

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



ENROLLED

SENATE BILL NO. 138

(By Senators Wittmer & Seese)



PASSED March 7, 1990

In Effect 90 days from Passage

NO. 138

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Senate Bill No. 138

(BY SENATORS DITTMAR AND HECK)

[Passed March 7, 1990; in effect ninety days from passage.]

AN ACT to amend chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated four-a, relating to payment order; funds transfer; other definitions; time payment order received; federal reserve regulations and operating circulars; exclusion of consumer transactions; security procedures; authorized and verified payment orders; unenforceability of certain verified payment orders; refund of payment; erroneous payment orders; transmission of payment; misdescription of beneficiary; misdescription of intermediary bank or beneficiary's bank; acceptance of payment order; rejection of payment order; cancellation and amendment of payment order; liability and duty of receiving bank; execution; obligations of receiving bank; erroneous execution; duty of sender; liability for late or improper execution; payment date; obligation of sender; payment by sender; obligation of beneficiary's bank; payment of beneficiary's bank; payment by originator; discharge of underlying obligation; variation by agreement; creditor process; setoff by beneficiary's bank; injunction or restraining order; order items may be charged; preclusion of objection to debt; rate of interest; and choice of law.

Be it enacted by the Legislature of West Virginia:

That chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four-a, to read as follows:

ARTICLE 4A. FUNDS TRANSFERS.

PART I. SUBJECT MATTER AND DEFINITIONS.

§46-4A-101. Short title.

- 1 This article may be cited as Uniform Commercial
- 2 Code - Funds Transfer.

§46-4A-102. Subject matter.

- 1 Except as otherwise provided in section one hundred
- 2 eight of this article, this article applies to funds
- 3 transfers defined in section one hundred four of this
- 4 article.

§46-4A-103. Payment order — Definitions.

- 1 (a) In this article:

- 2 (1) "Payment order" means an instruction of a
- 3 sender to a receiving bank, transmitted orally, elec-
- 4 tronically or in writing, to pay, or to cause another
- 5 bank to pay, a fixed or determinable amount of money
- 6 to a beneficiary if:

- 7 (A) The instruction does not state a condition to
- 8 payment to the beneficiary other than time of
- 9 payment;

- 10 (B) The receiving bank is to be reimbursed by
- 11 debiting an account of, or otherwise receiving pay-
- 12 ment from, the sender; and

- 13 (C) The instruction is transmitted by the sender
- 14 directly to the receiving bank or to an agent, funds-
- 15 transfer system or communication system for trans-
- 16 mittal to the receiving bank.

- 17 (2) "Beneficiary" means the person to be paid by the
- 18 beneficiary's bank.

- 19 (3) "Beneficiary's bank" means the bank identified

20 in a payment order in which an account of the
21 beneficiary is to be credited pursuant to the order or
22 which otherwise is to make payment to the benefi-
23 ciary if the order does not provide for payment to an
24 account.

25 (4) "Receiving bank" means the bank to which the
26 sender's instruction is addressed.

27 (5) "Sender" means the person giving the instruc-
28 tion to the receiving bank.

29 (b) If an instruction complying with subdivision (1),
30 subsection (a) of this section is to make more than one
31 payment to a beneficiary, the instruction is a separate
32 payment order with respect to each payment.

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

§46-4A-104. Funds transfer — Definitions.

1 In this article:

2 (1) "Funds transfer" means the series of transac-
3 tions, beginning with the originator's payment order,
4 made for the purpose of making payment to the
5 beneficiary of the order. The term includes any
6 payment order issued by the originator's bank or an
7 intermediary bank intended to carry out the origina-
8 tor's payment order. A funds transfer is completed by
9 acceptance by the beneficiary's bank of a payment
10 order for the benefit of the beneficiary of the origina-
11 tor's payment order.

12 (2) "Intermediary bank" means a receiving bank
13 other than the originator's bank or the beneficiary's
14 bank.

15 (3) "Originator" means the sender of the first
16 payment order in a funds transfer.

17 (4) "Originator's bank" means (A) the receiving
18 bank to which the payment order of the originator is
19 issued if the originator is not a bank, or (B) the
20 originator if the originator is a bank.

§46-4A-105. Other definitions.

1 (a) In this article:

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

10 (2) "Banker" means a person engaged in the busi-
11 ness of banking and includes a savings bank, savings
12 and loan association, credit union, and trust company.
13 A branch or separate office of a bank is a separate
14 bank for purposes of this article.

15 (3) "Customer" means a person, including a bank,
16 having an account with a bank or from whom a bank
17 has agreed to receive payment orders.

18 (4) "Funds-transfer business day" of a receiving
19 bank means the part of a day during which the
20 receiving bank is open for the receipt, processing and
21 transmittal of payment orders and cancellations and
22 amendments of payment orders.

23 (5) "Funds-transfer system" means a wire transfer
24 network, automated clearing house or other communi-
25 cation system of a clearing house or other association
26 of banks through which a payment order by a bank
27 may be transmitted to the bank to which the order is
28 addressed.

29 (6) "Good faith" means honesty in fact and the
30 observance of reasonable commercial standards of fair
31 dealing.

32 (7) "Prove" with respect to a fact means to meet the
33 burden of establishing the fact as defined in subdivi-
34 sion (8), section two hundred one, article one of this
35 chapter.

36 (b) Other definitions applying to this article and the
37 sections in which they appear are:

- 38 (1) "Acceptance", section two hundred nine of this
39 article.
- 40 (2) "Beneficiary", section one hundred three of this
41 article.
- 42 (3) "Beneficiary's bank", section one hundred three
43 of this article.
- 44 (4) "Executed", section three hundred one of this
45 article.
- 46 (5) "Execution date", section three hundred one of
47 this article.
- 48 (6) "Funds transfer", section one hundred four of
49 this article.
- 50 (7) "Funds-transfer system rule", section five hun-
51 dred one of this article.
- 52 (8) "Intermediary bank", section one hundred four
53 of this article.
- 54 (9) "Originator", section one hundred four of this
55 article.
- 56 (10) "Originator's bank", section one hundred four
57 of this article.
- 58 (11) "Payment by beneficiary's bank to beneficiary",
59 section four hundred five of this article.
- 60 (12) "Payment by originator to beneficiary", section
61 four hundred six of this article.
- 62 (13) "Payment by sender to receiving bank", section
63 four hundred three of this article.
- 64 (14) "Payment date", section four hundred one of
65 this article.
- 66 (15) "Payment order", section one hundred three of
67 this article.
- 68 (16) "Receiving bank", section one hundred three of
69 this article.
- 70 (17) "Security procedure", section two hundred one
71 of this article.

72 (18) "Sender", section one hundred three of this
73 article.

74 (c) The following definitions in article four of this
75 chapter apply to this article:

76 (1) "Clearing house", section one hundred four,
77 article four of this chapter.

78 (2) "Item", section one hundred four, article four of
79 this chapter.

80 (3) "Suspends payments", section one hundred four,
81 article four of this chapter.

82 (d) In addition, article one of this chapter contains
83 general definitions and principles of construction and
84 interpretation applicable throughout this article.

