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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



ENROLLED

Com. Sub. For
HOUSE BILL No. 2494

(By Delegate *Pethtel*)



Passed *April 9*, 1993

In Effect *Ninety Days From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2494
(By DELEGATE PETHEL)

[Passed April 9, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact sections two hundred one and two hundred seven, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact articles three and four of said chapter, all relating generally to negotiable instruments; providing definitions; excepting accord and satisfaction from effect of reservation of rights; providing for application of article and rules for resolving inconsistent provisions of law; providing rules for construing instruments; providing that instruments are not payable with interest unless provision for interest is stated in the instrument; providing rules for determining when a postdated instrument is payable; providing contribution rules for liable multiple parties to an instrument; providing statute of limitations; notice of right to defend action; negotiation, transfer and involvement of instruments; reacquisition of an instrument; persons entitled to enforce instrument; holders in due course; when instrument is transferred for value or consideration; defenses to the obligation of a party to pay an instrument; rules for notices; claims of property or possessory right in an instrument; enforcement of lost, destroyed, or stolen instruments; effect of instruments on obliga-

tions; rules for determining when a person is obligated on an instrument; rules for determining when signature on an instrument is given effect; acceptance of instruments; obligations of parties issuing, accepting, drawing, or indorsing certain instruments; establishing burden of proof for signatures on an instrument; providing for certain warranties with respect to an instrument; damages upon an obligated bank's refusal to pay certain instruments; instruments signed for accommodation; conversion of instrument; presentment; dishonor; notice of dishonor; discharge and effect of discharge; payment; tender of payment; bank deposits and collections; electronic presentment; agreements for electronic presentment; permitting presentment by transmission of an image of an item or encoded information rather than the item itself; statute of limitations; depository bank holder of unindorsed item; transfer, presentment, and encoding and retention warranties; time of determining insufficiency of account; permitting statements of bank accounts sufficient to permit customer to reasonably identify items paid when bank retains items for seven years.

Be it enacted by the Legislature of West Virginia:

That sections two hundred one and two hundred seven, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that articles three and four of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

**PART 2. GENERAL DEFINITIONS
AND PRINCIPLES OF INTERPRETATION.**

§46-1-201. General definitions.

- 1 Subject to additional definitions contained in the
- 2 subsequent articles of this chapter which are applicable
- 3 to specific articles or parts thereof, and unless the
- 4 context otherwise requires, in this chapter:
- 5 (1) "Action" in the sense of a judicial proceeding
- 6 includes recoupment, counterclaim, setoff, suit in equity
- 7 and any other proceedings in which rights are
- 8 determined.

9 (2) "Aggrieved party" means a party entitled to resort
10 to a remedy.

11 (3) "Agreement" means the bargain of the parties in
12 fact as found in their language or by implication from
13 other circumstances including course of dealing or
14 usage of trade or course of performance as provided in
15 this chapter (sections 1-205 and 2-208). Whether an
16 agreement has legal consequences is determined by the
17 provisions of this chapter, if applicable; otherwise by the
18 law of contracts (section 1-103). (Compare "Contract.")

19 (4) "Bank" means any person engaged in the business
20 of banking.

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

24 (6) "Bill of lading" means a document evidencing the
25 receipt of goods for shipment issued by a person
26 engaged in the business of transporting or forwarding
27 goods, and includes an airbill. "Airbill" means a
28 document serving for air transportation as a bill of
29 lading for marine or rail transportation, and includes an
30 air consignment note or air waybill.

31 (7) "Branch" includes a separately incorporated
32 foreign branch of a bank.

33 (8) "Burden of establishing a fact" means the burden
34 of persuading the triers of fact that the existence of the
35 fact is more probable than its nonexistence.

36 (9) "Buyer in ordinary course of business" means a
37 person who in good faith and without knowledge that
38 the sale to him is in violation of the ownership rights
39 or security interest of a third party in the goods buys
40 in ordinary course from a person in the business of
41 selling goods of that kind but does not include a
42 pawnbroker. All persons who sell minerals or the like
43 (including oil and gas) at wellhead or minehead shall be
44 deemed to be persons in the business of selling goods of
45 that kind. "Buying" may be for cash or by exchange of
46 other property or on secured or unsecured credit and
47 includes receiving goods or documents of title under a

48 preexisting contract for sale but does not include a
49 transfer in bulk or as security for or in total or partial
50 satisfaction of a money debt.

51 (10) "Conspicuous" means a term or clause is conspic-
52 uous when it is so written that a reasonable person
53 against whom it is to operate ought to have noticed it.
54 A printed heading in capitals (as: NONNEGOTIABLE
55 BILL OF LADING) is conspicuous. Language in the
56 body of a form is "conspicuous" if it is in larger or other
57 contrasting type or color. But in a telegram any stated
58 term is "conspicuous." Whether a term or clause is
59 "conspicuous" or not is for decision by the court.

60 (11) "Contract" means the total legal obligation which
61 results from the parties' agreement as affected by this
62 chapter and any other applicable rules of law. (Compare
63 "Agreement.")

64 (12) "Creditor" includes a general creditor, a secured
65 creditor, a lien creditor and any representative of
66 creditors, including an assignee for the benefit of
67 creditors, a trustee in bankruptcy, a receiver in equity
68 and an executor or administrator of an insolvent
69 debtor's or assignor's estate.

70 (13) "Defendant" includes a person in the position of
71 defendant in a cross action or counterclaim.

72 (14) "Delivery" with respect to instruments, docu-
73 ments of title, chattel paper or certificated securities
74 means voluntary transfer of possession.

75 (15) "Document of title" includes bill of lading, dock
76 warrant, dock receipt, warehouse receipt or order for
77 the delivery of goods, and also any other document
78 which in the regular course of business or financing is
79 treated as adequately evidencing that the person in
80 possession of it is entitled to receive, hold and dispose
81 of the document and the goods it covers. To be a
82 document of title a document must purport to be issued
83 by or addressed to a bailee and purport to cover goods
84 in the bailee's possession which are either identified or
85 are fungible portions of an identified mass.

86 (16) "Fault" means wrongful act, omission or breach.

87 (17) "Fungible" with respect to goods or securities
88 means goods or securities of which any unit is, by nature
89 or usage of trade, the equivalent of any other like unit.
90 Goods which are not fungible shall be deemed fungible
91 for the purposes of this chapter to the extent that under
92 a particular agreement or document unlike units are
93 treated as equivalents.

94 (18) "Genuine" means free of forgery or
95 counterfeiting.

96 (19) "Good faith" means honesty in fact in the conduct
97 or transaction concerned.

98 (20) "Holder" with respect to a negotiable instrument
99 means the person in possession if the instrument is
100 payable to bearer or, in the case of an instrument
101 payable to an identified person, if the identified person
102 is in possession. "Holder" with respect to a document of
103 title means the person in possession if the goods are
104 deliverable to the bearer or to the order of the person
105 in possession.

106 (21) To "honor" is to pay or to accept and pay, or
107 where a credit so engages to purchase or discount a
108 draft complying with the terms of the credit.

109 (22) "Insolvency proceedings" includes any assign-
110 ment for the benefit of creditors or other proceedings
111 intended to liquidate or rehabilitate the estate of the
112 person involved.

113 (23) A person is "insolvent" who either has ceased to
114 pay his debts in the ordinary course of business or
115 cannot pay his debts as they become due or is insolvent
116 within the meaning of the Federal Bankruptcy Law.

117 (24) "Money" means a medium of exchange autho-
118 rized or adopted by a domestic or foreign government
119 and includes a monetary unit of account established by
120 an intergovernmental organization or by agreement
121 between two or more nations.

122 (25) A person has "notice" of a fact when:

123 (a) He has actual knowledge of it; or

124 (b) He has received a notice or notification of it; or

125 (c) From all the facts and circumstances known to
126 him at the time in question he has reason to know that
127 it exists. A person "knows" or has "knowledge" of a fact
128 when he has actual knowledge of it. "Discover" or
129 "learn" or a word or phrase of similar import refers to
130 knowledge rather than to reason to know. The time and
131 circumstances under which a notice or notification may
132 cease to be effective are not determined by this chapter.

133 (26) A person "notifies" or "gives" a notice or notifi-
134 cation to another by taking such steps as may be
135 reasonably required to inform the other in ordinary
136 course whether or not such other actually comes to know
137 of it. A person "receives" a notice or notification when:

138 (a) It comes to his attention; or

139 (b) It is duly delivered at the place of business
140 through which the contract was made or at any other
141 place held out by him as the place for receipt of such
142 communications.

143 (27) Notice, knowledge or a notice or notification
144 received by an organization is effective for a particular
145 transaction from the time when it is brought to the
146 attention of the individual conducting that transaction,
147 and in any event from the time when it would have been
148 brought to his attention if the organization had exer-
149 cised due diligence. An organization exercises due
150 diligence if it maintains reasonable routines for com-
151 municating significant information to the person
152 conducting the transaction and there is reasonable
153 compliance with the routines. Due diligence does not
154 require an individual acting for the organization to
155 communicate information unless such communication is
156 part of his regular duties or unless he has reason to
157 know of the transaction and that the transaction would
158 be materially affected by the information.

159 (28) "Organization" includes a corporation, govern-
160 ment or governmental subdivision or agency, business
161 trust, estate, trust, partnership or association, two or
162 more persons having a joint or common interest, or any
163 other legal or commercial entity.

164 (29) "Party," as distinct from "third party," means a
165 person who has engaged in a transaction or made an
166 agreement within this chapter.

167 (30) "Person" includes an individual or an organiza-
168 tion (see section 1-102).

169 (31) "Presumption" or "presumed" means that the
170 trier of fact must find the existence of the fact presumed
171 unless and until evidence is introduced which would
172 support a finding of its nonexistence.

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

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

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

182 (35) "Representative" includes an agent, an officer of
183 a corporation or association, and a trustee, executor or
184 administrator of an estate, or any other person empow-
185 ered to act for another.

186 (36) "Rights" includes remedies.

187 (37) "Security interest" means an interest in personal
188 property or fixtures which secures payment or perfor-
189 mance of an obligation. The retention or reservation of
190 title by a seller of goods notwithstanding shipment or
191 delivery to the buyer (section 2-401) is limited in effect
192 to a reservation of a "security interest." The term also
193 includes any interest of a buyer of accounts or chattel
194 paper, which is subject to article nine. The special
195 property interest of a buyer of goods on identification
196 of such goods to a contract for sale under section 2-401
197 is not a "security interest," but a buyer may also acquire
198 a "security interest" by complying with article nine.
199 Unless a lease or consignment is intended as security,
200 reservation of title thereunder is not a "security interest"
201 but a consignment is in any event subject to the

202 provisions on consignment sales (section 2-326). Whether
203 a lease is intended as security is to be determined by
204 the facts of each case; however, (a) the inclusion of an
205 option to purchase does not of itself make the lease one
206 intended for security, and (b) an agreement that upon
207 compliance with the terms of the lease the lessee shall
208 become or has the option to become the owner of the
209 property for no additional consideration or for a nominal
210 consideration does make the lease one intended for
211 security.

212 (38) "Send" in connection with any writing or notice
213 means to deposit in the mail or deliver for transmission
214 by any other usual means of communication with
215 postage or cost of transmission provided for and
216 properly addressed and in the case of an instrument to
217 an address specified thereon or otherwise agreed, or if
218 there be none to any address reasonable under the
219 circumstances. The receipt of any writing or notice
220 within the time at which it would have arrived if
221 properly sent has the effect of a proper sending.

222 (39) "Signed" includes any symbol executed or
223 adopted by a party with present intention to authenti-
224 cate a writing.

225 (40) "Surety" includes guarantor.

226 (41) "Telegram" includes a message transmitted by
227 radio, teletype, cable, any mechanical method of
228 transmission, or the like.

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

231 (43) "Unauthorized" signature means one made
232 without actual, implied or apparent authority and
233 includes a forgery.

234 (44) "Value." Except as otherwise provided with
235 respect to negotiable instruments and bank collections
236 (sections 3-303, 4-208 and 4-209), a person gives "value"
237 for rights if he acquires them:

238 (a) In return for a binding commitment to extend
239 credit or for the extension of immediately available

240 credit whether or not drawn upon and whether or not
241 a chargeback is provided for in the event of difficulties
242 in collection; or

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

245 (c) By accepting delivery pursuant to a preexisting
246 contract for purchase; or

247 (d) Generally, in return for any consideration suffi-
248 cient to support a simple contract.

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

251 (46) "Written" or "writing" includes printing, type-
252 writing or any other intentional reduction to tangible
253 form.

**§46-1-207. Performance or acceptance under reservation
of rights.**

1 (a) A party who with explicit reservation of rights
2 performs or promises performance or assents to perfor-
3 mance in a manner demanded or offered by the other
4 party does not thereby prejudice the rights reserved.
5 Such words as "without prejudice," "under protest" or
6 the like are sufficient.

7 (b) Subsection (a) does not apply to an accord and
8 satisfaction.

ARTICLE 3. NEGOTIABLE INSTRUMENTS.

PART 1. GENERAL PROVISIONS AND DEFINITIONS.

