

108TH CONGRESS
1ST SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2003

Ms. HART (for herself, Mr. FORD, Mr. FERGUSON, Mr. OXLEY, Mr. BACHUS, Mr. CROWLEY, Mr. JONES of North Carolina, Mr. ROYCE, Mrs. KELLY, Mr. TOOMEY, Mr. GILLMOR, Mr. HINOJOSA, Mr. LUCAS of Kentucky, Mr. ROSS, Mrs. MCCARTHY of New York, Mr. MCINTYRE, Ms. NORTON, and Mr. BOSWELL) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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

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

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

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

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

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

9 (2) In that same Act, the Congress—

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

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17 thority by the Board superseded any State law,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

20 (3) Check truncation is no less desirable today
21 for both financial service customers and the financial
22 services industry, to reduce costs, improve efficiency
23 in check collections, and expedite funds availability
24 for customers than it was over 15 years ago when

1 Congress first directed the Board to consider estab-
2 lishing such a process.

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

5 (1) To facilitate check truncation by author-
6 izing substitute checks.

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

10 (3) To improve the overall efficiency of the Na-
11 tion's payments system.

12 **SEC. 2. DEFINITIONS.**

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

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

17 (2) BANK.—The term “bank” means any per-
18 son that is located in a State and engaged in the
19 business of banking and includes—

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

23 (B) any Federal reserve bank;

24 (C) any Federal home loan bank; or

25 (D) to the extent it acts as a payor—

- 1 (i) the Treasury of the United States;
2 (ii) the United States Postal Service;
3 (iii) a State government; or
4 (iv) a unit of general local government
5 (as defined in section 602(24) of the Expe-
6 dited Funds Availability Act).

7 (3) BANKING TERMS.—

8 (A) CLAIMANT BANK.—The term “claim-
9 ant bank” means a bank that submits a claim
10 for recredit under section 7 to an indemnifying
11 bank.

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

15 (C) DEPOSITARY BANK.—The term “de-
16 positary bank” means—

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

20 (ii) a bank to which a check is trans-
21 ferred for deposit in an account at such
22 bank, even if the check is physically re-
23 ceived and indorsed first by another bank.

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

1 (i) the bank by which a check is pay-
2 able, unless the check is payable at or
3 through another bank and is sent to the
4 other bank for payment or collection; or

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

8 (E) RETURNING BANK.—

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

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

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

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

24 (6) CHECK.—The term “check”—

1 (A) means a draft, payable on demand and
2 drawn on or payable through or at an office of
3 a bank, whether or not negotiable, that is han-
4 dled for forward collection or return, including
5 a substitute check and a travelers check; and

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

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

11 (A) with respect to a check handled for
12 forward collection, draws the check on a con-
13 sumer account; or

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

17 (8) CONSUMER ACCOUNT.—The term “con-
18 sumer account” has the same meaning as in section
19 602(10) of the Expedited Funds Availability Act.

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

22 (10) FORWARD COLLECTION.—The term “for-
23 ward collection” means the transfer by a bank of a
24 check to a collecting bank for settlement or the pay-
25 ing bank for payment.

1 (11) INDEMNIFYING BANK.—The term “indem-
2 nifying bank” means a bank that is providing an in-
3 demnity under section 5 with respect to a substitute
4 check.

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

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

15 (14) PERSON.—The term “person” means a
16 natural person, corporation, unincorporated com-
17 pany, partnership, government unit or instrumen-
18 tality, trust, or any other entity or organization.

19 (15) RECONVERTING BANK.—The term “recon-
20 verting bank” means—

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

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

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

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

6 (B) bears a MICR line containing all the
7 information appearing on the MICR line of the
8 original check and all other information re-
9 quired under generally applicable industry
10 standards for substitute checks;

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

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

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

19 (18) **TRUNCATE.**—The term “truncate” means
20 to remove an original paper check from the check
21 collection or return process and send to a recipient,
22 in lieu of such original paper check, a substitute
23 check or, by agreement, information relating to the
24 original check (including data taken from the MICR
25 line of the original check or an electronic image of

1 the original check), whether with or without subse-
2 quent delivery of the original paper check.

