instrument unless (i) the
9 person signed the instrument, or (ii) the person is
10 represented by an agent or representative who signed the
11 instrument and the signature is binding on the represented
12 person under section 554.3402.

13 2. A signature may be made (i) manually or by means of a
14 device or machine, and (ii) by the use of any name, including
15 a trade or assumed name, or by a word, mark, or symbol
16 executed or adopted by a person with present intention to
17 authenticate a writing.

18 Sec. 49. NEW SECTION. 554.3402 SIGNATURE BY
19 REPRESENTATIVE.

20 1. If a person acting, or purporting to act, as a
21 representative signs an instrument by signing either the name
22 of the represented person or the name of the signer, the
23 represented person is bound by the signature to the same
24 extent the represented person would be bound if the signature
25 were on a simple contract. If the represented person is
26 bound, the signature of the representative is the "authorized
27 signature of the represented person" and the represented
28 person is liable on the instrument, whether or not identified
29 in the instrument.

30 2. If a representative signs the name of the
31 representative to an instrument and the signature is an
32 authorized signature of the represented person, the following
33 rules apply:

34 a. If the form of the signature shows unambiguously that
35 the signature is made on behalf of the represented person who

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

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

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

20 Sec. 50. NEW SECTION. 554.3403 UNAUTHORIZED SIGNATURE.

21 1. Unless otherwise provided in this Article or Article 4,
22 an unauthorized signature is ineffective except as the
23 signature of the unauthorized signer in favor of a person who
24 in good faith pays the instrument or takes it for value. An
25 unauthorized signature may be ratified for all purposes of
26 this Article.

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

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

35 Sec. 51. NEW SECTION. 554.3404 IMPOSTORS -- FICTITIOUS

1 PAYEES.

2 1. If an impostor, by use of the mails or otherwise,
3 induces the issuer of an instrument to issue the instrument to
4 the impostor, or to a person acting in concert with the
5 impostor, by impersonating the payee of the instrument or a
6 person authorized to act for the payee, an endorsement of the
7 instrument by any person in the name of the payee is effective
8 as the endorsement of the payee in favor of a person who, in
9 good faith, pays the instrument or takes it for value or for
10 collection.

11 2. If (i) a person whose intent determines to whom an
12 instrument is payable (section 554.3110, subsection 1 or 2)
13 does not intend the person identified as payee to have any
14 interest in the instrument, or (ii) the person identified as
15 payee of an instrument is a fictitious person, the following
16 rules apply until the instrument is negotiated by special
17 endorsement:

18 a. Any person in possession of the instrument is its
19 holder.

20 b. An endorsement by any person in the name of the payee
21 stated in the instrument is effective as the endorsement of
22 the payee in favor of a person who, in good faith, pays the
23 instrument or takes it for value or for collection.

24 3. Under subsection 1 or 2, an endorsement is made in the
25 name of a payee if (i) it is made in a name substantially
26 similar to that of the payee or (ii) the instrument, whether
27 or not endorsed, is deposited in a depository bank to an
28 account in a name substantially similar to that of the payee.

29 4. With respect to an instrument to which subsection 1 or
30 2 applies, if a person paying the instrument or taking it for
31 value or for collection fails to exercise ordinary care in
32 paying or taking the instrument and that failure substantially
33 contributes to loss resulting from payment of the instrument,
34 the person bearing the loss may recover from the person
35 failing to exercise ordinary care to the extent the failure to

1 exercise ordinary care contributed to the loss.

2 Sec. 52. NEW SECTION. 554.3405 EMPLOYER'S RESPONSIBILITY
3 FOR FRAUDULENT ENDORSEMENT BY EMPLOYEE.

4 1. In this section:

5 a. "Employee" includes an independent contractor and
6 employee of an independent contractor retained by the
7 employer.

8 b. "Fraudulent endorsement" means (i) in the case of an
9 instrument payable to the employer, a forged endorsement
10 purporting to be that of the employer, or (ii) in the case of
11 an instrument with respect to which the employer is the
12 issuer, a forged endorsement purporting to be that of the
13 person identified as payee.

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

29 2. For the purpose of determining the rights and
30 liabilities of a person who, in good faith, pays an instrument
31 or takes it for value or for collection, if an employer
32 entrusted an employee with responsibility with respect to the
33 instrument and the employee or a person acting in concert with
34 the employee makes a fraudulent endorsement of the instrument,
35 the endorsement is effective as the endorsement of the person

1 to whom the instrument is payable if it is made in the name of
2 that person. If the person paying the instrument or taking it
3 for value or for collection fails to exercise ordinary care in
4 paying or taking the instrument and that failure substantially
5 contributes to loss resulting from the fraud, the person
6 bearing the loss may recover from the person failing to
7 exercise ordinary care to the extent the failure to exercise
8 ordinary care contributed to the loss.

9 3. Under subsection 2, an endorsement is made in the name
10 of the person to whom an instrument is payable if (i) it is
11 made in a name substantially similar to the name of that
12 person or (ii) the instrument, whether or not endorsed, is
13 deposited in a depository bank to an account in a name
14 substantially similar to the name of that person.

15 Sec. 53. NEW SECTION. 554.3406 NEGLIGENCE CONTRIBUTING
16 TO FORGED SIGNATURE OR ALTERATION OF INSTRUMENT.

17 1. A person whose failure to exercise ordinary care
18 substantially contributes to an alteration of an instrument or
19 to the making of a forged signature on an instrument is
20 precluded from asserting the alteration or the forgery against
21 a person who, in good faith, pays the instrument or takes it
22 for value or for collection.

23 2. Under subsection 1, if the person asserting the
24 preclusion fails to exercise ordinary care in paying or taking
25 the instrument and that failure substantially contributes to
26 loss, the loss is allocated between the person precluded and
27 the person asserting the preclusion according to the extent to
28 which the failure of each to exercise ordinary care
29 contributed to the loss.

30 3. Under subsection 1, the burden of proving failure to
31 exercise ordinary care is on the person asserting the
32 preclusion. Under subsection 2, the burden of proving failure
33 to exercise ordinary care is on the person precluded.

34 Sec. 54. NEW SECTION. 554.3407 ALTERATION.

35 1. "Alteration" means (i) an unauthorized change in an

1 instrument that purports to modify in any respect the
2 obligation of a party, or (ii) an unauthorized addition of
3 words or numbers or other change to an incomplete instrument
4 relating to the obligation of a party.

5 2. Except as provided in subsection 3, an alteration
6 fraudulently made discharges a party whose obligation is
7 affected by the alteration unless that party assents or is
8 precluded from asserting the alteration. No other alteration
9 discharges a party, and the instrument may be enforced
10 according to its original terms.

11 3. A payor bank or drawee paying a fraudulently altered
12 instrument or a person taking it for value, in good faith and
13 without notice of the alteration, may enforce rights with
14 respect to the instrument (i) according to its original terms,
15 or (ii) in the case of an incomplete instrument altered by
16 unauthorized completion, according to its terms as completed.

17 Sec. 55. NEW SECTION. 554.3408 DRAWEE NOT LIABLE ON
18 UNACCEPTED DRAFT.

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

23 Sec. 56. NEW SECTION. 554.3409 ACCEPTANCE OF DRAFT --
24 CERTIFIED CHECK.

25 1. "Acceptance" means the drawee's signed agreement to pay
26 a draft as presented. It must be written on the draft and may
27 consist of the drawee's signature alone. Acceptance may be
28 made at any time and becomes effective when notification
29 pursuant to instructions is given or the accepted draft is
30 delivered for the purpose of giving rights on the acceptance
31 to any person.

32 2. A draft may be accepted although it has not been signed
33 by the drawer, is otherwise incomplete, is overdue, or has
34 been dishonored.

35 3. If a draft is payable at a fixed period after sight and

1 the acceptor fails to date the acceptance, the holder may
2 complete the acceptance by supplying a date in good faith.

3 4. "Certified check" means a check accepted by the bank on
4 which it is drawn. Acceptance may be made as stated in
5 subsection 1 or by a writing on the check which indicates that
6 the check is certified. The drawee of a check has no
7 obligation to certify the check, and refusal to certify is not
8 dishonor of the check.

9 Sec. 57. NEW SECTION. 554.3410 ACCEPTANCE VARYING DRAFT.

10 1. If the terms of a drawee's acceptance vary from the
11 terms of the draft as presented, the holder may refuse the
12 acceptance and treat the draft as dishonored. In that case,
13 the drawee may cancel the acceptance.

14 2. The terms of a draft are not varied by an acceptance to
15 pay at a particular bank or place in the United States, unless
16 the acceptance states that the draft is to be paid only at
17 that bank or place.

18 3. If the holder assents to an acceptance varying the
19 terms of a draft, the obligation of each drawer and endorser
20 that does not expressly assent to the acceptance is
21 discharged.

22 Sec. 58. NEW SECTION. 554.3411 REFUSAL TO PAY CASHIER'S
23 CHECKS, TELLER'S CHECKS, AND CERTIFIED CHECKS.

24 1. In this section, "obligated bank" means the acceptor of
25 a certified check or the issuer of a cashier's check or
26 teller's check bought from the issuer.

27 2. If the obligated bank wrongfully (i) refuses to pay a
28 cashier's check or certified check, (ii) stops payment of a
29 teller's check, or (iii) refuses to pay a dishonored teller's
30 check, the person asserting the right to enforce the check is
31 entitled to compensation for expenses and loss of interest
32 resulting from the nonpayment and may recover consequential
33 damages if the obligated bank refuses to pay after receiving
34 notice of particular circumstances giving rise to the damages.

35 3. Expenses or consequential damages under subsection 2

1 are not recoverable if the refusal of the obligated bank to
2 pay occurs because (i) the bank suspends payments, (ii) the
3 obligated bank asserts a claim or defense of the bank that it
4 has reasonable grounds to believe is available against the
5 person entitled to enforce the instrument, (iii) the obligated
6 bank has a reasonable doubt whether the person demanding
7 payment is the person entitled to enforce the instrument, or
8 (iv) payment is prohibited by law.

9 Sec. 59. NEW SECTION. 554.3412 OBLIGATION OF ISSUER OF
10 NOTE OR CASHIER'S CHECK.

11 The issuer of a note or cashier's check or other draft
12 drawn on the drawer is obliged to pay the instrument (i)
13 according to its terms at the time it was issued or, if not
14 issued, at the time it first came into possession of a holder,
15 or (ii) if the issuer signed an incomplete instrument,
16 according to its terms when completed, to the extent stated in
17 sections 554.3115 and 554.3407. The obligation is owed to a
18 person entitled to enforce the instrument or to an endorser
19 who paid the instrument under section 554.3415.

20 Sec. 60. NEW SECTION. 554.3413 OBLIGATION OF ACCEPTOR.

21 1. The acceptor of a draft is obliged to pay the draft (i)
22 according to its terms at the time it was accepted, even
23 though the acceptance states that the draft is payable "as
24 originally drawn" or equivalent terms, (ii) if the acceptance
25 varies the terms of the draft, according to the terms of the
26 draft as varied, or (iii) if the acceptance is of a draft that
27 is an incomplete instrument, according to its terms when
28 completed, to the extent stated in sections 554.3115 and
29 554.3407. The obligation is owed to a person entitled to
30 enforce the draft or to the drawer or an endorser who paid the
31 draft under section 554.3414 or 554.3415.

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

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

5 Sec. 61. NEW SECTION. 554.3414 OBLIGATION OF DRAWER.

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

8 2. If an unaccepted draft is dishonored, the drawer is
9 obliged to pay the draft (i) according to its terms at the
10 time it was issued or, if not issued, at the time it first
11 came into possession of a holder, or (ii) if the drawer signed
12 an incomplete instrument, according to its terms when
13 completed, to the extent stated in sections 554.3115 and
14 554.3407. The obligation is owed to a person entitled to
15 enforce the draft or to an endorser who paid the draft under
16 section 554.3415.

17 3. If a draft is accepted by a bank, the drawer is
18 discharged, regardless of when or by whom acceptance was
19 obtained.

20 4. If a draft is accepted and the acceptor is not a bank,
21 the obligation of the drawer to pay the draft if the draft is
22 dishonored by the acceptor is the same as the obligation of an
23 endorser under section 554.3415, subsections 1 and 3.

24 5. If a draft states that it is drawn "without recourse"
25 or otherwise disclaims liability of the drawer to pay the
26 draft, the drawer is not liable under subsection 2 to pay the
27 draft if the draft is not a check. A disclaimer of the
28 liability stated in subsection 2 is not effective if the draft
29 is a check.

30 6. If (i) a check is not presented for payment or given to
31 a depository bank for collection within thirty days after its
32 date, (ii) the drawee suspends payments after expiration of
33 the thirty-day period without paying the check, and (iii)
34 because of the suspension of payments, the drawer is deprived
35 of funds maintained with the drawee to cover payment of the

1 check, the drawer to the extent deprived of funds may
2 discharge its obligation to pay the check by assigning to the
3 person entitled to enforce the check the rights of the drawer
4 against the drawee with respect to the funds.

5 Sec. 62. NEW SECTION. 554.3415 OBLIGATION OF ENDORSER.

6 1. Subject to subsections 2, 3, and 4 and to section
7 554.3419, subsection 4, if an instrument is dishonored, an
8 endorser is obliged to pay the amount due on the instrument
9 (i) according to the terms of the instrument at the time it
10 was endorsed, or (ii) if the endorser endorsed an incomplete
11 instrument, according to its terms when completed, to the
12 extent stated in sections 554.3115 and 554.3407. The
13 obligation of the endorser is owed to a person entitled to
14 enforce the instrument or to a subsequent endorser who paid
15 the instrument under this section.

16 2. If an endorsement states that it is made "without
17 recourse" or otherwise disclaims liability of the endorser,
18 the endorser is not liable under subsection 1 to pay the
19 instrument.

20 3. If notice of dishonor of an instrument is required by
21 section 554.3503 and notice of dishonor complying with that
22 section is not given to an endorser, the liability of the
23 endorser under subsection 1 is discharged.

24 4. If a draft is accepted by a bank after an endorsement
25 is made, the liability of the endorser under subsection 1 is
26 discharged.

27 5. If an endorser of a check is liable under subsection 1
28 and the check is not presented for payment, or given to a
29 depository bank for collection, within thirty days after the
30 day the endorsement was made, the liability of the endorser
31 under subsection 1 is discharged.

32 Sec. 63. NEW SECTION. 554.3416 TRANSFER WARRANTIES.

33 1. A person who transfers an instrument for consideration
34 warrants to the transferee and, if the transfer is by
35 endorsement, to any subsequent transferee that:

- 1 a. the warrantor is a person entitled to enforce the
- 2 instrument;
- 3 b. all signatures on the instrument are authentic and
- 4 authorized;
- 5 c. the instrument has not been altered;
- 6 d. the instrument is not subject to a defense or claim in
- 7 recoupment of any party which can be asserted against the
- 8 warrantor; and
- 9 e. the warrantor has no knowledge of any insolvency
- 10 proceeding commenced with respect to the maker or acceptor or,
- 11 in the case of an unaccepted draft, the drawer.

12 2. A person to whom the warranties under subsection 1 are

13 made and who took the instrument in good faith may recover

14 from the warrantor as damages for breach of warranty an amount

15 equal to the loss suffered as a result of the breach, but not

16 more than the amount of the instrument plus expenses and loss

17 of interest incurred as a result of the breach.

18 3. The warranties stated in subsection 1 cannot be

19 disclaimed with respect to checks. Unless notice of a claim

20 for breach of warranty is given to the warrantor within sixty

21 days after the claimant has reason to know of the breach and

22 the identity of the warrantor, the liability of the warrantor

23 under subsection 2 is discharged to the extent of any loss

24 caused by the delay in giving notice of the claim.

25 4. A cause of action for breach of warranty under this

26 section accrues when the claimant has reason to know of the

27 breach.

28 Sec. 64. NEW SECTION. 554.3417 PRESENTMENT WARRANTIES.

29 1. If an unaccepted draft is presented to the drawee for

30 payment or acceptance and the drawee pays or accepts the

31 draft, (i) the person obtaining payment or acceptance, at the

32 time of presentment, and (ii) a previous transferor of the

33 draft, at the time of transfer, warrant to the drawee making

34 payment or accepting the draft in good faith that:

35 a. the warrantor is, or was, at the time the warrantor

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

4 b. the draft has not been altered; and

5 c. the warrantor has no knowledge that the signature of
6 the drawer of the draft is unauthorized.

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

20 3. If a drawee asserts a claim for breach of warranty
21 under subsection 1 based on an unauthorized endorsement of the
22 draft or an alteration of the draft, the warrantor may defend
23 by proving that the endorsement is effective under section
24 554.3404 or 554.3405 or the drawer is precluded under section
25 554.3406 or 554.4406 from asserting against the drawee the
26 unauthorized endorsement or alteration.

27 4. If (i) a dishonored draft is presented for payment to
28 the drawer or an endorser or (ii) any other instrument is
29 presented for payment to a party obliged to pay the
30 instrument, and (iii) payment is received, the following rules
31 apply:

32 a. The person obtaining payment and a prior transferor of
33 the instrument warrant to the person making payment in good
34 faith that the warrantor is, or was, at the time the warrantor
35 transferred the instrument, a person entitled to enforce the

1 instrument or authorized to obtain payment on behalf of a
2 person entitled to enforce the instrument.

3 b. The person making payment may recover from any
4 warrantor for breach of warranty an amount equal to the amount
5 paid plus expenses and loss of interest resulting from the
6 breach.

7 5. The warranties stated in subsections 1 and 4 cannot be
8 disclaimed with respect to checks. Unless notice of a claim
9 for breach of warranty is given to the warrantor within sixty
10 days after the claimant has reason to know of the breach and
11 the identity of the warrantor, the liability of the warrantor
12 under subsection 2 or 4 is discharged to the extent of any
13 loss caused by the delay in giving notice of the claim.

14 6. A cause of action for breach of warranty under this
15 section accrues when the claimant has reason to know of the
16 breach.

17 Sec. 65. NEW SECTION. 554.3418 PAYMENT OR ACCEPTANCE BY
18 MISTAKE.

19 1. Except as provided in subsection 3, if the drawee of a
20 draft pays or accepts the draft and the drawee acted on the
21 mistaken belief that (i) payment of the draft had not been
22 stopped pursuant to section 554.4403 or (ii) the signature of
23 the drawer of the draft was authorized, the drawee may recover
24 the amount of the draft from the person to whom or for whose
25 benefit payment was made or, in the case of acceptance, may
26 revoke the acceptance. Rights of the drawee under this
27 subsection are not affected by failure of the drawee to
28 exercise ordinary care in paying or accepting the draft.

29 2. Except as provided in subsection 3, if an instrument
30 has been paid or accepted by mistake and the case is not
31 covered by subsection 1, the person paying or accepting may,
32 to the extent permitted by the law governing mistake and
33 restitution, (i) recover the payment from the person to whom
34 or for whose benefit payment was made or (ii) in the case of
35 acceptance, may revoke the acceptance.

1 3. The remedies provided by subsection 1 or 2 may not be
2 asserted against a person who took the instrument in good
3 faith and for value or who in good faith changed position in
4 reliance on the payment or acceptance. This subsection does
5 not limit remedies provided by section 554.3417 or 554.4407.

6 4. Notwithstanding section 554.4215, if an instrument is
7 paid or accepted by mistake and the payor or acceptor recovers
8 payment or revokes acceptance under subsection 1 or 2, the
9 instrument is deemed not to have been paid or accepted and is
10 treated as dishonored, and the person from whom payment is
11 recovered has rights as a person entitled to enforce the
12 dishonored instrument.

13 Sec. 66. NEW SECTION. 554.3419 INSTRUMENTS SIGNED FOR
14 ACCOMMODATION.

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

22 2. An accommodation party may sign the instrument as
23 maker, drawer, acceptor, or endorser and, subject to
24 subsection 4, is obliged to pay the instrument in the capacity
25 in which the accommodation party signs. The obligation of an
26 accommodation party may be enforced notwithstanding any
27 statute of frauds and whether or not the accommodation party
28 receives consideration for the accommodation.

29 3. A person signing an instrument is presumed to be an
30 accommodation party and there is notice that the instrument is
31 signed for accommodation if the signature is an anomalous
32 endorsement or is accompanied by words indicating that the
33 signer is acting as surety or guarantor with respect to the
34 obligation of another party to the instrument. Except as
35 provided in section 554.3605, the obligation of an

1 accommodation party to pay the instrument is not affected by
2 the fact that the person enforcing the obligation had notice
3 when the instrument was taken by that person that the
4 accommodation party signed the instrument for accommodation.

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

16 5. An accommodation party who pays the instrument is
17 entitled to reimbursement from the accommodated party and is
18 entitled to enforce the instrument against the accommodated
19 party. An accommodated party who pays the instrument has no
20 right of recourse against, and is not entitled to contribution
21 from, an accommodation party.

22 Sec. 67. NEW SECTION. 554.3420 CONVERSION OF INSTRUMENT.

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

33 2. In an action under subsection 1, the measure of
34 liability is presumed to be the amount payable on the
35 instrument, but recovery may not exceed the amount of the

1 plaintiff's interest in the instrument.

2 3. A representative, other than a depository bank, who has
3 in good faith dealt with an instrument or its proceeds on
4 behalf of one who was not the person entitled to enforce the
5 instrument is not liable in conversion to that person beyond
6 the amount of any proceeds that it has not paid out.

7 PART 5

8 DISHONOR

9 Sec. 68. NEW SECTION. 554.3501 PRESENTMENT.

10 1. "Presentment" means a demand made by or on behalf of a
11 person entitled to enforce an instrument (i) to pay the
12 instrument made to the drawee or a party obliged to pay the
13 instrument or, in the case of a note or accepted draft payable
14 at a bank, to the bank, or (ii) to accept a draft made to the
15 drawee.

16 2. The following rules are subject to Article 4, agreement
17 of the parties, and clearing-house rules and the like:

18 a. Presentment may be made at the place of payment of the
19 instrument and must be made at the place of payment if the
20 instrument is payable at a bank in the United States; may be
21 made by any commercially reasonable means, including an oral,
22 written, or electronic communication; is effective when the
23 demand for payment or acceptance is received by the person to
24 whom presentment is made; and is effective if made to any one
25 of two or more makers, acceptors, drawees, or other payors.

26 b. Upon demand of the person to whom presentment is made,
27 the person making presentment must (i) exhibit the instrument,
28 (ii) give reasonable identification and, if presentment is
29 made on behalf of another person, reasonable evidence of
30 authority to do so, and (iii) sign a receipt on the instrument
31 for any payment made or surrender the instrument if full
32 payment is made.

33 c. Without dishonoring the instrument, the party to whom
34 presentment is made may (i) return the instrument for lack of
35 a necessary endorsement, or (ii) refuse payment or acceptance

1 for failure of the presentment to comply with the terms of the
2 instrument, an agreement of the parties, or other applicable
3 law or rule.

4 d. The party to whom presentment is made may treat
5 presentment as occurring on the next business day after the
6 day of presentment if the party to whom presentment is made
7 has established a cut-off hour not earlier than two p.m. for
8 the receipt and processing of instruments presented for
9 payment or acceptance and presentment is made after the cut-
10 off hour.

11 Sec. 69. NEW SECTION. 554.3502 DISHONOR.

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

13 a. If the note is payable on demand, the note is
14 dishonored if presentment is duly made to the maker and the
15 note is not paid on the day of presentment.

16 b. If the note is not payable on demand and is payable at
17 or through a bank or the terms of the note require
18 presentment, the note is dishonored if presentment is duly
19 made and the note is not paid on the day it becomes payable or
20 the day of presentment, whichever is later.

21 c. If the note is not payable on demand and paragraph "b"
22 does not apply, the note is dishonored if it is not paid on
23 the day it becomes payable.

24 2. Dishonor of an unaccepted draft other than a
25 documentary draft is governed by the following rules:

26 a. If a check is duly presented for payment to the payor
27 bank otherwise than for immediate payment over the counter,
28 the check is dishonored if the payor bank makes timely return
29 of the check or sends timely notice of dishonor or nonpayment
30 under section 554.4301 or 554.4302, or becomes accountable for
31 the amount of the check under section 554.4302.

32 b. If a draft is payable on demand and paragraph a does
33 not apply, the draft is dishonored if presentment for payment
34 is duly made to the drawee and the draft is not paid on the
35 day of presentment.

1 c. If a draft is payable on a date stated in the draft,
2 the draft is dishonored if (i) presentment for payment is duly
3 made to the drawee and payment is not made on the day the
4 draft becomes payable or the day of presentment, whichever is
5 later, or (ii) presentment for acceptance is duly made before
6 the day the draft becomes payable and the draft is not
7 accepted on the day of presentment.

8 d. If a draft is payable on elapse of a period of time
9 after sight or acceptance, the draft is dishonored if
10 presentment for acceptance is duly made and the draft is not
11 accepted on the day of presentment.

12 3. Dishonor of an unaccepted documentary draft occurs
13 according to the rules stated in subsection 2, paragraphs "b",
14 "c", and "d", except that payment or acceptance may be delayed
15 without dishonor until no later than the close of the third
16 business day of the drawee following the day on which payment
17 or acceptance is required by those paragraphs.

18 4. Dishonor of an accepted draft is governed by the
19 following rules:

20 a. If the draft is payable on demand, the draft is
21 dishonored if presentment for payment is duly made to the
22 acceptor and the draft is not paid on the day of presentment.

23 b. If the draft is not payable on demand, the draft is
24 dishonored if presentment for payment is duly made to the
25 acceptor and payment is not made on the day it becomes payable
26 or the day of presentment, whichever is later.

27 5. In any case in which presentment is otherwise required
28 for dishonor under this section and presentment is excused
29 under section 554.3504, dishonor occurs without presentment if
30 the instrument is not duly accepted or paid.

31 6. If a draft is dishonored because timely acceptance of
32 the draft was not made and the person entitled to demand
33 acceptance consents to a late acceptance, from the time of
34 acceptance the draft is treated as never having been
35 dishonored.

1 Sec. 70. NEW SECTION. 554.3503 NOTICE OF DISHONOR.

2 1. The obligation of an endorser stated in section
3 554.3415, subsection 1 and the obligation of a drawer stated
4 in section 554.3414, subsection 4, may not be enforced unless
5 (i) the endorser or drawer is given notice of dishonor of the
6 instrument complying with this section or (ii) notice of
7 dishonor is excused under section 554.3504, subsection 2.

8 2. Notice of dishonor may be given by any person; may be
9 given by any commercially reasonable means, including an oral,
10 written, or electronic communication; and is sufficient if it
11 reasonably identifies the instrument and indicates that the
12 instrument has been dishonored or has not been paid or
13 accepted. Return of an instrument given to a bank for
14 collection is sufficient notice of dishonor.

15 3. Subject to section 554.3504, subsection 3, with respect
16 to an instrument taken for collection by a collecting bank,
17 notice of dishonor must be given (i) by the bank before
18 midnight of the next banking day following the banking day on
19 which the bank receives notice of dishonor of the instrument,
20 or (ii) by any other person within thirty days following the
21 day on which the person receives notice of dishonor. With
22 respect to any other instrument, notice of dishonor must be
23 given within thirty days following the day on which dishonor
24 occurs.

25 Sec. 71. NEW SECTION. 554.3504 EXCUSED PRESENTMENT AND
26 NOTICE OF DISHONOR.

27 1. Presentment for payment or acceptance of an instrument
28 is excused if (i) the person entitled to present the
29 instrument cannot with reasonable diligence make presentment,
30 (ii) the maker or acceptor has repudiated an obligation to pay
31 the instrument or is dead or in insolvency proceedings, (iii)
32 by the terms of the instrument presentment is not necessary to
33 enforce the obligation of endorsers or the drawer, (iv) the
34 drawer or endorser whose obligation is being enforced has
35 waived presentment or otherwise has no reason to expect or

1 right to require that the instrument be paid or accepted, or
2 (v) the drawer instructed the drawee not to pay or accept the
3 draft or the drawee was not obligated to the drawer to pay the
4 draft.

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

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

16 Sec. 72. NEW SECTION. 554.3505 EVIDENCE OF DISHONOR.

17 1. The following are admissible as evidence and create a
18 presumption of dishonor and of any notice of dishonor stated:

19 a. a document regular in form as provided in subsection 2
20 which purports to be a protest;

21 b. a purported stamp or writing of the drawee, payor bank,
22 or presenting bank on or accompanying the instrument stating
23 that acceptance or payment has been refused unless reasons for
24 the refusal are stated and the reasons are not consistent with
25 dishonor;

26 c. a book or record of the drawee, payor bank, or
27 collecting bank, kept in the usual course of business which
28 shows dishonor, even if there is no evidence of who made the
29 entry.

30 2. A protest is a certificate of dishonor made by a United
31 States consul or vice consul, or a notary public or other
32 person authorized to administer oaths by the law of the place
33 where dishonor occurs. It may be made upon information
34 satisfactory to that person. The protest must identify the
35 instrument and certify either that presentment has been made

1 or, if not made, the reason why it was not made, and that the
2 instrument has been dishonored by nonacceptance or nonpayment.
3 The protest may also certify that notice of dishonor has been
4 given to some or all parties.

5

PART 6

6

DISCHARGE AND PAYMENT

7

Sec. 73. NEW SECTION. 554.3601 DISCHARGE AND EFFECT OF
8 DISCHARGE.

9 1. The obligation of a party to pay the instrument is
10 discharged as stated in this Article or by an act or agreement
11 with the party which would discharge an obligation to pay
12 money under a simple contract.

13 2. Discharge of the obligation of a party is not effective
14 against a person acquiring rights of a holder in due course of
15 the instrument without notice of the discharge.

16 Sec. 74. NEW SECTION. 554.3602 PAYMENT.

17 1. Subject to subsection 2, an instrument is paid to the
18 extent payment is made (i) by or on behalf of a party obliged
19 to pay the instrument, and (ii) to a person entitled to
20 enforce the instrument. To the extent of the payment, the
21 obligation of the party obliged to pay the instrument is
22 discharged even though payment is made with knowledge of a
23 claim to the instrument under section 554.3306 by another
24 person.

25 2. The obligation of a party to pay the instrument is not
26 discharged under subsection 1 if:

27 a. a claim to the instrument under section 554.3306 is
28 enforceable against the party receiving payment and (i)
29 payment is made with knowledge by the payor that payment is
30 prohibited by injunction or similar process of a court of
31 competent jurisdiction, or (ii) in the case of an instrument
32 other than a cashier's check, teller's check, or certified
33 check, the party making payment accepted, from the person
34 having a claim to the instrument, indemnity against loss
35 resulting from refusal to pay the person entitled to enforce

1 the instrument; or

2 b. the person making payment knows that the instrument is
3 a stolen instrument and pays a person it knows is in wrongful
4 possession of the instrument.

5 Sec. 75. NEW SECTION. 554.3603 TENDER OF PAYMENT.

6 1. If tender of payment of an obligation to pay an
7 instrument is made to a person entitled to enforce the
8 instrument, the effect of tender is governed by principles of
9 law applicable to tender of payment under a simple contract.

10 2. If tender of payment of an obligation to pay an
11 instrument is made to a person entitled to enforce the
12 instrument and the tender is refused, there is discharge, to
13 the extent of the amount of the tender, of the obligation of
14 an endorser or accommodation party having a right of recourse
15 with respect to the obligation to which the tender relates.

16 3. If tender of payment of an amount due on an instrument
17 is made to a person entitled to enforce the instrument, the
18 obligation of the obligor to pay interest after the due date
19 on the amount tendered is discharged. If presentment is
20 required with respect to an instrument and the obligor is able
21 and ready to pay on the due date at every place of payment
22 stated in the instrument, the obligor is deemed to have made
23 tender of payment on the due date to the person entitled to
24 enforce the instrument.

25 Sec. 76. NEW SECTION. 554.3604 DISCHARGE BY CANCELLATION
26 OR RENUNCIATION.

27 1. A person entitled to enforce an instrument, with or
28 without consideration, may discharge the obligation of a party
29 to pay the instrument (i) by an intentional voluntary act,
30 such as surrender of the instrument to the party, destruction,
31 mutilation, or cancellation of the instrument, cancellation or
32 striking out of the party's signature, or the addition of
33 words to the instrument indicating discharge, or (ii) by
34 agreeing not to sue or otherwise renouncing rights against the
35 party by a signed writing.

1 2. Cancellation or striking out of an endorsement pursuant
2 to subsection 1 does not affect the status and rights of a
3 party derived from the endorsement.

4 Sec. 77. NEW SECTION. 554.3605 DISCHARGE OF ENDORSERS
5 AND ACCOMMODATION PARTIES.

6 1. In this section, the term "endorser" includes a drawer
7 having the obligation described in section 554.3414,
8 subsection 4.

9 2. Discharge, under section 554.3604, of the obligation of
10 a party to pay an instrument does not discharge the obligation
11 of an endorser or accommodation party having a right of
12 recourse against the discharged party.

13 3. If a person entitled to enforce an instrument agrees,
14 with or without consideration, to an extension of the due date
15 of the obligation of a party to pay the instrument, the
16 extension discharges an endorser or accommodation party having
17 a right of recourse against the party whose obligation is
18 extended to the extent the endorser or accommodation party
19 proves that the extension caused loss to the endorser or
20 accommodation party with respect to the right of recourse.

21 4. If a person entitled to enforce an instrument agrees,
22 with or without consideration, to a material modification of
23 the obligation of a party other than an extension of the due
24 date, the modification discharges the obligation of an
25 endorser or accommodation party having a right of recourse
26 against the person whose obligation is modified to the extent
27 the modification causes loss to the endorser or accommodation
28 party with respect to the right of recourse. The loss
29 suffered by the endorser or accommodation party as a result of
30 the modification is equal to the amount of the right of
31 recourse unless the person enforcing the instrument proves
32 that no loss was caused by the modification or that the loss
33 caused by the modification was an amount less than the amount
34 of the right of recourse.

35 5. If the obligation of a party to pay an instrument is

1 secured by an interest in collateral and a person entitled to
2 enforce the instrument impairs the value of the interest in
3 collateral, the obligation of an endorser or accommodation
4 party having a right of recourse against the obligor is
5 discharged to the extent of the impairment. The value of an
6 interest in collateral is impaired to the extent (i) the value
7 of the interest is reduced to an amount less than the amount
8 of the right of recourse of the party asserting discharge, or
9 (ii) the reduction in value of the interest causes an increase
10 in the amount by which the amount of the right of recourse
11 exceeds the value of the interest. The burden of proving
12 impairment is on the party asserting discharge.

13 6. If the obligation of a party is secured by an interest
14 in collateral not provided by an accommodation party and a
15 person entitled to enforce the instrument impairs the value of
16 the interest in collateral, the obligation of any party who is
17 jointly and severally liable with respect to the secured
18 obligation is discharged to the extent the impairment causes
19 the party asserting discharge to pay more than that party
20 would have been obliged to pay, taking into account rights of
21 contribution, if impairment had not occurred. If the party
22 asserting discharge is an accommodation party not entitled to
23 discharge under subsection 5, the party is deemed to have a
24 right to contribution based on joint and several liability
25 rather than a right to reimbursement. The burden of proving
26 impairment is on the party asserting discharge.

