

June 26, 2003, at 10:00 a.m., to hear testimony on the Nominations of Josette Sheeran Shiner, to Deputy United States Trade Representative, Executive Office of the President and James J. Jochum, to be Assistant Secretary, Department of Commerce.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 26, 2003, at 9:15 a.m. to hold a Business Meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 26, 2003, at 2 p.m. to hold a hearing on The Department of State's Office of Children's Issues—Responding to International Parental Abduction.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Thursday, June 26, 2003, at a time and location to be determined to consider the nominations of Joshua B. Bolten to be Director of the Office of Management and Budget; Fern Flanagan Saddler to be an Associate Judge of the Superior Court of the District of Columbia; and Judith Nan Macaluso to be an Associate Judge of the Superior Court of the District of Columbia.

*Agenda*

Nominations: Joshua B. Bolten to be Director of the Office of Management and Budget; Fern Flanagan Saddler to be an Associate Judge of the Superior Court for the District of Columbia; and Judith Nan Macaluso to be an Associate Judge of the Superior Court for the District of Columbia.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, June 26, 2003, at 11 a.m., in room 485 of the Russell Senate Office Building to conduct a business meeting on pending committee matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. McCONNELL. I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, June 26, 2003, at 9:30 a.m., in SDG 50.

I. Continuation of S. 1125, Fairness in Asbestos Injury Resolution Act of 2003 ("The FAIR Act") mark-up.

II. Nominations: William H. Pryor, Jr., to be United States Circuit Judge for the Eleventh Circuit; Diane M. Stuart to be Director, Violence Against Women Office, United States Department of Justice; and Thomas M. Hardiman to be United States District Judge for the Western District of Pennsylvania.

III. Bills: S.J. Res. 1, a joint resolution proposing an amendment to the constitution of the United States to protect the rights of crime victims [Kyl, Chambliss, Cornyn, Craig, DeWine, Feinstein, Graham, Grassley]; S. 1280, a bill to amend the Protect Act to clarify the liability of the National Center for Missing and Exploited Children [Hatch, Biden]; S. 174, a resolution designating Thursday, November 20, 2003, as "Feed America Thursday" [Hatch]; and S. 175, a resolution designating the month of October 2003, as "Family History Month" [Hatch].

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY, AND HOMELAND SECURITY

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Terrorism, Technology, and Homeland Security be authorized to meet to conduct a hearing on "Terrorism: Growing Wahhabi Influence in the United States" on Thursday, June 26, 2003 at 2 p.m., in Dirksen 226.

Panel I: David Aufhauser, General Counsel, U.S. Treasury Department, Washington, DC; and Larry A. Mefford, Assistant Director, Counterterrorism Division, Federal Bureau of Investigation, Washington, DC.

Panel 2: Dr. Alex Alexiev, Distinguished Fellow, Center for Security Policy, Washington, DC; and Stephen Schwartz, Senior Fellow, Foundation for Defense of Democracies, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST—  
EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Calendar Nos. 48 and 49, the nominations of Daniel Pearson and Charlotte A. Lane, to be members of the U.S. International Trade Commission, which have been pending on the Executive Calendar since March 5. I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Is there objection.

Mr. FRIST. Mr. President, on behalf of my colleagues on the other side of the aisle, I object to my own request.

The PRESIDING OFFICER. Objection is heard.

IMPROVING THE EFFICIENCY OF  
THE NATION'S PAYMENTS SYSTEM

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 168, S. 1334.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 1334) 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.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read the third time, the Banking Committee be discharged from further consideration of H.R. 1474, and the Senate proceed to its immediate consideration; that all after the enacting clause be stricken and the text of S. 1334 be inserted in lieu thereof; that the bill, as amended, be read the third time and passed; that the motion to reconsider be laid upon the table, and that any statements regarding the measure be printed in the RECORD. I further ask unanimous consent that S. 1334 be returned to the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1474), as amended, was passed, as follows:

*Resolved*, That the bill from the House of Representatives (H.R. 1474) entitled "An Act 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," do pass with the following amendment:

Strike out all after the enacting clause and insert:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) *SHORT TITLE*.—This Act may be cited as the "Check Truncation Act of 2003".