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

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

10 **SEC. 3. GENERAL PROVISIONS GOVERNING SUBSTITUTE**
11 **CHECKS.**

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

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

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

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

4 (c) ENDORSEMENTS.—A bank shall ensure that the
5 substitute check for which the bank is the reconverting
6 bank bears all endorsements applied by parties that pre-
7 viously handled the check (whether in electronic form or
8 in the form of the original paper check or a substitute
9 check) for forward collection or return.

10 (d) IDENTIFICATION OF RECONVERTING BANK.—A
11 bank shall identify itself as a reconverting bank on any
12 substitute check for which the bank is a reconverting bank
13 so as to preserve any previous reconverting bank identi-
14 fications in conformance with generally applicable industry
15 standards.

16 (e) APPLICABLE LAW.—A substitute check that is
17 the legal equivalent of the original check under subsection
18 (b) shall be subject to any provision of part 229 of title
19 12 of the Code of Federal Regulations, the Uniform Com-
20 mercial Code, and any other applicable Federal or State
21 law as if such substitute check were the original check,
22 to the extent such provision of law is not inconsistent with
23 this Act.

1 **SEC. 4. SUBSTITUTE CHECK WARRANTIES.**

2 A bank that transfers, presents, or returns a sub-
3 stitute check and receives consideration for the check war-
4 rants, as a matter of law, to the transferee, any subse-
5 quent collecting or returning bank, the depository bank,
6 the drawee, the drawer, the payee, the depositor, and any
7 endorser (regardless of whether the warrantee receives the
8 substitute check or another paper or electronic form of
9 the substitute check or original check) that—

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

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

20 **SEC. 5. INDEMNITY.**

21 (a) INDEMNITY.—A reconverting bank and each bank
22 that subsequently transfers, presents, or returns a sub-
23 stitute check in any electronic or paper form, and receives
24 consideration for such transfer, presentment, or return
25 shall indemnify the transferee, any subsequent collecting
26 or returning bank, the depository bank, the drawee, the

1 drawer, the payee, the depositor, and any endorser, up to
2 the amount described in subsections (b) and (c), as appli-
3 cable, to the extent of any loss incurred by any recipient
4 of a substitute check if that loss occurred due to the re-
5 ceipt of a substitute check instead of the original check.

6 (b) INDEMNITY AMOUNT.—

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

13 (2) AMOUNT IN ABSENCE OF BREACH OF WAR-
14 RANTY.—In the absence of a breach of a warranty
15 provided under section 4, the amount of the indem-
16 nity under subsection (a) shall be the sum of—

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

19 (B) interest and expenses (including costs
20 and reasonable attorney’s fees and other ex-
21 penses of representation).

22 (c) COMPARATIVE NEGLIGENCE.—If a loss described
23 in subsection (a) results in whole or in part from the neg-
24 ligence or failure to act in good faith on the part of an
25 indemnified party, then that party’s indemnification under

1 this section shall be reduced in proportion to the amount
2 of negligence or bad faith attributable to that party.

3 (d) EFFECT OF PRODUCING ORIGINAL CHECK, SUB-
4 STITUTE CHECK, OR SUFFICIENT COPY.—

5 (1) IN GENERAL.—If the indemnifying bank
6 produces the original check, a substitute check, or a
7 copy of the original check that is sufficient to deter-
8 mine whether or not a claim is valid, the indem-
9 nifying bank shall—

10 (A) be liable under this section only for
11 losses covered by the indemnity that are in-
12 curred up to the time the original check, the
13 substitute check, or a sufficient copy is provided
14 to the indemnified party; and

15 (B) have a right to the return of any funds
16 the bank has paid under the indemnity in ex-
17 cess of those losses.

18 (2) COORDINATION OF INDEMNITY WITH IM-
19 PLIED WARRANTY.—The production of the original
20 check, a substitute check, or a sufficient copy under
21 paragraph (1) by an indemnifying bank shall not ab-
22 solve the bank from any liability on a warranty es-
23 tablished under this Act or any other provision of
24 law.

25 (e) SUBROGATION OF RIGHTS.—

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

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

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

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

16 (a) RECREDIT CLAIMS.—

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

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

25 (B) either—

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

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

6 (C) the consumer suffered a resulting loss;
7 and

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

12 (2) 30-DAY PERIOD.—Any claim under para-
13 graph (1) with respect to a consumer account may
14 be submitted by a consumer before the end of the
15 30-day period beginning on the later of—

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

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

23 (3) EXTENSION UNDER EXTENUATING CIR-
24 CUMSTANCES.—If the consumer's ability to submit
25 the claim within the 30-day period under paragraph

1 (2) is delayed due to extenuating circumstances, in-
2 cluding extended travel or the illness of the con-
3 sumer, the 30-day period shall be extended for a
4 total not to exceed 30 additional days.