§46-3-101. Short title.

1 This article shall be known and may be cited as
2 Uniform Commercial Code — Negotiable Instruments.

§46-3-102. Subject matter.

1 (a) This article applies to negotiable instruments. It
2 does not apply to money, to payment orders governed by
3 article four-a, or to securities governed by article eight.

4 (b) If there is conflict between this article and article
5 four or nine, articles four and nine govern.

6 (c) Regulations of the board of governors of the
7 federal reserve system and operating circulars of the
8 federal reserve banks supersede any inconsistent
9 provision of this article to the extent of the inconsis-
10 tency.

§46-3-103. Definitions.

1 (a) In this article:

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

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

6 (3) "Drawer" means a person who signs or is identi-
7 fied in a draft as a person ordering payment.

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

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

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

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

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

33 (9) "Promise" means a written undertaking to pay
34 money signed by the person undertaking to pay. An
35 acknowledgment of an obligation by the obligor is not
36 a promise unless the obligor also undertakes to pay the
37 obligation.

38 (10) "Prove" with respect to a fact means to meet the
39 burden of establishing the fact (section 1-201(8)).

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

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

45	"Acceptance"	Section 3-409.
46	"Accommodated party"	Section 3-419.
47	"Accommodation party"	Section 3-419.
48	"Alteration"	Section 3-407.
49	"Anomalous indorsement"	Section 3-205.
50	"Blank indorsement"	Section 3-205.
51	"Cashier's check"	Section 3-104.
52	"Certificate of deposit"	Section 3-104.
53	"Certified check"	Section 3-409.
54	"Check"	Section 3-104.
55	"Consideration"	Section 3-303.
56	"Draft"	Section 3-104.
57	"Holder in due course"	Section 3-302.
58	"Incomplete instrument"	Section 3-115.
59	"Indorsement"	Section 3-204.
60	"Indorser"	Section 3-204.
61	"Instrument"	Section 3-104.
62	"Issue"	Section 3-105.

63	“Issuer”	Section 3-105.
64	“Negotiable instrument”	Section 3-104.
65	“Negotiation”	Section 3-201.
66	“Note”	Section 3-104.
67	“Payable at a definite time”	Section 3-108.
68	“Payable on demand”	Section 3-108.
69	“Payable to bearer”	Section 3-109.
70	“Payable to order”	Section 3-109.
71	“Payment”	Section 3-602.
72	“Person entitled to enforce”	Section 3-301.
73	“Presentment”	Section 3-501.
74	“Reacquisition”	Section 3-207.
75	“Special indorsement”	Section 3-205.
76	“Teller’s check”	Section 3-104.
77	“Transfer of instrument”	Section 3-203.
78	“Traveler’s check”	Section 3-104.
79	“Value”	Section 3-303.
80	(c) The following definitions in other articles apply to	
81	this article:	
82	“Bank”	Section 4-105.
83	“Banking day”	Section 4-104.
84	“Clearing house”	Section 4-104.
85	“Collecting bank”	Section 4-105.
86	“Depository bank”	Section 4-105.
87	“Documentary draft”	Section 4-104.
88	“Intermediary bank”	Section 4-105.
89	“Item”	Section 4-104.
90	“Payor bank”	Section 4-105.
91	“Suspends payments”	Section 4-104.

92 (d) In addition article one contains general definitions
93 and principles of construction and interpretation
94 applicable throughout this article.

§46-3-104. Negotiable instrument.

1 (a) Except as provided in subsections (c) and (d),
2 "negotiable instrument" means an unconditional prom-
3 ise or order to pay a fixed amount of money, with or
4 without interest or other charges described in the
5 promise or order, if it:

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

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

9 (3) Does not state any other undertaking or instruc-
10 tion by the person promising or ordering payment to do
11 any act in addition to the payment of money, but the
12 promise or order may contain (i) an undertaking or
13 power to give, maintain or protect collateral to secure
14 payment, (ii) an authorization or power to the holder to
15 confess judgment or realize on or dispose of collateral
16 or (iii) a waiver of the benefit of any law intended for
17 the advantage or protection of an obligor.

18 (b) "Instrument" means a negotiable instrument.

19 (c) An order that meets all of the requirements of
20 subsection (a), except paragraph (1), and otherwise falls
21 within the definition of "check" in subsection (f) is a
22 negotiable instrument and a check.

23 (d) A promise or order other than a check is not an
24 instrument if, at the time it is issued or first comes into
25 possession of a holder, it contains a conspicuous
26 statement, however expressed, to the effect that the
27 promise or order is not negotiable or is not an instru-
28 ment governed by this article.

29 (e) An instrument is a "note" if it is a promise and
30 is a "draft" if it is an order. If an instrument falls within
31 the definition of both "note" and "draft," a person
32 entitled to enforce the instrument may treat it as either.

33 (f) "Check" means (i) a draft, other than a document-
34 ary draft, payable on demand and drawn on a bank or

35 (ii) a cashier's check or teller's check. An instrument
36 may be a check even though it is described on its face
37 by another term, such as "money order."

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

41 (h) "Teller's check" means a draft drawn by a bank
42 (i) on another bank or (ii) payable at or through a bank.

43 (i) "Traveler's check" means an instrument that (i) is
44 payable on demand, (ii) is drawn on or payable at or
45 through a bank, (iii) is designated by the term "travel-
46 er's check" or by a substantially similar term and (iv)
47 requires, as a condition to payment, a countersignature
48 by a person whose specimen signature appears on the
49 instrument.

50 (j) "Certificate of deposit" means an instrument
51 containing an acknowledgment by a bank that a sum of
52 money has been received by the bank and a promise by
53 the bank to repay the sum of money. A certificate of
54 deposit is a note of the bank.

§46-3-105. Issue of instrument.

1 (a) "Issue" means the first delivery of an instrument
2 by the maker or drawer, whether to a holder or
3 nonholder, for the purpose of giving rights on the
4 instrument to any person.

5 (b) An unissued instrument, or an unissued incom-
6 plete instrument that is completed, is binding on the
7 maker or drawer, but nonissuance is a defense. An
8 instrument that is conditionally issued or is issued for
9 a special purpose is binding on the maker or drawer,
10 but failure of the condition or special purpose to be
11 fulfilled is a defense.

12 (c) "Issuer" applies to issued and unissued instru-
13 ments and means a maker or drawer of an instrument.

§46-3-106. Unconditional promise or order.

1 (a) Except as provided in this section, for the purposes
2 of section 3-104(a), a promise or order is unconditional

3 unless it states (i) an express condition to payment, (ii)
4 that the promise or order is subject to or governed by
5 another writing or (iii) that rights or obligations with
6 respect to the promise or order are stated in another
7 writing. A reference to another writing does not of itself
8 make the promise or order conditional.

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

14 (c) If a promise or order requires, as a condition to
15 payment, a countersignature by a person whose speci-
16 men signature appears on the promise or order, the
17 condition does not make the promise or order conditional
18 for the purpose of section 3-104(a).

§46-3-107. Instrument payable in foreign money.

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

§46-3-108. Payable on demand or at definite time.

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

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

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

§46-3-109. Payable to bearer or to order.

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

2 (1) States that it is payable to bearer or to the order
3 of bearer or otherwise indicates that the person in
4 possession of the promise or order is entitled to payment;

5 (2) Does not state a payee; or

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

9 (b) A promise or order that is not payable to bearer
10 is payable to order if it is payable (i) to the order of an
11 identified person or (ii) to an identified person or order.
12 A promise or order that is payable to order is payable
13 to the identified person.

14 (c) An instrument payable to bearer may become
15 payable to an identified person if it is specially indorsed
16 pursuant to section 3-205(a). An instrument payable to
17 an identified person may become payable to bearer if
18 it is indorsed in blank pursuant to section 3-205(b).

§46-3-110. Identification of person to whom instrument is payable.

1 (a) The person to whom an instrument is initially
2 payable is determined by the intent of the person,
3 whether or not authorized, signing as, or in the name
4 or behalf of, the issuer of the instrument. The instru-
5 ment is payable to the person intended by the signer
6 even if that person is identified in the instrument by a
7 name or other identification that is not that of the
8 intended person. If more than one person signs in the
9 name or behalf of the issuer of an instrument and all
10 the signers do not intend the same person as payee, the
11 instrument is payable to any person intended by one or
12 more of the signers.

13 (b) If the signature of the issuer of an instrument is
14 made by automated means, such as a check-writing
15 machine, the payee of the instrument is determined by
16 the intent of the person who supplied the name or
17 identification of the payee, whether or not authorized to
18 do so.

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

24 (1) If an instrument is payable to an account and the
25 account is identified only by number, the instrument is
26 payable to the person to whom the account is payable.
27 If an instrument is payable to an account identified by
28 number and by the name of a person, the instrument
29 is payable to the named person, whether or not that
30 person is the owner of the account identified by number.

31 (2) If an instrument is payable to (i) a trust, an estate,
32 or a person described as trustee or representative of a
33 trust or estate, the instrument is payable to the trustee,
34 the representative, or a successor of either, whether or
35 not the beneficiary or estate is also named, (ii) a person
36 described as agent or similar representative of a named
37 or identified person, the instrument is payable to the
38 represented person, the representative, or a successor of
39 the representative, (iii) a fund or organization that is not
40 a legal entity, the instrument is payable to a represen-
41 tative of the members of the fund or organization or (iv)
42 an office or to a person described as holding an office,
43 the instrument is payable to the named person, the
44 incumbent of the office, or a successor to the incumbent.

45 (d) If an instrument is payable to two or more persons
46 alternatively, it is payable to any of them and may be
47 negotiated, discharged, or enforced by any or all of them
48 in possession of the instrument. If an instrument is
49 payable to two or more persons not alternatively, it is
50 payable to all of them and may be negotiated, dis-
51 charged, or enforced only by all of them. If an instru-
52 ment payable to two or more persons is ambiguous as

53 to whether it is payable to the persons alternatively, the
54 instrument is payable to the persons alternatively.

§46-3-111. Place of payment.

1 Except as otherwise provided for items in article four,
2 an instrument is payable at the place of payment stated
3 in the instrument. If no place of payment is stated, an
4 instrument is payable at the address of the drawee or
5 maker stated in the instrument. If no address is stated,
6 the place of payment is the place of business of the
7 drawee or maker. If a drawee or maker has more than
8 one place of business, the place of payment is any place
9 of business of the drawee or maker chosen by the person
10 entitled to enforce the instrument. If the drawee or
11 maker has no place of business, the place of payment
12 is the residence of the drawee or maker.

§46-3-112. Interest.

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

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

§46-3-113. Date of instrument.

1 (a) An instrument may be antedated or postdated.
2 The date stated determines the time of payment if the
3 instrument is payable at a fixed period after date.
4 Except as provided in section 4-401 (c), an instrument
5 payable on demand is not payable before the date of the
6 instrument.

7 (b) If an instrument is undated, its date is the date
8 of its issue or, in the case of an unissued instrument, the
9 date it first comes into possession of a holder.

§46-3-114. Contradictory terms of instrument.

1 If an instrument contains contradictory terms,
2 typewritten terms prevail over printed terms, hand
3 written terms prevail over both, and words prevail over
4 numbers.

§46-3-115. Incomplete instrument.

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

6 (b) Subject to subsection (c), if an incomplete instru-
7 ment is an instrument under section 3-104, it may be
8 enforced according to its terms if it is not completed,
9 or according to its terms as augmented by completion.
10 If an incomplete instrument is not an instrument under
11 section 3-104, but, after completion, the requirements of
12 section 3-104 are met, the instrument may be enforced
13 according to its terms as augmented by completion.

14 (c) If words or numbers are added to an incomplete
15 instrument without authority of the signer, there is an
16 alteration of the incomplete instrument under section 3-
17 407.

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

§46-3-116. Joint and several liability; contribution.

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

7 (b) Except as provided in section 3-419(e) or by
8 agreement of the affected parties, a party having joint
9 and several liability who pays the instrument is entitled
10 to receive from any party having the same joint and
11 several liability contribution in accordance with appli-
12 cable law.

13 (c) Discharge of one party having joint and several
14 liability by a person entitled to enforce the instrument
15 does not affect the right under subsection (b) of a party
16 having the same joint and several liability to receive
17 contribution from the party discharged.

§46-3-117. Other agreements affecting instrument.

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

§46-3-118. Statute of limitations.

1 (a) Except as provided in subsection (e), an action to
2 enforce the obligation of a party to pay a note payable
3 at a definite time must be commenced within six years
4 after the due date or dates stated in the note or, if a due
5 date is accelerated, within six years after the acceler-
6 ated due date.

7 (b) Except as provided in subsection (d) or (e), if
8 demand for payment is made to the maker of a note
9 payable on demand, an action to enforce the obligation
10 of a party to pay the note must be commenced within
11 six years after the demand. If no demand for payment
12 is made to the maker, an action to enforce the note is
13 barred if neither principal nor interest on the note has
14 been paid for a continuous period of ten years.