(b) *TABLE OF CONTENTS*.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

Sec. 4. General provisions governing substitute checks.

Sec. 5. Substitute check warranties.

Sec. 6. Indemnity.

Sec. 7. Expedited recredit for consumers.

Sec. 8. Expedited recredit procedures for banks.

Sec. 9. Delays in an emergency.

Sec. 10. Measure of damages.

Sec. 11. Statute of limitations and notice of claim.

Sec. 12. Consumer awareness.

Sec. 13. Effect on other law.

Sec. 14. Regulations.

Sec. 15. Study and report on funds availability.

Sec. 16. Evaluation and report by the Comptroller General.

Sec. 17. Variation by agreement.

Sec. 18. Effective date.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) *FINDINGS*.—Congress finds that—

(1) the Expedited Funds Availability Act (12 U.S.C. 4001 et seq.)—

(A) directs the Board to consider establishing regulations requiring Federal reserve banks and

depository institutions to provide for check truncation, in order to improve the check processing system;

(B) authorizes the Board 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

(C) directs that the exercise of such authority by the Board shall supersede any State law, including the Uniform Commercial Code, as in effect in any State; and

(2) check truncation is no less desirable in 2003 for both financial service customers and the financial services industry, to reduce costs, improve efficiency in check collections, and expedite funds availability for account holders than it was in 1987, when Congress first directed the Board to consider establishing such a process.

(b) PURPOSES.—The purposes of this Act are—

(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; and

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

### SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

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

(2) BANK.—The term “bank”—

(A) means any person located in a State engaged in the business of banking, including any depository institution; and

(B) includes—

(i) any Federal reserve bank;

(ii) any Federal home loan bank; and

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

(I) the Treasury of the United States;

(II) the United States Postal Service;

(III) a State government; and

(IV) a unit of general local government.

(3) BANKING TERMS.—

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

(B) 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 endorsed first by another bank.

(C) DEPOSITORY INSTITUTION.—The term “depository institution” has the same meaning as in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

(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 (12 U.S.C. 4001(3)).

(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 (12 U.S.C. 4001(10)).

(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 6 with respect to a substitute check.

(12) MICR LINE.—The term “MICR line” or “magnetic ink character recognition line” means 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 (12 U.S.C. 4001(14)).

(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) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)).

(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) UNIT OF GENERAL LOCAL GOVERNMENT.—The term “unit of general local government”

has the same meaning as in section 602(24) of the Expedited Funds Availability Act (12 U.S.C. 4001(24)).

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

### SEC. 4. 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, to the extent that the bank has made the warranties described in section 5 with respect to the substitute check.

(b) LEGAL EQUIVALENCE.—A substitute check shall be the legal equivalent of an 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 at which 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 reconverting 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 reconverting 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 consumers, of part 229 of title 12, Code of Federal Regulations (or any successor thereto), the Uniform Commercial Code, and any other applicable Federal or State law that would apply if the substitute check were the original check, to the extent that such provision of law is not inconsistent with this Act.

### SEC. 5. SUBSTITUTE CHECK WARRANTIES.

A bank that transfers, presents, or returns a substitute check and receives consideration for the check warrants 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 or original check) that—

(1) the substitute check meets all the requirements for legal equivalence under section 4(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 it will be asked to make a payment based on a check it has already paid.

### SEC. 6. 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 amounts 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 fees and other expenses of representation) proximately caused by a breach of a warranty established under section 5.

(2) AMOUNT IN ABSENCE OF BREACH OF WARRANTY.—In the absence of a breach of a warranty established under section 5, 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 fees and other expenses of representation).

## (c) COMPARATIVE NEGLIGENCE.—

(1) IN GENERAL.—If a loss under 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 the indemnification of that party under this section shall be reduced in proportion to the amount of negligence or bad faith attributable to that party.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.

