



1995 SENATE BILL 358

September 28, 1995 - Introduced by Senators GEORGE and HUELSMAN, cosponsored by Representatives HUBLER and PROSSER. Referred to Committee on Education and Financial Institutions.

1 **AN ACT to repeal** 404.101, 404.104 (1) (i), 404.104 (2) (f), 404.104 (3) (c), (e), (i)
2 and (j), 404.105 (6), 404.109, 404.202 (1) (d), 404.211, 404.212 (1m), 404.213 (1)
3 (c), 404.213 (1a) and 404.303 (1) (d); **to renumber** the unnumbered subchapter
4 title preceding 404.101, 404.104 (1) (k), the unnumbered subchapter title
5 preceding 404.201 and 404.202 (1) (e); **to renumber and amend** 401.207,
6 404.104 (1) (g), (h) and (j), 404.104 (2) (a) to (e), 404.104 (3) (b), (d), (f), (g) and
7 (h), 404.105 (1) to (5), 404.106 to 404.108, 404.208, 404.209, 404.210, 404.212
8 (title), (1) and (2) to (5), 404.213 (title) and (1) (intro.), (a), (b) and (d), 404.213
9 (2) to (4), (4m) and (5), 404.214, the unnumbered subchapter title preceding
10 404.301, 404.302, 404.303 (1) (e), the unnumbered subchapter title preceding
11 404.401, 404.401 (2), 404.402, 404.406 (2) and (4) and the unnumbered
12 subchapter title preceding 404.501; **to amend** 401.201 (20), 401.201 (24),
13 401.201 (43), 401.201 (44) (intro.), 402.103 (3) (e), 402.511 (3), 404.102, 404.103,
14 404.104 (1) (intro.) and (a) to (f), 404.104 (3) (a), 404.104 (4), 404.105 (intro.),
15 404.201, 404.202 (title) and (1) (intro.) and (a) to (c), 404.202 (2) and (3),
16 404.203, 404.204, 404.206, 404.301, 404.302 (title), 404.303 (title) and (1)
17 (intro.) and (a) to (c), 404.303 (2), 404.401 (1), 404.402 (title), 404.403 (1) and

1 (3), 404.405, 404.407, 404.501, 404.502, 404.503, 404.504, 409.203 (1) (intro.),
2 409.302 (1) (f), 409.312 (1), 410.105 (3) (b), 410.105 (3) (c) and 706.07 (2) (e); **to**
3 **repeal and recreate** chapter 403, 404.205, 404.207, 404.403 (2), 404.406 (1),
4 404.406 (3) and (5) and 405.103 (3) (a); and **to create** 401.207 (2), 404.104 (1)
5 (g) and (h), 404.104 (2) (a), (b) and (h), 404.104 (3) (b), (c), (e), (g), (i), (k) to (m)
6 and (p) to (s), 404.105 (1), 404.106, 404.110, 404.111, 404.208, 404.209, 404.213,
7 404.214 (2), 404.215 (2), 404.302 (2), 404.303 (1) (e), 404.401 (2) and (3), 404.402
8 (1) and (3) and 404.406 (2) of the statutes; **relating to:** revising the negotiable
9 instruments chapter and the bank deposits and collection chapter of the
10 uniform commercial code.

Analysis by the Legislative Reference Bureau

This bill repeals and recreates the chapter in Wisconsin's uniform commercial code (UCC) that governs negotiable instruments. The bill also makes certain conforming and miscellaneous changes to the chapter in the uniform commercial code governing bank deposits and collections. The bill is patterned after 2 uniform acts: UCC Revised Article 3 – Negotiable Instruments and UCC Article 4 Conforming and Miscellaneous Amendments. These acts were prepared under the joint sponsorship of the National Conference of Commissioners on Uniform State Laws and the American Law Institute. The revised articles 3 and 4 were approved and promulgated by those organizations in 1990.

Article 3 of the UCC governs negotiable instruments. A negotiable instrument is an unconditional promise or order to pay a fixed amount of money, that meets certain specified criteria. If the instrument is an unconditional promise to pay it is called a “note” and if it is an unconditional order to pay it is called a “draft”. A common type of draft is the bank check. In order to be a negotiable instrument, the draft or note must be payable to the bearer (where no specific payee is indicated) or to “order” (where a specific payee is indicated). A negotiable instrument is an instrument that a person, called a “holder in due course”, who is not one of the persons who created the instrument, may “negotiate” or transfer to another person without difficulty and who may enforce the instrument according to its terms. Article 4 of the UCC governs bank deposits and collections. Because many instruments, such as a bank check, are governed by provisions in both articles 3 and 4, a number of conforming changes were made to article 4 to reflect the revisions made by article 3.

The changes made by this bill include the following:

1. Scope. The bill makes a number of changes to the scope of articles 3 and 4. Under current law, article 3 applies to instruments that have certain characteristics of negotiable instruments, even if the instruments are not made out to “order” or “bearer”. Although these instruments are covered by article 3, no holder of these instruments may be a “holder in due course”. Under the bill, the only type of instrument that is not made out to “order” or “bearer” that is covered under article 3 is a check. Under current law, in order for an instrument to be negotiable it must be for a sum certain. This bill eliminates this requirement and, as a result, permits variable interest bearing notes to be covered under article 3. The scope of article 4 is also amended by the bill. Under current law, a bank is defined as any person engaged in the business of banking. This bill amends the definition of bank in article 4 to specifically include “a savings bank, savings and loan association, credit union, or trust company.”

2. Definition of ordinary care. This bill creates a definition of “ordinary care” for purposes of articles 3 and 4. Under the definition, “ordinary care” means, in the case of a person engaged in business, observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing, for collection or for payment by automated means, the definition provides that “reasonable commercial standards” do not require the bank to examine the instrument if the failure to examine does not violate the bank’s prescribed procedures and the bank’s procedures do not vary unreasonably from general banking usage.

3. Contribution rules. Under current law, if more than one person signs an instrument in the same capacity, they are jointly and severally liable in that capacity. This bill creates a right of contribution for parties who satisfy an instrument against co-parties signing the instrument in the same capacity. If a party is insolvent, contribution is divided among the solvent co-parties.

4. Statute of limitations. Although current article 3 contains provisions for determining when a cause of action arises or accrues under the article, article 3 does not contain specific statute of limitation provisions. This bill creates specific statute of limitations provisions under both article 3 and article 4. Although the bill provides for different statutes of limitations for different situations, generally, under article 3 as amended by the bill, an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within 6 years of the due date. Generally, under article 3 as amended by the bill, an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within 3 years after the dishonor of the draft, or 10 years after the date of the draft, whichever period expires first. The bill provides that an action to enforce an obligation, duty or right arising under article 4 must be commenced within 3 years after the cause of action accrues.

5. Restrictive endorsements. In order to negotiate an instrument that is made out “to order”, such as a personal check, an endorsement is required. A restrictive endorsement is an endorsement that seeks to impose a condition on the instrument’s negotiation. Under current article 3, most endorsements that seek to prohibit

further transfer or negotiation are treated as ineffective, although certain restrictive endorsements are given effect. Under the bill, conditional language does not make an endorsement “restrictive” under article 3 and an endorsement conditioning the right to receive payment does not affect the right of the endorsee to enforce the instrument. Under both current law and the bill, certain restrictive endorsements like “for deposit only” and “pay any bank” are honored, except for intermediary banks, acting as conduits to the depository bank. Under the bill, nondepository payor banks, as well as intermediary banks, are expressly exempted from liability with respect to these restrictive endorsements.

6. Holder in due course requirements. A “holder in due course” of a draft or note is entitled to payment even when the relationship between the original parties to the instrument would preclude their enforcement of the instrument. A person becomes a “holder in due course” by taking the instrument in good faith from a prior holder for value without knowledge of any defects in the instrument, of any claims against the instrument, or of any defenses that may be asserted against its payment. This bill adds certain additional requirements in order for a person to become a “holder in due course”. Under the bill, a person cannot become a “holder in due course” if there is apparent evidence of forgery or alteration. In addition, this bill adds to article 3 standards addressing the issue of when the taker of an instrument has notice of breach of a fiduciary duty and thus notice of a claim to the instrument or its proceeds.

7. Signing negotiable instruments. This bill modifies certain provisions dealing with the liability of the parties to a negotiable instrument. Under current article 4, no person is liable on an instrument unless his or her signature is on it, relieving an undisclosed principle from liability. This bill repeals this provision and recognizes that a person may be liable on an instrument, even without signing the note, if the person is represented by an agent who signed the instrument. The bill further provides that, with respect to corporate instruments signed by agents, a representative may show that the parties did not intend individual liability (except against a “holder in due course”), providing some protection to the agent that signs a corporate check even when the check does not show the agent’s status as such. The bill provides that the signature of an organization is unauthorized if more than one signature is required and this requirement is not met.

8. Dishonoring negotiable instruments. Subject to certain exceptions (such as when an endorsement states that it is “without recourse”), if an instrument is dishonored, an endorser of the instrument is obligated to pay the amount due on the instrument. Under current law, this endorser liability is discharged after a reasonable time for presentment, presumed to be 7 days. This bill modifies this provision to provide for a 30-day period and by making the period absolute rather than presumptive. This bill also modifies provisions relating to the wrongful dishonor of cashiers checks. Under the bill, if an “obligated bank” (the acceptor of a certified check or the issuer of a cashier’s check or teller’s check bought from the issuer) wrongfully refuses to pay a cashiers check or certified check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential

damages if the bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

9. Standard for good faith. This bill modifies the definition of good faith under articles 3 and 4 to include a requirement to observe “reasonable commercial standards of fair dealing”.

10. Accord and satisfactions. This bill clarifies rules regarding the effect of communications accompanying a check to the effect that the check is offered as full payment for the claim and that obtaining payment of the check is an agreement by the claimant to a settlement of the dispute for the amount tendered. Generally, the bill follows the general common law rule. Except in certain specified situations, a claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction for the claim. Under the bill, the claim is not, however, discharged, if the claimant is an organization and proves that, within a reasonable time before tendering the instrument, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts are to be sent to a designated person, office or place, and that the instrument or accompanying communication was not received by that designated person, office or place. The bill also provides that a claim is not discharged if, within 90 days after payment of the instrument, the claimant tenders repayment of the amount of the instrument to the person against whom the claim is asserted.

11. Truncation agreements. This bill authorizes “truncation agreements”, a concept not included in the existing article 4. A truncation agreement between a bank and a customer allows a bank to present an item for payment by “transmission of an image of an item or information describing the item (called a presentment notice) rather than by presenting the item itself. A related change made by the bill recognizes the practice of a bank providing a customer with an itemized statement of items credited to and debited against the customer’s account in lieu of providing the actual item to the customer with the statement. Current law ties the customer’s responsibility to report altered or forged items upon receipt of the items with the customer’s statement. This bill allows a sufficiently detailed statement to constitute notification of altered or forged items and ties the customer’s responsibility to report such items to the receipt of the statement, rather than the item. The bill requires a bank that does not provide the items to retain the items or legible copies for at least 7 years and must supply at least legible copies at the customer’s request.

12. Direct suits for conversion of a negotiable instrument. This bill amends provisions in current article 3 in order to allow a person whose endorsement is forged to sue the depository bank directly. Under current law, the owner of the instrument is generally required to bring multiple actions against the various payor banks and to require those banks to assert warranty rights against the depository bank.

13. Warranties. Under current article 4, there are a number of warranties that customers and collecting banks make to a payor of an item and to a subsequent transferee or collecting bank. In addition to making some modifications to these warranties, this bill adds “encoding” and “retention” warranties. The encoding

warranty is a warranty from a person who encodes information with respect to an item that the information is correctly encoded. The retention warranty refers to items that are presented pursuant to a truncation agreement and retain the original instrument while transmitting an image of it as presentation for payment.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 401.201 (20) of the statutes is amended to read:

2 401.201 **(20)** “Holder”, with respect to a negotiable instrument, means a the
3 person who is in possession of a document of title or an instrument or a certificated
4 investment security drawn, issued or endorsed to him or her or to his or her order or
5 to bearer or in blank if the instrument is payable to bearer or, in the case of an
6 instrument payable to an identified person, if the identified person is in possession.
7 “Holder”, with respect to a document of title, means the person in possession if the
8 goods are deliverable to bearer or to the order of the person in possession.

9 **SECTION 2.** 401.201 (24) of the statutes is amended to read:

10 401.201 **(24)** “Money” means a medium of exchange authorized or adopted by
11 a domestic or foreign government as a part of its currency and includes a monetary
12 unit of account established by an intergovernmental organization or by agreement
13 between 2 or more nations.

14 **SECTION 3.** 401.201 (43) of the statutes is amended to read:

15 401.201 **(43)** “Unauthorized” signature ~~or indorsement~~ means one made
16 without actual, implied or apparent authority and includes a forgery.

17 **SECTION 4.** 401.201 (44) (intro.) of the statutes is amended to read:

1 **403.102 Subject matter. (1)** This chapter applies to negotiable instruments.

2 It does not apply to money, to payment orders governed by ch. 410 or to securities
3 governed by ch. 408.

4 **(2)** If there is a conflict between this chapter and ch. 404 or 409, chs. 404 and
5 409 govern.

6 **(3)** Regulations of the board of governors of the federal reserve system and
7 operating circulars of the federal reserve banks supersede any inconsistent provision
8 of this chapter to the extent of the inconsistency.

9 **403.103 Definitions. (1)** In this chapter:

10 (a) “Acceptor” means a drawee who has accepted a draft.

11 (b) “Drawee” means a person ordered in a draft to make payment.

12 (c) “Drawer” means a person who signs or is identified in a draft as a person
13 ordering payment.

14 (d) “Good faith” means honesty in fact and the observance of reasonable
15 commercial standards of fair dealing.

16 (e) “Maker” means a person who signs or is identified in a note as a person
17 undertaking to pay.

18 (f) “Order” means a written instruction to pay money signed by the person
19 giving the instruction. The instruction may be addressed to any person, including
20 the person giving the instruction, or to one or more persons jointly or in the
21 alternative but not in succession. An authorization to pay is not an order unless the
22 person authorized to pay is also instructed to pay.

23 (g) “Ordinary care” in the case of a person engaged in business means
24 observance of reasonable commercial standards, prevailing in the area in which the
25 person is located, with respect to the business in which the person is engaged. In the

1 case of a bank that takes an instrument for processing for collection or payment by
2 automated means, reasonable commercial standards do not require the bank to
3 examine the instrument if the failure to examine does not violate the bank's
4 prescribed procedures and the bank's procedures do not vary unreasonably from
5 general banking usage not disapproved by this chapter or ch. 404.

6 (h) "Party" means a party to an instrument.

7 (i) "Promise" means a written undertaking to pay money signed by the person
8 undertaking to pay. An acknowledgment of an obligation by the obligor is not a
9 promise unless the obligor also undertakes to pay the obligation.

10 (j) "Prove" with respect to a fact means to meet the burden of establishing a fact,
11 as defined in s. 401.201 (8).

12 (k) "Remitter" means a person who purchases an instrument from its issuer if
13 the instrument is payable to an identified person other than the purchaser.

14 **(2)** Other definitions applying to this chapter and the sections in which they
15 appear are:

16 (ae) "Acceptance" — s. 403.409 (1).

17 (am) "Accommodated party" — s. 403.419 (1).

18 (as) "Accommodation party" — s. 403.419 (1).

19 (b) "Alteration" — s. 403.407 (1).

20 (c) "Anomalous endorsement" — s. 403.205 (4).

21 (d) "Blank endorsement" — s. 403.205 (2).

22 (e) "Cashier's check" — s. 403.104 (7).

23 (fg) "Certificate of deposit" — s. 403.104 (10).

24 (fr) "Certified check" — s. 403.409 (4).

25 (g) "Check" — s. 403.104 (6).

- 1 (h) "Consideration" — s. 403.303 (2).
- 2 (i) "Draft" — s. 403.104 (5).
- 3 (jg) "Endorsement" — s. 403.204 (1).
- 4 (jr) "Endorser" — s. 403.204 (2).
- 5 (k) "Holder in due course" — s. 403.302 (1).
- 6 (L) "Incomplete instrument" — s. 403.115 (1).
- 7 (m) "Instrument" — s. 403.104 (2).
- 8 (ng) "Issue" — s. 403.105 (1).
- 9 (nr) "Issuer" — s. 403.105 (3).
- 10 (og) "Negotiable instrument" — s. 403.104 (1).
- 11 (or) "Negotiation" — s. 403.201 (1).
- 12 (p) "Note" — s. 403.104 (5).
- 13 (qd) "Payable at a definite time" — s. 403.108 (2).
- 14 (qh) "Payable on demand" — s. 403.108 (1).
- 15 (qp) "Payable to bearer" — s. 403.109 (1).
- 16 (qt) "Payable to order" — s. 403.109 (2).
- 17 (r) "Payment" — s. 403.602 (1).
- 18 (s) "Person entitled to enforce" — s. 403.301.
- 19 (t) "Presentment" — s. 403.501 (1).
- 20 (u) "Reacquisition" — s. 403.207.
- 21 (v) "Special endorsement" — s. 403.205 (1).
- 22 (w) "Teller's check" — s. 403.104 (8).
- 23 (xg) "Transfer of instrument" — s. 403.203 (1).
- 24 (xr) "Traveler's check" — s. 403.104 (9).
- 25 (y) "Value" — s. 403.303 (1).

1 **(3)** The following definitions in other chapters apply to this chapter:

2 (a) “Bank” — s. 404.105 (1).

3 (b) “Banking day” — s. 404.104 (1) (c).

4 (c) “Clearinghouse” — s. 404.104 (1) (d).

5 (d) “Collecting bank” — s. 404.105 (2).

6 (e) “Depositary bank” — s. 404.105 (3).

7 (f) “Documentary draft” — s. 404.104 (1) (f).

8 (g) “Intermediary bank” — s. 404.105 (4).

9 (h) “Item” — s. 404.104 (1) (i).

10 (i) “Payer bank” — s. 404.105 (5).

11 (j) “Suspends payments” — s. 404.104 (1) (L).

12 **(4)** In addition, ch. 401 contains general definitions and principles of
13 construction and interpretation applicable throughout this chapter.

14 **403.104 Negotiable instrument. (1)** Except as provided in subs. (3) and (4),
15 “negotiable instrument” means an unconditional promise or order to pay a fixed
16 amount of money, with or without interest or other charges described in the promise
17 or order, if all of the following apply:

18 (a) It is payable to bearer or to order at the time that it is issued or first comes
19 into possession of a holder.

20 (b) It is payable on demand or at a definite time.

21 (c) It does not state any other undertaking or instruction by the person
22 promising or ordering payment to do any act in addition to the payment of money,
23 but the promise or order may contain any of the following:

24 1. An undertaking or power to give, maintain or protect collateral to secure
25 payment.

1 2. An authorization or power to the holder to confess judgment or realize on or
2 dispose of collateral.

3 3. A waiver of the benefit of any law intended for the advantage or protection
4 of an obligor.

5 **(2)** “Instrument” means a negotiable instrument.

6 **(3)** An order that meets all of the requirements of sub. (1), except sub. (1) (a),
7 and otherwise falls within the definition of check in sub. (6) is a negotiable
8 instrument and a check.

9 **(4)** A promise or order other than a check is not an instrument if, at the time
10 that it is issued or first comes into possession of a holder, it contains a conspicuous
11 statement, however expressed, to the effect that the promise or order is not
12 negotiable or is not an instrument governed by this chapter.

