

The SPEAKER pro tempore. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

#### REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1329

Mr. STUPAK. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 1329.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

#### GENERAL LEAVE

Mr. BACHUS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1474.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

#### CHECK CLEARING FOR THE 21ST CENTURY ACT

The SPEAKER pro tempore. Pursuant to House Resolution 256 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1474.

□ 1210

##### IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1474) 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, with Mr. LAHOOD in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Alabama (Mr. BACHUS) and the gentleman from Massachusetts (Mr. FRANK) each will control 30 minutes.

The Chair recognizes the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Pennsylvania (Ms. HART).

(Ms. HART asked and was given permission to revise and extend her remarks.)

Ms. HART. Mr. Chairman, I rise in support of H.R. 1474.

A lot of people are not familiar with the legislation. We have been calling it "check truncation." The official title is Check Clearing for the 21st Century Act. Our truncated name is Check 21.

This legislation holds the promise of a more efficient check collection system by removing legal barriers to the full utilization of new technologies. It is a win for consumers. It is a win for the financial services industry. It will empower banks to help prevent fraud. It will empower consumers to have more control over their accounts and more efficiency in the transfer of their funds.

Our current check system's legal framework has not kept up with technological advances and has constrained the efforts of many banks to use innovations like digital check imaging to improve check processing efficiency, providing improved service to customers and substantial reductions in transportation and other check processing costs.

This digital check imaging looks like a check. It simply is a copy that is transferable digitally, transferable more quickly, than a paper check. It also can be copied and utilized just like a canceled check.

It is important to implement the technological advances made in the field of payment systems so that we provide customers with expedited access to capital, to credit, yet they will be ensured that they are protected from fraud.

This legislation permits banks, credit unions and other financial institutions to truncate checks, just simply not have to transport that canceled check. It allows them to process and clear checks electronically, without moving those paper checks to clearinghouses and returning the original cancelled checks to customers.

□ 1215

The problem with the current system is that over and over these checks are processed, and it takes a lot of time. It requires physical delivery of the check from the institution of deposit through an intermediary, such as clearinghouses or the Federal Reserve Bank, to the bank of the customer who wrote the check before it can be paid. Each step of this inefficient process relies on the physical transportation of that check, resulting in billions of checks being driven or flown across the country every day.

The problem with this legal framework was highlighted in the days following the September 11 attacks when the Nation's planes were grounded, and the flow of checks transported by air came to a complete stop. During that time, the Federal Reserve's daily check float grew from its normal few hundred million dollars to over \$47 billion.

Under current law, banks, credit unions, and other financial institutions are unable to truncate checks. They are only able to truncate checks if they have special arrangements with other institutions that are part of the transaction. There are over 15,000 banks, thrifts, and credit unions, and they are all negotiating separate agreements among themselves, so it is impossible

to follow and keep in touch with all of those, even for the most diligent financial institution.

The way this bill would work, a Pennsylvania bank would no longer have to ship a check drawn on a California bank all the way across the country in order for it to clear, for it to be processed, and for the actual payment of the check. This is done by creating a new negotiable instrument called a substitute check.

Again, the substitute check would permit banks to truncate the original check; and it would process the information electronically, immediately, and print and deliver the substitute checks to banks and bank customers. So the customer who wishes to retain that record, such as a canceled check, would have something that looks just like it.

This shows exactly what that substitute check looks like. It looks familiar, does it not? It is just an identical copy of a canceled check.

This is the legal equivalent of the original check under our legislation. It would include all the information contained on the original check and the image of the front and back of the original check, as well as the machine-readable numbers which appear on the bottom of the check. And because the substitute check can be processed just like an original check, a bank would not need to invest in any new technology or otherwise change its current check processing operation, unless the bank chooses to update its technology.

Consumers benefit, and this is the most important part of the legislation. Customers maintain the same protections that they have with this law as they have with their original check. Reducing processing costs will result in efficiency gains and expedited services for customers. Accessing images of checks will take a fraction of the time that it currently takes to access microfilm or the physical archives or the canceled check itself. Customers will no longer have to wait for a copy of the check to be obtained from a central processing facility or the microfilm library.

Institutions that have already implemented this check imaging technology offer their customers a wide variety of ways to access these images, including in person at branches as they would today, or through the mail but also over the Internet and in image statements and advanced ATMs. So, for the customer, this is just a wonderful boost.

Customers will also benefit from the availability of check imaging to help combat fraud and the problems associated with bad checks. The ability to access check images on the Internet helps consumers to quickly and conveniently verify their transactions. They can identify potential errors. They can detect fraudulent transactions sooner, rather than waiting until the end of the month when they receive their traditional statement.

Identifying errors and potential fraud as soon as possible helps everyone. It helps the banks minimize customer inconvenience and cost. It helps control potential losses. It helps give law enforcement an advantage in tracking down the perpetrators of fraud.

Promoting this image technology can help speed processing and encourage banks to provide new and improved products and services to consumers. Financial institutions will be able to establish branches or ATMs in remote locations to further service their customers, provide more cost-effective service, provide customers with later deposit and cut-off times, and provide printed copies of checks deposited at ATMs on ATM receipts. Such changes could result in a check being credited a day earlier and interest accruing a day earlier on interest-bearing accounts. Obviously, that will make customers quite happy.

In conclusion, this is a win-win for everyone. It is a win for the industry, but it is especially a win for consumers. I encourage my colleagues to support H.R. 1474 and significantly increase the efficiency of the Nation's check clearing process.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think this is a very good idea. It is efficient. We make sure consumers are fully protected. I agree with just about everything everybody else is going to say today.

Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Chairman, I thank the gentleman for yielding time to me, and I thank the sponsors for giving me an opportunity to speak.

This is clearly a bill, as the previous speaker outlined, that improves efficiency and hopefully reduces costs to banks. One thing that was not addressed in this legislation, though, is a remaining area of patent unfairness to consumers.

We all know that a check is essentially an article of faith. It is a contract between two people. From time to time, people write checks that they simply do not have the money to cover. They are penalized. They pay a fine by their bank, anywhere in the neighborhood of \$15 to \$25.

But what continues to be the case in this country, in many banks, in the neighborhood of about 85 percent of the big banks and about 75 percent of smaller banks, is someone who receives the check, who is already out the amount of money that they were supposed to be given, is also charged a fee, a fine. This is patently unfair. It is counterintuitive; and, frankly, it is indefensible. I think we should address this in this House.

Some of the arguments that are raised to defend the idea that the person who gets the check should be fined when someone bounces a check say that there is an added cost to banks when someone bounces a check.

This is true. It is estimated that that cost is in the neighborhood of 48 to 65 cents, depending on what study we see. It is clear that someone should be penalized for that. Frankly, we can argue it is too high, but the person who wrote the check is already getting a \$20-some-odd-dollar fine.

Also, there is a relationship between all banks in the system that when there is a bounced check, if the credit union has a bounced check that they have to return to CitiBank, there is a relationship there that they exchange a few dimes to make up for that cost.

The net of all of this is the banking business makes about \$6.1 billion of profits, according to 1999 numbers, just on these transactions. They cover the costs, and then industry-wide they make about \$6.1 billion. So the idea that the costs are not getting covered is certainly not the case.

Secondly, some have argued that we need to have a disincentive for a merchant who is going to get a bad check. We have to incentivize them, checking vigorously to make sure they are getting it from a legitimate person.

Well, this is the silliest argument. They already have the greatest incentive of all. If they get a bad check, they are out the money or they are out the service or they are out the product that they exchange in exchange for that. That is why we all go to our local diners and we see the checks up, notices up, "we do not accept checks from this person," because they definitely do not want to get snookered a second time. So the idea that they should get a \$20, a \$15 or \$10 fine, somehow creates a disincentive is simply not the case.

A third argument made is that, well, when we are receiving a check, we should be extra vigilant. We should call up to make sure the person has the money in their account. Well, I have news, because of excellent legislation passed by the gentleman from Ohio (Mr. OXLEY) and others, we cannot do that. We cannot receive a check for \$100 and call up the bank and say, listen, I have account number 1751. Do they have \$100 in their account? They cannot even exchange that information, so there is no way you as the person receiving the check can avoid that fee.