27 7. Under subsection 5 or 6, impairing value of an interest
28 in collateral includes (i) failure to obtain or maintain
29 perfection or recordation of the interest in collateral, (ii)
30 release of collateral without substitution of collateral of
31 equal value, (iii) failure to perform a duty to preserve the
32 value of collateral owed, under Article 9 or other law, to a
33 debtor or surety or other person secondarily liable, or (iv)
34 failure to comply with applicable law in disposing of
35 collateral.

1 8. An accommodation party is not discharged under
2 subsection 3, 4, or 5 unless the person entitled to enforce
3 the instrument knows of the accommodation or has notice under
4 section 554.3419, subsection 3, that the instrument was signed
5 for accommodation.

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

13 Sec. 78. Section 554.4101, Code 1993, is amended to read
14 as follows:

15 554.4101 SHORT TITLE.

16 This Article ~~shall be known and~~ may be cited as Uniform
17 Commercial Code -- Bank Deposits and Collections.

18 Sec. 79. Section 554.4102, Code 1993, is amended to read
19 as follows:

20 554.4102 APPLICABILITY.

21 1. To the extent that items within this Article are also
22 ~~within the scope of~~ Articles 3 and 8, they are subject to the
23 provisions of those Articles. ~~In the event of~~ If there is
24 conflict, the provisions of this Article ~~govern those of~~
25 governs Article 3, ~~but the provisions of~~ Article 8 govern
26 ~~those of~~ governs this Article.

27 2. The liability of a bank for action or nonaction with
28 respect to any an item handled by it for purposes of
29 presentment, payment, or collection is governed by the law of
30 the place where the bank is located. In the case of action or
31 nonaction by or at a branch or separate office of a bank, its
32 liability is governed by the law of the place where the branch
33 or separate office is located.

34 Sec. 80. Section 554.4103, Code 1993, is amended to read
35 as follows:

1 554.4103 VARIATION BY AGREEMENT -- MEASURE OF DAMAGES --
2 CERTAIN ACTION CONSTITUTING ORDINARY CARE.

3 1. The effect of the provisions of this Article may be
4 varied by agreement ~~except-that-no-agreement-can,~~ but the
5 parties to the agreement cannot disclaim a bank's
6 responsibility for its own lack of good faith or failure to
7 exercise ordinary care or ~~can~~ limit the measure of damages for
8 ~~such the~~ lack or failure, but. However, the parties may
9 determine by agreement ~~determine~~ the standards by which ~~such~~
10 the bank's responsibility is to be measured if ~~such~~ those
11 standards are not manifestly unreasonable.

12 2. Federal Reserve regulations and operating ~~letters~~
13 circulars, clearing house rules, and the like, have the effect
14 of agreements under subsection 1, whether or not specifically
15 assented to by all parties interested in items handled.

16 3. Action or nonaction approved by this Article or
17 pursuant to Federal Reserve regulations or operating ~~letters~~
18 ~~constitutes~~ circulars is the exercise of ordinary care and, in
19 the absence of special instructions, action or nonaction
20 consistent with clearing house rules and the like or with a
21 general banking usage not disapproved by this Article, is
22 prima facie ~~constitutes~~ the exercise of ordinary care.

23 4. The specification or approval of certain procedures by
24 this Article ~~does-not-constitute~~ is not disapproval of other
25 procedures ~~which that~~ may be reasonable under the
26 circumstances.

27 5. The measure of damages for failure to exercise ordinary
28 care in handling an item is the amount of the item reduced by
29 an amount ~~which that~~ could not have been realized by the ~~use~~
30 exercise of ordinary care, ~~and where.~~ If there is also bad
31 faith it includes any other damages, ~~if any, suffered by~~ the
32 party suffered as a proximate consequence.

33 Sec. 81. Section 554.4104, Code 1993, is amended to read
34 as follows:

35 554.4104 DEFINITIONS AND INDEX OF DEFINITIONS.

- 1 1. In this Article, unless the context otherwise requires:
2 a. "Account" means any deposit or credit account with a
3 bank and includes, including a checking, time, interest or
4 savings-account demand, time, savings, passbook, share draft,
5 or like account, other than an account evidenced by a
6 certificate of deposit;
7 b. "Afternoon" means the period of a day between noon and
8 midnight;
9 c. "Banking day" means that the part of any a day on which
10 a bank is open to the public for carrying on substantially all
11 of its banking functions but for the purposes of determining a
12 bank's midnight deadline, shall not include Saturday, Sunday,
13 or any holiday when the federal reserve banks are not
14 performing check clearing functions;
15 d. "Clearing house" means any an association of banks or
16 other payors regularly clearing items;
17 e. "Customer" means any a person having an account with a
18 bank or for whom a bank has agreed to collect items and
19 includes, including a bank carrying that maintains an account
20 with at another bank;
21 f. "Documentary draft" means any-negotiable-or
22 nonnegotiable-draft-with-accompanying-documents,-securities-or
23 other-papers-to-be-delivered-against-honor-of-the-draft a
24 draft to be presented for acceptance or payment if specified
25 documents, certificated securities (section 554.8102) or
26 instructions for uncertificated securities (section 554.8308)
27 or other certificates, statements, or the like are to be
28 received by the drawee or other payor before acceptance or
29 payment of the draft;
30 g. "Draft" means a draft as defined in section 554.3104 or
31 an item, other than an instrument, that is an order;
32 h. "Drawee" means a person ordered in a draft to make
33 payment;
34 i. "Item" means any-instrument-for-the-payment-of-money
35 even-though-it-is-not-negotiable-but-does-not-include-money an

1 instrument or a promise or order to pay money handled by a
2 bank for collection or payment. The term does not include a
3 payment order governed by Article 12 or a credit or debit card
4 slip;

5 h j. "Midnight deadline" with respect to a bank is
6 midnight on its next banking day following the banking day on
7 which it receives the relevant item or notice or from which
8 the time for taking action commences to run, whichever is
9 later;

10 ~~i. -- "Properly payable" includes the availability of funds~~
11 ~~for payment at the time of decision to pay or dishonor;~~

12 j k. "Settle" means to pay in cash, by clearing house
13 settlement, in a charge or credit or by remittance, or
14 otherwise as instructed agreed. A settlement may be either
15 provisional or final;

16 k l. "Suspends payments" with respect to a bank means that
17 it has been closed by order of the supervisory authorities,
18 that a public officer has been appointed to take it over, or
19 that it ceases or refuses to make payments in the ordinary
20 course of business.

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

23 <u>"Agreement for electronic presentment".</u>	<u>Section 554.4110.</u>
24 <u>"Bank".</u>	<u>Section 554.4105.</u>
25 <u>"Collecting bank".</u>	<u>Section 554.4105.</u>
26 <u>"Depository bank".</u>	<u>Section 554.4105.</u>
27 <u>"Intermediary bank".</u>	<u>Section 554.4105.</u>
28 <u>"Payor bank".</u>	<u>Section 554.4105.</u>
29 <u>"Presenting bank".</u>	<u>Section 554.4105.</u>
30 "Remitting bank".	Section 554.4105.
31 <u>"Presentment notice".</u>	<u>Section 554.4110.</u>

32 3. The following definitions in other Articles apply to
33 this Article:

34 "Acceptance".	Section 554.3410
35	<u>554.3409.</u>

1	<u>"Alteration".</u>	Section 554.3407.
2	<u>"Cashiers check".</u>	Section 554.3104.
3	<u>"Certificate of deposit".</u>	Section 554.3104.
4	"Certification".-----	Section 554.3411.
5	<u>"Certified check".</u>	Section 554.3409.
6	<u>"Check".</u>	Section 554.3104.
7	<u>"Draft".</u>	Section 554.3104.
8	<u>"Good faith".</u>	Section 554.3103.
9	<u>"Holder in due course".</u>	Section 554.3302.
10	<u>"Instrument".</u>	Section 554.3104.
11	<u>"Notice of dishonor".</u>	Section 554.3508
12		<u>554.3503.</u>
13	<u>"Order".</u>	Section 554.3103.
14	<u>"Ordinary care".</u>	Section 554.3103.
15	<u>"Person entitle to enforce".</u>	Section 554.3301.
16	<u>"Presentment".</u>	Section 554.3504
17		<u>554.3501.</u>
18	"Protest".-----	Section 554.3509.
19	"Secondary-party".-----	Section 554.3102.
20	<u>"Promise".</u>	Section 554.3103.
21	<u>"Prove".</u>	Section 554.3103.
22	<u>"Teller's check".</u>	Section 554.3104.
23	<u>"Unauthorized signature".</u>	Section 554.3403.

24 4. In addition Article 1 contains general definitions and
25 principles of construction and interpretation applicable
26 throughout this Article.

27 Sec. 82. Section 554.4105, Code 1993, is amended to read
28 as follows:

29 554.4105 "BANK" -- "DEPOSITARY BANK" -- "INTERMEDIARY
30 BANK" -- "COLLECTING BANK" -- "PAYOR BANK" -- "PRESENTING
31 BANK"----"REMITTING-BANK".

32 In this Article ~~unless the context otherwise requires:~~

33 1. "Bank" means a person engaged in the business of
34 banking, including a savings bank, savings and loan
35 association, credit union, or trust company;

1 a 2. "Depository bank" means the first bank to which take
2 an item is ~~transferred-for-collection~~ even though it is also
3 the payor bank, unless the item is presented for immediate
4 payment over the counter;

5 b 3. "Payor bank" means a bank ~~by-which-an-item-is-payable~~
6 ~~as-drawn-or-accepted~~ that is the drawee of the draft;

7 c 4. "Intermediary bank" means any a bank to which an item
8 is transferred in course of collection except the depository
9 or payor bank;

10 d 5. "Collecting bank" means any a bank handling the an
11 item for collection except the payor bank;

12 e 6. "Presenting bank" means any a bank presenting an item
13 except a payor bank;

14 ~~f.---"Remitting-bank"-means-any-payor-or-intermediary-bank~~
15 ~~remitting-for-an-item.~~

16 Sec. 83. Section 554.4106, Code 1993, is amended to read
17 as follows:

18 554.4106 SEPARATE OFFICE OF A BANK.

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

24 Sec. 84. Section 554.4107, Code 1993, is amended to read
25 as follows:

26 554.4107 TIME OF RECEIPT OF ITEMS.

27 1. For the purpose of allowing time to process items,
28 prove balances, and make the necessary entries on its books to
29 determine its position for the day, a bank may fix an
30 afternoon hour of two P.M. or later as a cutoff hour for the
31 handling of money and items and the making of entries on its
32 books.

33 2. Any An item or deposit of money received on any day
34 after a cutoff hour so fixed or after the close of the banking
35 day may be treated as being received at the opening of the

1 next banking day.

2 Sec. 85. Section 554.4108, Code 1993, is amended to read
3 as follows:

4 554.4108 DELAYS.

5 1. Unless otherwise instructed, a collecting bank in a
6 good faith effort to secure payment ~~may, in the case of a~~
7 ~~specific items~~ item drawn on a payor other than a bank, and
8 with or without the approval of any person involved, may
9 waive, modify, or extend time limits imposed or permitted by
10 this chapter for a period not ~~in excess of an~~ exceeding two
11 additional banking day days without discharge of secondary
12 parties-and-without drawers or endorsers or liability to its
13 transferor or any a prior party.

14 2. Delay by a collecting bank or payor bank beyond time
15 limits prescribed or permitted by this chapter or by
16 instructions is excused if (i) the delay is caused by
17 interruption of communication facilities, suspension of
18 payments by another bank, war, emergency conditions, failure
19 of equipment, or other circumstances beyond the control of the
20 bank ~~provided-it~~ and (ii) the bank exercises such diligence as
21 the circumstances require.

22 Sec. 86. NEW SECTION. 554.4110 ELECTRONIC PRESENTMENT.

23 1. "Agreement for electronic presentment" means an
24 agreement, clearing-house rule, or federal reserve regulation
25 or operating circular, providing that presentment of an item
26 may be made by transmission of an image of an item or
27 information describing the item ("presentment notice") rather
28 than delivery of the item itself. The agreement may provide
29 for procedures governing retention, presentment, payment,
30 dishonor, and other matters concerning items subject to the
31 agreement.

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

34 3. If presentment is made by presentment notice, a
35 reference to "item" or "check" in the Article means the

1 presentment notice unless the context otherwise indicates.

2 Sec. 87. NEW SECTION. 554.4111 PAYABLE THROUGH OR
3 PAYABLE AT BANK -- COLLECTING BANK.

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

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

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

*17 Sec. 88. Section 554.4201, Code 1993, is amended to read
18 as follows:

19 554.4201 PRESUMPTION-AND-DURATION-OF-AGENCY STATUS OF
20 COLLECTING BANKS AS AGENT AND PROVISIONAL STATUS OF CREDITS --
21 APPLICABILITY OF ARTICLE -- ITEM ENDORSED "PAY ANY BANK".

22 1. Unless a contrary intent clearly appears and prior-to
23 before the time that a settlement given by a collecting bank
24 for an item is or becomes final, ~~{subsection-3-of-section~~
25 ~~554.4211-and-sections-554.4212-and-554.4213}~~ the bank, with
26 respect to the item, is an agent or subagent of the owner of
27 the item and any settlement given for the item is provisional.
28 This provision applies regardless of the form of endorsement
29 or lack of endorsement and even though credit given for the
30 item is subject to immediate withdrawal as of right or is in
31 fact withdrawn; but the continuance of ownership of an item by
32 its owner and any rights of the owner to proceeds of the item
33 are subject to rights of a collecting bank, such as those
34 resulting from outstanding advances on the item and ~~valid~~
35 rights of recoupment or setoff. When If an item is handled by

1 banks for purposes of presentment, payment, and collection, or
2 return, the relevant provisions of this Article apply even
3 though action of the parties clearly establishes that a
4 particular bank has purchased the item and is the owner of it.

5 2. After an item has been endorsed with the words "pay any
6 bank" or the like, only a bank may acquire the rights of a
7 holder until the item has been:

8 a. ~~until the item has been~~ returned to the customer
9 initiating collection; or

10 b. ~~until the item has been~~ specially endorsed by a bank to
11 a person who is not a bank.

12 Sec. 89. Section 554.4202, Code 1993, is amended to read
13 as follows:

14 554.4202 RESPONSIBILITY FOR COLLECTION OR RETURN -- WHEN
15 ACTION SEASONABLE TIMELY.

16 1. A collecting bank must use exercise ordinary care in:

17 a. presenting an item or sending it for presentment; and

18 b. sending notice of dishonor or nonpayment or returning
19 an item other than a documentary draft to the bank's

20 transferor ~~or directly to the depository bank under subsection~~

21 ~~2 of section 554.4212~~ after learning that the item has not
22 been paid or accepted, as the case may be; and

23 c. settling for an item when the bank receives final
24 settlement; and

25 d. ~~making or providing for any necessary protest; and~~

26 e. notifying its transferor of any loss or delay in
27 transit within a reasonable time after discovery thereof.

28 2. A collecting bank ~~taking proper action before its~~
29 ~~midnight deadline following receipt of an item; notice or~~
30 ~~payment acts seasonably; taking proper action within a~~
31 ~~reasonably longer time may be seasonable but the bank has the~~
32 ~~burden of so establishing~~ exercises ordinary care under

33 subsection 1 by taking proper action before its midnight
34 deadline following receipt of an item, notice, or settlement.

35 Taking proper action within a reasonably longer time may

1 constitute the exercise of ordinary care, but the bank has the
2 burden of establishing timeliness.

3 3. Subject to subsection 1, paragraph "a" a bank is not
4 liable for the insolvency, neglect, misconduct, mistake, or
5 default of another bank or person or for loss or destruction
6 of an item in the possession of others or in transit or-in-the
7 possession-of-others.

8 Sec. 90. Section 554.4203, Code 1993, is amended to read
9 as follows:

10 554.4203 EFFECT OF INSTRUCTIONS.

11 Subject to ~~the provisions of~~ Article 3 concerning
12 conversion of instruments (section ~~554.3419~~ 554.3420) and the
13 ~~provisions of both Article 3 and this Article concerning~~
14 restrictive endorsements (section 554.3206) only a collecting
15 bank's transferor can give instructions which that affect the
16 bank or constitute notice to it, and a collecting bank is not
17 liable to prior parties for any action taken pursuant to ~~such~~
18 the instructions or in accordance with any agreement with its
19 transferor.

20 Sec. 91. Section 554.4204, Code 1993, is amended to read
21 as follows:

22 554.4204 METHODS OF SENDING AND PRESENTING -- SENDING
23 ~~DIRECT~~ DIRECTLY TO PAYOR BANK.

24 1. A collecting bank ~~must~~ shall send items by a reasonably
25 prompt method, taking into consideration any relevant
26 instructions, the nature of the item, the number of ~~such~~ those
27 items on hand, and the cost of collection involved, and the
28 method generally used by it or others to present ~~such~~ those
29 items.

30 2. A collecting bank may send:

31 a. any an item ~~direct~~ directly to the payor bank;

32 b. any an item to any a nonbank payor if authorized by its
33 transferor; and

34 c. any an item other than documentary drafts to any
35 nonbank payor, if authorized by Federal Reserve regulation or

1 operating letter circular, clearing house rule, or the like.

2 3. Presentment may be made by a presenting bank at a place
3 where the payor bank or other payor has requested that
4 presentment be made.

5 Sec. 92. Section 554.4205, Code 1993, is amended by
6 striking the section and inserting in lieu thereof the
7 following:

8 554.4205 DEPOSITORY BANK HOLDER OF UNENDORSED ITEM.

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

11 1. The depository bank becomes a holder of the item at the
12 time it receives the item for collection if the customer at
13 the time of delivery was a holder of the item, whether or not
14 the customer endorse the item, and, if the bank satisfies the
15 other requirements of section 554.3302, it is a holder in due
16 course; and

17 2. The depository bank warrants to collecting banks, the
18 payor bank or other payor, and the drawer that the amount of
19 the item was paid to the customer or deposited to the
20 customer's account.

21 Sec. 93. Section 554.4206, Code 1993, is amended to read
22 as follows:

23 554.4206 TRANSFER BETWEEN BANKS.

24 Any agreed method which that identifies the transferor bank
25 is sufficient for the item's further transfer to another bank.

26 Sec. 94. Section 554.4207, Code 1993, is amended by
27 striking the section and inserting in lieu thereof the
28 following:

29 554.4207 TRANSFER WARRANTIES.

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

33 a. the warrantor is a person entitled to enforce the item;

34 b. all signatures on the item are authentic and

35 authorized;

1 c. the item has not been altered;

2 d. the item is not subject to a defense or claim in
3 recoupment (section 554.3305, subsection 1) of any party than
4 can be asserted against the warrantor; and

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

8 2. If an item is dishonored, a customer or collecting bank
9 transferring the item and receiving settlement or other
10 consideration is obliged to pay the amount due on the item (i)
11 according to the terms of the item at the time it was
12 transferred, or (ii) if the transfer was an incomplete item,
13 according to its terms when completed as stated in sections
14 554.3115 and 554.3407. The obligation of a transferor is owed
15 to the transferee and to any subsequent collecting bank that
16 takes the item in good faith. A transferor cannot disclaim
17 its obligation under this subsection by an endorsement stating
18 that it is made "without recourse" or otherwise disclaiming
19 liability.

20 3. A person to whom the warranties under subsection 1 are
21 made and who took the item in good faith may recover from the
22 warrantor as damages for breach of warranty an amount equal to
23 the loss suffered as a result of the breach, but not more than
24 the amount of the item plus expenses and loss of interest
25 incurred as a result of the breach.

26 4. The warranties stated in subsection 1 cannot be
27 disclaimed with respect to checks. Unless notice of a claim
28 for breach of warranty is given to the warrantor within sixty
29 days after the claimant has reason to know of the breach and
30 the identity of the warrantor, the warrantor is discharged to
31 the extent of any loss caused by the delay in giving notice of
32 the claim.

33 5. A cause of action for breach of warranty under this
34 section accrues when the claimant has reason to know of the
35 breach.

1 Sec. 95. Section 554.4208, Code 1993, is amended to read
2 as follows:

3 554.4208 SECURITY INTEREST OF COLLECTING BANK IN ITEMS,
4 ACCOMPANYING DOCUMENTS AND PROCEEDS.

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

7 a. in case of an item deposited in an account, to the
8 extent to which credit given for the item has been withdrawn
9 or applied;

10 b. in case of an item for which it has given, credit
11 available for withdrawal as of right, to the extent of the
12 credit given whether or not the credit is drawn upon and
13 ~~whether or not~~ there is a right of charge-back; or

14 c. if it makes an advance on or against the item.

15 2. When If credit ~~which-has-been~~ given for several items
16 received at one time or pursuant to a single agreement is
17 withdrawn or applied in part, the security interest remains
18 upon all the items, any accompanying documents or the proceeds
19 of either. For the purpose of this section, credits first
20 given are first withdrawn.

21 3. Receipt by a collecting bank of a final settlement for
22 an item is a realization on its security interest in the item,
23 accompanying documents and proceeds. ~~To-the-extent-and-so~~ So
24 long as the bank does not receive final settlement for the
25 item or give up possession of the item or accompanying
26 documents for purposes other than collection, the security
27 interest continues to that extent and is subject to the
28 ~~provisions-of~~ Article 9 ~~except-that,~~ but:

29 a. no security agreement is necessary to make the security
30 interest enforceable (~~subsection-1-"b"-of~~ section 554.9203
31 554.9203, subsection 1, paragraph "a"); and

32 b. no filing is required to perfect the security interest;
33 and

34 c. the security interest has priority over conflicting
35 perfected security interests in the item, accompanying

1 documents, or proceeds.

2 Sec. 96. Section 554.4209, Code 1993, is amended to read
3 as follows:

4 554.4209 WHEN BANK GIVES VALUE FOR PURPOSES OF HOLDER IN
5 DUE COURSE.

6 For purposes of determining its status as a holder in due
7 course, the a bank has given value to the extent that it has a
8 security interest in an item provided-that, if the bank
9 otherwise complies with the requirements of section 554.3302
10 on what constitutes a holder in due course.

11 Sec. 97. Section 554.4210, Code 1993, is amended to read
12 as follows:

13 554.4210 PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY,
14 THROUGH, OR AT A BANK----; LIABILITY OF SECONDARY-PARTIES
15 DRAWER OR ENDORSER.

16 1. Unless otherwise instructed, a collecting bank may
17 present an item not payable by, through or at a bank by
18 sending to the party to accept or pay a written notice that
19 the bank holds the item for acceptance or payment. The notice
20 must be sent in time to be received on or before the day when
21 presentment is due and the bank must meet any requirement of
22 the party to accept or pay under section 554-3505 554.3501 by
23 the close of the bank's next banking day after it knows of the
24 requirement.

25 2. Where if presentment is made by notice and neither
26 honor-nor payment, acceptance, or request for compliance with
27 a requirement under section 554-3505 554.3501 is received by
28 the close of business on the day after maturity or, in the
29 case of demand items, by the close of business on the third
30 banking day after notice was sent, the presenting bank may
31 treat the item as dishonored and charge any secondary-party
32 drawer or endorser by sending the-secondary-party it notice of
33 the facts.

34 Sec. 98. Section 554.4211, Code 1993, is amended by
35 striking the section and inserting in lieu thereof the

1 following:

2 554.4211 MEDIUM AND TIME OF SETTLEMENT BY BANK.

3 1. With respect to settlement by a bank, the medium and
4 time for settlement may be prescribed by federal reserve
5 regulations or circulars, clearing-house rules, and the like,
6 or agreement. In the absence of such prescription:

7 a. the medium of settlement is cash or credit to an
8 account in a federal reserve bank of or specified by the
9 person to receive settlement; and

10 b. the time of settlement is:

11 (1) with respect to tender of settlement by cash, a
12 cashier's check, or teller's check, when the case or check is
13 sent or delivered.

14 (2) with respect to tender of settlement by credit in an
15 account in a federal reserve bank, when the credit is made.

16 (3) with respect to tender of settlement by a credit or
17 debit to an account in a bank, when the credit or debit made
18 or, in the case of tender of settlement by authority to charge
19 an account, when the authority is sent or delivered; or

20 (4) with respect to tender of settlement by a funds
21 transfer, when payment is made pursuant to section 554.12406,
22 subsection 1 to the person receiving the settlement.

23 2. If the tender of settlement is not by a medium
24 authorized by subsection 1 or the time of settlement is not
25 fixed by subsection 1, no settlement occurs until the tender
26 of settlement is accepted by the person receiving the
27 settlement.

28 3. If settlement for an item is made by cashier's check or
29 teller's check and the person receiving settlement, before its
30 midnight deadline:

31 a. presents or forwards the check for collection,
32 settlement is final when the check is finally paid; or

33 b. fails to present or forward the check for collection,
34 settlement is final at the midnight deadline of the person
35 receiving settlement.

1 4. If settlement for an item is made by giving authority
2 to charge the account of the bank giving settlement in the
3 bank receiving settlement, settlement is final when the charge
4 is made by the bank receiving settlement if there are funds
5 available in the account for the amount of the item.

6 Sec. 99. Section 554.4212, Code 1993, is amended to read
7 as follows:

8 554.4212 RIGHT OF CHARGE-BACK OR REFUND -- LIABILITY OF
9 COLLECTING BANK -- RETURN OF ITEM.

10 1. If a collecting bank has made provisional settlement
11 with its customer for an item and itself fails by reason of
12 dishonor, suspension of payments by a bank, or otherwise to
13 receive a settlement for the item which is or becomes final,
14 the bank may revoke the settlement given by it, charge back
15 the amount of any credit given for the item to its customer's
16 account, or obtain refund from its customer whether or not it
17 is able to return the ~~items~~ item, if by its midnight deadline
18 or within a longer reasonable time after it learns the facts
19 it returns the item or sends notification of the facts. If
20 the return or notice is delayed beyond the bank's midnight
21 deadline or a longer reasonable time after it learns the
22 facts, the bank may revoke the settlement, charge back the
23 credit, or obtain refund from its customer, but it is liable
24 for any loss resulting from the delay. These rights to
25 revoke, charge back and obtain refund terminate if and when a
26 settlement for the item received by the bank is or becomes
27 final ~~{subsection-3-of-section-554.4211-and-subsections-2-and~~
28 ~~3-of-section-554.4213}~~.

29 ~~2.--Within-the-time-and-manner-prescribed-by-this-section~~
30 ~~and-section-554.4301,--an-intermediary-or-payor-bank,--as-the~~
31 ~~case-may-be,--may-return-an-unpaid-item-directly-to-the~~
32 ~~depository-bank-and-may-send-for-collection-a-draft-on-the~~
33 ~~depository-bank-and-obtain-reimbursement.--In-such-case,--if~~
34 ~~the-depository-bank-has-received-provisional-settlement-for~~
35 ~~the-item,--it-must-reimburse-the-bank-drawing-the-draft-and-any~~

1 ~~provisional-credits-for-the-item-between-banks-shall-become~~
2 ~~and-remain-final-~~

3 2. A collecting bank returns an item when it is sent or
4 delivered to the bank's customer or transferor or pursuant to
5 its instructions.

6 3. A depository bank which that is also the payor may
7 charge back the amount of an item to its customer's account or
8 obtain refund in accordance with the section governing return
9 of an item received by a payor bank for credit on its books
10 (section 554.4301).

11 4. The right to charge-back is not affected by:

12 a. prior previous use of the a credit given for the item;
13 or

14 b. failure by any bank to exercise ordinary care with
15 respect to the item, but any a bank so failing remains liable.

16 5. A failure to charge-back or claim refund does not
17 affect other rights of the bank against the customer or any
18 other party.

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

26 Sec. 100. Section 554.4213, Code 1993, is amended to read
27 as follows:

28 554.4213 FINAL PAYMENT OF ITEM BY PAYOR BANK -- WHEN
29 PROVISIONAL DEBITS AND CREDITS BECOME FINAL -- WHEN CERTAIN
30 CREDITS BECOME AVAILABLE FOR WITHDRAWAL.

31 1. An item is finally paid by a payor bank when the bank
32 has first done any of the following~~7-whichever-happens-first~~:

33 a. paid the item in cash; or

34 b. settled for the item without reserving having a right
35 to revoke the settlement ~~and-without-having-such-right~~ under

1 statute, clearing house rule, or agreement; or

2 ~~c.---completed-the-process-of-posting-the-item-to-the~~
3 ~~indicated-account-of-the-drawer,-maker-or-other-person-to-be~~
4 ~~charged-therewith,-or~~

5 d c. made a provisional settlement for the item and failed
6 to revoke the settlement in the time and manner permitted by
7 statute, clearing house rule, or agreement.

8 ~~Upon-a-final-payment-under-subparagraphs-"b,"-"c"-or-"d"~~
9 ~~the-payor-bank-shall-be-accountable-for-the-amount-of-the~~
10 ~~item.~~

11 2 3. If provisional settlement for an item between the
12 presenting and payor banks is made through a clearing house or
13 by debits or credits in an account between them, then to the
14 extent that provisional debits or credits for the item are
15 entered in accounts between the presenting and payor banks or
16 between the presenting and successive prior collecting banks
17 seriatim, they become final upon final payment of the item by
18 the payor bank.

19 3 4. If a collecting bank receives a settlement for an
20 item which is or becomes final ~~(subsection-3-of-section~~
21 ~~554-4211,-subsection-2-of-this-section)~~ the bank is
22 accountable to its customer for the amount of the item and any
23 provisional credit given for the item in an account with its
24 customer becomes final.

25 4 5. Subject to (i) applicable law stating a time for
26 availability of funds and (ii) any right of the bank to apply
27 the credit to an obligation of the customer, credit given by a
28 bank for an item in an-account-with-its-customer a customer's
29 account becomes available for withdrawal as of right;

30 a. ~~in-any-case-where~~ if the bank has received a
31 provisional settlement for the item, -- when such the
32 settlement becomes final and the bank has had a reasonable
33 time to ~~learn-that-the-settlement-is-final~~ receive return of
34 the item and the item has not been received in that time;

35 b. ~~in-any-case-where~~ if the bank is both a the depository

1 bank and a the payor bank, and the item is finally paid, -- at
2 the opening of the bank's second banking day following receipt
3 of the item.

4 5. ~~A deposit of money in a bank is final when made but~~
5 subject Subject to applicable law stating a time for
6 availability of funds and any right of the a bank to apply the
7 a deposit of money to an obligation of the customer, the
8 deposit becomes available for withdrawal as of right at the
9 opening of the bank's next banking day ~~following~~ after receipt
10 of the deposit.

11 Sec. 101. Section 554.4214, Code 1993, is amended to read
12 as follows:

13 554.4214 INSOLVENCY AND PREFERENCE.

14 1. Any If an item is in or ~~coming~~ comes into the
15 possession of a payor or collecting bank which that suspends
16 payment and which the item is has not been finally paid ~~shall~~,
17 the item must be returned by the receiver, trustee, or agent
18 in charge of the closed bank to the presenting bank or the
19 closed bank's customer.

20 2. If a payor bank finally pays an item and suspends
21 payments without making a settlement for the item with its
22 customer or the presenting bank which settlement is or becomes
23 final, the owner of the item has a preferred claim against the
24 payor bank.

25 3. If a payor bank gives or a collecting bank gives or
26 receives a provisional settlement for an item and thereafter
27 suspends payments, the suspension does not prevent or
28 interfere with the ~~settlement~~ settlements becoming final if
29 such the finality occurs automatically upon the lapse of
30 certain time or the happening of certain events ~~{subsection-3~~
31 ~~of-section-554-4211; subsections-1-"d",-2-and-3-of-section~~
32 ~~554-4213}~~.

33 4. If a collecting bank receives from subsequent parties
34 settlement for an item which settlement is or becomes final
35 and the bank suspends payments without making a settlement for

1 the item with its customer which settlement is or becomes
2 final, the owner of the item has a preferred claim against
3 such the collecting bank.

4 Sec. 102. NEW SECTION. 554.4215 PRESENTMENT WARRANTIES.

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

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

15 b. the draft has not been altered; and

16 c. the warrantor has no knowledge that the signature of
17 the purported drawer of the draft is unauthorized.

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

32 3. If a drawee asserts a claim for breach of warranty
33 under subsection 1 based on an unauthorized endorsement of the
34 draft or an alteration of the draft, the warrantor may defend
35 by proving that the endorsement is effective under section

1 554.3404 or 554.3405 or the drawer is precluded under section
2 554.3406 or 554.4406 from asserting against the drawee the
3 unauthorized endorsement or alteration.

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

16 5. The warranties stated in subsections 1 and 4 cannot be
17 disclaimed with respect to checks. Unless notice of a claim
18 for breach of warranty is given to the warrantor with sixty
19 days after the claimant has reason to know of the breach and
20 the identity of the warrantor, the warrantor is discharged to
21 the extent of any loss caused by the delay in giving notice of
22 the claim.

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

26 Sec. 103. NEW SECTION. 554.4216 ENCODING AND RETENTION
27 WARRANTIES.

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

33 2. A person who undertakes to retain an item pursuant to
34 an agreement for electronic presentment warrants to any
35 subsequent collecting bank and to the payor bank or other

1 payor that retention and presentment of the item comply with
 2 the agreement. If a customer of a depository bank undertakes
 3 to retain an item, that bank also makes this warranty.

4 3. A person to whom warranties are made under this section
 5 and who took the item in good faith may recover from the
 6 warrantor as damages for breach of warranty an amount equal to
 7 the loss suffered as a result of the breach, plus expenses and
 8 loss of interest incurred as a result of the breach.

9 Sec. 104. Section 554.4301, Code 1993, is amended to read
 10 as follows:

11 554.4301 DEFERRED POSTING -- RECOVERY OF PAYMENT BY RETURN
 12 OF ITEMS -- TIME OF DISHONOR -- RETURN OF ITEMS BY PAYOR BANK.

13 1. ~~Where an authorized settlement~~ If a payor settles for a
 14 demand item ~~(other than a documentary draft)~~ ~~received by a~~
 15 ~~payor bank~~ presented otherwise than for immediate payment over
 16 the counter ~~has been made~~ before midnight of the banking day
 17 of receipt, the payor bank may revoke the settlement and
 18 recover ~~any the payment settlement~~ if, before it has made
 19 final payment ~~(subsection 1 of section 554.4213)~~ and before
 20 its midnight deadline, it

21 a. returns the item; or

22 b. sends written notice of dishonor or nonpayment if the
 23 item is ~~held for protest or is otherwise~~ unavailable for
 24 return; and the item or notice includes the reason for
 25 dishonor or nonpayment.

26 2. If a demand item is received by a payor bank for credit
 27 on its books, it may return such the item or send notice of
 28 dishonor and may revoke any credit given or recover the amount
 29 thereof withdrawn by its customer, if it acts within the time
 30 limit and in the manner specified in ~~the preceding~~ subsection
 31 1.

32 3. Unless previous notice of dishonor has been sent, an
 33 item is dishonored at the time when for purposes of dishonor
 34 it is returned or notice sent, in accordance with this
 35 section.

1 4. An item is returned:

2 a. as to an item received presented through a clearing
3 house, when it is delivered to the presenting or last
4 collecting bank or to the clearing house or is sent or
5 delivered in accordance with its clearing house rules; or

6 b. in all other cases, when it is sent or delivered to the
7 bank's customer or transferor or pursuant to that customer's
8 or transferor's instructions.

