<<+A person who accepts a check in payment for goods or services may charge and collect a processing fee, not to exceed twenty dollars ($20.00), for a check on which payment has been refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank if at the time the consumer presented the check to the person, a sign:+>>

<<+(1) Was conspicuously posted on or in the immediate vicinity of the cash register or other place where the check is received;+>>

<<+(2) Was in plain view of anyone paying for goods or services by check;+>>

<<+(3) Was no smaller than 8 by 11 inches; and+>>

<<+(4) Stated the amount of the fee that would be charged for returned checks.+>>

<<+When the drawer sends a check by mail for payment of a debt and the check is dishonored and returned, the processing fee may be collected if the drawer was given prior written notice that a fee would be charged for returned checks. Any document that clearly and conspicuously states the amount of the fee that will be charged for returned checks and is delivered to the drawer or his agent, or is mailed first-class mail to the drawer at his last known address as part of any document requesting payment of a debt satisfies this notice requirement for that payment only.+>>

<<+If a collection agency collects or seeks to collect on behalf of its principal a processing fee as specified in this section in addition to the sum payable of a check, the amount of such processing fee must be separately stated on the collection notice. The collection agency shall not collect or seek to collect from the drawer any sum other than the actual amount of the returned check and the specified processing fee.+>>

<<+"PART 6.+>>
<<+"DISCHARGE AND PAYMENT.+>>

<< NC ST § 25-3-601 >>

<<+"§ 25-3-601. Discharge and effect of discharge+>>

<<+(a) The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.+>>

<<+(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.+>>

<< NC ST § 25-3-602 >>

<<+"§ 25-3-602. Payment+>>

<<+(a) Subject to subsection (b) of this section, an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument

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under G.S. 25-3-306 by another person.+>>

<<+(b) The obligation of a party to pay the instrument is not discharged under subsection (a) of this section if:+>>

<<+(1) A claim to the instrument under G.S. 25-3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or+>>

<<+(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.+>>

<< NC ST § 25-3-603 >>

<<+"§ 25-3-603. Tender of payment+>>

<<+(a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.+>>

<<+(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.+>>

<<+(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.+>>

<< NC ST § 25-3-604 >>

<<+"§ 25-3-604. Discharge by cancellation or renunciation+>>

<<+(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.+>>

<<+(b) Cancellation or striking out of an endorsement pursuant to subsection (a) of this section does not affect the status and rights of a party derived from the indorsement.+>>

<< NC ST § 25-3-605 >>

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<<+"§ 25-3-605. Discharge of indorsers and accommodation parties+>>

<<+(a) In this section, the term 'indorser' includes a drawer having the obligation described in G.S. 25-3-414(d).+>>

<<+(b) Discharge, under G.S. 25-3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.+>>

<<+(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.+>>

<<+(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.+>>

<<+(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.+>>

<<+(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e) of this section, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.+>>

<<+(g) Under subsection (e) or (f) of this section, impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in

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disposing of collateral.+>>

<<+(h) An accommodation party is not discharged under subsection (c), (d), or (e) of this section unless the person entitled to enforce the instrument knows of the accommodation or has notice under G.S. 25-3-419(c) that the instrument was signed for accommodation.+>>

<<+(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.+>>"

Sec. 2. Article 4 of Chapter 25 of the General Statutes reads as rewritten:

"ARTICLE 4.
"Bank Deposits and Collections.
"PART 1.
"GENERAL PROVISIONS AND DEFINITIONS.

<< NC ST § 25-4-101 >>

"§ 25-4-101. Short title

This <<-article shall be known and->> <<+Article+>> may be cited as Uniform Commercial Code--Bank Deposits and Collections.

<< NC ST § 25-4-102 >>

"§ 25-4-102. Applicability

<<-(1)->><<+(a)+>> To the extent that items within this <<- article->> <<+Article+>> are also within <<-the scope of articles->> <<+Articles+>> 3 and 8, they are subject to <<-the provisions of->> those <<-articles.->> <<+Articles.+>> <<-In the event of conflict the provisions of->> <<+If there is conflict,+>> this <<-article govern those of->> <<+Article governs+>> <<-article 3->> <<+Article 3,+>> but <<-the provisions of article->> <<+ Article+>> 8 <<-govern those of->> <<+governs+>> this <<- article.->> <<+Article.+>>

<<-(2)->><<+(b)+>> The liability of a bank for action or <<-non-action->> <<+nonaction+>> with respect to <<-any->> <<+an+>> item handled by it for purposes of presentment, <<-payment->> <<+payment,+>> or collection is governed by the law of the place where the bank is located. In the case of action or <<-non-action->> <<+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.