15 (c) Except as provided in subsection (d), an action to
16 enforce the obligation of a party to an unaccepted draft

17 to pay the draft must be commenced within three years
18 after dishonor of the draft or ten years after the date
19 of the draft, whichever period expires first.

20 (d) An action to enforce the obligation of the acceptor
21 of a certified check or the issuer of a teller's check,
22 cashier's check, or traveler's check must be commenced
23 within three years after demand for payment is made
24 to the acceptor or issuer, as the case may be.

25 (e) An action to enforce the obligation of a party to
26 a certificate of deposit to pay the instrument must be
27 commenced within six years after demand for payment
28 is made to the maker, but if the instrument states a due
29 date and the maker is not required to pay before that
30 date, the six-year period begins when a demand for
31 payment is in effect and the due date has passed.

32 (f) An action to enforce the obligation of a party to pay
33 an accepted draft, other than a certified check, must be
34 commenced (i) within six years after the due date or
35 dates stated in the draft or acceptance if the obligation
36 of the acceptor is payable at a definite time or (ii) within
37 six years after the date of the acceptance if the
38 obligation of the acceptor is payable on demand.

39 (g) Unless governed by other law regarding claims
40 for indemnity or contribution, an action (i) for conver-
41 sion of an instrument, for money had and received, or
42 like action based on conversion, (ii) for breach of
43 warranty or (iii) to enforce an obligation, duty, or right
44 arising under this article and not governed by this
45 section must be commenced within three years after the
46 cause of action accrues.

§46-3-119. Notice of right to defend action.

1 In an action for breach of an obligation for which a
2 third person is answerable over pursuant to this article
3 or article four, the defendant may give the third person
4 written notice of the litigation, and the person notified
5 may then give similar notice to any other person who
6 is answerable over. If the notice states (i) that the person
7 notified may come in and defend and (ii) that failure to
8 do so will bind the person notified in an action later

9 brought by the person giving the notice as to any
10 determination of fact common to the two litigations, the
11 person notified is so bound unless after reasonable
12 receipt of the notice the person notified does come in and
13 defend.

PART 2. NEGOTIATION TRANSFER, AND INDORSEMENT.

§46-3-201. Negotiation.

1 (a) "Negotiation" means a transfer of possession,
2 whether voluntary or involuntary, or an instrument by
3 a person other than the issuer to a person who thereby
4 becomes its holder.

5 (b) Except for negotiation by a remitter, if an
6 instrument is payable to an identified person, negotia-
7 tion requires transfer of possession of the instrument
8 and its indorsement by the holder. If an instrument is
9 payable to bearer, it may be negotiated by transfer of
10 possession alone.

§46-3-202. Negotiation subject to rescission.

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

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

§46-3-203. Transfer of instrument; rights acquired by transfer.

1 (a) An instrument is transferred when it is delivered
2 by a person other than its issuer for the purpose of
3 giving to the person receiving delivery the right to
4 enforce the instrument.

5 (b) Transfer of an instrument, whether or not the
6 transfer is a negotiation, vests in the transferee any
7 right of the transferor to enforce the instrument,

8 including any right as a holder in due course, but the
9 transferee cannot acquire rights of a holder in due
10 course by a transfer, directly or indirectly, from a
11 holder in due course if the transferee engaged in fraud
12 or illegality affecting the instrument.

13 (c) Unless otherwise agreed, if an instrument is
14 transferred for value and the transferee does not become
15 a holder because of lack of indorsement by the trans-
16 feror, the transferee has a specifically enforceable right
17 to the unqualified indorsement of the transferor, but
18 negotiation of the instrument does not occur until the
19 indorsement is made.

20 (d) If a transferor purports to transfer less than the
21 entire instrument, negotiation of the instrument does not
22 occur. The transferee obtains no rights under this article
23 and has only the rights of a partial assignee.

§46-3-204. Indorsement.

1 (a) "Indorsement" means a signature, other than that
2 of a signer as maker, drawer, or acceptor, that alone or
3 accompanied by other words is made on an instrument
4 for the purpose of (i) negotiating the instrument, (ii)
5 restricting payment of the instrument or (iii) incurring
6 indorser's liability on the instrument, but regardless of
7 the intent of the signer, a signature and its accompan-
8 ying words is an indorsement unless the accompanying
9 words, terms of the instrument, place of the signature,
10 or other circumstances unambiguously indicate that the
11 signature was made for a purpose other than indorse-
12 ment. For the purpose of determining whether a
13 signature is made on an instrument, a paper affixed to
14 the instrument is a part of the instrument.

15 (b) "Indorser" means a person who makes an
16 indorsement.

17 (c) For the purpose of determining whether the
18 transferee of an instrument is a holder, an indorsement
19 that transfers a security interest in the instrument is
20 effective as an unqualified indorsement of the
21 instrument.

22 (d) If an instrument is payable to a holder under a
23 name that is not the name of the holder, indorsement

24 may be made by the holder in the name stated in the
25 instrument or in the holder's name or both, but
26 signature in both names may be required by a person
27 paying or taking the instrument for value or collection.

**§46-3-205. Special indorsement; blank indorsement;
anomalous indorsement.**

1 (a) If an indorsement is made by the holder of an
2 instrument, whether payable to an identified person or
3 payable to bearer, and the indorsement identifies a
4 person to whom it makes the instrument payable, it is
5 a "special indorsement." When specially indorsed, an
6 instrument becomes payable to the identified person and
7 may be negotiated only by the indorsement of that
8 person. The principles stated in section 3-110 apply to
9 special indorsements.

10 (b) If an indorsement is made by the holder of an
11 instrument and it is not a special indorsement, it is a
12 "blank indorsement." When indorsed in blank, an
13 instrument becomes payable to bearer and may be
14 negotiated by transfer of possession alone until specially
15 indorsed.

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

21 (d) "Anomalous indorsement" means an indorsement
22 made by a person who is not the holder of the instru-
23 ment. An anomalous indorsement does not affect the
24 manner in which the instrument may be negotiated.

§46-3-206. Restrictive indorsement.

1 (a) An indorsement limiting payment to a particular
2 person or otherwise prohibiting further transfer or
3 negotiation of the instrument is not effective to prevent
4 further transfer or negotiation of the instrument.

5 (b) An indorsement stating a condition to the right of
6 the indorsee to receive payment does not affect the right
7 of the indorsee to enforce the instrument. A person

8 paying the instrument or taking it for value or collection
9 may disregard the condition, and the rights and
10 liabilities of that person are not affected by whether the
11 condition has been fulfilled.

12 (c) If an instrument bears an indorsement (i) des-
13 cribed in section 4-201(b) or (ii) in blank or to a
14 particular bank using the words "for deposit," "for
15 collection," or other words indicating a purpose of
16 having the instrument collected by a bank for the
17 indorser or for a particular account, the following rules
18 apply:

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

24 (2) A depository bank that purchases the instrument
25 or takes it for collection when so indorsed converts the
26 instrument unless the amount paid by the bank with
27 respect to the instrument is received by the indorser or
28 applied consistently with the indorsement.

29 (3) A payor bank that is also the depository bank or
30 that takes the instrument for immediate payment over
31 the counter from a person other than a collecting bank
32 converts the instrument unless the proceeds of the
33 instrument are received by the indorser or applied
34 consistently with the indorsement.

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

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

46 (1) Unless there is notice of breach of fiduciary duty
47 as provided in section 3-307, a person who purchases the

48 instrument from the indorsee or takes the instrument
49 from the indorsee for collection or payment may pay the
50 proceeds of payment or the value given for the instru-
51 ment to the indorsee without regard to whether the
52 indorsee violates a fiduciary duty to the indorser.

53 (2) A subsequent transferee of the instrument or
54 person who pays the instrument is neither given notice
55 nor otherwise affected by the restriction in the indor-
56 sement unless the transferee or payor knows that the
57 fiduciary dealt with the instrument or its proceeds in
58 breach of fiduciary duty.

59 (e) The presence on an instrument of an indorsement
60 to which this section applies does not prevent a
61 purchaser of the instrument from becoming a holder in
62 due course of the instrument unless the purchaser is a
63 converter under subsection (c) or has notice or knowl-
64 edge of breach of fiduciary duty as stated in subsection
65 (d).

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

§46-3-207. Reacquisition.

1 Reacquisition of an instrument occurs if it is trans-
2 ferred to a former holder, by negotiation or otherwise.
3 A former holder who reacquires the instrument may
4 cancel indorsements made after the reacquirer first
5 became a holder of the instrument. If the cancellation
6 causes the instrument to be payable to the reacquirer
7 or to bearer, the reacquirer may negotiate the instru-
8 ment. An indorser whose indorsement is canceled is
9 discharged, and the discharge is effective against any
10 subsequent holder.

PART 3. ENFORCEMENT OF INSTRUMENTS.

§46-3-301. Person entitled to enforce instrument.

1 "Person entitled to enforce" an instrument means (i)
2 the holder of the instrument, (ii) a nonholder in
3 possession of the instrument who has the rights of a

4 holder or (iii) a person not in possession of the instru-
5 ment who is entitled to enforce the instrument pursuant
6 to section 3-309 or 3-418(d). A person may be a person
7 entitled to enforce the instrument even though the
8 person is not the owner of the instrument or is in
9 wrongful possession of the instrument.

§46-3-302. Holder in due course.

1 (a) Subject to subsection (c) and section one hundred
2 six-d, "holder in due course" means the holder of an
3 instrument if:

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

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

18 (b) Notice of discharge of a party, other than dis-
19 charge in an insolvency proceeding, is not notice of a
20 defense under subsection (a), but discharge is effective
21 against a person who became a holder in due course
22 with notice of the discharge. Public filing or recording
23 of a document does not of itself constitute notice of a
24 defense, claim in recoupment, or claim to the
25 instrument.

26 (c) Except to the extent a transferor or predecessor
27 in interest has rights as a holder in due course, a person
28 does not acquire rights of a holder in due course of an
29 instrument taken (i) by legal process or by purchase in
30 an execution, bankruptcy, or creditor's sale or similar
31 proceeding, (ii) by purchase as part of a bulk transaction
32 not in ordinary course of business of the transferor or

33 (iii) as the successor in interest to an estate or other
34 organization.

35 (d) If, under section 3-303(a)(1), the promise of
36 performance that is the consideration for an instrument
37 has been partially performed, the holder may assert
38 rights as a holder in due course of the instrument only
39 to the fraction of the amount payable under the
40 instrument equal to the value of the partial performance
41 divided by the value of the promised performance.

42 (e) If (i) the person entitled to enforce an instrument
43 has only a security interest in the instrument and (ii)
44 the person obliged to pay the instrument has a defense,
45 claim in recoupment, or claim to the instrument that
46 may be asserted against the person who granted the
47 security interest, the person entitled to enforce the
48 instrument may assert rights as a holder in due course
49 only to an amount payable under the instrument which,
50 at the time of enforcement of the instrument, does not
51 exceed the amount of the unpaid obligation secured.

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

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

§46-3-303. Value and consideration.

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

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

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

9 (3) The instrument is issued or transferred as pay-
10 ment of, or as security for, an antecedent claim against
11 any person, whether or not the claim is due;

12 (4) The instrument is issued or transferred in ex-
13 change for a negotiable instrument; or

14 (5) The instrument is issued or transferred in ex-
15 change for the incurring of an irrevocable obligation to
16 a third party by the person taking the instrument.

17 (b) "Consideration" means any consideration suffi-
18 cient to support a simple contract. The drawer or maker
19 of an instrument has a defense if the instrument is
20 issued without consideration. If an instrument is issued
21 for a promise of performance, the issuer has a defense
22 to the extent performance of the promise is due and the
23 promise has not been performed. If an instrument is
24 issued for value as stated in subsection (a), the instru-
25 ment is also issued for consideration.

§46-3-304. Overdue instrument.

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

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

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

7 (3) If the instrument is not a check, when the
8 instrument has been outstanding for a period of time
9 after its date which is unreasonably long under the
10 circumstances of the particular case in light of the
11 nature of the instrument and usage of the trade.

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

14 (1) If the principal is payable in installments and a
15 due date has not been accelerated, the instrument
16 becomes overdue upon default under the instrument for
17 nonpayment of an installment, and the instrument
18 remains overdue until the default is cured;

19 (2) If the principal is not payable in installments and
20 the due date has not been accelerated, the instrument
21 becomes overdue on the day after the due date;

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

23 accelerated, the instrument becomes overdue on the day
24 after the accelerated due date.

25 (c) Unless the due date or principal has been accel-
26 erated, an instrument does not become overdue if there
27 is default in payment of interest but no default in
28 payment of principal.

§46-3-305. Defenses and claims in recoupment.

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

4 (1) A defense of the obligor based on (i) infancy of the
5 obligor to the extent it is a defense to a simple contract,
6 (ii) duress, lack of legal capacity, or illegality of the
7 transaction which, under other law, nullifies the
8 obligation of the obligor, (iii) fraud that induced the
9 obligor to sign the instrument with neither knowledge
10 nor reasonable opportunity to learn of its character or
11 its essential terms or (iv) discharge of the obligor in
12 insolvency proceedings;

13 (2) A defense of the obligor stated in another section
14 of this article or a defense of the obligor that would be
15 available if the person entitled to enforce the instrument
16 were enforcing a right to payment under a simple
17 contract; and

18 (3) A claim in recoupment of the obligor against the
19 original payee of the instrument if the claim arose from
20 the transaction that gave rise to the instrument; but the
21 claim of the obligor may be asserted against a transferee
22 of the instrument only to reduce the amount owing on
23 the instrument at the time the action is brought.

