CHAPTER 404

UNIFORM COMMERCIAL CODE — BANK DEPOSITS AND COLLECTIONS

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Cross–reference: See definitions in s. 401.201.

SUBCHAPTER I

GENERAL PROVISIONS AND DEFINITIONS

404.102 Applicability. (1) The extent that items within this chapter are also within chs. 403 and 408, they are subject to those chapters. If there is conflict, this chapter governs ch. 403, but ch. 408 governs this chapter.

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

History: 1995 a. 449.

404.103 Variation by agreement; measure of damages; action constituting ordinary care. (1) The effect of the provisions of this chapter may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

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

(3) Action or nonaction approved by this chapter or pursuant to federal reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse rules and the like or with a general banking usage not disapproved by this chapter, is prima facie the exercise of ordinary care.

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

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

History: 1991 a. 304 s. 51; 1995 a. 449.

404.104 Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft or like account, other than an account evidenced by a certificate of deposit.

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

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

(d) "Clearinghouse" means an association of banks or other payers regularly clearing items.

(e) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

(f) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities or instructions for uncertificated securities, or other certificates, statements or the like are to be received by the drawee or other payer before acceptance or payment of the draft.

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

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

(i) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. "Item" does not include a payment order governed by ch. 410 or a credit or debit card slip.

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

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

(L) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

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

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

(b) "Bank" — s. 404.105 (1).

(c) "Collecting bank" — s. 404.105.

(d) "Depositary bank" — s. 404.105.

(e) "Intermediary bank" — s. 404.105.

(f) "Payer bank" — s. 404.105.

(g) "Presenting bank" — s. 404.105.

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

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

(a) "Acceptance" — s. 403.409 (1).

(b) "Alteration" — s. 403.407 (1).

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

(d) "Certificate of deposit" — s. 403.104.

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

(f) "Check" — s. 403.104.

(fc) "Control" — s. 407.106.

(fe) "Demand draft" — s. 403.104 (11).

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

(h) "Holder in due course" — s. 403.302.

(i) "Instrument" — s. 403.104 (2).

(j) "Notice of dishonor" — s. 403.503.

(k) "Order" — s. 403.103 (1) (f).

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

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

(n) "Presentment" — s. 403.501 (1).

(p) "Promise" — s. 403.103 (1) (i).

(q) "Prove" — s. 403.103 (1) (j).

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

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

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

History: 1991 a. 304 s. 51; 1995 a. 449; 2003 a. 86; 2009 a. 322.

404.105 "Bank"; "collecting bank"; "depository bank"; "intermediary bank"; "payer bank"; "presenting bank". In this chapter:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union or trust company.

(2) "Collecting bank" means a bank handling an item for collection except the payer bank.

(3) "Depositary bank" means the first bank to take an item even though it is also the payer bank, unless the item is presented for immediate payment over the counter.

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depositary or payer bank.

(5) "Payer bank" means a bank that is the drawee of a draft.

(6) "Presenting bank" means a bank presenting an item except a payer bank.

History: 1983 a. 189; 1995 a. 449.

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

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

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

History: 1995 a. 449.

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

History: 1995 a. 449 s. 31; Stats. 1995 s. 404.107.

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

(2) An item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

History: 1995 a. 449 s. 31; Stats. 1995 s. 404.108.

404.109 Delays. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payer other than a bank, and with or without the approval of any person involved, may waive, modify or extend time limits imposed or permitted by chs. 401 to 411 for a period not exceeding 2 additional banking days without discharge of drawers or endorsers or liability to its transferor or a prior party.

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

History: 1979 c. 89; 1991 a. 148, 304, 315; 1995 a. 449 s. 31; Stats. 1995 s. 404.109.

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

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

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

History: 1995 a. 449.

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

History: 1995 a. 449.

SUBCHAPTER II

COLLECTION OF ITEMS:
DEPOSITARY AND COLLECTING BANKS

404.201 Status of collecting bank as agent and provisional status of credits; applicability of chapter; item endorsed "pay any bank". (1) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection or return, the relevant provisions of this chapter apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

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

(a) The item has been returned to the customer initiating collection.

(b) The item has been specially endorsed by a bank to a person who is not a bank.

History: 1995 a. 449.

404.202 Responsibility for collection or return; when action timely. (1) A collecting bank must exercise ordinary care in all of the following:

(a) Presenting an item or sending it for presentment.

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

(c) Settling for an item when the bank receives final settlement.

(d) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank exercises ordinary care under sub. (1) by taking proper action before its midnight deadline following receipt of an item, notice or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

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

History: 1995 a. 449.

404.203 Effect of instructions. Subject to s. 403.420 concerning conversion of instruments and to s. 403.206 concerning restrictive endorsements, only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

History: 1995 a. 449; 2005 a. 253.