<< NC ST § 25-4-103 >>

"§ 25-4-103. Variation by agreement; measure of damages; <<-certain->> action constituting ordinary care

<<-(1)->><<+(a)+>> The effect of the provisions of this <<- article->> <<+Article+>> may be varied by <<-agreement except that no agreement can->> <<+agreement, but the parties to the agreement cannot+>> disclaim a bank's responsibility for its <<-own->> lack of good faith or failure to exercise ordinary

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care or <<-can->> limit the measure of damages for <<-such->> <<+the+>> lack or <<-failure; but->> <<+failure. However,+>> the parties may <<+determine+>> by agreement <<- determine->> the standards by which <<-such->> <<+the bank's+>> responsibility is to be measured if <<-such->> <<+those+>> standards are not manifestly unreasonable.

<<-(2)->><<+(b)+>> Federal reserve regulations and operating <<- letters, clearing house->> <<+circulars, clearing-house+>> rules, and the <<-like,->> <<+like+>> have the effect of agreements under subsection <<-(1),->> <<+(a) of this section,+>> whether or not specifically assented to by all parties interested in items handled.

<<-(3)->><<+(c)+>> Action or <<-non-action->> <<+nonaction+>> approved by this <<-article->> <<+Article+>> or pursuant to federal reserve regulations or operating <<-letters constitutes->> <<+circulars is+>> the exercise of ordinary care and, in the absence of special instructions, action or <<-non-action->> <<+nonaction+>> consistent with <<-clearing house->> <<+clearing-house+>> rules and the like or with a general banking usage not disapproved by this <<-article,->> <<+ Article, is+>> prima facie <<-constitutes->> the exercise of ordinary care.

<<-(4)->><<+(d)+>> The specification or approval of certain procedures by this <<-article does not constitute->> <<+Article is not+>> disapproval of other procedures <<-which->> <<+that+>> may be reasonable under the circumstances.

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

<< NC ST § 25-4-104 >>

"§ 25-4-104. Definitions and index of definitions

<<-(1)->><<+(a)+>> In this <<-article->> <<+Article,+>> unless the context otherwise <<-requires->> <<+requires:+>>

<<-(a)->><<+(1)+>> 'Account' means any <<+deposit or credit+>> account with a <<-bank and includes a checking, time, interest or savings account;->> <<+bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.+>>

<<-(b)->><<+(2)+>> 'Afternoon' means the period of a day between noon and <<-midnight;->> <<+midnight.+>>

<<-(c)->><<+(3)+>> 'Banking day' means <<-that->> <<+the+>> part of <<-any->> <<+a+>> day on which a bank is open to the public for carrying on substantially all of its banking <<-functions;->> <<+ functions.+>>

<<-(d)->><<+(4)+>> 'Clearing house' means <<-any->> <<+an+>> association of banks or other payors regularly clearing <<- items;->> <<+items.+>>

<<-(e)->><<+(5)+>> 'Customer' means <<-any->> <<+a+>> person having an account with a bank or for whom a bank has agreed to collect <<- items and includes->> <<+items, including+>> a bank <<- carrying->> <<+that maintains+>> an account <<-with->> <<+ at+>> another <<-bank;->> <<+bank.+>>

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<<-(f)->><<+(6)+>> 'Documentary draft' means <<-any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;->> <<+a draft to be presented for acceptance or payment if specified documents, certificated securities (G.S. 25-8-102) or instructions for uncertificated securities (G.S. 25-8-308), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.+>>

<<+(7) 'Draft' means a draft as defined in G.S. 25-3-104 or an item, other than an instrument, that is an order.+>>

<<+(8) 'Drawee' means a person ordered in a draft to make payment.+>>

<<-(g)->><<+(9)+>> 'Item' means <<-any instrument for the payment of money even though it is not negotiable but does not include money;->> <<+an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip.+>>

<<-(h)->><<+(10)+>> '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;->> <<+later.+>>

<<-(i) 'Properly payable' includes the availability of funds for payment at the time of decision to pay or dishonor;->>

<<-(j)->><<+(11)+>> 'Settle' means to pay in cash, by <<-clearing house->> <<+clearing-house+>> settlement, in a charge or <<-credit or->> <<+credit,+>> by remittance, or otherwise as <<- instructed.->> <<+agreed.+>> A settlement may be either provisional or <<-final;->> <<+final.+>>

<<-(k)->><<+(12)+>> '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->> <<+over,+>> or that it ceases or refuses to make payments in the ordinary course of business.