Some people have said, well, the receiving banks have costs just like the issuing bank has costs. As I mentioned, those costs are already covered.

Then, finally, after we cut through all of it, I have found in my one experience with this, and some industry leaders have said, do you know what, at the end of the day if you make a stink about it, we do not charge. That is not any way to run a railroad.

Frankly, this fee, this fine, this penalty is indefensible. It does not penalize someone who does something wrong, it does not disincentivize activity in any way, and it does not encourage any type of activity that a person can protect.

One of the things we are doing here is making this transaction more efficient. The gentleman from Alabama (Mr. BACHUS) said it in the debate on the rule, do we want to improve the efficiency here? That is the rationale. But I think we also have to restore a sense of fairness. This is one open fissure in the law that I look for opportunities to address.

Now, I know that we are here under an open rule and I have the opportunity, but I would ask the gentleman from Massachusetts if perhaps there might be other opportunities to address this inequity.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. WEINER. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. The gentleman is right, we are trying in everything we have done, and I think we have accomplished that in our committee so far. The chairman has been very cooperative in promoting efficiency while protecting consumers. This bill, as I said, does do that with regard to your ability to get the check if you actually need it.

The gentleman raises a point that had not previously occurred to me that I think is a good one. I think it ought to be addressed. I would be obviously, as I have told him, very reluctant to do it now without a chance to examine it and have some hearings.

We do have pending in the process a more comprehensive bill called the Regulatory Relief Bill into which I believe this would fit. The bill passed our committee. It is being sequentially referred to the Committee on the Judiciary.

There are some important issues there, particularly including the industrial loan corporations, where we have given assurances that we are going to try and work some compromises out. So I can guarantee to the gentleman from New York (Mr. WEINER), who has raised this very important issue, that further work remains to be done on regulatory relief. I have spoken to the chairman of both the full committee and the subcommittee, and we agree that this is an issue worthy of consideration.

I would say this, whether or not we would all ultimately agree on a solution cannot be predicted. Certainly the gentleman will, I believe, have an opportunity if not to offer it today to offer it later, and I hope then to be able to offer it with a good deal more agreement.

Mr. OXLEY. Mr. Chairman, will the gentleman yield?

Mr. WEINER. I yield to the gentleman from Ohio.

Mr. OXLEY. I thank the gentleman for yielding, Mr. Chairman.

Mr. Chairman, the gentleman from New York makes an excellent point. This is an issue that needs to be addressed. I think, indeed, the avenue that the gentleman from Massachusetts (Mr. FRANKS) mentioned would be

the most appropriate, as opposed to this check truncation bill. So I appreciate the gentleman's withholding the amendment until we have an opportunity to find out where it fits.

Indeed, as the regulatory relief bill works its way through the process, the gentleman would have adequate opportunity to work his amendment in that particular venue. So I appreciate the gentleman for yielding and look forward to working with him.

Mr. WEINER. Mr. Chairman, I thank the chairman and the ranking member for those words. Perhaps in the interim we could also inform some of the small business groups and advocates, who are probably the primary victims of these fees, small businesses who are in good faith accepting these things. The larger businesses, the Wal-Marts of the world, probably say to their banks, we refuse to pay them.

But this will be an opportunity. I appreciate the gentleman's willingness to give me another bite at this apple at the appropriate time.

Mr. FRANK of Massachusetts. Mr. Chairman, I ask unanimous consent that the gentleman from Tennessee (Mr. FORD) be allowed to manage the remainder of our time on this bill.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. BACHUS. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. OXLEY), the chairman of the full committee.

Mr. OXLEY. Mr. Chairman, I rise today to encourage my colleagues to support this important legislation.

I want to particularly pay my highest regards and admiration to the gentleman from Alabama (Chairman BACHUS) for working so well in a bipartisan way on this legislation; to our good friend, the gentlewoman from Pennsylvania (Ms. HART); my good friend, the gentleman from Tennessee (Mr. FORD), for being the lead Democrat to sponsor on this legislation; and the gentleman from New Jersey (Mr. FERGUSON).

This is a very important piece of legislation that modernizes the system. Just think about it. We are in many ways operating in kind of a Pony Express system today in moving checks around. Admittedly, instead of ponies, we do it by airplane.

We have found in our hearings, in our deliberations on this legislation, that the 4 days after 9/11/01 were 4 days in which nobody was flying. The checks were piling up. We process 42 billion checks in this economy every year, and the system was badly in need of modernization. I think that 4-day period pointed that out so well.

So this is really recognizing the technology that is out there.

I had an opportunity to visit NCR headquarters in Dayton, just south of my congressional district, last year. I got an eyewitness look at the new technology that is out there that allows this bill to come to fruition. It al-

lows us to move a step forward in the check-clearing process and at the same time making us more efficient as we proceed. That is an amazing effort that can bring about a great deal of change.

So I want to encourage my colleagues to support this legislation. It is long overdue. I again thank the leaders, particularly the gentlewoman from Pennsylvania (Ms. HART) and the gentleman from Tennessee (Mr. FORD), for their leadership on this issue.

Mr. FORD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I thank the gentleman from Ohio (Mr. OXLEY) and the gentleman from Alabama (Mr. BACHUS) for his leadership, as well as the gentlewoman from Pennsylvania (Ms. HART) and the gentleman from New Jersey (Mr. FERGUSON), and all my friends on the committee and all my friends on the Democrat side.

The rule kind of got heated and spirited over another issue that probably deserves some heat and spirit, but I think this issue here is one that should enjoy relative ease as we move forward.

I thank the gentleman from Ohio (Mr. OXLEY) (for working with the gentleman from New York (Mr. WEINER) and the gentleman from Massachusetts (Mr. FRANK) in addressing what also is an important issue in how people's checks are cashed and how they may be penalized for someone else wronging them.

□ 1230

That being said, the gentlewoman from Pennsylvania (Ms. HART) has walked through in pretty good detail what this bill seeks to do. In a lot of ways, Check 21 is pretty simple in what it does. It just modernizes the Nation's check payment system and tries to keep up with all the new technologies in the 21st century.

The gentleman from Alabama (Mr. BACHUS) mentioned how many millions of dollars can flow across the continents and across the oceans with the click of a mouse and the challenge we faced 2 years ago after the tragedies of 9/11 and how this bill really tries to respond. I know some people suggested, my good friend, the gentleman from Texas (Mr. SESSIONS), suggested earlier somehow or another this would really help to decrease oil costs. I hope we are not overstating the impact of the bill, and this will help in our fight against terrorism. Perhaps it will.

But one thing can be said, it is pro-consumer. It is pro-business in a lot of ways, not only pro-business for the banks but pro-business for those institutions who electronically transfer monies and those who depend heavily on checks.

My good friend, the gentleman from Vermont (Mr. SANDERS), who deserves some thanks also on our side of the aisle for working with the gentleman from Alabama (Mr. BACHUS), in particular raised some legitimate concerns throughout the debate about checks and whether or not these sub-

stitute checks that have now been introduced as a legal equivalent will somehow or another diminish the rights of those who rely on checks heavily, particularly seniors.

Perhaps the opposite is true. Not only does this legislation not affect arrangements between banks and customers moving forward, but it will probably also allow for a cheaper, more efficient way for checks to be used. I say that because banks will actually save money on the process and will actually be able to provide a greater array of services to all of its customers, particularly those customers who may rely more on checks.

The year upwards of 60 billion checks will be written in the United States; and although, more and more people are relying on forms of electronic payments, the Fed makes clear that checks will remain an indispensable part of our financial system.

Mr. Speaker, I could go on and on about the bill, but I take 30 more seconds before yielding to the gentlewoman from New York (Mrs. MALONEY) for some comments on the bill.

We talked about check truncation, and just to be real simple about what this is, we wanted to find a way to sort of foster innovation without mandating the receipt of checks in electronic form. It is important for banks and businesses, consumers to continue to have that option of accepting checks in paper form.

Essentially, what truncation is is when information on the paper check is captured off the check and delivered electronically, instead of the paper check being presented physically. Through check truncation, paper checks are rendered into zeros and one digital signals which can move through the payment system at digital speeds.