404.204 Methods of sending and presenting; sending directly to payer bank. (1) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved and the method generally used by it or others to present those items.

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

(a) An item directly to the payer bank.

(b) An item to a nonbank payer if authorized by its transferor.

(c) An item other than documentary drafts to a nonbank payer, if authorized by federal reserve regulation or operating circular, clearinghouse rule or the like.

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

History: 1991 a. 304 s. 51; 1995 a. 449.

404.205 Depositary bank holder of unendorsed item. If a customer delivers an item to a depositary bank for collection, all of the following apply:

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

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

History: 1995 a. 449.

The general rule is that accepting a check when the payee's endorsement is missing is not in accordance with the reasonable commercial standards of banking and the acceptance by a depositary bank of such a check for deposit is commercially unreasonable as a matter of law. This section excepts from the general rule depositary banks that receive unendorsed checks from customers when the missing endorsement is that of the customer. Schmitz v. Firstar Bank Milwaukee, 2003 WI 83, 262 Wis. 2d 672, 664 N.W.2d 594, 01–2139.

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

History: 1995 a. 449.

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

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

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

(c) The item has not been altered.

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

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

(f) If the item is a demand draft, the creation of the item according to the terms on its face was authorized by the person identified as the drawer.

(2) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item according to the terms of the item at the time it was transferred or, if the transfer was of an incomplete item, according to its terms when completed as

stated in ss. 403.115 and 403.407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an endorsement stating that it is made "without recourse" or otherwise disclaiming liability.

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

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

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

History: 1995 a. 449; 2003 a. 86.

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

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

(b) The draft has not been altered.

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

(d) If the draft is a demand draft, the creation of the draft according to the terms on its face was authorized by the person identified as the drawer.

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

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

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

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

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

History: 1995 a. 449; 2003 a. 86.

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

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

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

History: 1995 a. 449.

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

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

(b) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge–back.

(c) If it makes an advance on or against the item.

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

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

(a) No security agreement is necessary to make the security interest enforceable.

(b) No filing is required to perfect the security interest.

(c) The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

History: 1973 c. 336 s. 79; 1995 a. 449 s. 47; Stats. 1995 s. 404.210; 2009 a. 322.

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

History: 1995 a. 449 s. 49; Stats. 1995 s. 404.211.

404.212 Presentment by notice of item not payable by, through or at a bank; liability of drawer or endorser. (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be

received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under s. 403.501 by the close of the bank's next banking day after it knows of the requirement.

(2) If presentment is made by notice and payment, acceptance or request for compliance with a requirement under s. 403.501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the 3rd banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or endorser by sending it notice of the facts.

History: 1991 a. 316; 1995 a. 449 s. 51; Stats. 1995 s. 404.212.

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

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

(b) The time of settlement is:

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

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

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

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

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

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

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

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

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

History: 1995 a. 449.

404.214 Right of charge–back or refund; liability of collecting bank; return of item. (1) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit or obtain a refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge–back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

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

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

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

(a) Previous use of a credit given for the item.

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

(5) A failure to charge–back or claim refund does not affect other rights of the bank against the customer or any other party.

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

History: 1987 a. 165; 1995 a. 449 ss. 53, 61; Stats. 1995 s. 404.214.

404.215 Final payment of item by payer bank; when provisional debits and credits become final; when certain credits become available for withdrawal. (1) An item is finally paid by a payer bank when the bank has first done any of the following:

(a) Paid the item in cash.

(b) Settled for the item without having a right to revoke the settlement under statute, clearinghouse rule or agreement.

(c) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule or agreement.

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

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

(4) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(5) Subject to applicable law stating a time for availability of funds and to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(a) If the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time.

(b) If the bank is both the depositary bank and the payer bank and the item is finally paid, at the opening of the bank's 2nd banking day following receipt of the item.

(6) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

History: 1979 c. 110 s. 60 (8); 1985 a. 325; 1991 a. 304 s. 51; 1995 a. 336 s. 50; 1995 a. 449 ss. 55 to 58, 62; Stats. 1995 s. 404.215.

404.216 Insolvency and preference. (1) If an item is in or comes into the possession of a payer or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

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

(3) If a payer bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

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

History: 1995 a. 449 s. 60; Stats. 1995 s. 404.216.

SUBCHAPTER III

COLLECTION OF ITEMS: PAYER BANKS

404.301 Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payer bank. (1) If a payer bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payer bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it does any of the following:

(a) Returns the item.

(b) Sends written notice of dishonor or nonpayment if the item is unavailable for return.

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

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

(4) An item is returned:

(a) As to an item presented through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with clearinghouse rules.

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

History: 1991 a. 304 s. 51; 1991 a. 316; 1995 a. 449.