13 **(5)** An instrument is a note if it is a promise and is a draft if it is an order. If
14 an instrument falls within the definition of both note and draft, a person entitled to
15 enforce the instrument may treat it as either.

16 **(6)** “Check” means a draft, other than a documentary draft, payable on demand
17 and drawn on a bank or means a cashier’s check or teller’s check. An instrument may
18 be a check even though it is described on its face by another term, such as money
19 order.

20 **(7)** “Cashier’s check” means a draft with respect to which the drawer and
21 drawee are the same bank or branches of the same bank.

22 **(8)** “Teller’s check” means a draft drawn by a bank on another bank, or payable
23 at or through a bank.

24 **(9)** “Traveler’s check” means an instrument that is payable on demand, that
25 is drawn on or payable at or through a bank, that is designated by the term “traveler’s

1 check” or by a substantially similar term, and that requires, as a condition to
2 payment, a countersignature by a person whose specimen signature appears on the
3 instrument.

4 **(10)** “Certificate of deposit” means an instrument containing an
5 acknowledgment by a bank that a sum of money has been received by the bank and
6 a promise by the bank to repay the sum of money. A certificate of deposit is a note
7 of the bank.

8 **403.105 Issue of instrument.** (1) “Issue” means the first delivery of an
9 instrument by the maker or drawer, whether to a holder or nonholder, for the purpose
10 of giving rights on the instrument to any person.

11 **(2)** An unissued instrument, or an unissued incomplete instrument that is
12 completed, is binding on the maker or drawer, but nonissuance is a defense. An
13 instrument that is conditionally issued or is issued for a special purpose is binding
14 on the maker or drawer, but failure of the condition or special purpose to be fulfilled
15 is a defense.

16 **(3)** “Issuer” applies to issued and unissued instruments and means a maker or
17 drawer of an instrument.

18 **403.106 Unconditional promise or order.** (1) (a) Except as otherwise
19 provided in this section, for the purposes of s. 403.104 (1), a promise or order is
20 unconditional unless it states any of the following:

- 21 1. An express condition to payment.
- 22 2. That the promise or order is subject to or governed by another writing.
- 23 3. That rights or obligations with respect to the promise or order are stated in
24 another writing.

1 (b) A reference to another writing does not of itself make the promise or order
2 conditional.

3 (2) A promise or order is not made conditional by a reference to another writing
4 for a statement of rights with respect to collateral, prepayment or acceleration or
5 because payment is limited to resort to a particular fund or source.

6 (3) If a promise or order requires, as a condition to payment, a countersignature
7 by a person whose specimen signature appears on the promise or order, the condition
8 does not make the promise or order conditional for the purposes of s. 403.104 (1). If
9 the person whose specimen signature appears on an instrument fails to countersign
10 the instrument, the failure to countersign is a defense to the obligation of the issuer,
11 but the failure does not prevent a transferee of the instrument from becoming a
12 holder of the instrument.

13 (4) If a promise or order at the time that it is issued or first comes into
14 possession of a holder contains a statement, required by applicable statutory or
15 administrative law, to the effect that the rights of a holder or transferee are subject
16 to claims or defenses that the issuer could assert against the original payee, the
17 promise or order is not thereby made conditional for the purposes of s. 403.104 (1);
18 but if the promise or order is an instrument, there cannot be a holder in due course
19 of the instrument.

20 **403.107 Instrument payable in foreign money.** Unless the instrument
21 otherwise provides, an instrument that states the amount payable in foreign money
22 may be paid in the foreign money or in an equivalent amount in dollars calculated
23 by using the current bank-offered spot rate at the place of payment for the purchase
24 of dollars on the day on which the instrument is paid.

1 **403.108 Payable on demand or at definite time.** (1) A promise or order
2 is payable on demand if any of the following applies:

3 (a) It states that it is payable on demand or at sight, or otherwise indicates that
4 it is payable at the will of the holder.

5 (b) It does not state any time of payment.

6 **(2)** A promise or order is payable at a definite time if it is payable on elapse of
7 a definite period of time after sight or acceptance or at a fixed date or dates or at a
8 time or times readily ascertainable at the time that the promise or order is issued,
9 subject to any of the following rights:

10 (a) Prepayment.

11 (b) Acceleration.

12 (c) Extension at the option of the holder.

13 (d) Extension to a further definite time at the option of the maker or acceptor
14 or automatically upon or after a specified act or event.

15 **(3)** If an instrument, payable at a fixed date, is also payable upon demand made
16 before the fixed date, the instrument is payable on demand until the fixed date and,
17 if demand for payment is not made before that date, becomes payable at a definite
18 time on the fixed date.

19 **403.109 Payable to bearer or to order.** (1) A promise or order is payable
20 to bearer if any of the following applies:

21 (a) It states that it is payable to bearer or to the order of bearer or otherwise
22 indicates that the person in possession of the promise or order is entitled to payment.

23 (b) It does not state a payee.

24 (c) It states that it is payable to or to the order of cash or otherwise indicates
25 that it is not payable to an identified person.

1 (2) A promise or order that is not payable to bearer is payable to order if it is
2 payable to the order of an identified person or to an identified person or order. A
3 promise or order that is payable to order is payable to the identified person.

4 (3) An instrument payable to bearer may become payable to an identified
5 person if it is specially endorsed under s. 403.205 (1). An instrument payable to an
6 identified person may become payable to bearer if it is endorsed in blank under s.
7 403.205 (2).

8 **403.110 Identification of person to whom instrument is payable. (1)**

9 The person to whom an instrument is initially payable is determined by the intent
10 of the person, whether or not authorized, signing as, or in the name or behalf of, the
11 issuer of the instrument. The instrument is payable to the person intended by the
12 signer even if that person is identified in the instrument by a name or other
13 identification that is not that of the intended person. If more than one person signs
14 in the name or behalf of the issuer of an instrument and all of the signers do not
15 intend the same person as payee, the instrument is payable to any person intended
16 by one or more of the signers.

17 (2) If the signature of the issuer of an instrument is made by automated means,
18 such as a checkwriting machine, the payee of the instrument is determined by the
19 intent of the person who supplied the name or identification of the payee, whether
20 or not authorized to do so.

21 (3) A person to whom an instrument is payable may be identified in any way,
22 including by name, identifying number, office or account number. For the purpose
23 of determining the holder of an instrument, the following rules apply:

24 (a) If an instrument is payable to an account and the account is identified only
25 by number, the instrument is payable to the person to whom the account is payable.

1 If an instrument is payable to an account identified by number and by the name of
2 a person, the instrument is payable to the named person, whether or not that person
3 is the owner of the account identified by number.

4 (b) If an instrument is payable to:

5 1. A trust, an estate or a person described as trustee or representative of a trust
6 or estate, the instrument is payable to the trustee, the representative or a successor
7 of either, whether or not the beneficiary or estate is also named.

8 2. A person described as agent or similar representative of a named or
9 identified person, the instrument is payable to the represented person, the
10 representative or a successor of the representative.

11 3. A fund or organization that is not a legal entity, the instrument is payable
12 to a representative of the members of the fund or organization.

13 4. An office or to a person described as holding an office, the instrument is
14 payable to the named person, the incumbent of the office or a successor to the
15 incumbent.

16 (4) If an instrument is payable to 2 or more persons alternatively, it is payable
17 to any of them and may be negotiated, discharged or enforced by any or all of them
18 in possession of the instrument. If an instrument is payable to 2 or more persons not
19 alternatively, it is payable to all of them and may be negotiated, discharged or
20 enforced only by all of them. If an instrument payable to 2 or more persons is
21 ambiguous as to whether it is payable to the persons alternatively, the instrument
22 is payable to the persons alternatively.

23 **403.111 Place of payment.** Except as otherwise provided for items in ch. 404,
24 an instrument is payable at the place of payment stated in the instrument. If no
25 place of payment is stated, an instrument is payable at the address of the drawee or

1 maker stated in the instrument. If no address is stated, the place of payment is the
2 place of business of the drawee or maker. If a drawee or maker has more than one
3 place of business, the place of payment is any place of business of the drawee or
4 maker chosen by the person entitled to enforce the instrument. If the drawee or
5 maker has no place of business, the place of payment is the residence of the drawee
6 or maker.

7 **403.112 Interest.** (1) Unless otherwise provided in the instrument, an
8 instrument is not payable with interest, and interest on an interest-bearing
9 instrument is payable from the date of the instrument.

10 (2) Interest may be stated in an instrument as a fixed or variable amount of
11 money or it may be expressed as a fixed or variable rate or rates. The amount or rate
12 of interest may be stated or described in the instrument in any manner and may
13 require reference to information not contained in the instrument. If an instrument
14 provides for interest, but the amount of interest payable cannot be ascertained from
15 the description, interest is payable at the judgment rate in effect at the place of
16 payment of the instrument and at the time that interest first accrues.

17 **403.113 Date of instrument.** (1) An instrument may be antedated or
18 postdated. The date stated determines the time of payment if the instrument is
19 payable at a fixed period after date. Except as provided in s. 404.401 (3), an
20 instrument payable on demand is not payable before the date of the instrument.

21 (2) If an instrument is undated, its date is the date of its issue or, in the case
22 of an unissued instrument, the date that it first comes into possession of a holder.

23 **403.114 Contradictory terms of instrument.** If an instrument contains
24 contradictory terms, typewritten terms prevail over printed terms, handwritten
25 terms prevail over both and words prevail over numbers.

1 **403.115 Incomplete instrument.** (1) “Incomplete instrument” means a
2 signed writing, whether or not issued by the signer, the contents of which show at the
3 time of signing that it is incomplete but that the signer intended it to be completed
4 by the addition of words or numbers.

5 (2) Subject to sub. (3), if an incomplete instrument is an instrument under s.
6 403.104, it may be enforced according to its terms if it is not completed, or according
7 to its terms as augmented by completion. If an incomplete instrument is not an
8 instrument under s. 403.104, but, after completion, the requirements of s. 403.104
9 are met, the instrument may be enforced according to its terms as augmented by
10 completion.

11 (3) If words or numbers are added to an incomplete instrument without
12 authority of the signer, there is an alteration of the incomplete instrument under s.
13 403.407.

14 (4) The burden of establishing that words or numbers were added to an
15 incomplete instrument without authority of the signer is on the person asserting the
16 lack of authority.

17 **403.116 Joint and several liability; contribution.** (1) Except as otherwise
18 provided in the instrument, 2 or more persons who have the same liability on an
19 instrument as makers, drawers, acceptors, endorsers who endorse as joint payees or
20 anomalous endorsers are jointly and severally liable in the capacity in which they
21 sign.

22 (2) Except as provided in s. 403.419 (5) or by agreement of the affected parties,
23 a party having joint and several liability who pays the instrument is entitled to
24 receive from any party having the same joint and several liability contribution in
25 accordance with applicable law.

1 **(3)** Discharge of one party having joint and several liability by a person entitled
2 to enforce the instrument does not affect the right under sub. (2) of a party having
3 the same joint and several liability to receive contribution from the party discharged.

4 **403.117 Other agreements affecting instrument.** Subject to applicable
5 law regarding exclusion of proof of contemporaneous or previous agreements, the
6 obligation of a party to an instrument to pay the instrument may be modified,
7 supplemented or nullified by a separate agreement of the obligor and a person
8 entitled to enforce the instrument, if the instrument is issued or the obligation is
9 incurred in reliance on the agreement or as part of the same transaction giving rise
10 to the agreement. To the extent that an obligation is modified, supplemented or
11 nullified by an agreement under this section, the agreement is a defense to the
12 obligation.

13 **403.118 Statute of limitations. (1)** Except as provided in sub. (5), an action
14 to enforce the obligation of a party to pay a note payable at a definite time shall be
15 commenced within 6 years after the due date or dates stated in the note or, if a due
16 date is accelerated, within 6 years after the accelerated due date.

17 **(2)** Except as provided in sub. (4) or (5), if demand for payment is made to the
18 maker of a note payable on demand, an action to enforce the obligation of a party to
19 pay the note shall be commenced within 6 years after the demand. If no demand for
20 payment is made to the maker, an action to enforce the note is barred if neither
21 principal nor interest on the note has been paid for a continuous period of 10 years.

22 **(3)** Except as provided in sub. (4), an action to enforce the obligation of a party
23 to an unaccepted draft to pay the draft shall be commenced within 3 years after
24 dishonor of the draft or 10 years after the date of the draft, whichever period expires
25 first.

1 (4) An action to enforce the obligation of the acceptor of a certified check or the
2 issuer of a teller's check, cashier's check or traveler's check shall be commenced
3 within 3 years after demand for payment is made to the acceptor or issuer, as the case
4 may be.

5 (5) An action to enforce the obligation of a party to a certificate of deposit to pay
6 the instrument shall be commenced within 6 years after demand for payment is
7 made to the maker, but if the instrument states a due date and the maker is not
8 required to pay before that date, the 6-year period begins when a demand for
9 payment is in effect and the due date has passed.

10 (6) An action to enforce the obligation of a party to pay an accepted draft, other
11 than a certified check, shall be commenced within 6 years after the due date or dates
12 stated in the draft or acceptance if the obligation of the acceptor is payable at a
13 definite time or shall be commenced within 6 years after the date of the acceptance
14 if the obligation of the acceptor is payable on demand.

15 (7) Unless governed by other law regarding claims for indemnity or
16 contribution, an action for conversion of an instrument, for money had and received,
17 or like action based on conversion, an action for breach of warranty or an action to
18 enforce an obligation, duty or right arising under this chapter and not governed by
19 this section shall be commenced within 3 years after the cause of action accrues.

20 **403.119 Notice of right to defend action.** In an action for breach of an
21 obligation for which a 3rd person is answerable over under this chapter or ch. 404,
22 the defendant may give the 3rd person written notice of the litigation, and the person
23 notified may then give similar notice to any other person who is answerable over. If
24 the notice states that the person notified may come in and defend and that failure
25 to do so will bind the person notified in an action later brought by the person giving

1 the notice as to any determination of fact common to the 2 litigations, the person
2 notified is so bound unless after seasonable receipt of the notice the person notified
3 does come in and defend.

4 SUBCHAPTER II

5 NEGOTIATION, TRANSFER AND

6 ENDORSEMENT

7 **403.201 Negotiation.** (1) "Negotiation" means a transfer of possession,
8 whether voluntary or involuntary, of an instrument by a person other than the issuer
9 to a person who thereby becomes its holder.

10 (2) Except for negotiation by a remitter, if an instrument is payable to an
11 identified person, negotiation requires transfer of possession of the instrument and
12 its endorsement by the holder. If an instrument is payable to bearer, it may be
13 negotiated by transfer of possession alone.

14 **403.202 Negotiation subject to rescission.** (1) Negotiation is effective even
15 if obtained in any of the following ways:

16 (a) From an infant, a corporation exceeding its powers or a person without
17 capacity.

18 (b) By fraud, duress or mistake.

19 (c) In breach of duty or as part of an illegal transaction.

20 (2) To the extent permitted by other law, negotiation may be rescinded or may
21 be subject to other remedies, but those remedies may not be asserted against a
22 subsequent holder in due course or a person paying the instrument in good faith and
23 without knowledge of facts that are a basis for rescission or other remedy.

24 **403.203 Transfer of instrument; rights acquired by transfer.** (1) An
25 instrument is transferred when it is delivered by a person other than its issuer for

1 the purpose of giving to the person receiving delivery the right to enforce the
2 instrument.

3 (2) Transfer of an instrument, whether or not the transfer is a negotiation,
4 vests in the transferee any right of the transferor to enforce the instrument,
5 including any right as a holder in due course, but the transferee may not acquire
6 rights of a holder in due course by a transfer, directly or indirectly, from a holder in
7 due course if the transferee engaged in fraud or illegality affecting the instrument.

8 (3) Unless otherwise agreed, if an instrument is transferred for value and the
9 transferee does not become a holder because of lack of endorsement by the transferor,
10 the transferee has a specifically enforceable right to the unqualified endorsement of
11 the transferor, but negotiation of the instrument does not occur until the
12 endorsement is made.

13 (4) If a transferor purports to transfer less than the entire instrument,
14 negotiation of the instrument does not occur. The transferee obtains no rights under
15 this chapter and has only the rights of a partial assignee.

16 **403.204 Endorsement.** (1) "Endorsement" means a signature, other than
17 that of a signer as maker, drawer or acceptor, that alone or accompanied by other
18 words is made on an instrument for the purpose of negotiating the instrument,
19 restricting payment of the instrument or incurring the endorser's liability on the
20 instrument, but regardless of the intent of the signer, a signature and its
21 accompanying words is an endorsement unless the accompanying words, terms of
22 the instrument, place of the signature or other circumstances unambiguously
23 indicate that the signature was made for a purpose other than endorsement. For
24 the purpose of determining whether a signature is made on an instrument, a paper
25 affixed to the instrument is a part of the instrument.

1 (2) “Endorser” means a person who makes an endorsement.

2 (3) For the purpose of determining whether the transferee of an instrument is
3 a holder, an endorsement that transfers a security interest in the instrument is
4 effective as an unqualified endorsement of the instrument.

5 (4) If an instrument is payable to a holder under a name that is not the name
6 of the holder, endorsement may be made by the holder in the name stated in the
7 instrument or in the holder’s name or both, but signature in both names may be
8 required by a person paying or taking the instrument for value or collection.

9 **403.205 Special endorsement; blank endorsement; anomalous**
10 **endorsement.** (1) If an endorsement is made by the holder of an instrument,
11 whether payable to an identified person or payable to bearer, and the endorsement
12 identifies a person to whom it makes the instrument payable, it is a special
13 endorsement. If specially endorsed, an instrument becomes payable to the identified
14 person and may be negotiated only by the endorsement of that person. The principles
15 stated in s. 403.110 apply to special endorsements.

16 (2) If an endorsement is made by the holder of an instrument and it is not a
17 special endorsement, it is a blank endorsement. If endorsed in blank, an instrument
18 becomes payable to bearer and may be negotiated by transfer of possession alone
19 until specially endorsed.

20 (3) The holder may convert a blank endorsement that consists only of a
21 signature into a special endorsement by writing, above the signature of the endorser,
22 words identifying the person to whom the instrument is made payable.

23 (4) “Anomalous endorsement” means an endorsement made by a person who
24 is not the holder of the instrument. An anomalous endorsement does not affect the
25 manner in which the instrument may be negotiated.

1 **403.206 Restrictive endorsement. (1)** An endorsement limiting payment
2 to a particular person or otherwise prohibiting further transfer or negotiation of the
3 instrument is not effective to prevent further transfer or negotiation of the
4 instrument.

5 **(2)** An endorsement stating a condition to the right of the endorsee to receive
6 payment does not affect the right of the endorsee to enforce the instrument. A person
7 paying the instrument or taking it for value or collection may disregard the
8 condition, and the rights and liabilities of that person are not affected by whether the
9 condition has been fulfilled.

10 **(3)** If an instrument bears an endorsement described in s. 404.201 (2), or an
11 endorsement in blank or to a particular bank using the words “for deposit”, “for
12 collection”, or other words indicating a purpose of having the instrument collected
13 by a bank for the endorser or for a particular account, the following rules apply:

14 (a) A person, other than a bank, who purchases the instrument when so
15 endorsed converts the instrument unless the amount paid for the instrument is
16 received by the endorser or applied consistently with the endorsement.