<<-(2)->><<+(b)+>> Other definitions applying to this <<- article->> <<+Article+>> and the sections in which they appear are:

'Agreement for electronic presentment'	G.S. 25-4-110.
'Bank'	G.S. 25-4-105.
'Collecting bank'	G.S. 25-4-105.
'Depositary bank'	G.S. 25-4-105.
'Intermediary bank'	G.S. 25-4-105.
'Payor bank'	G.S. 25-4-105.
'Presenting bank'	G.S. 25-4-105.
'Presentment notice'	G.S. 25-4-110.

<<-(3)->><<+(c)+>> The following definitions in other <<- articles->> <<+Articles+>> apply to this <<-article:->> <<+ Article:+>>

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'Acceptance'	G.S. 25-3-409.
'Alteration'	G.S. 25-3-407.
'Cashier's check'	G.S. 25-3-104.
'Certificate of deposit'	G.S. 25-3-104.
'Certified check'	G.S. 25-3-409.
'Check'	G.S. 25-3-104.
'Good faith'	G.S. 25-3-103.
'Draft'	G.S. 25-3-104.
'Holder in due course'	G.S. 25-3-302.
'Instrument'	G.S. 25-3-104.
'Notice of dishonor'	G.S. 25-3-503.
'Order'	G.S. 25-3-103.
'Ordinary care'	G.S. 25-3-103.
'Person entitled to enforce'	G.S. 25-3-301.
'Presentment'	G.S. 25-3-501.
'Promise'	G.S. 25-3-103.
'Prove'	G.S. 25-3-103.
'Teller's check'	G.S. 25-3-104.
'Unauthorized signature'	G.S. 25-3-403.

<<-(4)->><<+(d)+>> In addition <<-article->> <<+Article+>> 1 contains general definitions and principles of construction and interpretation applicable throughout this <<-article.->> <<+Article.+>>

<< NC ST § 25-4-105 >>

"§ 25-4-105. <<-'Depositary bank';->> <<+'Bank'; 'depositary bank';+>> 'intermediary bank'; 'collecting bank'; 'payor bank'; 'presenting <<-bank'; 'remitting bank.'->> <<+bank'+>>

In this <<-article unless the context otherwise requires:->> <<+ Article:+>>

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

<<-(a)->><<+(2)+>> 'Depositary bank' means the first bank to <<- which->> <<+take+>> an item <<-is transferred for collection->> even though it is also the payor <<-bank;->> <<+bank, unless the item is presented for immediate payment over the counter.+>>

<<-(b)->><<+(3)+>> 'Payor bank' means a bank <<-by which an item is payable as drawn or accepted;->> <<+that is the drawee of a draft.+>>

<<-(c)->><<+(4)+>> 'Intermediary bank' means <<-any->> <<+ a+>> bank to which an item is transferred in course of collection except the depositary or payor <<-bank;->> <<+bank.+>>

<<-(d)->><<+(5)+>> 'Collecting bank' means <<-any->> <<+a+>> bank handling <<-the->> <<+an+>> item for collection except the payor <<-bank;->> <<+bank.+>>

<<-(e)->><<+(6)+>> 'Presenting bank' means <<-any->> <<+a+>> bank presenting an item except a payor <<-bank;->> <<+bank.+>>

<<-(f) 'Remitting bank' means any payor or intermediary bank remitting for an

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item.->>

<< NC ST § 25-4-106 >>

<<+"§ 25 4 106. Payable through or payable at bank; collecting bank+>>

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

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

<<+(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.+>>

<< NC ST § 25-4-106 >>

<< NC ST § 25-4-107 >>

"§ <<-25-4-106.->><<+25-4-107.+>> 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 <<+to which+>> notices or orders <<- shall->> <<+must+>> be given under this <<-article->> <<+ Article+>> and under <<-article 3.->> <<+Article 3.+>>

<< NC ST § 25-4-107 >>

<< NC ST § 25-4-108 >>

"§ <<-25-4-107.->><<+25-4-108.+>> Time of receipt of items

<<-(1)->><<+(a)+>> For the purpose of allowing time to process items, prove <<-balances->> <<+balances,+>> and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2:00 <<-o'clock P.M.->> <<+p.m.+>> or later as a <<-cut-off->> <<+cutoff+>> hour for the handling of money and items and the making of entries on its books.