§46-4A-106. Time payment order is received.

1 (a) The time of receipt of a payment order or
2 communication canceling or amending a payment
3 order is determined by the rules applicable to receipt
4 of a notice stated in subdivision (27), section two
5 hundred one, article one of this chapter. A receiving
6 bank may fix a cut-off time or times on a funds-
7 transfer business day for the receipt and processing of
8 payment orders and communications canceling or
9 amending payment orders. Different cut-off times may
10 apply to payment orders, cancellations or amend-
11 ments, or to different categories of payment orders,
12 cancellations or amendments. A cut-off time may
13 apply to senders generally or different cut-off times
14 may apply to different senders or categories of pay-
15 ment orders. If a payment order or communication
16 canceling or amending a payment order is received
17 after the close of a funds-transfer business day or after
18 the appropriate cut-off time on a funds-transfer
19 business day, the receiving bank may treat the pay-
20 ment order or communication as received at the
21 opening of the next funds-transfer business day.

22 (b) If this article refers to an execution date or
23 payment date or states a day on which a receiving
24 bank is required to take action, and the date or day

25 does not fall on a funds-transfer business day, the next
26 day that is a funds-transfer business day is treated as
27 the date or day stated, unless the contrary is stated in
28 this article.

§46-4A-107. Federal reserve regulations and operating circulars.

1 Regulations of the board of governors of the federal
2 reserve system and operating circulars of the federal
3 reserve banks supersede any inconsistent provision of
4 this article to the extent of the inconsistency.

§46-4A-108. Exclusion of consumer transactions governed by federal law.

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

PART II. ISSUE AND ACCEPTANCE OF PAYMENT ORDER.

§46-4A-201. Security procedure.

1 “Security procedure” means a procedure established
2 by agreement of a customer and a receiving bank for
3 the purpose of (1) verifying that a payment order or
4 communication amending or canceling a payment
5 order is that of the customer, or (2) detecting error in
6 the transmission or the content of the payment order
7 or communication. A security procedure may require
8 the use of algorithms or other codes, identifying words
9 or numbers, encryption, callback procedures or similar
10 security devices. Comparison of a signature on a
11 payment order or communication with an authorized
12 specimen signature of the customer is not by itself a
13 security procedure.

§46-4A-202. Authorized and verified payment orders.

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

5 (b) If a bank and its customer have agreed that the
6 authenticity of payment orders issued to the bank in
7 the name of the customer as sender will be verified
8 pursuant to a security procedure, a payment order
9 received by the receiving bank is effective as the order
10 of the customer, whether or not authorized, if (1) the
11 security procedure is a commercially reasonable
12 method of providing security against unauthorized
13 payment orders, and (2) the bank proves that it
14 accepted the payment order in good faith and in
15 compliance with the security procedure and any
16 written agreement or instruction of the customer
17 restricting acceptance of payment orders issued in the
18 name of the customer. The bank is not required to
19 follow an instruction that violates a written agreement
20 with the customer or notice of which is not received
21 at a time and in a manner affording the bank a
22 reasonable opportunity to act on it before the payment
23 order is accepted.

24 (c) Commercial reasonableness of a security proce-
25 dure is a question of law to be determined by consid-
26 ering the wishes of the customer expressed to the
27 bank, the circumstances of the customer known to the
28 bank, including the size, type and frequency of pay-
29 ment orders normally issued by the customer to the
30 bank, alternative security procedures offered to the
31 customer and security procedures in general use by
32 customers and receiving banks similarly situated. A
33 security procedure is deemed to be commercially
34 reasonable if (1) the security procedure was chosen by
35 the customer after the bank offered, and the customer
36 refused, a security procedure that was commercially
37 reasonable for that customer, and (2) the customer
38 expressly agreed in writing to be bound by any
39 payment order, whether or not authorized, issued in
40 its name, and accepted by the bank in compliance with
41 the security procedure chosen by the customer.

42 (d) The term "sender" in this article includes the
43 customer in whose name a payment order is issued if
44 the order is the authorized order of the customer
45 under subsection (a) of this section, or it is effective as

46 the order of the customer under subsection (b) of this
47 section.

48 (e) This section applies to amendments and cancel-
49 lations of payment orders to the same extent it applies
50 to payment orders.

51 (f) Except as provided in this section and in subdi-
52 vision (1), subsection (a), section two hundred three of
53 this article, rights and obligations arising under this
54 section or section two hundred three of this article
55 may not be varied by agreement.

§46-4A-203. Unenforceability of certain verified payment orders.

1 (a) If an accepted payment order is not, under
2 subsection (a), section two hundred two of this article,
3 an authorized order of a customer identified as sender,
4 but is effective as an order of the customer pursuant
5 to subsection (b), section two hundred two of this
6 article, the following rules apply:

7 (1) By express written agreement, the receiving
8 bank may limit the extent to which it is entitled to
9 enforce or retain payment of the payment order; or

10 (2) The receiving bank is not entitled to enforce or
11 retain payment of the payment order if the customer
12 proves that the order was not caused, directly or
13 indirectly, by a person (A) entrusted at any time with
14 duties to act for the customer with respect to payment
15 orders or the security procedure, or (B) who obtained
16 access to transmitting facilities of the customer or who
17 obtained, from a source controlled by the customer
18 and without authority of the receiving bank, informa-
19 tion facilitating breach of the security procedure,
20 regardless of how the information was obtained or
21 whether the customer was at fault. Information
22 includes any access device, computer software or the
23 like.

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

§46-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

1 (a) If a receiving bank accepts a payment order
2 issued in the name of its customer as sender which is
3 (1) not authorized and not effective as the order of the
4 customer under section two hundred two of this
5 article or (2) not enforceable, in whole or in part,
6 against the customer under section two hundred three
7 of this article, the bank shall refund any payment of
8 the payment order received from the customer to the
9 extent the bank is not entitled to enforce payment,
10 and shall pay interest on the refundable amount
11 calculated from the date the bank received payment to
12 the date of the refund. However, the customer is not
13 entitled to interest from the bank on the amount to be
14 refunded if the customer fails to exercise ordinary
15 care to determine that the order was not authorized
16 by the customer and to notify the bank of the relevant
17 facts within a reasonable time not exceeding ninety
18 days after the date the customer received notification
19 from the bank that the order was accepted or that the
20 customer's account was debited with respect to the
21 order. The bank is not entitled to any recovery from
22 the customer on account of a failure by the customer
23 to give notification as stated in this section.

24 (b) Reasonable time under subsection (a) of this
25 section may be fixed by agreement as stated in
26 subsection (1), section two hundred four, article one of
27 this chapter, but the obligation of a receiving bank to
28 refund payment as stated in subsection (a) of this
29 section may not otherwise be varied by agreement.

§46-4A-205. Erroneous payment orders.