17 (b) A depositary bank that purchases the instrument or takes it for collection
18 when so endorsed converts the instrument unless the amount paid by the bank with
19 respect to the instrument is received by the endorser or applied consistently with the
20 endorsement.

21 (c) A payer bank that is also the depositary bank or that takes the instrument
22 for immediate payment over the counter from a person other than a collecting bank
23 converts the instrument unless the proceeds of the instrument are received by the
24 endorser or applied consistently with the endorsement.

1 (d) Except as otherwise provided in par. (c), a payer bank or intermediary bank
2 may disregard the endorsement and is not liable if the proceeds of the instrument
3 are not received by the endorser or applied consistently with the endorsement.

4 (4) Except for an endorsement covered by sub. (3), if an instrument bears an
5 endorsement using words to the effect that payment is to be made to the endorsee
6 as agent, trustee or other fiduciary for the benefit of the endorser or another person,
7 the following rules apply:

8 (a) Unless there is notice of breach of fiduciary duty as provided in s. 403.307,
9 a person who purchases the instrument from the endorsee or takes the instrument
10 from the endorsee for collection or payment may pay the proceeds of payment or the
11 value given for the instrument to the endorsee without regard to whether the
12 endorsee violates a fiduciary duty to the endorser.

13 (b) A subsequent transferee of the instrument or person who pays the
14 instrument is neither given notice nor otherwise affected by the restriction in the
15 endorsement unless the transferee or payer knows that the fiduciary dealt with the
16 instrument or its proceeds in breach of fiduciary duty.

17 (5) The presence on an instrument of an endorsement to which this section
18 applies does not prevent a purchaser of the instrument from becoming a holder in due
19 course of the instrument unless the purchaser is a converter under sub. (3) or has
20 notice or knowledge of breach of fiduciary duty as stated in sub. (4).

21 (6) In an action to enforce the obligation of a party to pay the instrument, the
22 obligor has a defense if payment would violate an endorsement to which this section
23 applies and the payment is not permitted by this section.

24 **403.207 Reacquisition.** Reacquisition of an instrument occurs if it is
25 transferred to a former holder, by negotiation or otherwise. A former holder who

1 reacquires the instrument may cancel endorsements made after the reacquirer first
2 became a holder of the instrument. If the cancellation causes the instrument to be
3 payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument.
4 An endorser whose endorsement is canceled is discharged, and the discharge is
5 effective against any subsequent holder.

6 SUBCHAPTER III

7 ENFORCEMENT OF INSTRUMENTS

8 **403.301 Person entitled to enforce instrument.** “Person entitled to
9 enforce” an instrument means the holder of the instrument, a nonholder in
10 possession of the instrument who has the rights of a holder, or a person not in
11 possession of the instrument who is entitled to enforce the instrument under s.
12 403.309 or 403.418 (4). A person may be a person entitled to enforce the instrument
13 even though the person is not the owner of the instrument or is in wrongful
14 possession of the instrument.

15 **403.302 Holder in due course.** (1) Subject to sub. (3) and s. 403.106 (4),
16 “holder in due course” means the holder of an instrument if all of the following apply:

17 (a) The instrument when issued or negotiated to the holder does not bear such
18 apparent evidence of forgery or alteration or is not otherwise so irregular or
19 incomplete as to call into question its authenticity.

20 (b) The holder took the instrument:

21 1. For value;

22 2. In good faith;

23 3. Without notice that the instrument is overdue or has been dishonored or that
24 there is an uncured default with respect to payment of another instrument issued
25 as part of the same series;

1 4. Without notice that the instrument contains an unauthorized signature or
2 has been altered;

3 5. Without notice of any claim to the instrument described in s. 403.306; and

4 6. Without notice that any party has a defense or claim in recoupment described
5 in s. 403.305 (1).

6 **(2)** Notice of discharge of a party, other than discharge in an insolvency
7 proceeding, is not notice of a defense under sub. (1), but discharge is effective against
8 a person who became a holder in due course with notice of the discharge. Public filing
9 or recording of a document does not of itself constitute notice of a defense, claim in
10 recoupment or claim to the instrument.

11 **(3)** Except to the extent that a transferor or predecessor in interest has rights
12 as a holder in due course, a person does not acquire rights of a holder in due course
13 of an instrument taken in any of the following ways:

14 (a) By legal process or by purchase in an execution, bankruptcy or creditor's
15 sale or similar proceeding.

16 (b) By purchase as part of a bulk transaction not in ordinary course of business
17 of the transferor.

18 (c) As the successor in interest to an estate or other organization.

19 **(4)** If under s. 403.303 (1) (a) the promise of performance that is the
20 consideration for an instrument has been partially performed, the holder may assert
21 rights as a holder in due course of the instrument only to the fraction of the amount
22 payable under the instrument equal to the value of the partial performance divided
23 by the value of the promised performance.

24 **(5)** If the person entitled to enforce an instrument has only a security interest
25 in the instrument and the person obliged to pay the instrument has a defense, claim

1 in recoupment or claim to the instrument that may be asserted against the person
2 who granted the security interest, the person entitled to enforce the instrument may
3 assert rights as a holder in due course only to an amount payable under the
4 instrument which, at the time of enforcement of the instrument, does not exceed the
5 amount of the unpaid obligation secured.

6 (6) To be effective, notice shall be received at a time and in a manner that gives
7 a reasonable opportunity to act on it.

8 (7) This section is subject to any law limiting status as a holder in due course
9 in particular classes of transactions.

10 **403.303 Value and consideration.** (1) An instrument is issued or
11 transferred for value if any of the following applies:

12 (a) The instrument is issued or transferred for a promise of performance, to the
13 extent that the promise has been performed.

14 (b) The transferee acquires a security interest or other lien in the instrument
15 other than a lien obtained by judicial proceeding.

16 (c) The instrument is issued or transferred as payment of, or as security for, an
17 antecedent claim against any person, whether or not the claim is due.

18 (d) The instrument is issued or transferred in exchange for a negotiable
19 instrument.

20 (e) The instrument is issued or transferred in exchange for incurring an
21 irrevocable obligation to a 3rd party by the person taking the instrument.

22 (2) "Consideration" means any consideration sufficient to support a simple
23 contract. The drawer or maker of an instrument has a defense if the instrument is
24 issued without consideration. If an instrument is issued for a promise of
25 performance, the issuer has a defense to the extent that performance of the promise

1 is due and the promise has not been performed. If an instrument is issued for value
2 as stated in sub. (1), the instrument is also issued for consideration.

3 **403.304 Overdue instrument.** (1) An instrument payable on demand
4 becomes overdue at the earliest of the following times:

5 (a) On the day after the day on which demand for payment is duly made.

6 (b) If the instrument is a check, 90 days after its date.

7 (c) If the instrument is not a check, when the instrument has been outstanding
8 for a period of time after its date which is unreasonably long under the circumstances
9 of the particular case in light of the nature of the instrument and usage of the trade.

10 (2) With respect to an instrument payable at a definite time the following rules
11 apply:

12 (a) If the principal is payable in instalments and a due date has not been
13 accelerated, the instrument becomes overdue upon default under the instrument for
14 nonpayment of an instalment, and the instrument remains overdue until the default
15 is cured.

16 (b) If the principal is not payable in instalments and the due date has not been
17 accelerated, the instrument becomes overdue on the day after the due date.

18 (c) If a due date with respect to principal has been accelerated, the instrument
19 becomes overdue on the day after the accelerated due date.

20 (3) Unless the due date of principal has been accelerated, an instrument does
21 not become overdue if there is default in payment of interest but no default in
22 payment of principal.

23 **403.305 Defenses and claims in recoupment.** (1) Except as stated in sub.
24 (2), the right to enforce the obligation of a party to pay an instrument is subject to
25 the following:

- 1 (a) A defense of the obligor based on any of the following:
- 2 1. Infancy of the obligor to the extent that it is a defense to a simple contract.
- 3 2. Duress, lack of legal capacity or illegality of the transaction which, under
- 4 other law, nullifies the obligation of the obligor.
- 5 3. Fraud that induced the obligor to sign the instrument with neither
- 6 knowledge nor reasonable opportunity to learn of its character or its essential terms.
- 7 4. Discharge of the obligor in insolvency proceedings.
- 8 (b) A defense of the obligor stated in another section of this chapter or a defense
- 9 of the obligor that would be available if the person entitled to enforce the instrument
- 10 were enforcing a right to payment under a simple contract.
- 11 (c) A claim in recoupment of the obligor against the original payee of the
- 12 instrument if the claim arose from the transaction that gave rise to the instrument;
- 13 but the claim of the obligor may be asserted against a transferee of the instrument
- 14 only to reduce the amount owing on the instrument at the time that the action is
- 15 brought.
- 16 **(2)** The right of a holder in due course to enforce the obligation of a party to pay
- 17 the instrument is subject to defenses of the obligor stated in sub. (1) (a), but is not
- 18 subject to defenses of the obligor stated in sub. (1) (b) or claims in recoupment stated
- 19 in sub. (1) (c) against a person other than the holder.
- 20 **(3)** Except as stated in sub. (4), in an action to enforce the obligation of a party
- 21 to pay the instrument, the obligor may not assert against the person entitled to
- 22 enforce the instrument a defense, a claim in recoupment or a claim to the instrument
- 23 under s. 403.306 of another person, but the other person's claim to the instrument
- 24 may be asserted by the obligor if the other person is joined in the action and
- 25 personally asserts the claim against the person entitled to enforce the instrument.

1 An obligor is not obliged to pay the instrument if the person seeking enforcement of
2 the instrument does not have rights of a holder in due course and the obligor proves
3 that the instrument is a lost or stolen instrument.

4 (4) In an action to enforce the obligation of an accommodation party to pay an
5 instrument, the accommodation party may assert against the person entitled to
6 enforce the instrument any defense or claim in recoupment under sub. (1) that the
7 accommodated party could assert against the person entitled to enforce the
8 instrument, except the defenses of discharge in insolvency proceedings, infancy and
9 lack of legal capacity.

10 **403.306 Claims to an instrument.** A person taking an instrument, other
11 than a person having rights of a holder in due course, is subject to a claim of a
12 property or possessory right in the instrument or its proceeds, including a claim to
13 rescind a negotiation and to recover the instrument or its proceeds. A person having
14 rights of a holder in due course takes free of the claim to the instrument.

15 **403.307 Notice of breach of fiduciary duty. (1)** In this section:

16 (a) "Fiduciary" means an agent, trustee, partner, corporate officer or director
17 or other representative owing a fiduciary duty with respect to an instrument.

18 (b) "Represented person" means the principal, beneficiary, partnership,
19 corporation or other person to whom the duty stated in par. (a) is owed.

20 (2) If an instrument is taken from a fiduciary for payment or collection or for
21 value, the taker has knowledge of the fiduciary status of the fiduciary and the
22 represented person makes a claim to the instrument or its proceeds on the basis that
23 the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

24 (a) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of
25 the represented person.

1 (b) In the case of an instrument payable to the represented person or the
2 fiduciary as such, the taker has notice of the breach of fiduciary duty if the
3 instrument is taken in payment of or as security for a debt known by the taker to be
4 the personal debt of the fiduciary, is taken in a transaction known by the taker to be
5 for the personal benefit of the fiduciary or is deposited to an account other than an
6 account of the fiduciary, as such, or an account of the represented person.

7 (c) If an instrument is issued by the represented person or the fiduciary as such,
8 and made payable to the fiduciary personally, the taker does not have notice of the
9 breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

10 (d) If an instrument is issued by the represented person or the fiduciary as such
11 to the taker as payee, the taker has notice of the breach of fiduciary duty if the
12 instrument is taken in payment of or as security for a debt known by the taker to be
13 the personal debt of the fiduciary, is taken in a transaction known by the taker to be
14 for the personal benefit of the fiduciary or is deposited to an account other than an
15 account of the fiduciary, as such, or an account of the represented person.

16 **403.308 Proof of signatures and status as holder in due course. (1)** In
17 an action with respect to an instrument, the authenticity of, and authority to make,
18 each signature on the instrument is admitted unless specifically denied in the
19 pleadings. If the validity of a signature is denied in the pleadings, the burden of
20 establishing validity is on the person claiming validity, but the signature is
21 presumed to be authentic and authorized unless the action is to enforce the liability
22 of the purported signer and the signer is dead or incompetent at the time of trial of
23 the issue of validity of the signature. If an action to enforce the instrument is brought
24 against a person as the undisclosed principal of a person who signed the instrument

1 as a party to the instrument, the plaintiff has the burden of establishing that the
2 defendant is liable on the instrument as a represented person under s. 403.402 (1).

3 (2) If the validity of signatures is admitted or proved and there is compliance
4 with sub. (1), a plaintiff producing the instrument is entitled to payment if the
5 plaintiff proves entitlement to enforce the instrument under s. 403.301, unless the
6 defendant proves a defense or claim in recoupment. If a defense or claim in
7 recoupment is proved, the right to payment of the plaintiff is subject to the defense
8 or claim, except to the extent the plaintiff proves that the plaintiff has rights of a
9 holder in due course which are not subject to the defense or claim.

10 **403.309 Enforcement of lost, destroyed or stolen instrument.** (1) A
11 person not in possession of an instrument is entitled to enforce the instrument if all
12 of the following apply:

13 (a) The person was in possession of the instrument and entitled to enforce it
14 when loss of possession occurred.

15 (b) The loss of possession was not the result of a transfer by the person or a
16 lawful seizure.

17 (c) The person cannot reasonably obtain possession of the instrument because
18 the instrument was destroyed, its whereabouts cannot be determined or it is in the
19 wrongful possession of an unknown person or a person that cannot be found or is not
20 amenable to service of process.

21 (2) A person seeking enforcement of an instrument under sub. (1) shall prove
22 the terms of the instrument and the person's right to enforce the instrument. If that
23 proof is made, s. 403.308 applies to the case as if the person seeking enforcement had
24 produced the instrument. The court may not enter judgment in favor of the person
25 seeking enforcement unless it finds that the person required to pay the instrument

1 is adequately protected against loss that might occur by reason of a claim by another
2 person to enforce the instrument. Adequate protection may be provided by any
3 reasonable means.

4 **403.310 Effect of instrument on obligation for which taken. (1)** Unless
5 otherwise agreed, if a certified check, cashier's check or teller's check is taken for an
6 obligation, the obligation is discharged to the same extent that discharge would
7 result if an amount of money equal to the amount of the instrument were taken in
8 payment of the obligation. Discharge of the obligation does not affect any liability
9 that the obligor may have as an endorser of the instrument.

10 **(2)** Unless otherwise agreed and except as provided in sub. (1), if a note or an
11 uncertified check is taken for an obligation, the obligation is suspended to the same
12 extent that the obligation would be discharged if an amount of money equal to the
13 amount of the instrument were taken, and the following rules apply:

14 (a) In the case of an uncertified check, suspension of the obligation continues
15 until dishonor of the check or until it is paid or certified. Payment or certification of
16 the check results in discharge of the obligation to the extent of the amount of the
17 check.

18 (b) In the case of a note, suspension of the obligation continues until dishonor
19 of the note or until it is paid. Payment of the note results in discharge of the
20 obligation to the extent of the payment.

21 (c) Except as provided in par. (d), if the check or note is dishonored and the
22 obligee of the obligation for which the instrument was taken is the person entitled
23 to enforce the instrument, the obligee may enforce either the instrument or the
24 obligation. In the case of an instrument of a 3rd person which is negotiated to the

1 obligee by the obligor, discharge of the obligor on the instrument also discharges the
2 obligation.

3 (d) If the person entitled to enforce the instrument taken for an obligation is
4 a person other than the obligee, the obligee may not enforce the obligation to the
5 extent that the obligation is suspended. If the obligee is the person entitled to enforce
6 the instrument but no longer has possession of it because it was lost, stolen or
7 destroyed, the obligation may not be enforced to the extent of the amount payable on
8 the instrument, and to that extent the obligee's rights against the obligor are limited
9 to enforcement of the instrument.

10 (3) If an instrument other than one described in sub. (1) or (2) is taken for an
11 obligation, the effect is one of the following:

12 (a) That stated in sub. (1) if the instrument is one on which a bank is liable as
13 maker or acceptor.

14 (b) That stated in sub. (2) in any other case.

15 **403.311 Accord and satisfaction by use of instrument.** (1) Subsections
16 (2) to (4) apply if a person against whom a claim is asserted proves that all of the
17 following conditions have been met:

18 (a) That person in good faith tendered an instrument to the claimant as full
19 satisfaction of the claim.

20 (b) The amount of the claim was unliquidated or subject to a bona fide dispute.

21 (c) The claimant obtained payment of the instrument.

22 (2) Unless sub. (3) applies, the claim is discharged if the person against whom
23 the claim is asserted proves that the instrument or an accompanying written
24 communication contained a conspicuous statement to the effect that the instrument
25 was tendered as full satisfaction of the claim.

1 **(3)** Subject to sub. (4), a claim is not discharged under sub. (2) if any of the
2 following applies:

3 (a) The claimant, if an organization, proves that all of the following conditions
4 have been met:

5 1. Within a reasonable time before the tender, the claimant sent a conspicuous
6 statement to the person against whom the claim is asserted that communications
7 concerning disputed debts, including an instrument tendered as full satisfaction of
8 a debt, are to be sent to a designated person, office or place.

9 2. The instrument or accompanying communication was not received by that
10 designated person, office or place.

11 (b) The claimant, whether or not an organization, proves that within 90 days
12 after payment of the instrument the claimant tendered repayment of the amount of
13 the instrument to the person against whom the claim is asserted. This paragraph
14 does not apply if the claimant is an organization that sent a statement complying
15 with par. (a) 1.

16 **(4)** A claim is discharged if the person against whom the claim is asserted
17 proves that within a reasonable time before collection of the instrument was initiated
18 the claimant, or an agent of the claimant having direct responsibility with respect
19 to the disputed obligation, knew that the instrument was tendered in full satisfaction
20 of the claim.

21 **403.312 Lost, destroyed or stolen cashier's check, teller's check or**
22 **certified check. (1)** In this section:

23 (a) "Check" means a cashier's check, teller's check or certified check.

24 (b) "Claimant" means a person who claims the right to receive the amount of
25 a check that was lost, destroyed or stolen.

1 (c) "Declaration of loss" means a written statement, made under penalty of
2 perjury, to the effect that the declarer lost possession of a check, that the declarer is
3 the drawer or payee of the check, in the case of a certified check, or the remitter or
4 payee of the check, in the case of a cashier's check or teller's check, that the loss of
5 possession was not the result of a transfer by the declarer or a lawful seizure, and
6 that the declarer cannot reasonably obtain possession of the check because the check
7 was destroyed, its whereabouts cannot be determined or it is in the wrongful
8 possession of an unknown person or of a person that cannot be found or is not
9 amenable to service of process.

10 (d) "Obligated bank" means the issuer of a cashier's check or teller's check or
11 the acceptor of a certified check.

12 **(2)** (a) A claimant may assert a claim to the amount of a check by a
13 communication to the obligated bank describing the check with reasonable certainty
14 and requesting payment of the amount of the check if all of the following apply:

15 1. The claimant is the drawer or payee of a certified check or the remitter or
16 payee of a cashier's check or teller's check.

17 2. The communication contains or is accompanied by a declaration of loss of the
18 claimant with respect to the check.

