

107TH CONGRESS
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H. R. 5414

To facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 19, 2002

Mr. FERGUSON (for himself and Mr. FORD) introduced the following bill;
which was referred to the Committee on Financial Services

A BILL

To facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Check Clearing for the 21st Century Act”.

6 (b) FINDINGS.—The Congress finds as follows:

1 (1) In the Expedited Funds Availability Act,
2 enacted on August 10, 1987, the Congress directed
3 the Board of Governors of the Federal Reserve Sys-
4 tem to consider establishing regulations requiring
5 Federal reserve banks and depository institutions to
6 provide for check truncation, in order to improve the
7 check processing system.

8 (2) In that same Act, the Congress—

9 (A) provided the Board of Governors of the
10 Federal Reserve System with full authority to
11 regulate all aspects of the payment system, in-
12 cluding the receipt, payment, collection, and
13 clearing of checks, and related functions of the
14 payment system pertaining to checks, and

15 (B) directed that the exercise of such au-
16 thority by the Board superseded any State law,
17 including the Uniform Commercial Code, as in
18 effect in any State.

19 (3) Check truncation is no less desirable today
20 for both financial service customers and the financial
21 services industry, to reduce costs, improve efficiency
22 in check collections, and expedite funds availability
23 for customers than it was over 15 years ago when
24 Congress first directed the Board to consider estab-
25 lishing such a process.

1 (c) PURPOSES.—The purposes of this Act are as fol-
2 lows:

3 (1) To facilitate check truncation by author-
4 izing substitute checks.

5 (2) To foster innovation in the check collection
6 system without mandating receipt of checks in elec-
7 tronic form.

8 (3) To improve the overall efficiency of the Na-
9 tion’s payments system.

10 **SEC. 2. DEFINITIONS.**

11 For purposes of this Act, the following definitions
12 shall apply:

13 (1) ACCOUNT.—The term “account” means a
14 deposit account at a bank.

15 (2) BANK.—The term “bank”—

16 (A) means any person located in a State
17 engaged in the business of banking, including
18 any depository institution (as defined in section
19 19(b)(1)(A) of the Federal Reserve Act); and

20 (B) includes—

21 (i) any Federal reserve bank;

22 (ii) any Federal home loan bank; and

23 (iii) to the extent it acts as a payor—

24 (I) the Treasury of the United
25 States;

1 (II) the United States Postal
2 Service;

3 (III) a State government; and

4 (IV) a unit of general local gov-
5 ernment.

6 (3) BANKING DAY.—The term “banking day”
7 means that part of any business day during which
8 an office of a bank is open to the public for carrying
9 on substantially all of the banking business of the
10 bank.

11 (4) BANKING TERMS.—

12 (A) COLLECTING BANK.—The term “col-
13 lecting bank” means any bank handling a check
14 for collection except the paying bank.

15 (B) DEPOSITARY BANK.—

16 (i) IN GENERAL.—The term “deposi-
17 tary bank” means the first bank to which
18 a check is transferred even though it is
19 also the paying bank or the payee.

20 (ii) TREATED AS DEPOSITARY BANK
21 IN CASE OF CHECK DEPOSIT.—A bank
22 shall be treated as the depository bank, for
23 purposes of this Act, if a check is trans-
24 ferred for deposit in a customer account at
25 such bank, even though the check is phys-

1 ically received and indorsed first by an-
2 other bank.

3 (C) PAYING BANK.—The term “paying
4 bank” means—

5 (i) the bank by which a check is pay-
6 able, unless the check is payable at another
7 bank and is sent to the other bank for pay-
8 ment or collection;

9 (ii) the bank at which a check is pay-
10 able and to which it is sent for payment or
11 collection;

12 (iii) the Federal reserve bank or Fed-
13 eral home loan bank by which a check is
14 payable;

15 (iv) the bank through which a check is
16 payable and to which it is sent for pay-
17 ment or collection, if the check is not pay-
18 able by a bank;

19 (v) the State or unit of general local
20 government on which a check is drawn and
21 to which it is sent for payment or collec-
22 tion;

23 (vi) the bank through which a check is
24 payable and to which the check is sent for
25 payment or collection, regardless of wheth-

1 er the check is payable by another bank;
2 and

3 (vii) the bank whose routing number
4 appears on a check in fractional form or in
5 the MICR line and to which the check is
6 sent for payment or collection.