Check 21 accomplishes this by establishing this new negotiable instrument, a substitute check which has the same legal status as original checks. The substitute checks would contain the two-face image of the original check. They would include the magnetic code at the bottom so that any bank could process them using existing equipment.

They would conform to standards for size, paper stock and the like. The substitute checks can then be used by banks and consumers in the same way as original checks.

I make one last comment about my friend from North Carolina (Mr. WATT). He and the gentleman from Alabama (Mr. DAVIS) both contributed heavily to this bill ending up as good as it has, largely because of concerns they raised about the language. But for the gentleman from North Carolina (Mr. WATT) bringing to our attention how there might have been some ambiguity regarding coverage of the Uniform Commercial Code as it relates to certain disputes between banks, we might not have tightened the language. And but for the work of the gentleman from Alabama (Mr. DAVIS), who will speak in a few minutes, the language regarding

the recredit provision, which actually is a new protection for consumers, might not have been included.

Mr. Chairman, I yield 2 minutes to the gentlewoman from New York (Mrs. MALONEY).

(Mrs. MALONEY asked and was given permission to revise and extend her remarks.)

Mrs. MALONEY. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I rise in support of the Check 21 legislation that will modernize the Nation's check clearing system and benefit our constituents across the country. I thank the ranking member, the gentleman from Massachusetts (Mr. FRANK) and the gentleman from Tennessee (Mr. FORD) and the gentleman from Vermont (Mr. SANDERS), along with the gentleman from Ohio (Mr. OXLEY) and the gentleman from Alabama (Mr. BACHUS) for their hard work on this bill.

This legislation will increase electronic check presentment and lower the cost of check clearing, and it will make it easier for the payments system to proceed without breakdown in the event of another terrorist attack.

Today, the technology exists to allow customers to view images of checks on their own home computers so they do not have to wait until the end of the month to get their checks. This legislation complements this technology and will spur more financial institutions to offer these services to consumers.

As a practical matter, the ability of a consumer to see an electronic image of a check will allow them to more easily resolve disputed checks and combat fraud. The legislation also includes important consumer provisions that will allow customers to retrieve and properly debit funds.

Check truncation legislation will help prevent another post-9/11 situation where the grounding of the Nation's airplanes prevented checks from being cleared. Currently, checks that are not truncated have to be physically flown to their paying bank. With the planes grounded, massive float built up in the payment system after the terror attack and could have threatened a widespread economic interruption had flights not resumed.

Not only was this a problem after 9/11, but there is a long history of inefficiency in the transfer of checks by airplane, especially with respect to check-clearing services provided by the Federal Reserve. I have had a long interest in this issue, and I thank the sponsors of this legislation for including language in the bill that adds check transportation services to the Monetary Control Act.

I have had an interest in this issue and I thank the sponsors of the legislation for including language in the bill that adds check transportation services to the Monetary Control Act.

This provision will require the Federal Reserve the disclosure of costs related to check transportation and prevent further inefficiency.

This legislation is the product of years of work by the Federal Reserve and the Finan-

cial Services Committee. It represents contributions from many Members over the course of countless hearings.

I urge my colleagues to support the underlying bill.

Mr. BACHUS. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey (Mr. FERGUSON), who is last year's sponsor of the bill and is an original cosponsor this year.

Mr. FERGUSON. Mr. Chairman, I am pleased to be here. I certainly appreciate the chairman of the subcommittee and the chairman of the full committee for their work on this, and the ranking member of the full committee and the subcommittee and certainly my friend, the gentlewoman from Pennsylvania (Ms. HART), my friend, the gentleman from Tennessee (Mr. FORD), for their great work in sponsoring this legislation in this Congress.

I rise in support of this important legislation. It is common-sense legislation. It has garnered overwhelming support from financial institutions, from technology companies, from various trade associations, and from the Federal Reserve.

The way in which banks currently handle check transfers is totally outdated. Currently, banks are required to physically present and return original paper checks. It is a tedious process that is inefficient. It is expensive, and it is rife with potential for fraud. As a result, millions of paper checks are physically transported between banks every day. The system relies solely on uninterrupted air and ground traffic in order to ensure that checks are presented to paying banks in a timely manner.

When the horrific events of September 11 grounded all air traffic in the United States, hundreds of millions of checks did not move and the U.S. payment system was stalled, creating a situation that severely threatened our economic security. That is why the Federal Reserve, after consulting with the banking industry, technology companies, and consumer groups, submitted a proposal to Congress that would reduce the need for physical transportation of checks through increased electronic truncation.

Last Congress, I sponsored Check 21, a bill which builds on the Federal Reserve's proposal and modernizes the Nation's check payments system by allowing banks to exchange checks electronically. This Congress, I am proud to be a co-sponsor of the gentlewoman from Pennsylvania's (Ms. HART) and the gentleman from Tennessee's (Mr. FORD) legislation.

Check 21 strengthens our economic security by capitalizing on existing technology to make the collection process faster and more efficient while improving customer service, access to funds, and any fraud protections. Check 21 is simply a better, more efficient way of transferring checks that takes advantage of the technology that we have at hand.

Mr. Chairman, I am pleased that we were poised to pass this legislation.

Mr. FORD. Mr. Chairman, I yield 4 minutes to the gentleman from Alabama (Mr. DAVIS), a new colleague but one who has already distinguished himself in the Congress.

Mr. DAVIS of Alabama. Mr. Chairman, I want to thank the gentleman for yielding me time.

This is somewhat of a departure from the debate of the morning and from the debate that we may have this afternoon on some issues, but it is something of a welcome departure I suspect for some of us.

The way this institution works when it is at its best is we find a way to work with the best interests of the business community and we find a way to work with the best interests of the consumer community; and if we get some efficiency out of the process, well, all the better.

This legislation is a good bill. It is outstanding legislation, and I want to compliment the leadership of this committee. I want to compliment our very able colleague, the gentlewoman from Pennsylvania (Ms. HART), as well as my good friend, my very able colleague, the gentleman from Tennessee (Mr. FORD), as well as a number of members of this committee who have contributed to taking what was a good bill and getting it to the point that it is an excellent piece of legislation.

A number of people have extolled the virtues of this bill as far as efficiencies are concerned. A number of people have extolled its virtues as far as making a system that has been something of a maze a much more comprehensible process.

I want to dwell for a minute on an act of simplification that this bill creates with respect to consumers. Right now, a good many of the people who are watching this or who are part of our districts have had the experience of looking at their bank ledgers and finding out that they have been credited for something that they did not think they wrote. A lot of people regularly run into these kinds of very small issues with the banking community, and those of us who went to law school can recall the portions of our bar books that summarize the UCC and the various protections, and they have been something of an imponderable maze.

This bill improves that. The expedited recredit provision has a number of very simple but very important features.

The first one is that if it is determined that a bank has falsely credited someone's account, within 1 day of that determination the bank must recredit the account. And there is a very specific window of time that is set to resolve a dispute. If a bank has not determined that a claim is valid within 10 business days, the bank has two options: either recrediting the lesser of the amount charged or \$25 with interest being recredited and any remaining amount within 45 calendar days. That is an important act of simplification.

Another important act is that if there is an invalid claim or notice of recredit, the consumer must receive it no later than the day after the bank makes the determination. Why is that maze of words important? Because a lot of banks, Mr. Chairman, have not necessarily had the clearest or best guidance from the UCC on what to do in the very simple instance someone comes into a bank and wants to straighten out their account. This bill helps.

Another instance, we had a question during the committee process about the substitute check and a number of valid questions were raised about the meaning of the substitute check. In working with our colleagues on the other side of the aisle, we managed to clear up a lot of these ambiguities. It is now very clear that someone who may not have a substitute check in hand, that individual can still take advantage of the expedited recredit provisions. That is important in a world where paper sometimes gets lost in the mail.

So I will conclude, Mr. Chairman, by saying that this bill reflects what we can do when we are able to step outside of our partisan boxes and what we can do when we bring a little bit of common sense to the process. Again, I want to thank the leadership of the committee for bringing this to place.

Mr. BACHUS. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. HENSARLING).

Mr. HENSARLING. Mr. Chairman, I rise today in support of H.R. 1474, the Check Clearing for the 21st Century Act.