19 3. The communication is received at a time and in a manner affording the
20 obligated bank a reasonable time to act on it before the check is paid.

21 4. The claimant provides reasonable identification if requested by the obligated
22 bank.

23 (b) Delivery of a declaration of loss is a warranty of the truth of the statements
24 made in the declaration of loss.

1 (c) If a claim is asserted in compliance with this subsection, the following rules
2 apply:

3 1. The claim becomes enforceable at the later of the time that the claim is
4 asserted, or the 90th day following the date of the check, in the case of a cashier's
5 check or teller's check, or the 90th day following the date of the acceptance, in the
6 case of a certified check.

7 2. Until the claim becomes enforceable, it has no legal effect and the obligated
8 bank may pay the check or, in the case of a teller's check, may permit the drawee to
9 pay the check. Payment to a person entitled to enforce the check discharges all
10 liability of the obligated bank with respect to the check.

11 3. If the claim becomes enforceable before the check is presented for payment,
12 the obligated bank is not obliged to pay the check.

13 4. When the claim becomes enforceable, the obligated bank becomes obliged to
14 pay the amount of the check to the claimant if payment of the check has not been
15 made to a person entitled to enforce the check. Subject to s. 404.302 (1) (a), payment
16 to the claimant discharges all liability of the obligated bank with respect to the check.

17 **(3)** If the obligated bank pays the amount of a check to a claimant under sub.
18 (2) (c) 4. and the check is presented for payment by a person having rights of a holder
19 in due course, the claimant is obliged to refund the payment to the obligated bank
20 if the check is paid or pay the amount of the check to the person having rights of a
21 holder in due course if the check is dishonored.

22 **(4)** If a claimant has the right to assert a claim under sub. (2) and is also a
23 person entitled to enforce a check which is lost, destroyed or stolen, the claimant may
24 assert rights with respect to the check either under this section or s. 403.309.

SUBCHAPTER IV

LIABILITY OF PARTIES

1
2
3 **403.401 Signature. (1)** A person is not liable on an instrument unless the
4 person signed the instrument, or the person is represented by an agent or
5 representative who signed the instrument and the signature is binding on the
6 represented person under s. 403.402.

7 **(2)** A signature may be made manually or by means of a device or machine and
8 may be made by the use of any name, including a trade or assumed name, or by a
9 word, mark or symbol executed or adopted by a person with present intention to
10 authenticate a writing.

11 **403.402 Signature by representative. (1)** If a person acting, or purporting
12 to act, as a representative signs an instrument by signing either the name of the
13 represented person or the name of the signer, the represented person is bound by the
14 signature to the same extent that the represented person would be bound if the
15 signature were on a simple contract. If the represented person is bound, the
16 signature of the representative is the authorized signature of the represented person
17 and the represented person is liable on the instrument, whether or not identified in
18 the instrument.

19 **(2)** If a representative signs the name of the representative to an instrument
20 and the signature is an authorized signature of the represented person, the following
21 rules apply:

22 **(a)** If the form of the signature shows unambiguously that the signature is
23 made on behalf of the represented person who is identified in the instrument, the
24 representative is not liable on the instrument.

1 (b) Subject to sub. (3), if the form of the signature does not show unambiguously
2 that the signature is made in a representative capacity or the represented person is
3 not identified in the instrument, the representative is liable on the instrument to a
4 holder in due course that took the instrument without notice that the representative
5 was not intended to be liable on the instrument. With respect to any other person,
6 the representative is liable on the instrument unless the representative proves that
7 the original parties did not intend the representative to be liable on the instrument.

8 **(3)** If a representative signs the name of the representative as drawer of a check
9 without indication of the representative status and the check is payable from an
10 account of the represented person who is identified on the check, the signer is not
11 liable on the check if the signature is an authorized signature of the represented
12 person.

13 **403.403 Unauthorized signature.** (1) Unless otherwise provided in this
14 chapter or ch. 404, an unauthorized signature is ineffective except as the signature
15 of the unauthorized signer in favor of a person who in good faith pays the instrument
16 or takes it for value. An unauthorized signature may be ratified for all purposes of
17 this chapter.

18 **(2)** If the signature of more than one person is required to constitute the
19 authorized signature of an organization, the signature of the organization is
20 unauthorized if one of the required signatures is lacking.

21 **(3)** The civil or criminal liability of a person who makes an unauthorized
22 signature is not affected by any provision of this chapter which makes the
23 unauthorized signature effective for the purposes of this chapter.

24 **403.404 Impostors; fictitious payees.** (1) If an impostor, by use of the mails
25 or otherwise, induces the issuer of an instrument to issue the instrument to the

1 impostor, or to a person acting in concert with the impostor, by impersonating the
2 payee of the instrument or a person authorized to act for the payee, an endorsement
3 of the instrument by any person in the name of the payee is effective as the
4 endorsement of the payee in favor of a person who, in good faith, pays the instrument
5 or takes it for value or for collection.

6 (2) If a person whose intent determines to whom an instrument is payable
7 under s. 403.110 (1) or (2) does not intend the person identified as payee to have any
8 interest in the instrument or if the person identified as payee of an instrument is a
9 fictitious person, the following rules apply until the instrument is negotiated by
10 special endorsement:

11 (a) Any person in possession of the instrument is its holder.

12 (b) An endorsement by any person in the name of the payee stated in the
13 instrument is effective as the endorsement of the payee in favor of a person who, in
14 good faith, pays the instrument or takes it for value or for collection.

15 (3) Under sub. (1) or (2), an endorsement is made in the name of a payee if it
16 is made in a name substantially similar to that of the payee or if the instrument,
17 whether or not endorsed, is deposited in a depository bank to an account in a name
18 substantially similar to that of the payee.

19 (4) With respect to an instrument to which sub. (1) or (2) applies, if a person
20 paying the instrument or taking it for value or for collection fails to exercise ordinary
21 care in paying or taking the instrument and that failure substantially contributes
22 to loss resulting from payment of the instrument, the person bearing the loss may
23 recover from the person failing to exercise ordinary care to the extent that the failure
24 to exercise ordinary care contributed to the loss.

1 **403.405 Employer's responsibility for fraudulent endorsement by**
2 **employee. (1)** In this section:

3 (a) "Employee" includes an independent contractor and employe of an
4 independent contractor retained by the employer.

5 (b) "Fraudulent endorsement" means, in the case of an instrument payable to
6 the employer, a forged endorsement purporting to be that of the employer or, in the
7 case of an instrument with respect to which the employer is the issuer, a forged
8 endorsement purporting to be that of the person identified as payee.

9 (c) 1. "Responsibility" with respect to instruments means authority to do any
10 of the following:

11 a. Sign or endorse instruments on behalf of the employer.

12 b. Process instruments received by the employer for bookkeeping purposes, for
13 deposit to an account or for other disposition.

14 c. Prepare or process instruments for issue in the name of the employer.

15 d. Supply information determining the names or addresses of payees of
16 instruments to be issued in the name of the employer.

17 e. Control the disposition of instruments to be issued in the name of the
18 employer.

19 f. Act otherwise in a responsible capacity with respect to instruments.

20 2. "Responsibility" does not include authority that merely allows an employe
21 to have access to instruments or blank or incomplete instrument forms that are being
22 stored or transported or are part of incoming or outgoing mail, or similar access.

23 **(2)** For the purpose of determining the rights and liabilities of a person who,
24 in good faith, pays an instrument or takes it for value or for collection, if an employer
25 entrusted an employe with responsibility with respect to the instrument and the

1 employe or a person acting in concert with the employe makes a fraudulent
2 endorsement of the instrument, the endorsement is effective as the endorsement of
3 the person to whom the instrument is payable if it is made in the name of that person.
4 If the person paying the instrument or taking it for value or for collection fails to
5 exercise ordinary care in paying or taking the instrument and that failure
6 substantially contributes to loss resulting from the fraud, the person bearing the loss
7 may recover from the person failing to exercise ordinary care to the extent that the
8 failure to exercise ordinary care contributed to the loss.

9 (3) Under sub. (2), an endorsement is made in the name of the person to whom
10 an instrument is payable if the endorsement is made in a name substantially similar
11 to the name of that person or if the instrument, whether or not endorsed, is deposited
12 in a depository bank to an account in a name substantially similar to the name of that
13 person.

14 **403.406 Negligence contributing to forged signature or alteration of**
15 **instrument.** (1) A person whose failure to exercise ordinary care substantially
16 contributes to an alteration of an instrument or to the making of a forged signature
17 on an instrument is precluded from asserting the alteration or the forgery against
18 a person who, in good faith, pays the instrument or takes it for value or for collection.

19 (2) Under sub. (1), if the person asserting the preclusion fails to exercise
20 ordinary care in paying or taking the instrument and that failure substantially
21 contributes to loss, the loss is allocated between the person precluded and the person
22 asserting the preclusion according to the extent to which the failure of each to
23 exercise ordinary care contributed to the loss.

1 **(3)** Under sub. (1), the burden of proving failure to exercise ordinary care is on
2 the person asserting the preclusion. Under sub. (2), the burden of proving failure to
3 exercise ordinary care is on the person precluded.

4 **403.407 Alteration.** **(1)** “Alteration” means an unauthorized change in an
5 instrument that purports to modify in any respect the obligation of a party or an
6 unauthorized addition of words or numbers or other change to an incomplete
7 instrument relating to the obligation of a party.

8 **(2)** Except as provided in sub. (3), an alteration fraudulently made discharges
9 a party whose obligation is affected by the alteration unless that party assents or is
10 precluded from asserting the alteration. No other alteration discharges a party, and
11 the instrument may be enforced according to its original terms.

12 **(3)** A payer bank or drawee paying a fraudulently altered instrument or a
13 person taking it for value, in good faith and without notice of the alteration, may
14 enforce rights with respect to the instrument according to its original terms, or, in
15 the case of an incomplete instrument altered by unauthorized completion, according
16 to its terms as completed.

17 **403.408 Drawee not liable on unaccepted draft.** A check or other draft
18 does not of itself operate as an assignment of funds in the hands of the drawee
19 available for its payment, and the drawee is not liable on the instrument until the
20 drawee accepts it.

21 **403.409 Acceptance of draft; certified check.** **(1)** “Acceptance” means the
22 drawee’s signed agreement to pay a draft as presented. The acceptance shall be
23 written on the draft and may consist of the drawee’s signature alone. Acceptance
24 may be made at any time and becomes effective when notification pursuant to

1 instructions is given or the accepted draft is delivered for the purpose of giving rights
2 on the acceptance to any person.

3 (2) A draft may be accepted although it has not been signed by the drawer, is
4 otherwise incomplete, is overdue or has been dishonored.

5 (3) If a draft is payable at a fixed period after sight and the acceptor fails to date
6 the acceptance, the holder may complete the acceptance by supplying a date in good
7 faith.

8 (4) “Certified check” means a check accepted by the bank on which it is drawn.
9 Acceptance may be made as stated in sub. (1) or by a writing on the check which
10 indicates that the check is certified. The drawee of a check has no obligation to certify
11 the check, and refusal to certify is not dishonor of the check.

12 **403.410 Acceptance varying draft.** (1) If the terms of a drawee’s acceptance
13 vary from the terms of the draft as presented, the holder may refuse the acceptance
14 and treat the draft as dishonored. In that case, the drawee may cancel the
15 acceptance.

16 (2) The terms of a draft are not varied by an acceptance to pay at a particular
17 bank or place in the United States, unless the acceptance states that the draft is to
18 be paid only at that bank or place.

19 (3) If the holder assents to an acceptance varying the terms of a draft, the
20 obligation of each drawer and endorser that does not expressly assent to the
21 acceptance is discharged.

22 **403.411 Refusal to pay cashier’s checks, teller’s checks and certified**
23 **checks.** (1) In this section, “obligated bank” means the acceptor of a certified check
24 or the issuer of a cashier’s check or teller’s check bought from the issuer.

1 **(2)** If the obligated bank wrongfully refuses to pay a cashier's check or certified
2 check, wrongfully stops payment of a teller's check or wrongfully refuses to pay a
3 dishonored teller's check, the person asserting the right to enforce the check is
4 entitled to compensation for expenses and loss of interest resulting from the
5 nonpayment and may recover consequential damages if the obligated bank refuses
6 to pay after receiving notice of particular circumstances giving rise to the damages.

7 **(3)** Expenses or consequential damages under sub. (2) are not recoverable if the
8 refusal of the obligated bank to pay occurs because of any of the following:

9 (a) The bank suspends payments.

10 (b) The obligated bank asserts a claim or defense of the obligated bank that it
11 has reasonable grounds to believe is available against the person entitled to enforce
12 the instrument.

13 (c) The obligated bank has a reasonable doubt as to whether the person
14 demanding payment is the person entitled to enforce the instrument.

15 (d) Payment is prohibited by law.

16 **403.412 Obligation of issuer of note or cashier's check.** The issuer of a
17 note or cashier's check or other draft drawn on the drawer is obliged to pay the
18 instrument according to its terms at the time that it was issued or, if not issued, at
19 the time that it first came into possession of a holder or, if the issuer signed an
20 incomplete instrument, according to its terms when completed, to the extent stated
21 in ss. 403.115 and 403.407. The obligation is owed to a person entitled to enforce the
22 instrument or to an endorser who paid the instrument under s. 403.415.

23 **403.413 Obligation of acceptor.** **(1)** The acceptor of a draft is obliged to pay
24 the draft according to its terms at the time that it was accepted, even though the
25 acceptance states that the draft is payable "as originally drawn" or equivalent terms,

1 if the acceptance varies the terms of the draft, according to the terms of the draft as
2 varied, or if the acceptance is of a draft that is an incomplete instrument, according
3 to its terms when completed, to the extent stated in ss. 403.115 and 403.407. The
4 obligation is owed to a person entitled to enforce the draft or to the drawer or an
5 endorser who paid the draft under s. 403.414 or 403.415.

6 (2) If the certification of a check or other acceptance of a draft states the amount
7 certified or accepted, the obligation of the acceptor is that amount. If the certification
8 or acceptance does not state an amount, the amount of the instrument is
9 subsequently raised, and the instrument is then negotiated to a holder in due course,
10 the obligation of the acceptor is the amount of the instrument at the time that it was
11 taken by the holder in due course.

12 **403.414 Obligation of drawer.** (1) This section does not apply to cashier's
13 checks or other drafts drawn on the drawer.

14 (2) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft
15 according to its terms at the time that it was issued or, if not issued, at the time that
16 it first came into possession of a holder, or if the drawer signed an incomplete
17 instrument, according to its terms when completed, to the extent stated in ss. 403.115
18 and 403.407. The obligation is owed to a person entitled to enforce the draft or to an
19 endorser who paid the draft under s. 403.415.

20 (3) If a draft is accepted by a bank, the drawer is discharged, regardless of when
21 or by whom acceptance was obtained.

22 (4) If a draft is accepted and the acceptor is not a bank, the obligation of the
23 drawer to pay the draft if the draft is dishonored by the acceptor is the same as the
24 obligation of an endorser under s. 403.415 (1) and (3).

1 **(5)** If a draft states that it is drawn “without recourse” or otherwise disclaims
2 liability of the drawer to pay the draft, the drawer is not liable under sub. (2) to pay
3 the draft if the draft is not a check. A disclaimer of the liability stated in sub. (2) is
4 not effective if the draft is a check.

5 **(6)** If a check is not presented for payment or given to a depository bank for
6 collection within 30 days after its date, the drawee suspends payments after
7 expiration of the 30-day period without paying the check, and because of the
8 suspension of payments, the drawer is deprived of funds maintained with the drawee
9 to cover payment of the check, the drawer, to the extent deprived of funds, may
10 discharge its obligation to pay the check by assigning to the person entitled to enforce
11 the check the rights of the drawer against the drawee with respect to the funds.

12 **403.415 Obligation of endorser.** **(1)** Subject to subs. (2) to (5) and to s.
13 403.419 (4), if an instrument is dishonored, an endorser is obliged to pay the amount
14 due on the instrument according to the terms of the instrument at the time that it
15 was endorsed, or if the endorser endorsed an incomplete instrument, according to its
16 terms when completed, to the extent stated in ss. 403.115 and 403.407. The
17 obligation of the endorser is owed to a person entitled to enforce the instrument or
18 to a subsequent endorser who paid the instrument under this section.

19 **(2)** If an endorsement states that it is made “without recourse” or otherwise
20 disclaims liability of the endorser, the endorser is not liable under sub. (1) to pay the
21 instrument.

22 **(3)** If notice of dishonor of an instrument is required by s. 403.503 and notice
23 of dishonor complying with that section is not given to an endorser, the liability of
24 the endorser under sub. (1) is discharged.

1 (4) If a draft is accepted by a bank after an endorsement is made, the liability
2 of the endorser under sub. (1) is discharged.

3 (5) If an endorser of a check is liable under sub. (1) and the check is not
4 presented for payment, or given to a depository bank for collection, within 30 days
5 after the day on which the endorsement was made, the liability of the endorser under
6 sub. (1) is discharged.

7 **403.416 Transfer warranties. (1)** A person who transfers an instrument for
8 consideration warrants to the transferee and, if the transfer is by endorsement, to
9 any subsequent transferee that all of the following apply:

10 (a) The warrantor is a person entitled to enforce the instrument.

11 (b) All signatures on the instrument are authentic and authorized.

12 (c) The instrument has not been altered.

13 (d) The instrument is not subject to a defense or claim in recoupment of any
14 party which can be asserted against the warrantor.

15 (e) The warrantor has no knowledge of any insolvency proceeding commenced
16 with respect to the maker or acceptor or, in the case of an unaccepted draft, the
17 drawer.

18 (2) A person to whom the warranties under sub. (1) are made and who took the
19 instrument in good faith may recover from the warrantor as damages for breach of
20 warranty an amount equal to the loss suffered as a result of the breach, but not more
21 than the amount of the instrument plus expenses and loss of interest incurred as a
22 result of the breach.

23 (3) The warranties stated in sub. (1) may not be disclaimed with respect to
24 checks. Unless notice of a claim for breach of warranty is given to the warrantor
25 within 30 days after the claimant has reason to know of the breach and the identity

1 of the warrantor, the liability of the warrantor under sub. (2) is discharged to the
2 extent of any loss caused by the delay in giving notice of the claim.

3 (4) A cause of action for breach of warranty under this section accrues when
4 the claimant has reason to know of the breach.

5 **403.417 Presentment warranties.** (1) If an unaccepted draft is presented
6 to the drawee for payment or acceptance and the drawee pays or accepts the draft,
7 the person obtaining payment or acceptance, at the time of presentment, and a
8 previous transferor of the draft, at the time of transfer, warrant to the drawee
9 making payment or accepting the draft in good faith that all of the following apply:

10 (a) The warrantor is, or was at the time that the warrantor transferred the
11 draft, a person entitled to enforce the draft or authorized to obtain payment or
12 acceptance of the draft on behalf of a person entitled to enforce the draft.

13 (b) The draft has not been altered.

14 (c) The warrantor has no knowledge that the signature of the drawer of the
15 draft is unauthorized.

16 (2) A drawee making payment may recover from any warrantor damages for
17 breach of warranty equal to the amount paid by the drawee less the amount that the
18 drawee received or is entitled to receive from the drawer because of the payment.
19 In addition, the drawee is entitled to compensation for expenses and loss of interest
20 resulting from the breach. The right of the drawee to recover damages under this
21 subsection is not affected by any failure of the drawee to exercise ordinary care in
22 making payment. If the drawee accepts the draft, breach of warranty is a defense
23 to the obligation of the acceptor. If the acceptor makes payment with respect to the
24 draft, the acceptor is entitled to recover from any warrantor for breach of warranty
25 the amounts stated in this subsection.