5 (b) PROCEDURES FOR CLAIMS.—

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

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

12 (i) why the substitute check was not
13 properly charged to the consumer's ac-
14 count; or

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

17 (B) a statement that the consumer suf-
18 fered a loss and an estimate of the amount of
19 the loss;

20 (C) the reason why production of the origi-
21 nal check or a better copy of the original check
22 is necessary to determine the validity of the
23 charge to the consumer's account or the war-
24 ranty claim; and

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

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

9 (c) RECREDIT TO CONSUMER.—

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

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

17 (B) the bank has not provided to the con-
18 sumer the original check, a substitute check, or
19 a copy of the original check and demonstrates
20 that the substitute check was properly charged
21 to the consumer's account.

22 (2) TIMING OF RECREDIT.—

23 (A) IN GENERAL.—The bank shall recredit
24 the consumer's account for the amount de-
25 scribed in paragraph (1) no later than the end

1 of the business day following the business day
2 on which the bank determines the consumer's
3 claim is valid.

4 (B) RECREDIT PENDING INVESTIGA-
5 TION.—If the bank has not yet determined that
6 the consumer's claim is valid before the end of
7 the 10th business day after the business day on
8 which the consumer submitted the claim, the
9 bank shall recredit the consumer's account
10 for—

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

17 (ii) the remaining amount of the sub-
18 stitute check that was charged against the
19 consumer account, if any, together with in-
20 terest if the account is an interest-bearing
21 account, not later than the 45th calendar
22 day following the business day on which
23 the consumer submits the claim.

24 (d) AVAILABILITY OF RECREDIT.—

1 (1) NEXT BUSINESS DAY AVAILABILITY.—Ex-
2 cept as provided in paragraph (2), a bank that pro-
3 vides a recredit to a consumer account under sub-
4 section (c) shall make the recredited funds available
5 for withdrawal by the consumer by the start of the
6 next business day after the business day on which
7 the bank recredits the consumer’s account under
8 subsection (c).

9 (2) SAFEGUARD EXCEPTIONS.—A bank may
10 delay availability to a consumer of a recredit pro-
11 vided under subsection (c)(2)(B)(i) until the start of
12 either the business day following the business day on
13 which the bank determines that the consumer’s
14 claim is valid or the 45th calendar day following the
15 business day on which the consumer submits a claim
16 for such recredit in accordance with subsection (b),
17 whichever is earlier, in any of the following cir-
18 cumstances:

19 (A) NEW ACCOUNTS.—The claim is made
20 during the 30-day period beginning on the busi-
21 ness day the consumer account was established.

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

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

8 (ii) on 2 or more business days during
9 such 6-month period, the balance in the
10 consumer account was negative or would
11 have become negative in the amount of
12 \$5,000 or more if checks or other charges
13 to the account had been paid.

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

21 (3) OVERDRAFT FEES.—No bank that, in ac-
22 cordance with paragraph (2), delays the availability
23 of a recredit under subsection (c) to any consumer
24 account may impose any overdraft fees with respect
25 to drafts drawn by the consumer on such recredited

1 amount before the end of the 5-day period beginning
2 on the date notice of the delay in the availability of
3 such amount is sent by the bank to the consumer.

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

6 (1) determines that a substitute check for which
7 the bank recredited a consumer account under sub-
8 section (c) was in fact properly charged to the con-
9 sumer account; and

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

12 (f) NOTICE TO CONSUMER.—

13 (1) NOTICE IF CONSUMER CLAIM NOT VALID.—

14 If a bank determines that a substitute check subject
15 to the consumer's claim was in fact properly charged
16 to the consumer's account, the bank shall send to
17 the consumer, no later than the business day fol-
18 lowing the business day on which the bank makes a
19 determination—

20 (A) the original check, the substitute
21 check, or a copy of the original check that is
22 sufficient to determine that the substitute check
23 was properly charged to the consumer's ac-
24 count; and

1 (B) an explanation of the basis for the de-
2 termination by the bank that the substitute
3 check was properly charged, including copies of
4 any information or documents on which the
5 bank relied in making the determination.