9 Sec. 105. Section 554.4302, Code 1993, is amended to read
10 as follows:

11 554.4302 PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF
12 ITEM.

13 1. In the absence of a valid defense such as breach of a
14 presentment warranty (subsection 1 of section 554.4207),
15 settlement effected or the like, if If an item is presented on
16 to and received by a payor bank, the bank is accountable for
17 the amount of:

18 a. a demand item, other than a documentary draft, whether
19 properly payable or not, if the bank, in any case where in
20 which it is not also the depository bank, retains the item
21 beyond midnight of the banking day of receipt without settling
22 for it or, regardless of whether or not it is also the
23 depository bank, does not pay or return the item or send
24 notice of dishonor until after its midnight deadline; or

25 b. any other properly payable item unless, within the time
26 allowed for acceptance or payment of that item, the bank
27 either accepts or pays the item or returns it and accompanying
28 documents.

29 2. The liability of a payor bank to pay an item pursuant
30 to subsection 1 is subject to defenses based on breach of a
31 presentment warranty (section 554.4215) or proof that the
32 person seeking enforcement of the liability presented or
33 transferred the item for the purpose of defrauding the payor
34 bank.

35 Sec. 106. Section 554.4303, Code 1993, is amended to read

1 as follows:

2 554.4303 WHEN ITEMS SUBJECT TO NOTICE, ~~STOP-ORDER STOP-~~
3 PAYMENT ORDER, LEGAL PROCESS, OR SETOFF -- ORDER IN WHICH
4 ITEMS MAY BE CHARGED OR CERTIFIED.

5 1. Any knowledge, notice, or stop-order stop-payment order
6 received by, legal process served upon, or setoff exercised by
7 a payor bank, ~~whether or not effective under other rules of~~
8 law comes too late to terminate, suspend, or modify the bank's
9 right or duty to pay an item or to charge its customer's
10 account for the item, ~~comes too late to so terminate, suspend~~
11 ~~or modify such right or duty~~ if the knowledge, notice, stop
12 order stop-payment order, or legal process is received or
13 served and a reasonable time for the bank to act thereon
14 expires or the setoff is exercised after the ~~bank has done any~~
15 earliest of the following:

16 a. ~~accepted or certified~~ the bank accepts or certifies the
17 item;

18 b. paid the bank pays the item in cash;

19 c. settled the bank settles for the item without reserving
20 having a right to revoke the settlement ~~and without having~~
21 such right under statute, clearing house rule, or agreement;

22 ~~d. -- completed the process of posting the item to the~~
23 ~~indicated account of the drawer, maker or other person to be~~
24 ~~charged therewith or otherwise has evidenced by examination of~~
25 ~~such indicated account and by action its decision to pay the~~
26 ~~item; or~~

27 e d. become the bank becomes accountable for the amount of
28 the item under subsection 1-"d" of section 554.4213 and
29 section 554.4302 dealing with the payor bank's responsibility
30 for late return of items; or

31 e. with respect to checks, a cutoff hour no earlier than
32 one hour after the opening of the next banking day after the
33 banking day on which the bank received the check and no later
34 than the close of that next banking day or, if no cutoff hour
35 is fixed, the close of the next banking day after the banking

1 day on which the bank received the check.

2 2. ~~Subject to the provisions of~~ subsection 1 items may be
3 accepted, paid, certified or charged to the indicated account
4 of its customer in any order ~~convenient to the bank.~~

5 Sec. 107. Section 554.4401, Code 1993, is amended to read
6 as follows:

7 554.4401 WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT.

8 1. ~~As against its customer,~~ a bank may charge against
9 the customer's account any of a customer an item which that is
10 otherwise properly payable from that account even though the
11 charge creates an overdraft. An item is properly payable if
12 it is authorized by the customer and is in accordance with any
13 agreement between the customer and bank.

14 2. A customer is not liable for the amount of an overdraft
15 if the customer neither signed the item nor benefited from the
16 proceeds of the item.

17 3. A bank may charge against the account of a customer a
18 check that is otherwise properly payable from the account,
19 even though payment was made before the date of the check,
20 unless the customer has given notice to the bank of the
21 postdating describing the check with reasonable certainty.
22 The notice is effective for the period stated in section
23 554.4403, subsection 2, for stop-payment orders, and must be
24 received at such time and in such manner as to afford the bank
25 a reasonable opportunity to act on it before the bank takes
26 any action with respect to the check described in section
27 554.4303. If a bank charges against the account of a customer
28 a check before the date stated in the notice of postdating,
29 the bank is liable for damages for the loss resulting from its
30 act. The loss may include damages for dishonor of subsequent
31 items under section 554.4402.

32 4. A bank which that in good faith makes payment to a
33 holder may charge the indicated account of its customer
34 according to:

35 a. the original tenor terms of the customer's altered

1 item; or

2 b. the tenor terms of the customer's completed item, even
3 though the bank knows the item has been completed unless the
4 bank has notice that the completion was improper.

5 Sec. 108. Section 554.4402, Code 1993, is amended to read
6 as follows:

7 554.4402 BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL
8 DISHONOR -- TIME OF DETERMINING INSUFFICIENCY OF ACCOUNT.

9 1. Except as otherwise provided in this Article, a payor
10 bank wrongfully dishonors an item if it dishonors an item that
11 is properly payable, but a bank may dishonor an item that
12 would create an overdraft unless it has agreed to pay the
13 overdraft.

14 2. A payor bank is liable to its customer for damages
15 proximately caused by the wrongful dishonor of an item. When
16 the-dishonor-occurs-through-mistake-liability Liability is
17 limited to actual damages proved---if-so-proximately-caused
18 and-proved-damages and may include damages for an arrest or
19 prosecution of the customer or other consequential damages.
20 Whether any consequential damages are proximately caused by
21 the wrongful dishonor is a question of fact to be determined
22 in each case.

23 3. A payor bank's determination of the customer's account
24 balance on which a decision to dishonor for insufficiency of
25 available funds is based may be made at any time between the
26 time the item is received by the payor bank and the time that
27 the payor bank returns the item or gives notice in lieu of
28 return, and no more than one determination need be made. If,
29 at the election of the payor bank, a subsequent balance
30 determination is made for the purposes of reevaluating the
31 bank's decision to dishonor the item, the account balance at
32 the time is determinative of whether a dishonor for
33 insufficiency of available funds is wrongful.

34 Sec. 109. Section 554.4403, Code 1993, is amended to read
35 as follows:

1 554.4403 CUSTOMER'S RIGHT TO STOP PAYMENT -- BURDEN OF
2 PROOF OF LOSS.

3 1. A customer ~~may-by-order-to-the-customer's-bank-stop~~
4 ~~payment-of-any-item-payable-for-the-customer's-account-but-the~~
5 ~~order-must-be~~ or any person authorized to draw on the account
6 if there is more than one person may stop payment of an item
7 drawn on the customer's account or close the account by an
8 order to the bank describing the item or account with
9 reasonable certainty received at such a time and in such a
10 ~~manner as-to-afford~~ that affords the bank a reasonable
11 opportunity to act on it ~~prior-to~~ before any action by the
12 bank with respect to the item described in section 554.4303.
13 If the signature of more than one person is required to draw
14 on an account, any of these persons may stop payment or close
15 the account.

16 2. ~~An-oral-order-is-binding-upon-the-bank-only-for~~
17 ~~fourteen-calendar-days-unless-confirmed-in-writing-within-that~~
18 ~~period.--A-written-order-is-effective-for-only-six-months~~
19 ~~unless-renewed-in-writing~~ A stop-payment order is effective
20 for six months, but it lapses after fourteen calendar days if
21 the original order was oral and was not confirmed in writing
22 within that period. A stop-payment order may be renewed for
23 additional six-month periods by a writing given to the bank
24 within a period during which the stop-payment order is
25 effective.

26 3. The burden of establishing the fact and amount of loss
27 resulting from the payment of an item contrary to a ~~binding~~
28 ~~stop-payment~~ stop-payment order or order to close an account
29 is on the customer. The loss from payment of an item contrary
30 to a stop-payment order may include damages for dishonor of
31 subsequent items under section 554.4402.

32 Sec. 110. Section 554.4405, Code 1993, is amended to read
33 as follows:

34 554.4405 DEATH OR INCOMPETENCE OF CUSTOMER.

35 1. A payor or collecting bank's authority to accept, pay,

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

11 2. Even with knowledge, a bank may for ten days after the
12 date of death pay or certify checks drawn on or prior-to
13 before that date unless ordered to stop payment by a person
14 claiming an interest in the account.

15 Sec. 111. Section 554.4406, Code 1993, is amended to read
16 as follows:

17 554.4406 CUSTOMER'S DUTY TO DISCOVER AND REPORT
18 UNAUTHORIZED SIGNATURE OR ALTERATION.

19 ~~1. When a bank sends to its customer a statement of~~
20 ~~account accompanied by items paid in good faith in support of~~
21 ~~the debit entries or holds the statement and items pursuant to~~
22 ~~a request or instructions of its customer or otherwise in a~~
23 ~~reasonable manner makes the statement and items available to~~
24 ~~the customer, the customer must exercise reasonable care and~~
25 ~~promptness to examine the statement and items to discover the~~
26 ~~customer's unauthorized signature or any alteration on an item~~
27 ~~and must notify the bank promptly after discovery thereof. A~~
28 bank that sends or makes available to a customer a statement
29 of account showing payment of items for the account shall
30 either return or make available to the customer the items paid
31 or provide information in the statement of account sufficient
32 to allow the customer reasonably to identify the items paid.
33 The statement of account provides sufficient information, if
34 the item is described by item number, amount, and date of
35 payment.

1 2. If the items are not returned to the customer, the
2 person retaining the items shall either retain the items or,
3 if the items are destroyed, maintain the capacity to furnish
4 legible copies of the items until the expiration of eleven
5 years after receipt of the items. A customer may request an
6 item from the bank that paid the item, and that bank must
7 provide in a reasonable time either the item or, if the item
8 has been destroyed or is not otherwise obtainable, a legible
9 copy of the item.

10 3. If a bank sends or makes available a statement of
11 account or items pursuant to subsection 1, the customer must
12 exercise reasonable promptness in examining the statement or
13 the items to determine whether any payment was not authorized
14 because of an alteration of an item or because a purported
15 signature by or on behalf of the customer was not authorized.
16 If, based on the statement or items provided, the customer
17 should reasonably have discovered the unauthorized payment,
18 the customer must promptly notify the bank of the relevant
19 facts.

20 2 4. If the bank establishes proves that the customer
21 failed, with respect to an item, to comply with the duties
22 imposed on the customer by subsection 3 the customer is
23 precluded from asserting against the bank:

24 a. the customer's unauthorized signature or any alteration
25 on the item, if the bank also establishes proves that it
26 suffered a loss by reason of such the failure; and

27 b. an the customer's unauthorized signature or alteration
28 by the same wrongdoer on any other item paid in good faith by
29 the bank after-the-first-item-and-statement-was-available-to
30 the-customer-for-a-reasonable-period-not-exceeding-fourteen
31 calendar-days-and-before-the-bank-receives-notification-from
32 the-customer-of-any-such-unauthorized-signature-or-alteration
33 if the payment was made before the bank received notice from
34 the customer of the unauthorized signature or alteration and
35 after the customer had been afforded a reasonable period of

1 time, not exceeding sixty days, in which to examine the item
2 or statement of account and notify the bank.

3 ~~3.---The-preclusion-under-subsection-2-does-not-apply-if-the~~
4 ~~customer-establishes-lack-of-ordinary-care-on-the-part-of-the~~
5 ~~bank-in-paying-the-item(s).~~

6 5. If subsection 4 applies and the customer proves that
7 the bank failed to exercise ordinary care in payment the item
8 and that the failure substantial contributed to loss, the loss
9 is allocated between the customer precluded and the bank
10 asserting the preclusion according to the extent to which the
11 failure of the customer to comply with subsection 3 and the
12 failure of the bank to exercise ordinary care contributed to
13 the loss. If the customer proves that the bank did not pay
14 the item in good faith, the preclusion under subsection 4 does
15 not apply.

16 4 6. Without regard to care or lack of care of either the
17 customer or the bank, a customer who does not within one year
18 from-the-time after the statement and or items are made
19 available to the customer (subsection 1) discover and report
20 the customer's unauthorized signature on or any alteration on
21 the-face-or-back-of-the-item-or-does-not-within-three-years
22 from-that-time-discover-and-report-any-unauthorized
23 endorsement on the item is precluded from asserting against
24 the bank such the unauthorized signature or endorsement-or
25 such alteration. If there is a preclusion under this
26 subsection, the payor bank may not recover for breach of
27 warranty under section 554.4208 with respect to the
28 unauthorized signature or alteration to which the preclusion
29 applies.

30 ~~5.---If-under-this-section-a-payor-bank-has-a-valid-defense~~
31 ~~against-a-claim-of-a-customer-upon-or-resulting-from-payment~~
32 ~~of-an-item-and-waives-or-fails-upon-request-to-assert-the~~
33 ~~defense-the-bank-may-not-assert-against-any-collecting-bank-or~~
34 ~~other-prior-party-presenting-or-transferring-the-item-a-claim~~
35 ~~based-upon-the-unauthorized-signature-or-alteration-giving~~

1 ~~rise-to-the-customer's-claim-~~

2 Sec. 112. Section 554.4407, Code 1993, is amended to read
3 as follows:

4 554.4407 PAYOR BANK'S RIGHT TO SUBROGATION ON IMPROPER
5 PAYMENT.

6 If a payor bank has paid an item over the ~~stop-payment~~
7 order of the drawer or maker to stop payment, or after an
8 account has been closed, or otherwise under circumstances
9 giving a basis for objection by the drawer or maker, to
10 prevent unjust enrichment and only to the extent necessary to
11 prevent loss to the bank by reason of its payment of the item,
12 the payor bank ~~shall-be~~ is subrogated to the rights

13 a. of any holder in due course on the item against the
14 drawer or maker; and

15 b. of the payee or any other holder of the item against
16 the drawer or maker either on the item or under the
17 transaction out of which the item arose; and

18 c. of the drawer or maker against the payee or any other
19 holder of the item with respect to the transaction out of
20 which the item arose.

21 Sec. 113. Section 554.4501, Code 1993, is amended to read
22 as follows:

23 554.4501 HANDLING OF DOCUMENTARY DRAFTS -- DUTY TO SEND
24 FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR.

25 A bank ~~which~~ that takes a documentary draft for collection
26 ~~must~~ shall present or send the draft and accompanying
27 documents for presentment and, upon learning that the draft
28 has not been paid or accepted in due course ~~must,~~ shall
29 seasonably notify its customer of such the fact even though it
30 may have discounted or bought the draft or extended credit
31 available for withdrawal as of right.

32 Sec. 114. Section 554.4502, Code 1993, is amended to read
33 as follows:

34 554.4502 PRESENTMENT OF "ON ARRIVAL" DRAFTS.

35 When If a draft or the relevant instructions require

1 presentment "on arrival", "when goods arrive" or the like, the
2 collecting bank need not present until in its judgment a
3 reasonable time for arrival of the goods has expired. Refusal
4 to pay or accept because the goods have not arrived is not
5 dishonor; the bank must notify its transferor of such the
6 refusal but need not present the draft again until it is
7 instructed to do so or learns of the arrival of the goods.

8 Sec. 115. Section 554.4503, Code 1993, is amended to read
9 as follows:

10 554.4503 RESPONSIBILITY OF PRESENTING BANK FOR DOCUMENTS
11 AND GOODS -- REPORT OF REASONS FOR DISHONOR -- REFEREE IN CASE
12 OF NEED.

13 Unless otherwise instructed and except as provided in
14 Article 5, a bank presenting a documentary draft:

15 a. must deliver the documents to the drawee on acceptance
16 of the draft if it is payable more than three days after
17 presentment; otherwise, only on payment; and

18 b. upon dishonor, either in the case of presentment for
19 acceptance or presentment for payment, may seek and follow
20 instructions from any referee in case of need designated in
21 the draft or, if the presenting bank does not choose to
22 utilize the referee's services, it must use diligence and good
23 faith to ascertain the reason for dishonor, must notify its
24 transferor of the dishonor and of the results of its effort to
25 ascertain the reasons therefor, and must request instructions.

26 But However, the presenting bank is under no obligation
27 with respect to goods represented by the documents except to
28 follow any reasonable instructions seasonably received; it has
29 a right to reimbursement for any expense incurred in following
30 instructions and to prepayment of or indemnity for such those
31 expenses.

32 Sec. 116. Section 554.4504, subsection 1, Code 1993, is
33 amended to read as follows:

34 1. A presenting bank which that, following the dishonor of
35 a documentary draft, has seasonably requested instructions but

1 does not receive them within a reasonable time may store,
2 sell, or otherwise deal with the goods in any reasonable
3 manner.

4 Sec. 117. Section 554.5103, subsection 3, Code 1993, is
5 amended to read as follows:

6 3. Definitions in other Articles applying to this Article
7 and the sections in which they appear are:

8 "Accept" or "Acceptance".	Section 554.3410
9	<u>554.3409.</u>
10 "Contract for sale".	Section 554.2106.
11 "Draft".	Section 554.3104.
12 "Holder in due course".	Section 554.3302.
13 "Midnight deadline".	Section 554.4104.
14 "Security".	Section 554.8102.

15 Sec. 118. Section 554.9206, subsection 1, Code 1993, is
16 amended to read as follows:

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

30 Sec. 119. NEW SECTION. 668.16 APPLICABILITY OF THIS
31 CHAPTER.

32 This chapter does not apply to Article 3 or 4 of chapter
33 554.

34 Sec. 120. DIRECTION TO CODE EDITOR.

35 The Code editor, in cooperation with the legislative

1 service bureau and in conformity with the policies of the
2 legislative council, is directed to renumber sections in this
3 Act in conformance with the numbering system included in the
4 model Act as recommended by the American law institute and
5 national conference of commissioners on uniform state laws,
6 and to correct internal references as necessary.

7 Sec. 121. REPEALS

8 1. Sections 554.3101 through 554.3806, Code 1993, are
9 repealed.

10 2. Section 554.4109, Code 1993, is repealed.

11 Sec. 122. EFFECTIVE DATE. This Act takes effect July 1,
12 1995.

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

Sturgeon. Chair
Palmer
Redfern

556-2244
Commerce
New
2279

SENATE FILE
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY CHAIR-
PERSON DELUHERY)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act amending the Uniform Commercial Code relating to
2 negotiable instruments, and bank deposits and collections, and
3 repealing sections.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1 Section 1. Section 9E.9, subsection 5, Code 1993, is
2 amended to read as follows:

3 5. In making or noting a protest of a negotiable
4 instrument, the notarial officer must determine ~~the matters~~
5 set forth whether there is evidence of dishonor as provided in
6 section ~~554.3509~~ 554.3505.

7 Sec. 2. Section 533.43, subsection 3, Code 1993, is
8 amended to read as follows:

9 3. The share draft is payable to a member of the credit
10 union, or to a member of the family of the issuer of the share
11 draft, or to a business in which the issuer of the share draft
12 has an interest. However, the exception contained in this
13 subsection does not apply to any person referred to in this
14 subsection if the person is a holder in due course, as
15 provided in chapter 554, article 37 ~~and with respect to a~~
16 ~~share draft which is issued prior to the expiration of one~~
17 ~~year after April 13, 1979, the person shall not be denied the~~
18 ~~rights of a holder in due course of the share draft solely on~~
19 ~~the grounds that the share draft fails to meet the~~
20 ~~requirements of section 554.3104, subsection 1, paragraph "d".~~

21 Sec. 3. Section 537.3211, Code 1993, is amended to read as
22 follows:

23 537.3211 NOTICE OF CONSUMER PAPER.

24 Every note which is a negotiable instrument ~~pursuant to~~ as
25 provided in section 554.3104 taken in a consumer credit
26 transaction, if the writing requires or provides for a
27 signature of the consumer, shall conspicuously show on its
28 face the following: "This is a consumer credit transaction."

29 Sec. 4. Section 539.1, Code 1993, is amended to read as
30 follows:

31 539.1 ASSIGNMENT OF NONNEGOTIABLE INSTRUMENTS.

32 Bonds, due bills, and all instruments by which the maker
33 promises to pay another, without words of negotiability, a sum
34 of money, or by which the maker promises to pay a sum of money
35 in property or labor, or to pay or deliver any property or

1 labor, or acknowledges any money, labor, or property to be
2 due, are assignable by endorsement on the instrument, or by
3 other writing. The assignee, including a person who takes
4 assignment for collection in the regular course of business,
5 has a right of action on them in the assignee's own name,
6 subject to any defense or counterclaim which the maker or
7 debtor had against an assignor of the instrument before notice
8 of the assignment. In case of conflict between this section
9 and ~~Uniform-Commercial-Code~~, sections 554:3805, 554.5116 or
10 and 554.9318, those sections 554.5116 and 554.9318 control.

11 Sec. 5. Section 539.2, Code 1993, is amended to read as
12 follows:

13 539.2 ASSIGNMENT PROHIBITED BY INSTRUMENT.

14 When by the terms of an instrument its assignment is
15 prohibited, an assignment thereof shall nevertheless be valid,
16 but the maker may make use of any defense or counterclaim
17 against the assignee which the maker may have against any
18 assignor thereof before notice of such assignment is given to
19 the maker in writing. In case of conflict between this
20 section and ~~Uniform-Commercial-Code~~, sections 554:3805,
21 554.5116 or and 554.9318, those sections 554.5116 and 554.9318
22 control.

23 Sec. 6. Section 554.1201, subsections 20, 24, and 43, Code
24 1993, are amended to read as follows:

25 20. "Holder" means ~~a person who is in possession of a~~
26 ~~document of title or an instrument or a certificated~~
27 ~~investment security drawn, issued, or endorsed to that person~~
28 ~~or to that person's order or to bearer or in blank with~~
29 respect to a negotiable instrument, means the person in
30 possession if the instrument is payable to bearer or, in the
31 case of an instrument payable to an identified person, if the
32 identified person is in possession. "Holder" with respect to
33 a document of title means the person in possession if the
34 goods are deliverable to bearer or to the order of the person
35 in possession.

1 24. "Money" means a medium of exchange authorized or
2 adopted by a domestic or foreign government ~~as-a-part-of-its~~
3 currency and includes a monetary unit of account established
4 by an intergovernmental organization or by agreement between
5 two or more nations.

6 43. "Unauthorized" signature ~~or-endorsement~~ means one made
7 without actual, implied, or apparent authority and includes a
8 forgery.

9 Sec. 7. Section 554.1207, Code 1993, is amended to read as
10 follows:

11 554.1207 PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF
12 RIGHTS.

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

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

20 Sec. 8. Section 554.2103, subsection 3, Code 1993, is
21 amended to read as follows:

22 3. The following definitions in other Articles apply to
23 this Article:

24 "Check".	Section 554.3104.
25 "Consignee".	Section 554.7102.
26 "Consignor".	Section 554.7102.
27 "Consumer goods".	Section 554.9109.
28 "Dishonor".	Section 554.3507
29	<u>554.3502.</u>
30 "Draft".	Section 554.3104.

31 Sec. 9. Section 554.2511, subsection 3, Code 1993, is
32 amended to read as follows:

33 3. Subject to the provisions of this chapter on the effect
34 of an instrument on an obligation (section ~~554.3802~~ 554.3310),
35 payment by check is conditional and is defeated as between the

1 parties by dishonor of the check on due presentment.

2 UNIFORM COMMERCIAL CODE

3 ARTICLE 3 - NEGOTIABLE INSTRUMENTS

4 PART 1

5 GENERAL PROVISIONS AND DEFINITIONS

6 Sec. 10. NEW SECTION. 554.3101 SHORT TITLE. This
7 Article may be cited as Uniform Commercial Code -- Negotiable
8 Instruments.

9 Sec. 11. NEW SECTION. 554.3102 SUBJECT MATTER.

10 1. This Article applies to negotiable instruments. It
11 does not apply to money, to payment orders governed by Article
12 8, or to securities governed by Article 12.

13 2. If there is conflict between this Article and Article 9
14 or 12, Articles 9 and 12 govern.

15 3. Regulations of the Board of Governors of the Federal
16 Reserve System and operating circulars of the Federal Reserve
17 Banks supersede any inconsistent provision of this Article to
18 the extent of the inconsistency.

19 Sec. 12. NEW SECTION. 554.3103 DEFINITIONS.

20 1. In this Article:

21 a. "Acceptor" means a drawee who has accepted a draft.

22 b. "Drawee" means a person ordered in a draft to make
23 payment.

24 c. "Drawer" means a person who signs or is identified in a
25 draft as a person ordering payment.

26 d. "Good faith" means honesty in fact and the observance
27 of reasonable commercial standards of fair dealing.

28 e. "Maker" means a person who signs or is identified in a
29 note as a person undertaking to pay.

30 f. "Order" means a written instruction to pay money signed
31 by the person giving the instruction. The instruction may be
32 addressed to any person, including the person giving the
33 instruction, or to one or more persons jointly or in the
34 alternative but not in succession. An authorization to pay is
35 not an order unless the person authorized to pay is also

1 instructed to pay.

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

13 h. "Party" means a party to an instrument.

14 i. "Promise" means a written undertaking to pay money
15 signed by the person undertaking to pay. An acknowledgment of
16 an obligation by the obligor is not a promise unless the
17 obligor also undertakes to pay the obligation.

18 j. "Prove" with respect to a fact means to meet the burden
19 of establishing the fact (section 554.1201, subsection 8).

20 k. "Remitter" means a person who purchases an instrument
21 from its issuer if the instrument is payable to an identified
22 person other than the purchaser.

23 2. Other definitions applying to this Article and the
24 sections in which they appear are:

25 "Acceptance".	Section 554.3409.
26 "Accommodated party".	Section 554.3419.
27 "Accommodation party".	Section 554.3419.
28 "Alteration".	Section 554.3407.
29 "Anomalous endorsement".	Section 554.3205.
30 "Blank endorsement".	Section 554.3205.
31 "Cashier's check".	Section 554.3104.
32 "Certificate of deposit".	Section 554.3104.
33 "Certified check".	Section 554.3409.
34 "Check".	Section 554.3104.
35 "Consideration".	Section 554.3303.

1 "Draft".	Section 554.3104.
2 "Holder in due course".	Section 554.3302.
3 "Incomplete instrument".	Section 554.3115.
4 "Endorsement".	Section 554.3204.
5 "Endorser".	Section 554.3204.
6 "Instrument".	Section 554.3104.
7 "Issue".	Section 554.3105.
8 "Issuer".	Section 554.3105.
9 "Negotiable instrument".	Section 554.3104.
10 "Negotiation".	Section 554.3201.
11 "Note".	Section 554.3104.
12 "Payable at a definite time".	Section 554.3108.
13 "Payable on demand".	Section 554.3108.
14 "Payable to bearer".	Section 554.3109.
15 "Payable to order".	Section 554.3109.
16 "Payment".	Section 554.3602.
17 "Person entitled to enforce".	Section 554.3301.
18 "Presentment".	Section 554.3501.
19 "Reacquisition".	Section 554.3207.
20 "Special endorsement".	Section 554.3205.
21 "Teller's check".	Section 554.3104.
22 "Transfer of instrument".	Section 554.3203.
23 "Traveler's check".	Section 554.3104.
24 "Value".	Section 554.3303.
25 3. The following definitions in other Articles apply to	
26 this Article:	
27 "Bank".	Section 554.4105.
28 "Banking day".	Section 554.4104.
29 "Clearing house".	Section 554.4104.
30 "Collecting bank".	Section 554.4105.
31 "Depositary bank".	Section 554.4105.
32 "Documentary draft".	Section 554.4104.
33 "Intermediary bank".	Section 554.4105.
34 "Item".	Section 554.4104.
35 "Payor bank".	Section 554.4105.

1 "Suspends payments". Section 554.4104.

2 4. In addition, Article 1 contains general definitions and
3 principles of construction and interpretation applicable
4 throughout this Article.

5 Sec. 13. NEW SECTION. 554.3104 NEGOTIABLE INSTRUMENT.

6 1. Except as provided in subsections 3 and 4, "negotiable
7 instrument" means an unconditional promise or order to pay a
8 fixed amount of money, with or without interest or other
9 charges described in the promise or order, if it:

10 a. is payable to bearer or to order at the time it is
11 issued or first comes into possession of a holder;

12 b. is payable on demand or at a definite time; and

13 c. does not state any other undertaking or instruction by
14 the person promising or ordering payment to do any act in
15 addition to the payment of money, but the promise or order may
16 contain (i) an undertaking or power to give, maintain, or
17 protect collateral to secure payment, (ii) an authorization or
18 power to the holder to confess judgment or realize on or
19 dispose of collateral, or (iii) a waiver of the benefit of any
20 law intended for the advantage or protection of an obligor.

21 2. "Instrument" means a negotiable instrument.

22 3. An order that meets all of the requirements of
23 subsection 1, except paragraph "a", and otherwise falls within
24 the definition of "check" in subsection 6 is a negotiable
25 instrument and a check.

26 4. A promise or order other than a check is not an
27 instrument if, at the time it is issued or first comes into
28 possession of a holder, it contains a conspicuous statement,
29 however expressed, to the effect that the promise or order is
30 not negotiable or is not an instrument governed by this
31 Article.

32 5. An instrument is a "note" if it is a promise and is a
33 "draft" if it is an order. If an instrument falls within the
34 definition of both "note" and "draft," a person entitled to
35 enforce the instrument may treat it as either.

1 6. "Check" means (i) a draft, other than a documentary
2 draft, payable on demand and drawn on a bank or (ii) a
3 cashier's check or teller's check. An instrument may be a
4 check even though it is described on its face by another term,
5 such as "money order."

6 7. "Cashier's check" means a draft with respect to which
7 the drawer and drawee are the same bank or branches of the
8 same bank.

9 8. "Teller's check" means a draft drawn by a bank (i) on
10 another bank, or (ii) payable at or through a bank.

11 9. "Traveler's check" means an instrument that (i) is
12 payable on demand, (ii) is drawn on or payable at or through a
13 bank, (iii) is designated by the term "traveler's check" or by
14 a substantially similar term, and (iv) requires, as a
15 condition to payment, a countersignature by a person whose
16 specimen signature appears on the instrument.

17 10. "Certificate of deposit" means an instrument
18 containing an acknowledgment by a bank that a sum of money has
19 been received by the bank and a promise by the bank to repay
20 the sum of money. A certificate of deposit is a note of the
21 bank.

22 Sec. 14. NEW SECTION. 554.3105 ISSUE OF INSTRUMENT.

23 1. "Issue" means the first delivery of an instrument by
24 the maker or drawer, whether to a holder or nonholder, for the
25 purpose of giving rights on the instrument to any person.

26 2. An unissued instrument, or an unissued incomplete
27 instrument that is completed, is binding on the maker or
28 drawer, but nonissuance is a defense. An instrument that is
29 conditionally issued or is issued for a special purpose is
30 binding on the maker or drawer, but failure of the condition
31 or special purpose to be fulfilled is a defense.

32 3. "Issuer" applies to issued and unissued instruments and
33 means a maker or drawer of an instrument.

34 Sec. 15. NEW SECTION. 554.3106 UNCONDITIONAL PROMISE OR
35 ORDER.

1 1. Except as provided in this section, for the purposes of
2 section 554.3104, subsection 1, a promise or order is
3 unconditional unless it states (i) an express condition to
4 payment, (ii) that the promise or order is subject to or
5 governed by another writing, or (iii) that rights or
6 obligations with respect to the promise or order are stated in
7 another writing. A reference to another writing does not of
8 itself make the promise or order conditional.

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

14 3. If a promise or order requires, as a condition to
15 payment, a countersignature by a person whose specimen
16 signature appears on the promise or order, the condition does
17 not make the promise or order conditional for the purposes of
18 section 554.3104, subsection 1. If the person whose specimen
19 signature appears on an instrument fails to countersign the
20 instrument, the failure to countersign is a defense to the
21 obligation of the issuer, but the failure does not prevent a
22 transferee of the instrument from becoming a holder of the
23 instrument.

24 4. If a promise or order at the time it is issued or first
25 comes into possession of a holder contains a statement,
26 required by applicable statutory or administrative law, to the
27 effect that the rights of a holder or transferee are subject
28 to claims or defenses that the issuer could assert against the
29 original payee, the promise or order is not thereby made
30 conditional for the purposes of section 554.3104, subsection
31 1; but if the promise or order is an instrument, there cannot
32 be a holder in due course of the instrument.

33 Sec. 16. NEW SECTION. 554.3107 INSTRUMENT PAYABLE IN
34 FOREIGN MONEY.

35 Unless the instrument otherwise provides, an instrument

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

6 Sec. 17. NEW SECTION. 554.3108 PAYABLE ON DEMAND OR AT
7 DEFINITE TIME.

8 1. A promise or order is "payable on demand" if it (i)
9 states that it is payable on demand or at sight, or otherwise
10 indicates that it is payable at the will of the holder, or
11 (ii) does not state any time of payment.

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

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

26 Sec. 18. NEW SECTION. 554.3109 PAYABLE TO BEARER OR TO
27 ORDER.

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

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

32 b. does not state a payee; or

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

1 2. A promise or order that is not payable to bearer is
2 payable to order if it is payable (i) to the order of an
3 identified person or (ii) to an identified person or order. A
4 promise or order that is payable to order is payable to the
5 identified person.

6 3. An instrument payable to bearer may become payable to
7 an identified person if it is specially endorsed pursuant to
8 section 554.3205, subsection 1. An instrument payable to an
9 identified person may become payable to bearer if it is
10 endorsed in blank pursuant to section 554.3205, subsection 2.

11 Sec. 19. NEW SECTION. 554.3110 IDENTIFICATION OF PERSON
12 TO WHOM INSTRUMENT IS PAYABLE.

13 1. The person to whom an instrument is initially payable
14 is determined by the intent of the person, whether or not
15 authorized, signing as, or in the name or behalf of, the
16 issuer of the instrument. The instrument is payable to the
17 person intended by the signer even if that person is
18 identified in the instrument by a name or other identification
19 that is not that of the intended person. If more than one
20 person signs in the name or behalf of the issuer of an
21 instrument and all the signers do not intend the same person
22 as payee, the instrument is payable to any person intended by
23 one or more of the signers.

24 2. If the signature of the issuer of an instrument is made
25 by automated means, such as a check-writing machine, the payee
26 of the instrument is determined by the intent of the person
27 who supplied the name or identification of the payee, whether
28 or not authorized to do so.

29 3. A person to whom an instrument is payable may be
30 identified in any way, including by name, identifying number,
31 office, or account number. For the purpose of determining the
32 holder of an instrument, the following rules apply:

33 a. if an instrument is payable to an account and the
34 account is identified only by number, the instrument is
35 payable to the person to whom the account is payable. If an

1 instrument is payable to an account identified by number and
2 by the name of a person, the instrument is payable to the
3 named person, whether or not that person is the owner of the
4 account identified by number.

5 b. if an instrument is payable to:

6 (1) a trust, an estate, or a person described as trustee
7 or representative of a trust or estate, the instrument is
8 payable to the trustee, the representative, or a successor of
9 either, whether or not the beneficiary or estate is also
10 named;

11 (2) a person described as agent or similar representative
12 of a named or identified person, the instrument is payable to
13 the represented person, the representative, or a successor of
14 the representative;

15 (3) a fund or organization that is not a legal entity, the
16 instrument is payable to a representative of the members of
17 the fund or organization; or

18 (4) an office or to a person described as holding an
19 office, the instrument is payable to the named person, the
20 incumbent of the office, or a successor to the incumbent.