24 (b) The right of a holder in due course to enforce the
25 obligation of a party to pay the instrument is subject to
26 defenses of the obligor stated in subsection (a)(1), but is
27 not subject to defenses of the obligor stated in subsection
28 (a)(2) or claims in recoupment stated in subsection (a)(3)
29 against a person other than the holder.

30 (c) Except as stated in subsection (d), in an action to
31 enforce the obligation of a party to pay the instrument,

32 the obligor may not assert against the person entitled
33 to enforce the instrument a defense, claim in recoup-
34 ment, or claim to the instrument (section 3-306) of
35 another person, but the other person's claim to the
36 instrument may be asserted by the obligor if the other
37 person is joined in the action and personally asserts the
38 claim against the person entitled to enforce the instru-
39 ment. An obligor is not obliged to pay the instrument
40 if the person seeking enforcement of the instrument does
41 not have rights of a holder in due course and the obligor
42 proves that the instrument is a lost or stolen instrument.

43 (d) In an action to enforce the obligation of an
44 accommodation party to pay an instrument, the accom-
45 modation party may assert against the person entitled
46 to enforce the instrument any defense or claim in
47 recoupment under subsection (a) that the accommodated
48 party could assert against the person entitled to enforce
49 the instrument, except the defenses of discharge in
50 insolvency proceedings, infancy and lack of legal
51 capacity.

§46-3-306. Claims to an instrument.

1 A person taking an instrument, other than a person
2 having rights of a holder in due course, is subject to a
3 claim of a property or possessory right in the instrument
4 or its proceeds, including a claim to rescind a negoti-
5 ation and to recover the instrument or its proceeds. A
6 person having rights of a holder in due course takes free
7 of the claim to the instrument.

§46-3-307. Notice of breach of fiduciary duty.

1 (a) In this section:

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

5 (2) "Represented person" means the principal, benefi-
6 ciary, partnership, corporation or other person to whom
7 the duty stated in paragraph (1) is owed.

8 (b) If (i) an instrument is taken from a fiduciary for
9 payment or collection or for value, (ii) the taker has

10 knowledge of the fiduciary status of the fiduciary and
11 (iii) the represented person makes a claim to the
12 instrument or its proceeds on the basis that the
13 transaction of the fiduciary is a breach of fiduciary duty,
14 the following rules apply:

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

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

27 (3) If an instrument is issued by the represented
28 person or the fiduciary as such, and made payable to the
29 fiduciary personally, the taker does not have notice of
30 the breach of fiduciary duty unless the taker knows of
31 the breach of fiduciary duty.

32 (4) If an instrument is issued by the represented
33 person or the fiduciary as such, to the taker as payee,
34 the taker has notice of the breach of fiduciary duty if
35 the instrument is (i) taken in payment of or as security
36 for a debt known by the taker to be the personal debt
37 of the fiduciary, (ii) taken in a transaction known by the
38 taker to be for the personal benefit of the fiduciary or
39 (iii) deposited to an account other than an account of the
40 fiduciary, as such, or an account of the represented
41 person.

**§46-3-308. Proof of signatures and status as holder in due
course.**

1 (a) In an action with respect to an instrument, the
2 authenticity of, and authority to make, each signature
3 on the instrument is admitted unless specifically denied
4 in the pleadings. If the validity of a signature is denied
5 in the pleadings, the burden of establishing validity is

6 on the person claiming validity, but the signature is
7 presumed to be authentic and authorized unless the
8 action is to enforce the liability of the purported signer
9 and the signer is dead or incompetent at the time of trial
10 of the issue of validity of the signature. If an action to
11 enforce the instrument is brought against a person as
12 the undisclosed principal of a person who signed the
13 instrument as a party to the instrument, the plaintiff
14 has the burden of establishing that the defendant is
15 liable on the instrument as a represented person under
16 section 3-402(a).

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

**§46-3-309. Enforcement of lost, destroyed, or stolen
instrument.**

1 (a) A person not in possession of an instrument is
2 entitled to enforce the instrument if (i) the person was
3 in possession of the instrument and entitled to enforce
4 it when loss of possession occurred, (ii) the loss of
5 possession was not the result of a transfer by the person
6 or a lawful seizure and (iii) the person cannot reasonably
7 obtain possession of the instrument because the instru-
8 ment was destroyed, its whereabouts cannot be deter-
9 mined, or it is in the wrongful possession of an unknown
10 person or a person that cannot be found or is not
11 amenable to service of process.

12 (b) A person seeking enforcement of an instrument
13 under subsection (a) must prove the terms of the
14 instrument and the person's right to enforce the
15 instrument. If that proof is made, section 3-308 applies
16 to the case as if the person seeking enforcement had

17 produced the instrument. The court may not enter
18 judgment in favor of the person seeking enforcement
19 unless it finds that the person required to pay the
20 instrument is adequately protected against loss that
21 might occur by reason of a claim by another person to
22 enforce the instrument. Adequate protection may be
23 provided by any reasonable means.

**§46-3-310. Effect of instrument on obligation for which
taken.**

1 (a) Unless otherwise agreed, if a certified check,
2 cashier's check or teller's check is taken for an obliga-
3 tion, the obligation is discharged to the same extent
4 discharge would result if an amount of money equal to
5 the amount of the instrument were taken in payment of
6 the obligation. Discharge of the obligation does not
7 affect any liability that the obligor may have as an
8 indorser of the instrument.

9 (b) Unless otherwise agreed and except as provided in
10 subsection (a), if a note or an uncertified check is taken
11 for an obligation, the obligation is suspended to the same
12 extent the obligation would be discharged if an amount
13 of money equal to the amount of the instrument were
14 taken, and the following rules apply:

15 (1) In the case of an uncertified check, suspension of
16 the obligation continues until dishonor of the check or
17 until it is paid or certified. Payment or certification of
18 the check results in discharge of the obligation to the
19 extent of the amount of the check.

20 (2) In the case of a note, suspension of the obligation
21 continues until dishonor of the note or until it is paid.
22 Payment of the note results in discharge of the obliga-
23 tion to the extent of the payment.

24 (3) Except as provided in paragraph (4), if the check
25 or note is dishonored and the obligee of the obligation
26 for which the instrument was taken is the person
27 entitled to enforce the instrument, the obligee may
28 enforce either the instrument or the obligation. In the
29 case of an instrument of a third person which is
30 negotiated to the obligee by the obligor, discharge of the
31 obligor on the instrument also discharges the obligation.

32 (4) If the person entitled to enforce the instrument
33 taken for an obligation is a person other than the
34 obligee, the obligee may not enforce the obligation to the
35 extent the obligation is suspended. If the obligee is the
36 person entitled to enforce the instrument but no longer
37 has possession of it because it was lost, stolen or
38 destroyed, the obligation may not be enforced to the
39 extent of the amount payable on the instrument, and to
40 that extent the obligee's rights against the obligor are
41 limited to enforcement of the instrument.

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

§46-3-311. Accord and satisfaction by use of instrument.

1 (a) If a person against whom a claim is asserted
2 proved that (i) that person in good faith tendered an
3 instrument to the claimant as full satisfaction of the
4 claim, (ii) the amount of the claim was unliquidated or
5 subject to a bona fide dispute and (iii) the claimant
6 obtained payment of the instrument, the following
7 subsections apply.

8 (b) Unless subsection (c) applies, the claim is dis-
9 charged if the person against whom the claim is
10 asserted proves that the instrument or an accompanying
11 written communication contained a conspicuous state-
12 ment to the effect that the instrument was tendered as
13 full satisfaction of the claim.

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

16 (1) The claimant, if an organization, proves that (i)
17 within a reasonable time before the tender, the claimant
18 sent a conspicuous statement to the person against
19 whom the claim is asserted that communications
20 concerning disputed debts, including an instrument
21 tendered as full satisfaction of a debt, are to be sent to
22 a designated person, office, or place and (ii) the
23 instrument or accompanying communication was sent to

24 a lock box for the receipt of payments of undisputed
25 claims.

26 (2) The claimant, whether or not an organization,
27 proves that within ninety days after payment of the
28 instrument, the claimant tendered repayment of the
29 amount of the instrument to the person against whom
30 the claim is asserted. This paragraph does not apply if
31 the claimant is an organization that sent a statement
32 complying with paragraph (1)(i).

33 (d) A claim is discharged if the person against whom
34 the claim is asserted proves that within a reasonable
35 time before collection of the instrument was initiated,
36 the claimant, or an agent of the claimant having direct
37 responsibility with respect to the disputed obligation,
38 knew that the instrument was tendered in full satisfac-
39 tion of the claim.

**§46-3-312. Lost, destroyed, or stolen cashier's check,
teller's check or certified check.**

1 (a) In this section:

2 (1) "Check" means a cashier's check, teller's check or
3 certified check.

4 (2) "Claimant" means a person who claims the right
5 to receive the amount of a cashier's check, teller's check
6 or certified check that was lost, destroyed or stolen.

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

20 (4) "Obligated bank" means the issuer of a cashier's

21 check or teller's check or the acceptor of a certified
22 check.

23 (b) A claimant may assert a claim to the amount of
24 a check by a communication to the obligated bank
25 describing the check with reasonable certainty and
26 requesting payment of the amount of the check, if (i) the
27 claimant is the drawer or payee of a certified check or
28 the remitter or payee of a cashier's check or teller's
29 check, (ii) the communication contains or is accompan-
30 ied by a declaration of loss of the claimant with respect
31 to the check, (iii) the communication is received at a
32 time and in a manner affording the bank a reasonable
33 time to act on it before the check is paid and (iv) the
34 claimant provides reasonable identification if requested
35 by the obligated bank. Delivery of a declaration of loss
36 is a warranty of the truth of the statements made in the
37 declaration. If a claim is asserted in compliance with
38 this subsection, the following rules apply:

39 (1) The claim becomes enforceable at the later of (i)
40 the time the claim is asserted or (ii) the ninetieth day
41 following the date of the check, in the case of a cashier's
42 check or teller's check, or the ninetieth day following the
43 date of the acceptance, in the case of a certified check.

44 (2) Until the claim becomes enforceable, it has no
45 legal effect and the obligated bank may pay the check
46 or, in the case of a teller's check, may permit the drawee
47 to pay the check. Payment to a person entitled to enforce
48 the check discharges all liability of the obligated bank
49 with respect to the check.

50 (3) If the claim becomes enforceable before the check
51 is presented for payment, the obligated bank is not
52 obliged to pay the check.

53 (4) When the claim becomes enforceable, the obli-
54 gated bank becomes obliged to pay the amount of the
55 check to the claimant if payment of the check has not
56 been made to a person entitled to enforce the check.
57 Subject to section 4-302(a)(1), payment to the claimant
58 discharges all liability of the obligated bank with
59 respect to the check.

60 (c) If the obligated bank pays the amount of a check
61 to a claimant under subsection (b)(4) and the check is
62 presented for payment by a person having rights of a
63 holder in due course, the claimant is obliged to (i) refund
64 the payment to the obligated bank if the check is paid
65 or (ii) pay the amount of the check to the person having
66 rights of a holder in due course if the check is
67 dishonored.

68 (d) If a claimant has the right to assert a claim under
69 subsection (b) and is also a person entitled to enforce a
70 cashier's check, teller's check or certified check which
71 is lost, destroyed or stolen, the claimant may assert
72 rights with respect to the check either under this section
73 or section 3-309.

PART 4. LIABILITY OF PARTIES.

§46-3-401. Signature.

1 (a) A person is not liable on an instrument unless (i)
2 the person signed the instrument or (ii) the person is
3 represented by an agent or representative who signed
4 the instrument and the signature is binding on the
5 represented person under section 3-402.

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

§46-3-402. Signature by representative.

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

12 (b) If a representative signs the name of the represen-
13 tative to an instrument and the signature is an autho-
14 rized signature of the represented person, the following
15 rules apply:

16 (1) If the form of the signature shows unambiguously
17 that the signature is made on behalf of the represented
18 person who is identified in the instrument, the represen-
19 tative is not liable on the instrument.

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

31 (c) If a representative signs the name of the represen-
32 tative as drawer of a check without indication of the
33 representative status and the check is payable from an
34 account of the represented person who is identified on
35 the check, the signer is not liable on the check if the
36 signature is an authorized signature of the represented
37 person.

§46-3-403. Unauthorized signature.

1 (a) Unless otherwise provided in this article or article
2 four, an unauthorized signature is ineffective except as
3 the signature of the unauthorized signer in favor of a
4 person who in good faith pays the instrument or takes
5 it for value. An unauthorized signature may be ratified
6 for all purposes of this article.

7 (b) If the signature of more than one person is
8 required to constitute the authorized signature of an
9 organization, the signature of the organization is
10 unauthorized if one of the required signatures is
11 lacking.