7 (D) RETURNING BANK.—

8 (i) IN GENERAL.—The term “return-
9 ing bank” means a bank (other than the
10 paying or depository bank) handling a re-
11 turned check or notice in lieu of return.

12 (ii) TREATMENT AS COLLECTING
13 BANK.—No provision of this Act shall be
14 construed as affecting the treatment of a
15 returning bank as a collecting bank for
16 purposes of section 4–202(b) of the Uni-
17 form Commercial Code.

18 (5) BOARD.—The term “Board” means the
19 Board of Governors of the Federal Reserve System.

20 (6) BUSINESS DAY.—The term “business day”
21 has the same meaning as in section 602(3) of the
22 Expedited Funds Availability Act.

23 (7) CHECK.—The term “check”—

24 (A) means a draft, payable on demand and
25 drawn on or payable through or at an office of

1 a bank, whether or not negotiable, that is han-
2 dled for forward collection or return, including
3 a substitute check; and

4 (B) does not include a noncash item or an
5 item payable in a medium other than United
6 States dollars.

7 (8) CONSUMER.—The term “consumer” means
8 an individual who—

9 (A) with respect to a check handled for
10 forward collection, draws the check on a con-
11 sumer account; and

12 (B) with respect to a check handled for re-
13 turn, deposits the check into, or cashes the
14 check against, a consumer account.

15 (9) CONSUMER ACCOUNT.—The term “con-
16 sumer account” has the same meaning as in section
17 602(10) of the Expedited Funds Availability Act.

18 (10) CUSTOMER.—

19 (11) FORWARD COLLECTION.—The term “for-
20 ward collection” means the transfer by a bank of a
21 check to a collecting bank for settlement or the pay-
22 ing bank for payment.

23 (12) INDEMNIFYING BANK.—The term “indem-
24 nifying bank” means a bank that is providing an in-

1 demnity under section 5 with respect to a substitute
2 check.

3 (13) MICR LINE.—The terms “MICR line” and
4 “magnetic ink character recognition line” mean the
5 numbers, which may include the bank routing num-
6 ber, account number, check number, check amount,
7 and other information printed near the bottom of a
8 check in magnetic ink in accordance with generally
9 applicable industry standards.

10 (14) NONCASH ITEM.—The term “noncash
11 item” has the same meaning as in section 602(14)
12 of the Expedited Funds Availability Act.

13 (15) PERSON.—The term “person” includes a
14 government unit or instrumentality.

15 (16) RECONVERTING BANK.—

16 (A) IN GENERAL.—The term “reconverting
17 bank” means the bank that creates a substitute
18 check.

19 (B) IF SUBSTITUTE CHECK IS NOT CRE-
20 ATED BY A BANK.—If a substitute check is cre-
21 ated by a person other than a bank, the term
22 “reconverting bank” means the first bank that
23 transfers or presents such substitute check.

1 (17) **SUBSTITUTE CHECK.**—The term “sub-
2 stitute check” means a paper reproduction of the
3 original check that—

4 (A) contains an image of the front and
5 back of the original check;

6 (B) bears an MICR line containing all in-
7 formation required under generally applicable
8 industry standards for substitute checks;

9 (C) conforms, in paper stock, dimension,
10 and otherwise, with generally applicable indus-
11 try standards for substitute checks; and

12 (D) is suitable for automated processing in
13 the same manner as the original check.

14 (18) **STATE.**—The term “State” has the same
15 meaning as in section 3(a)(3) of the Federal Deposit
16 Insurance Act.

17 (19) **TRUNCATE.**—The term “truncate” means
18 to remove an original paper check from the check
19 collection or return process and send to a recipient,
20 in lieu of such original paper check, a substitute
21 check or, by agreement, information relating to the
22 original check (including data taken from the MICR
23 line of the original check or an electronic image of
24 the original check), whether with or without subse-
25 quent delivery of the original paper check.

1 (20) UNIFORM COMMERCIAL CODE.—The term
2 “Uniform Commercial Code” means the Uniform
3 Commercial Code in effect in a State.