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

11 (A) the amount of the recredit; and

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

14 (3) NOTICE OF REVERSAL OF RECREDIT.—In
15 addition to the notice required under paragraph (1),
16 if a bank reverses a recredited amount under sub-
17 section (e), the bank shall send to the consumer, no
18 later than the business day following the business
19 day on which the bank reverses the recredit, a notice
20 of—

21 (A) the amount of the reversal; and

22 (B) the date the recredit was reversed.

23 (4) MODE OF DELIVERY.—A notice described in
24 this subsection shall be delivered by United States

1 mail or by any other means through which the con-
2 sumer has agreed to receive account information.

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

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

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

12 (a) RECREDIT CLAIMS.—

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

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

22 (B) the claimant bank has suffered a re-
23 sulting loss or is obligated to recredit a con-
24 sumer account under section 6 with respect to
25 such substitute check; and

1 (C) production of the original check, an-
2 other substitute check, or a better copy of the
3 original check is necessary to determine the va-
4 lidity of the charge to the customer account or
5 any warranty claim connected with such sub-
6 stitute check.

7 (2) 120-DAY PERIOD.—Any claim under para-
8 graph (1) may be submitted by the claimant bank
9 to an indemnifying bank before the end of the 120-
10 day beginning on the date of the transaction that
11 gave rise to the claim.

12 (b) PROCEDURES FOR CLAIMS.—

13 (1) IN GENERAL.—To make a claim under sub-
14 section (a) for an expedited recredit relating to a
15 substitute check, the claimant bank shall send to the
16 indemnifying bank—

17 (A) a description of—

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

22 (ii) the warranty claim;

23 (B) a statement that the claimant bank
24 has suffered a loss or is obligated to recredit
25 the consumer's account under section 6, to-

1 gether with an estimate of the amount of the
2 loss or recredit;

3 (C) the reason why production of the origi-
4 nal check, another substitute check, or a better
5 copy of the original check is necessary to deter-
6 mine the validity of the charge to the consumer
7 account or the warranty claim; and

8 (D) information sufficient for the indem-
9 nifying bank to identify the substitute check
10 and to investigate the claim.

11 (2) REQUIREMENTS RELATING TO COPIES OF
12 SUBSTITUTE CHECKS.—If the information submitted
13 by a claimant bank pursuant to paragraph (1) in
14 connection with a claim for an expedited recredit in-
15 cludes a copy of any substitute check for which any
16 such claim is made, the claimant bank shall take
17 reasonable steps to ensure that any such copy can-
18 not be—

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

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

24 (3) CLAIM IN WRITING.—An indemnifying bank
25 may, in the bank’s discretion, require the claimant

1 bank to submit in writing the information required
2 by paragraph (1), including a copy of the written
3 claim, if any, that the consumer submitted in ac-
4 cordance with section 6(b).

5 (c) RECREDIT BY INDEMNIFYING BANK.—

6 (1) PROMPT ACTION REQUIRED.—No later than
7 10 business days after the business day on which an
8 indemnifying bank receives a claim under subsection
9 (a) from a claimant bank with respect to a sub-
10 stitute check, the indemnifying bank shall—

11 (A) provide the original check (with respect
12 to such substitute check), another substitute
13 check, or a copy of the original check that is
14 sufficient to determine that the bank's claim is
15 not valid to the claimant bank;

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

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

23 (2) RECREDIT DOES NOT ABROGATE OTHER LI-
24 ABILITIES.—Providing a recredit under this sub-
25 section to a claimant bank with respect to a sub-

1 substitute check shall not absolve the indemnifying bank
2 from liability for claims brought under any other law
3 or from additional damages under section 5 or 9
4 with respect to such check.

5 (3) REFUND TO INDEMNIFYING BANK.—If a
6 claimant bank reverses, in accordance with section
7 6(e), a recredit previously made to a consumer ac-
8 count under section 6(e), or otherwise receives a
9 credit or recredit with regard to such substitute
10 check, the claimant bank shall promptly refund to
11 any indemnifying bank any amount previously ad-
12 vanced by the indemnifying bank in connection with
13 such substitute check.

