

## Part 2

### Collection of Items - Depository and Collecting Banks

#### **70A-4-201 Status of collecting bank as agent and provisional status of credits -- Applicability of chapter -- Item indorsed "pay any bank."**

- (1) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this chapter apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.
- (2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:
  - (a) returned to the customer initiating collection; or
  - (b) specially indorsed by a bank to a person who is not a bank.

Amended by Chapter 237, 1993 General Session

#### **70A-4-202 Responsibility for collection or return -- When action timely.**

- (1) A collecting bank must exercise ordinary care in:
  - (a) presenting an item or sending it for presentment;
  - (b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;
  - (c) settling for an item when the bank receives final settlement; and
  - (d) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.
- (2) A collecting bank exercises ordinary care under Subsection (1) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timelines.
- (3) Subject to Subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

Amended by Chapter 237, 1993 General Session

#### **70A-4-203 Effect of instructions.**

Subject to Title 70A, Chapter 3, Uniform Commercial Code - Negotiable Instruments, concerning conversion of instruments, Section 70A-3-420, and restrictive indorsements only, Section 70A-3-206, a collecting bank's transferor can give instructions that affect the bank or

constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

Amended by Chapter 12, 1994 General Session

**70A-4-204 Methods of sending and presenting -- Sending directly to payor bank.**

- (1) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.
- (2) A collecting bank may send:
  - (a) an item directly to the payor bank;
  - (b) an item to a nonbank payor if authorized by its transferor; and
  - (c) an item other than documentary drafts to a nonbank payor, if authorized by Federal Reserve regulation or operating circular, clearinghouse rule, or the like.
- (3) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

Amended by Chapter 237, 1993 General Session

**70A-4-205 Depository bank holder of unindorsed item.**

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

- (1) the depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of Section 70A-3-302, it is a holder in due course; and
- (2) the depository bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-4-206 Transfer between banks.**

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

Amended by Chapter 237, 1993 General Session

**70A-4-207 Transfer warranties.**

- (1) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:
  - (a) the warrantor is a person entitled to enforce the item;
  - (b) all signatures on the item are authentic and authorized;
  - (c) the item has not been altered;
  - (d) the item is not subject to a defense or claim in recoupment, Section 70A-3-305, of any party that can be asserted against the warrantor;
  - (e) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and
  - (f) if the item is a demand draft, creation of the item according to the terms on its face was authorized by the person identified as drawer.

- (2) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item according to the terms of the item at the time it was transferred, or if the transfer was of an incomplete item, according to its terms when completed as stated in Sections 70A-3-115 and 70A-3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.
- (3) A person to whom the warranties under Subsection (1) are made and who took the item in good faith may recover from the warrantor, as damages for breach of warranty, an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.
- (4) The warranties stated in Subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.
- (5) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.
- (6) If the warranty in Subsection (1)(f) is not given by a transferor or collecting bank under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee nor to any prior collecting bank of that transferee.

Amended by Chapter 60, 1998 General Session

**70A-4-208 Presentment warranties.**

- (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:
  - (a) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
  - (b) the draft has not been altered;
  - (c) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and
  - (d) if the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.
- (2) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft:
  - (a) breach of warranty is a defense to the obligation of the acceptor; and
  - (b) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.
- (3) If a drawee asserts a claim for breach of warranty under Subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 70A-3-404 or 70A-3-405, or the drawer

is precluded under Section 70A-3-406 or 70A-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

- (4) If a dishonored draft is presented for payment to the drawer or an indorser, or any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.
- (5) The warranties stated in Subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.
- (6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.
- (7) A demand draft is a check, as provided in Section 70A-3-104.
- (8) If the warranty in Subsection (1)(d) is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

Amended by Chapter 60, 1998 General Session

**70A-4-209 Encoding and retention warranties.**

- (1) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.
- (2) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.
- (3) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-4-210 Security interest of collecting bank in items, accompanying documents, and proceeds.**

- (1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:
  - (a) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;
  - (b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or
  - (c) if it makes an advance on or against the item.

- (2) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.
- (3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Chapter 9a, Uniform Commercial Code - Secured Transactions, but:
  - (a) no security agreement is necessary to make the security interest enforceable, Subsection 70A-9a-203(2)(c)(i);
  - (b) no filing is required to perfect the security interest; and
  - (c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

Amended by Chapter 42, 2006 General Session

**70A-4-211 When bank gives value for purposes of holder in due course.**

For purposes of determining its status as a holder in due course, a bank has given value to the extent that it has a security interest in an item if the bank otherwise complies with the requirements of Section 70A-3-302 on what constitutes a holder in due course.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-4-212 Presentment of notice of item not payable by, through, or at bank -- Liability of drawer or indorser.**

- (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 70A-3-501 by the close of the bank's next banking day after it knows of the requirement.
- (2) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 70A-3-501 is received by the close of business on the day after maturity, or in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-4-213 Medium and time of settlement by bank.**

- (1) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearinghouse rules, and the like, or agreement. In the absence of such prescription:
  - (a) the medium of settlement is cash or credit to an account in a federal reserve bank of, or specified by, the person to receive settlement; and
  - (b) the time of settlement is:

- (i) with respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;
  - (ii) with respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made;
  - (iii) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or
  - (iv) with respect to tender of settlement by a funds transfer, when payment is made pursuant to Section 70A-4a-406 to the person receiving settlement.
- (2) If the tender of settlement is not by a medium authorized by Subsection (1) or the time of settlement is not fixed by Subsection (1), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.
- (3) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:
- (a) presents or forwards the check for collection, settlement is final when the check is finally paid; and
  - (b) fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.
- (4) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of item.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-4-214 Right of charge-back or refund -- Liability of collecting bank -- Return of item.**

- (1) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge-back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.
- (2) A collecting bank returns an item when it is sent or delivered to the bank's customers or transferor or pursuant to its instructions.
- (3) A depository bank that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books, Section 70A-4-301.
- (4) The right to charge back is not affected by:
- (a) previous use of a credit given for the item; or
  - (b) failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.
- (5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

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

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-4-215 Final payment of item by payor bank -- When provisional debits and credits become final -- When certain credits become available for withdrawal.**

- (1) An item is finally paid by a payor bank when the bank has first done any of the following:
  - (a) paid the item in cash;
  - (b) settled for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement; or
  - (c) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule, or agreement.
- (2) If provisional settlement for an item does not become final, the item is not finally paid.
- (3) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.
- (4) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.
- (5) Subject to applicable law stating a time for availability of funds, and any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:
  - (a) if the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time; and
  - (b) if the bank is both the depository bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.
- (6) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

Enacted by Chapter 237, 1993 General Session

**70A-4-216 Insolvency and preference.**

- (1) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.
- (2) If a payor bank finally pays an item and suspends payments without making a settlement for the time with its customer or the presenting bank, which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.
- (3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the

settlements becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

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

Enacted by Chapter 237, 1993 General Session