12 (c) The civil or criminal liability of a person who
13 makes an unauthorized signature is not affected by any

14 provision of this article which makes the unauthorized
15 signature effective for the purposes of this article.

§46-3-404. Impostors; fictitious payees.

1 (a) If an impostor, by use of the mails or otherwise,
2 induces the issuer of an instrument to issue the
3 instrument to the impostor, or to a person acting in
4 concert with the impostor, by impersonating the payee
5 of the instrument or a person authorized to act for the
6 payee, an indorsement of the instrument by any person
7 in the name of the payee is effective as the indorsement
8 of the payee in favor of a person who, in good faith, pays
9 the instrument or takes it for value of for collection.

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

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

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

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

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

37 ordinary care to the extent the failure to exercise
38 ordinary care contributed to the loss.

**§46-3-405. Employer's responsibility for fraudulent
indorsement by employee.**

1 (a) In this section:

2 (1) "Employee" includes an independent contractor
3 and employee of an independent contractor retained by
4 the employer.

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

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

27 (b) For the purpose of determining the rights and
28 liabilities of a person who, in good faith, pays an
29 instrument or takes it for value or for collection, if an
30 employer entrusted an employee with responsibility
31 with respect to the instrument and the employee or a
32 person acting in concert with the employee makes a
33 fraudulent indorsement of the instrument, the indorse-
34 ment is effective as the indorsement of the person to
35 whom the instrument is payable if it is made in the

36 name of that person. If the person paying the instrument
37 or taking it for value or for collection fails to exercise
38 ordinary care in paying or taking the instrument and
39 that failure substantially contributes to loss resulting
40 from the fraud, the person bearing the loss may recover
41 from the person failing to exercise ordinary care to the
42 extent the failure to exercise ordinary care contributed
43 to the loss.

44 (c) Under subsection (b), an indorsement is made in
45 the name of the person to whom an instrument is
46 payable if (i) it is made in a name substantially similar
47 to the name of that person or (ii) the instrument,
48 whether or not indorsed, is deposited in a depository
49 bank to an account in a name substantially similar to
50 the name of that person.

**§46-3-406. Negligence contributing to forged signature
or alteration of instrument.**

1 (a) A person whose failure to exercise ordinary care
2 substantially contributes to an alteration of an instru-
3 ment or to the making of a forged signature on an
4 instrument is precluded from asserting the alteration or
5 the forgery against a person who, in good faith, pays the
6 instrument or takes it for value or for collection.

7 (b) Under subsection (a), if the person asserting the
8 preclusion fails to exercise ordinary care in paying or
9 taking the instrument and that failure substantially
10 contributes to loss, the loss is allocated between the
11 person precluded and the person asserting the preclu-
12 sion according to the extent to which the failure of each
13 to exercise ordinary care contributed to the loss.

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

§46-3-407. Alteration.

1 (a) "Alteration" means (i) an unauthorized change in
2 an instrument that purports to modify in any respect the
3 obligation of a party or (ii) an unauthorized addition of

4 words or numbers or other change to an incomplete
5 instrument relating to the obligation of a party.

6 (b) Except as provided in subsection (c), an alteration
7 fraudulently made discharges a party whose obligation
8 is affected by the alteration unless that party assents or
9 is precluded from asserting the alteration. No other
10 alteration discharges a party, and the instrument may
11 be enforced according to its original terms.

12 (c) A payor bank or drawee paying a fraudulently
13 altered instrument or a person taking it for value, in
14 good faith and without notice of the alteration, may
15 enforce rights with respect to the instrument (i)
16 according to its original terms or (ii) in the case of an
17 incomplete instrument altered by unauthorized comple-
18 tion, according to its terms as completed.

§46-3-408. Drawee not liable on unaccepted draft.

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

§46-3-409. Acceptance of draft; certified check.

1 (a) "Acceptance" means the drawee's signed agree-
2 ment to pay a draft as presented. It must be written on
3 the draft and may consist of the drawee's signature
4 alone. Acceptance may be made at any time and
5 becomes effective when notification pursuant to instruc-
6 tions is given or the accepted draft is delivered for the
7 purpose of giving rights on the acceptance to any person.

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

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

15 (d) "Certified check" means a check accepted by the
16 bank on which it is drawn. Acceptance may be made
17 as stated in subsection (a) or by a writing on the check

18 which indicates that the check is certified. The drawee
19 of a check has no obligation to certify the check, and
20 refusal to certify is not dishonor of the check.

§46-3-410. Acceptance varying draft.

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

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

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

**§46-3-411. Refusal to pay cashier's checks, teller's checks
and certified checks.**

1 (a) In this section, "obligated bank" means the
2 acceptor of a certified check or the issuer of a cashier's
3 check or teller's check bought from the issuer.

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

13 (c) Expenses or consequential damages under subsec-
14 tion (b) are not recoverable if the refusal of the obligated
15 bank to pay occurs because (i) the bank suspends
16 payments, (ii) the obligated bank asserts a claim or
17 defense of the bank that it has reasonable grounds to
18 believe is available against the person entitled to enforce
19 the instrument, (iii) the obligated bank has a reasonable
20 doubt whether the person demanding payment is the

21 person entitled to enforce the instrument or (iv) payment
22 is prohibited by law.

§46-3-412. Obligation of issuer of note or cashier's check.

1 The issuer of a note or cashier's check or other draft
2 drawn on the drawer is obliged to pay the instrument
3 (i) according to its terms at the time it was issued or,
4 if not issued, at the time it first came into possession of
5 a holder or (ii) if the issuer signed an incomplete
6 instrument, according to its terms when completed, to
7 the extent stated in sections 3-115 and 3-407. The
8 obligation is owed to a person entitled to enforce the
9 instrument or to an indorser who paid the instrument
10 under section 3-415.

§46-3-413. Obligation of acceptor.

1 (a) The acceptor of a draft is obliged to pay the draft
2 (i) according to its terms at the time it was accepted,
3 even though the acceptance states that the draft is
4 payable "as originally drawn" or equivalent terms, (ii)
5 if the acceptance varies the terms of the draft, according
6 to the terms of the draft as varied or (iii) if the
7 acceptance is of a draft that is an incomplete instru-
8 ment, according to its terms when completed, to the
9 extent stated in sections 3-115 and 3-407. The obligation
10 is owed to a person entitled to enforce the draft or to
11 the drawer or an indorser who paid the draft under
12 section 3-414 or 3-415.

13 (b) If the certification of a check or other acceptance
14 of a draft states the amount certified or accepted, the
15 obligation of the acceptor is that amount. If (i) the
16 certification or acceptance does not state an amount, (ii)
17 the amount of the instrument is subsequently raised and
18 (iii) the instrument is then negotiated to a holder in due
19 course, the obligation of the acceptor is the amount of
20 the instrument at the time it was taken by the holder
21 in due course.

§46-3-414. Obligation of drawer.

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

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

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

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

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

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

§46-3-415. Obligation of indorser.

1 (a) Subject to subsections (b), (c), (d) and (e), if an
2 instrument is dishonored, an indorser is obliged to pay
3 the amount due on the instrument (i) according to the
4 terms of the instrument at the time it was indorsed or

5 (ii) if the indorser indorsed an incomplete instrument,
6 according to its terms when completed, to the extent
7 stated in sections 3-115 and 3-407. The obligation of the
8 indorser is owed to a person entitled to enforce the
9 instrument or to a subsequent indorser who paid the
10 instrument under this section.

11 (b) If an indorsement states that it is made "without
12 recourse" or otherwise disclaims liability of the indorser,
13 the indorser is not liable under subsection (a) to pay the
14 instrument.

15 (c) If notice of dishonor of an instrument is required
16 by section 3-503 and notice of dishonor complying with
17 that section is not given to an indorser, the liability of
18 the indorser under subsection (a) is discharged.

19 (d) If a draft is accepted by a bank after an indor-
20 sement is made, the liability of the indorser under
21 subsection (a) is discharged.

22 (e) If an indorser of a check is liable under subsection
23 (a) and the check is not presented for payment, or given
24 to a depository bank for collection, within thirty days
25 after the day the indorsement was made, the liability of
26 the indorser under subsection (a) is discharged.

§46-3-416. Transfer warranties.

1 (a) A person who transfers an instrument for consid-
2 eration warrants to the transferee and, if the transfer
3 is by indorsement, to any subsequent transferee that:

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

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

8 (3) The instrument has not been altered;

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

12 (5) The warrantor has no knowledge of any insolvency
13 proceeding commenced with respect to the maker or
14 acceptor or, in the case of an unaccepted draft, the

15 drawer.

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

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

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

§46-3-417. Presentment warranties.

1 (a) If an unaccepted draft is presented to the drawee
2 for payment of acceptance and the drawee pays or
3 accepts the draft, (i) the person obtaining payment or
4 acceptance, at the time of presentment and (ii) a
5 previous transferor of the draft, at the time of transfer,
6 warrant to the drawee making payment or accepting the
7 draft in good faith that:

8 (1) The warrantor is, or was, at the time the warran-
9 tor transferred the draft, a person entitled to enforce the
10 draft or authorized to obtain payment or acceptance of
11 the draft on behalf of a person entitled to enforce the
12 draft;

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

14 (3) The warrantor has no knowledge that the signa-
15 ture of the drawer of the draft is unauthorized.

16 (b) A drawee making payment may recover from any
17 warrantor damages for breach of warranty equal to the
18 amount paid by the drawee less the amount the drawee

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

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

39 (d) If (i) a dishonored draft is presented for payment
40 to the drawer or an indorser or (ii) any other instrument
41 is presented for payment to a party obliged to pay the
42 instrument and (iii) payment is received, the following
43 rules apply:

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

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

55 (3) The warranties stated in subsections (a) and (d)
56 cannot be disclaimed with respect to checks. Unless
57 notice of a claim for breach of warranty is given to the
58 warrantor within thirty days after the claimant has

59 reason to know of the breach and the identity of the
60 warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss
61 caused by the delay in giving notice of the claim.
62

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

§46-3-418. Payment of acceptance by mistake.

1 (a) Except as provided in subsection (c), if the drawee
2 of a draft pays or accepts the draft and the drawee acted
3 on the mistaken belief that (i) payment of the draft had
4 not been stopped pursuant to section 4-403 or (ii) the
5 signature of the drawer of the draft was authorized, the
6 drawee may recover the amount of the draft from the
7 person to whom or for whose benefit payment was made
8 or, in the case of acceptance, may revoke the acceptance.
9 Rights of the drawee under this subsection are not
10 affected by failure of the drawee to exercise ordinary
11 care in paying or accepting the draft.

12 (b) Except as provided in subsection (c), if an instrument
13 has been paid or accepted by mistake and the case
14 is not covered by subsection (a), the person paying or
15 accepting may, to the extent permitted by the law
16 governing mistake and restitution, (i) recover the
17 payment from the person to whom or for whose benefit
18 payment was made or (ii) in the case of acceptance, may
19 revoke the acceptance.

20 (c) The remedies provided by subsection (a) or (b) may
21 not be asserted against a person who took the instrument
22 in good faith and for value or who in good faith
23 changed position in reliance on the payment or acceptance.
24 This subsection does not limit remedies provided
25 by section 3-417 or 4-407.

26 (d) Notwithstanding section 4-215, if an instrument is
27 paid or accepted by mistake and the payor or acceptor
28 recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been
29 paid or accepted and is treated as dishonored, and the
30

31 person from whom payment is recovered has rights as
32 a person entitled to enforce the dishonored instrument.

§46-3-419. Instruments signed for accommodation.

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

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

17 (c) A person signing an instrument is presumed to be
18 an accommodation party and there is notice that the
19 instrument is signed for accommodation if the signature
20 is an anomalous indorsement or is accompanied by
21 words indicating that the signer is acting as surety or
22 guarantor with respect to the obligation of another party
23 to the instrument. Except as provided in section 3-605,
24 the obligation of an accommodation party to pay the
25 instrument is not affected by the fact that the person
26 enforcing the obligation had notice when the instrument
27 was taken by that person that the accommodation party
28 signed the instrument for accommodation.

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

38 other party cannot be served with process or (iv) it is
39 otherwise apparent that payment cannot be obtained
40 from the other party.

41 (e) An accommodation party who pays the instrument
42 is entitled to reimbursement from the accommodated
43 party and is entitled to enforce the instrument against
44 the accommodated party. An accommodated party who
45 pays the instrument has no right of recourse against,
46 and is not entitled to contribution from, an accommo-
47 dation party.

§46-3-420. Conversion of instrument.

1 (a) The law applicable to conversion of personal
2 property applies to instruments. An instrument is also
3 converted if it is taken by the transfer, other than a
4 negotiation, from a person not entitled to enforce the
5 instrument or a bank makes or obtains payment with
6 respect to the instrument for a person not entitled to
7 enforce the instrument or receive payment. An action
8 for conversion of a instrument may not be brought by
9 (i) the issuer or acceptor of the instrument or (ii) a payee
10 or indorsee who did not receive delivery of the instru-
11 ment either directly or through delivery to an agent or
12 a copayee.