21 4. If an instrument is payable to two or more persons
22 alternatively, it is payable to any of them and may be
23 negotiated, discharged, or enforced by any or all of them in
24 possession of the instrument. If an instrument is payable to
25 two or more persons not alternatively, it is payable to all of
26 them and may be negotiated, discharged, or enforced only by
27 all of them. If an instrument payable to two or more persons
28 is ambiguous as to whether it is payable to the persons
29 alternatively, the instrument is payable to the persons
30 alternatively.

31 Sec. 20. NEW SECTION. 554.3111 PLACE OF PAYMENT.

32 Except as otherwise provided for items in Article 4, an
33 instrument is payable at the place of payment stated in the
34 instrument. If no place of payment is stated, an instrument
35 is payable at the address of the drawee or maker stated in the

1 instrument. If no address is stated, the place of payment is
2 the place of business of the drawee or maker. If a drawee or
3 maker has more than one place of business, the place of
4 payment is any place of business of the drawee or maker chosen
5 by the person entitled to enforce the instrument. If the
6 drawee or maker has no place of business, the place of payment
7 is the residence of the drawee or maker.

8 Sec. 21. NEW SECTION. 554.3112 INTEREST.

9 1. Unless otherwise provided in the instrument, (i) an
10 instrument is not payable with interest, and (ii) interest on
11 an interest-bearing instrument is payable from the date of the
12 instrument.

13 2. Interest may be stated in an instrument as a fixed or
14 variable amount of money or it may be expressed as a fixed or
15 variable rate or rates. The amount or rate of interest may be
16 stated or described in the instrument in any manner and may
17 require reference to information not contained in the
18 instrument. If an instrument provides for interest, but the
19 amount of interest payable cannot be ascertained from the
20 description, interest is payable at the judgment rate in
21 effect at the place of payment of the instrument and at the
22 time interest first accrues.

23 Sec. 22. NEW SECTION. 554.3113 DATE OF INSTRUMENT.

24 1. An instrument may be antedated or postdated. The date
25 stated determines the time of payment if the instrument is
26 payable at a fixed period after date. Except as provided in
27 section 554.4401, subsection 3, an instrument payable on
28 demand is not payable before the date of the instrument.

29 2. If an instrument is undated, its date is the date of
30 its issue or, in the case of an unissued instrument, the date
31 it first comes into possession of a holder.

32 Sec. 23. NEW SECTION. 554.3114 CONTRADICTORY TERMS OF
33 INSTRUMENT.

34 If an instrument contains contradictory terms, typewritten
35 terms prevail over printed terms, handwritten terms prevail

1 over both, and words prevail over numbers.

2 Sec. 24. NEW SECTION. 554.3115 INCOMPLETE INSTRUMENT.

3 1. "Incomplete instrument" means a signed writing, whether
4 or not issued by the signer, the contents of which show at the
5 time of signing that it is incomplete but that the signer
6 intended it to be completed by the addition of words or
7 numbers.

8 2. Subject to subsection 3, if an incomplete instrument is
9 an instrument under section 554.3104, it may be enforced
10 according to its terms if it is not completed, or according to
11 its terms as augmented by completion. If an incomplete
12 instrument is not an instrument under section 554.3104, but,
13 after completion, the requirements of section 554.3104 are
14 met, the instrument may be enforced according to its terms as
15 augmented by completion.

16 3. If words or numbers are added to an incomplete
17 instrument without authority of the signer, there is an
18 alteration of the incomplete instrument under section
19 554.3407.

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

23 Sec. 25. NEW SECTION. 554.3116 JOINT AND SEVERAL
24 LIABILITY -- CONTRIBUTION.

25 1. Except as otherwise provided in the instrument, two or
26 more persons who have the same liability on an instrument as
27 makers, drawers, acceptors, endorsers who endorse as joint
28 payees, or anomalous endorsers are jointly and severally
29 liable in the capacity in which they sign.

30 2. Except as provided in section 554.3419, subsection 5,
31 or by agreement of the affected parties, a party having joint
32 and several liability who pays the instrument is entitled to
33 receive from any party having the same joint and several
34 liability contribution in accordance with applicable law.

35 3. Discharge of one party having joint and several

1 liability by a person entitled to enforce the instrument does
2 not affect the right under subsection 2 of a party having the
3 same joint and several liability to receive contribution from
4 the party discharged.

5 Sec. 26. NEW SECTION. 554.3117 OTHER AGREEMENTS
6 AFFECTING INSTRUMENT.

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

17 Sec. 27. NEW SECTION. 554.3118 STATUTE OF LIMITATIONS.

18 1. Except as provided in subsection 5, an action to
19 enforce the obligation of a party to pay a note payable at a
20 definite time must be commenced within six years after the due
21 date or dates stated in the note or, if a due date is
22 accelerated, within six years after the accelerated due date.

23 2. Except as provided in subsection 4 or 5, if demand for
24 payment is made to the maker of a note payable on demand, an
25 action to enforce the obligation of a party to pay the note
26 must be commenced within six years after the demand. If no
27 demand for payment is made to the maker, an action to enforce
28 the note is barred if neither principal nor interest on the
29 note has been paid for a continuous period of ten years.

30 3. Except as provided in subsection 4, an action to
31 enforce the obligation of a party to an unaccepted draft to
32 pay the draft must be commenced within three years after
33 dishonor of the draft or ten years after the date of the
34 draft, whichever period expires first.

35 4. An action to enforce the obligation of the acceptor of

1 a certified check or the issuer of a teller's check, cashier's
2 check, or traveler's check must be commenced within three
3 years after demand for payment is made to the acceptor or
4 issuer, as the case may be.

5 5. An action to enforce the obligation of a party to a
6 certificate of deposit to pay the instrument must be commenced
7 within six years after demand for payment is made to the
8 maker, but if the instrument states a due date and the maker
9 is not required to pay before that date, the six-year period
10 begins when a demand for payment is in effect and the due date
11 has passed.

12 6. An action to enforce the obligation of a party to pay
13 an accepted draft, other than a certified check, must be
14 commenced (i) within six years after the due date or dates
15 stated in the draft or acceptance if the obligation of the
16 acceptor is payable at a definite time, or (ii) within six
17 years after the date of the acceptance if the obligation of
18 the acceptor is payable on demand.

19 7. Unless governed by other law regarding claims for
20 indemnity or contribution, an action (i) for conversion of an
21 instrument, for money had and received, or like action based
22 on conversion, (ii) for breach of warranty, or (iii) to
23 enforce an obligation, duty, or right arising under this
24 Article and not governed by this section must be commenced
25 within three years after the cause of action accrues.

26 Sec. 28. NEW SECTION. 554.3119 NOTICE OF RIGHT TO DEFEND
27 ACTION.

28 In an action for breach of an obligation for which a third
29 person is answerable over pursuant to this Article or Article
30 4, the defendant may give the third person written notice of
31 the litigation, and the person notified may then give similar
32 notice to any other person who is answerable over. If the
33 notice states (i) that the person notified may come in and
34 defend and (ii) that failure to do so will bind the person
35 notified in an action later brought by the person giving the

1 notice as to any determination of fact common to the two
2 litigations, the person notified is so bound unless after
3 reasonable receipt of the notice the person notified does come
4 in and defend.

5

PART 2

6

NEGOTIATION, TRANSFER, AND ENDORSEMENT

7

Sec. 29. NEW SECTION. 554.3201 NEGOTIATION.

8

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

11 2. Except for negotiation by a remitter, if an instrument
12 is payable to an identified person, negotiation requires
13 transfer of possession of the instrument and its endorsement
14 by the holder. If an instrument is payable to bearer, it may
15 be negotiated by transfer of possession alone.

16 Sec. 30. NEW SECTION. 554.3202 NEGOTIATION SUBJECT TO
17 RESCISSION.

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

22 2. To the extent permitted by other law, negotiation may
23 be rescinded or may be subject to other remedies, but those
24 remedies may not be asserted against a subsequent holder in
25 due course or a person paying the instrument in good faith and
26 without knowledge of facts that are a basis for rescission or
27 other remedy.

28 Sec. 31. NEW SECTION. 554.3203 TRANSFER OF INSTRUMENT --
29 RIGHTS ACQUIRED BY TRANSFER.

30 1. An instrument is transferred when it is delivered by a
31 person other than its issuer for the purpose of giving to the
32 person receiving delivery the right to enforce the instrument.

33 2. Transfer of an instrument, whether or not the transfer
34 is a negotiation, vests in the transferee any right of the
35 transferor to enforce the instrument, including any right as a

1 holder in due course, but the transferee cannot acquire rights
2 of a holder in due course by a transfer, directly or
3 indirectly, from a holder in due course if the transferee
4 engaged in fraud or illegality affecting the instrument.

5 3. Unless otherwise agreed, if an instrument is
6 transferred for value and the transferee does not become a
7 holder because of lack of endorsement by the transferor, the
8 transferee has a specifically enforceable right to the
9 unqualified endorsement of the transferor, but negotiation of
10 the instrument does not occur until the endorsement is made.

11 4. If a transferor purports to transfer less than the
12 entire instrument, negotiation of the instrument does not
13 occur. The transferee obtains no rights under this Article
14 and has only the rights of a partial assignee.

15 Sec. 32. NEW SECTION. 554.3204 ENDORSEMENT.

16 1. "Endorsement" means a signature, other than that of a
17 signer as maker, drawer, or acceptor, that alone or
18 accompanied by other words is made on an instrument for the
19 purpose of (i) negotiating the instrument, (ii) restricting
20 payment of the instrument, or (iii) incurring endorser's
21 liability on the instrument, but regardless of the intent of
22 the signer, a signature and its accompanying words is an
23 endorsement unless the accompanying words, terms of the
24 instrument, place of the signature, or other circumstances
25 unambiguously indicate that the signature was made for a
26 purpose other than endorsement. For the purpose of
27 determining whether a signature is made on an instrument, a
28 paper affixed to the instrument is a part of the instrument.

29 2. "Endorser" means a person who makes an endorsement.

30 3. For the purpose of determining whether the transferee
31 of an instrument is a holder, an endorsement that transfers a
32 security interest in the instrument is effective as an
33 unqualified endorsement of the instrument.

34 4. If an instrument is payable to a holder under a name
35 that is not the name of the holder, endorsement may be made by

1 the holder in the name stated in the instrument or in the
2 holder's name or both, but signature in both names may be
3 required by a person paying or taking the instrument for value
4 or collection.

5 Sec. 33. NEW SECTION. 554.3205 SPECIAL ENDORSEMENT --
6 BLANK ENDORSEMENT -- ANOMALOUS ENDORSEMENT.

7 1. If an endorsement is made by the holder of an
8 instrument, whether payable to an identified person or payable
9 to bearer, and the endorsement identifies a person to whom it
10 makes the instrument payable, it is a "special endorsement."
11 When specially endorsed, an instrument becomes payable to the
12 identified person and may be negotiated only by the
13 endorsement of that person. The principles stated in section
14 554.3110 apply to special endorsements.

15 2. If an endorsement is made by the holder of an
16 instrument and it is not a special endorsement, it is a "blank
17 endorsement." When endorsed in blank, an instrument becomes
18 payable to bearer and may be negotiated by transfer of
19 possession alone until specially endorsed.

20 3. The holder may convert a blank endorsement that
21 consists only of a signature into a special endorsement by
22 writing, above the signature of the endorser, words
23 identifying the person to whom the instrument is made payable.

24 4. "Anomalous endorsement" means an endorsement made by a
25 person who is not the holder of the instrument. An anomalous
26 endorsement does not affect the manner in which the instrument
27 may be negotiated.

28 Sec. 34. NEW SECTION. 554.3206 RESTRICTIVE ENDORSEMENT.

29 1. An endorsement limiting payment to a particular person
30 or otherwise prohibiting further transfer or negotiation of
31 the instrument is not effective to prevent further transfer or
32 negotiation of the instrument.

33 2. An endorsement stating a condition to the right of the
34 endorsee to receive payment does not affect the right of the
35 endorsee to enforce the instrument. A person paying the

1 instrument or taking it for value or collection may disregard
2 the condition, and the rights and liabilities of that person
3 are not affected by whether the condition has been fulfilled.

4 3. If an instrument bears an endorsement (i) described in
5 section 554.4201, subsection 2, or (ii) in blank or to a
6 particular bank using the words "for deposit," "for
7 collection," or other words indicating a purpose of having the
8 instrument collected by a bank for the endorser or for a
9 particular account, the following rules apply:

10 a. A person, other than a bank, who purchases the
11 instrument when so endorsed converts the instrument unless the
12 amount paid for the instrument is received by the endorser or
13 applied consistently with the endorsement.

14 b. A depository bank that purchases the instrument or
15 takes it for collection when so endorsed converts the
16 instrument unless the amount paid by the bank with respect to
17 the instrument is received by the endorser or applied
18 consistently with the endorsement.

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

24 d. Except as otherwise provided in paragraph c, a payor
25 bank or intermediary bank may disregard the endorsement and is
26 not liable if the proceeds of the instrument are not received
27 by the endorser or applied consistently with the endorsement.

28 4. Except for an endorsement covered by subsection 3, if
29 an instrument bears an endorsement using words to the effect
30 that payment is to be made to the endorsee as agent, trustee,
31 or other fiduciary for the benefit of the endorser or another
32 person, the following rules apply:

33 a. Unless there is notice of breach of fiduciary duty as
34 provided in section 554.3307, a person who purchases the
35 instrument from the endorsee or takes the instrument from the

1 endorsee for collection or payment may pay the proceeds of
2 payment or the value given for the instrument to the endorsee
3 without regard to whether the endorsee violates a fiduciary
4 duty to the endorser.

5 b. A subsequent transferee of the instrument or person who
6 pays the instrument is neither given notice nor otherwise
7 affected by the restriction in the endorsement unless the
8 transferee or payor knows that the fiduciary dealt with the
9 instrument or its proceeds in breach of fiduciary duty.

10 5. The presence on an instrument of an endorsement to
11 which this section applies does not prevent a purchaser of the
12 instrument from becoming a holder in due course of the
13 instrument unless the purchaser is a converter under
14 subsection 3 or has notice or knowledge of breach of fiduciary
15 duty as stated in subsection 4.

16 6. In an action to enforce the obligation of a party to
17 pay the instrument, the obligor has a defense if payment would
18 violate an endorsement to which this section applies and the
19 payment is not permitted by this section.

20 Sec. 35. NEW SECTION. 554.3207 REACQUISITION.

21 Reacquisition of an instrument occurs if it is transferred
22 to a former holder, by negotiation or otherwise. A former
23 holder who reacquires the instrument may cancel endorsements
24 made after the reacquirer first became a holder of the
25 instrument. If the cancellation causes the instrument to be
26 payable to the reacquirer or to bearer, the reacquirer may
27 negotiate the instrument. An endorser whose endorsement is
28 cancelled is discharged, and the discharge is effective
29 against any subsequent holder.

30

PART 3

31

ENFORCEMENT OF INSTRUMENTS

32

Sec. 36. NEW SECTION. 554.3301 PERSON ENTITLED TO

33

ENFORCE INSTRUMENT.

34

"Person entitled to enforce" an instrument means (i) the
35 holder of the instrument, (ii) a nonholder in possession of

1 the instrument who has the rights of a holder, or (iii) a
2 person not in possession of the instrument who is entitled to
3 enforce the instrument pursuant to section 554.3309 or
4 554.3418, subsection 4. A person may be a person entitled to
5 enforce the instrument even though the person is not the owner
6 of the instrument or is in wrongful possession of the
7 instrument.

8 Sec. 37. NEW SECTION. 554.3302 HOLDER IN DUE COURSE.

9 1. Subject to subsection 3 and section 554.3106,
10 subsection 4, "holder in due course" means the holder of an
11 instrument if:

12 a. the instrument when issued or negotiated to the holder
13 does not bear such apparent evidence of forgery or alteration
14 or is not otherwise so irregular or incomplete as to call into
15 question its authenticity; and

16 b. the holder took the instrument (i) for value, (ii) in
17 good faith, (iii) without notice that the instrument is
18 overdue or has been dishonored or that there is an uncured
19 default with respect to payment of another instrument issued
20 as part of the same series, (iv) without notice that the
21 instrument contains an unauthorized signature or has been
22 altered, (v) without notice of any claim to the instrument
23 described in section 554.3306, and (vi) without notice that
24 any party has a defense or claim in recoupment described in
25 section 554.3305, subsection 1.

26 2. Notice of discharge of a party, other than discharge in
27 an insolvency proceeding, is not notice of a defense under
28 subsection 1, but discharge is effective against a person who
29 became a holder in due course with notice of the discharge.
30 Public filing or recording of a document does not of itself
31 constitute notice of a defense, claim in recoupment, or claim
32 to the instrument.

33 3. Except to the extent a transferor or predecessor in
34 interest has rights as a holder in due course, a person does
35 not acquire rights of a holder in due course of an instrument

1 taken (i) by legal process or by purchase in an execution,
2 bankruptcy, or creditor's sale or similar proceeding, (ii) by
3 purchase as part of a bulk transaction not in ordinary course
4 of business of the transferor, or (iii) as the successor in
5 interest to an estate or other organization.

6 4. If, under section 554.3303, subsection 1, paragraph
7 "a", the promise of performance that is the consideration for
8 an instrument has been partially performed, the holder may
9 assert rights as a holder in due course of the instrument only
10 to the fraction of the amount payable under the instrument
11 equal to the value of the partial performance divided by the
12 value of the promised performance.

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

23 6. To be effective, notice must be received at a time and
24 in a manner that gives a reasonable opportunity to act on it.

25 7. This section is subject to any law limiting status as a
26 holder in due course in particular classes of transactions.

27 Sec. 38. NEW SECTION. 554.3303 VALUE AND CONSIDERATION.

- 28 1. An instrument is issued or transferred for value if:
29 a. the instrument is issued or transferred for a promise
30 of performance, to the extent the promise has been performed;
31 b. the transferee acquires a security interest or other
32 lien in the instrument other than a lien obtained by judicial
33 proceeding;
34 c. the instrument is issued or transferred as payment of,
35 or as security for, an antecedent claim against any person,

1 whether or not the claim is due;

2 d. the instrument is issued or transferred in exchange for
3 a negotiable instrument; or

4 e. the instrument is issued or transferred in exchange for
5 the incurring of an irrevocable obligation to a third party by
6 the person taking the instrument.

7 2. "Consideration" means any consideration sufficient to
8 support a simple contract. The drawer or maker of an
9 instrument has a defense if the instrument is issued without
10 consideration. If an instrument is issued for a promise of
11 performance, the issuer has a defense to the extent
12 performance of the promise is due and the promise has not been
13 performed. If an instrument is issued for value as stated in
14 subsection 1, the instrument is also issued for consideration.

15 Sec. 39. NEW SECTION. 554.3304 OVERDUE INSTRUMENT.

16 1. An instrument payable on demand becomes overdue at the
17 earliest of the following times:

18 a. on the day after the day demand for payment is duly
19 made;

20 b. if the instrument is a check, ninety days after its
21 date; or

22 c. if the instrument is not a check, when the instrument
23 has been outstanding for a period of time after its date which
24 is unreasonably long under the circumstances of the particular
25 case in light of the nature of the instrument and usage of the
26 trade.

27 2. With respect to an instrument payable at a definite
28 time the following rules apply:

29 a. If the principal is payable in installments and a due
30 date has not been accelerated, the instrument becomes overdue
31 upon default under the instrument for nonpayment of an
32 installment, and the instrument remains overdue until the
33 default is cured.

34 b. If the principal is not payable in installments and the
35 due date has not been accelerated, the instrument becomes

1 overdue on the day after the due date.

2 c. If a due date with respect to principal has been
3 accelerated, the instrument becomes overdue on the day after
4 the accelerated due date.

5 3. Unless the due date of principal has been accelerated,
6 an instrument does not become overdue if there is default in
7 payment of interest but no default in payment of principal.

8 Sec. 40. NEW SECTION. 554.3305 DEFENSES AND CLAIMS IN
9 RECOUPMENT.

10 1. Except as stated in subsection 2, the right to enforce
11 the obligation of a party to pay an instrument is subject to
12 the following:

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

21 b. a defense of the obligor stated in another section of
22 this Article or a defense of the obligor that would be
23 available if the person entitled to enforce the instrument
24 were enforcing a right to payment under a simple contract; and

25 c. a claim in recoupment of the obligor against the
26 original payee of the instrument if the claim arose from the
27 transaction that gave rise to the instrument; but the claim of
28 the obligor may be asserted against a transferee of the
29 instrument only to reduce the amount owing on the instrument
30 at the time the action is brought.

31 2. The right of a holder in due course to enforce the
32 obligation of a party to pay the instrument is subject to
33 defenses of the obligor stated in subsection 1, paragraph "a",
34 but is not subject to defenses of the obligor stated in
35 subsection 1, paragraph "b", or claims in recoupment stated in

1 subsection 1, paragraph "c", against a person other than the
2 holder.

3 3. Except as stated in subsection 4, in an action to
4 enforce the obligation of a party to pay the instrument, the
5 obligor may not assert against the person entitled to enforce
6 the instrument a defense, claim in recoupment, or claim to the
7 instrument (section 554.3306) of another person, but the other
8 person's claim to the instrument may be asserted by the
9 obligor if the other person is joined in the action and
10 personally asserts the claim against the person entitled to
11 enforce the instrument. An obligor is not obliged to pay the
12 instrument if the person seeking enforcement of the instrument
13 does not have rights of a holder in due course and the obligor
14 proves that the instrument is a lost or stolen instrument.

15 4. In an action to enforce the obligation of an
16 accommodation party to pay an instrument, the accommodation
17 party may assert against the person entitled to enforce the
18 instrument any defense or claim in recoupment under subsection
19 1 that the accommodated party could assert against the person
20 entitled to enforce the instrument, except the defenses of
21 discharge in insolvency proceedings, infancy, and lack of
22 legal capacity.

23 Sec. 41. NEW SECTION. 554.3306 CLAIMS TO AN INSTRUMENT.

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

31 Sec. 42. NEW SECTION. 554.3307 NOTICE OF BREACH OF
32 FIDUCIARY DUTY.

33 1. In this section:

34 a. "Fiduciary" means an agent, trustee, partner, corporate
35 officer or director, or other representative owing a fiduciary

1 duty with respect to an instrument.

2 b. "Represented person" means the principal, beneficiary,
3 partnership, corporation, or other person to whom the duty
4 stated in paragraph "a" is owed.

5 2. If (i) an instrument is taken from a fiduciary for
6 payment or collection or for value, (ii) the taker has
7 knowledge of the fiduciary status of the fiduciary, and (iii)
8 the represented person makes a claim to the instrument or its
9 proceeds on the basis that the transaction of the fiduciary is
10 a breach of fiduciary duty, the following rules apply:

11 a. Notice of breach of fiduciary duty by the fiduciary is
12 notice of the claim of the represented person.

13 b. In the case of an instrument payable to the represented
14 person or the fiduciary as such, the taker has notice of the
15 breach of fiduciary duty if the instrument is (i) taken in
16 payment of or as security for a debt known by the taker to be
17 the personal debt of the fiduciary, (ii) taken in a
18 transaction known by the taker to be for the personal benefit
19 of the fiduciary, or (iii) deposited to an account other than
20 an account of the fiduciary, as such, or an account of the
21 represented person.

22 c. If an instrument is issued by the represented person or
23 the fiduciary as such, and made payable to the fiduciary
24 personally, the taker does not have notice of the breach of
25 fiduciary duty unless the taker knows of the breach of
26 fiduciary duty.

27 d. If an instrument is issued by the represented person or
28 the fiduciary as such, to the taker as payee, the taker has
29 notice of the breach of fiduciary duty if the instrument is
30 (i) taken in payment of or as security for a debt known by the
31 taker to be the personal debt of the fiduciary, (ii) taken in
32 a transaction known by the taker to be for the personal
33 benefit of the fiduciary, or (iii) deposited to an account
34 other than an account of the fiduciary, as such, or an account
35 of the represented person.

1 Sec. 43. NEW SECTION. 554.3308 PROOF OF SIGNATURES AND
2 STATUS AS HOLDER IN DUE COURSE.

3 1. In an action with respect to an instrument, the
4 authenticity of, and authority to make, each signature on the
5 instrument is admitted unless specifically denied in the
6 pleadings. If the validity of a signature is denied in the
7 pleadings, the burden of establishing validity is on the
8 person claiming validity, but the signature is presumed to be
9 authentic and authorized unless the action is to enforce the
10 liability of the purported signer and the signer is dead or
11 incompetent at the time of trial of the issue of validity of
12 the signature. If an action to enforce the instrument is
13 brought against a person as the undisclosed principal of a
14 person who signed the instrument as a party to the instrument,
15 the plaintiff has the burden of establishing that the
16 defendant is liable on the instrument as a represented person
17 under section 554.3402, subsection 1.

18 2. If the validity of signatures is admitted or proved and
19 there is compliance with subsection 1, a plaintiff producing
20 the instrument is entitled to payment if the plaintiff proves
21 entitlement to enforce the instrument under section 554.3301,
22 unless the defendant proves a defense or claim in recoupment.
23 If a defense or claim in recoupment is proved, the right to
24 payment of the plaintiff is subject to the defense or claim,
25 except to the extent the plaintiff proves that the plaintiff
26 has rights of a holder in due course which are not subject to
27 the defense or claim.

28 Sec. 44. NEW SECTION. 554.3309 ENFORCEMENT OF LOST,
29 DESTROYED, OR STOLEN INSTRUMENT.

30 1. A person not in possession of an instrument is entitled
31 to enforce the instrument if: (i) the person was in
32 possession of the instrument and entitled to enforce it when
33 loss of possession occurred, (ii) the loss of possession was
34 not the result of a transfer by the person or a lawful
35 seizure, and (iii) the person cannot reasonably obtain

1 possession of the instrument because the instrument was
2 destroyed, its whereabouts cannot be determined, or it is in
3 the wrongful possession of an unknown person or a person that
4 cannot be found or is not amenable to service of process.

5 2. A person seeking enforcement of an instrument under
6 subsection 1 must prove the terms of the instrument and the
7 person's right to enforce the instrument. If that proof is
8 made, section 554.3308 applies to the case as if the person
9 seeking enforcement had produced the instrument. The court
10 may not enter judgment in favor of the person seeking
11 enforcement unless it finds that the person required to pay
12 the instrument is adequately protected against loss that might
13 occur by reason of a claim by another person to enforce the
14 instrument. Adequate protection may be provided by any
15 reasonable means.

16 Sec. 45. NEW SECTION. 554.3310 EFFECT OF INSTRUMENT ON
17 OBLIGATION FOR WHICH TAKEN.

18 1. Unless otherwise agreed, if a certified check,
19 cashier's check, or teller's check is taken for an obligation,
20 the obligation is discharged to the same extent discharge
21 would result if an amount of money equal to the amount of the
22 instrument were taken in payment of the obligation. Discharge
23 of the obligation does not affect any liability that the
24 obligor may have as an endorser of the instrument.

25 2. Unless otherwise agreed and except as provided in
26 subsection 1, if a note or an uncertified check is taken for
27 an obligation, the obligation is suspended to the same extent
28 the obligation would be discharged if an amount of money equal
29 to the amount of the instrument were taken, and the following
30 rules apply:

31 a. In the case of an uncertified check, suspension of the
32 obligation continues until dishonor of the check or until it
33 is paid or certified. Payment or certification of the check
34 results in discharge of the obligation to the extent of the
35 amount of the check.

1 b. In the case of a note, suspension of the obligation
2 continues until dishonor of the note or until it is paid.
3 Payment of the note results in discharge of the obligation to
4 the extent of the payment.

5 c. Except as provided in paragraph "d", if the check or
6 note is dishonored and the obligee of the obligation for which
7 the instrument was taken is the person entitled to enforce the
8 instrument, the obligee may enforce either the instrument or
9 the obligation. In the case of an instrument of a third
10 person which is negotiated to the obligee by the obligor,
11 discharge of the obligor on the instrument also discharges the
12 obligation.

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

23 3. If an instrument other than one described in subsection
24 1 or 2 is taken for an obligation, the effect is (i) that
25 stated in subsection 1 if the instrument is one on which a
26 bank is liable as maker or acceptor, or (ii) that stated in
27 subsection 2 in any other case.

28 Sec. 46. NEW SECTION. 554.3311 ACCORD AND SATISFACTION
29 BY USE OF INSTRUMENT.

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

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

6 3. Subject to subsection 4, a claim is not discharged
7 under subsection 2 if either of the following applies:

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

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

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

28 Sec. 47. NEW SECTION. 554.3312 LOST, DESTROYED, OR
29 STOLEN CASHIER'S CHECK, TELLER'S CHECK, OR CERTIFIED CHECK.

30 1. In this section:

31 a. "Check" means a cashier's check, teller's check, or
32 certified check.

33 b. "Claimant" means a person who claims the right to
34 receive the amount of a cashier's check, teller's check, or
35 certified check that was lost, destroyed, or stolen.

1 c. "Declaration of loss" means a written statement, made
2 under penalty of perjury, to the effect that (i) the declarer
3 lost possession of a check, (ii) the declarer is the drawer or
4 payee of the check, in the case of a certified check, or the
5 remitter or payee of the check, in the case of a cashier's
6 check or teller's check, (iii) the loss of possession was not
7 the result of a transfer by the declarer or a lawful seizure,
8 and (iv) the declarer cannot reasonably obtain possession of
9 the check because the check was destroyed, its whereabouts
10 cannot be determined, or it is in the wrongful possession of
11 an unknown person or a person that cannot be found or is not
12 amenable to service of process.

13 d. "Obligated bank" means the issuer of a cashier's check
14 or teller's check or the acceptor of a certified check.

15 2. A claimant may assert a claim to the amount of a check
16 by a communication to the obligated bank describing the check
17 with reasonable certainty and requesting payment of the amount
18 of the check, if (i) the claimant is the drawer or payee of a
19 certified check or the remitter or payee of a cashier's check
20 or teller's check, (ii) the communication contains or is
21 accompanied by a declaration of loss of the claimant with
22 respect to the check, (iii) the communication is received at a
23 time and in a manner affording the bank a reasonable time to
24 act on it before the check is paid, and (iv) the claimant
25 provides reasonable identification if requested by the
26 obligated bank. Delivery of a declaration of loss is a
27 warranty of the truth of the statements made in the
28 declaration. If a claim is asserted in compliance with this
29 subsection, the following rules apply:

30 a. The claim becomes enforceable at the later of (i) the
31 time the claim is asserted, or (ii) the ninetieth day
32 following the date of the check, in the case of a cashier's
33 check or teller's check, or the ninetieth day following the
34 date of the acceptance, in the case of a certified check.

35 b. Until the claim becomes enforceable, it has no legal

1 effect and the obligated bank may pay the check or, in the
2 case of a teller's check, may permit the drawee to pay the
3 check. Payment to a person entitled to enforce the check
4 discharges all liability of the obligated bank with respect to
5 the check.

6 c. If the claim becomes enforceable before the check is
7 presented for payment, the obligated bank is not obliged to
8 pay the check.

9 d. When the claim becomes enforceable, the obligated bank
10 becomes obliged to pay the amount of the check to the claimant
11 if payment of the check has not been made to a person entitled
12 to enforce the check. Subject to section 554.4302, subsection
13 1, paragraph "a", payment to the claimant discharges all
14 liability of the obligated bank with respect to the check.

15 3. If the obligated bank pays the amount of a check to a
16 claimant under subsection 2, paragraph "b", subparagraph (4)
17 and the check is presented for payment by a person having
18 rights of a holder in due course, the claimant is obliged to
19 (i) refund the payment to the obligated bank if the check is
20 paid, or (ii) pay the amount of the check to the person having
21 rights of a holder in due course if the check is dishonored.

22 4. If a claimant has the right to assert a claim under
23 subsection 2 and is also a person entitled to enforce a
24 cashier's check, teller's check, or certified check which is
25 lost, destroyed, or stolen, the claimant may assert rights
26 with respect to the check either under this section or section
27 554.3309.

28 PART 4

29 LIABILITY OF PARTIES

30 Sec. 48. NEW SECTION. 554.3401 SIGNATURE.

31 1. A person is not liable on an instrument unless (i) the
32 person signed the instrument, or (ii) the person is
33 represented by an agent or representative who signed the
34 instrument and the signature is binding on the represented
35 person under section 554.3402.

1 2. A signature may be made (i) manually or by means of a
2 device or machine, and (ii) by the use of any name, including
3 a trade or assumed name, or by a word, mark, or symbol
4 executed or adopted by a person with present intention to
5 authenticate a writing.

6 Sec. 49. NEW SECTION. 554.3402 SIGNATURE BY
7 REPRESENTATIVE.

8 1. If a person acting, or purporting to act, as a
9 representative signs an instrument by signing either the name
10 of the represented person or the name of the signer, the
11 represented person is bound by the signature to the same
12 extent the represented person would be bound if the signature
13 were on a simple contract. If the represented person is
14 bound, the signature of the representative is the "authorized
15 signature of the represented person" and the represented
16 person is liable on the instrument, whether or not identified
17 in the instrument.

18 2. If a representative signs the name of the
19 representative to an instrument and the signature is an
20 authorized signature of the represented person, the following
21 rules apply:

22 a. If the form of the signature shows unambiguously that
23 the signature is made on behalf of the represented person who
24 is identified in the instrument, the representative is not
25 liable on the instrument.

26 b. Subject to subsection 3, if (i) the form of the
27 signature does not show unambiguously that the signature is
28 made in a representative capacity or (ii) the represented
29 person is not identified in the instrument, the representative
30 is liable on the instrument to a holder in due course that
31 took the instrument without notice that the representative was
32 not intended to be liable on the instrument. With respect to
33 any other person, the representative is liable on the
34 instrument unless the representative proves that the original
35 parties did not intend the representative to be liable on the

1 instrument.

2 3. If a representative signs the name of the
3 representative as drawer of a check without indication of the
4 representative status and the check is payable from an account
5 of the represented person who is identified on the check, the
6 signer is not liable on the check if the signature is an
7 authorized signature of the represented person.

8 Sec. 50. NEW SECTION. 554.3403 UNAUTHORIZED SIGNATURE.

9 1. Unless otherwise provided in this Article or Article 4,
10 an unauthorized signature is ineffective except as the
11 signature of the unauthorized signer in favor of a person who
12 in good faith pays the instrument or takes it for value. An
13 unauthorized signature may be ratified for all purposes of
14 this Article.

15 2. If the signature of more than one person is required to
16 constitute the authorized signature of an organization, the
17 signature of the organization is unauthorized if one of the
18 required signatures is lacking.

19 3. The civil or criminal liability of a person who makes
20 an unauthorized signature is not affected by any provision of
21 this Article which makes the unauthorized signature effective
22 for the purposes of this Article.