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

(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 at which 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 that the original check or copy is provided to the indemnified party; and

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

(2) COORDINATION OF INDEMNITY WITH IMPLIED WARRANTY.—The production of the original check, substitute check, or 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 that the indemnifying bank brings against a warrantor or other party related to a check that forms the basis for the indemnification.

**SEC. 7. 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 account for a substitute check that was provided to the consumer;

(B) either—

(i) the check was not properly charged to the consumer 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) 40-DAY PERIOD.—Any claim under paragraph (1) with respect to a consumer account may be submitted by a consumer before the end of the 40-day period beginning on the later of—

(A) the date on which the financial institution mails or delivers, by a means agreed to by the consumer, the periodic statement of account for such account which contains information concerning the transaction giving rise to the claim; or

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

(3) EXTENSION UNDER EXTENUATING CIRCUMSTANCES.—If the ability of the consumer to submit the claim within the 40-day period under paragraph (2) is delayed due to extenuating circumstances, including extended travel or the illness of the consumer, the 40-day period shall be extended by a reasonable amount of time.

## (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 subject consumer 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 subject consumer account or the warranty claim; and

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

## (2) CLAIM IN WRITING.—

(A) IN GENERAL.—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.

(B) MEANS OF SUBMISSION.—A bank that requires a submission of information under subparagraph (A) may permit the consumer to make the submission electronically, if the consumer has agreed to communicate with the bank in that manner.

## (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—

(i) provided to the consumer—

(I) the original check; or

(II) 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 at which the original check was truncated; and

(ii) demonstrated to the consumer that the substitute check was properly charged to the consumer account.

## (2) TIMING OF RECREDIT.—

(A) IN GENERAL.—The bank shall recredit the subject consumer account for the amount described in paragraph (1) not later than the end of the business day following the business day on which the bank determines the claim of the consumer is valid.

(B) RECREDIT PENDING INVESTIGATION.—If the bank has not determined that the claim of the consumer 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 subject consumer 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, not 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 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 claim of the consumer 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 on which 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 on which 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 reccredited 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 claim of a consumer under this section was in fact properly charged to the consumer account, the bank shall send to the consumer, not later than the business day following the business day on which the bank makes the 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 at which the original check was truncated); or

(ii) is otherwise sufficient to determine whether or not the claim of the consumer is valid; and

(B) an explanation of the basis for the determination by the bank that the substitute check was properly charged, including a statement that the consumer may request 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, not 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 on which 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, not 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 on which 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 provision of law, such as a claim for wrongful dishonor under the Uniform Commercial Code, or from liability for additional damages under section 6 or 10.

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

#### SEC. 8. 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 7 with respect to a substitute check, or would have been subject to such a claim had the subject consumer account been charged;

(B) the claimant bank has suffered a resulting loss or is obligated to recredit the consumer account under section 7 with respect to such substitute check; and

(C) 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 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 period 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 subject consumer account under section 7, together

with an estimate of the amount of the loss or recredit;

(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 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 4(b); or

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

(3) CLAIM IN WRITING.—

(A) IN GENERAL.—An indemnifying bank may, in the discretion of the bank, require the claimant bank to submit the information required by paragraph (1) in writing, including a copy of the written or electronically submitted claim, if any, that the consumer provided in accordance with section 7(b).

(B) MEANS OF SUBMISSION.—An indemnifying bank that requires a submission of information under subparagraph (A) may permit the claimant bank to make the submission electronically, if the claimant bank has agreed to communicate with the indemnifying bank in that manner.

(c) RECREDIT BY INDEMNIFYING BANK.—

(1) PROMPT ACTION REQUIRED.—Not 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 at which the original check was truncated); or

(ii) is otherwise sufficient to determine that the claim of the bank is not valid;

(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 6 or 10 with respect to such check.

(3) REFUND TO INDEMNIFYING BANK.—If a claimant bank reverses, in accordance with section 7(e), a recredit previously made to a consumer account under section 7(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 6(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) of this section, section 6(d) shall govern any right of the indemnifying bank to any repayment of any funds that the indemnifying bank has recredited to the claimant bank pursuant to subsection (c).