1 (3) If a drawee asserts a claim for breach of warranty under sub. (1) based on
2 an unauthorized endorsement of the draft or an alteration of the draft, the warrantor
3 may defend by proving that the endorsement is effective under s. 403.404 or 403.405
4 or the drawer is precluded under s. 403.406 or 404.406 from asserting against the
5 drawee the unauthorized endorsement or alteration.

6 (4) If a dishonored draft is presented for payment to the drawer or an endorser
7 or any other instrument is presented for payment to a party obliged to pay the
8 instrument and payment is received, the following rules apply:

9 (a) The person obtaining payment and a prior transferor of the instrument
10 warrant to the person making payment in good faith that the warrantor is, or was
11 at the time that the warrantor transferred the instrument, a person entitled to
12 enforce the instrument or authorized to obtain payment on behalf of a person entitled
13 to enforce the instrument.

14 (b) The person making payment may recover from any warrantor for breach of
15 warranty an amount equal to the amount paid plus expenses and loss of interest
16 resulting from the breach.

17 (5) The warranties stated in subs. (1) and (4) may not be disclaimed with
18 respect to checks. Unless notice of a claim for breach of warranty is given to the
19 warrantor within 30 days after the claimant has reason to know of the breach and
20 the identity of the warrantor, the liability of the warrantor under sub. (2) or (4) is
21 discharged to the extent of any loss caused by the delay in giving notice of the claim.

22 (6) A cause of action for breach of warranty under this section accrues when
23 the claimant has reason to know of the breach.

24 **403.418 Payment or acceptance by mistake.** (1) Except as provided in sub.
25 (3), if the drawee of a draft pays or accepts the draft and the drawee acted on the

1 mistaken belief that payment of the draft had not been stopped pursuant to s.
2 404.403 or that the signature of the drawer of the draft was authorized, the drawee
3 may recover the amount of the draft from the person to whom or for whose benefit
4 payment was made or, in the case of acceptance, may revoke the acceptance. Rights
5 of the drawee under this subsection are not affected by failure of the drawee to
6 exercise ordinary care in paying or accepting the draft.

7 (2) Except as provided in sub. (3), if an instrument has been paid or accepted
8 by mistake and the case is not covered by sub. (1), the person paying or accepting may,
9 to the extent permitted by the law governing mistake and restitution, recover the
10 payment from the person to whom or for whose benefit payment was made or, in the
11 case of acceptance, may revoke the acceptance.

12 (3) The remedies provided by sub. (1) or (2) may not be asserted against a
13 person who took the instrument in good faith and for value or who in good faith
14 changed position in reliance on the payment or acceptance. This subsection does not
15 limit remedies provided by s. 403.417 or 404.407.

16 (4) Notwithstanding s. 404.215, if an instrument is paid or accepted by mistake
17 and the payer or acceptor recovers payment or revokes acceptance under sub. (1) or
18 (2), the instrument is considered not to have been paid or accepted and is treated as
19 dishonored, and the person from whom payment is recovered has rights as a person
20 entitled to enforce the dishonored instrument.

21 **403.419 Instruments signed for accommodation.** (1) If an instrument is
22 issued for value given for the benefit of a party to the instrument (“accommodated
23 party”) and another party to the instrument (“accommodation party”) signs the
24 instrument for the purpose of incurring liability on the instrument without being a

1 direct beneficiary of the value given for the instrument, the instrument is signed by
2 the accommodation party “for accommodation”.

3 (2) An accommodation party may sign the instrument as maker, drawer,
4 acceptor or endorser and, subject to sub. (4), is obliged to pay the instrument in the
5 capacity in which the accommodation party signs. The obligation of an
6 accommodation party may be enforced notwithstanding any statute of frauds and
7 whether or not the accommodation party receives consideration for the
8 accommodation.

9 (3) A person signing an instrument is presumed to be an accommodation party
10 and there is notice that the instrument is signed for accommodation if the signature
11 is an anomalous endorsement or is accompanied by words indicating that the signer
12 is acting as surety or guarantor with respect to the obligation of another party to the
13 instrument. Except as provided in s. 403.605, the obligation of an accommodation
14 party to pay the instrument is not affected by the fact that the person enforcing the
15 obligation had notice when the instrument was taken by that person that the
16 accommodation party signed the instrument for accommodation.

17 (4) If the signature of a party to an instrument is accompanied by words
18 indicating unambiguously that the party is guaranteeing collection rather than
19 payment of the obligation of another party to the instrument, the signer is obliged
20 to pay the amount due on the instrument to a person entitled to enforce the
21 instrument only if any of the following occurs:

22 (a) Execution of judgment against the other party has been returned
23 unsatisfied.

24 (b) The other party is insolvent or in an insolvency proceeding.

25 (c) The other party cannot be served with process.

1 (d) It is otherwise apparent that payment cannot be obtained from the other
2 party.

3 (5) An accommodation party who pays the instrument is entitled to
4 reimbursement from the accommodated party and is entitled to enforce the
5 instrument against the accommodated party. An accommodated party who pays the
6 instrument has no right of recourse against, and is not entitled to contribution from,
7 an accommodation party.

8 **403.420 Conversion of instrument.** (1) The law applicable to conversion
9 of personal property applies to instruments. An instrument is also converted if it is
10 taken by transfer, other than a negotiation, from a person not entitled to enforce the
11 instrument or a bank makes or obtains payment with respect to the instrument for
12 a person not entitled to enforce the instrument or receive payment. An action for
13 conversion of an instrument may not be brought by the issuer or acceptor of the
14 instrument or by a payee or endorsee who did not receive delivery of the instrument
15 either directly or through delivery to an agent or a copayee.

16 (2) In an action under sub. (1), the measure of liability is presumed to be the
17 amount payable on the instrument, but recovery may not exceed the amount of the
18 plaintiff's interest in the instrument.

19 (3) A representative, other than a depository bank, who has in good faith dealt
20 with an instrument or its proceeds on behalf of one who was not the person entitled
21 to enforce the instrument is not liable in conversion to that person beyond the
22 amount of any proceeds that it has not paid out.

23

SUBCHAPTER V

24

DISHONOR

1 **403.501 Presentment.** (1) “Presentment” means a demand made by or on
2 behalf of a person entitled to enforce an instrument to do any of the following:

3 (a) Pay the instrument made to the drawee or a party obliged to pay the
4 instrument or, in the case of a note or accepted draft payable at a bank, to the bank.

5 (b) Accept a draft made to the drawee.

6 (2) The following rules are subject to ch. 404, agreement of the parties, and
7 clearinghouse rules and the like:

8 (a) Presentment may be made at the place of payment of the instrument and
9 shall be made at the place of payment if the instrument is payable at a bank in the
10 United States; may be made by any commercially reasonable means, including an
11 oral, written or electronic communication; is effective when the demand for payment
12 or acceptance is received by the person to whom presentment is made; and is effective
13 if made to any one of 2 or more makers, acceptors, drawees or other payers.

14 (b) Upon demand of the person to whom presentment is made, the person
15 making presentment shall do all of the following:

16 1. Exhibit the instrument.

17 2. Give reasonable identification and, if presentment is made on behalf of
18 another person, reasonable evidence of authority to do so.

19 3. Sign a receipt on the instrument for any payment made or surrender the
20 instrument if full payment is made.

21 (c) Without dishonoring the instrument, the party to whom presentment is
22 made may return the instrument for lack of a necessary endorsement or refuse
23 payment or acceptance for failure of the presentment to comply with the terms of the
24 instrument, an agreement of the parties or other applicable law or rule.

1 (d) The party to whom presentment is made may treat presentment as
2 occurring on the next business day after the day of presentment if the party to whom
3 presentment is made has established a cutoff hour not earlier than 2 p.m. for the
4 receipt and processing of instruments presented for payment or acceptance and
5 presentment is made after the cutoff hour.

6 **403.502 Dishonor. (1)** Dishonor of a note is governed by the following rules:

7 (a) If the note is payable on demand, the note is dishonored if presentment is
8 duly made to the maker and the note is not paid on the day of presentment.

9 (b) If the note is not payable on demand and is payable at or through a bank
10 or the terms of the note require presentment, the note is dishonored if presentment
11 is duly made and the note is not paid on the day on which it becomes payable or the
12 day of presentment, whichever is later.

13 (c) If the note is not payable on demand and par. (b) does not apply, the note is
14 dishonored if it is not paid on the day on which it becomes payable.

15 **(2)** Dishonor of an unaccepted draft other than a documentary draft is governed
16 by the following rules:

17 (a) If a check is duly presented for payment to the payer bank otherwise than
18 for immediate payment over the counter, the check is dishonored if the payer bank
19 makes timely return of the check or sends timely notice of dishonor or nonpayment
20 under s. 404.301 or 404.302, or becomes accountable for the amount of the check
21 under s. 404.302.

22 (b) If a draft is payable on demand and par. (a) does not apply, the draft is
23 dishonored if presentment for payment is duly made to the drawee and the draft is
24 not paid on the day of presentment.

1 (c) If a draft is payable on a date stated in the draft, the draft is dishonored if
2 presentment for payment is duly made to the drawee and payment is not made on
3 the day on which the draft becomes payable or the day of presentment, whichever is
4 later, or if presentment for acceptance is duly made before the day on which the draft
5 becomes payable and the draft is not accepted on the day of presentment.

6 (d) If a draft is payable on elapse of a period of time after sight or acceptance,
7 the draft is dishonored if presentment for acceptance is duly made and the draft is
8 not accepted on the day of presentment.

9 **(3)** Dishonor of an unaccepted documentary draft occurs according to the rules
10 stated in sub. (2) (b) to (d), except that payment or acceptance may be delayed without
11 dishonor until no later than the close of the 3rd business day of the drawee following
12 the day on which payment or acceptance is required by those paragraphs.

13 **(4)** Dishonor of an accepted draft is governed by the following rules:

14 (a) If the draft is payable on demand, the draft is dishonored if presentment for
15 payment is duly made to the acceptor and the draft is not paid on the day of
16 presentment.

17 (b) If the draft is not payable on demand, the draft is dishonored if presentment
18 for payment is duly made to the acceptor and payment is not made on the day on
19 which it becomes payable or the day of presentment, whichever is later.

20 **(5)** In any case in which presentment is otherwise required for dishonor under
21 this section and presentment is excused under s. 403.504, dishonor occurs without
22 presentment if the instrument is not duly accepted or paid.

23 **(6)** If a draft is dishonored because timely acceptance of the draft was not made
24 and the person entitled to demand acceptance consents to a late acceptance, from the
25 time of acceptance the draft is treated as never having been dishonored.

1 **403.503 Notice of dishonor.** (1) The obligation of an endorser stated in s.
2 403.415 (1) and the obligation of a drawer stated in s. 403.414 (4) may not be enforced
3 unless the endorser or drawer is given notice of dishonor of the instrument complying
4 with this section or notice of dishonor is excused under s. 403.504 (2).

5 (2) Notice of dishonor may be given by any person; may be given by any
6 commercially reasonable means, including an oral, written or electronic
7 communication; and is sufficient if it reasonably identifies the instrument and
8 indicates that the instrument has been dishonored or has not been paid or accepted.
9 Return of an instrument given to a bank for collection is sufficient notice of dishonor.

10 (3) Subject to s. 403.504 (3), with respect to an instrument taken for collection
11 by a collecting bank, notice of dishonor shall be given by the bank before midnight
12 of the next banking day following the banking day on which the bank receives notice
13 of dishonor of the instrument or by any other person within 30 days following the day
14 on which the person receives notice of dishonor. With respect to any other
15 instrument, notice of dishonor shall be given within 30 days following the day on
16 which dishonor occurs.

17 **403.504 Excused presentment and notice of dishonor.** (1) Presentment
18 for payment or acceptance of an instrument is excused if any of the following
19 conditions exists:

20 (a) The person entitled to present the instrument cannot with reasonable
21 diligence make presentment.

22 (b) The maker or acceptor has repudiated an obligation to pay the instrument
23 or is dead or in insolvency proceedings.

24 (c) By the terms of the instrument, presentment is not necessary to enforce the
25 obligation of endorsers or the drawer.

1 (d) The drawer or endorser whose obligation is being enforced has waived
2 presentment or otherwise has no reason to expect or right to require that the
3 instrument be paid or accepted.

4 (e) The drawer instructed the drawee not to pay or accept the draft or the
5 drawee was not obligated to the drawer to pay the draft.

6 **(2)** Notice of dishonor is excused if, by the terms of the instrument, notice of
7 dishonor is not necessary to enforce the obligation of a party to pay the instrument
8 or if the party whose obligation is being enforced waived notice of dishonor. A waiver
9 of presentment is also a waiver of notice of dishonor.

10 **(3)** Delay in giving notice of dishonor is excused if the delay was caused by
11 circumstances beyond the control of the person giving the notice and the person
12 giving the notice exercised reasonable diligence after the cause of the delay ceased
13 to operate.

14 **403.505 Evidence of dishonor. (1)** The following are admissible as evidence
15 and create a presumption of dishonor and of any notice of dishonor stated:

16 (a) A document regular in form as provided in sub. (2) which purports to be a
17 protest.

18 (b) A purported stamp or writing of the drawee, payer bank or presenting bank
19 on or accompanying the instrument stating that acceptance or payment has been
20 refused unless reasons for the refusal are stated and the reasons are not consistent
21 with dishonor.

22 (c) A book or record of the drawee, payer bank or collecting bank kept in the
23 usual course of business which shows dishonor, even if there is no evidence of who
24 made the entry.

1 (a) A claim to the instrument under s. 403.306 is enforceable against the party
2 receiving payment and payment is made with knowledge by the payer that payment
3 is prohibited by injunction or similar process of a court of competent jurisdiction, or,
4 in the case of an instrument other than a cashier's check, teller's check or certified
5 check, the party making payment accepted, from the person having a claim to the
6 instrument, indemnity against loss resulting from refusal to pay the person entitled
7 to enforce the instrument.

8 (b) The person making payment knows that the instrument is a stolen
9 instrument and pays a person with knowledge that the person is in wrongful
10 possession of the instrument.

11 **403.603 Tender of payment. (1)** If tender of payment of an obligation to pay
12 an instrument is made to a person entitled to enforce the instrument, the effect of
13 tender is governed by principles of law applicable to tender of payment under a
14 simple contract.

15 (2) If tender of payment of an obligation to pay an instrument is made to a
16 person entitled to enforce the instrument and the tender is refused, there is
17 discharge, to the extent of the amount of the tender, of the obligation of an endorser
18 or accommodation party having a right of recourse with respect to the obligation to
19 which the tender relates.

20 (3) If tender of payment of an amount due on an instrument is made to a person
21 entitled to enforce the instrument, the obligation of the obligor to pay interest after
22 the due date on the amount tendered is discharged. If presentment is required with
23 respect to an instrument and the obligor is able and ready to pay on the due date at
24 every place of payment stated in the instrument, the obligor is considered to have

1 made tender of payment on the due date to the person entitled to enforce the
2 instrument.

3 **403.604 Discharge by cancellation or renunciation.** (1) A person entitled
4 to enforce an instrument, with or without consideration, may discharge the
5 obligation of a party to pay the instrument by doing any of the following:

6 (a) An intentional voluntary act, such as surrender of the instrument to the
7 party, destruction, mutilation or cancellation of the instrument, cancellation or
8 striking out of the party's signature or the addition of words to the instrument
9 indicating discharge.

10 (b) Agreeing not to sue or otherwise renouncing rights against the party by a
11 signed writing.

12 (2) Cancellation or striking out of an endorsement pursuant to sub. (1) (a) does
13 not affect the status and rights of a party derived from the endorsement.

14 **403.605 Discharge of endorser and accommodation parties.** (1) In this
15 section, "endorser" includes a drawer having the obligation described in s. 403.414
16 (4).

17 (2) Discharge, under s. 403.604, of the obligation of a party to pay an
18 instrument does not discharge the obligation of an endorser or accommodation party
19 having a right of recourse against the discharged party.

20 (3) If a person entitled to enforce an instrument agrees, with or without
21 consideration, to an extension of the due date of the obligation of a party to pay the
22 instrument, the extension discharges an endorser or accommodation party having
23 a right of recourse against the party whose obligation is extended to the extent that
24 the endorser or accommodation party proves that the extension caused loss to the
25 endorser or accommodation party with respect to the right of recourse.

1 (4) If a person entitled to enforce an instrument agrees, with or without
2 consideration, to a material modification of the obligation of a party other than an
3 extension of the due date, the modification discharges the obligation of an endorser
4 or accommodation party having a right of recourse against the person whose
5 obligation is modified to the extent that the modification causes loss to the endorser
6 or accommodation party with respect to the right of recourse. The loss suffered by
7 the endorser or accommodation party as a result of the modification is equal to the
8 amount of the right of recourse unless the person enforcing the instrument proves
9 that no loss was caused by the modification or that the loss caused by the
10 modification was an amount less than the amount of the right of recourse.

11 (5) If the obligation of a party to pay an instrument is secured by an interest
12 in collateral and a person entitled to enforce the instrument impairs the value of the
13 interest in collateral, the obligation of an endorser or accommodation party having
14 a right of recourse against the obligor is discharged to the extent of the impairment.
15 The value of an interest in collateral is impaired to the extent that the value of the
16 interest is reduced to an amount less than the amount of the right of recourse of the
17 party asserting discharge, or to the extent that the reduction in value of the interest
18 causes an increase in the amount by which the amount of the right of recourse
19 exceeds the value of the interest. The burden of proving impairment is on the party
20 asserting discharge.

21 (6) If the obligation of a party is secured by an interest in collateral not provided
22 by an accommodation party and a person entitled to enforce the instrument impairs
23 the value of the interest in collateral, the obligation of any party who is jointly and
24 severally liable with respect to the secured obligation is discharged to the extent that
25 the impairment causes the party asserting discharge to pay more than that party

1 would have been obliged to pay, taking into account rights of contribution, if
2 impairment had not occurred. If the party asserting discharge is an accommodation
3 party not entitled to discharge under sub. (5), the party is considered to have a right
4 to contribution based on joint and several liability rather than a right to
5 reimbursement. The burden of proving impairment is on the party asserting
6 discharge.

7 **(7)** Under sub. (5) or (6), impairing value of an interest in collateral includes
8 all of the following:

9 (a) Failure to obtain or maintain perfection or recordation of the interest in
10 collateral.

11 (b) Release of collateral without substitution of collateral of equal value.

12 (c) Failure to perform a duty to preserve the value of collateral owed, under ch.
13 409 or other law, to a debtor or surety or other person secondarily liable.

14 (d) Failure to comply with applicable law in disposing of collateral.

15 **(8)** An accommodation party is not discharged under sub. (3), (4) or (5) unless
16 the person entitled to enforce the instrument knows of the accommodation or has
17 notice under s. 403.419 (3) that the instrument was signed for accommodation.

18 **(9)** A party is not discharged under this section if the party asserting discharge
19 consents to the event or conduct that is the basis of the discharge or if the instrument
20 or a separate agreement of the party provides for waiver of discharge under this
21 section either specifically or by general language indicating that parties waive
22 defenses based on suretyship or impairment of collateral.