23 Sec. 51. NEW SECTION. 554.3404 IMPOSTORS -- FICTITIOUS
24 PAYEES.

25 1. If an impostor, by use of the mails or otherwise,
26 induces the issuer of an instrument to issue the instrument to
27 the impostor, or to a person acting in concert with the
28 impostor, by impersonating the payee of the instrument or a
29 person authorized to act for the payee, an endorsement of the
30 instrument by any person in the name of the payee is effective
31 as the endorsement of the payee in favor of a person who, in
32 good faith, pays the instrument or takes it for value or for
33 collection.

34 2. If (i) a person whose intent determines to whom an
35 instrument is payable (section 554.3110, subsection 1 or 2)

1 does not intend the person identified as payee to have any
2 interest in the instrument, or (ii) the person identified as
3 payee of an instrument is a fictitious person, the following
4 rules apply until the instrument is negotiated by special
5 endorsement:

6 a. Any person in possession of the instrument is its
7 holder.

8 b. An endorsement by any person in the name of the payee
9 stated in the instrument is effective as the endorsement of
10 the payee in favor of a person who, in good faith, pays the
11 instrument or takes it for value or for collection.

12 3. Under subsection 1 or 2, an endorsement is made in the
13 name of a payee if (i) it is made in a name substantially
14 similar to that of the payee or (ii) the instrument, whether
15 or not endorsed, is deposited in a depository bank to an
16 account in a name substantially similar to that of the payee.

17 4. With respect to an instrument to which subsection 1 or
18 2 applies, if a person paying the instrument or taking it for
19 value or for collection fails to exercise ordinary care in
20 paying or taking the instrument and that failure substantially
21 contributes to loss resulting from payment of the instrument,
22 the person bearing the loss may recover from the person
23 failing to exercise ordinary care to the extent the failure to
24 exercise ordinary care contributed to the loss.

25 Sec. 52. NEW SECTION. 554.3405 EMPLOYER'S RESPONSIBILITY
26 FOR FRAUDULENT ENDORSEMENT BY EMPLOYEE.

27 1. In this section:

28 a. "Employee" includes an independent contractor and
29 employee of an independent contractor retained by the
30 employer.

31 b. "Fraudulent endorsement" means (i) in the case of an
32 instrument payable to the employer, a forged endorsement
33 purporting to be that of the employer, or (ii) in the case of
34 an instrument with respect to which the employer is the
35 issuer, a forged endorsement purporting to be that of the

1 person identified as payee.

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

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

32 3. Under subsection 2, an endorsement is made in the name
33 of the person to whom an instrument is payable if (i) it is
34 made in a name substantially similar to the name of that
35 person or (ii) the instrument, whether or not endorsed, is

1 deposited in a depository bank to an account in a name
2 substantially similar to the name of that person.

3 Sec. 53. NEW SECTION. 554.3406 NEGLIGENCE CONTRIBUTING
4 TO FORGED SIGNATURE OR ALTERATION OF INSTRUMENT.

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

11 2. Under subsection 1, if the person asserting the
12 preclusion fails to exercise ordinary care in paying or taking
13 the instrument and that failure substantially contributes to
14 loss, the loss is allocated between the person precluded and
15 the person asserting the preclusion according to the extent to
16 which the failure of each to exercise ordinary care
17 contributed to the loss.

18 3. Under subsection 1, the burden of proving failure to
19 exercise ordinary care is on the person asserting the
20 preclusion. Under subsection 2, the burden of proving failure
21 to exercise ordinary care is on the person precluded.

22 Sec. 54. NEW SECTION. 554.3407 ALTERATION.

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

28 2. Except as provided in subsection 3, an alteration
29 fraudulently made discharges a party whose obligation is
30 affected by the alteration unless that party assents or is
31 precluded from asserting the alteration. No other alteration
32 discharges a party, and the instrument may be enforced
33 according to its original terms.

34 3. A payor bank or drawee paying a fraudulently altered
35 instrument or a person taking it for value, in good faith and

1 without notice of the alteration, may enforce rights with
2 respect to the instrument (i) according to its original terms,
3 or (ii) in the case of an incomplete instrument altered by
4 unauthorized completion, according to its terms as completed.

5 Sec. 55. NEW SECTION. 554.3408 DRAWEE NOT LIABLE ON
6 UNACCEPTED DRAFT.

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

11 Sec. 56. NEW SECTION. 554.3409 ACCEPTANCE OF DRAFT --
12 CERTIFIED CHECK.

13 1. "Acceptance" means the drawee's signed agreement to pay
14 a draft as presented. It must be written on the draft and may
15 consist of the drawee's signature alone. Acceptance may be
16 made at any time and becomes effective when notification
17 pursuant to instructions is given or the accepted draft is
18 delivered for the purpose of giving rights on the acceptance
19 to any person.

20 2. A draft may be accepted although it has not been signed
21 by the drawer, is otherwise incomplete, is overdue, or has
22 been dishonored.

23 3. If a draft is payable at a fixed period after sight and
24 the acceptor fails to date the acceptance, the holder may
25 complete the acceptance by supplying a date in good faith.

26 4. "Certified check" means a check accepted by the bank on
27 which it is drawn. Acceptance may be made as stated in
28 subsection 1 or by a writing on the check which indicates that
29 the check is certified. The drawee of a check has no
30 obligation to certify the check, and refusal to certify is not
31 dishonor of the check.

32 Sec. 57. NEW SECTION. 554.3410 ACCEPTANCE VARYING DRAFT.

33 1. If the terms of a drawee's acceptance vary from the
34 terms of the draft as presented, the holder may refuse the
35 acceptance and treat the draft as dishonored. In that case,

1 the drawee may cancel the acceptance.

2 2. The terms of a draft are not varied by an acceptance to
3 pay at a particular bank or place in the United States, unless
4 the acceptance states that the draft is to be paid only at
5 that bank or place.

6 3. If the holder assents to an acceptance varying the
7 terms of a draft, the obligation of each drawer and endorser
8 that does not expressly assent to the acceptance is
9 discharged.

10 Sec. 58. NEW SECTION. 554.3411 REFUSAL TO PAY CASHIER'S
11 CHECKS, TELLER'S CHECKS, AND CERTIFIED CHECKS.

12 1. In this section, "obligated bank" means the acceptor of
13 a certified check or the issuer of a cashier's check or
14 teller's check bought from the issuer.

15 2. If the obligated bank wrongfully (i) refuses to pay a
16 cashier's check or certified check, (ii) stops payment of a
17 teller's check, or (iii) refuses to pay a dishonored teller's
18 check, the person asserting the right to enforce the check is
19 entitled to compensation for expenses and loss of interest
20 resulting from the nonpayment and may recover consequential
21 damages if the obligated bank refuses to pay after receiving
22 notice of particular circumstances giving rise to the damages.

23 3. Expenses or consequential damages under subsection 2
24 are not recoverable if the refusal of the obligated bank to
25 pay occurs because (i) the bank suspends payments, (ii) the
26 obligated bank asserts a claim or defense of the bank that it
27 has reasonable grounds to believe is available against the
28 person entitled to enforce the instrument, (iii) the obligated
29 bank has a reasonable doubt whether the person demanding
30 payment is the person entitled to enforce the instrument, or
31 (iv) payment is prohibited by law.

32 Sec. 59. NEW SECTION. 554.3412 OBLIGATION OF ISSUER OF
33 NOTE OR CASHIER'S CHECK.

34 The issuer of a note or cashier's check or other draft
35 drawn on the drawer is obliged to pay the instrument (i)

1 according to its terms at the time it was issued or, if not
2 issued, at the time it first came into possession of a holder,
3 or (ii) if the issuer signed an incomplete instrument,
4 according to its terms when completed, to the extent stated in
5 sections 554.3115 and 554.3407. The obligation is owed to a
6 person entitled to enforce the instrument or to an endorser
7 who paid the instrument under section 554.3415.

8 Sec. 60. NEW SECTION. 554.3413 OBLIGATION OF ACCEPTOR.

9 1. The acceptor of a draft is obliged to pay the draft (i)
10 according to its terms at the time it was accepted, even
11 though the acceptance states that the draft is payable "as
12 originally drawn" or equivalent terms, (ii) if the acceptance
13 varies the terms of the draft, according to the terms of the
14 draft as varied, or (iii) if the acceptance is of a draft that
15 is an incomplete instrument, according to its terms when
16 completed, to the extent stated in sections 554.3115 and
17 554.3407. The obligation is owed to a person entitled to
18 enforce the draft or to the drawer or an endorser who paid the
19 draft under section 554.3414 or 554.3415.

20 2. If the certification of a check or other acceptance of
21 a draft states the amount certified or accepted, the
22 obligation of the acceptor is that amount. If (i) the
23 certification or acceptance does not state an amount, (ii) the
24 amount of the instrument is subsequently raised, and (iii) the
25 instrument is then negotiated to a holder in due course, the
26 obligation of the acceptor is the amount of the instrument at
27 the time it was taken by the holder in due course.

28 Sec. 61. NEW SECTION. 554.3414 OBLIGATION OF DRAWER.

29 1. This section does not apply to cashier's checks or
30 other drafts drawn on the drawer.

31 2. If an unaccepted draft is dishonored, the drawer is
32 obliged to pay the draft (i) according to its terms at the
33 time it was issued or, if not issued, at the time it first
34 came into possession of a holder, or (ii) if the drawer signed
35 an incomplete instrument, according to its terms when

1 completed, to the extent stated in sections 554.3115 and
2 554.3407. The obligation is owed to a person entitled to
3 enforce the draft or to an endorser who paid the draft under
4 section 554.3415.

5 3. If a draft is accepted by a bank, the drawer is
6 discharged, regardless of when or by whom acceptance was
7 obtained.

8 4. If a draft is accepted and the acceptor is not a bank,
9 the obligation of the drawer to pay the draft if the draft is
10 dishonored by the acceptor is the same as the obligation of an
11 endorser under section 554.3415, subsections 1 and 3.

12 5. If a draft states that it is drawn "without recourse"
13 or otherwise disclaims liability of the drawer to pay the
14 draft, the drawer is not liable under subsection 2 to pay the
15 draft if the draft is not a check. A disclaimer of the
16 liability stated in subsection 2 is not effective if the draft
17 is a check.

18 6. If (i) a check is not presented for payment or given to
19 a depository bank for collection within thirty days after its
20 date, (ii) the drawee suspends payments after expiration of
21 the thirty-day period without paying the check, and (iii)
22 because of the suspension of payments, the drawer is deprived
23 of funds maintained with the drawee to cover payment of the
24 check, the drawer to the extent deprived of funds may
25 discharge its obligation to pay the check by assigning to the
26 person entitled to enforce the check the rights of the drawer
27 against the drawee with respect to the funds.

28 Sec. 62. NEW SECTION. 554.3415 OBLIGATION OF ENDORSER.

29 1. Subject to subsections 2, 3, and 4 and to section
30 554.3419, subsection 3, if an instrument is dishonored, an
31 endorser is obliged to pay the amount due on the instrument
32 (i) according to the terms of the instrument at the time it
33 was endorsed, or (ii) if the endorser endorsed an incomplete
34 instrument, according to its terms when completed, to the
35 extent stated in sections 554.3115 and 554.3407. The

1 obligation of the endorser is owed to a person entitled to
2 enforce the instrument or to a subsequent endorser who paid
3 the instrument under this section.

4 2. If an endorsement states that it is made "without
5 recourse" or otherwise disclaims liability of the endorser,
6 the endorser is not liable under subsection 1 to pay the
7 instrument.

8 3. If notice of dishonor of an instrument is required by
9 section 554.3503 and notice of dishonor complying with that
10 section is not given to an endorser, the liability of the
11 endorser under subsection 1 is discharged.

12 4. If a draft is accepted by a bank after an endorsement
13 is made, the liability of the endorser under subsection 1 is
14 discharged.

15 5. If an endorser of a check is liable under subsection 1
16 and the check is not presented for payment, or given to a
17 depository bank for collection, within thirty days after the
18 day the endorsement was made, the liability of the endorser
19 under subsection 1 is discharged.

20 Sec. 63. NEW SECTION. 554.3416 TRANSFER WARRANTIES.

21 1. A person who transfers an instrument for consideration
22 warrants to the transferee and, if the transfer is by
23 endorsement, to any subsequent transferee that:

24 a. the warrantor is a person entitled to enforce the
25 instrument;

26 b. all signatures on the instrument are authentic and
27 authorized;

28 c. the instrument has not been altered;

29 d. the instrument is not subject to a defense or claim in
30 recoupment of any party which can be asserted against the
31 warrantor; and

32 e. the warrantor has no knowledge of any insolvency
33 proceeding commenced with respect to the maker or acceptor or,
34 in the case of an unaccepted draft, the drawer.

35 2. A person to whom the warranties under subsection 1 are

1 made and who took the instrument in good faith may recover
2 from the warrantor as damages for breach of warranty an amount
3 equal to the loss suffered as a result of the breach, but not
4 more than the amount of the instrument plus expenses and loss
5 of interest incurred as a result of the breach.

6 3. The warranties stated in subsection 1 cannot be
7 disclaimed with respect to checks. Unless notice of a claim
8 for breach of warranty is given to the warrantor within thirty
9 days after the claimant has reason to know of the breach and
10 the identity of the warrantor, the liability of the warrantor
11 under subsection 2 is discharged to the extent of any loss
12 caused by the delay in giving notice of the claim.

13 4. A cause of action for breach of warranty under this
14 section accrues when the claimant has reason to know of the
15 breach.

16 Sec. 64. NEW SECTION. 554.3417 PRESENTMENT WARRANTIES.

17 1. If an unaccepted draft is presented to the drawee for
18 payment or acceptance and the drawee pays or accepts the
19 draft, (i) the person obtaining payment or acceptance, at the
20 time of presentment, and (ii) a previous transferor of the
21 draft, at the time of transfer, warrant to the drawee making
22 payment or accepting the draft in good faith that:

23 a. the warrantor is, or was, at the time the warrantor
24 transferred the draft, a person entitled to enforce the draft
25 or authorized to obtain payment or acceptance of the draft on
26 behalf of a person entitled to enforce the draft;

27 b. the draft has not been altered; and

28 c. the warrantor has no knowledge that the signature of
29 the drawer of the draft is unauthorized.

30 2. A drawee making payment may recover from any warrantor
31 damages for breach of warranty equal to the amount paid by the
32 drawee less the amount the drawee received or is entitled to
33 receive from the drawer because of the payment. In addition,
34 the drawee is entitled to compensation for expenses and loss
35 of interest resulting from the breach. The right of the

1 drawee to recover damages under this subsection is not
2 affected by any failure of the drawee to exercise ordinary
3 care in making payment. If the drawee accepts the draft,
4 breach of warranty is a defense to the obligation of the
5 acceptor. If the acceptor makes payment with respect to the
6 draft, the acceptor is entitled to recover from any warrantor
7 for breach of warranty the amounts stated in this subsection.

8 3. If a drawee asserts a claim for breach of warranty
9 under subsection 1 based on an unauthorized endorsement of the
10 draft or an alteration of the draft, the warrantor may defend
11 by proving that the endorsement is effective under section
12 554.3404 or 554.3405 or the drawer is precluded under section
13 554.3406 or 554.4406 from asserting against the drawee the
14 unauthorized endorsement or alteration.

15 4. If (i) a dishonored draft is presented for payment to
16 the drawer or an endorser or (ii) any other instrument is
17 presented for payment to a party obliged to pay the
18 instrument, and (iii) payment is received, the following rules
19 apply:

20 a. The person obtaining payment and a prior transferor of
21 the instrument warrant to the person making payment in good
22 faith that the warrantor is, or was, at the time the warrantor
23 transferred the instrument, a person entitled to enforce the
24 instrument or authorized to obtain payment on behalf of a
25 person entitled to enforce the instrument.

26 b. The person making payment may recover from any
27 warrantor for breach of warranty an amount equal to the amount
28 paid plus expenses and loss of interest resulting from the
29 breach.

30 5. The warranties stated in subsections 1 and 4 cannot be
31 disclaimed with respect to checks. Unless notice of a claim
32 for breach of warranty is given to the warrantor within thirty
33 days after the claimant has reason to know of the breach and
34 the identity of the warrantor, the liability of the warrantor
35 under subsection 2 or 4 is discharged to the extent of any

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

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

5 Sec. 65. NEW SECTION. 554.3418 PAYMENT OR ACCEPTANCE BY
6 MISTAKE.

7 1. Except as provided in subsection 3, if the drawee of a
8 draft pays or accepts the draft and the drawee acted on the
9 mistaken belief that (i) payment of the draft had not been
10 stopped pursuant to section 554.4403 or (ii) the signature of
11 the drawer of the draft was authorized, the drawee may recover
12 the amount of the draft from the person to whom or for whose
13 benefit payment was made or, in the case of acceptance, may
14 revoke the acceptance. Rights of the drawee under this
15 subsection are not affected by failure of the drawee to
16 exercise ordinary care in paying or accepting the draft.

17 2. Except as provided in subsection 3, if an instrument
18 has been paid or accepted by mistake and the case is not
19 covered by subsection 1, the person paying or accepting may,
20 to the extent permitted by the law governing mistake and
21 restitution, (i) recover the payment from the person to whom
22 or for whose benefit payment was made or (ii) in the case of
23 acceptance, may revoke the acceptance.

24 3. The remedies provided by subsection 1 or 2 may not be
25 asserted against a person who took the instrument in good
26 faith and for value or who in good faith changed position in
27 reliance on the payment or acceptance. This subsection does
28 not limit remedies provided by section 554.3417 or 554.4407.

29 4. Notwithstanding section 554.4215, if an instrument is
30 paid or accepted by mistake and the payor or acceptor recovers
31 payment or revokes acceptance under subsection 1 or 2, the
32 instrument is deemed not to have been paid or accepted and is
33 treated as dishonored, and the person from whom payment is
34 recovered has rights as a person entitled to enforce the
35 dishonored instrument.

1 Sec. 66. NEW SECTION. 554.3419 INSTRUMENTS SIGNED FOR
2 ACCOMMODATION.

3 1. If an instrument is issued for value given for the
4 benefit of a party to the instrument ("accommodated party")
5 and another party to the instrument ("accommodation party")
6 signs the instrument for the purpose of incurring liability on
7 the instrument without being a direct beneficiary of the value
8 given for the instrument, the instrument is signed by the
9 accommodation party "for accommodation."

10 2. An accommodation party may sign the instrument as
11 maker, drawer, acceptor, or endorser and, subject to
12 subsection 4, is obliged to pay the instrument in the capacity
13 in which the accommodation party signs. The obligation of an
14 accommodation party may be enforced notwithstanding any
15 statute of frauds and whether or not the accommodation party
16 receives consideration for the accommodation.

17 3. A person signing an instrument is presumed to be an
18 accommodation party and there is notice that the instrument is
19 signed for accommodation if the signature is an anomalous
20 endorsement or is accompanied by words indicating that the
21 signer is acting as surety or guarantor with respect to the
22 obligation of another party to the instrument. Except as
23 provided in section 554.3605, the obligation of an
24 accommodation party to pay the instrument is not affected by
25 the fact that the person enforcing the obligation had notice
26 when the instrument was taken by that person that the
27 accommodation party signed the instrument for accommodation.

28 4. If the signature of a party to an instrument is
29 accompanied by words indicating unambiguously that the party
30 is guaranteeing collection rather than payment of the
31 obligation of another party to the instrument, the signer is
32 obliged to pay the amount due on the instrument to a person
33 entitled to enforce the instrument only if (i) execution of
34 judgment against the other party has been returned
35 unsatisfied, (ii) the other party is insolvent or in an

1 insolvency proceeding, (iii) the other party cannot be served
2 with process, or (iv) it is otherwise apparent that payment
3 cannot be obtained from the other party.

4 5. An accommodation party who pays the instrument is
5 entitled to reimbursement from the accommodated party and is
6 entitled to enforce the instrument against the accommodated
7 party. An accommodated party who pays the instrument has no
8 right of recourse against, and is not entitled to contribution
9 from, an accommodation party.

10 Sec. 67. NEW SECTION. 554.3420 CONVERSION OF INSTRUMENT.

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

21 2. In an action under subsection 1, the measure of
22 liability is presumed to be the amount payable on the
23 instrument, but recovery may not exceed the amount of the
24 plaintiff's interest in the instrument.

25 3. A representative, other than a depository bank, who has
26 in good faith dealt with an instrument or its proceeds on
27 behalf of one who was not the person entitled to enforce the
28 instrument is not liable in conversion to that person beyond
29 the amount of any proceeds that it has not paid out.

30 PART 5

31 DISHONOR

32 Sec. 68. NEW SECTION. 554.3501 PRESENTMENT.

33 1. "Presentment" means a demand made by or on behalf of a
34 person entitled to enforce an instrument (i) to pay the
35 instrument made to the drawee or a party obliged to pay the

1 instrument or, in the case of a note or accepted draft payable
2 at a bank, to the bank, or (ii) to accept a draft made to the
3 drawee.

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

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

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

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

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

34 Sec. 69. NEW SECTION. 554.3502 DISHONOR.

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

1 a. If the note is payable on demand, the note is
2 dishonored if presentment is duly made to the maker and the
3 note is not paid on the day of presentment.

4 b. If the note is not payable on demand and is payable at
5 or through a bank or the terms of the note require
6 presentment, the note is dishonored if presentment is duly
7 made and the note is not paid on the day it becomes payable or
8 the day of presentment, whichever is later.

9 c. If the note is not payable on demand and paragraph "b"
10 does not apply, the note is dishonored if it is not paid on
11 the day it becomes payable.

12 2. Dishonor of an unaccepted draft other than a
13 documentary draft is governed by the following rules:

14 a. If a check is duly presented for payment to the payor
15 bank otherwise than for immediate payment over the counter,
16 the check is dishonored if the payor bank makes timely return
17 of the check or sends timely notice of dishonor or nonpayment
18 under section 554.4301 or 554.4302, or becomes accountable for
19 the amount of the check under section 554.4302.

20 b. If a draft is payable on demand and paragraph a does
21 not apply, the draft is dishonored if presentment for payment
22 is duly made to the drawee and the draft is not paid on the
23 day of presentment.

24 c. If a draft is payable on a date stated in the draft,
25 the draft is dishonored if (i) presentment for payment is duly
26 made to the drawee and payment is not made on the day the
27 draft becomes payable or the day of presentment, whichever is
28 later, or (ii) presentment for acceptance is duly made before
29 the day the draft becomes payable and the draft is not
30 accepted on the day of presentment.

31 d. If a draft is payable on elapse of a period of time
32 after sight or acceptance, the draft is dishonored if
33 presentment for acceptance is duly made and the draft is not
34 accepted on the day of presentment.

35 3. Dishonor of an unaccepted documentary draft occurs

1 according to the rules stated in subsection 2, paragraphs "b",
2 "c", and "d", except that payment or acceptance may be delayed
3 without dishonor until no later than the close of the third
4 business day of the drawee following the day on which payment
5 or acceptance is required by those paragraphs.

6 4. Dishonor of an accepted draft is governed by the
7 following rules:

8 a. If the draft is payable on demand, the draft is
9 dishonored if presentment for payment is duly made to the
10 acceptor and the draft is not paid on the day of presentment.

11 b. If the draft is not payable on demand, the draft is
12 dishonored if presentment for payment is duly made to the
13 acceptor and payment is not made on the day it becomes payable
14 or the day of presentment, whichever is later.

15 5. In any case in which presentment is otherwise required
16 for dishonor under this section and presentment is excused
17 under section 554.3504, dishonor occurs without presentment if
18 the instrument is not duly accepted or paid.

19 6. If a draft is dishonored because timely acceptance of
20 the draft was not made and the person entitled to demand
21 acceptance consents to a late acceptance, from the time of
22 acceptance the draft is treated as never having been
23 dishonored.

24 Sec. 70. NEW SECTION. 554.3503 NOTICE OF DISHONOR.

25 1. The obligation of an endorser stated in section
26 554.3415, subsection 1 and the obligation of a drawer stated
27 in section 554.3414, subsection 4, may not be enforced unless
28 (i) the endorser or drawer is given notice of dishonor of the
29 instrument complying with this section or (ii) notice of
30 dishonor is excused under section 554.3504, subsection 2.

31 2. Notice of dishonor may be given by any person; may be
32 given by any commercially reasonable means, including an oral,
33 written, or electronic communication; and is sufficient if it
34 reasonably identifies the instrument and indicates that the
35 instrument has been dishonored or has not been paid or

1 accepted. Return of an instrument given to a bank for
2 collection is sufficient notice of dishonor.

3 3. Subject to section 554.3504, subsection 3, with respect
4 to an instrument taken for collection by a collecting bank,
5 notice of dishonor must be given (i) by the bank before
6 midnight of the next banking day following the banking day on
7 which the bank receives notice of dishonor of the instrument,
8 or (ii) by any other person within thirty days following the
9 day on which the person receives notice of dishonor. With
10 respect to any other instrument, notice of dishonor must be
11 given within thirty days following the day on which dishonor
12 occurs.

13 Sec. 71. NEW SECTION. 554.3504 EXCUSED PRESENTMENT AND
14 NOTICE OF DISHONOR.

15 1. Presentment for payment or acceptance of an instrument
16 is excused if (i) the person entitled to present the
17 instrument cannot with reasonable diligence make presentment,
18 (ii) the maker or acceptor has repudiated an obligation to pay
19 the instrument or is dead or in insolvency proceedings, (iii)
20 by the terms of the instrument presentment is not necessary to
21 enforce the obligation of endorsers or the drawer, (iv) the
22 drawer or endorser whose obligation is being enforced has
23 waived presentment or otherwise has no reason to expect or
24 right to require that the instrument be paid or accepted, or
25 (v) the drawer instructed the drawee not to pay or accept the
26 draft or the drawee was not obligated to the drawer to pay the
27 draft.

28 2. Notice of dishonor is excused if (i) by the terms of
29 the instrument notice of dishonor is not necessary to enforce
30 the obligation of a party to pay the instrument, or (ii) the
31 party whose obligation is being enforced waived notice of
32 dishonor. A waiver of presentment is also a waiver of notice
33 of dishonor.

34 3. Delay in giving notice of dishonor is excused if the
35 delay was caused by circumstances beyond the control of the

1 person giving the notice and the person giving the notice
2 exercised reasonable diligence after the cause of the delay
3 ceased to operate.

4 Sec. 72. NEW SECTION. 554.3505 EVIDENCE OF DISHONOR.

5 1. The following are admissible as evidence and create a
6 presumption of dishonor and of any notice of dishonor stated:

7 a. a document regular in form as provided in subsection 2
8 which purports to be a protest;

9 b. a purported stamp or writing of the drawee, payor bank,
10 or presenting bank on or accompanying the instrument stating
11 that acceptance or payment has been refused unless reasons for
12 the refusal are stated and the reasons are not consistent with
13 dishonor;

14 c. a book or record of the drawee, payor bank, or
15 collecting bank, kept in the usual course of business which
16 shows dishonor, even if there is no evidence of who made the
17 entry.

18 2. A protest is a certificate of dishonor made by a United
19 States consul or vice consul, or a notary public or other
20 person authorized to administer oaths by the law of the place
21 where dishonor occurs. It may be made upon information
22 satisfactory to that person. The protest must identify the
23 instrument and certify either that presentment has been made
24 or, if not made, the reason why it was not made, and that the
25 instrument has been dishonored by nonacceptance or nonpayment.
26 The protest may also certify that notice of dishonor has been
27 given to some or all parties.

28 PART 6

29 DISCHARGE AND PAYMENT

30 Sec. 73. NEW SECTION. 554.3601 DISCHARGE AND EFFECT OF
31 DISCHARGE.

32 1. The obligation of a party to pay the instrument is
33 discharged as stated in this Article or by an act or agreement
34 with the party which would discharge an obligation to pay
35 money under a simple contract.

1 2. Discharge of the obligation of a party is not effective
2 against a person acquiring rights of a holder in due course of
3 the instrument without notice of the discharge.

4 Sec. 74. NEW SECTION. 554.3602 PAYMENT.

5 1. Subject to subsection 2, an instrument is paid to the
6 extent payment is made (i) by or on behalf of a party obliged
7 to pay the instrument, and (ii) to a person entitled to
8 enforce the instrument. To the extent of the payment, the
9 obligation of the party obliged to pay the instrument is
10 discharged even though payment is made with knowledge of a
11 claim to the instrument under section 554.3306 by another
12 person.

13 2. The obligation of a party to pay the instrument is not
14 discharged under subsection 1 if:

15 a. a claim to the instrument under section 554.3306 is
16 enforceable against the party receiving payment and (i)
17 payment is made with knowledge by the payor that payment is
18 prohibited by injunction or similar process of a court of
19 competent jurisdiction, or (ii) in the case of an instrument
20 other than a cashier's check, teller's check, or certified
21 check, the party making payment accepted, from the person
22 having a claim to the instrument, indemnity against loss
23 resulting from refusal to pay the person entitled to enforce
24 the instrument; or

25 b. the person making payment knows that the instrument is
26 a stolen instrument and pays a person it knows is in wrongful
27 possession of the instrument.

28 Sec. 75. NEW SECTION. 554.3603 TENDER OF PAYMENT.

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

33 2. If tender of payment of an obligation to pay an
34 instrument is made to a person entitled to enforce the
35 instrument and the tender is refused, there is discharge, to

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

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

13 Sec. 76. NEW SECTION. 554.3604 DISCHARGE BY CANCELLATION
14 OR RENUNCIATION.

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

24 2. Cancellation or striking out of an endorsement pursuant
25 to subsection 1 does not affect the status and rights of a
26 party derived from the endorsement.

27 Sec. 77. NEW SECTION. 554.3605 DISCHARGE OF ENDORSERS
28 AND ACCOMMODATION PARTIES.

29 1. In this section, the term "endorser" includes a drawer
30 having the obligation described in section 554.3414,
31 subsection 4.

32 2. Discharge, under section 554.3604, of the obligation of
33 a party to pay an instrument does not discharge the obligation
34 of an endorser or accommodation party having a right of
35 recourse against the discharged party.

1 3. If a person entitled to enforce an instrument agrees,
2 with or without consideration, to an extension of the due date
3 of the obligation of a party to pay the instrument, the
4 extension discharges an endorser or accommodation party having
5 a right of recourse against the party whose obligation is
6 extended to the extent the endorser or accommodation party
7 proves that the extension caused loss to the endorser or
8 accommodation party with respect to the right of recourse.

9 4. If a person entitled to enforce an instrument agrees,
10 with or without consideration, to a material modification of
11 the obligation of a party other than an extension of the due
12 date, the modification discharges the obligation of an
13 endorser or accommodation party having a right of recourse
14 against the person whose obligation is modified to the extent
15 the modification causes loss to the endorser or accommodation
16 party with respect to the right of recourse. The loss
17 suffered by the endorser or accommodation party as a result of
18 the modification is equal to the amount of the right of
19 recourse unless the person enforcing the instrument proves
20 that no loss was caused by the modification or that the loss
21 caused by the modification was an amount less than the amount
22 of the right of recourse.

23 5. If the obligation of a party to pay an instrument is
24 secured by an interest in collateral and a person entitled to
25 enforce the instrument impairs the value of the interest in
26 collateral, the obligation of an endorser or accommodation
27 party having a right of recourse against the obligor is
28 discharged to the extent of the impairment. The value of an
29 interest in collateral is impaired to the extent (i) the value
30 of the interest is reduced to an amount less than the amount
31 of the right of recourse of the party asserting discharge, or
32 (ii) the reduction in value of the interest causes an increase
33 in the amount by which the amount of the right of recourse
34 exceeds the value of the interest. The burden of proving
35 impairment is on the party asserting discharge.

1 6. If the obligation of a party is secured by an interest
2 in collateral not provided by an accommodation party and a
3 person entitled to enforce the instrument impairs the value of
4 the interest in collateral, the obligation of any party who is
5 jointly and severally liable with respect to the secured
6 obligation is discharged to the extent the impairment causes
7 the party asserting discharge to pay more than that party
8 would have been obliged to pay, taking into account rights of
9 contribution, if impairment had not occurred. If the party
10 asserting discharge is an accommodation party not entitled to
11 discharge under subsection 5, the party is deemed to have a
12 right to contribution based on joint and several liability
13 rather than a right to reimbursement. The burden of proving
14 impairment is on the party asserting discharge.

15 7. Under subsection 5 or 6, impairing value of an interest
16 in collateral includes (i) failure to obtain or maintain
17 perfection or recordation of the interest in collateral, (ii)
18 release of collateral without substitution of collateral of
19 equal value, (iii) failure to perform a duty to preserve the
20 value of collateral owed, under Article 9 or other law, to a
21 debtor or surety or other person secondarily liable, or (iv)
22 failure to comply with applicable law in disposing of
23 collateral.

24 8. An accommodation party is not discharged under
25 subsection 3, 4, or 5 unless the person entitled to enforce
26 the instrument knows of the accommodation or has notice under
27 section 554.3419, subsection 3, that the instrument was signed
28 for accommodation.

29 9. A party is not discharged under this section if (i) the
30 party asserting discharge consents to the event or conduct
31 that is the basis of the discharge, or (ii) the instrument or
32 a separate agreement of the party provides for waiver of
33 discharge under this section either specifically or by general
34 language indicating that parties waive defenses based on
35 suretyship or impairment of collateral.

1 Sec. 78. Section 554.4101, Code 1993, is amended to read
2 as follows:

3 554.4101 SHORT TITLE.

4 This Article ~~shall be known and~~ may be cited as Uniform
5 Commercial Code -- Bank Deposits and Collections.

6 Sec. 79. Section 554.4102, Code 1993, is amended to read
7 as follows:

8 554.4102 APPLICABILITY.

9 1. To the extent that items within this Article are also
10 within ~~the scope of~~ Articles 3 and 8, they are subject to the
11 provisions of those Articles. ~~in the event of~~ If there is
12 conflict, ~~the provisions of~~ this Article ~~govern those of~~
13 governs Article 3, ~~but the provisions of~~ Article 8 ~~govern~~
14 ~~those of~~ governs this Article.

15 2. The liability of a bank for action or nonaction with
16 respect to any an item handled by it for purposes of
17 presentment, payment, or collection is governed by the law of
18 the place where the bank is located. In the case of action or
19 nonaction by or at a branch or separate office of a bank, its
20 liability is governed by the law of the place where the branch
21 or separate office is located.

22 Sec. 80. Section 554.4103, Code 1993, is amended to read
23 as follows:

24 554.4103 VARIATION BY AGREEMENT -- MEASURE OF DAMAGES --
25 ~~CERTAIN ACTION CONSTITUTING ORDINARY CARE.~~

26 1. The effect of the provisions of this Article may be
27 varied by agreement ~~except that no agreement can,~~ but the
28 parties to the agreement cannot disclaim a bank's
29 responsibility for its own lack of good faith or failure to
30 exercise ordinary care or ~~can~~ limit the measure of damages for
31 ~~such~~ the lack or failure, ~~but.~~ However, the parties may
32 determine by agreement ~~determine~~ the standards by which ~~such~~
33 the bank's responsibility is to be measured if ~~such~~ those
34 standards are not manifestly unreasonable.

35 2. Federal Reserve regulations and operating letters

1 circulares, clearing house rules, and the like, have the effect
2 of agreements under subsection 1, whether or not specifically
3 assented to by all parties interested in items handled.