4 (21) UNIT OF GENERAL LOCAL GOVERN-
5 MENT.—The term “unit of general local govern-
6 ment” has the same meaning as in section 602(24)
7 of the Expedited Funds Availability Act.

8 (22) OTHER TERMS.—Unless the context re-
9 quires otherwise, the terms not defined in this sec-
10 tion shall have the same meanings as in the Uniform
11 Commercial Code.

12 **SEC. 3. GENERAL PROVISIONS GOVERNING SUBSTITUTE**
13 **CHECKS.**

14 (a) NO AGREEMENT REQUIRED.—A person may de-
15 posit, present, or send for collection or return a substitute
16 check without an agreement with the recipient, to the ex-
17 tent the bank is treated as having made the warranties
18 in section 4 as a matter of law with respect to such sub-
19 stitute check.

20 (b) LEGAL EQUIVALENCE.—A substitute check shall
21 be the legal equivalent of the original check for all pur-
22 poses, including any provision of any Federal or State law,
23 and for all persons if the substitute check—

1 (1) accurately represents all of the information
2 on the front and back of the original check as of the
3 time the original check was truncated; and

4 (2) bears the legend: “This is a legal copy of
5 your check. You can use it the same way you would
6 use the original check.”.

7 (c) ENDORSEMENTS.—A reconverting bank shall en-
8 sure that the substitute check that is created by the bank
9 bears all endorsements applied by parties that previously
10 handled the check (whether in electronic form or in the
11 form of the original paper check or a substitute check)
12 for forward collection or return.

13 (d) IDENTIFICATION OF RECONVERTING BANK.—A
14 reconverting bank shall identify itself as a reconverting
15 bank on any substitute check such bank creates so as to
16 preserve any previous reconverting bank identifications in
17 conformance with generally applicable industry standards.

18 (e) APPLICABLE LAW.—A substitute check that is
19 the legal equivalent of the original check under subsection
20 (b) shall be subject to any provision of part 229 of title
21 12 of the Code of Federal Regulations (as in effect on
22 the date of the enactment of this Act), the Uniform Com-
23 mercial Code, and any other applicable Federal or State
24 law that would apply if such substitute check were the

1 original check, to the extent such provision of law is not
2 inconsistent with this Act.

3 **SEC. 4. SUBSTITUTE CHECK WARRANTIES.**

4 A bank that transfers, presents, or returns a sub-
5 stitute check and receives consideration for the check shall
6 be deemed to have warranted to the transferee, any subse-
7 quent collecting or returning bank, the depository bank,
8 the drawee, the drawer, the payee, the depositor, and any
9 endorser (regardless of whether the warrantee receives the
10 substitute check or another paper or electronic form of
11 the substitute or original check) that—

12 (1) the substitute check meets all the require-
13 ments for legal equivalence under section 3(b); and

14 (2) no depository bank, drawee, drawer, or en-
15 dorser will receive presentment or return of the sub-
16 stitute check, the original check, or a copy or other
17 paper or electronic version of the substitute check or
18 original check such that it will be asked to make a
19 payment based on a check it has already paid.

20 **SEC. 5. INDEMNITY.**

21 (a) INDEMNITY.—A reconverting bank that creates a
22 substitute check, and each bank that subsequently trans-
23 fers, presents, or returns that substitute check in any elec-
24 tronic or paper form, and receives consideration for such
25 transfer, presentment, or return shall be deemed to have

1 indemnified the transferee, any subsequent collecting or
2 returning bank, the depositary bank, the drawee, the
3 drawer, the payee, the depositor, and any endorser, up to
4 the amount described in subsections (b) and (c), to the
5 extent of any loss incurred by any recipient of a substitute
6 check if that loss occurred due to the receipt of a sub-
7 stitute check instead of the original check.

8 (b) INDEMNITY AMOUNT.—

9 (1) AMOUNT IN EVENT OF BREACH OF WAR-
10 RANTY.—The amount of the indemnity under sub-
11 section (a) shall be the amount of any loss (includ-
12 ing costs and reasonable attorney’s fees and other
13 expenses of representation) proximately caused by a
14 breach of a warranty established by operation of sec-
15 tion 4.