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

17 (c) A representative, other than a depository bank,
18 who has in good faith dealt with an instrument or its
19 proceeds on behalf of one who was not the person
20 entitled to enforce the instrument is not liable in
21 conversion to that person beyond the amount of any
22 proceeds that it has not paid out.

PART 5. DISHONOR.

§46-3-501. Presentment.

1 (a) "Presentment" means a demand made by or on
2 behalf of a person entitled to enforce an instrument (i)
3 to pay the instrument made to the drawee or a party

4 obliged to pay the instrument or, in the case of a note
5 or accepted draft payable at a bank, to the bank or (ii)
6 to accept a draft made to the drawee.

7 (b) The following rules are subject to article four,
8 agreement of the parties, and clearing-house rules and
9 the like:

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

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

27 (3) Without dishonoring the instrument, the party to
28 whom presentment is made may (i) return the instru-
29 ment for lack of a necessary indorsement or (ii) refuse
30 payment or acceptance for failure of the presentment to
31 comply with the terms of the instrument, an agreement
32 of the parties, or other applicable law or rule.

33 (4) The party to whom presentment is made may treat
34 presentment as occurring on the next business day after
35 the day of presentment if the party to whom present-
36 ment is made has established a cutoff hour not earlier
37 than two p.m. for the receipt and processing of instru-
38 ments presented for payment or acceptance and present-
39 ment is made after the cutoff hour.

§46-3-502. Dishonor.

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

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

6 (2) If the note is not payable on demand and is
7 payable at or through a bank or the terms of the note
8 require presentment, the note is dishonored if present-
9 ment is duly made and the note is not paid on the day
10 it becomes payable or the day of presentment, whichever
11 is later.

12 (3) If the note is not payable on demand and para-
13 graph (2) does not apply, the note is dishonored if it is
14 not paid on the day it becomes payable.

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

17 (1) If a check is duly presented for payment to the
18 payor bank otherwise than for immediate payment over
19 the counter, the check is dishonored if the payor bank
20 makes timely return of the check or sends timely notice
21 of dishonor or nonpayment under section 4-301 or 4-302,
22 or becomes accountable for the amount of the check
23 under section 4-302.

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

28 (3) If a draft is payable on a date stated in the draft,
29 the draft is dishonored if (i) presentment for payment
30 is duly made to the drawee and payment is not made
31 on the day the draft becomes payable or the day of
32 presentment, whichever is later or (ii) presentment for
33 acceptance is duly made before the day the draft
34 becomes payable and the draft is not accepted on the day
35 of presentment.

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

40 (c) Dishonor of an unaccepted documentary draft

41 occurs according to the rules stated in subsections (b)
42 (2), (3) and (4), except that payment or acceptance may
43 be delayed without dishonor until no later than the close
44 of the third business day of the drawee following the day
45 on which payment or acceptance is required by those
46 paragraphs.

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

49 (1) If the draft is payable on demand, the draft is
50 dishonored if presentment for payment is duly made to
51 the acceptor and the draft is not paid on the day of
52 presentment.

53 (2) If the draft is not payable on demand, the draft
54 is dishonored if presentment for payment is duly made
55 to the acceptor and payment is not made on the day it
56 becomes payable or the day of presentment, whichever
57 is later.

58 (e) In any case in which presentment is otherwise
59 required for dishonor under this section and present-
60 ment is excused under section 3-504, dishonor occurs
61 without presentment if the instrument is not duly
62 accepted or paid.

63 (f) If a draft is dishonored because timely acceptance
64 of the draft was not made and the person entitled to
65 demand acceptance consents to a late acceptance, from
66 the time of acceptance the draft is treated as never
67 having been dishonored.

§46-3-503. Notice of dishonor.

1 (a) The obligation of an indorser stated in section 3-
2 415(a) and the obligation of a drawer stated in section
3 3-414(d) may not be enforced unless (i) the indorser or
4 drawer is given notice of dishonor of the instrument
5 complying with this section or (ii) notice of dishonor is
6 excused under section 3-504(b).

7 (b) Notice of dishonor may be given by any person;
8 may be given by any commercially reasonable means,
9 including an oral, written or electronic communication;
10 and is sufficient if it reasonably identifies the instru-

11 ment and indicates that the instrument has been
12 dishonored or has not been paid or accepted. Return of
13 an instrument given to a bank for collection is sufficient
14 notice of dishonor.

15 (c) Subject to section 3-504(c), with respect to an
16 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
19 day on which the bank receives notice of dishonor of the
20 instrument or (ii) by any other person within thirty days
21 following the day on which the person receives notice of
22 dishonor. With respect to any other instrument, notice
23 of dishonor must be given within thirty days following
24 the day on which dishonor occurs.

§46-3-504. Excused presentment and notice of dishonor.

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

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

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

§46-3-505. Evidence of dishonor.

1 (a) The following are admissible as evidence and
2 create a presumption of dishonor and of any notice of
3 dishonor stated:

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

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

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

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

PART 6. DISCHARGE AND PAYMENT.

§46-3-601. Discharge and effect of discharge.

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

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

§46-3-602. Payment.

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

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

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

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

§46-3-603. Tender of payment.

1 (a) If tender of payment of an obligation to pay an
2 instrument is made to a person entitled to enforce the
3 instrument, the effect of tender is governed by princi-
4 ples of law applicable to tender of payment under a
5 simple contract.

6 (b) If tender of payment of an obligation to pay an
7 instrument is made to a person entitled to enforce the
8 instrument and the tender is refused, there is discharge,
9 to the extent of the amount of the tender, of the
10 obligation of an indorser or accommodation party
11 having a right of recourse with respect to the obligation
12 to which the tender relates.

13 (c) If tender of payment of an amount due on an
14 instrument is made to a person entitled to enforce the
15 instrument, the obligation of the obligor to pay interest
16 after the due date on the amount tendered is discharged.
17 If presentment is required with respect to an instrument
18 and the obligor is able and ready to pay on the due date
19 at every place of payment stated in the instrument, the
20 obligor is deemed to have made tender of payment on
21 the due date to the person entitled to enforce the
22 instrument.

§46-3-604. Discharged by cancellation or renunciation.

1 (a) A person entitled to enforce an instrument, with
2 or without consideration, may discharge the obligation
3 of a party to pay the instrument (i) by an intentional
4 voluntary act, such as surrender of the instrument to the
5 party, destruction, mutilation, or cancellation of the
6 instrument, cancellation or striking out of the party's
7 signature or the addition of words to the instrument
8 indicating discharge or (ii) by agreeing not to sue or
9 otherwise renouncing rights against the party by a
10 signed writing.

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

§46-3-605. Discharge of indorsers and accommodation parties.

1 (a) In this section, the term "indorser" includes a
2 drawer having the obligation described in section 3-
3 414(d).

4 (b) Discharge, under section 3-604, of the obligation
5 of a party to pay an instrument does not discharge the
6 obligation of an indorser or accommodation party
7 having a right of recourse against the discharge party.

8 (c) If a person entitled to enforce an instrument
9 agrees, with or without consideration, to an extension of
10 the due date of the obligation of a party to pay the
11 instrument, the extension discharges an indorser or
12 accommodation party having a right of recourse against
13 the party whose obligation is extended to the extent the

14 indorser or accommodation party proves that the
15 extension caused loss to the indorser or accommodation
16 party with respect to the right of recourse.

17 (d) If a person entitled to enforce an instrument
18 agrees, with or without consideration, to a material
19 modification of the obligation of a party other than an
20 extension of the due date, the modification discharges
21 the obligation of an indorser or accommodation party
22 having a right of recourse against the person whose
23 obligation is modified to the extent the modification
24 causes loss to the indorser or accommodation party with
25 respect to the right of recourse. The loss suffered by the
26 indorser or accommodation party as a result of the
27 modification is equal to the amount of the right of
28 recourse unless the person enforcing the instrument
29 proves that no loss was caused by the modification or
30 that the loss caused by the modification was an amount
31 less than the amount of the right of recourse.

32 (e) If the obligation of a party to pay an instrument
33 is secured by an interest in collateral and a person
34 entitled to enforce the instrument impairs the value of
35 the interest in collateral, the obligation of an indorser
36 or accommodation party having a right of recourse
37 against the obligor is discharged to the extent of the
38 impairment. The value of an interest in collateral is
39 impaired to the extent (i) the value of the interest is
40 reduced to an amount less than the amount of the right
41 of recourse of the party asserting discharge or (ii) the
42 reduction in value of the interest causes an increase in
43 the amount by which the amount of the right of recourse
44 exceeds the value of the interest. The burden of proving
45 impairment is on the party asserting discharge.

46 (f) If the obligation of a party is secured by an interest
47 in collateral not provided by an accommodation party
48 and a person entitled to enforce the instrument impairs
49 the value of the interest in collateral, the obligation of
50 any party who is jointly and severally liable with respect
51 to the secured obligation is discharged to the extent the
52 impairment causes the party asserting discharge to pay
53 more than that party would have been obliged to pay,
54 taking into account rights of contribution, if impairment

55 had not occurred. If the party asserting discharge is an
 56 accommodation party not entitled to discharge under
 57 subsection (e), the party is deemed to have a right to
 58 contribution based on joint and several liability rather
 59 than a right to reimbursement. The burden of proving
 60 impairment is on the party asserting discharge.

61 (g) Under subsection (e) or (f), impairing value of an
 62 interest in collateral includes (i) failure to obtain or
 63 maintain perfection or recordation of the interest in
 64 collateral, (ii) release of collateral without substitution
 65 of collateral of equal value, (iii) failure to perform a duty
 66 to preserve the value of collateral owed, under article
 67 nine or other law, to a debtor or surety or other person
 68 secondarily liable or (iv) failure to comply with appli-
 69 cable law in disposing of collateral.

70 (h) An accommodation party is not discharged under
 71 subsection (c), (d) or (e) unless the person entitled to
 72 enforce the instrument knows of the accommodation or
 73 has notice under section 3-419 (c) that the instrument
 74 was signed for accommodation.

75 (i) A party is not discharged under this section if (i)
 76 the party asserting discharge consents to the event or
 77 conduct that is the basis of the discharge or (ii) the
 78 instrument or a separate agreement of the party
 79 provides for waiver if discharge under this section
 80 either specifically or by general language indicating
 81 that parties waive defenses based on suretyship or
 82 impairment of collateral.

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

§46-4-101. Short title.

PART 1. GENERAL PROVISIONS AND DEFINITIONS.

1 This article may be cited as Uniform Commercial
 2 Code — Bank Deposits and Collections.

§46-4-102. Applicability.

1 (a) To the extent that items within this article are also
 2 within articles three and eight, they are subject to those
 3 articles. If there is conflict, this article governs article
 4 three but article eight governs this article.

5 (b) The liability of a bank for action or nonaction with
6 respect to an item handled by it for purposes of
7 presentment, payment or collection is governed by the
8 law of the place where the bank is located. In the case
9 of action or nonaction by or at a branch or separate
10 office of a bank, its liability is governed by the law of
11 the place where the branch or separate office is located.

**§46-4-103. Variation by agreement; measure of damages;
action constituting ordinary care.**

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

9 (b) Federal reserve regulations and operating circu-
10 lars, clearing-house rules, and the like, have the effect
11 of agreements under subsection (a), whether or not
12 specifically assented to by all parties interested in items
13 handled.

14 (c) Action or nonaction approved by this article or
15 pursuant to federal reserve regulations or operating
16 circulars is the exercise of ordinary care and, in the
17 absence of special instructions, action or nonaction
18 consistent with clearing-house rules and the like or with
19 a general banking usage not disapproved by this article,
20 is prima facie the exercise of ordinary care.

21 (d) The specification or approval of certain procedures
22 by this article is not disapproval of other procedures
23 that may be reasonable under the circumstances.

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

§46-4-104. Definitions and index of definitions.

1 (a) In this article unless the context otherwise
2 requires:

3 (1) "Account" means any deposit or credit account
4 with a bank, including demand, time, savings, passbook,
5 share draft, or like account, other than an account
6 evidenced by a certificate of deposit;

7 (2) "Afternoon" means the period of a day between
8 noon and midnight;

9 (3) "Banking day" means the part of a day on which
10 a bank is open to the public for carrying on substantially
11 all of its banking functions;

12 (4) "Clearinghouse" means an association of banks or
13 other payors regularly clearing items;

14 (5) "Customer" means a person having an account with
15 a bank or for whom a bank has agreed to collect items,
16 including a bank that maintains an account at another
17 bank;

18 (6) "Documentary draft" means a draft to be presented
19 for acceptance or payment if specified documents,
20 certificated securities (section 8-102) or instructions for
21 uncertificated securities (section 8-308), or other
22 certificates, statements, or the like are to be received by
23 the drawee or other payor before acceptance or payment
24 of the draft;

25 (7) "Draft" means a draft as defined in section 3-104
26 or an item, other than an instrument, that is an order;

27 (8) "Drawee" means a person ordered in a draft to
28 make payment;

29 (9) "Item" means an instrument or a promise or order
30 to pay money handled by a bank for collection or
31 payment. The term does not include a payment order
32 governed by article four-a or a credit or debit card slip;

33 (10) "Midnight deadline" with respect to a bank is
34 midnight on its next banking day following the banking
35 day on which it receives the relevant item or notice or
36 from which the time for taking action commences to
37 run, whichever is later;

38 (11) "Settle" means to pay in cash, by clearing-house
39 settlement, in a charge or credit or by remittance, or
40 otherwise as agreed. A settlement may be either
41 provisional or final;

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

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

49 "Agreement for electronic	
50 presentment"	Section 4-110.
51 "Bank"	Section 4-105.
52 "Collecting bank"	Section 4-105.
53 "Depository bank"	Section 4-105.
54 "Intermediary bank"	Section 4-105.
55 "Payor bank"	Section 4-105.
56 "Presenting bank"	Section 4-105.
57 "Presentment notice"	Section 4-110.