23 **SECTION 10.** The unnumbered subchapter title preceding 404.101 of the
24 statutes is renumbered subchapter I (title) of chapter 404.

25 **SECTION 11.** 404.101 of the statutes is repealed.

1 **SECTION 12.** 404.102 of the statutes is amended to read:

2 **404.102 Applicability.** (1) To the extent that items within this chapter are
3 also within the scope of chs. 403 and 408, they are subject to the provisions of those
4 chapters. ~~In the event of~~ If there is conflict the provisions of, this chapter govern
5 those of governs ch. 403, but the provisions of ch. 408 govern those of governs this
6 chapter.

7 (2) The liability of a bank for action or nonaction with respect to ~~any~~ an item
8 handled by it for purposes of presentment, payment or collection is governed by the
9 law of the place where the bank is located. In the case of action or nonaction by or
10 at a branch or separate office of a bank, its liability is governed by the law of the place
11 where the branch or separate office is located.

12 **SECTION 13.** 404.103 of the statutes is amended to read:

13 **404.103 (title) Variation by agreement; measure of damages; certain**
14 **action constituting ordinary care.** (1) The effect of the provisions of this chapter
15 may be varied by agreement ~~except that no agreement can,~~ but the parties to the
16 agreement cannot disclaim a bank's responsibility for its ~~own~~ lack of good faith or
17 failure to exercise ordinary care or ~~can~~ limit the measure of damages for ~~such~~ the lack
18 or failure; ~~but.~~ However, the parties may determine by agreement determine the
19 standards by which ~~such~~ the bank's responsibility is to be measured if ~~such~~ those
20 standards are not manifestly unreasonable.

21 (2) Federal reserve regulations and operating letters circulars, clearinghouse
22 rules, and the like, have the effect of agreements under sub. (1), whether or not
23 specifically assented to by all parties interested in items handled.

24 (3) Action or nonaction approved by this chapter or pursuant to federal reserve
25 regulations or operating letters ~~constitutes~~ circulars is the exercise of ordinary care

1 and, in the absence of special instructions, action or nonaction consistent with
2 clearinghouse rules and the like or with a general banking usage not disapproved by
3 this chapter, ~~is~~ prima facie constitutes the exercise of ordinary care.

4 (4) The specification or approval of certain procedures by this chapter ~~does not~~
5 ~~constitute~~ is not disapproval of other procedures ~~which that~~ that may be reasonable under
6 the circumstances.

7 (5) The measure of damages for failure to exercise ordinary care in handling
8 an item is the amount of the item reduced by an amount ~~which that~~ that could not have
9 been realized by the use exercise of ordinary care, ~~and where.~~ If there is also bad faith
10 it includes any other damages, ~~if any, suffered by the party~~ suffered as a proximate
11 consequence.

12 **SECTION 14.** 404.104 (1) (intro.) and (a) to (f) of the statutes are amended to
13 read:

14 404.104 (1) (intro.) In this chapter, unless the context otherwise requires:

15 (a) "Account" means any deposit or credit account with a bank ~~and includes a~~
16 ~~checking, time, interest or savings account, including a demand, time, savings,~~
17 passbook, share draft or like account, other than an account evidenced by a
18 certificate of deposit.

19 (b) "Afternoon" means the period of a day between noon and midnight;.

20 (c) "Banking day" means ~~that the~~ the part of ~~any a~~ a day on which a bank is open to
21 the public for carrying on substantially all of its banking functions;.

22 (d) "Clearinghouse" means any an association of banks or other ~~payors~~ payors
23 regularly clearing items;.

1 (e) "Customer" means ~~any a~~ a person having an account with a bank or for whom
2 a bank has agreed to collect items ~~and includes, including~~ a bank carrying that
3 maintains an account with at another bank;

4 (f) "Documentary draft" means ~~any negotiable or nonnegotiable draft with~~
5 ~~accompanying documents, securities or other papers to be delivered against honor~~
6 ~~of the draft; a draft to be presented for acceptance or payment if specified documents,~~
7 ~~certificated securities or instructions for uncertificated securities, or other~~
8 ~~certificates, statements or the like are to be received by the drawee or other payer~~
9 before acceptance or payment of the draft.

10 **SECTION 15.** 404.104 (1) (g), (h) and (j) of the statutes are renumbered 404.104
11 (1) (i), (j) and (k) and amended to read:

12 404.104 (1) (i) "Item" means ~~any an~~ an instrument for the payment of money even
13 ~~though it is not negotiable but does not include money; or a promise or order to pay~~
14 money handled by a bank for collection or payment. "Item" does not include a
15 payment order governed by ch. 410 or a credit or debit card slip.

16 (j) "Midnight deadline" with respect to a bank is midnight on its next banking
17 day following the banking day on which it receives the relevant item or notice or from
18 which the time for taking action commences to run, whichever is later;

19 (k) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or
20 credit or by remittance, or otherwise as instructed agreed. A settlement may be
21 either provisional or final;

22 **SECTION 16.** 404.104 (1) (g) and (h) of the statutes are created to read:

23 404.104 (1) (g) "Draft" means a draft as defined in s. 403.104 (5), or an item,
24 other than an instrument, that is an order.

25 (h) "Drawee" means a person ordered in a draft to make a payment.

1 **SECTION 17.** 404.104 (1) (i) of the statutes is repealed.

2 **SECTION 18.** 404.104 (1) (k) of the statutes is renumbered 404.104 (1) (L).

3 **SECTION 19.** 404.104 (2) (a) to (e) of the statutes are renumbered 404.104 (2)
4 (c) to (g), and 404.104 (2) (f), as renumbered, is amended to read:

5 404.104 (2) (f) "~~Payer~~ "Payer bank" — s. 404.105.

6 **SECTION 20.** 404.104 (2) (a), (b) and (h) of the statutes are created to read:

7 404.104 (2) (a) "Agreement for electronic presentment" — s. 404.110 (1).

8 (b) "Bank" — s. 404.105 (1).

9 (h) "Presentment notice" — s. 404.110 (1).

10 **SECTION 21.** 404.104 (2) (f) of the statutes is repealed.

11 **SECTION 22.** 404.104 (3) (a) of the statutes is amended to read:

12 404.104 (3) (a) "Acceptance" — s. ~~403.410~~ 403.409 (1).

13 **SECTION 23.** 404.104 (3) (b), (d), (f), (g) and (h) of the statutes are renumbered
14 404.104 (3) (d), (f), (h), (j) and (n), and 404.104 (3) (j) and (n), as renumbered, are
15 amended to read:

16 404.104 (3) (j) "Notice of dishonor" — s. ~~403.508~~ 403.503.

17 (n) "Presentment" — s. ~~403.504~~ 403.501 (1).

18 **SECTION 24.** 404.104 (3) (b), (c), (e), (g), (i), (k) to (m) and (p) to (s) of the statutes
19 are created to read:

20 404.104 (3) (b) "Alteration" — s. 403.407 (1).

21 (c) "Cashier's check" — s. 403.104 (7).

22 (e) "Certified check" — s. 403.409 (4).

23 (g) "Good faith" — s. 403.103 (1) (d).

24 (i) "Instrument" — s. 403.104 (2).

25 (k) "Order" — s. 403.103 (1) (f).

1 (L) "Ordinary care" — s. 403.103 (1) (g).

2 (m) "Person entitled to enforce" — s. 403.301.

3 (p) "Promise" — s. 403.103 (1) (i).

4 (q) "Prove" — s. 403.103 (1) (j).

5 (r) "Teller's check" — s. 403.104 (8).

6 (s) "Unauthorized signature" — s. 403.403.

7 **SECTION 25.** 404.104 (3) (c), (e), (i) and (j) of the statutes are repealed.

8 **SECTION 26.** 404.104 (4) of the statutes is amended to read:

9 404.104 (4) In addition, ch. 401 contains general definitions and principles of
10 construction and interpretation applicable throughout this chapter.

11 **SECTION 27.** 404.105 (intro.) of the statutes is amended to read:

12 **404.105** (title) ~~"Depository bank"; "intermediary bank" "Bank";~~
13 ~~"collecting bank"; "payer depository bank"; "intermediary bank"; "payer~~
14 ~~bank"; "presenting bank"; "remitting bank".~~ (intro.) In this chapter unless the
15 context otherwise requires:

16 **SECTION 28.** 404.105 (1) to (5) of the statutes are renumbered 404.105 (2) to (6)
17 and amended to read:

18 404.105 (2) "Collecting bank" means any a bank handling the an item for
19 collection except the payer payer bank;

20 (3) "Depository bank" means the first bank to which take an item is transferred
21 for collection even though it is also the payer payer bank; unless the item is
22 presented for immediate payment over the counter.

23 (4) "Intermediary bank" means any a bank to which an item is transferred in
24 course of collection except the depository or payer payer bank;

1 (5) ~~“Payer~~ “Payer bank” means a bank by which an item is payable as drawn
2 or accepted; that is the drawee of a draft.

3 (6) ~~“Presenting bank”~~ means ~~any a~~ a bank presenting an item except a ~~payer~~
4 payer bank;

5 **SECTION 29.** 404.105 (1) of the statutes is created to read:

6 404.105 (1) “Bank” means a person engaged in the business of banking,
7 including a savings bank, savings and loan association, credit union or trust
8 company.

9 **SECTION 30.** 404.105 (6) of the statutes is repealed.

10 **SECTION 31.** 404.106 to 404.108 of the statutes are renumbered 404.107 to
11 404.109 and amended to read:

12 **404.107 Separate office of a bank.** A branch or separate office of a bank is
13 a separate bank for the purpose of computing the time within which and determining
14 the place at or to which action may be taken or notices or orders ~~shall~~ must be given
15 under this chapter and under ch. 403.

16 **404.108 Time of receipt of items. (1)** For the purpose of allowing time to
17 process items, prove balances and make the necessary entries on its books to
18 determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later
19 as a ~~cut-off~~ cutoff hour for the handling of money and items and the making of entries
20 on its books.

21 (2) ~~Any~~ An item or deposit of money received on any day after a ~~cut-off~~ cutoff
22 hour so fixed or after the close of the banking day may be treated as being received
23 at the opening of the next banking day.

24 **404.109 Delays. (1)** Unless otherwise instructed, a collecting bank in a good
25 faith effort to secure payment ~~may, in the case of a specific items~~ item drawn on a

1 payer other than a bank, and with or without the approval of any person involved,
2 may waive, modify or extend time limits imposed or permitted by chs. 401 to 411 for
3 a period not ~~in excess of an~~ exceeding 2 additional banking day days without
4 discharge of ~~secondary parties and without~~ drawers or endorsers or liability to its
5 transferor or ~~any~~ a prior party.

6 (2) Delay by a collecting bank or ~~payer~~ payor bank beyond time limits
7 prescribed or permitted by chs. 401 to 411 or by instructions is excused if the delay
8 is caused by interruption of communication or computer facilities, suspension of
9 payments by another bank, war, emergency conditions, failure of equipment or other
10 circumstances beyond the control of the bank ~~provided it~~ and the bank exercises such
11 diligence as the circumstances require.

12 **SECTION 32.** 404.106 of the statutes is created to read:

13 **404.106 Payable through or payable at bank; collecting bank.** (1) If an
14 item states that it is “payable through” a bank identified in the item, the item
15 designates the bank as a collecting bank and does not by itself authorize the bank
16 to pay the item and the item may be presented for payment only by or through the
17 bank.

18 (2) If an item states that it is “payable at” a bank identified in the item, the item
19 designates the bank as a collecting bank and does not by itself authorize the bank
20 to pay the item and the item may be presented for payment only by or through the
21 bank.

22 (3) If a draft names a nonbank drawee and it is unclear whether a bank named
23 in the draft is a codrawee or a collecting bank, the bank is a collecting bank.

24 **SECTION 33.** 404.109 of the statutes is repealed.

25 **SECTION 34.** 404.110 of the statutes is created to read:

1 **404.110 Electronic presentment.** (1) “Agreement for electronic
2 presentment” means an agreement, clearinghouse rule or federal reserve regulation
3 or operating circular, providing that presentment of an item may be made by
4 transmission of an image of an item or information describing the item
5 (“presentment notice”) rather than delivery of the item itself. The agreement may
6 provide for procedures governing retention, presentment, payment, dishonor and
7 other matters concerning items subject to the agreement.

8 (2) Presentment of an item pursuant to an agreement for electronic
9 presentment is made when the presentment notice is received.

10 (3) If presentment is made by presentment notice, a reference to “item” or
11 “check” in this chapter means the presentment notice unless the context otherwise
12 indicates.

13 **SECTION 35.** 404.111 of the statutes is created to read:

14 **404.111 Statute of limitations.** An action to enforce an obligation, duty, or
15 right arising under this chapter must be commenced within 3 years after the cause
16 of action accrues.

17 **SECTION 36.** The unnumbered subchapter title preceding 404.201 of the
18 statutes is numbered subchapter II (title) of chapter 404.

19 **SECTION 37.** 404.201 of the statutes is amended to read:

20 **404.201 (title) ~~Presumption and duration of agency status~~ Status of**
21 **~~collecting banks~~ bank as agent and provisional status of credits;**
22 **~~applicability of chapter; item indorsed~~ endorsed “pay any bank”. (1) Unless**
23 **a contrary intent clearly appears and ~~prior to~~ before the time that a settlement given**
24 **by a collecting bank for an item is or becomes final (ss. ~~404.211 (3), 404.212 and~~**
25 **~~404.213~~), the bank, with respect to the item, is an agent or subagent of the owner of**

1 the item and any settlement given for the item is provisional. This provision applies
2 regardless of the form of ~~indorsement~~ endorsement or lack of ~~indorsement~~
3 endorsement and even though credit given for the item is subject to immediate
4 withdrawal as of right or is in fact withdrawn; but the continuance of ownership of
5 an item by its owner and any rights of the owner to proceeds of the item are subject
6 to rights of a collecting bank, such as those resulting from outstanding advances on
7 the item and ~~valid~~ rights of recoupment or setoff. ~~When~~ If an item is handled by
8 banks for purposes of presentment, payment ~~and~~, collection or return, the relevant
9 provisions of this chapter apply even though action of the parties clearly establishes
10 that a particular bank has purchased the item and is the owner of it.

11 (2) After an item has been ~~indersed~~ endorsed with the words "pay any bank"
12 or the like, only a bank may acquire the rights of a holder until any of the following
13 occur:

14 (a) ~~Until the~~ The item has been returned to the customer initiating collection;
15 ~~or,~~

16 (b) ~~Until the~~ The item has been specially ~~indersed~~ endorsed by a bank to a
17 person who is not a bank.

18 **SECTION 38.** 404.202 (title) and (1) (intro.) and (a) to (c) of the statutes are
19 amended to read:

20 **404.202** (title) **Responsibility for collection or return; when action**
21 **seasonable timely.** (1) (intro.) A collecting bank must use exercise ordinary care
22 in all of the following:

23 (a) Presenting an item or sending it for presentment; ~~and,~~

1 (b) Sending notice of dishonor or nonpayment or returning an item other than
2 a documentary draft to the bank's transferor after learning that the item has not
3 been paid or accepted, as the case may be; ~~and.~~

4 (c) Settling for an item when the bank receives final settlement; ~~and.~~

5 **SECTION 39.** 404.202 (1) (d) of the statutes is repealed.

6 **SECTION 40.** 404.202 (1) (e) of the statutes is renumbered 404.202 (1) (d).

7 **SECTION 41.** 404.202 (2) and (3) of the statutes are amended to read:

8 404.202 (2) A collecting bank ~~taking proper action before its midnight deadline~~
9 ~~following receipt of an item, notice or payment acts seasonably; taking proper action~~
10 ~~within a reasonably longer time may be seasonable but the bank has the burden of~~
11 ~~so establishing~~ exercises ordinary care under sub. (1) by taking proper action before
12 its midnight deadline following receipt of an item, notice or settlement. Taking
13 proper action within a reasonably longer time may constitute the exercise of ordinary
14 care, but the bank has the burden of establishing timeliness.

15 (3) Subject to sub. (1) (a), a bank is not liable for the insolvency, neglect,
16 misconduct, mistake or default of another bank or person or for loss or destruction
17 of an item in the possession of others or in transit ~~or in the possession of others.~~

18 **SECTION 42.** 404.203 of the statutes is amended to read:

19 **404.203 Effect of instructions.** Subject to the provisions of s. 403.419 to s.
20 403.420 concerning conversion of instruments and the provisions of both ch. 403 and
21 ~~this chapter~~ to s. 403.206 concerning restrictive indorsements endorsements, only a
22 collecting bank's transferor can give instructions ~~which~~ that affect the bank or
23 constitute notice to it and a collecting bank is not liable to prior parties for any action
24 taken pursuant to such the instructions or in accordance with any agreement with
25 its transferor.

1 **SECTION 43.** 404.204 of the statutes is amended to read:

2 **404.204 (title) Methods of sending and presenting; sending direct**
3 **directly to payor payer bank.** (1) A collecting bank ~~must~~ shall send items by a
4 reasonably prompt method, taking into consideration ~~any~~ relevant instructions, the
5 nature of the item, the number of ~~such~~ those items on hand, and the cost of collection
6 involved and the method generally used by it or others to present ~~such~~ those items.

7 (2) A collecting bank may send any of the following:

8 (a) ~~Any~~ An item ~~direct~~ directly to the ~~payor~~ payer bank;

9 (b) ~~Any~~ An item to ~~any~~ a nonbank ~~payor~~ payer if authorized by its transferor;
10 ~~and.~~

11 (c) ~~Any~~ An item other than documentary drafts to ~~any~~ a nonbank ~~payor~~ payer,
12 if authorized by federal reserve regulation or operating ~~letter~~ circular, clearinghouse
13 rule or the like.

14 (3) Presentment may be made by a presenting bank at a place where the ~~payor~~
15 payer bank ~~or other payer~~ has requested that presentment be made.

16 **SECTION 44.** 404.205 of the statutes is repealed and recreated to read:

17 **404.205 Depository bank holder of unendorsed item.** If a customer
18 delivers an item to a depository bank for collection, all of the following apply:

19 (1) The depository bank becomes a holder of the item at the time that it receives
20 the item for collection if the customer at the time of delivery was a holder of the item,
21 whether or not the customer endorses the item, and, if the bank satisfies the other
22 requirements of s. 403.302, it is a holder in due course.

23 (2) The depository bank warrants to collecting banks, the payer bank or other
24 payer and the drawer that the amount of the item was paid to the customer or
25 deposited to the customer's account.

1 **SECTION 45.** 404.206 of the statutes is amended to read:

2 **404.206 Transfer between banks.** Any agreed method ~~which~~ that identifies
3 the transferor bank is sufficient for the item's further transfer to another bank.

4 **SECTION 46.** 404.207 of the statutes is repealed and recreated to read:

5 **404.207 Transfer warranties. (1)** A customer or collecting bank that
6 transfers an item and receives a settlement or other consideration warrants all of the
7 following to the transferee and to any subsequent collecting bank:

8 (a) The warrantor is a person entitled to enforce the item.

9 (b) All signatures on the item are authentic and authorized.

10 (c) The item has not been altered.

11 (d) The item is not subject to a defense or claim in recoupment of any party that
12 can be asserted against the warrantor.

13 (e) The warrantor has no knowledge of any insolvency proceeding commenced
14 with respect to the maker or acceptor or, in the case of an unaccepted draft, the
15 drawer.