404.302 Payer bank's responsibility for late return of item. (1) If an item is presented to and received by a payer bank, the bank is accountable for the amount of any of the following:

(a) A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline.

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

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

History: 1983 a. 192; 1995 a. 449.

When a provisional settlement was not revoked by the payor bank before the midnight deadline under s. 404.301 (1), the payor bank became accountable under s. 404.302 for the value of the presented checks. Under the facts of the case, the payor bank had no defenses under s. 401.203, 403.418, or 403.511 (2) (b). Northwestern National Insurance Co. v. Midland National Bank, 96 Wis. 2d 155, 292 N.W.2d 591 (1980).

Bank required to disburse funds after final payment. 64 MLR 408 (1980).

404.303 When items subject to notice, stop–payment order, legal process or setoff; order in which items may be charged or certified. (1) Any knowledge, notice or stop–payment order received by, legal process served upon or setoff exercised by a payer bank comes too late to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop–payment order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

(a) The bank accepts or certifies the item.

(b) The bank pays the item in cash.

(c) The bank settles for the item without having a right to revoke the settlement under statute, clearinghouse rule or agreement.

(d) The bank becomes accountable for the amount of the item under s. 404.302 dealing with the payer bank's responsibility for late return of items.

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

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

History: 1991 a. 304 s. 51; 1995 a. 449.

SUBCHAPTER IV

RELATIONSHIP BETWEEN PAYER BANK AND ITS CUSTOMER

404.401 When bank may charge customer's account. (1) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(2) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(3) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in s. 404.403 (2) for stop–payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in s. 404.303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under s. 404.402.

(4) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to any of the following:

(a) The original terms of the altered item.

(b) The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

History: 1991 a. 316; 1995 a. 449.

404.402 Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account. **(1)** Except as otherwise provided in this chapter, a payer bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(2) A payer bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

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

History: 1995 a. 449.

Absent an agreement to the contrary, a bank retains discretion to dishonor a check creating an overdraft even when it has previously honored that customer's overdrafts. Schaller v. Marine National Bank, 131 Wis. 2d 389, 388 N.W.2d 645 (Ct. App. 1986).

404.403 Customer's right to stop payment; burden of proof of loss. **(1)** A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in s. 404.303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(2) A stop–payment order is effective for 6 months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in writing within that period. A stop–payment order may be renewed for additional 6–month periods by a writing given to the bank within a period during which the stop–payment order is effective.

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

History: 1991 a. 316; 1995 a. 449.

404.404 Bank not obligated to pay check more than 6 months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than 6 months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

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

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

History: 1995 a. 449.

404.406 Customer's duty to discover and report unauthorized signature or alteration. **(1)** A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount and date of payment.

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

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

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

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

(b) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

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

(6) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payer bank may not recover for breach of warranty under s. 404.208 with respect to the unauthorized signature or alteration to which the preclusion applies.

History: 1991 a. 316; 1995 a. 449.

If a customer directs a bank to pay only checks bearing 2 signatures, the absence of a required signature constitutes an "unauthorized signature." Rascar, Inc. v. Bank of Oregon, 87 Wis. 2d 446, 275 N.W.2d 108 (Ct. App. 1978).

If both the maker's and endorser's signature are forged, the controlling defect in the check is the maker forgery. A bank's alleged negligence in failing to inspect the endorsements was immaterial. Winkie, Inc. v. Heritage Bank, 99 Wis. 2d 616, 299 N.W.2d 829 (1981).

Interception of bank statements by a 3rd person does not relieve the customer of his or her responsibility to examine the statements or find out why they are not coming. Whether or not the bank is negligent is not material if the customer does not give timely notice. A contractual reduction of the statutory notice period to 14 days was not "manifestly unreasonable" under s. 404.103 (1). Borowski v. Firstar Bank Milwaukee, 217 Wis. 2d 565, 579 N.W.2d 247 (Ct. App. 1998), 96–3277.

Although a claim for misrepresentation may "supplement" the provisions of the UCC, it may not supplant them. A bank customer's failure to comply with ss. 403.406 and 404.406 precluded the customer's claim for strict–liability misrepresentation. Weber, Leicht, Gohr & Associates v. Liberty Bank, 2000 WI App 249, 239 Wis. 2d 461, 620 N.W.2d 472, 99–1557.

404.407 Payer bank's right to subrogation on improper payment. If a payer bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payer bank is subrogated to the rights of all of the following:

(1) Any holder in due course on the item against the drawer or maker.

(2) The payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose.

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

History: 1995 a. 449.

SUBCHAPTER V

COLLECTION OF DOCUMENTARY DRAFTS

404.501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor. A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

History: 1995 a. 449; 1997 a. 35.

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

History: 1995 a. 449.

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

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

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

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

History: 1991 a. 316; 1995 a. 449.

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

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

History: 1995 a. 449.