16 (2) AMOUNT IN ABSENCE OF BREACH OF WAR-
17 RANTY.—In the absence of a breach of a warranty
18 established by operation of section 4, the amount of
19 the indemnity shall be the sum of—

20 (A) the amount of any loss, up to the
21 amount of the substitute check; and

22 (B) interest and expenses (including costs
23 and reasonable attorney’s fees and other ex-
24 penses of representation).

1 (c) COMPARATIVE NEGLIGENCE.—If a loss described
2 in subsection (a) results in whole or in part from the neg-
3 ligence or failure to act in good faith on the part of an
4 indemnified party, then that party’s indemnification under
5 this section shall be reduced in proportion to the amount
6 of negligence or bad faith attributable to that party.

7 (d) EFFECT OF PRODUCING ORIGINAL CHECK OR
8 SUBSTITUTE CHECK.—

9 (1) IN GENERAL.—If the indemnifying bank
10 produces the original check or substitute check, the
11 indemnifying bank shall—

12 (A) be liable only for losses covered by the
13 indemnity that are incurred up to the time the
14 original check or substitute check is provided to
15 the indemnified party; and

16 (B) have a right to the return of any funds
17 it has paid under the indemnity in excess of
18 those losses.

19 (2) COORDINATION OF INDEMNITY WITH IM-
20 PLIED WARRANTY.—The production of the original
21 check or substitute check in accordance with para-
22 graph (1) by an indemnifying bank shall not absolve
23 the bank from any liability on a warranty estab-
24 lished under this Act or any other provision of law.

25 (e) SUBROGATION OF RIGHTS.—

1 (1) IN GENERAL.—Each indemnifying bank
2 shall be subrogated to the rights of any indemnified
3 party to the extent of the indemnity.

4 (2) RECOVERY UNDER WARRANTY.—A bank
5 that indemnifies a party under this section may at-
6 tempt to recover from another party based on a war-
7 ranty or other claim.

8 (3) DUTY OF INDEMNIFIED PARTY.—Each in-
9 demnified party shall have a duty to comply with all
10 reasonable requests for assistance from an indem-
11 nifying bank in connection with any claim the in-
12 demnifying bank brings against a warrantor or other
13 party related to a check that forms the basis for the
14 indemnification.

15 **SEC. 6. EXPEDITED RECREDIT FOR CONSUMERS.**

16 (a) RECREDIT CLAIMS.—

17 (1) IN GENERAL.—Subject to subsection (f), a
18 customer who is a consumer may make a claim for
19 expedited recredit from the bank that holds the cus-
20 tomer's account with respect to a substitute check if
21 the customer asserts in good faith that—

22 (A) the bank charged the customer's ac-
23 count for a substitute check that was provided
24 to the customer;

25 (B) either—

1 (i) the check was not properly charged
2 to, or chargeable against, such account; or

3 (ii) the customer has a warranty claim
4 with respect to such substitute check;

5 (C) the customer suffered a resulting loss;

6 and

7 (D) the production of the original check or
8 substitute check is necessary to determine the
9 validity of any claim described in subparagraph
10 (B).

11 (2) 30-DAY PERIOD.—Any claim under para-
12 graph (1) with respect to a customer account may
13 be submitted by a customer before the end of the
14 30-day period beginning on the later of—

15 (A) the date on which the customer re-
16 ceives the periodic statement of account for
17 such account which contains information con-
18 cerning the transaction giving rise to the claim;

19 or

20 (B) the date the substitute check is made
21 available to the customer.

22 (3) EXTENSION UNDER EXTENUATING CIR-
23 CUMSTANCES.—If the customer's ability to submit
24 the claim within the 30-day period referred to in
25 paragraph (2) is delayed due to extenuating cir-

1 cumstances, including extended travel or the illness
2 of the customer, the 30-day period may be extended
3 for a total of not to exceed 30 additional days, in
4 accordance with regulations prescribed by the Board.