16 **(2)** If an item is dishonored, a customer or collecting bank transferring the item
17 and receiving settlement or other consideration is obliged to pay the amount due on
18 the item according to the terms of the item at the time it was transferred or, if the
19 transfer was of an incomplete item, according to its terms when completed as stated
20 in ss. 403.115 and 403.407. The obligation of a transferor is owed to the transferee
21 and to any subsequent collecting bank that takes the item in good faith. A transferor
22 cannot disclaim its obligation under this subsection by an endorsement stating that
23 it is made "without recourse" or otherwise disclaiming liability.

24 **(3)** A person to whom the warranties under sub. (1) are made and who took the
25 item in good faith may recover from the warrantor as damages for breach of warranty

1 an amount equal to the loss suffered as a result of the breach, but not more than the
2 amount of the item plus expenses and loss of interest incurred as a result of the
3 breach.

4 (4) The warranties stated in sub. (1) cannot be disclaimed with respect to
5 checks. Unless notice of a claim for breach of warranty is given to the warrantor
6 within 30 days after the claimant has reason to know of the breach and the identity
7 of the warrantor, the warrantor is discharged to the extent of any loss caused by the
8 delay in giving notice of the claim.

9 (5) A cause of action for breach of warranty under this section accrues when
10 the claimant has reason to know of the breach.

11 **SECTION 47.** 404.208 of the statutes is renumbered 404.210, and 404.210 (1)
12 (intro.), (a) and (b), (2) and (3) (intro.), (a) and (b), as renumbered, are amended to
13 read:

14 404.210 (1) (intro.) A collecting bank has a security interest in an item and any
15 accompanying documents or the proceeds of either in any of the following situations:

16 (a) In case of an item deposited in an account, to the extent to which credit given
17 for the item has been withdrawn or applied;

18 (b) In case of an item for which it has given credit available for withdrawal as
19 of right, to the extent of the credit given, whether or not the credit is drawn upon ~~and~~
20 ~~whether or not there is a right of charge-back; or,~~

21 (2) ~~When~~ If credit ~~which has been~~ given for several items received at one time
22 or pursuant to a single agreement is withdrawn or applied in part, the security
23 interest remains upon all the items, any accompanying documents or the proceeds
24 of either. For the purpose of this section, credits first given are first withdrawn.

1 **(3)** (intro.) Receipt by a collecting bank of a final settlement for an item is a
2 realization on its security interest in the item, accompanying documents and
3 proceeds. ~~To the extent and so~~ So long as the bank does not receive final settlement
4 for the item or give up possession of the item or accompanying documents for
5 purposes other than collection, the security interest continues to that extent and is
6 subject to ~~the provisions of ch. 409 except that,~~ but all of the following apply:

7 (a) No security agreement is necessary to make the security interest
8 enforceable ~~(s. 409.203 (1) (a)); and,~~

9 (b) No filing is required to perfect the security interest; ~~and,~~

10 **SECTION 48.** 404.208 of the statutes is created to read:

11 **404.208 Presentment warranties. (1)** If an unaccepted draft is presented
12 to the drawee for payment or acceptance and the drawee pays or accepts the draft,
13 the person obtaining payment or acceptance, at the time of presentment, and a
14 previous transferor of the draft, at the time of transfer, warrant to the drawee that
15 pays or accepts the draft in good faith that all of the following conditions exist:

16 (a) The warrantor is, or was at the time the warrantor transferred the draft,
17 a person entitled to enforce the draft or authorized to obtain payment or acceptance
18 of the draft on behalf of a person entitled to enforce the draft.

19 (b) The draft has not been altered.

20 (c) The warrantor has no knowledge that the signature of the purported drawer
21 of the draft is unauthorized.

22 **(2)** A drawee making payment may recover from a warrantor damages for
23 breach of warranty equal to the amount paid by the drawee less the amount the
24 drawee received or is entitled to receive from the drawer because of the payment.
25 In addition, the drawee is entitled to compensation for expenses and loss of interest

1 resulting from the breach. The right of the drawee to recover damages under this
2 subsection is not affected by any failure of the drawee to exercise ordinary care in
3 making payment. If the drawee accepts the draft, breach of warranty is a defense
4 to the obligation of the acceptor, and if the acceptor makes payment with respect to
5 the draft, the acceptor is entitled to recover from a warrantor for breach of warranty
6 the amounts stated in this subsection.

7 (3) If a drawee asserts a claim for breach of warranty under sub. (1) based on
8 an unauthorized endorsement of the draft or an alteration of the draft, the warrantor
9 may defend by proving that the endorsement is effective under s. 403.404 or 403.405
10 or the drawer is precluded under s. 403.406 or 404.406 from asserting against the
11 drawee the unauthorized endorsement or alteration.

12 (4) If a dishonored draft is presented for payment to the drawer or an endorser
13 or any other item is presented for payment to a party obliged to pay the item, and the
14 item is paid, the person obtaining payment and a prior transferor of the item warrant
15 to the person making payment in good faith that the warrantor is, or was at the time
16 the warrantor transferred the item, a person entitled to enforce the item or
17 authorized to obtain payment on behalf of a person entitled to enforce the item. The
18 person making payment may recover from any warrantor for breach of warranty an
19 amount equal to the amount paid plus expenses and loss of interest resulting from
20 the breach.

21 (5) The warranties stated in subs. (1) and (4) cannot be disclaimed with respect
22 to checks. Unless notice of a claim for breach of warranty is given to the warrantor
23 within 30 days after the claimant has reason to know of the breach and the identity
24 of the warrantor, the warrantor is discharged to the extent of any loss caused by the
25 delay in giving notice of the claim.

1 **(6)** A cause of action for breach of warranty under this section accrues when
2 the claimant has reason to know of the breach.

3 **SECTION 49.** 404.209 of the statutes is renumbered 404.211 and amended to
4 read:

5 **404.211 When bank gives value for purposes of holder in due course.**
6 For purposes of determining its status as a holder in due course, ~~the a~~ bank has given
7 value to the extent that it has a security interest in an item ~~provided that, if~~ the bank
8 otherwise complies with s. 403.302 on what constitutes a holder in due course.

9 **SECTION 50.** 404.209 of the statutes is created to read:

10 **404.209 Encoding and retention warranties. (1)** A person who encodes
11 information on or with respect to an item after issue warrants to any subsequent
12 collecting bank and to the payer bank or other payer that the information is correctly
13 encoded. If the customer of a depository bank encodes, that bank also makes the
14 warranty.

15 **(2)** A person who undertakes to retain an item pursuant to an agreement for
16 electronic presentment warrants to any subsequent collecting bank and to the payer
17 bank or other payer that retention and presentment of the item comply with the
18 agreement. If a customer of a depository bank undertakes to retain an item, that
19 bank also makes this warranty.

20 **(3)** A person to whom warranties are made under this section and who took the
21 item in good faith may recover from the warrantor as damages for breach of warranty
22 an amount equal to the loss suffered as a result of the breach, plus expenses and loss
23 of interest incurred as a result of the breach.

24 **SECTION 51.** 404.210 of the statutes is renumbered 404.212 and amended to
25 read:

1 **404.212 (title) Presentment by notice of item not payable by, through**
2 **or at a bank; liability of secondary parties drawer or endorser.** (1) Unless
3 otherwise instructed, a collecting bank may present an item not payable by, through
4 or at a bank by sending to the party to accept or pay a written notice that the bank
5 holds the item for acceptance or payment. The notice must be sent in time to be
6 received on or before the day when presentment is due and the bank must meet any
7 requirement of the party to accept or pay under s. ~~403.505~~ 403.501 by the close of the
8 bank's next banking day after it knows of the requirement.

9 (2) ~~Where~~ If presentment is made by notice and ~~neither honor nor payment,~~
10 acceptance or request for compliance with a requirement under s. ~~403.505~~ 403.501
11 is not received by the close of business on the day after maturity or, in the case of
12 demand items, by the close of business on the ~~third~~ 3rd banking day after notice was
13 sent, the presenting bank may treat the item as dishonored and charge any
14 secondary party drawer or endorser by sending ~~the secondary party~~ it notice of the
15 facts.

16 **SECTION 52.** 404.211 of the statutes is repealed.

17 **SECTION 53.** 404.212 (title), (1) and (2) to (5) of the statutes are renumbered
18 404.214 (title), (1) and (3) to (6), and 404.214 (title), (1), (3), (4) and (6), as
19 renumbered, are amended to read:

20 **404.214 (title) Right of charge-back or refund; liability of collecting**
21 **bank; return of item.** (1) If a collecting bank has made provisional settlement with
22 its customer for an item and ~~itself~~ fails by reason of dishonor, suspension of payments
23 by a bank or otherwise to receive a settlement for the item which is or becomes final,
24 the bank may revoke the settlement given by it, ~~charge-back~~ charge back the amount
25 of any credit given for the item to its customer's account, or obtain refund from its

1 customer, whether or not it is able to return the items item, if by its midnight
2 deadline or within a longer reasonable time after it learns the facts it returns the
3 item or sends notification of the facts. If the return or notice is delayed beyond the
4 bank's midnight deadline or a longer reasonable time after it learns the facts, the
5 bank may revoke the settlement, charge back the credit or obtain a refund from its
6 customer, but it is liable for any loss resulting from the delay. These rights to revoke,
7 charge-back and obtain refund terminate if and when a settlement for the item
8 received by the bank is or becomes final (ss. 404.211 (3) and 404.213 (2) and (3)).

9 (3) A depository bank which that is also the ~~payor~~ payer may charge-back
10 charge back the amount of an item to its customer's account or obtain refund in
11 accordance with s. 404.301 governing return of an item received by a ~~payor~~ payer
12 bank for credit on its books.

13 (4) The right to charge-back is not affected by any of the following:

14 (a) ~~Prior~~ Previous use of the a credit given for the item; ~~or,~~

15 (b) Failure by any bank to exercise ordinary care with respect to the item, but
16 any a bank so failing remains liable.

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

22 **SECTION 54.** 404.212 (1m) of the statutes is repealed.

23 **SECTION 55.** 404.213 (title) and (1) (intro.), (a), (b) and (d) of the statutes are
24 renumbered 404.215 (title) and (1) (intro.), (a), (b) and (c), and 404.215 (title) and (1)
25 (intro.) and (a) and (b), as renumbered, are amended to read:

1 **404.215** (title) **Final payment of item by ~~payor~~ payer bank; when**
2 **provisional debits and credits become final; when certain credits become**
3 **available for withdrawal. (1)** (intro.) An item is finally paid by a ~~payor~~ payer
4 bank when the bank has first done any of the following, ~~whichever happens first~~:

5 (a) Paid the item in cash; ~~or~~,

6 (b) Settled for the item without ~~reserving~~ having a right to revoke the
7 settlement and ~~without having such right~~ under statute, clearinghouse rule or
8 agreement; ~~or~~,

9 **SECTION 56.** 404.213 (1) (c) of the statutes is repealed.

10 **SECTION 57.** 404.213 (1a) of the statutes is repealed.

11 **SECTION 58.** 404.213 (2) to (4), (4m) and (5) of the statutes are renumbered
12 404.215 (3) to (5), (5m) and (6), and 404.215 (3), (4), (5), (5m) (a) and (b) 1., 2. and 3.
13 and (6), as renumbered, are amended to read:

14 404.215 **(3)** If provisional settlement for an item between the presenting and
15 ~~payor~~ payer banks is made through a clearinghouse or by debits or credits in an
16 account between them, then to the extent that provisional debits or credits for the
17 item are entered in accounts between the presenting and ~~payor~~ payer banks or
18 between the presenting and successive prior collecting banks in a series, they become
19 final upon final payment of the item by the ~~payor~~ payer bank.

20 404.215 **(4)** If a collecting bank receives a settlement for an item which is or
21 becomes final (~~ss. 404.211 (3) and 404.213 (2)~~), the bank is accountable to its
22 customer for the amount of the item and any provisional credit given for the item in
23 an account with its customer becomes final.

24 **(5)** Subject to applicable law stating a time for availability of funds and to any
25 right of the bank to apply the credit to an obligation of the customer, credit given by

1 a bank for an item in an a customer's account ~~with its customer~~ becomes available
2 for withdrawal as of right:

3 (a) ~~In any case where~~ If the bank has received a provisional settlement for the
4 item, ~~—when such~~ when the settlement becomes final and the bank has had a
5 reasonable time to ~~learn that the settlement is final;~~ receive return of the item and
6 the item has not been received within that time.

7 (b) ~~In any case where~~ If the bank is both a the depository bank and a ~~payer~~ the
8 payer bank and the item is finally paid, ~~—at~~ at the opening of the bank's ~~second~~ 2nd
9 banking day following receipt of the item.

10 **(5m)** (a) ~~As used in~~ In this subsection, “banking day” means a business day as
11 defined in s. 421.301 (6) that is not a federal legal holiday.

12 (b) 1. If the item is a check or draft endorsed only by the person to whom it was
13 issued and is drawn on the treasury of the United States, ~~the~~ this state of Wisconsin
14 or any unit of local government ~~located~~ in this state, after not more than one banking
15 day has intervened between the banking day on which the check or draft is received
16 at the proof and transit facility of the depository and the banking day on which the
17 funds are available for withdrawal.

18 2. If the ~~payer~~ payer bank or other financial institution is located in this state,
19 after not more than 4 banking days have intervened between the banking day on
20 which the item is received at the proof and transit facility of the depository and the
21 banking day on which the funds are available for withdrawal.

22 3. If the ~~payer~~ payer bank or other financial institution is located in any other
23 state, after not more than 7 banking days have intervened between the banking day
24 on which the item is received at the proof and transit facility of the depository and
25 the banking day on which the funds are available for withdrawal.

1 (6) ~~A deposit of money in a bank is final when made but, subject to~~ Subject to
2 applicable law stating a time for availability of funds and any right of the a bank to
3 apply the a deposit to an obligation of the customer, ~~the depositor, a deposit of money~~
4 becomes available for withdrawal as of right at the opening of the bank's next
5 banking day ~~following~~ after receipt of the deposit.

6 **SECTION 59.** 404.213 of the statutes is created to read:

7 **404.213 Medium and time of settlement by bank.** (1) With respect to
8 settlement by a bank, the medium and time of settlement may be prescribed by
9 federal reserve regulations or circulars, clearinghouse rules and the like, or
10 agreement. In the absence of such prescription, all of the following apply:

11 (a) The medium of settlement is cash or credit to an account in a federal reserve
12 bank of or specified by the person to receive settlement.

13 (b) The time of settlement is:

14 1. With respect to tender of settlement by cash, a cashier's check, or teller's
15 check, when the cash or check is sent or delivered.

16 2. With respect to tender of settlement by credit in an account in a federal
17 reserve bank, when the credit is made.

18 3. With respect to tender of settlement by a credit or debit to an account in a
19 bank, when the credit or debit is made or, in the case of tender of settlement by
20 authority to charge an account, when the authority is sent or delivered.

21 4. With respect to tender of settlement by a funds transfer, when payment is
22 made pursuant to s. 410.406 (1) to the person receiving settlement.

23 (2) If the tender of settlement is not by a medium authorized by sub. (1) or the
24 time of settlement is not fixed by sub. (1), no settlement occurs until the tender of
25 settlement is accepted by the person receiving settlement.

1 **(3)** If settlement for an item is made by cashier's check or teller's check and the
2 person receiving settlement, before its midnight deadline does any of the following:

3 (a) Presents or forwards the check for collection, settlement is final when the
4 check is finally paid.

5 (b) Fails to present or forward the check for collection, settlement is final at the
6 midnight deadline of the person receiving settlement.

7 **(4)** If settlement for an item is made by giving authority to charge the account
8 of the bank giving settlement in the bank receiving settlement, settlement is final
9 when the charge is made by the bank receiving settlement if there are funds
10 available in the account for the amount of the item.

11 **SECTION 60.** 404.214 of the statutes is renumbered 404.216 and amended to
12 read:

13 **404.216 Insolvency and preference.** **(1)** ~~Any~~ If an item is in or coming
14 comes into the possession of a ~~payor~~ payer or collecting bank ~~which~~ that suspends
15 payment and ~~which~~ the item is has not been finally paid ~~shall~~, the item must be
16 returned by the receiver, trustee or agent in charge of the closed bank to the
17 presenting bank or the closed bank's customer.

18 **(2)** If a ~~payor~~ payer bank finally pays an item and suspends payments without
19 making a settlement for the item with its customer or the presenting bank which
20 settlement is or becomes final, the owner of the item has a preferred claim against
21 the ~~payor~~ payer bank.

22 **(3)** If a ~~payor~~ payer bank gives or a collecting bank gives or receives a
23 provisional settlement for an item and thereafter suspends payments, the
24 suspension does not prevent or interfere with the ~~settlement~~ settlement's becoming

1 final if such the finality occurs automatically upon the lapse of certain time or the
2 happening of certain events (ss. ~~404.211 (3) and 404.213 (1) (d), (2) and (3)~~).

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

7 **SECTION 61.** 404.214 (2) of the statutes is created to read:

8 404.214 (2) A collecting bank returns an item when it is sent or delivered to the
9 bank's customer or transferor or pursuant to its instructions.

10 **SECTION 62.** 404.215 (2) of the statutes is created to read:

11 404.215 (2) If provisional settlement for an item does not become final, the item
12 is not finally paid.

13 **SECTION 63.** The unnumbered subchapter title preceding 404.301 of the
14 statutes is numbered subchapter III (title) of chapter 404 and amended to read:

15 SUBCHAPTER III

16 COLLECTION OF ITEMS: PAYOR

17 PAYER BANKS

18 **SECTION 64.** 404.301 of the statutes is amended to read:

19 **404.301 (title) Deferred posting; recovery of payment by return of**
20 **items; time of dishonor; return of items by payer bank.** (1) ~~Where an~~
21 ~~authorized settlement~~ If a payor bank settles for a demand item (other than a
22 documentary draft) ~~received by a payor bank~~ presented otherwise than for
23 immediate payment over the counter ~~has been made~~ before midnight of the banking
24 day of receipt, the payor payer bank may revoke the settlement and recover any

1 ~~payment the settlement if, before it has made final payment (s. 404.213 (1)) and~~
2 ~~before its midnight deadline, it does any of the following:~~

3 ~~(a) Returns the item; or,~~

4 ~~(b) Sends written notice of dishonor or nonpayment if the item is held for~~
5 ~~protest or is otherwise unavailable for return.~~

6 ~~(2) If a demand item is received by a payor payer bank for credit on its books,~~
7 ~~it may return such the item or send notice of dishonor and may revoke any credit~~
8 ~~given or recover the amount thereof withdrawn by its customer, if it acts within the~~
9 ~~time limit and in the manner specified in sub. (1).~~

10 ~~(3) Unless previous notice of dishonor has been sent, an item is dishonored at~~
11 ~~the time when for purposes of dishonor it is returned or notice sent in accordance with~~
12 ~~this section.~~

13 ~~(4) An item is returned:~~

14 ~~(a) As to an item received presented through a clearinghouse, when it is~~
15 ~~delivered to the presenting or last collecting bank or to the clearinghouse or is sent~~
16 ~~or delivered in accordance with its clearinghouse rules; or,~~

17 ~~(b) In all other cases, when it is sent or delivered to the bank's customer or~~
18 ~~transferor or pursuant to the customer's or transferor's instructions.~~

19 **SECTION 65.** 404.302 (title) of the statutes is amended to read:

20 **404.302** (title) **~~Payor~~ Payer bank's responsibility for late return of item.**

21 **SECTION 66.** 404.302 of the statutes is renumbered 404.302 (1) and amended
22 to read:

23 ~~404.302 (1) In the absence of a valid defense such as breach of a presentment~~
24 ~~warranty under s. 404.207 (1), settlement effected or the like, if If an item is~~

1 presented ~~on~~ to and received by a ~~payer~~ payer bank, the bank is accountable for the
2 amount of any of the following:

3 (a) A demand item, other than a documentary draft, whether properly payable
4 or not, if the bank, in any case ~~where~~ in which it is not also the depository bank,
5 retains the item beyond midnight of the banking day of receipt without settling for
6 it or, ~~regardless of whether~~ or not it is also the depository bank, does not pay or return
7 the item or send notice of dishonor until after its midnight deadline; ~~or,~~

8 (b) Any other properly payable item, unless within the time allowed for
9 acceptance or payment of that item, the bank either accepts or pays the item or
10 returns it and accompanying documents.

