

Part 4

Relationship Between Payor Bank and Its Customer

70A-4-401 When bank may charge customer's account.

- (1) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.
- (2) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.
- (3) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in Section 70A-4-403 for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in Section 70A-4-303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under Section 70A-4-402.
- (4) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:
 - (a) the original terms of the altered item; or
 - (b) the terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

Amended by Chapter 237, 1993 General Session

70A-4-402 Bank's liability to customer for wrongful dishonor -- Time of determining insufficiency of account.

- (1) Except as otherwise provided in this chapter, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.
- (2) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.
- (3) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

Amended by Chapter 237, 1993 General Session

70A-4-403 Customer's right to stop-payment -- Burden of proof of loss.

- (1) A customer or any person authorized to draw on the account if there is more than one person, may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 70A-4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.
- (2) A stop-payment order is effective for six months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.
- (3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items and Section 70A-4-402.

Amended by Chapter 237, 1993 General Session

70A-4-404 Bank not obligated to pay check more than six months old.

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

Enacted by Chapter 154, 1965 General Session

70A-4-405 Death or incompetence of customer.

- (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.
- (2) Even with knowledge, a bank may for 10 days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account, and Subsection 70A-4-403(2) shall not be applicable to the stop payment order of such person.

Amended by Chapter 237, 1993 General Session

70A-4-406 Customer's duty to discover and report unauthorized signature or alteration.

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

- (2) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item, or if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.
- (3) If a bank sends or makes available a statement of account or items pursuant to Subsection (1), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.
- (4) If the bank proves that the customer failed with respect to an item, to comply with the duties imposed on the customer by Subsection (3), the customer is precluded from asserting against the bank:
 - (a) the customer's unauthorized signature or any alteration on the item if the bank also proves that it suffered a loss by reason of the failure; and
 - (b) the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.
- (5) If Subsection (4) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with Subsection (3) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under Subsection (4) does not apply.
- (6) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer, Subsection (1), discover and report the customer's unauthorized signature or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under Section 70A-4-207 with respect to the unauthorized signature or alteration to which the preclusion applies.

Amended by Chapter 237, 1993 General Session

70A-4-407 Payor bank's right to subrogation on improper payment.

If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights:

- (1) of any holder in due course on the item against the drawer or maker;
- (2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and
- (3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

Amended by Chapter 237, 1993 General Session