58 (c) The following definitions in other articles of this
59 chapter apply to this article:

60 "Acceptance"	Section 3-409.
61 "Alteration"	Section 3-407.
62 "Cashier's check"	Section 3-104.
63 "Certificate of deposit"	Section 3-104.
64 "Certified check"	Section 3-409.
65 "Check"	Section 3-104.
66 "Draft"	Section 3-104.
67 "Good faith"	Section 3-103.
68 "Holder in due course"	Section 3-302.

69	“Instrument”	Section 3-104.
70	“Notice of dishonor”	Section 3-503.
71	“Order”	Section 3-103.
72	“Ordinary care”	Section 3-103.
73	“Person entitled to enforce”	Section 3-301.
74	“Presentment”	Section 3-501.
75	“Promise”	Section 3-103.
76	“Prove”	Section 3-103.
77	“Teller’s check”	Section 3-104.
78	“Unauthorized signature”	Section 3-403.

79 (d) In addition article one contains general definitions
 80 and principles of construction and interpretation
 81 applicable throughout this article.

§46-4-105. “Bank”; “depository bank”; “intermediary bank”; “collecting bank”; “payor bank”; “presenting bank.”

1 In this article:

2 (1) “Bank” means a person engaged in the business of
 3 banking, including a savings bank, savings and loan
 4 association, credit union or trust company;

5 (2) “Depository bank” means the first bank to take an
 6 item even though it is also the payor bank unless the
 7 item is presented for immediate payment over the
 8 counter;

9 (3) “Payor bank” means a bank that is the drawee of
 10 a draft;

11 (4) “Intermediary bank” means a bank to which an
 12 item is transferred in course of collection except the
 13 depository or payor bank;

14 (5) “Collecting bank” means a bank handling an item
 15 for collection except the payor bank;

16 (6) “Presenting bank” means a bank presenting an
 17 item except a payor bank.

§46-4-106. Payable through or payable at bank; collecting bank.

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

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

11 (c) If a draft names a nonbank drawee and it is
12 unclear whether a bank named in the draft is a co-
13 drawee or a collecting bank, the bank is a collecting
14 bank.

§46-4-107. Separate office of a bank.

1 A branch or separate office of a bank is a separate
2 bank for the purpose of computing the time within
3 which and determining the place at or to which action
4 may be taken or notices or orders must be given under
5 this article and under article three.

§46-4-108. Time of receipt of items.

1 (a) For the purpose of allowing time to process items,
2 prove balances and make the necessary entries on its
3 books to determine its position for the day, a bank may
4 fix an afternoon hour of two p.m. or later as a cutoff
5 hour for the handling of money and items and the
6 making of entries on its books.

7 (b) An item or deposit of money received on any day
8 after a cutoff hour so fixed or after the close of the
9 banking day may be treated as being received at the
10 opening of the next banking day.

§46-4-109. Delays.

1 (a) Unless otherwise instructed, a collecting bank in
2 a good faith effort to secure payment of a specific item
3 drawn on a payor other than a bank, and with or

4 without the approval of any person involved, may waive,
5 modify or extend time limits imposed or permitted by
6 this chapter for a period not exceeding two additional
7 banking days without discharge of drawers or indorsers
8 or liability to its transferor or a prior party.

9 (b) Delay by a collecting bank or payor bank beyond
10 time limits prescribed or permitted by this chapter or
11 by instruction is excused if (i) the delay is caused by
12 interruption of communication or computer facilities,
13 suspension of payments by another bank, war, emer-
14 gency conditions, failure of equipment or other circum-
15 stances beyond the control of the bank and (ii) the bank
16 exercises such diligence as the circumstances require.

§46-4-110. Electronic presentment.

1 (a) "Agreement for electronic presentment" means an
2 agreement, clearing-house rule or federal reserve
3 regulation or operating circular, providing that present-
4 ment of an item may be made by transmission of an
5 image of an item or information describing the item
6 ("presentment notice") rather than delivery of the item
7 itself. The agreement may provide for procedures
8 governing retention, presentment, payment, dishonor
9 and other matters concerning items subject to the
10 agreement.

11 (b) Presentment of an item pursuant to an agreement
12 for presentment is made when the presentment notice
13 is received.

14 (c) If presentment is made by presentment notice, a
15 reference to "item" or "check" in this article means the
16 presentment notice unless the context otherwise indi-
17 cates.

§46-4-111. Statute of limitations.

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

PART 2. COLLECTION OF ITEMS: DEPOSITARY AND
COLLECTING BANKS.

**§46-4-201. Status of collecting banks as agent and
provisional status of credits; applicability of
article; item indorsed "pay any bank."**

1 (a) Unless a contrary intent clearly appears and
2 before the time that a settlement given by a collecting
3 bank for an item is or becomes final, the bank, with
4 respect to the item, is an agent or subagent of the owner
5 of the item and any settlement given for the item is
6 provisional. This provision applies regardless of the
7 form of indorsement or lack of indorsement and even
8 though credit given for the item is subject to immediate
9 withdrawal as of right or is in fact withdrawn; but the
10 continuance of ownership of an item by its owner and
11 any rights of the owner to proceeds of the item are
12 subject to rights of a collecting bank, such as those
13 resulting from outstanding advances on the item and
14 rights of recoupment setoff. If an item is handled by
15 banks for purposes of presentment, payment, collection
16 or return, the relevant provisions of this article apply
17 even though action of the parties clearly establishes that
18 a particular bank has purchased the item and is the
19 owner of it.

20 (b) After an item has been indorsed with the words
21 "pay any bank" or the like, only a bank may acquire the
22 rights of a holder until the item has been:

23 (1) Returned to the customer initiating collection; or

24 (2) Specially indorsed by a bank to a person who is
25 not a bank.

**§46-4-202. Responsibility for collection or return; when
action timely.**

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

2 (1) Presenting an item or sending it for presentment;

3 (2) Sending notice of dishonor or nonpayment or
4 returning an item other than a documentary draft to the
5 bank's transferor after learning that the item has not
6 been paid or accepted, as the case may be;

7 (3) Settling for an item when the bank receives final
8 settlement; and

9 (4) Notifying its transferor of any loss or delay in
10 transit within a reasonable time after discovery thereof.

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

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

§46-4-203. Effect of instructions.

1 Subject to article three concerning conversion of
2 instruments (section 3-420) and restrictive indorsements
3 (section 3-206), only a collecting bank's transferor can
4 give instructions that affect the bank or constitute notice
5 to it and a collecting bank is not liable to prior parties
6 for any action taken pursuant to the instructions or in
7 accordance with any agreement with its transferor.

§46-4-204. Methods of sending and presenting; sending directly to payor bank.

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

7 (b) A collecting bank may send:

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

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

11 (3) An item other than documentary drafts to a
12 nonbank payor, if authorized by federal reserve regu-
13 lation or operating circular, clearing-house, rule or the
14 like.

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

§46-4-205. Depository bank holder of unindorsed item.

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

3 (1) The depository bank becomes a holder of the item
4 at the time it receives the item for collection if the
5 customer at the time of delivery was a holder of the
6 item, whether or not the customer indorses the item,
7 and, if the bank satisfies the other requirements of
8 section 3-302, it is a holder in due course; and

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

§46-4-206. Transfer between banks.

1 Any agreed method that identifies the transferor bank
2 is sufficient for the item's further transfer to another
3 bank.

§46-4-207. Transfer warranties.

1 (a) A customer or collecting bank that transfers an
2 item and receives a settlement or other consideration
3 warrants to the transferee and to any subsequent
4 collecting bank that:

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

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

9 (3) The item has not been altered;

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

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

17 (b) If an item is dishonored, a customer or collecting
18 bank transferring the item and receiving settlement or
19 other consideration is obliged to pay the amount due on
20 the item (i) according to the terms of the item at the
21 time it was transferred or (ii) if the transfer was of an
22 incomplete item, according to its terms when completed
23 as stated in sections 3-115 and 3-407. The obligation of
24 a transferor is owed to the transferee and to any
25 subsequent collecting bank that takes the item in good
26 faith. A transferor cannot disclaim its obligation under
27 this subsection by an indorsement stating that it is made
28 "without recourse" or otherwise disclaiming liability.

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

36 (d) The warranties stated in subsection (a) cannot be
37 disclaimed with respect to checks. Unless notice of a
38 claim for breach of warranty is given to the warrantor
39 within thirty days after the claimant has reason to know
40 of the breach and the identity of the warrantor, the
41 warrantor is discharged to the extent of any loss caused
42 by the delay in giving notice of the claim.

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

§46-4-208. Presentment warranties.

1 (a) If an unaccepted draft is presented to the drawee
2 for payment or acceptance and the drawee pays or
3 accepts the draft, (i) the person obtaining payment or
4 acceptance, at the time of presentment and (ii) a
5 previous transferor of the draft, at the time of transfer,
6 warrant to the drawee that pays or accepts the draft in
7 good faith that:

8 (1) The warrantor is, or was, at the time the warrantor
9 transferred the draft, a person entitled to enforce the

10 draft or authorized to obtain payment or acceptance of
11 the draft on behalf of a person entitled to endorse the
12 draft;

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

14 (3) The warrantor has no knowledge that the signa-
15 ture of the purported drawer of the draft is
16 unauthorized.

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

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

40 (d) If, (i) a dishonored draft is presented for payment
41 to the drawer or an indorser or (ii) any other item is
42 presented for payment to a party obliged to pay the
43 item, and the item is paid, the person obtaining payment
44 and a prior transferor of the item warrant to the person
45 making payment in good faith that the warrantor is, or
46 was, at the time the warrantor transferred the item, a
47 person entitled to enforce the item or authorized to
48 obtain payment on behalf of a person entitled to enforce
49 the item. The person making payment may recover from

50 any warrantor for breach of warranty an amount equal
51 to the amount paid plus expenses and loss of interest
52 resulting from the breach.

53 (e) The warranties stated in subsections (a) and (d)
54 cannot be disclaimed with respect to checks. Unless
55 notice of a claim for breach of warranty is given to the
56 warrantor within thirty days after the claimant has
57 reason to know of the breach and the identity of the
58 warrantor, the warrantor is discharged to the extent of
59 any loss caused by the delay in giving notice of the
60 claim.

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

§46-4-209. Encoding and retention warranties.

1 (a) A person who encodes information on or with
2 respect to an item after issue warrants to any subse-
3 quent collecting bank and to the payor bank or other
4 payor that the information is correctly encoded. If the
5 customer of a depository bank encodes, that bank also
6 makes the warranty.

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

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

**§46-4-210. Security interest of collecting bank in items,
accompanying documents and proceeds.**

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

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

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

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

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

18 (c) Receipt by a collecting bank of a final settlement
19 for an item is a realization on its security interest in the
20 item, accompanying documents and proceeds. So long as
21 the bank does not receive final settlement for the item
22 or give up possession of the item or accompanying
23 documents for purposes other than collection, the
24 security interest continues to that extent and is subject
25 to article nine but:

26 (1) No security agreement is necessary to make the
27 security interest enforceable (section 9-203 (1)(a));

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

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

**§46-4-211. When bank gives value for purposes of holder
in due course.**

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

§46-4-212. Presentment by notice of item not payable by, through or at a bank; liability of drawer or indorser.

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

10 (b) If presentment is made by notice and payment,
11 acceptance, or request for compliance with a require-
12 ment under section 3-501 is not received by the close of
13 business on the day after maturity or in the case of
14 demand items by the close of business on the third
15 banking day after notice was sent, the presenting bank
16 may treat the item as dishonored and charge any
17 drawer or indorser by sending it notice of the facts.

§46-4-213. Medium and time of settlement by bank.

1 (a) With respect to settlement by a bank, the medium
2 and time of settlement may be prescribed by federal
3 reserve regulations or circulars, clearing-house rules,
4 and the like, or agreement. In the absence of such
5 prescription:

6 (1) The medium of settlement is cash or credit to an
7 account in a federal reserve bank of or specified by the
8 person to receive settlement; and

9 (2) The time of settlement is:

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

13 (ii) With respect to tender of settlement by credit in
14 an account in a federal reserve bank, when the credit
15 is made;

16 (iii) With respect to tender of settlement by a credit
17 or debit to an account in a bank, when the credit or debit

18 is made or, in the case of tender of settlement by
19 authority to charge an account, when the authority is
20 sent or delivered; or

21 (iv) With respect to tender of settlement by a funds
22 transfer, when payment is made pursuant to section 4A-
23 406(a) to the person receiving settlement.