11 **SECTION 67.** 404.302 (2) of the statutes is created to read:

12 404.302 (2) The liability of a payer bank to pay an item under sub. (1) is subject
13 to defenses based on breach of a presentment warranty or proof that the person
14 seeking enforcement of the liability presented or transferred the item for the purpose
15 of defrauding the payer bank.

16 **SECTION 68.** 404.303 (title) and (1) (intro.) and (a) to (c) of the statutes are
17 amended to read:

18 **404.303 (title) When items subject to notice, ~~stop-order~~ stop-payment**
19 **order, legal process or setoff; order in which items may be charged or**
20 **certified.** (1) (intro.) Any knowledge, notice or ~~stop-order~~ stop-payment order
21 received by, legal process served upon or setoff exercised by a ~~payer~~ payer bank,
22 ~~whether or not effective under other rules of law~~ comes too late to terminate, suspend
23 or modify the bank's right or duty to pay an item or to charge its customer's account
24 for the item, ~~comes too late to so terminate, suspend or modify such right or duty if~~
25 the knowledge, notice, ~~stop-order~~ stop-payment order or legal process is received or

1 served and a reasonable time for the bank to act thereon expires or the setoff is
2 exercised after the bank has done any earliest of the following:

3 (a) ~~Accepted or certified~~ The bank accepts or certifies the item;.

4 (b) ~~Paid~~ The bank pays the item in cash;.

5 (c) ~~Settled~~ The bank settles for the item without reserving having a right to
6 revoke the settlement and ~~without having such right~~ under statute, clearinghouse
7 rule or agreement;.

8 **SECTION 69.** 404.303 (1) (d) of the statutes is repealed.

9 **SECTION 70.** 404.303 (1) (e) of the statutes is renumbered 404.303 (1) (d) and
10 amended to read:

11 404.303 (1) (d) ~~Become~~ The bank becomes accountable for the amount of the
12 item under ss. ~~404.213 (1) (d) and s. 404.302~~ dealing with the ~~payor~~ payer bank's
13 responsibility for late return of items.

14 **SECTION 71.** 404.303 (1) (e) of the statutes is created to read:

15 404.303 (1) (e) With respect to checks, a cutoff hour no earlier than one hour
16 after the opening of the next banking day after the banking day on which the bank
17 received the check and no later than the close of that next banking day or, if no cutoff
18 hour is fixed, the close of the next banking day after the banking day on which the
19 bank received the check.

20 **SECTION 72.** 404.303 (2) of the statutes is amended to read:

21 404.303 (2) Subject to sub. (1), items may be accepted, paid, certified or charged
22 to the indicated account of its customer in any order ~~convenient to the bank~~.

23 **SECTION 73.** The unnumbered subchapter title preceding 404.401 of the
24 statutes is numbered subchapter IV (title) of chapter 404 and amended to read:

1 SUBCHAPTER IV

2 RELATIONSHIP BETWEEN PAYOR PAYER

3 BANK AND ITS CUSTOMER

4 **SECTION 74.** 404.401 (1) of the statutes is amended to read:5 404.401 (1) ~~As against its customer, a~~ A bank may charge against the
6 customer's account any of a customer an item which that is otherwise properly
7 payable from that account even though the charge creates an overdraft. An item is
8 properly payable if it is authorized by the customer and is in accordance with any
9 agreement between the customer and bank.10 **SECTION 75.** 404.401 (2) of the statutes is renumbered 404.401 (4) and amended
11 to read:12 404.401 (4) A bank which that in good faith makes payment to a holder may
13 charge the indicated account of its customer according to any of the following:14 (a) The original tenor terms of the customer's altered item; ~~or,~~15 (b) The tenor terms of the customer's completed item, even though the bank
16 knows the item has been completed unless the bank has notice that the completion
17 was improper.18 **SECTION 76.** 404.401 (2) and (3) of the statutes are created to read:19 404.401 (2) A customer is not liable for the amount of an overdraft if the
20 customer neither signed the item nor benefited from the proceeds of the item.21 (3) A bank may charge against the account of a customer a check that is
22 otherwise properly payable from the account, even though payment was made before
23 the date of the check, unless the customer has given notice to the bank of the
24 postdating describing the check with reasonable certainty. The notice is effective for
25 the period stated in s. 404.403 (2) for stop-payment orders, and must be received at

1 such time and in such manner as to afford the bank a reasonable opportunity to act
2 on it before the bank takes any action with respect to the check described in s.
3 404.303. If a bank charges against the account of a customer a check before the date
4 stated in the notice of postdating, the bank is liable for damages for the loss resulting
5 from its act. The loss may include damages for dishonor of subsequent items under
6 s. 404.402.

7 **SECTION 77.** 404.402 (title) of the statutes is amended to read:

8 **404.402 (title) Bank's liability to customer for wrongful dishonor; time**
9 **of determining insufficiency of account.**

10 **SECTION 78.** 404.402 of the statutes is renumbered 404.402 (2) and amended
11 to read:

12 404.402 (2) A payer ~~payer~~ bank is liable to its customer for damages
13 proximately caused by the wrongful dishonor of an item. ~~When the dishonor occurs~~
14 ~~through mistake liability~~ Liability is limited to actual damages proved. ~~If so~~
15 ~~proximately caused and proved damages~~ may include damages for an arrest or
16 prosecution of the customer or other consequential damages. Whether any
17 consequential damages are proximately caused by the wrongful dishonor is a
18 question of fact to be determined in each case.

19 **SECTION 79.** 404.402 (1) and (3) of the statutes are created to read:

20 404.402 (1) Except as otherwise provided in this chapter, a payer bank
21 wrongfully dishonors an item if it dishonors an item that is properly payable, but a
22 bank may dishonor an item that would create an overdraft unless it has agreed to
23 pay the overdraft.

24 (3) A payer bank's determination of the customer's account balance on which
25 a decision to dishonor for insufficiency of available funds is based may be made at

1 any time between the time the item is received by the payer bank and the time that
2 the payer bank returns the item or gives notice in lieu of return, and no more than
3 one determination need be made. If, at the election of the payer bank, a subsequent
4 balance determination is made for the purpose of reevaluating the bank's decision
5 to dishonor the item, the account balance at that time is determinative of whether
6 a dishonor for insufficiency of available funds is wrongful.

7 **SECTION 80.** 404.403 (1) and (3) of the statutes are amended to read:

8 404.403 (1) A customer may by order to the customer's bank stop payment of
9 any item payable for the customer's account but the order must be or any person
10 authorized to draw on the account if there is more than one person may stop payment
11 of any item drawn on the customer's account or close the account by an order to the
12 bank describing the item or account with reasonable certainty received at such a time
13 and in such a manner as to afford that affords the bank a reasonable opportunity to
14 act on it prior to before any action by the bank with respect to the item described in
15 s. 404.303. If the signature of more than one person is required to draw on an
16 account, any of these persons may stop payment or close the account.

17 (3) The burden of establishing the fact and amount of loss resulting from the
18 payment of an item contrary to a binding stop-payment stop-payment order or order
19 to close an account is on the customer. The loss from payment of an item contrary
20 to a stop-payment order may include damages for dishonor of subsequent items
21 under s. 404.402.

22 **SECTION 81.** 404.403 (2) of the statutes is repealed and recreated to read:

23 404.403 (2) A stop-payment order is effective for 6 months, but it lapses after
24 14 calendar days if the original order was oral and was not confirmed in writing
25 within that period. A stop-payment order may be renewed for additional 6-month

1 periods by a writing given to the bank within a period during which the
2 stop-payment order is effective.

3 **SECTION 82.** 404.405 of the statutes is amended to read:

4 **404.405 Death or incompetence of customer.** (1) A ~~payer~~ payer or
5 collecting bank's authority to accept, pay or collect an item or to account for proceeds
6 of its collection, if otherwise effective, is not rendered ineffective by incompetence of
7 a customer of either bank existing at the time the item is issued or its collection is
8 undertaken if the bank does not know of an adjudication of incompetence. Neither
9 death nor incompetence of a customer revokes ~~such~~ the authority to accept, pay,
10 collect or account until the bank knows of the fact of death or of an adjudication of
11 incompetence and has reasonable opportunity to act on it.

12 (2) Even with knowledge, a bank may for 10 days after the date of death pay
13 or certify checks drawn on or ~~prior to~~ before that date unless ordered to stop payment
14 by a person claiming an interest in the account.

15 **SECTION 83.** 404.406 (1) of the statutes is repealed and recreated to read:

16 404.406 (1) A bank that sends or makes available to a customer a statement
17 of account showing payment of items for the account shall either return or make
18 available to the customer the items paid or provide information in the statement of
19 account sufficient to allow the customer reasonably to identify the items paid. The
20 statement of account provides sufficient information if the item is described by item
21 number, amount and date of payment.

22 **SECTION 84.** 404.406 (2) and (4) of the statutes are renumbered 404.406 (4) and
23 (6) and amended to read:

1 404.406 (4) If the bank establishes proves that the customer failed, with
2 respect to an item, to comply with the duties imposed on the customer by sub. (1) ~~(3)~~,
3 the customer is precluded from asserting all of the following against the bank:

4 (a) The customer's unauthorized signature or any alteration on the item, if the
5 bank also establishes proves that it suffered a loss by reason of such the failure; and,

6 (b) ~~An~~ The customer's unauthorized signature or alteration by the same
7 wrongdoer on any other item paid in good faith by the bank ~~after the first item and~~
8 ~~statement was available to the customer for a reasonable period not exceeding 14~~
9 ~~calendar days and before the bank receives notification from the customer of any~~
10 ~~such unauthorized signature or alteration~~ if the payment was made before the bank
11 received notice from the customer of the unauthorized signature or alteration and
12 after the customer had been afforded a reasonable period of time, not exceeding 30
13 days, in which to examine the item or statement of account and notify the bank.

14 (6) Without regard to care or lack of care of either the customer or the bank,
15 a customer who does not within one year ~~from the time~~ after the statement and or
16 items are made available to the customer ~~(sub. (1))~~ discover and report the customer's
17 unauthorized signature on or any alteration ~~on the face or back of the item or does~~
18 ~~not within 3 years from that time discover and report any unauthorized indorsement~~
19 on the item is precluded from asserting against the bank such the unauthorized
20 signature ~~or indorsement~~ or such alteration. If there is a preclusion under this
21 subsection, the payer bank may not recover for breach of warranty under s. 404.208
22 with respect to the unauthorized signature or alteration to which the preclusion
23 applies.

24 **SECTION 85.** 404.406 (2) of the statutes is created to read:

1 404.406 (2) If the items are not returned to the customer, the person retaining
2 the items shall either retain the items or, if the items are destroyed, maintain the
3 capacity to furnish legible copies of the items until the expiration of 7 years after
4 receipt of the items. A customer may request an item from the bank that paid the
5 item, and that bank must provide in a reasonable time either the item or, if the item
6 has been destroyed or is not otherwise obtainable, a legible copy of the item.

7 **SECTION 86.** 404.406 (3) and (5) of the statutes are repealed and recreated to
8 read:

9 404.406 (3) If a bank sends or makes available a statement of account or items
10 under sub. (1), the customer must exercise reasonable promptness in examining the
11 statement or the items to determine whether any payment was not authorized
12 because of an alteration of an item or because a purported signature by or on behalf
13 of the customer was not authorized. If, based on the statement or items provided,
14 the customer should reasonably have discovered the unauthorized payment, the
15 customer must promptly notify the bank of the relevant facts.

16 (5) If sub. (4) applies and the customer proves that the bank failed to exercise
17 ordinary care in paying the item and that the failure substantially contributed to
18 loss, the loss is allocated between the customer precluded and the bank asserting the
19 preclusion according to the extent to which the failure of the customer to comply with
20 sub. (3) and the failure of the bank to exercise ordinary care contributed to the loss.
21 If the customer proves that the bank did not pay the item in good faith, the preclusion
22 under sub. (4) does not apply.

23 **SECTION 87.** 404.407 of the statutes is amended to read:

24 **404.407 (title) Payor Payer bank's right to subrogation on improper**
25 **payment.** If a ~~payor~~ payer bank has paid an item over the ~~stop payment~~ order of

1 the drawer or maker to stop payment, or after an account has been closed, or
2 otherwise under circumstances giving a basis for objection by the drawer or maker,
3 to prevent unjust enrichment and only to the extent necessary to prevent loss to the
4 bank by reason of its payment of the item, the ~~payer~~ payer bank ~~shall be~~ is subrogated
5 to the rights of all of the following:

6 (1) ~~Of any~~ Any holder in due course on the item against the drawer or maker;
7 ~~and.~~

8 (2) ~~Of the~~ The payee or any other holder of the item against the drawer or
9 maker either on the item or under the transaction out of which the item arose; ~~and.~~

10 (3) ~~Of the~~ The drawer or maker against the payee or any other holder of the
11 item with respect to the transaction out of which the item arose.

12 **SECTION 88.** The unnumbered subchapter title preceding 404.501 of the
13 statutes is numbered subchapter V (title) of chapter 404 and amended to read:

14 **CHAPTER 404**

15 **SUBCHAPTER V**

16 **COLLECTION OF DOCUMENTARY DRAFTS.**

17 **SECTION 89.** 404.501 of the statutes is amended to read:

18 **404.501 Handling of documentary drafts; duty to send for presentment**
19 **and to notify customer of dishonor.** A bank ~~which~~ that takes a documentary
20 draft for collection ~~must~~ shall prepare or send the draft and accompanying
21 documents for presentment and, upon learning that the draft has not been paid or
22 accepted in due course ~~must,~~ shall seasonably notify its customer of such ~~the~~ the fact
23 even though it may have discounted or bought the draft or extended credit available
24 for withdrawal as of right.

25 **SECTION 90.** 404.502 of the statutes is amended to read:

1 **404.502 Presentment of “on arrival” drafts.** ~~When~~ If a draft or the relevant
2 instructions require presentment “on arrival”, “when goods arrive” or the like, the
3 collecting bank need not present until in its judgment a reasonable time for arrival
4 of the goods has expired. Refusal to pay or accept because the goods have not arrived
5 is not dishonor; the bank must notify its transferor of such ~~the~~ the refusal but need not
6 present the draft again until it is instructed to do so or learns of the arrival of the
7 goods.

8 **SECTION 91.** 404.503 of the statutes is amended to read:

9 **404.503 Responsibility of presenting bank for documents and goods;**
10 **report of reasons for dishonor; referee in case of need.** (1) Unless otherwise
11 instructed and except as provided in ch. 405, a bank presenting a documentary draft:

12 (a) Must deliver the documents to the drawee on acceptance of the draft if it is
13 payable more than 3 days after presentment; otherwise, only on payment; ~~and.~~

14 (b) Upon dishonor, either in the case of presentment for acceptance or
15 presentment for payment, may seek and follow instructions from any referee in case
16 of need designated in the draft or, if the presenting bank does not choose to utilize
17 the referee’s services, it must use diligence and good faith to ascertain the reason for
18 dishonor, must notify its transferor of the dishonor and of the results of its effort to
19 ascertain the reasons therefor and must request instructions.

20 (2) The presenting bank is under no obligation with respect to goods
21 represented by the documents except to follow any reasonable instructions
22 seasonably received; it has a right to reimbursement for any expense incurred in
23 following instructions and to prepayment of or indemnity for such ~~the~~ those expenses.

24 **SECTION 92.** 404.504 of the statutes is amended to read:

1 **404.504 Privilege of presenting bank to deal with goods; security**
2 **interest for expenses. (1)** A presenting bank which ~~which~~ that, following the dishonor
3 of a documentary draft, has seasonably requested instructions but does not receive
4 them within a reasonable time may store, sell, or otherwise deal with the goods in
5 any reasonable manner.

6 **(2)** For its reasonable expenses incurred by action under sub. (1), the
7 presenting bank has a lien upon the goods or their proceeds, which may be foreclosed
8 in the same manner as an unpaid seller's lien.

9 **SECTION 93.** 405.103 (3) (a) of the statutes is repealed and recreated to read:
10 405.103 **(3)** (a) "Acceptance" — s. 403.409 (1).

11 **SECTION 94.** 409.203 (1) (intro.) of the statutes is amended to read:

12 409.203 **(1)** (intro.) Subject to s. ~~404.208~~ 404.210 on the security interest of a
13 collecting bank, s. 408.321 on security interests in securities and s. 409.113 on a
14 security interest arising under ch. 402 or 411, a security interest is not enforceable
15 against the debtor or 3rd parties with respect to the collateral and does not attach
16 unless:

17 **SECTION 95.** 409.302 (1) (f) of the statutes is amended to read:

18 409.302 **(1)** (f) A security interest of a collecting bank (s. ~~404.208~~ 404.210) or
19 in securities (s. 408.321) or arising under ch. 402 or 411 (see s. 409.113) or covered
20 in sub. (3);

21 **SECTION 96.** 409.312 (1) of the statutes is amended to read:

22 409.312 **(1)** The rules of priority stated in ss. 409.301 to 409.311 and 409.313
23 to 409.318 and in the following sections shall govern when applicable: s. ~~404.208~~
24 404.210 with respect to the security interests of collecting banks in items being

1 collected, accompanying documents and proceeds; s. 409.103 on security interests
2 related to other jurisdictions; s. 409.114 on consignments.

3 **SECTION 97.** 410.105 (3) (b) of the statutes is amended to read:

4 410.105 (3) (b) “Item” — s. 404.104 (1) ~~(g)~~ (i).

5 **SECTION 98.** 410.105 (3) (c) of the statutes is amended to read:

6 410.105 (3) (c) “Suspends payments” — s. 404.104 (1) ~~(k)~~ (L).

7 **SECTION 99.** 706.07 (2) (e) of the statutes is amended to read:

8 706.07 (2) (e) In making or noting a protest of a negotiable instrument, the
9 notarial officer must determine the matters set forth in s. ~~403.509~~ 403.505 (2).

10 **SECTION 100. Initial applicability.**

11 (1) This act first applies to transactions and events concerning a promise or
12 order that is a negotiable instrument, as defined under section 403.104 (1) of the
13 statutes, as affected by this act, or an item, as defined under section 404.104 (1) (i)
14 of the statutes, as affected by this act, that is created on the effective date of this
15 subsection

16 **SECTION 101. Effective date.**

17 (1) This act takes effect on the first day of the first month beginning after
18 publication.

19 (END)