1 (a)(1) If an accepted payment order was transmitted
2 pursuant to a security procedure for the detection of
3 error and the payment order (A) erroneously
4 instructed payment to a beneficiary not intended by
5 the sender, (B) erroneously instructed payment in an
6 amount greater than the amount intended by the
7 sender, or (C) was an erroneously transmitted dupli-

8 cate of a payment order previously sent by the sender,
9 the following rules apply:

10 (2) If the sender proves that the sender or a person
11 acting on behalf of the sender pursuant to section two
12 hundred six of this article complied with the security
13 procedure and that the error would have been
14 detected if the receiving bank had also complied, the
15 sender is not obliged to pay the order to the extent
16 stated in subdivisions (3) and (4) of this subsection;

17 (3) If the funds transfer is completed on the basis of
18 an erroneous payment order described in paragraphs
19 (A) or (C) of subdivision (1), the sender is not obliged
20 to pay the order and the receiving bank is entitled to
21 recover from the beneficiary any amount paid to the
22 beneficiary to the extent allowed by the law governing
23 mistake and restitution; or

24 (4) If the funds transfer is completed on the basis of
25 a payment order described in paragraph (B) of subdivi-
26 sion (1), the sender is not obliged to pay the order to
27 the extent the amount received by the beneficiary is
28 greater than the amount intended by the sender. In
29 that case, the receiving bank is entitled to recover
30 from the beneficiary the excess amount received to
31 the extent allowed by the law governing mistake and
32 restitution.

33 (b) If (1) the sender of an erroneous payment order
34 described in subdivision (1) of subsection (a) is not
35 obliged to pay all or part of the order, and (2) the
36 sender receives notification from the receiving bank
37 that the order was accepted by the bank or that the
38 sender's account was debited with respect to the order,
39 the sender has a duty to exercise ordinary care, on the
40 basis of information available to the sender, to dis-
41 cover the error with respect to the order and to advise
42 the bank of the relevant facts within a reasonable time
43 not exceeding ninety days after the bank's notification
44 was received by the sender. If the bank proves that
45 the sender failed to perform that duty, the sender is
46 liable to the bank for the loss the bank proves it
47 incurred as a result of the failure, but the liability of

48 the sender may not exceed the amount of the sender's
49 order.

50 (c) This section applies to amendments to payment
51 orders to the same extent it applies to payment orders.

§46-4A-206. Transmission of payment order through funds-transfer or other communication system.

1 (a) If a payment order addressed to a receiving bank
2 is transmitted to a funds-transfer system or other
3 third-party communication system for transmittal to
4 the bank, the system is deemed to be an agent of the
5 sender for the purpose of transmitting the payment
6 order to the bank. If there is a discrepancy between
7 the terms of the payment order transmitted to the
8 system and the terms of the payment order transmit-
9 ted by the system to the bank, the terms of the
10 payment order of the sender are those transmitted by
11 the system. This section does not apply to a funds-
12 transfer system of the federal reserve banks.

13 (b) This section applies to cancellations and amend-
14 ments of payment orders to the same extent it applies
15 to payment orders.

§46-4A-207. Misdescription of beneficiary.

1 (a) Subject to subsection (b) of this section, if, in a
2 payment order received by the beneficiary's bank, the
3 name, bank account number or other identification of
4 the beneficiary refers to a nonexistent or unidentifi-
5 able person or account, no person has rights as a
6 beneficiary of the order and acceptance of the order
7 cannot occur.

8 (b) If a payment order received by the beneficiary's
9 bank identifies the beneficiary both by name and by
10 an identifying or bank account number and the name
11 and number identify different persons, the following
12 rules apply:

13 (1) Except as otherwise provided in subsection (c) of
14 this section, if the beneficiary's bank does not know
15 that the name and number refer to different persons,
16 it may rely on the number as the proper identification

17 of the beneficiary of the order. The beneficiary's bank
18 need not determine whether the name and number
19 refer to the same person; or

20 (2) If the beneficiary's bank pays the person identi-
21 fied by name or knows that the name and number
22 identify different persons, no person has rights as
23 beneficiary except the person paid by the beneficiary's
24 bank if that person was entitled to receive payment
25 from the originator of the funds transfer. If no person
26 has rights as beneficiary, acceptance of the order
27 cannot occur.

28 (c) If a payment order described in subsection (b) of
29 this section is accepted, the originator's payment order
30 described the beneficiary inconsistently by name and
31 number, and the beneficiary's bank pays the person
32 identified by number as permitted by subdivision (1),
33 subsection (b) of this section, the following rules apply:

34 (1) If the originator is a bank, the originator is
35 obliged to pay its order; or

36 (2) If the originator is not a bank and proves that the
37 person identified by number was not entitled to
38 receive payment from the originator, the originator is
39 not obliged to pay its order unless the originator's
40 bank proves that the originator, before acceptance of
41 the originator's order, had notice that payment of a
42 payment order issued by the originator might be made
43 by the beneficiary's bank on the basis of an identifying
44 or bank account number even if it identifies a person
45 different from the named beneficiary. Proof of notice
46 may be made by any admissible evidence. The origi-
47 nator's bank satisfies the burden of proof if it proves
48 that the originator, before the payment order was
49 accepted, signed a writing stating the information to
50 which the notice relates.

51 (d) In a case governed by subdivision (1), subsection
52 (b) of this section, if the beneficiary's bank rightfully
53 pays the person identified by number and that person
54 was not entitled to receive payment from the origina-
55 tor, the amount paid may be recovered from that
56 person to the extent allowed by the law governing

57 mistake and restitution as follows:

58 (1) If the originator is obliged to pay its payment
59 order as stated in subsection (c) of this section, the
60 originator has the right to recover; or

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

§46-4A-208. Misdescription of intermediary bank or beneficiary's bank.

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

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

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

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

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

29 (2) If the sender is not a bank and the receiving

30 bank proves that the sender, before the payment order
31 was accepted, had notice that the receiving bank might
32 rely on the number as the proper identification of the
33 intermediary or beneficiary's bank even if it identifies
34 a person different from the bank identified by name,
35 the rights and obligations of the sender and the
36 receiving bank are governed by subdivision (1) of this
37 subsection, as though the sender were a bank. Proof of
38 notice may be made by any admissible evidence. The
39 receiving bank satisfies the burden of proof if it proves
40 that the sender, before the payment order was
41 accepted, signed a writing stating the information to
42 which the notice relates.

43 (3) Regardless of whether the sender is a bank, the
44 receiving bank may rely on the name as the proper
45 identification of the intermediary or beneficiary's
46 bank if the receiving bank, at the time it executes the
47 sender's order, does not know that the name and
48 number identify different persons. The receiving bank
49 need not determine whether the name and number
50 refer to the same person.

51 (4) If the receiving bank knows that the name and
52 number identify different persons, reliance on either
53 the name or the number in executing the sender's
54 payment order is a breach of the obligation stated in
55 subdivision (1), subsection (a), section three hundred
56 two of this chapter.

§46-4A-209. Acceptance of payment order.

1 (a) Subject to subsection (d) of this section, a
2 receiving bank other than the beneficiary's bank
3 accepts a payment order when it executes the order.