This bill, which modernizes check-clearing transactions, is a win-win for both consumers and financial institutions. Check 21 will result in fewer errors in check transactions while providing consumers with more choices.

Because of increased on-line access, consumers can now have more confidence when inquiring about the status of their personal checks, and they can receive a much quicker response from their bank.

Consumers will further benefit by the reduced cost associated with modernization of check clearing, and Check 21 ensures that banks remain fully accountable to the consumers they serve.

Mr. Chairman, the act will make banking more efficient, reduce transactional cost, provide consumers with more choices, and help our financial services industry remain preeminent in the world.

I want to thank the gentleman from Alabama (Mr. BACHUS) and my friends, the gentlewoman from Pennsylvania (Ms. HART) and the gentleman from Tennessee (Mr. FORD), for their leadership on this important legislation. I urge all of my colleagues to vote yes on H.R. 1474.

Mr. BACHUS. Mr. Chairman, I yield 2 minutes to the gentlewoman from Florida (Ms. HARRIS).

Ms. HARRIS. Mr. Chairman, I rise in support of H.R. 1474, the Check Clearing for the 21st Century Act.

Every day banks assume enormous risks in order to create jobs and build opportunities. They have infused our economy with its lifeblood of capital and credit, while maintaining the health of our global economy's circulatory arteries. Nevertheless, banks still must cope with costly and antiquated laws and regulations that do not accurately reflect the realities, demands, and opportunities of today's cyber economy.

Under the current law that governs the check-clearing process, banks must physically transport checks to a recipient bank, unless an electronic exchange agreement is in place with that recipient bank.

□ 1245

This requirement is costly, time-consuming and completely unnecessary in light of the safeguards and security available through digital imaging and electronic transmission.

H.R. 1474 helps us bring our banking system into the 21st century by granting full legal standing to substitute checks which can be digital images of the front and back of the original check that contain all of the information in readable form.

This bill modernizes the check collection process enabling banks to provide customers with faster and less expensive service. Moreover, H.R. 1474 retains and enhances all of the legal protections against fraud and errors that consumers enjoy under the current system while preserving the flexibility of recipient banks to process an electronically received check in the same way they would process the original.

Mr. Chairman, I urge my colleagues to support this long overdue legislation which will play a critical role in preserving the health of our financial system and revitalizing our economy, and I applaud the leadership and the sponsors this bill.

Mr. FORD. Mr. Chairman, I yield myself the remaining time. I will consume the shortest period of time as I possibly can, Mr. Chairman.

The gentleman from New Jersey (Mr. FERGUSON), who walked off the floor, deserves a lot of credit for this, and forgive me for not mentioning him more, and obviously the gentlewoman from Pennsylvania (Ms. HART), it is her bill this go around; but the gentleman from New Jersey (Mr. FERGUSON) brought my attention to the bill, and I thank him for that.

I think all the merits of the bill have been talked about pretty extensively and maybe the more we talk we may lose what unanimous support we have. So I am not going to talk much longer other than to thank a few people.

I want to thank Roger Ferguson at the Federal Reserve, the vice chair. I want to thank Ed Hill and Grant Cole at Bank of America. I want to thank Janelle Duncan with the Consumers Union, as well as the Consumer Federation of America and the United States Public Interest Research Group, for all

of their hard work. As the gentleman from Alabama (Mr. DAVIS) said, this is one bill that I think in a lot of ways can be accurately described as pro-business and pro-consumer.

I want to thank Brant Imperatore with O'Conner and Hannan, and of course, the committee staff on both sides, Erika Jeffers, who is a law school classmate, and Ken Swab and Jaime Lizarraga; as well as the gentleman from Ohio's (Mr. OXLEY) staff, Kevin MacMillan, Deena Ellis, Jim Clinger, Carter McDowell.

There were a number of groups outside of here, the Independent Community Bankers, America's Community Bankers, Credit Union National Association and many others, who contributed to making this final product as good as it is.

I ask my colleagues to support the bill.

Mr. Chairman, I yield back the balance of my time.

Mr. BACHUS. Mr. Chairman, I yield myself such time as may consume.

Mr. Chairman, present law requires that checks be returned to the bank where they were originally drawn, and that way of doing business has basically been the law and the procedure in this country for over 100 years. We have technology now that makes something else possible, and that is electronic transfer, as opposed to transfer of the paper check.

What we have in our country today is an antiquated process, which is also a tedious process, which each day involves as many as 10 to 12,000 cars, trucks and airplanes returning checks when none of this is necessary.

The credit unions some 20 years ago went away from this process. They have had zero consumer complaints. The largest banks have made agreements between banks, and they have gone away from this process; but today, two-thirds of the checks still are processed in this outdated manner.

What this House has done in a bipartisan way is take a bill that has been cosponsored by two of our most able Members, the gentlewoman from Pennsylvania (Ms. HART) and the gentleman from Tennessee (Mr. FORD), very aware of this issue, very knowledgeable on the issue, they have drafted this bill. The committee has looked at the bill. We have made changes to protect the consumer, slight changes. The bill as it exists today has been endorsed by the Federal Reserve, all the regulators, all the financial institutions involved, all the trade groups, consumer groups. It is a model for what this House can do when it puts aside its differences and works together for the good of the Nation as a whole.

This bill is good for customers. This bill is good for consumers. This bill is good for the economy.

We have talked about little things such as airport congestion, how this will help address that, congestion on the roadway, our energy dependence.

I want to commend, in closing, the gentleman from Ohio (Mr. OXLEY), who

has made this one of his three goals for this year to move this legislation; the gentleman from Massachusetts (Mr. FRANK), the ranking member, who identified this as necessary legislation.

My colleagues may say, well, this ought to be simple. For 20 years we tried to reform our check-clearing process. We have not been able to do it until this moment. This House today I think will take a historic step in making us more competitive in the world economy by bringing our check-clearing system up to a model for the world.

Mr. Chairman, I commend the gentleman from Tennessee (Mr. FORD) and the gentlewoman from Pennsylvania (Ms. HART).

Mr. FORD. Mr. Chairman, will the gentleman yield?

Mr. BACHUS. I yield to the gentleman from Tennessee.

Mr. FORD. Mr. Chairman, before the gentleman yields back, Jim Worth, I forgot to mention him, the legislative counsel. I thank him as well.

Mr. BACHUS. That is absolutely true. Our staff worked together very closely and in a very bipartisan spirit.

Mr. HINOJOSA. Mr. Chairman, I rise today in strong support of H.R. 1474, the Check Clearing for the 21st Century Act. I commend Representatives MELISSA HART and HAROLD FORD for introducing the legislation and for tenaciously working to ensure the legislation came to the House floor today.

I also want to thank Chairman OXLEY, Chairman BACHUS, Ranking Member FRANK and Ranking Member SANDERS for bringing this legislation to the floor today.

H.R. 1474 will modernize the nation's check payment system by allowing, but not mandating, banks to exchange checks electronically. Recognizing that not all banks have the ability to accept electronic transmission of a check, H.R. 1474 authorizes the creation of substitute checks for payment.

This substitute check would be used in place of the original paper check, and it would be a negotiable instrument. Banks that create an electronic check will be able to create a substitute check and use that for presentment to a bank that has not upgraded its system to accept electronic checks.

This legislation capitalizes on existing technology to make the current process faster and more efficient, while increasing customer service, improving access to funds and increasing antifraud measures that ensure our economic security. H.R. 1474 will decrease our check payment system's financial dependence on physically transporting checks, thus avoiding any types of delays or paralysis in the U.S. payment system that might be created by another September 11th terrorist attack.

I believe that the Committee successfully crafted very difficult and complicated credit provisions in the legislation that address the concerns of consumer groups.

This legislation is a well-crafted bill that will provide the structure for an efficient financial payments framework to enable financial institutions to provide better customer service. I encourage my colleagues to support this legislation.

Mr. OXLEY. Mr. Chairman. I wanted to take this opportunity to thank the gentleman from Wisconsin (Mr. SENSENBRENNER), the Chair-

man of the Judiciary Committee, for his assistance in bringing this important measure to the floor. I am inserting for the RECORD an exchange of correspondence regarding his committee's jurisdiction over the measure.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC, May 22, 2003.