#### SEC. 9. 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. 10. MEASURE OF DAMAGES.

(a) LIABILITY.—

(1) IN GENERAL.—Except as provided in section 6, 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 fees and other expenses of representation) related to the substitute check.

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

(b) COMPARATIVE NEGLIGENCE.—

(1) IN GENERAL.—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.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.

#### SEC. 11. 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 on which the cause of action accrues.

(2) ACCRUAL.—For purposes of paragraph (1), a cause of action accrues as of the date on which 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) NOTICE OF CLAIMS REQUIRED.—Unless a person gives notice of a claim to the indemnifying or warranting bank, not later than 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 from liability in an action to enforce a claim under this Act, 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 7 for expedited recredit constitutes timely notice of a claim by the consumer for purposes of subsection (b).

#### SEC. 12. CONSUMER AWARENESS.

(a) IN GENERAL.—During the 3-year period beginning on the effective date of this Act, each bank shall provide to each consumer that is a customer of the bank, in accordance with subsection (b), a brief notice about substitute checks that describes—

(1) how a substitute check is the legal equivalent of an original check for all purposes, including any provision of any Federal or State law, and for all persons, if the substitute check—

(A) accurately represents all of the information on the front and back of the original check

as of the time at which the original check was truncated; and

(B) bears the legend: "This is a legal copy of your check. You can use it in the same way you would use the original check."; and

(2) the consumer recedit rights established under section 7 when a consumer believes in good faith that a substitute check was not properly charged to the account of the consumer.

(b) DISTRIBUTION.—

(1) IN GENERAL.—The notice required by subsection (a) shall be provided—

(A) to each consumer that is a customer of the bank as of the effective date of this Act, and that receives original checks or substitute checks along with periodic account statements, not later than together with the first regularly scheduled communication with the customer after the effective date of this Act;

(B) at the time at which a customer relationship is initiated, if such relationship is initiated on or after the effective date of this Act and such customer will receive original checks or substitute checks along with periodic account statements; and

(C) to each customer of the bank that requests a copy of a check and receives a substitute check, at the time of the request.

(2) MODE OF DELIVERY.—A bank may provide 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.—Not later than 9 months 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 substitute check notice of the bank uses a model form or clause published by the Board, and such model form or clause accurately describes the policies and practices of the bank. A bank may delete any information in the model form or clause that is not required by this Act, or rearrange the format of such form.

(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. 13. 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. 14. REGULATIONS.

The Board may prescribe such regulations as it deems necessary to implement, prevent circumvention or evasion of, or facilitate compliance with the provisions of this Act.

#### SEC. 15. STUDY AND REPORT ON FUNDS AVAILABILITY.

(a) STUDY.—In order to evaluate the implementation and the impact of this Act, the Board shall conduct a study of—

(1) the percentage of total checks cleared in which the paper check is not returned to the paying bank;

(2) the extent to which financial institutions make funds available to consumers for local and nonlocal checks prior to the expiration of maximum hold periods;

(3) the length of time within which depository banks learn of the nonpayment of local and nonlocal checks;

(4) the increase or decrease in check-related losses over the study period; and

(5) the appropriateness of the time periods and amount limits applicable under sections 603 and 604 of the Expedited Funds Availability Act, as in effect on the date of enactment of this Act.

(b) REPORT TO CONGRESS.—Not later than 30 months after the effective date of this Act, the Board shall submit a report to Congress concerning the results of the study conducted under

this section, together with any recommendations for legislative action.

#### SEC. 16. EVALUATION AND REPORT BY THE COMPTROLLER GENERAL.

(a) STUDY.—Not later than 5 years after the date of enactment of this Act, the Comptroller General of the United States shall evaluate the implementation and administration of this Act, including—

(1) an estimate of the gains in economic efficiency made possible from check truncation;

(2) an evaluation of the benefits accruing to consumers and financial institutions from reduced transportation costs, longer hours for accepting deposits for credit within 1 business day, the impact of fraud losses, and an estimate of consumers' share of the total benefits derived from this Act; and

(3) an assessment of consumer acceptance of the check truncation process resulting from this Act, as well as any new costs incurred by consumers who had their original checks returned with their regular monthly statements prior to the date of enactment of this Act.