5 (b) PROCEDURES FOR CLAIMS.—

6 (1) IN GENERAL.—To make a claim for an ex-
7 pedited recredit under subsection (a) with respect to
8 a substitute check, the customer shall provide to the
9 bank that holds the customer account of such cus-
10 tomer the following:

11 (A) A description of the claim, including
12 an explanation of—

13 (i) why the substitute check was not
14 properly charged to, or chargeable against,
15 the customer's account; or

16 (ii) the warranty claim with respect to
17 such check.

18 (B) A statement that the customer suf-
19 fered a loss and an estimate of the amount of
20 the loss.

21 (C) The reason why production of the
22 original check or substitute check is necessary
23 to determine the validity of the charge to the
24 customer's account or the warranty claim.

1 (D) Sufficient information to identify the
2 substitute check and to investigate the claim.

3 (2) CLAIM IN WRITING.—The bank holding the
4 customer account that is the subject of a claim by
5 the customer under subsection (a) may, in the dis-
6 cretion of the bank, require the customer to submit
7 the information required under paragraph (1) in
8 writing.

9 (c) RECREDIT TO CUSTOMER.—

10 (1) PROMPT ACTION REQUIRED.—If a customer
11 submits a claim to a bank under subsection (a) (with
12 respect to a substitute check) that meets the re-
13 quirements of subsection (b), the bank shall, by the
14 end of the 10th business day following the banking
15 day on which the customer submits such claim to
16 the bank—

17 (A) produce the original or substitute
18 check and demonstrate to the customer that the
19 substitute check was properly charged to the
20 customer account of the customer; or

21 (B) recredit the customer account of the
22 customer in an amount equal to the sum of—

23 (i) an amount not to exceed the lesser
24 of—

1 (I) the amount of the substitute
2 check that was improperly charged
3 against the customer account; or

4 (II) \$2,500; and

5 (ii) interest on the amount recredited
6 under clause (i).

7 (2) RECREDIT OF AMOUNTS IN EXCESS OF
8 \$2,500.—If, in connection with a claim by a customer
9 under subsection (a) with respect to a substitute
10 check, the bank determines that an amount in excess
11 of any amount recredited to the customer account of
12 the customer under paragraph (1) was improperly
13 charged against the customer account in connection
14 with such check, the bank shall credit the customer
15 account for such excess amount, plus interest, before
16 the end of the business day following the banking
17 day on which the bank makes such determination.

18 (3) PERIOD FOR DETERMINATION.—A bank
19 shall make a determination with respect to the valid-
20 ity of a claim by a customer under subsection (a) for
21 purposes of paragraph (2) no later than 45 calendar
22 days after the banking day on which the customer
23 submits the claim in accordance with subsection (b).

24 (d) AVAILABILITY OF RECREDIT.—

1 (1) NEXT BUSINESS DAY AVAILABILITY.—Ex-
2 cept as provided in paragraphs (2) and (3), a bank
3 that provides a recredit to a customer account under
4 subsection (c) shall make the recredited funds avail-
5 able for withdrawal by the customer by the start of
6 the next business day after the business day by
7 which the bank is required to recredit the customer
8 under subsection (c).

9 (2) SAFEGUARD EXCEPTIONS.—Subject to
10 paragraph (4), a bank may delay availability to a
11 customer of a recredit provided to a customer ac-
12 count under subsection (c) until the start of the
13 45th business day following the banking day on
14 which the customer submits a claim for such recredit
15 in accordance with subsection (b) in any of the fol-
16 lowing cases:

17 (A) NEW ACCOUNTS.—The claim is made
18 during the 30-day period beginning on the
19 banking day the customer account was estab-
20 lished.

21 (B) REPEATED OVERDRAFTS.—Without
22 regard to the charge that is the subject of the
23 claim for which the recredit was made—

24 (i) on 6 or more banking days during
25 the 6-month period ending on the date the

1 customer submits the claim, the balance in
2 the customer account was negative or
3 would have become negative if checks or
4 other charges to the account had been
5 paid, or

6 (ii) on 2 or more banking days during
7 such 6-month period, the balance in the
8 customer account was negative or would
9 have become negative in the amount of
10 \$5,000 or more if checks or other charges
11 to the account had been paid.

12 (C) PREVENTION OF FRAUD LOSSES.—The
13 bank has reasonable cause to believe that the
14 claim is fraudulent, based on facts (other than
15 the fact that the check in question or the cus-
16 tomer is of a particular class) that would cause
17 a well-grounded belief in the mind of a reason-
18 able person that the claim is fraudulent.