<<-(2)->><<+(b)+>> <<-Any->> <<+An+>> item or deposit of money received on any day after a <<-cut off->> <<+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.

<< NC ST § 25-4-108 >>

<< NC ST § 25-4-109 >>

"§ <<-25-4-108.->><<+25-4-109.+>> Delays

<<+(a)+>> Unless otherwise instructed, a collecting bank in a good faith effort to secure payment <<-may, in the case->> of <<+a+>> specific <<-items->> <<+item drawn on a payor other than a bank,+>> and with or without the approval of any

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person involved, <<+may+>> waive, <<- modify->> <<+modify,+>> or extend time limits imposed or permitted by this <<-chapter->> <<+Chapter+>> for a period not <<-in excess of an->> <<+exceeding two+>> additional banking <<-day->> <<+days+>> without discharge of <<-secondary parties and without->> <<+drawers or indorsers or+>> liability to its transferor or <<-any->> <<+a+>> prior party.

<<-(2)->><<+(b)+>> Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this <<-chapter->> <<+Chapter+>> or by instructions is excused if <<+(i) the delay is+>> caused by interruption of communication <<+or computer+>> facilities, suspension of payments by another bank, war, emergency <<-conditions->> <<+conditions, failure of equipment,+>> or other circumstances beyond the control of the <<-bank provided it->> <<+bank, and (ii) the bank+>> exercises such diligence as the circumstances require.

<< Repealed: NC ST § 25-4-109 >>

<<-"§ 25-4-109. Process of posting->>

<<-The 'process of posting' means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:->>

<<-(a) verification of any signature;->>

<<-(b) ascertaining that sufficient funds are available;->>

<<-(c) affixing a 'paid' or other stamp;->>

<<-(d) entering a charge or entry to a customer's account;->>

<<-(e) correcting or reversing an entry or erroneous action with respect to the item.->>

<< NC ST § 25-4-110 >>

<<+"§ 25-4-110. Electronic presentment+>>

<<+(a) 'Agreement for electronic presentment' means an agreement, clearing-house rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of the 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.+>>

<<+(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.+>>

<<+(c) If presentment is made by presentment notice, a reference to 'item' or 'check' in this Article means the presentment notice unless the context otherwise indicates.+>>

<< NC ST § 25-4-111 >>

<<+"§ 25-4-111. Statute of limitations+>>

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<<+An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the cause of action accrues.+>>

<<+"PART 2.+>>
<<+"COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS.+>>

<< NC ST § 25-4-201 >>

"§ 25-4-201. <<-Presumption and duration of agency status->> <<+ Status+>> of collecting <<-banks->> <<+bank as agent+>> and provisional status of credits; applicability of <<-article;->> <<+ Article;+>> item indorsed 'pay any bank'

<<-(1)->><<+(a)+>> Unless a contrary intent clearly appears and <<- prior to->> <<+before+>> the time that a settlement given by a collecting bank for an item is or becomes <<-final (subsection (3) of G.S. 25-4-211 and G.S. 25-4-212 and 25-4-213) the bank->> <<+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 indorsement or lack or indorsement 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->> <<+bank,+>> such as those resulting from outstanding advances on the item and <<-valid->> rights of <<+recoupment or+>> setoff. <<-When->> <<+If+>> an item is handled by banks for purposes of presentment, <<-payment and collection,->> <<+payment, collection, or return,+>> the relevant provisions of this <<- article->> <<+Article+>> apply even though action of <<+the+>> parties clearly establishes that a particular bank has purchased the item and is the owner of it.

<<-(2)->><<+(b)+>> After an item has been indorsed with the words 'pay any bank' or the like, only a bank may acquire the rights of a holder <<+ until the item has been:+>>

<<-(a)->><<+(1)+>> <<-until the item has been returned->> <<+ Returned+>> to the customer initiating collection; or

<<-(b)->><<+(2)+>> <<-until the item has been specially->> <<+ Specially+>> indorsed by a bank to a person who is not a bank.