4 3. Action or nonaction approved by this Article or
5 pursuant to Federal Reserve regulations or operating letters
6 constitutes circulars is the exercise of ordinary care and, in
7 the absence of special instructions, action or nonaction
8 consistent with clearing house rules and the like or with a
9 general banking usage not disapproved by this Article, is
10 prima facie constitutes the exercise of ordinary care.

11 4. The specification or approval of certain procedures by
12 this Article ~~does-not-constitute~~ is not disapproval of other
13 procedures ~~which~~ that may be reasonable under the
14 circumstances.

15 5. The measure of damages for failure to exercise ordinary
16 care in handling an item is the amount of the item reduced by
17 an amount ~~which~~ that could not have been realized by the use
18 exercise of ordinary care, and where, if there is also bad
19 faith it includes any other damages, if any, suffered by the
20 party suffered as a proximate consequence.

21 Sec. 81. Section 554.4104, Code 1993, is amended to read
22 as follows:

23 554.4104 DEFINITIONS AND INDEX OF DEFINITIONS.

24 1. In this Article, unless the context otherwise requires:

25 a. "Account" means any deposit or credit account with a
26 bank ~~and-includes, including a checking, time, interest or~~
27 savings-account demand, time, savings, passbook, share draft,
28 or like account, other than an account evidenced by a
29 certificate of deposit;

30 b. "Afternoon" means the period of a day between noon and
31 midnight;

32 c. "Banking day" means ~~that~~ the part of any a day on which
33 a bank is open to the public for carrying on substantially all
34 of its banking functions but for the purposes of determining a
35 bank's midnight deadline, shall not include Saturday, Sunday,

1 or any holiday when the federal reserve banks are not
2 performing check clearing functions;

3 d. "Clearing house" means any an association of banks or
4 other payors regularly clearing items;

5 e. "Customer" means any a person having an account with a
6 bank or for whom a bank has agreed to collect items and
7 includes, including a bank carrying that maintains an account
8 with at another bank;

9 f. "Documentary draft" means any-negotiable-or
10 nonnegotiable-draft-with-accompanying-documents,-securities-or
11 other-papers-to-be-delivered-against-honor-of-the-draft a
12 draft to be presented for acceptance or payment if specified
13 documents, certified securities (section 554.8102) or
14 instructions for uncertified securities (section 554.8102) or
15 other certificates, statements, or the like are to be received
16 by the drawee or other payor before acceptance or payment of
17 the draft;

18 g. "Draft" means a draft as defined in section 554.3104 or
19 an item, other than an instrument, that is an order;

20 h. "Drawer" means a person ordered in a draft to make
21 payment;

22 i. "Item" means any-instrument-for-the-payment-of-money
23 even-though-it-is-not-negotiable-but-does-not-include-money an
24 instrument or a promise or order to pay money handled by a
25 bank for collection or payment. The term does not include a
26 payment order governed by Article 12 or a credit or debit card
27 slip;

28 h j. "Midnight deadline" with respect to a bank is
29 midnight on its next banking day following the banking day on
30 which it receives the relevant item or notice or from which
31 the time for taking action commences to run, whichever is
32 later;

33 ~~i.---"Properly-payable"-includes-the-availabiitiy-of-funds~~
34 ~~for-payment-at-the-time-of-decision-to-pay-or-dishonor;~~

35 j k. "Settle" means to pay in cash, by clearing house

1 settlement, in a charge or credit or by remittance, or
 2 otherwise as instructed agreed. A settlement may be either
 3 provisional or final;

4 k 1. "Suspends payments" with respect to a bank means that
 5 it has been closed by order of the supervisory authorities,
 6 that a public officer has been appointed to take it over, or
 7 that it ceases or refuses to make payments in the ordinary
 8 course of business.

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

11 "Agreement for electronic presentment".	Section 554.4110.
12 "Bank".	Section 554.4105.
13 "Collecting bank".	Section 554.4105.
14 "Depositary bank".	Section 554.4105.
15 "Intermediary bank".	Section 554.4105.
16 "Payor bank".	Section 554.4105.
17 "Presenting bank".	Section 554.4105.
18 "Remitting bank".	Section 554.4105.
19 <u>"Presentment notice".</u>	Section 554.4105.

20 3. The following definitions in other Articles apply to
 21 this Article:

22 "Acceptance".	Section 554.3410 554.3409.
23	
24 <u>"Alteration".</u>	Section 554.3407.
25 <u>"Cashiers check".</u>	Section 554.3104.
26 <u>"Certificate of deposit".</u>	Section 554.3104.
27 "Certification".	Section 554.3411.
28 "Certified check".	Section 554.3409.
29 "Check".	Section 554.3104.
30 "Draft".	Section 554.3104.
31 <u>"Good faith".</u>	Section 554.3103.
32 "Holder in due course".	Section 554.3302.
33 <u>"Instrument".</u>	Section 554.3104.
34 "Notice of dishonor".	Section 554.3508 554.3503.
35	

1	<u>"Order".</u>	Section 554.3103.
2	<u>"Ordinary care".</u>	Section 554.3103.
3	<u>"Person entitle to enforce".</u>	Section 554.3301.
4	<u>"Presentment".</u>	Section 554.3504
5		<u>554.3501.</u>
6	"Protest".	Section 554.3509.
7	"Secondary party".	Section 554.3102.
8	<u>"Promise".</u>	Section 554.3103.
9	<u>"Prove".</u>	Section 554.3103.
10	<u>"Teller's check".</u>	Section 554.3104.
11	<u>"Unauthorized signature".</u>	Section 554.3403.

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

15 Sec. 82. Section 554.4105, Code 1993, is amended to read
 16 as follows:

17 554.4105 "BANK" -- "DEPOSITARY BANK" -- "INTERMEDIARY
 18 BANK" -- "COLLECTING BANK" -- "PAYOR BANK" -- "PRESENTING
 19 BANK"-----"REMITTING-BANK".

20 In this Article ~~unless the context otherwise requires:~~

21 1. "Bank" means a person engaged in the business of
 22 banking, including a savings bank, savings and loan
 23 association, credit union, or trust company;

24 a 2. "Depositary bank" means the first bank to which take
 25 an item is transferred for collection even though it is also
 26 the payor bank, unless the item is presented for immediate
 27 payment over the counter;

28 b 3. "Payor bank" means a bank by which an item is payable
 29 as drawn or accepted that is the drawee of the draft;

30 c 4. "Intermediary bank" means any a bank to which an item
 31 is transferred in course of collection except the depositary
 32 or payor bank;

33 d 5. "Collecting bank" means any a bank handling the an
 34 item for collection except the payor bank;

35 e 6. "Presenting bank" means any a bank presenting an item

1 except a payor bank;

2 ~~f--"Remitting-bank"--means-any-payor-or-intermediary-bank~~
3 ~~remitting-for-an-item.~~

4 Sec. 83. Section 554.4106, Code 1993, is amended to read
5 as follows:

6 554.4106 SEPARATE OFFICE OF A BANK.

7 A branch or separate office of a bank is a separate bank
8 for the purpose of computing the time within which and
9 determining the place at or to which action may be taken or
10 notices or orders ~~shall~~ must be given under this Article and
11 under Article 3.

12 Sec. 84. Section 554.4107, Code 1993, is amended to read
13 as follows:

14 554.4107 TIME OF RECEIPT OF ITEMS.

15 1. For the purpose of allowing time to process items,
16 prove balances, and make the necessary entries on its books to
17 determine its position for the day, a bank may fix an
18 afternoon hour of two P.M. or later as a cutoff hour for the
19 handling of money and items and the making of entries on its
20 books.

21 2. Any An item or deposit of money received on any day
22 after a cutoff hour so fixed or after the close of the banking
23 day may be treated as being received at the opening of the
24 next banking day.

25 Sec. 85. Section 554.4108, Code 1993, is amended to read
26 as follows:

27 554.4108 DELAYS.

28 1. Unless otherwise instructed, a collecting bank in a
29 good faith effort to secure payment ~~may, in the case of a~~
30 specific items item drawn on a payor other than a bank, and
31 with or without the approval of any person involved, may
32 waive, modify, or extend time limits imposed or permitted by
33 this chapter for a period not ~~in excess of an~~ exceeding two
34 additional banking ~~day~~ days without discharge of secondary
35 ~~parties-and-without~~ drawers or endorsers or liability to its

1 transferor or any a prior party.

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

10 Sec. 86. NEW SECTION. 554.4110 ELECTRONIC PRESENTMENT.

11 1. "Agreement for electronic presentment" means an
12 agreement, clearing-house rule, or federal reserve regulation
13 or operating circular, providing that presentment of an item
14 may be made by transmission of an image of an item or
15 information describing the item ("presentment notice") rather
16 than delivery of the item itself. The agreement may provide
17 for procedures governing retention, presentment, payment,
18 dishonor, and other matters concerning items subject to the
19 agreement.

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

22 3. If presentment is made by presentment notice, a
23 reference to "item" or "check" in the Article means the
24 presentment notice unless the context otherwise indicates.

25 Sec. 87. NEW SECTION. 554.4111 PAYABLE THROUGH OR
26 PAYABLE AT BANK -- COLLECTING BANK.

27 1. If an item states that it is "payable through" a bank
28 identified in the item, (i) the item designates the bank as a
29 collecting bank and does not by itself authorize the bank to
30 pay the time, and (ii) the item may be presented for payment
31 only by or through the bank.

32 2. If an item states that it is "payable at" a bank
33 identified in the item, the item is equivalent to a draft
34 drawn on the bank.

35 Sec. 88. NEW SECTION. 554.4112 STATUTE OF LIMITATIONS.

1 An action to enforce an obligation, duty, or right arising
2 under this Article must be commenced within three years after
3 the cause of action accrues.

4 Sec. 89. Section 554.4201, Code 1993, is amended to read
5 as follows:

6 554.4201 ~~PRESUMPTION-AND-DURATION-OF-AGENCY~~ STATUS OF
7 COLLECTING BANKS AS AGENT AND PROVISIONAL STATUS OF CREDITS --
8 APPLICABILITY OF ARTICLE -- ITEM ENDORSED "PAY ANY BANK".

9 1. Unless a contrary intent clearly appears and ~~prior-to~~
10 before the time that a settlement given by a collecting bank
11 for an item is or becomes final, ~~{subsection-3-of-section~~
12 ~~554-4211-and-sections-554-4212-and-554-4213}~~ the bank, with
13 respect to the item, is an agent or subagent of the owner of
14 the item and any settlement given for the item is provisional.
15 This provision applies regardless of the form of endorsement
16 or lack of endorsement and even though credit given for the
17 item is subject to immediate withdrawal as of right or is in
18 fact withdrawn; but the continuance of ownership of an item by
19 its owner and any rights of the owner to proceeds of the item
20 are subject to rights of a collecting bank, such as those
21 resulting from outstanding advances on the item and ~~valid~~
22 rights of recoupment or setoff. ~~When~~ If an item is handled by
23 banks for purposes of presentment, payment, and collection, or
24 return, the relevant provisions of this Article apply even
25 though action of the parties clearly establishes that a
26 particular bank has purchased the item and is the owner of it.

27 2. After an item has been endorsed with the words "pay any
28 bank" or the like, only a bank may acquire the rights of a
29 holder until the item has been:

30 a. ~~until-the-item-has-been~~ returned to the customer
31 initiating collection; or

32 b. ~~until-the-item-has-been~~ specially endorsed by a bank to
33 a person who is not a bank.

34 Sec. 90. Section 554.4202, Code 1993, is amended to read
35 as follows:

1 554.4202 RESPONSIBILITY FOR COLLECTION OR RETURN -- WHEN
2 ACTION SEASONABLE TIMELY.

3 1. A collecting bank must use exercise ordinary care in:

4 a. presenting an item or sending it for presentment; and

5 b. sending notice of dishonor or nonpayment or returning

6 an item other than a documentary draft to the bank's

7 transferor ~~or directly to the depository bank under subsection~~

8 ~~2 of section 554.4212~~ after learning that the item has not

9 been paid or accepted, as the case may be; and

10 c. settling for an item when the bank receives final

11 settlement; and

12 ~~d. making or providing for any necessary protest; and~~

13 ~~e. notifying its transferor of any loss or delay in~~

14 transit within a reasonable time after discovery thereof.

15 2. A collecting bank ~~taking proper action before its~~

16 ~~midnight deadline following receipt of an item; notice or~~

17 ~~payment acts seasonably; taking proper action within a~~

18 ~~reasonably longer time may be seasonable but the bank has the~~

19 ~~burden of so establishing~~ exercises ordinary care under

20 subsection 1 by taking proper action before its midnight

21 deadline following receipt of an item, notice, or settlement.

22 Taking proper action within a reasonably longer time may

23 constitute the exercise of ordinary care, but the bank has the

24 burden of establishing timeliness.

25 3. Subject to subsection 1, paragraph "a" a bank is not

26 liable for the insolvency, neglect, misconduct, mistake, or

27 default of another bank or person or for loss or destruction

28 of an item in the possession of others or in transit or in the

29 possession of others.

30 Sec. 91. Section 554.4203, Code 1993, is amended to read

31 as follows:

32 554.4203 EFFECT OF INSTRUCTIONS.

33 Subject to ~~the provisions of~~ Article 3 concerning

34 conversion of instruments (section ~~554.3419~~ 554.3420) and the

35 ~~provisions of both Article 3 and this Article concerning~~

1 restrictive endorsements (section 554.3206) only a collecting
2 bank's transferor can give instructions which that affect the
3 bank or constitute notice to it, and a collecting bank is not
4 liable to prior parties for any action taken pursuant to such
5 the instructions or in accordance with any agreement with its
6 transferor.

7 Sec. 92. Section 554.4204, Code 1993, is amended to read
8 as follows:

9 554.4204 METHODS OF SENDING AND PRESENTING -- SENDING
10 ~~DIRECT~~ DIRECTLY TO PAYOR BANK.

11 1. A collecting bank ~~must~~ shall send items by a reasonably
12 prompt method, taking into consideration any relevant
13 instructions, the nature of the item, the number of such those
14 items on hand, and the cost of collection involved, and the
15 method generally used by it or others to present such those
16 items.

17 2. A collecting bank may send:

18 a. any an item ~~direct~~ directly to the payor bank;

19 b. any an item to any a nonbank payor if authorized by its
20 transferor; and

21 c. any an item other than documentary drafts to any
22 nonbank payor, if authorized by Federal Reserve regulation or
23 operating ~~letter~~ circular, clearing house rule, or the like.

24 3. Presentment may be made by a presenting bank at a place
25 where the payor bank or other payor has requested that
26 presentment be made.

27 Sec. 93. Section 554.4205, Code 1993, is amended by
28 striking the section and inserting in lieu thereof the
29 following:

30 554.4205 DEPOSITORY BANK HOLDER OF UNINDORSED ITEM.

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

33 1. The depository bank becomes a holder of the item at the
34 time it receives the item for collection if the customer at
35 the time of delivery was a holder of the item, whether or not

1 the customer endorse the item, and, if the bank satisfies the
2 other requirements of section 554.3302, it is a holder in due
3 course; and

4 2. The depository bank warrants to collecting banks, the
5 payor bank or other payor, and the drawer that the amount of
6 the item was paid to the customer or deposited to the
7 customer's account.

8 Sec. 94. Section 554.4206, Code 1993, is amended to read
9 as follows:

10 554.4206 TRANSFER BETWEEN BANKS.

11 Any agreed method ~~which~~ that identifies the transferor bank
12 is sufficient for the item's further transfer to another bank.

13 Sec. 95. Section 554.4207, Code 1993, is amended by
14 striking the section and inserting in lieu thereof the
15 following:

16 554.4207 TRANSFER WARRANTIES.

17 1. A customer or collecting bank that transfers an item
18 and receives a settlement or other consideration warrants to
19 the transferee and to any subsequent collecting bank that:

20 a. the warrantor is a person entitled to enforce the item;

21 b. all signatures on the item are authentic and
22 authorized;

23 c. the item has not been altered;

24 d. the item is not subject to a defense or claim in
25 recoupment (section 554.3305, subsection 1) of any party than
26 can be asserted against the warrantor; and

27 e. the warrantor has no knowledge of any insolvency
28 proceeding commenced with respect to the maker or acceptor or,
29 in the case of an unaccepted draft, the drawer.

30 2. If an item is dishonored, a customer or collecting bank
31 transferring the item and receiving settlement or other
32 consideration is obliged to pay the amount due on the item (i)
33 according to the terms of the item at the time it was
34 transferred, or (ii) if the transfer was an incomplete item,
35 according to its terms when completed as stated in sections

1 554.3115 and 554.3407. The obligation of a transferor is owed
2 to the transferee and to any subsequent collecting bank that
3 takes the item in good faith. A transferor cannot disclaim
4 its obligation under this subsection by an endorsement stating
5 that it is made "without recourse" or otherwise disclaiming
6 liability.

7 3. A person to whom the warranties under subsection 1 are
8 made and who took the item in good faith may recover from the
9 warrantor as damages for breach of warranty an amount equal to
10 the loss suffered as a result of the breach, but not more than
11 the amount of the item plus expenses and loss of interest
12 incurred as a result of the breach.

13 4. The warranties stated in subsection 1 cannot be
14 disclaimed with respect to checks. Unless notice of a claim
15 for breach of warranty is given to the warrantor within thirty
16 days after the claimant has reason to know of the breach and
17 the identity of the warrantor, the warrantor is discharged to
18 the extent of any loss caused by the delay in giving notice of
19 the claim.

20 5. A cause of action for breach of warranty under this
21 section accrues when the claimant has reason to know of the
22 breach.

23 Sec. 96. Section 554.4208, Code 1993, is amended to read
24 as follows:

25 554.4208 SECURITY INTEREST OF COLLECTING BANK IN ITEMS,
26 ACCOMPANYING DOCUMENTS AND PROCEEDS.

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

29 a. in case of an item deposited in an account, to the
30 extent to which credit given for the item has been withdrawn
31 or applied;

32 b. in case of an item for which it has given, credit
33 available for withdrawal as of right, to the extent of the
34 credit given whether or not the credit is drawn upon and
35 whether or not there is a right of charge-back; or

1 c. if it makes an advance on or against the item.

2 2. When If credit ~~which-has-been~~ given for several items
3 received at one time or pursuant to a single agreement is
4 withdrawn or applied in part, the security interest remains
5 upon all the items, any accompanying documents or the proceeds
6 of either. For the purpose of this section, credits first
7 given are first withdrawn.

8 3. Receipt by a collecting bank of a final settlement for
9 an item is a realization on its security interest in the item,
10 accompanying documents and proceeds. ~~To-the-extent-and-so~~ So
11 long as the bank does not receive final settlement for the
12 item or give up possession of the item or accompanying
13 documents for purposes other than collection, the security
14 interest continues to that extent and is subject to the
15 ~~provisions-of~~ Article 9 ~~except-that,~~ but:

16 a. no security agreement is necessary to make the security
17 interest enforceable (~~subsection-1-"b"-of~~ section 554.9203
18 554.9203, subsection 1, paragraph "a"); and

19 b. no filing is required to perfect the security interest;
20 and

21 c. the security interest has priority over conflicting
22 perfected security interests in the item, accompanying
23 documents, or proceeds.

24 Sec. 97. Section 554.4209, Code 1993, is amended to read
25 as follows:

26 554.4209 WHEN BANK GIVES VALUE FOR PURPOSES OF HOLDER IN
27 DUE COURSE.

28 For purposes of determining its status as a holder in due
29 course, ~~the~~ a bank has given value to the extent ~~that~~ it has a
30 security interest in an item ~~provided-that,~~ if the bank
31 otherwise complies with the requirements of section 554.3302
32 on what constitutes a holder in due course.

33 Sec. 98. Section 554.4210, Code 1993, is amended to read
34 as follows:

35 554.4210 PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY,

1 THROUGH OR AT A BANK -- LIABILITY OF SECONDARY PARTIES.

2 1. Unless otherwise instructed, a collecting bank may
3 present an item not payable by, through or at a bank by
4 sending to the party to accept or pay a written notice that
5 the bank holds the item for acceptance or payment. The notice
6 must be sent in time to be received on or before the day when
7 presentment is due and the bank must meet any requirement of
8 the party to accept or pay under section 554-3505 554.3501 by
9 the close of the bank's next banking day after it knows of the
10 requirement.

11 2. Where If presentment is made by notice and neither
12 honor-nor payment, acceptance, or request for compliance with
13 a requirement under section 554-3505 554.3501 is received by
14 the close of business on the day after maturity or, in the
15 case of demand items, by the close of business on the third
16 banking day after notice was sent, the presenting bank may
17 treat the item as dishonored and charge any secondary-party
18 drawer or endorser by sending the-secondary-party it notice of
19 the facts.

20 Sec. 99. Section 554.4211, Code 1993, is amended by
21 striking the section and inserting in lieu thereof the
22 following:

23 554.4211 MEDIUM AND TIME OF SETTLEMENT BY BANK.

24 1. With respect to settlement by a bank, the medium and
25 time for settlement may be prescribed by federal reserve
26 regulations or circulars, clearing-house rules, and the like,
27 or agreement. In the absence of such prescription:

28 a. the medium of settlement is cash or credit to an
29 account in a federal reserve bank of or specified by the
30 person to receive settlement; and

31 b. the time of settlement is:

32 (1) with respect to tender of settlement by cash, a
33 cashier's check, or teller's check, when the case or check is
34 sent or delivered.

35 (2) with respect to tender of settlement by credit in an

1 account in a federal reserve bank, when the credit is made.

2 (3) with respect to tender of settlement by a credit or
3 debit to an account in a bank, when the credit or debit made
4 or, in the case of tender of settlement by authority to charge
5 an account, when the authority is sent or delivered; or

6 (4) with respect to tender of settlement by a funds
7 transfer, when payment is made pursuant to section 554.12406,
8 subsection 1 to the person receiving the settlement.

9 2. If the tender of settlement is not by a medium
10 authorized by subsection 1 or the time of settlement is not
11 fixed by subsection 1, no settlement occurs until the tender
12 of settlement is accepted by the person receiving the
13 settlement.

14 3. If settlement for an item is made by cashier's check or
15 teller's check and the person receiving settlement, before its
16 midnight deadline:

17 a. presents or forwards the check for collection,
18 settlement is final when the check is finally paid; or

19 b. fails to present or forward the check for collection,
20 settlement is final at the midnight deadline of the person
21 receiving settlement.

22 4. If settlement for an item is made by giving authority
23 to charge the account of the bank giving settlement in the
24 bank receiving settlement, settlement is final when the charge
25 is made by the bank receiving settlement if there are funds
26 available in the account for the amount of the item.

27 Sec. 100. Section 554.4212, Code 1993, is amended to read
28 as follows:

29 554.4212 RIGHT OF CHARGE-BACK OR REFUND -- LIABILITY OF
30 COLLECTING BANK -- RETURN OF ITEM.

31 1. If a collecting bank has made provisional settlement
32 with its customer for an item and ~~itself~~ fails by reason of
33 dishonor, suspension of payments by a bank, or otherwise to
34 receive a settlement for the item which is or becomes final,
35 the bank may revoke the settlement given by it, charge back

1 the amount of any credit given for the item to its customer's
2 account, or obtain refund from its customer whether or not it
3 is able to return the ~~items~~ item, if by its midnight deadline
4 or within a longer reasonable time after it learns the facts
5 it returns the item or sends notification of the facts. If
6 the return or notice is delayed beyond the bank's midnight
7 deadline or a longer reasonable time after it learns the
8 facts, the bank may revoke the settlement, charge back the
9 credit, or obtain refund from its customer, but it is liable
10 for any loss resulting from the delay. These rights to
11 revoke, charge back and obtain refund terminate if and when a
12 settlement for the item received by the bank is or becomes
13 final ~~(subsection 3 of section 554.4211 and subsections 2 and~~
14 ~~3 of section 554.4213).~~

15 ~~2. -- Within the time and manner prescribed by this section~~
16 ~~and section 554.4301, an intermediary or payor bank, as the~~
17 ~~case may be, may return an unpaid item directly to the~~
18 ~~depository bank and may send for collection a draft on the~~
19 ~~depository bank and obtain reimbursement. -- In such case, if~~
20 ~~the depository bank has received provisional settlement for~~
21 ~~the item, it must reimburse the bank drawing the draft and any~~
22 ~~provisional credits for the item between banks shall become~~
23 ~~and remain final.~~

24 2. A collecting bank returns an item when it is sent or
25 delivered to the bank's customer or transferor or pursuant to
26 its instructions.

27 3. A depository bank which that is also the payor may
28 charge back the amount of an item to its customer's account or
29 obtain refund in accordance with the section governing return
30 of an item received by a payor bank for credit on its books
31 (section 554.4301).

- 32 4. The right to charge-back is not affected by:
- 33 a. prior previous use of the a credit given for the item;
 - 34 or
 - 35 b. failure by any bank to exercise ordinary care with

1 respect to the item, but any a bank so failing remains liable.

2 5. A failure to charge-back or claim refund does not
3 affect other rights of the bank against the customer or any
4 other party.

5 6. If credit is given in dollars as the equivalent of the
6 value of an item payable in a foreign currency money, the
7 dollar amount of any charge-back or refund ~~shall~~ must be
8 calculated on the basis of the buying-sight bank-offered spot
9 rate for the foreign currency money prevailing on the day when
10 the person entitled to the charge-back or refund learns that
11 it will not receive payment in ordinary course.

12 Sec. 101. Section 554.4213, Code 1993, is amended to read
13 as follows:

14 554.4213 FINAL PAYMENT OF ITEM BY PAYOR BANK -- WHEN
15 PROVISIONAL DEBITS AND CREDITS BECOME FINAL -- WHEN CERTAIN
16 CREDITS BECOME AVAILABLE FOR WITHDRAWAL.

17 1. An item is finally paid by a payor bank when the bank
18 has first done any of the following, ~~whichever-happens-first~~:

19 a. paid the item in cash; or

20 b. settled for the item without reserving having a right
21 to revoke the settlement ~~and-without-having-such-right~~ under
22 statute, clearing house rule, or agreement; or

23 ~~c.--completed-the-process-of-posting-the-item-to-the~~
24 ~~indicated-account-of-the-drawer,-maker-or-other-person-to-be~~
25 ~~charged-therewith,-or~~

26 d c. made a provisional settlement for the item and failed
27 to revoke the settlement in the time and manner permitted by
28 statute, clearing house rule, or agreement.

29 ~~Upon-a-final-payment-under-subparagraphs-"b,"-"c"-or-"d"~~
30 ~~the-payor-bank-shall-be-accountable-for-the-amount-of-the~~
31 ~~item-~~

32 2 3. If provisional settlement for an item between the
33 presenting and payor banks is made through a clearing house or
34 by debits or credits in an account between them, then to the
35 extent that provisional debits or credits for the item are

1 entered in accounts between the presenting and payor banks or
2 between the presenting and successive prior collecting banks
3 seriatim, they become final upon final payment of the item by
4 the payor bank.

5 3 4. If a collecting bank receives a settlement for an
6 item which is or becomes final ~~{subsection-3-of-section~~
7 ~~554.4211, -subsection-2-of-this-section}~~ the bank is
8 accountable to its customer for the amount of the item and any
9 provisional credit given for the item in an account with its
10 customer becomes final.

11 4 5. Subject to (i) applicable law stating a time for
12 availability of funds and (ii) any right of the bank to apply
13 the credit to an obligation of the customer, credit given by a
14 bank for an item in an-account-with-its-customer a customer's
15 account becomes available for withdrawal as of right:

16 a. in-any-case-where if the bank has received a
17 provisional settlement for the item, -- when such the
18 settlement becomes final and the bank has had a reasonable
19 time to ~~learn-that-the-settlement-is-final~~ receive return of
20 the item and the item has not been received in that time;

21 b. in-any-case-where if the bank is both a the depository
22 bank and a the payor bank, and the item is finally paid, -- at
23 the opening of the bank's second banking day following receipt
24 of the item.

25 5. ~~A-deposit-of-money-in-a-bank-is-final-when-made-but;~~
26 ~~subject~~ Subject to applicable law stating a time for
27 availability of funds and any right of the a bank to apply the
28 a deposit of money to an obligation of the customer, the
29 deposit becomes available for withdrawal as of right at the
30 opening of the bank's next banking day ~~following~~ after receipt
31 of the deposit.

32 Sec. 102. Section 554.4214, Code 1993, is amended to read
33 as follows:

34 554.4214 INSOLVENCY AND PREFERENCE.

35 1. Any if an item is in or coming comes into the

1 possession of a payor or collecting bank which that suspends
 2 payment and which the item is has not been finally paid shall,
 3 the item must be returned by the receiver, trustee, or agent
 4 in charge of the closed bank to the presenting bank or the
 5 closed bank's customer.

6 2. If a payor bank finally pays an item and suspends
 7 payments without making a settlement for the item with its
 8 customer or the presenting bank which settlement is or becomes
 9 final, the owner of the item has a preferred claim against the
 10 payor bank.

11 3. If a payor bank gives or a collecting bank gives or
 12 receives a provisional settlement for an item and thereafter
 13 suspends payments, the suspension does not prevent or
 14 interfere with the settlement settlements becoming final if
 15 such the finality occurs automatically upon the lapse of
 16 certain time or the happening of certain events (~~subsection-3~~
 17 ~~of-section-554-4211;-subsections-1-"d",-2-and-3-of-section~~
 18 ~~554-4213~~).

19 4. If a collecting bank receives from subsequent parties
 20 settlement for an item which settlement is or becomes final
 21 and the bank suspends payments without making a settlement for
 22 the item with its customer which settlement is or becomes
 23 final, the owner of the item has a preferred claim against
 24 such the collecting bank.

25 Sec. 103. NEW SECTION. 554.4215 PRESENTMENT WARRANTIES.

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

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

1 b. the draft has not been altered; and
2 c. the warrantor has no knowledge that the signature of
3 the purported drawer of the draft is unauthorized.

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

18 3. If a drawee asserts a claim for breach of warranty
19 under subsection 1 based on an unauthorized endorsement of the
20 draft or an alteration of the draft, the warrantor may defend
21 by proving that the endorsement is effective under section
22 554.3404 or 554.3405 or the drawer is precluded under section
23 554.3406 or 554.4406 from asserting against the drawee the
24 unauthorized endorsement or alteration.

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

1 the breach.

2 5. The warranties stated in subsections 1 and 4 cannot be
3 disclaimed with respect to checks. Unless notice of a claim
4 for breach of warranty is given to the warrantor with thirty
5 days after the claimant has reason to know of the breach and
6 the identity of the warrantor, the warrantor is discharged to
7 the extent of any loss caused by the delay in giving notice of
8 the claim.

9 6. A cause of action for breach of warranty under this
10 section accrues when the claimant has reason to know of the
11 breach.

12 Sec. 104. NEW SECTION. 554.4216 ENCODING AND RETENTION
13 WARRANTIES.

14 1. A person who encodes information on or with respect to
15 an item after issue warrants to any subsequent collecting bank
16 and to the payor bank or other payor that the information is
17 correctly encoded. If the customer of a depository bank
18 encodes, that bank also makes the warranty.

19 2. A person who undertakes to retain an item pursuant to
20 an agreement for electronic presentment warrants to any
21 subsequent collecting bank and to the payor bank or other
22 payor that retention and presentment of the item comply with
23 the agreement. If a customer of a depository bank undertakes
24 to retain an item, that bank also makes this warranty.

25 3. A person to whom warranties are made under this section
26 and who took the item in good faith may recover from the
27 warrantor as damages for breach of warranty an amount equal to
28 the loss suffered as a result of the breach, plus expenses and
29 loss of interest incurred as a result of the breach.

30 Sec. 105. Section 554.4301, Code 1993, is amended to read
31 as follows:

32 554.4301 DEFERRED POSTING -- RECOVERY OF PAYMENT BY RETURN
33 OF ITEMS -- TIME OF DISHONOR -- RETURN OF ITEMS BY PAYOR BANK.

34 1. ~~Where-an-authorized-settlement~~ If a payor settles for a
35 demand item ~~(other than a documentary draft)-received-by-a~~

1 payor-bank presented otherwise than for immediate payment over
2 the counter ~~has-been-made~~ before midnight of the banking day
3 of receipt, the payor bank may revoke the settlement and
4 recover any the payment settlement if, before it has made
5 final payment ~~(subsection-1-of-section-554-4213)~~ and before
6 its midnight deadline, it

7 a. returns the item; or
8 b. sends written notice of dishonor or nonpayment if the
9 item is ~~held-for-protest-or-is-otherwise~~ unavailable for
10 return; and the item or notice includes the reason for
11 dishonor or nonpayment.

12 2. If a demand item is received by a payor bank for credit
13 on its books, it may return such the item or send notice of
14 dishonor and may revoke any credit given or recover the amount
15 thereof withdrawn by its customer, if it acts within the time
16 limit and in the manner specified in the ~~preceding~~ subsection
17 1.

18 3. Unless previous notice of dishonor has been sent, an
19 item is dishonored at the time when for purposes of dishonor
20 it is returned or notice sent, in accordance with this
21 section.

22 4. An item is returned:

23 a. as to an item received presented through a clearing
24 house, when it is delivered to the presenting or last
25 collecting bank or to the clearing house or is sent or
26 delivered in accordance with its clearing house rules; or

27 b. in all other cases, when it is sent or delivered to the
28 bank's customer or transferor or pursuant to that customer's
29 or transferor's instructions.

30 Sec. 106. Section 554.4302, Code 1993, is amended to read
31 as follows:

32 554.4302 PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF
33 ITEM.

34 1. ~~In-the-absence-of-a-valid-defense-such-as-breach-of-a~~
35 ~~presentment-warranty-(subsection-1-of-section-554-4207)~~

1 ~~settlement-effected-or-the-like,-if~~ If an item is presented on
 2 to and received by a payor bank, the bank is accountable for
 3 the amount of:

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

11 b. any other properly payable item unless, within the time
 12 allowed for acceptance or payment of that item, the bank
 13 either accepts or pays the item or returns it and accompanying
 14 documents.

15 2. The liability of a payor bank to pay an item pursuant
 16 to subsection 1 is subject to defenses based on breach of a
 17 presentment warranty (section 554.4208) or proof that the
 18 person seeking enforcement of the liability presented or
 19 transferred the item for the purpose of defrauding the payor
 20 bank.

21 Sec. 107. Section 554.4303, Code 1993, is amended to read
 22 as follows:

23 554.4303 WHEN ITEMS SUBJECT TO NOTICE, ~~STOP-ORDER~~ STOP-
 24 PAYMENT ORDER, LEGAL PROCESS, OR SETOFF -- ORDER IN WHICH
 25 ITEMS MAY BE CHARGED OR CERTIFIED.