19 (3) EMERGENCY CONDITIONS.—If there has
20 been an interruption of communications, computer,
21 or equipment facilities, or other emergency condition
22 beyond the control of the bank, the bank may delay
23 availability of a recredit provided to a customer ac-
24 count under subsection (c) until a reasonable period
25 after the emergency has ceased, to the extent the

1 bank exercises such diligence as the circumstances
2 require and complies with paragraph (4).

3 (4) NOTICE TO CUSTOMER.—

4 (A) PROMPT NOTICE OF DELAY IN AVAIL-
5 ABILITY.—A bank that, in accordance with
6 paragraph (2) or (3), delays the availability of
7 a recredit under subsection (c) to any customer
8 account shall notify the customer of such
9 delay—

10 (i) at the time of the recredit; or

11 (ii) if the determination is made after
12 the recredit, in as expeditious a manner as
13 possible after the delay is put into effect.

14 (B) OVERDRAFT FEES.—No bank that, in
15 accordance with paragraph (2) or (3), delays
16 the availability of a recredit under subsection
17 (c) to any customer account may impose any
18 overdraft fees with respect to drafts drawn by
19 the customer on such recredited amount before
20 the end of the 5-day period beginning on the
21 date the notice under subparagraph (A) with
22 respect to the availability of such amount was
23 sent by the bank to the customer.

24 (e) REVERSAL OF RECREDIT.—If a bank determines
25 that a substitute check for which the bank recredited a

1 customer account under subsection (c) was in fact prop-
2 erly charged to the customer account, the bank may re-
3 verse the recredit to the customer account if, upon revers-
4 ing the recredited amount, the bank—

5 (1) notifies the customer of the date and the
6 amount of the reversal;

7 (2) provides the original check or the substitute
8 check to the customer; and

9 (3) provides the customer with an explanation
10 of the basis for the determination by the bank that
11 the substitute check had been properly charged, in-
12 cluding copies of any information or documents on
13 which the bank relied in making such determination.

14 (f) PRESERVATION OF RIGHTS.—In any case de-
15 scribed in subparagraph (A) and (B) of subsection (a)(1)
16 involving a substitute check, the customer shall have the
17 rights and protections provided under part 229 of title 12
18 of the Code of Federal Regulations, as in effect on the
19 date of the enactment of this Act, the Uniform Commer-
20 cial Code, and any other applicable Federal or State law
21 that would apply in such case had the customer been pro-
22 vided the original check.

23 (g) SCOPE OF APPLICATION.—This section shall only
24 apply to customers who are consumers.

1 **SEC. 7. EXPEDITED RECREDIT PROCEDURES FOR BANKS.**

2 (a) RECREDIT CLAIMS.—

3 (1) IN GENERAL.—A bank may make a claim
4 against an indemnifying bank for expedited recredit
5 for which that bank is indemnified if—

6 (A) the claimant bank (or a bank it has in-
7 demnified) has received a claim for expedited
8 recredit from a customer under section 6 with
9 respect to such substitute check or would have
10 been subject to such a claim had the customer's
11 account been charged;

12 (B) the claimant bank has suffered a re-
13 sulting loss or is obligated to recredit a cus-
14 tomer account under section 6 with respect to
15 such check; and

16 (C) production of the original check or
17 substitute check is necessary to determine the
18 validity of the charge to the customer account
19 or any warranty claim connected with such sub-
20 stitute check.

21 (2) 120-DAY PERIOD.—Any claim under para-
22 graph (1) may be submitted by the claimant bank
23 to an indemnifying bank before the end of the 120-
24 day beginning on the date of the transaction that
25 gave rise to the claim.

1 (3) CLAIMANT BANK DEFINED.—For purposes
2 of this section, the term “claimant bank” means a
3 bank which submits a claim under this subsection to
4 an indemnifying bank.