<< NC ST § 25-4-202 >>

"§ 25-4-202. Responsibility for <<-collection;->> <<+collection or return;+>> when action <<-seasonable.->> <<+timely+>>

<<-(1)->><<+(a)+>> A collecting bank must <<-use->> <<+ exercise+>> ordinary care <<-in->> <<+in:+>>

<<-(a)->><<+(1)+>> <<-presenting->> <<+Presenting+>> an item or sending it for presentment; <<-and->>

<<-(b)->><<+(2)+>> <<-sending->> <<+Sending+>> notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor <<-or directly to the depositary bank under subsection (2) of G.S. 25-4-212->> after learning that the item has not been paid or accepted, as the case may be; <<-and->>

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<<-(c)->><<+(3)+>> <<-settling->> <<+Settling+>> for an item when the bank receives final settlement; and

<<-(d) making or providing for any necessary protest; and->>

<<-(e)->><<+(4)+>> <<-notifying->> <<+Notifying+>> its transferor of any loss <<-or->> <<+of+>> delay in transit within a reasonable time after discovery thereof.

<<-(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.->>

<<+(b) A collecting bank exercises ordinary care under subsection (a) of this section by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a longer reasonable time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.+>>

<<-(3)->><<+(c)+>> Subject to subsection <<-(1)(a),->> <<+(a)(1) of this section,+>> a bank is not liable for the insolvency, neglect, misconduct, <<-mistake->> <<+mistake,+>> or default of another bank or person or for loss or destruction of an item <<+in the possession of others or+>> in <<-transit or in the possession of others.->> <<+ transit.+>>

<< NC ST § 25-4-203 >>

"§ 25-4-203. Effect of instructions

Subject to <<-the provisions of article->> <<+Article+>> 3 concerning conversion of instruments (G.S. <<-25-3-419->> <<+25-3-420+>>) and <<-the provisions of both article 3 and this article concerning->> restrictive indorsements <<+(G.S. 25-3-206),+>> only a collecting bank's transferor can give instructions <<-which->> <<+that+>> affect the bank or constitute notice to <<-it->> <<+it,+>> and a collecting bank is not liable to prior parties for any action taken pursuant to <<-such->> <<+ the+>> instructions or in accordance with any agreement with its transferor.

<< NC ST § 25-4-204 >>

"§ 25-4-204. Methods of sending and presenting; sending <<-direct->> <<+ directly+>> to payor

<<-(1)->><<+(a)+>> A collecting bank <<-must->> <<+shall+>> send items by <<+a+>> reasonably prompt <<-method->> <<+method,+>> taking into consideration <<-any->> relevant instructions, the nature of the item, the number of <<-such->> <<+those+>> items on hand, <<- and->> the cost of collection <<-involved->> <<+involved,+>> and the method generally used by it or others to present <<-such->> <<+those+>> items.

<<-(2)->><<+(b)+>> A collecting bank may <<-send->> <<+ send:+>>

<<-(a)->><<+(1)+>> <<-any->> <<+An+>> item <<- direct->> <<+directly+>> to the payor bank;

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<<-(b)->><<+(2)+>> <<-any->> <<+An+>> item to <<-any non-bank->> <<+a nonbank+>> payor if authorized by its transferor; and

<<-(c)->><<+(3)+>> <<-any->> <<+An+>> item other than documentary drafts to <<-any non-bank->> <<+a nonbank+>> payor, if authorized by federal reserve regulation or operating <<-letter, clearing house rule->> <<+circular, clearing-house rule,+>> or the like.

<<-(3)->><<+(c)+>> Presentment may be made by a presenting bank at a place where the payor bank <<+or other payor+>> has requested that presentment be made.

<< NC ST § 25-4-205 >>

"§ 25-4-205. <<-Supplying missing indorsement; no notice from prior indorsement.->> <<+Depositary bank holder of unindorsed item+>>

<<+If a customer delivers an item to a depositary bank for collection:+>>

<<-(1) A depositary bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words 'payee's indorsement required' or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.->>

<<-(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.->>

<<+(1) The depositary bank becomes a holder of the item at the time 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 indorses the item, and, if the bank satisfies the other requirements of G.S. 25-3-302, it is a holder in due course; and+>>

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

<< NC ST § 25-4-206 >>

"§ 25-4-206. Transfer between banks

Any agreed method <<-which->> <<+that+>> identifies the transferor bank is sufficient for the item's further transfer to another bank.