4 (b) Subject to subsections (c) and (d) of this section,
5 a beneficiary's bank accepts a payment order at the
6 earliest of the following times:

7 (1) When the bank (A) pays the beneficiary as stated
8 in subsection (a), section four hundred five of this
9 article or subsection (b), section four hundred five of
10 this article, or (B) notifies the beneficiary of receipt of
11 the order or that the account of the beneficiary has

12 been credited with respect to the order unless the
13 notice indicates that the bank is rejecting the order or
14 that funds with respect to the order may not be
15 withdrawn or used until receipt of payment from the
16 sender of the order;

17 (2) When the bank receives payment of the entire
18 amount of the sender's order pursuant to subdivision
19 (1), subsection (a), section four hundred three of this
20 article or subdivision (2), subsection (a), section four
21 hundred three of this article; or

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

43 (c) Acceptance of a payment order cannot occur
44 before the order is received by the receiving bank.
45 Acceptance does not occur under subdivision (2),
46 subsection (b) of this section or subdivision (3),
47 subsection (b) of this section if the beneficiary of the
48 payment order does not have an account with the
49 receiving bank, the account has been closed or the
50 receiving bank is not permitted by law to receive
51 credits for the beneficiary's account.

52 (d) A payment order issued to the originator's bank
53 cannot be accepted until (1) the payment date if the
54 bank is the beneficiary's bank, or (2) the execution
55 date if the bank is not the beneficiary's bank. If the
56 originator's bank executes the originator's payment
57 order before the execution date or pays the benefi-
58 ciary of the originator's payment order before the
59 payment date and the payment order is subsequently
60 cancelled pursuant to subsection (b), section two
61 hundred eleven of this article, the bank may recover
62 from the beneficiary any payment received to the
63 extent allowed by the law governing mistake and
64 restitution.

§46-4A-210. Rejection of payment order.

1 (a) A payment order is rejected by the receiving
2 bank by a notice of rejection transmitted to the sender
3 orally, electronically or in writing. A notice of rejec-
4 tion need not use any particular words and is suffi-
5 cient if it indicates that the receiving bank is rejecting
6 the order or will not execute or pay the order.
7 Rejection is effective when the notice is given if
8 transmission is by a means that is reasonable in the
9 circumstances. If notice of rejection is given by a
10 means that is not reasonable, rejection is effective
11 when the notice is received. If an agreement of the
12 sender and receiving bank establishes the means to be
13 used to reject a payment order, (1) any means comp-
14 lying with the agreement is reasonable, and (2) any
15 means not complying is not reasonable unless no
16 significant delay in receipt of the notice resulted from
17 the use of the noncomplying means.

18 (b) This subsection applies if a receiving bank other
19 than the beneficiary's bank fails to execute a payment
20 order despite existence on the execution date of a
21 withdrawable credit balance in an authorized account
22 of the sender sufficient to cover the order. If the
23 sender does not receive notice of rejection of the order
24 on the execution date and the authorized account of
25 the sender does not bear interest, the bank is obliged
26 to pay interest to the sender on the amount of the
27 order for the number of days elapsing after the

28 execution date to the earlier of the day the order is
29 canceled pursuant to subsection (d), section two
30 hundred eleven of this article or the day the sender
31 receives notice or learns that the order was not
32 executed, counting the final day of the period as an
33 elapsed day. If the withdrawable credit balance during
34 that period falls below the amount of the order, the
35 amount of interest is reduced accordingly.

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

39 (d) Acceptance of a payment order precludes a later
40 rejection of the order. Rejection of a payment order
41 precludes a later acceptance of the order.

§46-4A-211. Cancellation and amendment of payment order.

1 (a) A communication of the sender of a payment
2 order cancelling or amending the order may be
3 transmitted to the receiving bank orally, electronically
4 or in writing. If a security procedure is in effect
5 between the sender and the receiving bank, the
6 communication is not effective to cancel or amend the
7 order unless the communication is verified pursuant
8 to the security procedure or the bank agrees to the
9 cancellation or amendment.

10 (b) Subject to subsection (a) of this section, a
11 communication by the sender cancelling or amending
12 a payment order is effective to cancel or amend the
13 order if notice of the communication is received at a
14 time and in a manner affording the receiving bank a
15 reasonable opportunity to act on the communication
16 before the bank accepts the payment order.

17 (c) After a payment order has been accepted, cancel-
18 lation or amendment of the order is not effective
19 unless the receiving bank agrees or a funds-transfer
20 system rule allows cancellation or amendment without
21 agreement of the bank.

22 (1) With respect to a payment order accepted by a
23 receiving bank other than the beneficiary's bank,
24 cancellation or amendment is not effective unless a

25 conforming cancellation or amendment of the pay-
26 ment order issued by the receiving bank is also made.

27 (2) With respect to a payment order accepted by the
28 beneficiary's bank, cancellation or amendment is not
29 effective unless the order was issued in execution of
30 an unauthorized payment order, or because of a
31 mistake by a sender in the funds transfer which
32 resulted in the issuance of a payment order (A) that is
33 a duplicate of a payment order previously issued by
34 the sender, (B) that orders payment to a beneficiary
35 not entitled to receive payment from the originator, or
36 (C) that orders payment in an amount greater than
37 the amount the beneficiary was entitled to receive
38 from the originator. If the payment order is canceled
39 or amended, the beneficiary's bank is entitled to
40 recover from the beneficiary any amount paid to the
41 beneficiary to the extent allowed by the law governing
42 mistake and restitution.

43 (d) An unaccepted payment order is canceled by
44 operation of law at the close of the fifth funds-transfer
45 business day of the receiving bank after the execution
46 date or payment date of the order.

47 (e) A canceled payment order cannot be accepted. If
48 an accepted payment order is canceled, the acceptance
49 is nullified and no person has any right or obligation
50 based on the acceptance. Amendment of a payment
51 order is deemed to be cancellation of the original order
52 at the time of amendment and issue of a new payment
53 order in the amended form at the same time.

54 (f) Unless otherwise provided in an agreement of the
55 parties or in a funds-transfer system rule, if the
56 receiving bank, after accepting a payment order,
57 agrees to cancellation or amendment of the order by
58 the sender or is bound by a funds-transfer system rule
59 allowing cancellation or amendment without the
60 bank's agreement, the sender, whether or not cancel-
61 lation or amendment is effective, is liable to the bank
62 for any loss and expenses, including reasonable attor-
63 ney's fees, incurred by the bank as a result of the
64 cancellation or amendment or attempted cancellation

65 or amendment.

66 (g) A payment order is not revoked by death or legal
67 incapacity of the sender unless the receiving bank
68 knows of the death or of an adjudication of incapacity
69 by a court of competent jurisdiction and has reason-
70 able opportunity to act before acceptance of the order.

71 (h) A funds-transfer system rule is not effective to
72 the extent it conflicts with subdivision (2), subsection
73 (c) of this section.