5 (b) PROCEDURES FOR CLAIMS.—

6 (1) IN GENERAL.—To make a claim under sub-
7 section (a) for an expedited recredit relating to a
8 substitute check, the claimant bank shall provide to
9 the indemnifying bank the following:

10 (A) A description—

11 (i) of the claim, including an expla-
12 nation of why the substitute check cannot
13 be properly charged to the customer ac-
14 count; or

15 (ii) a description of the warranty
16 claim.

17 (B) A statement that the claimant bank
18 has suffered a loss or is obligated to recredit a
19 customer’s account under section 6, together
20 with an estimate of the amount of the loss or
21 recredit.

22 (C) The reason why production of the
23 original check or substitute check is necessary
24 to determine the validity of the charge to the
25 customer account or the warranty claim.

1 (D) Information sufficient for the indem-
2 nifying bank to identify the substitute check
3 and to investigate the claim.

4 (2) REQUIREMENTS RELATING TO COPIES OF
5 SUBSTITUTE CHECKS.—If the information submitted
6 by a claimant bank pursuant to paragraph (1) in
7 connection with a claim for an expedited recredit in-
8 cludes a copy of any substitute check for which any
9 such claim is made, the claimant bank shall take
10 reasonable steps to ensure that any such copy can-
11 not be—

12 (A) mistaken for the legal equivalent of the
13 check under section 3(b); or

14 (B) sent or handled by any bank, including
15 the indemnifying bank, as forward collection or
16 returned checks.

17 (3) CLAIM IN WRITING.—At the request of the
18 indemnifying bank, the claimant bank shall provide
19 a copy of any written claim submitted by a customer
20 in accordance with section 6(b), if the claimant bank
21 has obtained such customer's claim in writing.

22 (c) RECREDIT BY INDEMNIFYING BANK.—

23 (1) PROMPT ACTION REQUIRED.—No later than
24 10 business days after the business day an indem-
25 nifying bank receives a claim under subsection (a)

1 from a claimant bank with respect to a substitute
2 check, the indemnifying bank shall—

3 (A) provide the original check (with respect
4 to such substitute check) or another substitute
5 check to the claimant bank;

6 (B) recredit the claimant bank for the
7 amount of the claim up to the amount of the
8 substitute check, plus interest; or

9 (C) provide information to the claimant
10 bank as to why the indemnifying bank is not
11 obligated to perform the service described in
12 subparagraph (A) or (B).

13 (2) RECREDIT DOES NOT ABROGATE OTHER LI-
14 ABILITIES.—Providing a recredit under this sub-
15 section to a claimant bank with respect to a sub-
16 stitute check shall not absolve the indemnifying bank
17 from any liability for additional damages under sec-
18 tion 5 or 8 with respect to such check.

19 (3) REFUND TO INDEMNIFYING BANK.—If a
20 claimant bank reverses, in accordance with section
21 6(e), a recredit previously made to a customer ac-
22 count under section 6(e) in connection with a sub-
23 stitute check or otherwise receives a credit or re-
24 credit with regard to such substitute check, the
25 claimant bank shall promptly refund to any indem-

1 nifying bank any amount previously advanced by the
2 indemnifying bank in connection with such sub-
3 stitute check.

4 (d) PRODUCTION OF ORIGINAL CHECK OR SUB-
5 STITUTE CHECK GOVERNED BY SECTION 5(d).—If the in-
6 demnifying bank provides the claimant bank with the
7 original check or substitute check, section 5(d) shall gov-
8 ern any right of the indemnifying bank to any repayment
9 of any funds the indemnifying bank has reccredited to the
10 claimant bank pursuant to subsection (c).

11 **SEC. 8. MEASURE OF DAMAGES.**

12 (a) LIABILITY.—

13 (1) IN GENERAL.—Except as provided in sec-
14 tion 5, any person who, in connection with a sub-
15 stitute check, breaches any warranty under this Act
16 or fails to comply with any requirement imposed
17 under this Act, or any regulation prescribed pursu-
18 ant to this Act, with respect to any other person
19 shall be liable to such person in an amount equal to
20 the sum of—

21 (A) the lesser of—

22 (i) the amount of the loss suffered by
23 the other person as a result of the breach
24 or failure; or

1 (ii) the amount of the substitute
2 check;

3 (B) interest and expenses (including costs
4 and reasonable attorney's fees and other ex-
5 penses of representation) related to the sub-
6 stitute check.