<< Repealed: NC ST § 25-4-207 >>

<<-"§ 25-4-207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims->>

<<-(1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that->>

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<<-(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and->>

<<-(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith->>

<<-(i) to a maker with respect to the maker's own signature; or->>

<<-(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or->>

<<-(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and->>

<<-(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith->>

<<-(i) to the maker of a note; or->>

<<-(ii) to the drawer of a draft whether or not the drawer is also the drawee; or->>

<<-(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided 'payable as originally drawn' or equivalent terms; or->>

<<-(iv) to the acceptor of an item with respect to an alteration made after the acceptance.->>

<<-(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that->>

<<-(a) he has good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and->>

<<-(b) all signatures are genuine or authorized; and->>

<<-(c) the item has not been materially altered; and->>

<<-(d) no defense of any party is good against him; and->>

<<-(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.->>

<<-In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.->>

<<-(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement or words of guaranty

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or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.->>

<<-(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.->>

<< NC ST § 25 4 207 >>

<<+"§ 25 4 207. Transfer warranties+>>

<<+(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:+>>

<<+(1) The warrantor is a person entitled to enforce the item;+>>

<<+(2) All signatures on the item are authentic and authorized;+>>

<<+(3) The item has not been altered;+>>

<<+(4) The item is not subject to a defense or claim in recoupment (G.S. 25-3-305(a)) of any party that can be asserted against the warrantor; and+>>

<<+(5) 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.+>>

<<+(b) 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 (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in G.S. 25-3-115 and G.S. 25-3-407. 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 indorsement stating that it is made 'without recourse' or otherwise disclaiming liability.+>>

<<+(c) A person to whom the warranties under subsection (a) of this section 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.+>>

<<+(d) The warranties stated in subsection (a) of this section 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.+>>

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

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<< NC ST § 25-4-208 >>

<<+"§ 25-4-208. Presentment warranties+>>

<<+(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) 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:+>>

<<+(1) 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;+>>

<<+(2) The draft has not been altered; and+>>

<<+(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.+>>

<<+(b) 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 (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) 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.+>>

<<+(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under G.S. 25-3-404 or G.S. 25-3-405 or the drawer is precluded under G.S. 25-3-406 or G.S. 25-4-406 from asserting against the drawee the unauthorized indorsement or alteration.+>>

<<+(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) 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.+>>

<<+(e) The warranties stated in subsections (a) and (d) of this section 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.+>>

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

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<< NC ST § 25-4-209 >>

<<+"§ 25-4-209. Encoding and retention warranties+>>

<<+(a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.+>>

<<+(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor 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.+>>

<<+(c) 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.+>>

<< NC ST § 25-4-208 >>

<< NC ST § 25-4-210 >>

"§ <<-25-4-208.->><<+25-4-210.+>> Security interest of collecting bank in items, accompanying documents and proceeds

<<-(1)->><<+(a)+>> A <<+collecting+>> bank has a security interest in an item and any accompanying documents or the proceeds of <<- either->> <<+either:+>>

<<-(a)->><<+(1)+>> <<-in->> <<+In+>> case of an item deposited in an <<-account->> <<+account,+>> to the extent to which credit given for the item has been withdrawn or applied;

<<-(b)->><<+(2)+>> <<-in->> <<+In+>> case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit <<-given->> <<+given,+>> whether or not the credit is drawn upon <<-and whether->> or <<-not-> there is a right of charge-back; or

<<-(c)->><<+(3)+>> <<-if->> <<+If+>> it makes an advance on or against the item.

<<-(2)->><<+(b)+>> <<-When->> <<+If+>> credit <<-which has been->> given for several items received at one time or pursuant to a single agreement is withdrawn or applied in <<-part->> <<+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)->><<+(c)+>> Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying <<-documents->> <<+documents,+>> and proceeds. <<-To the extent and so->> <<+So+>> long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues <<+to that extent+>> and is subject to <<-the provisions of article 9->> <<+Article 9,+>> <<-except that->> <<+but:+>>

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<<-(a)->><<+(1)+>> <<-no->> <<+No+>> security agreement is necessary to make the security interest enforceable (<<-subsection (1)(b) of G.S. 25-9-203->> <<+G.S. 25-9-203(1)(a)+>>); <<- and->>

<<-(b)->><<+(2)+>> <<-no->> <<+No+>> filing is required to perfect the security interest; and

<<-(c)->><<+(3)+>> <<-the->> <<+The+>> security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

<< NC ST § 25-4-209 >>

<< NC ST § 25-4-211 >>

"§ <<-25-4-209.->><<+25-4-211.+>> When bank gives value for purposes of holder in due course

For purposes of determining its status as a holder in due course, <<- the->> <<+a+>> bank has given value to the extent <<-that->> it has a security interest in an <<-item provided that->> <<+item, if+>> the bank otherwise complies with the requirements of G.S. 25-3-302 on what constitutes a holder in due course.