**§46-4A-212. Liability and duty of receiving bank regarding
unaccepted payment order.**

1 If a receiving bank fails to accept a payment order
2 that it is obliged by express agreement to accept, the
3 bank is liable for breach of the agreement to the
4 extent provided in the agreement or in this article, but
5 does not otherwise have any duty to accept a payment
6 order or, before acceptance, to take any action, or
7 refrain from taking action, with respect to the order
8 except as provided in this article or by express
9 agreement. Liability based on acceptance arises only
10 when acceptance occurs as stated in section two
11 hundred nine of this article, and liability is limited to
12 that provided in this article. A receiving bank is not
13 the agent of the sender or beneficiary of the payment
14 order it accepts, or of any other party to the funds
15 transfer, and the bank owes no duty to any party to
16 the funds transfer except as provided in this article or
17 by express agreement.

PART III. EXECUTION OF SENDER'S PAYMENT

ORDER BY RECEIVING BANK.

§46-4A-301. Execution and execution date.

1 (a) A payment order is "executed" by the receiving
2 bank when it issues a payment order intended to carry
3 out the payment order received by the bank. A
4 payment order received by the beneficiary's bank can
5 be accepted but cannot be executed.

6 (b) "Execution date" of a payment order means the
7 day on which the receiving bank may properly issue

8 a payment order in execution of the sender's order.
9 The execution date may be determined by instruction
10 of the sender but cannot be earlier than the day the
11 order is received and, unless otherwise determined, is
12 the day the order is received. If the sender's instruc-
13 tion states a payment date, the execution date is the
14 payment date or an earlier date on which execution is
15 reasonably necessary to allow payment to the benefi-
16 ciary on the payment date.

**§46-4A-302. Obligations of receiving bank in execution of
payment order.**

1 (a) Except as provided in subsections (b) through (d)
2 of this section, if the receiving bank accepts a payment
3 order pursuant to subsection (a), section two hundred
4 nine of this article, the bank has the following obliga-
5 tions in executing the order:

6 (1) The receiving bank is obliged to issue, on the
7 execution date, a payment order complying with the
8 sender's order and to follow the sender's instructions
9 concerning (A) any intermediary bank or funds-
10 transfer system to be used in carrying out the funds
11 transfer, or (B) the means by which payment orders
12 are to be transmitted in the funds transfer. If the
13 originator's bank issues a payment order to an inter-
14 mediary bank, the originator's bank is obliged to
15 instruct the intermediary bank according to the
16 instruction of the originator. An intermediary bank in
17 the funds transfer is similarly bound by an instruction
18 given to it by the sender of the payment order it
19 accepts; and

20 (2) If the sender's instruction states that the funds
21 transfer is to be carried out telephonically or by wire
22 transfer or otherwise indicates that the funds transfer
23 is to be carried out by the most expeditious means, the
24 receiving bank is obliged to transmit its payment order
25 by the most expeditious available means, and to
26 instruct any intermediary bank accordingly. If a
27 sender's instruction states a payment date, the receiv-
28 ing bank is obliged to transmit its payment order at a
29 time and by means reasonably necessary to allow

30 payment to the beneficiary on the payment date or as
31 soon thereafter as is feasible.

32 (b) Unless otherwise instructed, a receiving bank
33 executing a payment order may (1) use any funds-
34 transfer system if use of that system is reasonable in
35 the circumstances, and (2) issue a payment order to
36 the beneficiary's bank or to an intermediary bank
37 through which a payment order conforming to the
38 sender's order can expeditiously be issued to the
39 beneficiary's bank if the receiving bank exercises
40 ordinary care in the selection of the intermediary
41 bank. A receiving bank is not required to follow an
42 instruction of the sender designating a funds-transfer
43 system to be used in carrying out the funds transfer if
44 the receiving bank, in good faith, determines that it is
45 not feasible to follow the instruction or that following
46 the instruction would unduly delay completion of the
47 funds transfer.

48 (c) Unless subdivision (2), subsection (a) of this
49 section applies or the receiving bank is otherwise
50 instructed, the bank may execute a payment order by
51 transmitting its payment order by first class mail or by
52 any means reasonable in the circumstances. If the
53 receiving bank is instructed to execute the sender's
54 order by transmitting its payment order by a particu-
55 lar means, the receiving bank may issue its payment
56 order by the means stated or by any means as expe-
57 ditious as the means stated.

58 (d) Unless instructed by the sender, (1) the receiving
59 bank may not obtain payment of its charges for
60 services and expenses in connection with the execu-
61 tion of the sender's order by issuing a payment order
62 in an amount equal to the amount of the sender's
63 order less the amount of the charges, and (2) may not
64 instruct a subsequent receiving bank to obtain pay-
65 ment of its charges in the same manner.

§46-4A-303. Erroneous execution of payment order.

1 (a) A receiving bank that (1) executes the payment
2 order of the sender by issuing a payment order in an
3 amount greater than the amount of the sender's order,

4 or (2) issues a payment order in execution of the
5 sender's order and then issues a duplicate order, is
6 entitled to payment of the amount of the sender's
7 order under subsection (c), section four hundred two
8 of this article if that subsection is otherwise satisfied.
9 The bank is entitled to recover from the beneficiary of
10 the erroneous order the excess payment received to
11 the extent allowed by the law governing mistake and
12 restitution.

13 (b) A receiving bank that executes the payment
14 order of the sender by issuing a payment order in an
15 amount less than the amount of the sender's order is
16 entitled to payment of the amount of the sender's
17 order under subsection (c), section four hundred two
18 of this article if (1) that subsection is otherwise
19 satisfied, and (2) the bank corrects its mistake by
20 issuing an additional payment order for the benefit of
21 the beneficiary of the sender's order. If the error is
22 not corrected, the issuer of the erroneous order is
23 entitled to receive or retain payment from the sender
24 of the order it accepted only to the extent of the
25 amount of the erroneous order. This subsection does
26 not apply if the receiving bank executes the sender's
27 payment order by issuing a payment order in an
28 amount less than the amount of the sender's order for
29 the purpose of obtaining payment of its charges for
30 services and expenses pursuant to instruction of the
31 sender.

32 (c) If a receiving bank executes the payment order
33 of the sender by issuing a payment order to a benefi-
34 ciary different from the beneficiary of the sender's
35 order and the funds transfer is completed on the basis
36 of that error, the sender of the payment order that
37 was erroneously executed and all previous senders in
38 the funds transfer are not obliged to pay the payment
39 orders they issued. The issuer of the erroneous order
40 is entitled to recover from the beneficiary of the order
41 the payment received to the extent allowed by the law
42 governing mistake and restitution.

**§46-4A-304. Duty of sender to report erroneously executed
payment order.**

1 If the sender of a payment order that is erroneously

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

§46-4A-305. Liability for late or improper execution or failure to execute payment order.

1 (a) If a funds transfer is completed but execution of
2 a payment order by the receiving bank in breach of
3 section three hundred two of this article results in
4 delay in payment to the beneficiary, the bank is
5 obliged to pay interest to either the originator or the
6 beneficiary of the funds transfer for the period of
7 delay caused by the improper execution. Except as
8 provided in subsection (c) of this section, additional
9 damages are not recoverable.