7 (2) OFFSET OF RECREDITS.—The amount of
8 damages any person receives under paragraph (1), if
9 any, shall be reduced by the amount, if any, that the
10 claimant receives and retains as a recredit under
11 section 6 or 7.

12 (b) COMPARATIVE NEGLIGENCE.—If a party incurs
13 damages that resulted in whole or in part from that par-
14 ty's negligence or failure to act in good faith, then the
15 amount of any liability due to that party under subsection
16 (a) shall be reduced in proportion to the amount of neg-
17 ligence or bad faith attributable to that party.

18 **SEC. 9. STATUTE OF LIMITATIONS AND NOTICE OF CLAIM.**

19 (a) ACTIONS UNDER THIS ACT.—

20 (1) IN GENERAL.—An action to enforce a claim
21 under this Act may be brought in any United States
22 district court, or in any other court of competent ju-
23 risdiction, before the end of the 1-year period begin-
24 ning on the date the cause of action accrues.

1 (2) ACCRUAL.—A cause of action accrues as of
2 the date the injured party first learns, or by which
3 such person reasonably should have learned, of the
4 facts and circumstances giving rise to the cause of
5 action.

6 (b) DISCHARGE OF CLAIMS.—Except as provided in
7 subsection (c), unless a person gives notice of a claim to
8 the indemnifying or warranting bank within 30 days after
9 the person has reason to know of the claim and the iden-
10 tity of the indemnifying or warranting bank, the indem-
11 nifying or warranting bank is discharged to the extent of
12 any loss caused by the delay in giving notice of the claim.

13 (c) NOTICE OF CLAIM BY CUSTOMER.—A timely
14 claim by a customer under section 6 for expedited recredit
15 also constitutes timely notice of a claim by the customer
16 for purposes of subsection (b).

17 **SEC. 10. CONSUMER AWARENESS.**

18 (a) IN GENERAL.—The Board shall develop and pre-
19 pare a brief document on substitute checks for distribution
20 by banks to customers which contains—

21 (1) a description of the process of check substi-
22 tution and how the process may be different than
23 the check clearing process the customer is familiar
24 with;

1 (2) a description of the benefits of check substi-
2 tution, including expedited funds availability for the
3 customer, and a notice that shorter check processing
4 times, through check substitution, will reduce the
5 float a consumer may currently be taking advantage
6 of, however ill-advised such a practice may be; and

7 (3) a description of the claim for recredit proc-
8 ess established under section 6 when the customer
9 believes in good faith that a substitute check was
10 not properly charged to, or chargeable against, the
11 customer's account.

12 (b) DISTRIBUTION.—

13 (1) IN GENERAL.—Each bank shall distribute
14 to each existing and potential customer of the bank,
15 after the effective date of this Act, the document
16 prepared by the Board pursuant to subsection (a).

17 (2) 1ST MAILING.—With respect to existing cus-
18 tomers of the bank as of the effective date of this
19 Act, the bank shall meet the requirements of para-
20 graph (1) by including the document prepared by
21 the Board in the first regularly scheduled mailing to
22 such customers after such effective date.

23 **SEC. 11. EFFECT ON OTHER LAW.**

24 This Act shall supersede any provision of Federal or
25 State law, including the Uniform Commercial Code, that

1 is inconsistent with this Act, but only to the extent of the
2 inconsistency.

3 **SEC. 12. VARIATION BY AGREEMENT.**

4 (a) SECTION 7.—Any provision of section 7 may be
5 varied by agreement of the banks involved.

6 (b) NO OTHER PROVISIONS MAY BE VARIED.—No
7 provision of this Act other than a provision of section 7
8 may be varied by agreement of any person.

9 **SEC. 13. REGULATIONS.**

10 The Board may, by regulation clarify or otherwise im-
11 plement the provisions of this Act and may modify the
12 requirements imposed by this Act with respect to sub-
13 stitute checks generally to further the purposes of this
14 Act, including reducing risk, accommodating technological
15 or other developments, and alleviating undue compliance
16 burdens.

17 **SEC. 14. EFFECTIVE DATE.**

18 This Act shall take effect on January 1, 2006.

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