Hon. MICHAEL OXLEY,  
Chairman, Committee on Financial Services,  
House of Representatives, Washington, DC.

DEAR CHAIRMAN OXLEY: In recognition of the desire to expedite floor consideration of H.R. 1474, the "Check Clearing for the 21st Century Act," the Committee on the Judiciary hereby waives consideration of the bill. Certain provisions of the bill relating to the litigation of claims relating to check clearing fall within the Committee on the Judiciary's Rule X jurisdiction. However, given the need to expedite this legislation, I will not seek a sequential referral based on their inclusion.

The Committee on the Judiciary takes this action with the understanding that the Committee's jurisdiction over these provisions is in no way diminished or altered. I would appreciate your including this letter in your committee report on H.R. 1474 and in the Congressional Record during consideration of H.R. 1474 on the House floor.

Sincerely,

F. JAMES SENSENBRENNER, JR.,  
Chairman.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON FINANCIAL SERVICES,  
Washington, DC, May 22, 2003.

Hon. F. JAMES SENSENBRENNER, JR.,  
Committee on the Judiciary, Rayburn House Of-  
fice Building, Washington, DC.

DEAR CHAIRMAN SENSENBRENNER: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 1474, the Check Clearing for the 21st Century Act.

I acknowledge your committee's jurisdictional interest in this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forego further action on the bill will not prejudice the Committee on the Judiciary with respect to its jurisdictional prerogatives on this or similar legislation. I will include a copy of your letter and this response in the Committee's report on the bill and the Congressional Record when the legislation is considered by the House.

Thank you again for your assistance.

Sincerely,

MICHAEL G. OXLEY,  
Chairman.

Mr. BACHUS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered by sections as an original bill for the purpose of amendment, and each section is considered read.

During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Clerk will designate section 1.

The text of section 1 is as follows:

H.R. 1474

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

(a) *SHORT TITLE.*—This Act may be cited as the "Check Clearing for the 21st Century Act".

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

(1) *In the Expedited Funds Availability Act, enacted on August 10, 1987, the Congress directed the Board of Governors of the Federal Reserve System to consider establishing regulations requiring Federal reserve banks and depository institutions to provide for check truncation, in order to improve the check processing system.*

(2) *In that same Act, the Congress—*  
(A) *provided the Board of Governors of the Federal Reserve System with full authority to regulate all aspects of the payment system, including the receipt, payment, collection, and clearing of checks, and related functions of the payment system pertaining to checks; and*

(B) *directed that the exercise of such authority by the Board superseded any State law, including the Uniform Commercial Code, as in effect in any State.*

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

(c) *PURPOSES.*—The purposes of this Act are as follows:

(1) *To facilitate check truncation by authorizing substitute checks.*

(2) *To foster innovation in the check collection system without mandating receipt of checks in electronic form.*

(3) *To improve the overall efficiency of the Nation's payments system.*

The CHAIRMAN. Are there any amendments to section 1?

AMENDMENT NO. 1 OFFERED BY MS. HART

Ms. HART. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Ms. HART:

In section 1, insert "or the 'Check 21 Act'" before the period at the end.

Ms. HART. Mr. Chairman, this amendment is actually very brief. It is one line. It is very simple; and it is, as far as I can tell, completely non-controversial.

The amendment simply adds another name to this legislation to the title of the bill. It will be, by this amendment, also referred to as the Check 21 Act. Everyone who has been familiar with this bill has commonly referred to it as Check-21, and this amendment simply brings clarity to that issue.

I would urge my colleagues to support the amendment.

Also, I would like to add to the thanks for the cooperation on a bipartisan basis for the bill itself as well. I would like to thank the gentleman from Ohio (Mr. OXLEY), the gentleman from Alabama (Mr. BACHUS), the ranking member as well, and also my fellow sponsors, the gentleman from Tennessee (Mr. FORD) and the gentleman from New Jersey (Mr. FERGUSON).

Everyone's cooperated well and explained this issue; but those who have not been mentioned today, those in the private sector who will be affected by this legislation have also been extremely supportive and very cooperative in working out differences that

they had during the process of moving this legislation forward, and I wish to recognize them as well. When we as the sponsors had asked them to sit down and iron some issues out, they did so and they did so very efficiently.

Mr. Chairman, I simply offer my amendment and ask for its approval, very simply adding the name Check 21 Act.

The CHAIRMAN. Does any other Member wish to speak on this amendment?

The question is on the amendment offered by the gentlewoman from Pennsylvania (Ms. HART).

The amendment was agreed to.

Mr. BACHUS. Mr. Chairman, I ask unanimous consent that the remainder of the committee amendment in the nature of a substitute be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The text of the remainder of the committee amendment in the nature of a substitute is as follows:

#### SEC. 2. DEFINITIONS.

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

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

(2) BANK.—The term “bank” means any person that is located in a State and engaged in the business of banking and includes—

(A) any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act);

(B) any Federal reserve bank;

(C) any Federal home loan bank; or

(D) to the extent it acts as a payor—

(i) the Treasury of the United States;

(ii) the United States Postal Service;

(iii) a State government; or

(iv) a unit of general local government (as defined in section 602(24) of the Expedited Funds Availability Act).

(3) BANKING TERMS.—

(A) CLAIMANT BANK.—The term “claimant bank” means a bank that submits a claim for re-credit under section 7 to an indemnifying bank.

(B) COLLECTING BANK.—The term “collecting bank” means any bank handling a check for collection except the paying bank.

(C) DEPOSITORY BANK.—The term “depository bank” means—

(i) the first bank to which a check is transferred, even if such bank is also the paying bank or the payee; or

(ii) a bank to which a check is transferred for deposit in an account at such bank, even if the check is physically received and indorsed first by another bank.

(D) PAYING BANK.—The term “paying bank” means—

(i) the bank by which a check is payable, unless the check is payable at or through another bank and is sent to the other bank for payment or collection; or

(ii) the bank at or through which a check is payable and to which the check is sent for payment or collection.

(E) RETURNING BANK.—

(i) IN GENERAL.—The term “returning bank” means a bank (other than the paying or depository bank) handling a returned check or notice in lieu of return.

(ii) TREATMENT AS COLLECTING BANK.—No provision of this Act shall be construed as affecting the treatment of a returning bank as a collecting bank for purposes of section 4-202(b) of the Uniform Commercial Code.

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

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

(6) CHECK.—The term “check”—

(A) means a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for forward collection or return, including a substitute check and a travelers check; and

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

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

(A) with respect to a check handled for forward collection, draws the check on a consumer account; or

(B) with respect to a check handled for return, deposits the check into, or cashes the check against, a consumer account.

(8) CONSUMER ACCOUNT.—The term “consumer account” has the same meaning as in section 602(10) of the Expedited Funds Availability Act.

(9) CUSTOMER.—The term “customer” means a person having an account with a bank.

(10) FORWARD COLLECTION.—The term “forward collection” means the transfer by a bank of a check to a collecting bank for settlement or the paying bank for payment.

(11) INDEMNIFYING BANK.—The term “indemnifying bank” means a bank that is providing an indemnity under section 5 with respect to a substitute check.

(12) MICR LINE.—The terms “MICR line” and “magnetic ink character recognition line” mean the numbers, which may include the bank routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with generally applicable industry standards.

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

(14) PERSON.—The term “person” means a natural person, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization.

(15) RECONVERTING BANK.—The term “reconverting bank” means—

(A) the bank that creates a substitute check; or

(B) if a substitute check is created by a person other than a bank, the first bank that transfers or presents such substitute check.

(16) SUBSTITUTE CHECK.—The term “substitute check” means a paper reproduction of the original check that—

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

(B) bears a MICR line containing all the information appearing on the MICR line of the original check, except as provided under generally applicable industry standards for substitute checks to facilitate the processing of substitute checks;

(C) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for substitute checks; and

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

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

(18) TRUNCATE.—The term “truncate” means to remove an original paper check from the check collection or return process and send to a recipient, in lieu of such original paper check, a substitute check or, by agreement, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without subsequent delivery of the original paper check.

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

(20) OTHER TERMS.—Unless the context requires otherwise, the terms not defined in this section shall have the same meanings as in the Uniform Commercial Code.