10 (b) If execution of a payment order by a receiving
11 bank in breach of section three hundred two of this
12 article results in (1) noncompletion of the funds
13 transfer, (2) failure to use an intermediary bank
14 designated by the originator, or (3) issuance of a
15 payment order that does not comply with the terms of
16 the payment order of the originator, the bank is liable
17 to the originator for its expenses in the funds transfer
18 and for incidental expenses and interest losses, to the
19 extent not covered by subsection (a) of this section
20 resulting from the improper execution. Except as
21 provided in subsection (c) of this section, additional

22 damages are not recoverable.

23 (c) In addition to the amounts payable under subsec-
24 tions (a) and (b) of this section, damages, including
25 consequential damages, are recoverable to the extent
26 provided in an express written agreement of the
27 receiving bank.

28 (d) If a receiving bank fails to execute a payment
29 order it was obliged by express agreement to execute,
30 the receiving bank is liable to the sender for its
31 expenses in the transaction and for incidental
32 expenses and interest losses resulting from the failure
33 to execute. Additional damages, including consequen-
34 tial damages, are recoverable to the extent provided in
35 an express written agreement of the receiving bank,
36 but are not otherwise recoverable.

37 (e) Reasonable attorney's fees are recoverable if
38 demand for compensation under subsection (a) or (b)
39 of this section is made and refused before an action is
40 brought on the claim. If a claim is made for breach of
41 an agreement under subsection (d) of this section and
42 the agreement does not provide for damages, reason-
43 able attorney's fees are recoverable if demand for
44 compensation under subsection (d) of this section is
45 made and refused before an action is brought on the
46 claim.

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

PART IV. PAYMENT.

§46-4A-401. Payment date.

1 "Payment date" of a payment order means the day
2 on which the amount of the order is payable to the
3 beneficiary by the beneficiary's bank. The payment
4 date may be determined by instruction of the sender
5 but cannot be earlier than the day the order is
6 received by the beneficiary's bank and, unless other-
7 wise determined, is the day the order is received by
8 the beneficiary's bank.

§46-4A-402. Obligation of sender to pay receiving bank.

1 (a) This section is subject to sections two hundred
2 five and two hundred seven of this article.

3 (b) With respect to a payment order issued to the
4 beneficiary's bank, acceptance of the order by the
5 bank obliges the sender to pay the bank the amount of
6 the order, but payment is not due until the payment
7 date of the order.

8 (c) This subsection is subject to subsection (e) of this
9 section and to section three hundred three of this
10 article. With respect to a payment order issued to a
11 receiving bank other than the beneficiary's bank,
12 acceptance of the order by the receiving bank obliges
13 the sender to pay the bank the amount of the sender's
14 order. Payment by the sender is not due until the
15 execution date of the sender's order. The obligation of
16 that sender to pay its payment order is excused if the
17 funds transfer is not completed by acceptance by the
18 beneficiary's bank of a payment order instructing
19 payment to the beneficiary of that sender's payment
20 order.

21 (d) If the sender of a payment order pays the order
22 and was not obliged to pay all or part of the amount
23 paid, the bank receiving payment is obliged to refund
24 payment to the extent the sender was not obliged to
25 pay. Except as provided in section two hundred four
26 and section three hundred four of this article, interest
27 is payable on the refundable amount from the date of
28 payment.

29 (e) If a funds transfer is not completed as stated in
30 subsection (c) of this section and an intermediary bank
31 is obliged to refund payment as stated in subsection (d)
32 of this section but is unable to do so because not
33 permitted by applicable law or because the bank
34 suspends payments, a sender in the funds transfer that
35 executed a payment order in compliance with an
36 instruction, as stated in subdivision (1), subsection (a),
37 section three hundred two of this article, to route the
38 funds transfer through that intermediary bank is
39 entitled to receive or retain payment from the sender

40 of the payment order that it accepted. The first sender
41 in the funds transfer that issued an instruction
42 requiring routing through that intermediary bank is
43 subrogated to the right of the bank that paid the
44 intermediary bank to refund as stated in subsection (d)
45 of this section.

46 (f) The right of the sender of a payment order to be
47 excused from the obligation to pay the order as stated
48 in subsection (c) of this section or to receive refund
49 under subsection (d) of this section may not be varied
50 by agreement.

§46-4A-403. Payment by sender to receiving bank.

1 (a) Payment of the sender's obligation under section
2 four hundred two of this article to pay the receiving
3 bank occurs as follows:

4 (1) If the sender is a bank, payment occurs when the
5 receiving bank receives final settlement of the obliga-
6 tion through a federal reserve bank or through a
7 funds-transfer system;

8 (2) If the sender is a bank and the sender (A)
9 credited an account of the receiving bank with the
10 sender, or (B) caused an account of the receiving bank
11 in another bank to be credited, payment occurs when
12 the credit is withdrawn or, if not withdrawn, at
13 midnight of the day on which the credit is withdraw-
14 able and the receiving bank learns of that fact; or

15 (3) If the receiving bank debits an account of the
16 sender with the receiving bank, payment occurs when
17 the debit is made to the extent the debit is covered by
18 a withdrawable credit balance in the account.

19 (b) If the sender and receiving bank are members of
20 a funds-transfer system that nets obligations multilat-
21 erally among participants, the receiving bank receives
22 final settlement when settlement is complete in
23 accordance with the rules of the system. The obliga-
24 tion of the sender to pay the amount of a payment
25 order transmitted through the funds-transfer system
26 may be satisfied, to the extent permitted by the rules
27 of the system, by setting off and applying against the

28 sender's obligation the right of the sender to receive
29 payment from the receiving bank of the amount of
30 any other payment order transmitted to the sender by
31 the receiving bank through the funds-transfer system.
32 The aggregate balance of obligations owed by each
33 sender to each receiving bank in the funds-transfer
34 system may be satisfied, to the extent permitted by
35 the rules of the system, by setting off and applying
36 against that balance the aggregate balance of obliga-
37 tions owed to the sender by other members of the
38 system. The aggregate balance is determined after the
39 right of setoff stated in the second sentence of this
40 subsection has been exercised.

41 (c) If two banks transmit payment orders to each
42 other under an agreement that settlement of the
43 obligations of each bank to the other under section
44 four hundred two of this article will be made at the
45 end of the day or other period, the total amount owed
46 with respect to all orders transmitted by one bank
47 shall be set off against the total amount owed with
48 respect to all orders transmitted by the other bank. To
49 the extent of the setoff, each bank has made payment
50 to the other.

51 (d) In a case not covered by subsection (a) of this
52 section, the time when payment of the sender's
53 obligation under subsection (b), section four hundred
54 two or subsection (c), section four hundred two of this
55 article occurs is governed by applicable principles of
56 law that determine when an obligation is satisfied.

**§46-4A-404. Obligation of beneficiary's bank to pay and give
notice to beneficiary.**

1 (a) Subject to subsection (e), section two hundred
2 eleven, subsection (d), section four hundred five, and
3 subsection (e), section four hundred five of this article,
4 if a beneficiary's bank accepts a payment order, the
5 bank is obliged to pay the amount of the order to the
6 beneficiary of the order. Payment is due on the
7 payment date of the order, but if acceptance occurs on
8 the payment date after the close of the funds-transfer
9 business day of the bank, payment is due on the next

10 funds-transfer business day. If the bank refuses to pay
11 after demand by the beneficiary and receipt of notice
12 of particular circumstances that will give rise to
13 consequential damages as a result of nonpayment, the
14 beneficiary may recover damages resulting from the
15 refusal to pay to the extent the bank had notice of the
16 damages, unless the bank proves that it did not pay
17 because of a reasonable doubt concerning the right of
18 the beneficiary to payment.