26 1. Any knowledge, notice, or ~~stop-order~~ stop-payment order
 27 received by, legal process served upon, or setoff exercised by
 28 a payor bank, ~~whether-or-not-effective-under-other-rules-of~~
 29 law comes too late to terminate, suspend, or modify the bank's
 30 right or duty to pay an item or to charge its customer's
 31 account for the item, ~~comes-too-late-to-so-terminate,-suspend~~
 32 ~~or-modify-such-right-or-duty~~ if the knowledge, notice, ~~stop~~
 33 ~~order~~ stop-payment order, or legal process is received or
 34 served and a reasonable time for the bank to act thereon
 35 expires or the setoff is exercised after the ~~bank-has-done-any~~

1 earliest of the following:

2 a. ~~accepted-or-certified~~ the bank accepts or certifies the
3 item;

4 b. paid ~~the bank pays~~ the item in cash;

5 c. settled ~~the bank settles~~ for the item without reserving
6 having a right to revoke the settlement ~~and-without-having~~
7 such-right under statute, clearing house rule, or agreement;
8 ~~d--completed-the-process-of-posting-the-item-to-the~~
9 ~~indicated-account-of-the-drawer,-maker-or-other-person-to-be~~
10 ~~charged-there-with-or-otherwise-has-evidenced-by-examination-of~~
11 ~~such-indicated-account-and-by-action-its-decision-to-pay-the~~
12 ~~item;~~ or

13 e d. become ~~the bank becomes~~ accountable for the amount of
14 the item under ~~subsection-1-"d"-of-section-554.4213-and~~
15 section 554.4302 dealing with the payor bank's responsibility
16 for late return of items; or

17 e. with respect to checks, a cutoff hour no earlier than
18 one hour after the opening of the next banking day after the
19 banking day on which the bank received the check and no later
20 than the close of that next banking day or, if no cutoff hour
21 is fixed, the close of the next banking day after the banking
22 day on which the bank received the check.

23 2. Subject to ~~the-provisions-of~~ subsection 1 items may be
24 accepted, paid, certified or charged to the indicated account
25 of its customer in any order ~~convenient-to-the-bank.~~

26 Sec. 108. Section 554.4401, Code 1993, is amended to read
27 as follows:

28 554.4401 WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT.

29 1. ~~As-against-its-customer,-a~~ A bank may charge against
30 the customer's account any of a customer an item which that is
31 otherwise properly payable from that account even though the
32 charge creates an overdraft. An item is properly payable if
33 it is authorized by the customer and is in accordance with any
34 agreement between the customer and bank.

35 2. A customer is not liable for the amount of an overdraft

1 if the customer neither signed the item nor benefited from the
2 proceeds of the item.

3 3. A bank may charge against the account of a customer a
4 check that is otherwise properly payable from the account,
5 even though payment was made before the date of the check,
6 unless the customer has given notice to the bank of the
7 postdating describing the check with reasonable certainty.
8 The notice is effective for the period stated in section
9 554.4403, subsection 2, for stop-payment orders, and must be
10 received at such time and in such manner as to afford the bank
11 a reasonable opportunity to act on it before the bank takes
12 any action with respect to the check described in section
13 554.4303. If a bank charges against the account of a customer
14 a check before the date stated in the notice of postdating,
15 the bank is liable for damages for the loss resulting from its
16 act. The loss may include damages for dishonor of subsequent
17 items under section 554.4402.

18 2 4. A bank which that in good faith makes payment to a
19 holder may charge the indicated account of its customer
20 according to:

21 a. the original tenor terms of the customer's altered
22 item; or

23 b. the tenor terms of the customer's completed item, even
24 though the bank knows the item has been completed unless the
25 bank has notice that the completion was improper.

26 Sec. 109. Section 554.4402, Code 1993, is amended to read
27 as follows:

28 554.4402 BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL
29 DISHONOR -- TIME OF DETERMINING INSUFFICIENCY OF ACCOUNT.

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

35 2. A payor bank is liable to its customer for damages

1 proximately caused by the wrongful dishonor of an item. When
2 ~~the-dishonor-occurs-through-mistake-liability~~ Liability is
3 limited to actual damages proved. ~~---if-so-proximately-caused~~
4 ~~and-proved-damages~~ and may include damages for an arrest or
5 prosecution of the customer or other consequential damages.
6 Whether any consequential damages are proximately caused by
7 the wrongful dishonor is a question of fact to be determined
8 in each case.

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

20 Sec. 110. Section 554.4403, Code 1993, is amended to read
21 as follows:

22 554.4403 CUSTOMER'S RIGHT TO STOP PAYMENT -- BURDEN OF
23 PROOF OF LOSS.

24 1. ~~A customer may-by-order-to-the-customer's-bank-stop~~
25 ~~payment-of-any-item-payable-for-the-customer's-account-but-the~~
26 ~~order-must-be~~ or any person authorized to draw on the account
27 if there is more than one person may stop payment of an item
28 drawn on the customer's account or close the account by an
29 order to the bank describing the item or account with
30 reasonable certainty received at such a time and in such a
31 manner as-to-afford that affords the bank a reasonable
32 opportunity to act on it ~~prior-to~~ before any action by the
33 bank with respect to the item described in section 554.4303.
34 If the signature of more than one person is required to draw
35 on an account, any of these persons may stop payment or close

1 the account.

2 2. An oral order is binding upon the bank only for
3 fourteen calendar days unless confirmed in writing within that
4 period. A written order is effective for only six months
5 unless renewed in writing. A stop-payment order is effective
6 for six months, but it lapses after fourteen calendar days if
7 the original order was oral and was not confirmed in writing
8 within that period. A stop-payment order may be renewed for
9 additional six-month periods by a writing given to the bank
10 within a period during which the stop-payment order is
11 effective.

12 3. The burden of establishing the fact and amount of loss
13 resulting from the payment of an item contrary to a binding
14 stop-payment stop-payment order or order to close an account
15 is on the customer. The loss from payment of an item contrary
16 to a stop-payment order may include damages for dishonor of
17 subsequent items under section 554.4402.

18 Sec. 111. Section 554.4405, Code 1993, is amended to read
19 as follows:

20 554.4405 DEATH OR INCOMPETENCE OF CUSTOMER.

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

32 2. Even with knowledge, a bank may for ten days after the
33 date of death pay or certify checks drawn on or prior to
34 before that date unless ordered to stop payment by a person
35 claiming an interest in the account.

1 Sec. 112. Section 554.4406, Code 1993, is amended to read
2 as follows:

3 554.4406 CUSTOMER'S DUTY TO DISCOVER AND REPORT
4 UNAUTHORIZED SIGNATURE OR ALTERATION.

5 1. ~~When a bank sends to its customer a statement of~~
6 ~~account accompanied by items paid in good faith in support of~~
7 ~~the debit entries or holds the statement and items pursuant to~~
8 ~~a request or instructions of its customer or otherwise in a~~
9 ~~reasonable manner makes the statement and items available to~~
10 ~~the customer, the customer must exercise reasonable care and~~
11 ~~promptness to examine the statement and items to discover the~~
12 ~~customer's unauthorized signature or any alteration on an item~~
13 ~~and must notify the bank promptly after discovery thereof. A~~
14 bank that sends or makes available to a customer a statement
15 of account showing payment of items for the account shall
16 either return or make available to the customer the items paid
17 or provide information in the statement of account sufficient
18 to allow the customer reasonably to identify the items paid.
19 The statement of account provides sufficient information, if
20 the item is described by item number, amount, and date of
21 payment.

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

31 3. If a bank sends or makes available a statement of
32 account or items pursuant to subsection 1, the customer must
33 exercise reasonable promptness in examining the statement or
34 the items to determine whether any payment was not authorized
35 because of an alteration of an item or because a purported

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

6 2 4. If the bank establishes proves that the customer
7 failed, with respect to an item, to comply with the duties
8 imposed on the customer by subsection 3 the customer is
9 precluded from asserting against the bank:

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

13 b. ~~as the customer's~~ unauthorized signature or alteration
14 by the same wrongdoer on any other item paid in good faith by
15 the bank ~~after-the-first-item-and-statement-was-available-to~~
16 ~~the-customer-for-a-reasonable-period-not-exceeding-fourteen~~
17 ~~calendar-days-and-before-the-bank-receives-notification-from~~
18 ~~the-customer-of-any-such-unauthorized-signature-or-alteration~~
19 if the payment was made before the bank received notice from
20 the customer of the unauthorized signature or alteration and
21 after the customer had been afforded a reasonable period of
22 time, not exceeding thirty days, in which to examine the item
23 or statement of account and notify the bank.

24 ~~3.--The-preclusion-under-subsection-2-does-not-apply-if-the~~
25 ~~customer-establishes-lack-of-ordinary-care-on-the-part-of-the~~
26 ~~bank-in-paying-the-item(s).~~

27 5. If subsection 4 applies and the customer proves that
28 the bank failed to exercise ordinary care in payment the item
29 and that the failure substantial contributed to loss, the loss
30 is allocated between the customer precluded and the bank
31 asserting the preclusion according to the extent to which the
32 failure of the customer to comply with subsection 3 and the
33 failure of the bank to exercise ordinary care contributed to
34 the loss. If the customer proves that the bank did not pay
35 the item in good faith, the preclusion under subsection 4 does

1 not apply.

2 4 6. Without regard to care or lack of care of either the
3 customer or the bank, a customer who does not within one year
4 ~~from-the-time~~ after the statement and or items are made
5 available to the customer (subsection 1) discover and report
6 the customer's unauthorized signature on or any alteration on
7 ~~the-face-or-back-of-the-item-or-does-not-within-three-years~~
8 ~~from-that-time-discover-and-report-any-unauthorized~~
9 endorsement on the item is precluded from asserting against
10 the bank such the unauthorized signature or endorsement or
11 such alteration. If there is a preclusion under this
12 subsection, the payor bank may not recover for breach of
13 warranty under section 554.4208 with respect to the
14 unauthorized signature or alteration to which the preclusion
15 applies.

16 5---~~if-under-this-section-a-payor-bank-has-a-vaaid-defense~~
17 ~~against-a-claim-of-a-customer-upon-or-resulting-from-payment~~
18 ~~of-an-item-and-waives-or-fails-upon-request-to-assert-the~~
19 ~~defense-the-bank-may-not-assert-against-any-collecting-bank-or~~
20 ~~other-prior-party-presenting-or-transferring-the-item-a-claim~~
21 ~~based-upon-the-unauthorized-signature-or-alteration-giving~~
22 ~~rise-to-the-customer's-claim:~~

23 Sec. 113. Section 554.4407, Code 1993, is amended to read
24 as follows:

25 554.4407 PAYOR BANK'S RIGHT TO SUBROGATION ON IMPROPER
26 PAYMENT.

27 If a payor bank has paid an item over the stop-payment
28 order of the drawer or maker to stop payment, or after an
29 account has been closed, or otherwise under circumstances
30 giving a basis for objection by the drawer or maker, to
31 prevent unjust enrichment and only to the extent necessary to
32 prevent loss to the bank by reason of its payment of the item,
33 the payor bank ~~shall-be~~ is subrogated to the rights

34 a. of any holder in due course on the item against the
35 drawer or maker; and

1 b. of the payee or any other holder of the item against
2 the drawer or maker either on the item or under the
3 transaction out of which the item arose; and

4 c. of the drawer or maker against the payee or any other
5 holder of the item with respect to the transaction out of
6 which the item arose.

7 Sec. 114. Section 554.4501, Code 1993, is amended to read
8 as follows:

9 554.4501 HANDLING OF DOCUMENTARY DRAFTS -- DUTY TO SEND
10 FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR.

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

18 Sec. 115. Section 554.4502, Code 1993, is amended to read
19 as follows:

20 554.4502 PRESENTMENT OF "ON ARRIVAL" DRAFTS.

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

29 Sec. 116. Section 554.4503, Code 1993, is amended to read
30 as follows:

31 554.4503 RESPONSIBILITY OF PRESENTING BANK FOR DOCUMENTS
32 AND GOODS -- REPORT OF REASONS FOR DISHONOR -- REFEREE IN CASE
33 OF NEED.

34 Unless otherwise instructed and except as provided in
35 Article 5, a bank presenting a documentary draft:

1 a. must deliver the documents to the drawee on acceptance
2 of the draft if it is payable more than three days after
3 presentment; otherwise, only on payment; and

4 b. upon dishonor, either in the case of presentment for
5 acceptance or presentment for payment, may seek and follow
6 instructions from any referee in case of need designated in
7 the draft or, if the presenting bank does not choose to
8 utilize the referee's services, it must use diligence and good
9 faith to ascertain the reason for dishonor, must notify its
10 transferor of the dishonor and of the results of its effort to
11 ascertain the reasons therefor, and must request instructions.

12 But However, the presenting bank is under no obligation
13 with respect to goods represented by the documents except to
14 follow any reasonable instructions seasonably received; it has
15 a right to reimbursement for any expense incurred in following
16 instructions and to prepayment of or indemnity for such those
17 expenses.

18 Sec. 117. Section 554.4504, subsection 1, Code 1993, is
19 amended to read as follows:

20 1. A presenting bank which that, following the dishonor of
21 a documentary draft, has seasonably requested instructions but
22 does not receive them within a reasonable time may store,
23 sell, or otherwise deal with the goods in any reasonable
24 manner.

25 Sec. 118. Section 554.5103, subsection 3, Code 1993, is
26 amended to read as follows:

27 3. Definitions in other Articles applying to this Article
28 and the sections in which they appear are:

29 "Accept" or "Acceptance".	Section 554.3410
30	<u>554.3409.</u>
31 "Contract for sale".	Section 554.2106.
32 "Draft".	Section 554.3104.
33 "Holder in due course".	Section 554.3302.
34 "Midnight deadline".	Section 554.4104.
35 "Security".	Section 554.8102.

1 Sec. 119. Section 554.9206, subsection 1, Code 1993, is
2 amended to read as follows:

3 1. Subject to any statute or decision which establishes a
4 different rule for buyers or lessees of consumer goods, an
5 agreement by a buyer or lessee that the buyer or lessee will
6 not assert against an assignee any claim or defense which the
7 buyer or lessee may have against the seller or lessor is
8 enforceable by an assignee who takes that assignee's
9 assignment for value, in good faith and without notice of a
10 claim or defense, except as to defenses of a type which may be
11 asserted against a holder in due course of a negotiable
12 instrument under the Article on ~~Commercial-Paper~~ Negotiable
13 Instruments (Article 3). A buyer who as part of one
14 transaction signs both a negotiable instrument and a security
15 agreement makes such an agreement.

16 Sec. 120. DIRECTION TO CODE EDITOR.

17 The Code editor is directed to renumber section 554.4215 to
18 section 554.4208 and renumber section 554.4216 to 554.4209,
19 renumber subsequent sections through section 554.4214
20 accordingly, and correct internal references.

21 Sec. 121. REPEALS

22 1. Sections 554.3101 through 554.3806, Code 1993, are
23 repealed.

24 2. Section 554.4109, Code 1993, is repealed.

25 EXPLANATION

26 This bill amends the chapter 554, the Uniform Commercial
27 Code, by rewriting Article 3 relating to commercial paper,
28 amends Article 4 relating to bank deposits and collections in
29 conformance with recommendations by the American law institute
30 and the national conference of commissioners on uniform state
31 laws, and provides conforming amendments to various sections
32 of the Code.

33 Part 1 of the new Article 3 establishes general provisions,
34 including definitions, requirements for the issuance and
35 payment of negotiable instruments, and liability parties

1 involved in a breach of an obligation arising from transaction
2 involving an instrument.

3 Part 2 provides for the negotiation, transfer, and
4 endorsement of negotiable instruments, including rights
5 acquired by transfer and reacquisitions. The bill includes
6 requirements regarding endorsements, including special and
7 blank endorsements, restrictive endorsements.

8 Part 3 provides for the enforcement of instruments, by
9 providing for the rights of holders of the instruments;
10 requirements relating to the transfer of instruments for value
11 and consideration; the payment of overdue instruments;
12 defenses and claims in recoupment; duties owed by fiduciaries;
13 evidence of lost, destroyed, or stolen instruments; the
14 discharge of obligations; and obligations occurring upon an
15 instrument's loss.

16 Part 4 provides for the liability of parties, including
17 requirements for signatures; the consequences of a fraudulent
18 endorsement or alterations; the acceptance of checks and other
19 drafts; the obligations of issuers, acceptors, drawers, and
20 endorsers; warranties; and the conversion of instruments.

21 Part 5 provides for the dishonor of instruments, including
22 requirements relating to presentment, and notice.

23 Part 6 provides for discharge and payment, including the
24 effect of discharge, and methods to accomplish discharge and
25 the tender of payment.

26 The bill also amends various sections in Article 4,
27 including sections providing for definitions, payment
28 requirements, presentment, a statute of limitations,
29 warranties, settlement, liability, the return of items, and
30 bank charges.

31 The bill directs the Code editor to make changes necessary
32 to conform the bill with the model act.

33 The bill repeals sections included within old Article 3 and
34 a provision in Article 4 relating to the process of posting of
35 a notice by a bank in determining to pay an item.

SENATE FILE 2279

AN ACT

AMENDING THE UNIFORM COMMERCIAL CODE RELATING TO NEGOTIABLE INSTRUMENTS, AND BANK DEPOSITS AND COLLECTIONS, AND REPEALING SECTIONS, AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 9E.9, subsection 5, Code 1993, is amended to read as follows:

5. In making or noting a protest of a negotiable instrument, the notarial officer must determine the matters set forth whether there is evidence of dishonor as provided in section 554.3509 554.3505.

Sec. 2. Section 533.43, subsection 3, Code 1993, is amended to read as follows:

3. The share draft is payable to a member of the credit union, or to a member of the family of the issuer of the share draft, or to a business in which the issuer of the share draft has an interest. However, the exception contained in this subsection does not apply to any person referred to in this subsection if the person is a holder in due course, as provided in chapter 554, article J; ~~and with respect to a share draft which is issued prior to the expiration of one year after April 13, 1979; the person shall not be denied the rights of a holder in due course of the share draft solely on~~

~~the grounds that the share draft fails to meet the requirements of section 554.3104, subsection 1, paragraph "d".~~

Sec. 3. Section 537.3211, Code 1993, is amended to read as follows:

537.3211 NOTICE OF CONSUMER PAPER.

Every note which is a negotiable instrument pursuant to as provided in section 554.3104 taken in a consumer credit transaction, if the writing requires or provides for a signature of the consumer, shall conspicuously show on its face the following: "This is a consumer credit transaction."

Sec. 4. Section 539.1, Code 1993, is amended to read as follows:

539.1 ASSIGNMENT OF NONNEGOTIABLE INSTRUMENTS.

Bonds, due bills, and all instruments by which the maker promises to pay another, without words of negotiability, a sum of money, or by which the maker promises to pay a sum of money in property or labor, or to pay or deliver any property or labor, or acknowledges any money, labor, or property to be due, are assignable by endorsement on the instrument, or by other writing. The assignee, including a person who takes assignment for collection in the regular course of business, has a right of action on them in the assignee's own name, subject to any defense or counterclaim which the maker or debtor had against an assignor of the instrument before notice of the assignment. In case of conflict between this section and ~~Uniform-Commercial-Code, sections 554.3805, 554.5116 or and 554.9318, these sections 554.5116 and 554.9318 control.~~

Sec. 5. Section 539.2, Code 1993, is amended to read as follows:

539.2 ASSIGNMENT PROHIBITED BY INSTRUMENT.

When by the terms of an instrument its assignment is prohibited, an assignment thereof shall nevertheless be valid, but the maker may make use of any defense or counterclaim against the assignee which the maker may have against any assignor thereof before notice of such assignment is given to the maker in writing. In case of conflict between this section and ~~Uniform-Commercial-Code, sections 554.3805,~~

554.5116 or and 554.9318, those sections 554.5116 and 554.9318 control.

Sec. 6. Section 554.1201, subsections 20, 24, and 43, Code 1993, are amended to read as follows:

20. "Holder" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or endorsed to that person or to that person's order or to bearer or in blank with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

24. "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

43. "Unauthorized" signature or endorsement means one made without actual, implied, or apparent authority and includes a forgery.

Sec. 7. Section 554.1207, Code 1993, is amended to read as follows:

554.1207 PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS.

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

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

Sec. 8. Section 554.2103, subsection 3, Code 1993, is amended to read as follows:

3. The following definitions in other Articles apply to this Article:

"Check".	Section 554.3104.
"Consignee".	Section 554.7102.
"Consignor".	Section 554.7102.
"Consumer goods".	Section 554.9109.
"Dishonor".	Section 554.3507 554.3502.
"Draft".	Section 554.3104.

Sec. 9. Section 554.2511, subsection 3, Code 1993, is amended to read as follows:

3. Subject to the provisions of this chapter on the effect of an instrument on an obligation (section 554.3002 554.3110), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

UNIFORM COMMERCIAL CODE

ARTICLE 3 - NEGOTIABLE INSTRUMENTS

PART 1

GENERAL PROVISIONS AND DEFINITIONS

Sec. 10. NEW SECTION. 554.3101 SHORT TITLE. This Article may be cited as Uniform Commercial Code -- Negotiable Instruments.

Sec. 11. NEW SECTION. 554.3102 SUBJECT MATTER.

1. This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 8, or to securities governed by Article 12.

2. If there is conflict between this Article and Article 9 or 12, Articles 9 and 12 govern.

3. Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

Sec. 12. NEW SECTION. 554.3103 DEFINITIONS.

1. In this Article:

a. "Acceptor" means a drawee who has accepted a draft.

b. "Drawee" means a person ordered in a draft to make payment.

c. "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

d. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

e. "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

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

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

h. "Party" means a party to an instrument.

i. "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

j. "Prove" with respect to a fact means to meet the burden of establishing the fact (section 554.1201, subsection 8).

k. "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

2. Other definitions applying to this Article and the sections in which they appear are:

"Acceptance". Section 554.3409.

"Accommodated party".	Section 554.3419.
"Accommodation party".	Section 554.3419.
"Alteration".	Section 554.3407.
"Anomalous endorsement".	Section 554.3205.
"Blank endorsement".	Section 554.3205.
"Cashier's check".	Section 554.3104.
"Certificate of deposit".	Section 554.3104.
"Certified check".	Section 554.3409.
"Check".	Section 554.3104.
"Consideration".	Section 554.3303.
"Draft".	Section 554.3104.
"Holder in due course".	Section 554.3302.
"Incomplete instrument".	Section 554.3115.
"Endorsement".	Section 554.3204.
"Endorser".	Section 554.3204.
"Instrument".	Section 554.3104.
"Issue".	Section 554.3105.
"Issuer".	Section 554.3105.
"Negotiable instrument".	Section 554.3104.
"Negotiation".	Section 554.3201.
"Note".	Section 554.3104.
"Payable at a definite time".	Section 554.3108.
"Payable on demand".	Section 554.3108.
"Payable to bearer".	Section 554.3109.
"Payable to order".	Section 554.3109.
"Payment".	Section 554.3602.
"Person entitled to enforce".	Section 554.3301.
"Presentment".	Section 554.3501.
"Reacquisition".	Section 554.3207.
"Special endorsement".	Section 554.3205.
"Teller's check".	Section 554.3104.
"Transfer of instrument".	Section 554.3203.
"Traveler's check".	Section 554.3104.
"Value".	Section 554.3303.
3. The following definitions in other Articles apply to this Article:	
"Bank".	Section 554.4105.

"Banking day".	Section 554.4104.
"Clearing house".	Section 554.4104.
"Collecting bank".	Section 554.4105.
"Depository bank".	Section 554.4105.
"Documentary draft".	Section 554.4104.
"Intermediary bank".	Section 554.4105.
"Item".	Section 554.4104.
"Payor bank".	Section 554.4105.
"Suspends payments".	Section 554.4104.

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 13. NEW SECTION. 554.3104 NEGOTIABLE INSTRUMENT.

1. Except as provided in subsections 3 and 4, "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- a. is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- b. is payable on demand or at a definite time; and
- c. does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

2. "Instrument" means a negotiable instrument.

3. An order that meets all of the requirements of subsection 1, except paragraph "a", and otherwise falls within the definition of "check" in subsection 6 is a negotiable instrument and a check.

4. A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is

not negotiable or is not an instrument governed by this Article.

5. An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

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

7. "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

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

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

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

Sec. 14. NEW SECTION. 554.3105 ISSUE OF INSTRUMENT.

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

2. An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

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

Sec. 15. NEW SECTION. 554.3106 UNCONDITIONAL PROMISE OR ORDER.

1. Except as provided in this section, for the purposes of section 554.3104, subsection 1, a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

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

3. If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of section 554.3104, subsection 1. If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

4. If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 554.3104, subsection 1; but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

Sec. 16. NEW SECTION. 554.3107 INSTRUMENT PAYABLE IN FOREIGN MONEY.

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

Sec. 17. NEW SECTION. 554.3108 PAYABLE ON DEMAND OR AT DEFINITE TIME.

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

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

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

Sec. 18. NEW SECTION. 554.3109 PAYABLE TO BEARER OR TO ORDER.

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

a. states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

b. does not state a payee; or

c. states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

2. A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

3. An instrument payable to bearer may become payable to an identified person if it is specially endorsed pursuant to section 554.3205, subsection 1. An instrument payable to an identified person may become payable to bearer if it is endorsed in blank pursuant to section 554.3205, subsection 2.

Sec. 19. NEW SECTION. 554.3110 IDENTIFICATION OF PERSON TO WHOM INSTRUMENT IS PAYABLE.

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

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

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

a. if an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the

named person, whether or not that person is the owner of the account identified by number.

b. if an instrument is payable to:

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

(2) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

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

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

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

Sec. 20. NEW SECTION. 554.3111 PLACE OF PAYMENT.

Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen

by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

Sec. 21. NEW SECTION. 554.3112 INTEREST.

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

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

Sec. 22. NEW SECTION. 554.3113 DATE OF INSTRUMENT.

1. An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in section 554.4401, subsection 3, an instrument payable on demand is not payable before the date of the instrument.

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

Sec. 23. NEW SECTION. 554.3114 CONTRADICTIONARY TERMS OF INSTRUMENT.

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

Sec. 24. NEW SECTION. 554.3115 INCOMPLETE INSTRUMENT.

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

2. Subject to subsection 3, if an incomplete instrument is an instrument under section 554.3104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under section 554.3104, but, after completion, the requirements of section 554.3104 are met, the instrument may be enforced according to its terms as augmented by completion.

3. If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under section 554.3407.

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

Sec. 25. NEW SECTION. 554.3116 JOINT AND SEVERAL LIABILITY -- CONTRIBUTION.

1. Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, endorsers who endorse as joint payees, or anomalous endorsers are jointly and severally liable in the capacity in which they sign.

2. Except as provided in section 554.3419, subsection 5, or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

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

Sec. 26. NEW SECTION. 554.3117 OTHER AGREEMENTS AFFECTING INSTRUMENT.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified.

supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

Sec. 27. NEW SECTION. 554.3118 ACCRUAL OF CAUSE OF ACTION.

1. A cause of action against a maker or an acceptor accrues

a. In the case of a time instrument on the day after maturity;

b. In the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

2. A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

3. A cause of action against a drawer of a draft or an endorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

4. Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

a. In the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

b. In all other cases from the date of accrual of the cause of action.

Sec. 28. NEW SECTION. 554.3119 NOTICE OF RIGHT TO DEFEND ACTION.

In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person

notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after reasonable receipt of the notice the person notified does come in and defend.

PART 2

NEGOTIATION, TRANSFER, AND ENDORSEMENT

Sec. 29. NEW SECTION. 554.3201 NEGOTIATION.

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

2. Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its endorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

Sec. 30. NEW SECTION. 554.3202 NEGOTIATION SUBJECT TO RESCISSION.

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

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

Sec. 31. NEW SECTION. 554.3203 TRANSFER OF INSTRUMENT -- RIGHTS ACQUIRED BY TRANSFER.

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

2. Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights

of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

3. Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of endorsement by the transferor, the transferee has a specifically enforceable right to the unqualified endorsement of the transferor, but negotiation of the instrument does not occur until the endorsement is made.

4. If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee.

Sec. 32. NEW SECTION. 554.3204 ENDORSEMENT.

1. "Endorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring endorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an endorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than endorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

2. "Endorser" means a person who makes an endorsement.

3. For the purpose of determining whether the transferee of an instrument is a holder, an endorsement that transfers a security interest in the instrument is effective as an unqualified endorsement of the instrument.

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

Sec. 33. NEW SECTION. 554.3205 SPECIAL ENDORSEMENT -- BLANK ENDORSEMENT -- ANOMALOUS ENDORSEMENT.

1. If an endorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the endorsement identifies a person to whom it makes the instrument payable, it is a "special endorsement." When specially endorsed, an instrument becomes payable to the identified person and may be negotiated only by the endorsement of that person. The principles stated in section 554.3110 apply to special endorsements.

2. If an endorsement is made by the holder of an instrument and it is not a special endorsement, it is a "blank endorsement." When endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed.

3. The holder may convert a blank endorsement that consists only of a signature into a special endorsement by writing, above the signature of the endorser, words identifying the person to whom the instrument is made payable.

4. "Anomalous endorsement" means an endorsement made by a person who is not the holder of the instrument. An anomalous endorsement does not affect the manner in which the instrument may be negotiated.

Sec. 34. NEW SECTION. 554.3206 RESTRICTIVE ENDORSEMENT.

1. An endorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

2. An endorsement stating a condition to the right of the endorsee to receive payment does not affect the right of the endorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

3. If an instrument bears an endorsement (i) described in section 554.4201, subsection 2, or (ii) in blank or to a particular bank using the words "for deposit," "for

collection," or other words indicating a purpose of having the instrument collected by a bank for the endorser or for a particular account, the following rules apply:

a. A person, other than a bank, who purchases the instrument when so endorsed converts the instrument unless the amount paid for the instrument is received by the endorser or applied consistently with the endorsement.

b. A depository bank that purchases the instrument or takes it for collection when so endorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the endorser or applied consistently with the endorsement.

c. A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the endorser or applied consistently with the endorsement.

d. Except as otherwise provided in paragraph c, a payor bank or intermediary bank may disregard the endorsement and is not liable if the proceeds of the instrument are not received by the endorser or applied consistently with the endorsement.

4. Except for an endorsement covered by subsection 3, if an instrument bears an endorsement using words to the effect that payment is to be made to the endorsee as agent, trustee, or other fiduciary for the benefit of the endorser or another person, the following rules apply:

a. Unless there is notice of breach of fiduciary duty as provided in section 554.3307, a person who purchases the instrument from the endorsee or takes the instrument from the endorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the endorsee without regard to whether the endorsee violates a fiduciary duty to the endorser.

b. A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the endorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

5. The presence on an instrument of an endorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection 3 or has notice or knowledge of breach of fiduciary duty as stated in subsection 4.

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

Sec. 35. NEW SECTION. 554.3207 REACQUISITION.

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel endorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An endorser whose endorsement is cancelled is discharged, and the discharge is effective against any subsequent holder.

PART 3

ENFORCEMENT OF INSTRUMENTS

Sec. 36. NEW SECTION. 554.3301 PERSON ENTITLED TO ENFORCE INSTRUMENT.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 554.3309 or 554.3418, subsection 4. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

Sec. 37. NEW SECTION. 554.3302 HOLDER IN DUE COURSE.

1. Subject to subsection 3 and section 554.3106, subsection 4, "holder in due course" means the holder of an instrument if:

a. the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

b. the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in section 554.3306, and (vi) without notice that any party has a defense or claim in recoupment described in section 554.3305, subsection 1.

2. Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection 1, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

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

4. If, under section 554.3303, subsection 1, paragraph "a", the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

5. If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

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

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

Sec. 38. NEW SECTION. 554.3303 VALUE AND CONSIDERATION.

1. An instrument is issued or transferred for value if:

a. the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

b. the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

c. the instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

d. the instrument is issued or transferred in exchange for a negotiable instrument; or

e. the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

2. "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection 1, the instrument is also issued for consideration.

Sec. 39. NEW SECTION. 554.3304 OVERDUE INSTRUMENT.

1. An instrument payable on demand becomes overdue at the earliest of the following times:

- a. on the day after the day demand for payment is duly made;
- b. if the instrument is a check, ninety days after its date; or
- c. if the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

2. With respect to an instrument payable at a definite time the following rules apply:

- a. If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.
- b. If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.
- c. If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

3. Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

Sec. 40. NEW SECTION. 554.3305 DEFENSES AND CLAIMS IN RECOUPMENT.

1. Except as stated in subsection 2, the right to enforce the obligation of a party to pay an instrument is subject to the following:

- a. a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign

the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

- b. a defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

- c. a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

2. The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection 1, paragraph "a", but is not subject to defenses of the obligor stated in subsection 1, paragraph "b", or claims in recoupment stated in subsection 1, paragraph "c", against a person other than the holder.

3. Except as stated in subsection 4, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (section 554.3306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

4. In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection 1 that the accommodated party could assert against the person

entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

Sec. 41. NEW SECTION. 554.3306 CLAIMS TO AN INSTRUMENT.

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

Sec. 42. NEW SECTION. 554.3307 NOTICE OF BREACH OF FIDUCIARY DUTY.

1. In this section:

a. "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

b. "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph "a" is owed.

2. If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

a. Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

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

c. If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

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

Sec. 43. NEW SECTION. 554.3308 PROOF OF SIGNATURES AND STATUS AS HOLDER IN DUE COURSE.

1. In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under section 554.3402, subsection 1.

2. If the validity of signatures is admitted or proved and there is compliance with subsection 1, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 554.3301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to

payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

Sec. 44. NEW SECTION. 554.3309 ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT.

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

2. A person seeking enforcement of an instrument under subsection 1 must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 554.3308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

Sec. 45. NEW SECTION. 554.3310 EFFECT OF INSTRUMENT ON OBLIGATION FOR WHICH TAKEN.

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

2. Unless otherwise agreed and except as provided in subsection 1, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

a. In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

b. In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

c. Except as provided in paragraph "d", if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

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

3. If an instrument other than one described in subsection 1 or 2 is taken for an obligation, the effect is (i) that stated in subsection 1 if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection 2 in any other case.

Sec. 46. NEW SECTION. 554.3311 ACCORD AND SATISFACTION
BY USE OF INSTRUMENT.

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

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

3. Subject to subsection 4, a claim is not discharged under subsection 2 if either of the following applies:

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

b. The claimant, whether or not an organization, proves that within ninety days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph "a" letter (i).

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

Sec. 47. NEW SECTION. 554.3312 LOST, DESTROYED, OR
STOLEN CASHIER'S CHECK, TELLER'S CHECK, OR CERTIFIED CHECK.

1. In this section:

a. "Check" means a cashier's check, teller's check, or certified check.

b. "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

c. "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

d. "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

2. A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

a. The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the ninetieth day following the date of the check, in the case of a cashier's

check or teller's check, or the ninetieth day following the date of the acceptance, in the case of a certified check.

b. Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

c. If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

d. When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to section 554.4302, subsection 1, paragraph "a", payment to the claimant discharges all liability of the obligated bank with respect to the check.

3. If the obligated bank pays the amount of a check to a claimant under subsection 2, paragraph "d", and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

4. If a claimant has the right to assert a claim under subsection 2 and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or section 554.3309.

PART 4

LIABILITY OF PARTIES

Sec. 48. NEW SECTION. 554.3401 SIGNATURE.

1. A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 554.3402.

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

Sec. 49. NEW SECTION. 554.3402 SIGNATURE BY REPRESENTATIVE.

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

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

a. If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

b. Subject to subsection 3, if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

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

Sec. 50. NEW SECTION. 554.3403 UNAUTHORIZED SIGNATURE.

1. Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

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

3. The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article.

Sec. 51. NEW SECTION. 554.3404 IMPOSTORS -- FICTITIOUS PAYERS.