#### SEC. 3. GENERAL PROVISIONS GOVERNING SUBSTITUTE CHECKS.

(a) NO AGREEMENT REQUIRED.—A person may deposit, present, or send for collection or return a substitute check without an agreement with the recipient, so long as a bank has made the warranties in section 4 with respect to such substitute check.

(b) LEGAL EQUIVALENCE.—A substitute check shall be the legal equivalent of the original check for all purposes, including any provision of any Federal or State law, and for all persons if the substitute check—

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

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

(c) ENDORSEMENTS.—A bank shall ensure that the substitute check for which the bank is the reconverting bank bears all endorsements applied by parties that previously handled the check (whether in electronic form or in the form of the original paper check or a substitute check) for forward collection or return.

(d) IDENTIFICATION OF RECONVERTING BANK.—A bank shall identify itself as a reconverting bank on any substitute check for which the bank is a reconverting bank so as to preserve any previous reconverting bank identifications in conformance with generally applicable industry standards.

(e) APPLICABLE LAW.—A substitute check that is the legal equivalent of the original check under subsection (b) shall be subject to any provision, including any provision relating to the protection of customers, of part 229 of title 12 of the Code of Federal Regulations, the Uniform Commercial Code, and any other applicable Federal or State law as if such substitute check were the original check, to the extent such provision of law is not inconsistent with this Act.

#### SEC. 4. SUBSTITUTE CHECK WARRANTIES.

A bank that transfers, presents, or returns a substitute check and receives consideration for the check warrants, as a matter of law, to the transferee, any subsequent collecting or returning bank, the depository bank, the drawee, the drawer, the payee, the depositor, and any endorser (regardless of whether the warrantee receives the substitute check or another paper or electronic form of the substitute check or original check) that—

(1) the substitute check meets all the requirements for legal equivalence under section 3(b); and

(2) no depository bank, drawee, drawer, or endorser will receive presentment or return of the substitute check, the original check, or a copy or other paper or electronic version of the substitute check or original check such that the bank, drawee, drawer, or endorser will be asked to make a payment based on a check that the bank, drawee, drawer, or endorser has already paid.

#### SEC. 5. INDEMNITY.

(a) INDEMNITY.—A reconverting bank and each bank that subsequently transfers, presents, or returns a substitute check in any electronic or paper form, and receives consideration for such transfer, presentment, or return shall indemnify the transferee, any subsequent collecting or returning bank, the depository bank, the drawee, the drawer, the payee, the depositor, and any endorser, up to the amount described in subsections (b) and (c), as applicable, to the extent of any loss incurred by any recipient of a substitute check if that loss occurred

due to the receipt of a substitute check instead of the original check.

(b) INDEMNITY AMOUNT.—

(1) AMOUNT IN EVENT OF BREACH OF WARRANTY.—The amount of the indemnity under subsection (a) shall be the amount of any loss (including costs and reasonable attorney's fees and other expenses of representation) proximately caused by a breach of a warranty provided under section 4.

(2) AMOUNT IN ABSENCE OF BREACH OF WARRANTY.—In the absence of a breach of a warranty provided under section 4, the amount of the indemnity under subsection (a) shall be the sum of—

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

(B) interest and expenses (including costs and reasonable attorney's fees and other expenses of representation).

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

(d) EFFECT OF PRODUCING ORIGINAL CHECK OR COPY.—

(1) IN GENERAL.—If the indemnifying bank produces the original check or a copy of the original check (including an image or a substitute check) that accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated) or is otherwise sufficient to determine whether or not a claim is valid, the indemnifying bank shall—

(A) be liable under this section only for losses covered by the indemnity that are incurred up to the time the original check or such copy is provided to the indemnified party; and

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

(2) COORDINATION OF INDEMNITY WITH IMPLIED WARRANTY.—The production of the original check, a substitute check, or a copy under paragraph (1) by an indemnifying bank shall not absolve the bank from any liability on a warranty established under this Act or any other provision of law.

(e) SUBROGATION OF RIGHTS.—

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

(2) RECOVERY UNDER WARRANTY.—A bank that indemnifies a party under this section may attempt to recover from another party based on a warranty or other claim.

(3) DUTY OF INDEMNIFIED PARTY.—Each indemnified party shall have a duty to comply with all reasonable requests for assistance from an indemnifying bank in connection with any claim the indemnifying bank brings against a warrantor or other party related to a check that forms the basis for the indemnification.

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

(a) RECREDIT CLAIMS.—

(1) IN GENERAL.—A consumer may make a claim for expedited recredit from the bank that holds the account of the consumer with respect to a substitute check, if the consumer asserts in good faith that—

(A) the bank charged the consumer's account for a substitute check that was provided to the consumer;

(B) either—

(i) the check was not properly charged to the consumer's account; or

(ii) the consumer has a warranty claim with respect to such substitute check;

(C) the consumer suffered a resulting loss; and  
(D) the production of the original check or a better copy of the original check is necessary to determine the validity of any claim described in subparagraph (B).

(2) 30-DAY PERIOD.—Any claim under paragraph (1) with respect to a consumer account may be submitted by a consumer before the end of the 30-day period beginning on the later of—

(A) the date on which the consumer receives the periodic statement of account for such account which contains information concerning the transaction giving rise to the claim; or

(B) the date the substitute check is made available to the consumer.

(3) EXTENSION UNDER EXTENUATING CIRCUMSTANCES.—If the consumer's ability to submit the claim within the 30-day period under paragraph (2) is delayed due to extenuating circumstances, including extended travel or the illness of the consumer, the 30-day period shall be extended for a total not to exceed 30 additional days.

(b) PROCEDURES FOR CLAIMS.—

(1) IN GENERAL.—To make a claim for an expedited recredit under subsection (a) with respect to a substitute check, the consumer shall provide to the bank that holds the account of such consumer—

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

(i) why the substitute check was not properly charged to the consumer's account; or

(ii) the warranty claim with respect to such check;

(B) a statement that the consumer suffered a loss and an estimate of the amount of the loss;

(C) the reason why production of the original check or a better copy of the original check is necessary to determine the validity of the charge to the consumer's account or the warranty claim; and

(D) sufficient information to identify the substitute check and to investigate the claim.

(2) CLAIM IN WRITING.—The bank holding the consumer account that is the subject of a claim by the consumer under subsection (a) may, in the discretion of the bank, require the consumer to submit the information required under paragraph (1) in writing.

(c) RECREDIT TO CONSUMER.—

(1) CONDITIONS FOR RECREDIT.—The bank shall recredit a consumer account in accordance with paragraph (2) for the amount of a substitute check that was charged against the consumer account if—

(A) a consumer submits a claim to the bank with respect to that substitute check that meets the requirement of subsection (b); and

(B) the bank has not provided to the consumer the original check, a substitute check, or a copy of the original check and demonstrates that the substitute check was properly charged to the consumer's account.

(2) TIMING OF RECREDIT.—

(A) IN GENERAL.—The bank shall recredit the consumer's account for the amount described in paragraph (1) no later than the end of the business day following the business day on which the bank determines the consumer's claim is valid.

(B) RECREDIT PENDING INVESTIGATION.—If the bank has not yet determined that the consumer's claim is valid before the end of the 10th business day after the business day on which the consumer submitted the claim, the bank shall recredit the consumer's account for—

(i) the lesser of the amount of the substitute check that was charged against the consumer account, or \$2,500, together with interest if the account is an interest-bearing account, no later than the end of such 10th business day; and

(ii) the remaining amount of the substitute check that was charged against the consumer account, if any, together with interest if the account is an interest-bearing account, not later than the 45th calendar day following the business day on which the consumer submits the claim.

(d) AVAILABILITY OF RECREDIT.—

(1) NEXT BUSINESS DAY AVAILABILITY.—Except as provided in paragraph (2), a bank that provides a recredit to a consumer account under

subsection (c) shall make the recredited funds available for withdrawal by the consumer by the start of the next business day after the business day on which the bank recredits the consumer's account under subsection (c).