19 (b) If a payment order accepted by the beneficiary's
20 bank instructs payment to an account of the benefi-
21 ciary, the bank is obliged to notify the beneficiary of
22 receipt of the order before midnight of the next funds-
23 transfer business day following the payment date. If
24 the payment order does not instruct payment to an
25 account of the beneficiary, the bank is required to
26 notify the beneficiary only if notice is required by the
27 order. Notice may be given by first class mail or any
28 other means reasonable in the circumstances. If the
29 bank fails to give the required notice, the bank is
30 obliged to pay interest to the beneficiary on the
31 amount of the payment order from the day notice
32 should have been given until the day the beneficiary
33 learned of receipt of the payment order by the bank.
34 No other damages are recoverable. Reasonable attor-
35 ney's fees are also recoverable if demand for interest
36 is made and refused before an action is brought on the
37 claim.

38 (c) The right of a beneficiary to receive payment and
39 damages as stated in subsection (a) of this section may
40 not be varied by agreement or a funds-transfer system
41 rule. The right of a beneficiary to be notified as stated
42 in subsection (b) of this section may be varied by
43 agreement of the beneficiary or by a funds-transfer
44 system rule if the beneficiary is notified of the rule
45 before initiation of the funds transfer.

§46-4A-405. Payment by beneficiary's bank to beneficiary.

1 (a) If the beneficiary's bank credits an account of the
2 beneficiary of a payment order, payment of the bank's
3 obligation under subsection (a), section four hundred

4 four of this article occurs when and to the extent (1)
5 the beneficiary is notified of the right to withdraw the
6 credit, (2) the bank lawfully applies the credit to a debt
7 of the beneficiary, or (3) funds with respect to the
8 order are otherwise made available to the beneficiary
9 by the bank.

10 (b) If the beneficiary's bank does not credit an
11 account of the beneficiary of a payment order, the
12 time when payment of the bank's obligation under
13 subsection (a), section four hundred four of this article
14 occurs is governed by principles of law that determine
15 when an obligation is satisfied.

16 (c) Except as stated in subsections (d) and (e) of this
17 section, if the beneficiary's bank pays the beneficiary
18 of a payment order under a condition to payment or
19 agreement of the beneficiary giving the bank the right
20 to recover payment from the beneficiary if the bank
21 does not receive payment of the order, the condition to
22 payment or agreement is not enforceable.

23 (d) A funds-transfer system rule may provide that
24 payments made to beneficiaries of funds transfers
25 made through the system are provisional until receipt
26 of payment by the beneficiary's bank of the payment
27 order it accepted. A beneficiary's bank that makes a
28 payment that is provisional under the rule is entitled
29 to refund from the beneficiary if (1) the rule requires
30 that both the beneficiary and the originator be given
31 notice of the provisional nature of the payment before
32 the funds transfer is initiated, (2) the beneficiary, the
33 beneficiary's bank and the originator's bank agreed to
34 be bound by the rule, and (3) the beneficiary's bank
35 did not receive payment of the payment order that it
36 accepted. If the beneficiary is obliged to refund
37 payment to the beneficiary's bank, acceptance of the
38 payment order by the beneficiary's bank is nullified
39 and no payment by the originator of the funds transfer
40 to the beneficiary occurs under section four hundred
41 six of this article.

42 (e)(1) This subsection applies to a funds transfer that
43 includes a payment order transmitted over a funds-

44 transfer system that (A) nets obligations multilaterally
45 among participants, and (B) has in effect a loss-sharing
46 agreement among participants for the purpose of
47 providing funds necessary to complete settlement of
48 the obligations of one or more participants that do not
49 meet their settlement obligations.

50 (2) If the beneficiary's bank in the funds transfer
51 accepts a payment order and the system fails to
52 complete settlement pursuant to its rules with respect
53 to any payment order in the funds transfer, (A) the
54 acceptance by the beneficiary's bank is nullified and
55 no person has any right or obligation based on the
56 acceptance, (B) the beneficiary's bank is entitled to
57 recover payment from the beneficiary, (C) no pay-
58 ment by the originator to the beneficiary occurs under
59 section four hundred six of this article, and (D) subject
60 to subsection (e), section four hundred two of this
61 article, each sender in the funds transfer is excused
62 from its obligation to pay its payment order under
63 subsection (c), section four hundred two of this article
64 because the funds transfer has not been completed.

**§46-4A-406. Payment by originator to beneficiary; discharge
of underlying obligation.**

1 (a) Subject to subsection (e), section two hundred
2 eleven, subsection (d), section four hundred five, and
3 subsection (e), section four hundred five of this article,
4 the originator of a funds transfer pays the beneficiary
5 of the originator's payment order (1) at the time a
6 payment order for the benefit of the beneficiary is
7 accepted by the beneficiary's bank in the funds
8 transfer and (2) in an amount equal to the amount of
9 the order accepted by the beneficiary's bank, but not
10 more than the amount of the originator's order.

11 (b) If payment under subsection (a) of this section is
12 made to satisfy an obligation, the obligation is dis-
13 charged to the same extent discharge would result
14 from payment to the beneficiary of the same amount
15 in money, unless (1) the payment under subsection (a)
16 of this section was made by a means prohibited by the
17 contract of the beneficiary with respect to the obliga-

18 tion, (2) the beneficiary, within a reasonable time after
19 receiving notice of receipt of the order by the benefi-
20 ciary's bank, notified the originator of the benefi-
21 ciary's refusal of the payment, (3) funds with respect
22 to the order were not withdrawn by the beneficiary or
23 applied to a debt of the beneficiary, and (4) the
24 beneficiary would suffer a loss that could reasonably
25 have been avoided if payment had been made by a
26 means complying with the contract. If payment by the
27 originator does not result in discharge under this
28 section, the originator is subrogated to the rights of the
29 beneficiary to receive payment from the beneficiary's
30 bank under subsection (a), section four hundred four
31 of this article.

32 (c) For the purpose of determining whether dis-
33 charge of an obligation occurs under subsection (b) of
34 this section, if the beneficiary's bank accepts a pay-
35 ment order in an amount equal to the amount of the
36 originator's payment order less charges of one or more
37 receiving banks in the funds transfer, payment to the
38 beneficiary is deemed to be in the amount of the
39 originator's order unless upon demand by the benefi-
40 ciary the originator does not pay the beneficiary the
41 amount of the deducted charges.

42 (d) Rights of the originator or of the beneficiary of
43 a funds transfer under this section may be varied only
44 by agreement of the originator and the beneficiary.

PART V. MISCELLANEOUS PROVISIONS.

§46-4A-501. Variation by agreement and effect of funds-transfer system rule.