14 (d) PRODUCTION OF ORIGINAL CHECK OR A SUFFI-
15 CIENT COPY GOVERNED BY SECTION 5(d).—If the indem-
16 nifying bank provides the claimant bank with the original
17 check, another substitute check, or a sufficient copy of the
18 original check under subsection (c)(1)(A), section 5(d)
19 shall govern any right of the indemnifying bank to any
20 repayment of any funds the indemnifying bank has recred-
21 ited to the claimant bank pursuant to subsection (c).

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

23 Delay by a bank beyond the time limits prescribed
24 or permitted by this Act is excused if the delay is caused
25 by interruption of communication or computer facilities,

1 suspension of payments by another bank, war, emergency
2 conditions, failure of equipment, or other circumstances
3 beyond the control of a bank and if the bank uses such
4 diligence as the circumstances require.

5 **SEC. 9. MEASURE OF DAMAGES.**

6 (a) LIABILITY.—

7 (1) IN GENERAL.—Except as provided in sec-
8 tion 5, any person who, in connection with a sub-
9 stitute check, breaches any warranty under this Act
10 or fails to comply with any requirement imposed by,
11 or regulation prescribed pursuant to, this Act with
12 respect to any other person shall be liable to such
13 person in an amount equal to the sum of—

14 (A) the lesser of—

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

18 (ii) the amount of the substitute
19 check; and

20 (B) interest and expenses (including costs
21 and reasonable attorney's fees and other ex-
22 penses of representation) related to the sub-
23 stitute check.

24 (2) OFFSET OF RECREDITS.—The amount of
25 damages any person receives under paragraph (1), if

1 any, shall be reduced by the amount, if any, that the
2 claimant receives and retains as a recredit under
3 section 6 or 7.

4 (b) COMPARATIVE NEGLIGENCE.—If a person incurs
5 damages that resulted in whole or in part from the neg-
6 ligence or failure of that person to act in good faith, then
7 the amount of any liability due to that person under sub-
8 section (a) shall be reduced in proportion to the amount
9 of negligence or bad faith attributable to that person.

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

11 (a) ACTIONS UNDER THIS ACT.—

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

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

22 (b) DISCHARGE OF CLAIMS.—Except as provided in
23 subsection (c), unless a person gives notice of a claim to
24 the indemnifying or warranting bank within 30 days after
25 the person has reason to know of the claim and the iden-

1 tity of the indemnifying or warranting bank, the indem-
2 nifying or warranting bank is discharged to the extent of
3 any loss caused by the delay in giving notice of the claim.

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

8 **SEC. 11. CONSUMER AWARENESS.**

9 (a) IN GENERAL.—Each bank shall provide, in ac-
10 cordance with subsection (b), a brief notice about sub-
11 stitute checks that describes—

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

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

20 (b) DISTRIBUTION.—

21 (1) EXISTING CUSTOMERS.—With respect to
22 consumers that are customers of a bank on the ef-
23 fective date of this Act, a bank shall provide the no-
24 tice described in subsection (a) to each such con-
25 sumer no later than the first regularly scheduled

1 communication with the consumer after the effective
2 date of this Act.

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

8 (3) MODE OF DELIVERY.—A bank may send
9 the notices required by this subsection by United
10 States mail or by any other means through which
11 the consumer has agreed to receive account informa-
12 tion.

13 (c) MODEL LANGUAGE.—

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

19 (2) SAFE HARBOR.—A bank shall be treated as
20 being in compliance with the requirements of sub-
21 section (a) if the bank's substitute check notice uses
22 a model form or clause published by the Board and
23 such model form or clause accurately describes the
24 bank's policies and practices. A bank may delete any

1 information in the model form or clause that is not
2 required by this Act or rearrange the format.

3 (3) USE OF MODEL LANGUAGE NOT RE-
4 QUIRED.—This section shall not be construed as re-
5 quiring any bank to use a model form or clause that
6 the Board prepares under this subsection.

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

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

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

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

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

18 **SEC. 14. REGULATIONS.**

19 The Board may, by regulation, clarify or otherwise
20 implement the provisions of this Act or may modify the
21 requirements imposed by this Act with respect to sub-
22 stitute checks to further the purposes of this Act, includ-
23 ing reducing risk, accommodating technological or other
24 developments, and alleviating undue compliance burdens.

1 **SEC. 15. EFFECTIVE DATE.**

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

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