(2) SAFEGUARD EXCEPTIONS.—A bank may delay availability to a consumer of a recredit provided under subsection (c)(2)(B)(i) until the start of either the business day following the business day on which the bank determines that the consumer's claim is valid or the 45th calendar day following the business day on which the consumer submits a claim for such recredit in accordance with subsection (b), whichever is earlier, in any of the following circumstances:

(A) NEW ACCOUNTS.—The claim is made during the 30-day period beginning on the business day the consumer account was established.

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

(i) on 6 or more business days during the 6-month period ending on the date on which the consumer submits the claim, the balance in the consumer account was negative or would have become negative if checks or other charges to the account had been paid; or

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

(C) PREVENTION OF FRAUD LOSSES.—The bank has reasonable cause to believe that the claim is fraudulent, based on facts (other than the fact that the check in question or the consumer is of a particular class) that would cause a well-grounded belief in the mind of a reasonable person that the claim is fraudulent.

(3) OVERDRAFT FEES.—No bank that, in accordance with paragraph (2), delays the availability of a recredit under subsection (c) to any consumer account may impose any overdraft fees with respect to drafts drawn by the consumer on such recredited amount before the end of the 5-day period beginning on the date notice of the delay in the availability of such amount is sent by the bank to the consumer.

(e) REVERSAL OF RECREDIT.—A bank may reverse a recredit to a consumer account if the bank—

(1) determines that a substitute check for which the bank recREDITED a consumer account under subsection (c) was in fact properly charged to the consumer account; and

(2) notifies the consumer in accordance with subsection (f)(3).

(f) NOTICE TO CONSUMER.—

(1) NOTICE IF CONSUMER CLAIM NOT VALID.—If a bank determines that a substitute check subject to the consumer's claim was in fact properly charged to the consumer's account, the bank shall send to the consumer, no later than the business day following the business day on which the bank makes a determination—

(A) the original check or a copy of the original check (including an image or a substitute check) that—

(i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or  
(ii) is otherwise sufficient to determine whether or not the consumer's claim is valid; and

(B) an explanation of the basis for the determination by the bank that the substitute check was properly charged, including copies of any information or documents on which the bank relied in making the determination.

(2) NOTICE OF RECREDIT.—If a bank recredits a consumer account under subsection (c), the bank shall send to the consumer, no later than the business day following the business day on which the bank makes the recredit, a notice of—

(A) the amount of the recredit; and

(B) the date the recredited funds will be available for withdrawal.

(3) NOTICE OF REVERSAL OF RECREDIT.—In addition to the notice required under paragraph

(1), if a bank reverses a recredited amount under subsection (e), the bank shall send to the consumer, no later than the business day following the business day on which the bank reverses the recredit, a notice of—

- (A) the amount of the reversal; and  
(B) the date the recredit was reversed.

(4) **MODE OF DELIVERY.**—A notice described in this subsection shall be delivered by United States mail or by any other means through which the consumer has agreed to receive account information.

(g) **OTHER CLAIMS NOT AFFECTED.**—Providing a recredit in accordance with this section shall not absolve the bank from liability for a claim made under any other law, such as a claim for wrongful dishonor under the Uniform Commercial Code, or from liability for additional damages under section 5 or 9.

(h) **CLARIFICATION CONCERNING CONSUMER POSSESSION.**—A consumer who was provided a substitute check may make a claim for an expedited recredit under this section with regard to a transaction involving the substitute check whether or not the consumer is in possession of the substitute check.

(i) **SCOPE OF APPLICATION.**—This section shall only apply to customers who are consumers.

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

(a) **RECREDIT CLAIMS.**—

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

(A) the claimant bank (or a bank that the claimant bank has indemnified) has received a claim for expedited recredit from a consumer under section 6 with respect to a substitute check or would have been subject to such a claim had the consumer's account been charged;

(B) the claimant bank has suffered a resulting loss or is obligated to recredit a consumer account under section 6 with respect to such substitute check; and

(C) production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the customer account or any warranty claim connected with such substitute check.

(2) **120-DAY PERIOD.**—Any claim under paragraph (1) may be submitted by the claimant bank to an indemnifying bank before the end of the 120-day beginning on the date of the transaction that gave rise to the claim.

(b) **PROCEDURES FOR CLAIMS.**—

(1) **IN GENERAL.**—To make a claim under subsection (a) for an expedited recredit relating to a substitute check, the claimant bank shall send to the indemnifying bank—

(A) a description of—

(i) the claim, including an explanation of why the substitute check cannot be properly charged to the consumer account; or

(ii) the warranty claim;

(B) a statement that the claimant bank has suffered a loss or is obligated to recredit the consumer's account under section 6, together with an estimate of the amount of the loss or recredit;

(C) the reason why production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the consumer account or the warranty claim; and

(D) information sufficient for the indemnifying bank to identify the substitute check and to investigate the claim.

(2) **REQUIREMENTS RELATING TO COPIES OF SUBSTITUTE CHECKS.**—If the information submitted by a claimant bank pursuant to paragraph (1) in connection with a claim for an expedited recredit includes a copy of any substitute check for which any such claim is made, the claimant bank shall take reasonable steps to ensure that any such copy cannot be—

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

(B) sent or handled by any bank, including the indemnifying bank, as a forward collection or returned check.

(3) **CLAIM IN WRITING.**—An indemnifying bank may, in the bank's discretion, require the claimant bank to submit in writing the information required by paragraph (1), including a copy of the written claim, if any, that the consumer submitted in accordance with section 6(b).

(c) **RECREDIT BY INDEMNIFYING BANK.**—

(1) **PROMPT ACTION REQUIRED.**—No later than 10 business days after the business day on which an indemnifying bank receives a claim under subsection (a) from a claimant bank with respect to a substitute check, the indemnifying bank shall—

(A) provide, to the claimant bank, the original check (with respect to such substitute check) or a copy of the original check (including an image or a substitute check) that—

(i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or

(ii) is otherwise sufficient to determine the bank's claim is not valid; and

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

(C) provide information to the claimant bank as to why the indemnifying bank is not obligated to comply with subparagraph (A) or (B).

(2) **RECREDIT DOES NOT ABROGATE OTHER LIABILITIES.**—Providing a recredit under this subsection to a claimant bank with respect to a substitute check shall not absolve the indemnifying bank from liability for claims brought under any other law or from additional damages under section 5 or 9 with respect to such check.

(3) **REFUND TO INDEMNIFYING BANK.**—If a claimant bank reverses, in accordance with section 6(e), a recredit previously made to a consumer account under section 6(c), or otherwise receives a credit or recredit with regard to such substitute check, the claimant bank shall promptly refund to any indemnifying bank any amount previously advanced by the indemnifying bank in connection with such substitute check.

(d) **PRODUCTION OF ORIGINAL CHECK OR A SUFFICIENT COPY GOVERNED BY SECTION 5(d).**—If the indemnifying bank provides the claimant bank with the original check or a copy of the original check (including an image or a substitute check) under subsection (c)(1)(A), section 5(d) shall govern any right of the indemnifying bank to any repayment of any funds the indemnifying bank has recredited to the claimant bank pursuant to subsection (c).

#### **SEC. 8. DELAYS IN AN EMERGENCY.**

Delay by a bank beyond the time limits prescribed or permitted by this Act is excused if the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of a bank and if the bank uses such diligence as the circumstances require.

#### **SEC. 9. MEASURE OF DAMAGES.**

(a) **LIABILITY.**—

(1) **IN GENERAL.**—Except as provided in section 5, any person who, in connection with a substitute check, breaches any warranty under this Act or fails to comply with any requirement imposed by, or regulation prescribed pursuant to, this Act with respect to any other person shall be liable to such person in an amount equal to the sum of—

(A) the lesser of—

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

(ii) the amount of the substitute check; and

(B) interest and expenses (including costs and reasonable attorney's fees and other expenses of representation) related to the substitute check.

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

(b) **COMPARATIVE NEGLIGENCE.**—If a person incurs damages that resulted in whole or in part from the negligence or failure of that person to act in good faith, then the amount of any liability due to that person under subsection (a) shall be reduced in proportion to the amount of negligence or bad faith attributable to that person.