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

4 (b) "Funds-transfer system rule" means a rule of an
5 association of banks, (1) governing transmission of
6 payment orders by means of a funds-transfer system
7 of the association or rights and obligations with respect
8 to those orders, or (2) to the extent the rule governs
9 rights and obligations between banks that are parties

10 to a funds transfer in which a federal reserve bank,
11 acting as an intermediary bank, sends a payment
12 order to the beneficiary's bank. Except as otherwise
13 provided in this article, a funds-transfer system rule
14 governing rights and obligations between participating
15 banks using the system may be effective even if the
16 rule conflicts with this article and indirectly affects
17 another party to the funds transfer who does not
18 consent to the rule. A funds-transfer system rule may
19 also govern rights and obligations of parties other than
20 participating banks using the system to the extent
21 stated in subsection (c), section four hundred four,
22 subsection (d), section four hundred five, and subsec-
23 tion (c), section five hundred seven of this article.

**§46-4A-502. Creditor process served on receiving bank;
setoff by beneficiary's bank.**

1 (a) As used in this section, "creditor process" means
2 levy, attachment, garnishment, notice of lien, seques-
3 tration or similar process issued by or on behalf of a
4 creditor or other claimant with respect to an account.

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

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

20 (1) The bank may credit the beneficiary's account.
21 The amount credited may be set off against an obliga-
22 tion owed by the beneficiary to the bank or may be
23 applied to satisfy creditor process served on the bank
24 with respect to the account;

25 (2) The bank may credit the beneficiary's account
26 and allow withdrawal of the amount credited unless
27 creditor process with respect to the account is served
28 at a time and in a manner affording the bank a
29 reasonable opportunity to act to prevent withdrawal;
30 or

31 (3) If creditor process with respect to the benefi-
32 ciary's account has been served and the bank has had
33 a reasonable opportunity to act on it, the bank may not
34 reject the payment order except for a reason unre-
35 lated to the service of process.

36 (d) Creditor process with respect to a payment by
37 the originator to the beneficiary pursuant to a funds
38 transfer may be served only on the beneficiary's bank
39 with respect to the debt owed by that bank to the
40 beneficiary. Any other bank served with the creditor
41 process is not obliged to act with respect to the process.

§46-4A-503. Injunction or restraining order with respect to funds transfer.

1 For proper cause and in compliance with applicable
2 law, a court may restrain (1) a person from issuing a
3 payment order to initiate a funds transfer, (2) an
4 originator's bank from executing the payment order of
5 the originator, or (3) the beneficiary's bank from
6 releasing funds to the beneficiary or the beneficiary
7 from withdrawing the funds. A court may not other-
8 wise restrain a person from issuing a payment order,
9 paying or receiving payment of a payment order, or
10 otherwise acting with respect to a funds transfer.

§46-4A-504. Order in which items and payment orders may be charged to account; order of withdrawals from account.

1 (a) If a receiving bank has received more than one
2 payment order of the sender or one or more payment
3 orders and other items that are payable from the
4 sender's account, the bank may charge the sender's
5 account with respect to the various orders and items
6 in any sequence.

7 (b) In determining whether a credit to an account

8 has been withdrawn by the holder of the account or
9 applied to a debt of the holder of the account, credits
10 first made to the account are first withdrawn or
11 applied.

§46-4A-505. Preclusion of objection to debit of customer's account.

1 If a receiving bank has received payment from its
2 customer with respect to a payment order issued in
3 the name of the customer as sender and accepted by
4 the bank, and the customer received notification
5 reasonably identifying the order, the customer is
6 precluded from asserting that the bank is not entitled
7 to retain the payment unless the customer notifies the
8 bank of the customer's objection to the payment
9 within one year after the notification was received by
10 the customer.

§46-4A-506. Rate of interest.

1 (a) If, under this article, a receiving bank is obliged
2 to pay interest with respect to a payment order issued
3 to the bank, the amount payable may be determined
4 (1) by agreement of the sender and receiving bank, or
5 (2) by a funds-transfer system rule if the payment
6 order is transmitted through a funds-transfer system.

7 (b) If the amount of interest is not determined by an
8 agreement or rule as stated in subsection (a) of this
9 section, the amount is calculated by multiplying the
10 applicable federal funds rate by the amount on which
11 interest is payable, and then multiplying the product
12 by the number of days for which interest is payable.
13 The applicable federal funds rate is the average of the
14 federal funds rates published by the Federal Reserve
15 Bank of New York for each of the days for which
16 interest is payable divided by three hundred sixty. The
17 federal funds rate for any day on which a published
18 rate is not available is the same as the published rate
19 for the next preceding day for which there is a
20 published rate. If a receiving bank that accepted a
21 payment order is required to refund payment to the
22 sender of the order because the funds transfer was not
23 completed, but the failure to complete was not due to

24 any fault by the bank, the interest payable is reduced
25 by a percentage equal to the reserve requirement on
26 deposits of the receiving bank.

§46-4A-507. Choice of law.

1 (a) The following rules apply unless the affected
2 parties otherwise agree or subsection (c) of this section
3 applies:

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

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

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

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

23 (c)(1) A funds-transfer system rule may select the
24 law of a particular jurisdiction to govern (A) rights
25 and obligations between participating banks with
26 respect to payment orders transmitted or processed
27 through the system, or (B) the rights and obligations
28 of some or all parties to a funds transfer any part of
29 which is carried out by means of the system.

30 (2) A choice of law made pursuant to paragraph (A)
31 of subdivision (1) is binding on participating banks.

32 (3) A choice of law made pursuant to paragraph (B)
33 of subdivision (1) is binding on the originator, other
34 sender, or a receiving bank having notice that the

35 funds-transfer system might be used in the funds
36 transfer and of the choice of law by the system when
37 the originator, other sender, or receiving bank issued
38 or accepted a payment order.

39 (4) The beneficiary of a funds transfer is bound by
40 the choice of law if, when the funds transfer is
41 initiated, the beneficiary has notice that the funds-
42 transfer system might be used in the funds transfer
43 and of the choice of law by the system. The law of a
44 jurisdiction selected pursuant to this subsection may
45 govern, whether or not that law bears a reasonable
46 relation to the matter in issue.

47 (d) In the event of inconsistency between an agree-
48 ment under subsection (b) of this section and a choice-
49 of-law rule under subsection (c) of this section, the
50 agreement under subsection (b) of this section prevails.

51 (e) If a funds transfer is made by use of more than
52 one funds-transfer system and there is inconsistency
53 between choice-of-law rules of the systems, the matter
54 in issue is governed by the law of the selected juris-
55 diction that has the most significant relationship to the
56 matter in issue.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Fredrick L. Parker
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Harrell E. Malone
.....
Clerk of the Senate

Donald L. Hopp
.....
Clerk of the House of Delegates

Neil Sandette
.....
President of the Senate

Bill Cullen
.....
Speaker House of Delegates

The within is approved this the ^{13th}.....
day of ^{March}..... 1990.

Jason Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/12/90

Time 10:20 am

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SPECIALIST G. SMITH