(b) REPORT TO CONGRESS.—Not later than 5 years after the date of enactment of this Act, the Comptroller General shall submit a report to Congress concerning the findings and conclusions of the Comptroller General in connection with the evaluation conducted pursuant to subsection (a), together with such recommendations for legislative and administrative action as the Comptroller General may determine to be appropriate.

#### SEC. 17. VARIATION BY AGREEMENT.

(a) SECTION 8.—Any provision of section 8 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. 18. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act, this Act shall become effective 12 months after the date of enactment of this Act.

### COMMENDING AUGUST HIEBERT

### EXPRESSING SENSE OF THE SENATE REGARDING THE CENTENARY OF THE RHODES SCHOLARSHIPS IN THE UNITED STATES

### HONORING MAYNARD HOLBROOK JACKSON, JR.

### COMMENDING GENERAL ERIC SHINSEKI

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the following Senate resolutions, en bloc: S. Res. 186, S. Res. 187, S. Res. 188, and S. Res. 190.

The PRESIDING OFFICER. The clerk will report the resolutions by title.

The legislative clerk read as follows:

A resolution (S. Res. 186) commending August Hiebert for his Service to the Alaska Communications Industry.

A resolution (S. Res. 187) expressing the sense of the Senate regarding the centenary of the Rhodes Scholarships in the United States and the establishment of the Mandela Rhodes Foundation.

A resolution (S. Res. 188) honoring Maynard Holbrooke Jackson, Jr., former Mayor

of the City of Atlanta, and extending condolences of the Senate on his death.

A resolution (S. Res. 190) commending General Eric Shinseki of the United States Army for his outstanding service and commitment to excellence.

There being no objection, the Senate proceeded to consider the resolutions, en bloc.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolutions be agreed to, en bloc; that the preambles be agreed to, en bloc; that the motions to reconsider be laid upon the table; and that any statements relating to these resolutions be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 186) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 186

Whereas Augie Hiebert came to Alaska in 1939 and built the first successful commercial radio station;

Whereas on Dec. 7, 1941, Augie Hiebert picked up the first report of the raid on Pearl Harbor from his radio station in Fairbanks, Alaska giving military leaders the first word of the attack that began World War II;

Whereas in 1953, Augie Hiebert founded Alaska's first television station;

Whereas Augie Hiebert established Alaska's first FM radio station and was named president of the Alaska Broadcasting system, overseeing the affiliation of nine stations that serve all major Alaska communities;

Whereas Augie Hiebert helped establish Alaska's first satellite earth station activated in 1970;

Whereas Augie Hiebert led in the development of the Territory and State of Alaska, working for over a half century to pioneer modern radio and television on behalf of the broadcast industry;

Whereas Augie Hiebert has been a pillar of the Alaska community as president of the Anchorage Chamber of Commerce and the Association of the U.S. Army in Alaska, and as director of the Alaska Educational Broadcasting Committee, the CBS Television Network Affiliates Association, the Civil Air Patrol, and the Pioneers of Alaska: Now, therefore, be it

Resolved, That it is the sense of the Senate that Augie Hiebert is commended for his service to the communications industry in Alaska and the world and for bringing the best that broadcasting has to offer to the people of Alaska.

The resolution (S. Res. 187) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 187

Whereas the Rhodes Scholarships, the oldest international fellowships, were initiated after the death of Cecil Rhodes in 1902, and now bring outstanding students from the United States, Australia, Bangladesh, Bermuda, Canada, the Commonwealth Caribbean, Germany, Hong Kong, India, Jamaica, Kenya, Malaysia, New Zealand, Pakistan, Singapore, South Africa, Uganda, Zambia, and Zimbabwe to the University of Oxford;

Whereas the first American Rhodes Scholars were elected in 1904, and since that time