24 (b) If the tender of settlement is not by a medium
25 authorized by subsection (a) or the time of settlement is
26 not fixed by subsection (a), no settlement occurs until the
27 tender of settlement is accepted by the person receiving
28 settlement.

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

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

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

37 (d) If settlement for an item is made by giving
38 authority to charge the account of the bank giving
39 settlement in the bank receiving settlement, settlement
40 is final when the charge is made by the bank receiving
41 settlement if there are funds available in the account for
42 the amount of the item.

**§46-4-214. Right of charge-back or refund; liability of
collecting bank; return of item.**

1 (a) If a collecting bank has made provisional settle-
2 ment with its customer for an item and fails by reason
3 of dishonor, suspension of payments by a bank or
4 otherwise to receive settlement for the item which is or
5 becomes final, the bank may revoke the settlement given
6 by it, charge back the amount of any credit given for
7 the item to its customer's account or obtain refund from
8 its customer whether or not it is able to return the item
9 if by its midnight deadline or within a longer reasonable
10 time after it learns the facts it returns the item or sends
11 notification of the facts. If the return or notice is delayed

12 beyond the bank's midnight deadline or a longer
13 reasonable time after it learns the facts, the bank may
14 revoke the settlement, charge back the credit, or obtain
15 refund from its customer, but it is liable for any loss
16 resulting from the delay. These rights to revoke, charge-
17 back and obtain refund terminate if and when a
18 settlement for the item received by the bank is or
19 becomes final.

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

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

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

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

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

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

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

**§46-4-215. Final payment of item by payor bank; when
provisional debits and credits become final;
when certain credits become available for
withdrawal.**

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

3 (1) Paid the item in cash;

4 (2) Settled for the item without having a right to
5 revoke the settlement under statute, clearing-house rule
6 or agreement; or

7 (3) Made a provisional settlement for the item and
8 failed to revoke the settlement in the time and manner
9 permitted by statute, clearing-house rule or agreement.

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

12 (c) If provisional settlement for an item between the
13 presenting and payor banks is made through a clearing-
14 house or by debits or credits in an account between
15 them, then to the extent that provisional debits or
16 credits for the item are entered in accounts between the
17 presenting and payor banks or between the presenting
18 and successive prior collecting banks seriatim, they
19 become final upon final payment of the item by the
20 payor bank.

21 (d) If a collecting bank receives a settlement for an
22 item which is or becomes final, the bank is accountable
23 to its customer for the amount of the item and any
24 provisional credit given for the item in an account with
25 its customer becomes final.

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

31 (1) If the bank has received the provisional settlement
32 for the item, when the settlement becomes final and the
33 bank has had a reasonable time to receive return of the
34 item and the item has not been received within that
35 time;

36 (2) If the bank is both the depository bank and the
37 payor bank and the item is finally paid, at the opening
38 of the bank's second banking day following receipt of the
39 item.

40 (f) Subject to applicable law stating a time for
41 availability of funds and any right of a bank to apply

42 a deposit to an obligation of the depositor, a deposit of
43 money becomes available for withdrawal as of right at
44 the opening of the bank's next banking day after receipt
45 of the deposit.

§46-4-216. Insolvency and preference.

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

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

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

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

**§46-4-301. Deferred posting; recovery of payment by
return of items; time of dishonor; return of
items by payor bank.**

1 (a) If a payor bank settles for a demand item (other
2 than a documentary draft) presented otherwise than for
3 immediate payment over the counter before midnight of
4 the banking day of receipt, the payor bank may revoke
5 the settlement and recover the settlement if, before it
6 has made final payment and before its midnight
7 deadline it:

8 (1) Returns the item; or

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

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

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

21 (d) An item is returned:

22 (1) As to an item presented through a clearing-house,
23 when it is delivered to the presenting or last collecting
24 bank or to the clearing-house or is sent or delivered in
25 accordance with clearing-house rules; or

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

**§46-4-302. Payor bank's responsibility for late return of
item.**

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

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

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

14 (b) The liability of a payor bank to pay an item
15 pursuant to subsection (a) is subject to defenses based

16 on breach of a presentment warranty (section 4-208) or
17 proof that the person seeking enforcement of the
18 liability presented or transferred the item for the
19 purpose of defrauding the payor bank.

§46-4-303. When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified.

1 (a) Any knowledge, notice, or stop-payment order
2 received by, legal process served upon, or setoff
3 exercised by a payor bank comes too late to terminate,
4 suspend, or modify the bank's right or duty to pay an
5 item or to charge its customer's account for the item if
6 the knowledge, notice, stop-payment order, or legal
7 process is received or served and a reasonable time for
8 the bank to act thereon expires or the setoff is exercised
9 after the earliest of the following:

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

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

12 (3) The bank settles for the item without having a
13 right to revoke the settlement under statute, clearing-
14 house rule or agreement;

15 (4) The bank becomes accountable for the amount of
16 the item under section 4-302 dealing with the payor
17 bank's responsibility for late return of items; or

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

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

PART 4. RELATIONSHIP BETWEEN PAYOR
BANK AND ITS CUSTOMER.

§46-4-401. When bank may charge customer's account.

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

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

10 (c) A bank may charge against the account of a
11 customer a check that is otherwise properly payable
12 from the account, even though payment was made
13 before the date of the check, unless the customer has
14 given notice to the bank of the postdating describing the
15 check with reasonable certainty. The notice is effective
16 for the period stated in section 4-403(b) for stop-payment
17 orders, and must be received at such time and in such
18 manner as to afford the bank a reasonable opportunity
19 to act on it before the bank takes any action with respect
20 to the check described in section 4-303. A bank shall
21 accept nine such notices each year for each account
22 without charge for acceptance of the notice or monitor-
23 ing for the postdated check. If a bank charges against
24 the account of a customer a check before the date stated
25 in the notice of postdating, the bank is liable for
26 damages for the loss resulting from its act. The loss may
27 include damages for dishonor of subsequent items under
28 section 4-402.

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

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

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

§46-4-402. Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account.

1 (a) Except as otherwise provided in this article, a
2 payor bank wrongfully dishonors an item if it dishonors
3 an item that is properly payable, but a bank may
4 dishonor an item that would create an overdraft unless
5 it has agreed to pay the overdraft.

6 (b) A payor bank is liable to its customer for damages
7 proximately caused by the wrongful dishonor of an item.
8 Liability is limited to actual damages proved and may
9 include damages for an arrest or prosecution of the
10 customer or other consequential damages. Whether any
11 consequential damages are proximately caused by the
12 wrongful dishonor is a question of fact to be determined
13 in each case.

14 (c) A payor bank's determination of the customer's
15 account balance on which a decision to dishonor for
16 insufficiency of available funds is based may be made
17 at any time between the time the item is received by
18 the payor bank and the time that the payor bank returns
19 the item or gives notice in lieu of return, and no more
20 than one determination need be made. If, at the election
21 of the payor bank, a subsequent balance determination
22 is made for the purpose of reevaluating the bank's
23 decision to dishonor the item, the account balance at that
24 time is determinative of whether a dishonor for insuf-
25 ficiency of available funds is wrongful.

§46-4-403. Customer's right to stop payment; burden of proof of loss.

1 (a) A customer or any person authorized to draw on
2 the account if there is more than one person may stop
3 payment of any item drawn on the customer's account
4 or close the account by an order to the bank describing
5 the item or account with reasonable certainty received
6 at a time and in a manner that affords the bank a
7 reasonable opportunity to act on it before any action by
8 the bank with respect to the item described in section
9 4-303. If the signature of more than one person is

10 required to draw on an account, any of these persons
11 may stop payment or close the account.

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

19 (c) The burden of establishing the fact and amount of
20 loss resulting from the payment of an item contrary to
21 a stop-payment order or order to close an account is on
22 the customer. The loss from payment of an item
23 contrary to a stop-payment order may include damages
24 for dishonor of subsequent items under section 4-402.

§46-4-404. Bank not obligated to pay check more than six months old.

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

§46-4-405. Death or incompetence of customer.

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

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

§46-4-406. Customer's duty to discover and report unauthorized signature or alteration.

1 (a) A bank that sends or makes available to a customer
2 a statement of account showing payment of items for the
3 account shall either return or make available to the
4 customer the items paid or provide information in the
5 statement of account sufficient to allow the customer
6 reasonably to identify the items paid. The statement of
7 account provides sufficient information if the item is
8 described by item number, amount, and date of
9 payment.

10 (b) If the items are not returned to the customer, the
11 person retaining the items shall either retain the items
12 or, if the items are destroyed, maintain the capacity to
13 furnish legible copies of the items until the expiration
14 of seven years after receipt of the items. A customer
15 may request an item from the bank that paid the item,
16 and that bank must provide in a reasonable time either
17 the item or, if the item has been destroyed or is not
18 otherwise obtainable, a legible copy of the item.

19 (c) If a bank sends or makes available a statement of
20 account or items pursuant to subsection (a), the custo-
21 mer must exercise reasonable promptness in examining
22 the statement or the items to determine whether any
23 payment was not authorized because of an alteration of
24 an item or because a purported signature by or on
25 behalf of the customer was not authorized. If, based on
26 the statement or items provided, the customer should
27 reasonably have discovered the unauthorized payment,
28 the customer must promptly notify the bank of the
29 relevant facts.

30 (d) If the bank proves that the customer failed with
31 respect to an item to comply with the duties imposed on
32 the customer by subsection (c), the customer is pre-
33 cluded from asserting against the bank:

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

37 (2) The customer's unauthorized signature or altera-
38 tion by the same wrongdoer on any other item paid in

39 good faith by the bank if the payment was made before
40 the bank received notice from the customer of the
41 unauthorized signature or alteration and after the
42 customer had been afforded a reasonable period of time,
43 not exceeding thirty days, in which to examine the item
44 or statement of account and notify the bank.

45 (e) If subsection (d) applies and the customer proves
46 that the bank failed to exercise ordinary care in paying
47 the item and that the failure substantially contributed
48 to loss, the loss is allocated between the customer
49 precluded and the bank asserting the preclusion
50 according to the extent to which the failure of the
51 customer to comply with subsection (c) and the failure
52 of the bank to exercise ordinary care contributed to the
53 loss. If the customer proves that the bank did not pay
54 the item in good faith, the preclusion under subsection
55 (d) does not apply.

56 (f) Without regard to care or lack of care of either the
57 customer or the bank, a customer who does not within
58 one year after the statement or items are made available
59 to the customer (subsection (a)) discover and report the
60 customer's unauthorized signature on or any alteration
61 on the item is precluded from asserting against the bank
62 the unauthorized signature or alteration. If there is a
63 preclusion under this subsection, the payor bank may
64 not recover for breach of warranty under section 4-208
65 with respect to the unauthorized signature or alteration
66 to which the preclusion applies.

67 (g) A bank shall offer at least one account, at a
68 reasonable charge, that provides for the return to the
69 customer of all items or legible copies of all items. With
70 respect to accounts which do not provide for the return
71 of all items or legible copies of all items, a bank must
72 provide eighteen items, or legible copies of eighteen
73 items, in accord with subsection (b) of this section, per
74 year, per account, without charge to the customer.
75 Where a bank returns a copy to the customer, the copy
76 together with a copy of the bank's statement showing
77 payment of the item shall be prima facie evidence of
78 payment.

§46-4-407. Payor bank's right to subrogation on improper payment.

1 If a payor bank has paid an item over the order of
2 the drawer or maker to stop payment, or after an
3 account has been closed, or otherwise under circumstan-
4 ces giving a basis for objection by the drawer or maker,
5 to prevent unjust enrichment and only to the extent
6 necessary to prevent loss to the bank by reason of its
7 payment of the item, the payor bank is subrogated to
8 the rights:

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

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

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

PART 5. COLLECTION OF DOCUMENTARY DRAFTS.

§46-4-501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.

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

§46-4-502. Presentment of "on arrival" drafts.

1 If a draft or the relevant instructions require present-
2 ment "on arrival," "when goods arrive" or the like, the
3 collecting bank need not present until in its judgment
4 a reasonable time for arrival of the goods has expired.
5 Refusal to pay or accept because the goods have not
6 arrived is not dishonor; the bank must notify its
7 transferor of the refusal but need not present the draft
8 again until it is instructed to do so or learns of the
9 arrival of the goods.

§46-4-503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.

1 Unless otherwise instructed and except as provided in
2 article five a bank presenting a documentary draft:

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

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

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

§46-4-504. Privilege of presenting bank to deal with goods; security interest for expenses.

1 (a) A presenting bank that, following the dishonor of
2 a documentary draft, has seasonably requested instruc-
3 tions but does not receive them within a reasonable time
4 may store, sell, or otherwise deal with the goods in any
5 reasonable manner.

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

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

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

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

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker of the House of Delegates

The within is approved this the 10th
day of May, 1993.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

4/23/93

Time

11:31 am