1. If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an endorsement of the instrument by any person in the name of the payee is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

2. If (i) a person whose intent determines to whom an instrument is payable (section 554.3110, subsection 1 or 2) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following

rules apply until the instrument is negotiated by special endorsement:

a. Any person in possession of the instrument is its holder.

b. An endorsement by any person in the name of the payee stated in the instrument is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

3. Under subsection 1 or 2, an endorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not endorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.

4. With respect to an instrument to which subsection 1 or 2 applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

Sec. 52. NEW SECTION. 554.3405 EMPLOYER'S RESPONSIBILITY FOR FRAUDULENT ENDORSEMENT BY EMPLOYEE.

1. In this section:

a. "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

b. "Fraudulent endorsement" means (i) in the case of an instrument payable to the employer, a forged endorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged endorsement purporting to be that of the person identified as payee.

c. "Responsibility" with respect to instruments means authority (i) to sign or endorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for

other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

2. For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent endorsement of the instrument, the endorsement is effective as the endorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

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

Sec. 53. NEW SECTION. 554.3406 NEGLIGENCE CONTRIBUTING TO FORGED SIGNATURE OR ALTERATION OF INSTRUMENT.

1. A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is

precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

2. Under subsection 1, if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

3. Under subsection 1, the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection 2, the burden of proving failure to exercise ordinary care is on the person precluded.

Sec. 54. NEW SECTION. 554.3407 ALTERATION.

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

2. Except as provided in subsection 3, an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

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

Sec. 55. NEW SECTION. 554.3408 DRAWEE NOT LIABLE ON UNACCEPTED DRAFT.

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

Sec. 56. NEW SECTION. 554.3409 ACCEPTANCE OF DRAFT -- CERTIFIED CHECK.

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

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

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

4. "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection 1 or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

Sec. 57. NEW SECTION. 554.3410 ACCEPTANCE VARYING DRAFT.

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

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

3. If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and endorser that does not expressly assent to the acceptance is discharged.

Sec. 58. NEW SECTION. 554.3411 REFUSAL TO PAY CASHIER'S CHECKS, TELLER'S CHECKS, AND CERTIFIED CHECKS.

1. In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

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

3. Expenses or consequential damages under subsection 2 are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

Sec. 59. NEW SECTION. 554.3412 OBLIGATION OF ISSUER OF NOTE OR CASHIER'S CHECK.

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 554.3115 and 554.3407. The obligation is owed to a person entitled to enforce the instrument or to an endorser who paid the instrument under section 554.3415.

Sec. 60. NEW SECTION. 554.3413 OBLIGATION OF ACCEPTOR.

1. The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the

draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in sections 554.3115 and 554.3407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an endorser who paid the draft under section 554.3414 or 554.3415.

2. If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

Sec. 61. NEW SECTION. 554.3414 OBLIGATION OF DRAWER.

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

2. If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (1) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 554.3115 and 554.3407. The obligation is owed to a person entitled to enforce the draft or to an endorser who paid the draft under section 554.3415.

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

4. If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an endorser under section 554.3415, subsections 1 and 3.

5. If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection 2 to pay the draft if the draft is not a check. A disclaimer of the

liability stated in subsection 2 is not effective if the draft is a check.

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

Sec. 62. NEW SECTION. 554.3415 OBLIGATION OF ENDORSER.

1. Subject to subsections 2, 3, and 4 and to section 554.3419, subsection 4, if an instrument is dishonored, an endorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was endorsed, or (ii) if the endorser endorsed an incomplete instrument, according to its terms when completed, to the extent stated in sections 554.3115 and 554.3407. The obligation of the endorser is owed to a person entitled to enforce the instrument or to a subsequent endorser who paid the instrument under this section.

2. If an endorsement states that it is made "without recourse" or otherwise disclaims liability of the endorser, the endorser is not liable under subsection 1 to pay the instrument.

3. If notice of dishonor of an instrument is required by section 554.3503 and notice of dishonor complying with that section is not given to an endorser, the liability of the endorser under subsection 1 is discharged.

4. If a draft is accepted by a bank after an endorsement is made, the liability of the endorser under subsection 1 is discharged.

5. If an endorser of a check is liable under subsection 1 and the check is not presented for payment, or given to a depository bank for collection, within thirty days after the

day the endorsement was made, the liability of the endorser under subsection 1 is discharged.

Sec. 63. NEW SECTION. 554.3416 TRANSFER WARRANTIES.

1. A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee that:

- a. the warrantor is a person entitled to enforce the instrument;
- b. all signatures on the instrument are authentic and authorized;
- c. the instrument has not been altered;
- d. the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and
- e. the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

2. A person to whom the warranties under subsection 1 are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

3. The warranties stated in subsection 1 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within sixty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection 2 is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

Sec. 64. NEW SECTION. 554.3417 PRESENTMENT WARRANTIES.

1. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the

time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

- a. the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
- b. the draft has not been altered; and
- c. the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

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

3. If a drawee asserts a claim for breach of warranty under subsection 1 based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 554.3404 or 554.3405 or the drawer is precluded under section 554.3406 or 554.4406 from asserting against the drawee the unauthorized endorsement or alteration.

4. If (i) a dishonored draft is presented for payment to the drawer or an endorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

- a. The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good

faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

b. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

5. The warranties stated in subsections 1 and 4 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within sixty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection 2 or 4 is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

Sec. 65. NEW SECTION. 554.3418 PAYMENT OR ACCEPTANCE BY MISTAKE.

1. Except as provided in subsection 3, if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to section 554.4403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

2. Except as provided in subsection 3, if an instrument has been paid or accepted by mistake and the case is not covered by subsection 1, the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

3. The remedies provided by subsection 1 or 2 may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by section 554.3417 or 554.4407.

4. Notwithstanding section 554.4215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection 1 or 2, the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

Sec. 66. NEW SECTION. 554.3419 INSTRUMENTS SIGNED FOR ACCOMMODATION.

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

2. An accommodation party may sign the instrument as maker, drawer, acceptor, or endorser and, subject to subsection 4, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

3. A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous endorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 554.3605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice

when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

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

5. An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

Sec. 67. NEW SECTION. 554.3420 CONVERSION OF INSTRUMENT.

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

2. In an action under subsection 1, the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

3. A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the

instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

PART 5

DISHONOR

Sec. 68. NEW SECTION. 554.3501 PRESENTMENT.

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

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

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

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

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

d. The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made

has established a cut-off hour not earlier than two p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

Sec. 69. NEW SECTION. 554.3502 DISHONOR.

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

- a. If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.
- b. If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.
- c. If the note is not payable on demand and paragraph "b" does not apply, the note is dishonored if it is not paid on the day it becomes payable.

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

- a. If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under section 554.4301 or 554.4302, or becomes accountable for the amount of the check under section 554.4302.
- b. If a draft is payable on demand and paragraph a does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.
- c. If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

d. If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

3. Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection 2, paragraphs "b", "c", and "d", except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

4. Dishonor of an accepted draft is governed by the following rules:

- a. If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.
- b. If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.
5. In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under section 554.3504, dishonor occurs without presentment if the instrument is not duly accepted or paid.
6. If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

Sec. 70. NEW SECTION. 554.3503 NOTICE OF DISHONOR.

1. The obligation of an endorser stated in section 554.3415, subsection 1 and the obligation of a drawer stated in section 554.3414, subsection 4, may not be enforced unless (i) the endorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under section 554.3504, subsection 2.

2. Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral,

written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

3. Subject to section 554.3504, subsection 3, with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within thirty days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within thirty days following the day on which dishonor occurs.

Sec. 71. NEW SECTION. 554.3504 EXCUSED PRESENTMENT AND NOTICE OF DISHONOR.

1. Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of endorsers or the drawer, (iv) the drawer or endorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

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

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

Sec. 72. NEW SECTION. 554.3505 EVIDENCE OF DISHONOR.

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

- a. a document regular in form as provided in subsection 2 which purports to be a protest;
- b. a purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;
- c. a book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

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

PART 6
DISCHARGE AND PAYMENT

Sec. 73. NEW SECTION. 554.3601 DISCHARGE AND EFFECT OF DISCHARGE.

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

2. 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.

Sec. 74. NEW SECTION. 554.3602 PAYMENT.

1. Subject to subsection 2, 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 section 554.3306 by another person.

2. The obligation of a party to pay the instrument is not discharged under subsection 1 if:

a. a claim to the instrument under section 554.3306 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

b. 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.

Sec. 75. NEW SECTION. 554.3603 TENDER OF PAYMENT.

1. 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.

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

3. If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

Sec. 76. NEW SECTION. 554.3604 DISCHARGE BY CANCELLATION OR RENUNCIATION.

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

2. Cancellation or striking out of an endorsement pursuant to subsection 1 does not affect the status and rights of a party derived from the endorsement.

Sec. 77. NEW SECTION. 554.3605 DISCHARGE OF ENDORSERS AND ACCOMMODATION PARTIES.

1. In this section, the term "endorser" includes a drawer having the obligation described in section 554.3414, subsection 4.

2. Discharge, under section 554.3604, of the obligation of a party to pay an instrument does not discharge the obligation of an endorser or accommodation party having a right of recourse against the discharged party.

3. If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an endorser or accommodation party having a right of recourse against the party whose obligation is

extended to the extent the endorser or accommodation party proves that the extension caused loss to the endorser or accommodation party with respect to the right of recourse.

4. If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an endorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the endorser or accommodation party with respect to the right of recourse. The loss suffered by the endorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

5. If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an endorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

6. If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party

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

7. Under subsection 5 or 6, impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

8. An accommodation party is not discharged under subsection 3, 4, or 5 unless the person entitled to enforce the instrument knows of the accommodation or has notice under section 554.3419, subsection 3, that the instrument was signed for accommodation.

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

Sec. 78. Section 554.4101, Code 1993, is amended to read as follows:

554.4101 SHORT TITLE.

This Article ~~shall be known and~~ may be cited as Uniform Commercial Code -- Bank Deposits and Collections.

Sec. 79. Section 554.4102, Code 1993, is amended to read as follows:

554.4102 APPLICABILITY.

1. To the extent that items within this Article are also within the scope of Articles 3 and 8, they are subject to the provisions of those Articles. ~~In the event of~~ If there is conflict, ~~the provisions of this Article govern those of~~ governs Article 3, but ~~the provisions of~~ Article 8 govern those of governs this Article.

2. The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

Sec. 80. Section 554.4103, Code 1993, is amended to read as follows:

554.4103 VARIATION BY AGREEMENT -- MEASURE OF DAMAGES -- ~~CERTAIN ACTION CONSTITUTING ORDINARY CARE.~~

1. The effect of the provisions of this Article may be varied by agreement ~~except that no agreement can,~~ but the parties to the agreement cannot disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or ~~can limit the measure of damages for such the lack or failure; but,~~ However, the parties may ~~determine~~ by agreement determine the standards by which ~~such the bank's~~ responsibility is to be measured if ~~such those~~ standards are not manifestly unreasonable.

2. Federal Reserve regulations and operating letters circulares, clearing house rules, and the like, have the effect of agreements under subsection 1, whether or not specifically assented to by all parties interested in items handled.

3. Action or nonaction approved by this Article or pursuant to Federal Reserve regulations or operating letters ~~constitutes~~ circulares is the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing house rules and the like or with a general banking usage not disapproved by this Article, is prima facie ~~constitutes~~ the exercise of ordinary care.

4. The specification or approval of certain procedures by this Article ~~does not constitute is not~~ disapproval of other procedures which that may be reasonable under the circumstances.

5. The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which that could not have been realized by the use exercise of ordinary care, ~~and where,~~ If there is also bad faith it includes any other damages, ~~if any,~~ suffered by the party suffered as a proximate consequence.

Sec. 81. Section 554.4104, Code 1993, is amended to read as follows:

554.4104 DEFINITIONS AND INDEX OF DEFINITIONS.

1. In this Article, unless the context otherwise requires:

a. "Account" means any deposit or credit account with a bank ~~and includes, including a checking, time, interest or savings account demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;~~

b. "Afternoon" means the period of a day between noon and midnight;

c. "Banking day" means that the part of any a day on which a bank is open to the public for carrying on substantially all of its banking functions but for the purposes of determining a bank's midnight deadline, shall not include Saturday, Sunday, or any holiday when the federal reserve banks are not performing check clearing functions;

d. "Clearing house" means any an association of banks or other payors regularly clearing items;

e. "Customer" means any a person having an account with a bank or for whom a bank has agreed to collect items ~~and includes, including a bank carrying that maintains an account with at another bank;~~

f. "Documentary draft" means any negotiable or nonnegotiable draft with accompanying document, securities or other papers to be delivered against honor of the draft a draft to be presented for acceptance or payment if specified

documents, certificated securities (section 554.8102) or instructions for uncertificated securities (section 554.8308) or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

g. "Draft" means a draft as defined in section 554.3104 or an item, other than an instrument, that is an order;

h. "Drawee" means a person ordered in a draft to make payment;

i. "Item" means any instrument for the payment of money even though it is not negotiable but does not include money an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 12 or a credit or debit card slip;

h j. "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

i. "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

j k. "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed agreed. A settlement may be either provisional or final;

k l. "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

2. Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment".	Section 554.4110.
"Bank".	Section 554.4105.
"Collecting bank".	Section 554.4105.
"Depository bank".	Section 554.4105.

"Intermediary bank".	Section 554.4105.
"Payor bank".	Section 554.4105.
"Presenting bank".	Section 554.4105.
"Remitting bank".	Section 554.4105.
"Presentment notice".	Section 554.4110.

3. The following definitions in other Articles apply to this Article:

"Acceptance".	Section 554.3410 554.3409.
"Alteration".	Section 554.3407.
"Cashier's check".	Section 554.3104.
"Certificate of deposit".	Section 554.3104.
"Certification".	Section 554.3411.
"Certified check".	Section 554.3409.
"Check".	Section 554.3104.
"Draft".	Section 554.3104.
"Good faith".	Section 554.3103.
"Holder in due course".	Section 554.3302.
"Instrument".	Section 554.3104.
"Notice of dishonor".	Section 554.3508 554.3503.
"Order".	Section 554.3103.
"Ordinary care".	Section 554.3103.
"Person entitled to enforce".	Section 554.3301.
"Presentment".	Section 554.3504 554.3501.
"Protest".	Section 554.3509.
"Secondary party".	Section 554.3102.
"Promise".	Section 554.3103.
"Prove".	Section 554.3103.
"Teller's check".	Section 554.3104.
"Unauthorized signature".	Section 554.3403.

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 82. Section 554.4105, Code 1993, is amended to read as follows:

554.4105 "BANK" -- "DEPOSITARY BANK" -- "INTERMEDIARY BANK" -- "COLLECTING BANK" -- "PAYOR BANK" -- "PRESENTING BANK"---"~~REMITTING-BANK~~".

In this Article ~~unless the context otherwise requires:~~

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

a 2. "Depositary bank" means the first bank to which take an item is transferred-for-collection even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

b 3. "Payor bank" means a bank by which an item is payable as drawn or accepted that is the drawee of the draft;

c 4. "Intermediary bank" means any a bank to which an item is transferred in course of collection except the depositary or payor bank;

d 5. "Collecting bank" means any a bank handling the an item for collection except the payor bank;

e 6. "Presenting bank" means any a bank presenting an item except a payor bank;

f---"~~Remitting bank~~" means any payor or intermediary bank remitting for an item.

Sec. 83. Section 554.4106, Code 1993, is amended to read as follows:

554.4106 SEPARATE OFFICE OF A BANK.

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall must be given under this Article and under Article 3.

Sec. 84. Section 554.4107, Code 1993, is amended to read as follows:

554.4107 TIME OF RECEIPT OF ITEMS.

1. For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cutoff hour for the

handling of money and items and the making of entries on its books.

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

Sec. 85. Section 554.4108, Code 1993, is amended to read as follows:

554.4108 DELAYS.

1. Unless otherwise instructed, a collecting bank in a good faith effort to secure payment ~~may, in the case of a~~ specific items item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this chapter for a period not ~~in excess of an~~ exceeding two additional banking day days without discharge of ~~secondary parties and without drawers or endorsers or~~ liability to its transferor or any a prior party.

2. Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this chapter or by instructions is excused if (i) the delay is caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank ~~provided it and (ii) the bank~~ exercises such diligence as the circumstances require.

Sec. 86. NEW SECTION. 554.4110 ELECTRONIC PRESENTMENT.

1. "Agreement for electronic presentment" means an agreement, clearing-house rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

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

3. If presentment is made by presentment notice, a reference to "item" or "check" in the Article means the presentment notice unless the context otherwise indicates.

Sec. 87. NEW SECTION. 554.4111 PAYABLE THROUGH OR PAYABLE AT BANK -- COLLECTING BANK.

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

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

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

Sec. 88. Section 554.4201, Code 1993, is amended to read as follows:

554.4201 PRESUMPTION-AND-DURATION-OF-AGENCY STATUS OF COLLECTING BANKS AS AGENT AND PROVISIONAL STATUS OF CREDITS -- APPLICABILITY OF ARTICLE -- ITEM ENDORSED "PAY ANY BANK".

1. Unless a contrary intent clearly appears and prior to before the time that a settlement given by a collecting bank for an item is or becomes final, (~~subsection 3 of section 554.4211 and sections 554.4212 and 554.4213~~) the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those

resulting from outstanding advances on the item and valid rights of recoupment or setoff. When If an item is handled by banks for purposes of presentment, payment, and collection, or return, the relevant provisions of this Article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

2. After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

- a. ~~until the item has been~~ returned to the customer initiating collection; or
- b. ~~until the item has been~~ specially endorsed by a bank to a person who is not a bank.

Sec. 89. Section 554.4202, Code 1993, is amended to read as follows:

554.4202 RESPONSIBILITY FOR COLLECTION OR RETURN -- WHEN ACTION REASONABLE TIMELY.

1. A collecting bank must use exercise ordinary care in:
 - a. presenting an item or sending it for presentment; and
 - b. sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor ~~or directly to the depository bank under subsection 2 of section 554.4212~~ after learning that the item has not been paid or accepted, as the case may be; and
 - c. settling for an item when the bank receives final settlement; and
 - d. ~~making or providing for any necessary protest; and~~
 - e. notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

2. A collecting bank ~~taking proper action before its midnight deadline following receipt of an item; notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing~~ exercises ordinary care under subsection 1 by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may

constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

3. Subject to subsection 1, paragraph "a" a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit or in the possession of others.

Sec. 90. Section 554.4203, Code 1993, is amended to read as follows:

554.4203 EFFECT OF INSTRUCTIONS.

Subject to ~~the provisions of~~ Article 3 concerning conversion of instruments (section 554.3419 554.3420) and ~~the provisions of both Article 3 and this Article concerning~~ restrictive endorsements [section 554.3206] only a collecting bank's transferor can give instructions which that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to such the instructions or in accordance with any agreement with its transferor.

Sec. 91. Section 554.4204, Code 1993, is amended to read as follows:

554.4204 METHODS OF SENDING AND PRESENTING -- SENDING ~~BY~~ DIRECTLY TO PAYOR BANK.

1. A collecting bank ~~must~~ shall send items by a reasonably prompt method, taking into consideration ~~any~~ relevant instructions, the nature of the item, the number of such those items on hand, ~~and~~ the cost of collection involved, and the method generally used by it or others to present such those items.

2. A collecting bank may send:

- a. any an item ~~direct~~ directly to the payor bank;
- b. any an item to any a nonbank payor if authorized by its transferor; and
- c. any an item other than documentary drafts to any nonbank payor, if authorized by Federal Reserve regulation or operating letter circuar, clearing house rule, or the like.

3. Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

Sec. 92. Section 554.4205, Code 1993, is amended by striking the section and inserting in lieu thereof the following:

554.4205 DEPOSITORY BANK HOLDER OF UNENDORSED ITEM.

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

1. The depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer endorse the item, and, if the bank satisfies the other requirements of section 554.3302, it is a holder in due course; and

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

Sec. 93. Section 554.4206, Code 1993, is amended to read as follows:

554.4206 TRANSFER BETWEEN BANKS.

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

Sec. 94. Section 554.4207, Code 1993, is amended by striking the section and inserting in lieu thereof the following:

554.4207 TRANSFER WARRANTIES.

1. A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- a. the warrantor is a person entitled to enforce the item;
- b. all signatures on the item are authentic and authorized;
- c. the item has not been altered;
- d. the item is not subject to a defense or claim in recoupment (section 554.3305, subsection 1) of any party than can be asserted against the warrantor; and

e. the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

2. If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was an incomplete item, according to its terms when completed as stated in sections 554.3115 and 554.3407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an endorsement stating that it is made "without recourse" or otherwise disclaiming liability.

3. A person to whom the warranties under subsection 1 are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

4. The warranties stated in subsection 1 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within sixty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

Sec. 95. Section 554.4208, Code 1993, is amended to read as follows:

554.4208 SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS.

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

a. in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

b. in case of an item for which it has given, credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

c. if it makes an advance on or against the item.

2. When if credit which-has-been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

3. Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. ~~To-the-extent-and-so~~ So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to the ~~provisions of Article 9 except that, but:~~

a. no security agreement is necessary to make the security interest enforceable (~~subsection 1-b of section 554.9203~~ 554.9203, subsection 1, paragraph "a"); and

b. no filing is required to perfect the security interest; and

c. the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

Sec. 96. Section 554.4209, Code 1993, is amended to read as follows:

554.4209 WHEN BANK GIVES VALUE FOR PURPOSES OF HOLDER IN DUE COURSE.

For purposes of determining its status as a holder in due course, the a bank has given value to the extent that it has a security interest in an item ~~provided that, if~~ if the bank

otherwise complies with the requirements of section 554.3302 on what constitutes a holder in due course.

Sec. 97. Section 554.4210, Code 1993, is amended to read as follows:

554.4210 PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH, OR AT A BANK----; LIABILITY OF SECONDARY-PARTIES DRAWER OR ENDORSER.

1. Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 554-3585 554.3501 by the close of the bank's next banking day after it knows of the requirement.

2. Where if presentment is made by notice and neither honor-nor payment, acceptance, or request for compliance with a requirement under section 554-3585 554.3501 is received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary-party drawer or endorser by sending the-secondary-party it notice of the facts.

Sec. 98. Section 554.4211, Code 1993, is amended by striking the section and inserting in lieu thereof the following:

554.4211 MEDIUM AND TIME OF SETTLEMENT BY BANK.

1. With respect to settlement by a bank, the medium and time for settlement may be prescribed by federal reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

- a. the medium of settlement is cash or credit to an account in a federal reserve bank of or specified by the person to receive settlement; and
- b. the time of settlement is:

(1) with respect to tender of settlement by cash, a cashier's check, or teller's check, when the case or check is sent or delivered.

(2) with respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made.

(3) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(4) with respect to tender of settlement by a funds transfer, when payment is made pursuant to section 554.12406, subsection 1 to the person receiving the settlement.

2. If the tender of settlement is not by a medium authorized by subsection 1 or the time of settlement is not fixed by subsection 1, no settlement occurs until the tender of settlement is accepted by the person receiving the settlement.

3. If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

- a. presents or forwards the check for collection, settlement is final when the check is finally paid; or
- b. fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

4. If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

Sec. 99. Section 554.4212, Code 1993, is amended to read as follows:

554.4212 RIGHT OF CHARGE-BACK OR REFUND -- LIABILITY OF COLLECTING BANK -- RETURN OF ITEM.

1. If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank, or otherwise to

receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer whether or not it is able to return the items item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (~~subsection 3 of section 554.4211 and subsections 2 and 3 of section 554.4213~~).

~~2. Within the time and manner prescribed by this section and section 554.4301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depository bank and may send for collection a draft on the depository bank and obtain reimbursement. In such case, if the depository bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.~~

2. A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

3. A depository bank which that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 554.4301).

4. The right to charge-back is not affected by:

- a. prior previous use of the a credit given for the item;
- or

b. failure by any bank to exercise ordinary care with respect to the item, but any a bank so failing remains liable.

5. A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

6. If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency money, the dollar amount of any charge-back or refund shall must be calculated on the basis of the buying-night bank-offered spot rate for the foreign currency money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

Sec. 100. Section 554.4213, Code 1993, is amended to read as follows:

554.4213 FINAL PAYMENT OF ITEM BY PAYOR BANK -- WHEN PROVISIONAL DEBITS AND CREDITS BECOME FINAL -- WHEN CERTAIN CREDITS BECOME AVAILABLE FOR WITHDRAWAL.

1. An item is finally paid by a payor bank when the bank has first done any of the following, whichever happens first:

- a. paid the item in cash; or
- b. settled for the item without reserving having a right to revoke the settlement and without having such right under statute, clearing house rule, or agreement; or
- ~~c. completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or~~
- d c. made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule, or agreement.

~~Upon a final payment under subparagraphs "b," "c," or "d" the payor bank shall be accountable for the amount of the item.~~

2 3. If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or

between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

3 4. If a collecting bank receives a settlement for an item which is or becomes final (~~subsection-3-of-section 554-4211; subsection-2-of-this-section~~) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

4 5. Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in ~~an account with its customer~~ a customer's account becomes available for withdrawal as of right:

a. ~~in any case where~~ if the bank has received a provisional settlement for the item, -- when such the settlement becomes final and the bank has had a reasonable time to learn that the settlement is final receive return of the item and the item has not been received in that time;

b. ~~in any case where~~ if the bank is both a the depository bank and a the payor bank, and the item is finally paid, -- at the opening of the bank's second banking day following receipt of the item.

5. ~~A deposit of money in a bank is final when made but;~~ Subject to applicable law stating a time for availability of funds and any right of the a bank to apply the a deposit of money to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following after receipt of the deposit.

Sec. 101. Section 554.4214, Code 1993, is amended to read as follows:

554.4214 INSOLVENCY AND PREFERENCE.

1. Any if an item is in or coming comes into the possession of a payor or collecting bank which that suspends payment and which the item is has not been finally paid shall, the item must be returned by the receiver, trustee, or agent

in charge of the closed bank to the presenting bank or the closed bank's customer.

2. If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

3. If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement settlements becoming final if such the finality occurs automatically upon the lapse of certain time or the happening of certain events (~~subsection-3 of-section-554-4211; subsections-1-"d",-2-and-3-of-section 554-4213~~).

4. If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against such the collecting bank.

Sec. 102. NEW SECTION. 554.4215 PRESENTMENT WARRANTIES.

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

a. the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

b. the draft has not been altered; and

c. the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

2. A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the

drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

3. If a drawee asserts a claim for breach of warranty under subsection 1 based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 554.3404 or 554.3405 or the drawer is precluded under section 554.3406 or 554.4406 from asserting against the drawee the unauthorized endorsement or alteration.

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

5. The warranties stated in subsections 1 and 4 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor with sixty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

Sec. 103. NEW SECTION. 554.4216 ENCODING AND RETENTION WARRANTIES.

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

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

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

Sec. 104. Section 554.4301, Code 1993, is amended to read as follows:

554.4301 DEFERRED POSTING -- RECOVERY OF PAYMENT BY RETURN OF ITEMS -- TIME OF DISHONOR -- RETURN OF ITEMS BY PAYOR BANK.

1. ~~Where an authorized settlement if a payor settles for a demand item (other than a documentary draft) received by a payor bank presented otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover any the payment settlement if, before it has made final payment (subsection 1 of section 554.4213) and before its midnight deadline, it~~

- a. returns the item; or
- b. sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return; and the item or notice includes the reason for dishonor or nonpayment.

2. If a demand item is received by a payor bank for credit on its books, it may return such the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection 1.

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

4. An item is returned:

a. as to an item received presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its clearing house rules; or

b. in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to that customer's or transferor's instructions.

Sec. 105. Section 554.4302, Code 1993, is amended to read as follows:

554.4302 PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF ITEM.

1. In the absence of a valid defense such as breach of a presentment warranty (subsection 1 of section 554.4207), settlement effected or the like, if If an item is presented on to and received by a payor bank, the bank is accountable for the amount of:

a. a demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case where in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether or not it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

b. any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

2. The liability of a payor bank to pay an item pursuant to subsection 1 is subject to defenses based on breach of a presentment warranty (section 554.4215) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

Sec. 106. Section 554.4303, Code 1993, is amended to read as follows:

554.4303 WHEN ITEMS SUBJECT TO NOTICE, STOP-ORDER STOP-PAYMENT ORDER, LEGAL PROCESS, OR SETOFF -- ORDER IN WHICH ITEMS MAY BE CHARGED OR CERTIFIED.

1. Any knowledge, notice, or stop-order stop-payment order received by, legal process served upon, or setoff exercised by a payor bank, whether or not effective under other rules of law comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop order stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any earliest of the following:

a. accepted or certified the bank accepts or certifies the item;

b. paid the bank pays the item in cash;

c. settled the bank settles for the item without reserving having a right to revoke the settlement and without having such right under statute, clearing house rule, or agreement;

d. -- completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

e. d. become the bank becomes accountable for the amount of the item under subsection 1 "d" of section 554.4213 and section 554.4302 dealing with the payor bank's responsibility for late return of items; or

e. With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

2. Subject to the provisions of subsection 1 items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

Sec. 107. Section 554.4401, Code 1993, is amended to read as follows:

554.4401 WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT.

1. ~~As against its customer, a~~ A bank may charge against the customer's account any of a customer an item which that is otherwise properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

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

3. A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in section 554.4403, subsection 2, for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in section 554.4303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under section 554.4402.

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

a. the original tenor terms of the customer's altered item; or

b. the tenor terms of the customer's completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

Sec. 108. Section 554.4402, Code 1993, is amended to read as follows:

554.4402 BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL DISHONOR -- TIME OF DETERMINING INSUFFICIENCY OF ACCOUNT.

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

2. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. ~~When the dishonor occurs through mistake liability~~ Liability is limited to actual damages proved ~~and proved damages~~ and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

3. A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purposes of reevaluating the bank's decision to dishonor the item, the account balance at the time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

Sec. 109. Section 554.4403, Code 1993, is amended to read as follows:

554.4403 CUSTOMER'S RIGHT TO STOP PAYMENT -- BURDEN OF PROOF OF LOSS.

1. A customer may-by-order-to-the-customer's-bank-stop payment-of-any-item-payable-for-the-customer's-account-but-the order-must-be or any person authorized to draw on the account if there is more than one person may stop payment of an item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at such a time and in such a manner as-to-afford that affords the bank a reasonable opportunity to act on it prior-to before any action by the bank with respect to the item described in section 554.4303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

2. An-oral-order-is-binding-upon-the-bank-only-for fourteen-calendar-days-unless-confirmed-in-writing-within-that period--A-written-order-is-effective-for-only-six-months unless-renewed-in-writing A stop-payment order is effective for six months, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

3. The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop-payment stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under section 554.4402.

Sec. 110. Section 554.4405, Code 1993, is amended to read as follows:

554.4405 DEATH OR INCOMPETENCE OF CUSTOMER.

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

2. Even with knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or prior-to before that date unless ordered to stop payment by a person claiming an interest in the account.

Sec. 111. Section 554.4406, Code 1993, is amended to read as follows:

554.4406 CUSTOMER'S DUTY TO DISCOVER AND REPORT UNAUTHORIZED SIGNATURE OR ALTERATION.

1. When-a-bank-sends-to-its-customer-a-statement-of account-accompanied-by-items-paid-in-good-faith-in-support-of the-debit-entries-or-holds-the-statement-and-items-pursuant-to a-request-or-instructions-of-its-customer-or-otherwise-in-a reasonable-manner-makes-the-statement-and-items-available-to the-customer, the-customer-must-exercise-reasonable-care-and promptness-to-examine-the-statement-and-items-to-discover-the customer's-unauthorized-signature-or-any-alteration-on-an-item and-must-notify-the-bank-promptly-after-discovery-thereof. A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information, if the item is described by item number, amount, and date of payment.

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

3. If a bank sends or makes available a statement of account or items pursuant to subsection 1, the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

4. If the bank establishes proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection 3 the customer is precluded from asserting against the bank:

a. the customer's unauthorized signature or any alteration on the item, if the bank also establishes proves that it suffered a loss by reason of such the failure; and

b. an the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding sixty days, in which to examine the item or statement of account and notify the bank.

3.--The preclusion under subsection 2 does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s):

5. If subsection 4 applies and the customer proves that the bank failed to exercise ordinary care in payment the item and that the failure substantial contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection 3 and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection 4 does not apply.

6. Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year from the time after the statement and or items are made available to the customer (subsection 1) discover and report the customer's unauthorized signature on or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized endorsement on the item is precluded from asserting against the bank such the unauthorized signature or endorsement or such alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 554.4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

5.--if under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim:

Sec. 112. Section 554.4407, Code 1993, is amended to read as follows:

554.4407 PAYOR BANK'S RIGHT TO SUBROGATION ON IMPROPER PAYMENT.

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

- a. of any holder in due course on the item against the drawer or maker; and
- b. of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and
- c. of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

Sec. 113. Section 554.4501, Code 1993, is amended to read as follows:

554.4501 HANDLING OF DOCUMENTARY DRAFTS -- DUTY TO SEND FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR.

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

Sec. 114. Section 554.4502, Code 1993, is amended to read as follows:

554.4502 PRESENTMENT OF "ON ARRIVAL" DRAFTS.

When if a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such the

refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

Sec. 115. Section 554.4503, Code 1993, is amended to read as follows:

554.4503 RESPONSIBILITY OF PRESENTING BANK FOR DOCUMENTS AND GOODS -- REPORT OF REASONS FOR DISHONOR -- REFEREE IN CASE OF NEED.

Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

- a. must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and
- b. upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions.

But However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such those expenses.

Sec. 116. Section 554.4504, subsection 1, Code 1993, is amended to read as follows:

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

Sec. 117. Section 554.5103, subsection J, Code 1993, is amended to read as follows:

3. Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or "Acceptance". Section 554.3410
 554.3409.
 "Contract for sale". Section 554.2106.
 "Draft". Section 554.3104.
 "Holder in due course". Section 554.3302.
 "Midnight deadline". Section 554.4104.
 "Security". Section 554.8102.

Sec. 118. Section 554.9206, subsection 1, Code 1993, is amended to read as follows:

1. Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that the buyer or lessee will not assert against an assignee any claim or defense which the buyer or lessee may have against the seller or lessor is enforceable by an assignee who takes that assignee's assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Commercial-Paper Negotiable Instruments (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

Sec. 119. NEW SECTION. 668.16 APPLICABILITY OF THIS CHAPTER.

This chapter does not apply to Article 3 or 4 of chapter 554.

Sec. 120. DIRECTION TO CODE EDITOR.

The Code editor, in cooperation with the legislative service bureau and in conformity with the policies of the legislative council, is directed to renumber sections in this Act in conformance with the numbering system included in the model Act as recommended by the American law institute and national conference of commissioners on uniform state laws, and to correct internal references as necessary.

Sec. 121. REPEALS.

1. Sections 554.3101 through 554.3806, Code 1993, are repealed.
2. Section 554.4109, Code 1993, is repealed.

Sec. 122. EFFECTIVE DATE. This Act takes effect July 1, 1995.

 LEONARD L. BOSWELL
 President of the Senate

 HAROLD VAN MAANEN
 Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2279, Seventy-fifth General Assembly.

 JOHN F. DWYER
 Secretary of the Senate

Approved *May 10*, 1994

 TERRY E. BRANSTAD
 Governor