#### **SEC. 10. STATUTE OF LIMITATIONS AND NOTICE OF CLAIM.**

(a) **ACTIONS UNDER THIS ACT.**—

(1) **IN GENERAL.**—An action to enforce a claim under this Act may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 1-year period beginning on the date the cause of action accrues.

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

(b) **DISCHARGE OF CLAIMS.**—Except as provided in subsection (c), unless a person gives notice of a claim to the indemnifying or warranting bank within 30 days after the person has reason to know of the claim and the identity of the indemnifying or warranting bank, the indemnifying or warranting bank is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(c) **NOTICE OF CLAIM BY CONSUMER.**—A timely claim by a consumer under section 6 for expedited recredit constitutes timely notice of a claim by the consumer for purposes of subsection (b).

#### **SEC. 11. CONSUMER AWARENESS.**

(a) **IN GENERAL.**—Each bank shall provide, in accordance with subsection (b), a brief notice about substitute checks that describes—

(1) the process of check substitution and how the process may be different than the check clearing process with which the consumer may be familiar; and

(2) a description of the consumer recredit rights established under section 6 when a consumer believes in good faith that a substitute check was not properly charged to the consumer's account.

(b) **DISTRIBUTION.**—

(1) **EXISTING CUSTOMERS.**—With respect to consumers that are customers of a bank on the effective date of this Act, a bank shall provide the notice described in subsection (a) to each such consumer no later than the first regularly scheduled communication with the consumer after the effective date of this Act.

(2) **NEW ACCOUNT HOLDERS.**—A bank shall provide the notice described in subsection (a) to each consumer, other than existing customers referred to in paragraph (1), at the time at which the customer relationship is initiated.

(3) **MODE OF DELIVERY.**—A bank may send the notices required by this subsection by United States mail or by any other means through which the consumer has agreed to receive account information.

(c) **MODEL LANGUAGE.**—

(1) **IN GENERAL.**—No later than 1 year after the date of enactment of this Act, the Board shall publish model forms and clauses that a depository institution may use to describe each of the elements required by subsection (a).

(2) **SAFE HARBOR.**—A bank shall be treated as being in compliance with the requirements of subsection (a) if the bank's substitute check notice uses a model form or clause published by the Board and such model form or clause accurately describes the bank's policies and practices. A bank may delete any information in the model form or clause that is not required by this Act or rearrange the format.

(3) **USE OF MODEL LANGUAGE NOT REQUIRED.**—This section shall not be construed as requiring any bank to use a model form or clause that the Board prepares under this subsection.

#### **SEC. 12. EFFECT ON OTHER LAW.**

This Act shall supersede any provision of Federal or State law, including the Uniform Commercial Code, that is inconsistent with this Act, but only to the extent of the inconsistency.

**SEC. 13. VARIATION BY AGREEMENT.**

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

(b) NO OTHER PROVISIONS MAY BE VARIED.—Except as provided in subsection (a), no provision of this Act may be varied by agreement of any person or persons.

**SEC. 14. REGULATIONS.**

(a) IN GENERAL.—The Board may, by regulation, clarify or otherwise implement the provisions of this Act or may modify the requirements imposed by this Act with respect to substitute checks to further the purposes of this Act, including reducing risk, accommodating technological or other developments, and alleviating undue compliance burdens.

(b) BOARD MONITORING OF CHECK COLLECTION AND RETURN PROCESS; ADJUSTMENT OF TIME PERIODS.—

(1) MONITORING OF CHECK COLLECTION AND RETURN PROCESS.—The Board shall monitor the extent to which—

(A) original checks are converted to substitute checks in the check collection and return process, and

(B) checks are collected and returned electronically rather than in paper form.

(2) ADJUSTMENT OF TIME PERIODS.—The Board shall exercise the Board's authority under section 603(d)(1) of the Expedited Funds Availability Act to reduce the time periods applicable under subsections (b) and (e) of section 603 of such Act for making funds available for withdrawal, when warranted.

(c) PUBLICATION OF SCHEDULE BY BOARD FOR CHECK TRANSPORTATION SERVICES.—Section 11A(b) of the Federal Reserve Act (12 U.S.C. 248a(b)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by redesignating paragraph (8) as paragraph (9); and

(3) by inserting after paragraph (7) the following new paragraph:

"(8) check transportation services; and".

**SEC. 15. EFFECTIVE DATE.**

This Act shall take effect at the end of the 18-month period beginning on the date of the enactment of this Act, except as otherwise specifically provided in this Act.

The CHAIRMAN. Are there any further amendments?

The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. ADERHOLT) having assumed the chair, Mr. LAHOOD, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1474) 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, pursuant to House Resolution 256, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amend-

ment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BACHUS. Mr. Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

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**ESTABLISHING JOINT COMMITTEE TO REVIEW HOUSE AND SENATE MATTERS ASSURING CONTINUING REPRESENTATION AND CONGRESSIONAL OPERATIONS FOR THE AMERICAN PEOPLE**

Mr. DREIER. Mr. Speaker, pursuant to the order of the House yesterday, I call up the concurrent resolution (H. Con. Res. 190) to establish a joint committee to review House and Senate rules, joint rules, and other matters assuring continuing representation and congressional operations for the American people, and ask for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The text of H. Con. Res. 190 is as follows:

H. CON. RES. 190

Whereas the Government must be able to function during emergencies in a manner that gives confidence and security to the American people; and

Whereas the Government must ensure the continuation of congressional operations, including procedures for replacing Members, in the aftermath of a catastrophic attack: Now, therefore, be it

*Resolved by the House of Representatives (the Senate concurring), That (a) there is hereby established a joint committee composed of 20 members as follows:*

(1) 10 Members of the House of Representatives as follows: 5 from the majority party to be appointed by the Speaker of the House, including the chairman of the Committee on Rules, who shall serve as co-chairman, and 5 from the minority party to be appointed by the Speaker of the House (after consultation with the Minority Leader); and

(2) 10 Members of the Senate as follows: 5 from the majority party, including the chairman of the Committee on Rules and Administration, who shall serve as co-chairman, and 5 from the minority party, to be appointed by the Majority Leader of the Senate (after consultation with the Minority Leader).

A vacancy in the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee, and shall be filled in the same manner as the original selection.

(b)(1) The joint committee shall make a full study and review of the procedures which should be adopted by the House of Representatives, the Senate, and the Congress for the purpose of (A) ensuring the continuity and authority of Congress during times of crisis, (B) improving congressional procedures necessary for the enactment of measures affecting homeland security during times of crisis, and (C) enhancing the ability of each chamber to cooperate effectively with the other body on major and consequential issues related to homeland security.

(2) No recommendation shall be made by the joint committee except upon the majority vote of the members from each House, respectively.

(3) Notwithstanding any other provision of this resolution, any recommendation with respect to the rules and procedures of one House that only affects matters related solely to that House may only be made and voted on by members of the joint committee from that House and, upon its adoption by a majority of such members, shall be considered to have been adopted by the full committee as a recommendation of the joint committee.

(4) The joint committee shall submit to the Speaker of the House of Representatives and to the Majority Leader of the Senate an interim report not later than January 31, 2004, and a final report not later than May 31, 2004, of the results of such study and review.

(c) The joint committee shall cease to exist no later than May 31, 2004.

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to the order of the House of Wednesday, June 4, 2003, the gentleman from California (Mr. DREIER) and the gentleman from Texas (Mr. FROST) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. DREIER).

Mr. DREIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me begin by expressing my appreciation to Speaker HASTERT for his leadership on this very important issue of the continuity of the Congress.

H. Con. Res. 190 creates a joint committee of the House and Senate for systematic review of what congressional procedures, coordination, devices and leadership are necessary to handle a time of national crisis. Today, Mr. Speaker, we act to assure the American people that there will be continuing representation and congressional operations in the face of any catastrophe.

For a number of months, I have been considering the continuity of Congress, homeland security, and what measures we need to have in place to make sure that this institution functions in a time of crisis. I am pleased today to bring before the House a measure which has been sponsored by all 13 members of the Committee on Rules, Democrats and Republicans.

□ 1300

Mr. Speaker, only on a few occasions in the past have we acted to establish bicameral, bipartisan panels to review the structure and the functioning of this institution. The last time we did so was a decade ago, back in 1993, and I was privileged to be a cochairman of