<< NC ST § 25-4-210 >>

<< NC ST § 25-4-212 >>

"§ <<-25-4-210.->><<+25-4-212.+>> Presentment by notice of item not payable by, <<-through->> <<+through,+>> or at a bank; liability of <<-secondary parties.->> <<+drawer or indorser+>>

<<-(1)->><<+(a)+>> 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 G.S. <<-25-3-505->> <<+25-3-501+>> by the close of the bank's next banking day after it knows of the requirement.

<<-(2)->><<+(b)+>> <<-Where->> <<+If+>> presentment is made by notice and <<-neither honor nor->> <<+payment, acceptance, or+>> request for compliance with a requirement under G.S. <<-25-3-505->> <<+ 25-3-501+>> is <<+not+>> received by the close of business on the day after maturity <<-or->> <<+or,+>> in the case of demand <<- items->> <<+items,+>> by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any <<-secondary party->> <<+drawer or indorser+>> by sending <<-him->> <<+it+>> notice of the facts.

<< NC ST § 25-4-211 >>

<< NC ST § 25-4-213 >>

"§ <<-25-4-211.->><<+25-4-213.+>> <<-Media of remittance; provisional and final

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settlement in remittance cases.->> <<+Medium and time of settlement by bank+>>

<<-(1) A collecting bank may take in settlement of an item->>

<<-(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or->>

<<-(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or->>

<<-(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or->>

<<-(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.->>

<<-(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.->>

<<-(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement.->>

<<-(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization, at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;->>

<<-(b) if the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b), at the time of the receipt of such remittance check or obligation; or->>

<<-(c) if in a case not covered by subparagraph (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline, at such midnight deadline:->>

<<+(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by federal reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:+>>

<<+(1) 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; and+>>

<<+(2) The time of settlement is:+>>

<<+(i) With respect to tender of settlement by cash, a cashier's check, or

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teller's check, when the cash or check is sent or delivered;+>>

<<+(ii) With respect to tender of settlement by credit in an account in a Federal Reserve Bank, when the credit is made;+>>

<<+(iii) 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; or+>>

<<+(iv) With respect to tender of settlement by a funds transfer, when payment is made pursuant to G.S. 25-4A-406(a) to the person receiving settlement.+>>

<<+(b) If the tender of settlement is not by a medium authorized by subsection (a) of this section or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.+>>

<<+(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:+>>

<<+(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or+>>

<<+(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.+>>

<<+(d) 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.+>>

<< NC ST § 25-4-212 >>

<< NC ST § 25-4-214 >>

"§ <<-25-4-212.->><<+25-4-214.+>> Right of charge-back or <<- refund.->> <<+refund; liability of collecting bank; return of item+>>

<<-(1)->><<+(a)+>> If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, <<-charge back->> <<+charge back+>> the amount of any credit given for the item to its customer's <<-account->> <<+ account,+>> or obtain refund from its <<-customer->> <<+customer,+>> whether or not it is able to return the <<-item->> <<+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 refund from its customer, but it is liable for any loss resulting from the delay.+>> These rights to revoke, <<- charge back->> <<+charge back,+>> and obtain refund terminate if and when a settlement for the item received by the bank is or becomes <<- final->> <<+final.+>> <<-(subsection (3) of G.S. 25-4-211 and subsections (2) and (3) of G.S. 25-4-213).->>

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<<-(2) Within the time and manner prescribed by this section and G.S. 25-4- 301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.->>

<<+(b) 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)->><<+(c)+>> A depositary bank <<-which->> <<+that+>> is also the payor may <<-charge back->> <<+charge back+>> the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (G.S. 25-4-301).

<<-(4)->><<+(d)+>> The right to <<-charge-back->> <<+charge back+>> is not affected <<-by->> <<+by:+>>

<<-(a)->><<+(1)+>> <<-prior->> <<+Previous+>> use of <<- the->> <<+a+>> credit given for the item; or

<<-(b)->><<+(2)+>> <<-failure->> <<+Failure+>> by any bank to exercise ordinary care with respect to the <<-item->> <<+item,+>> but <<-any->> <<+a+>> bank so failing remains liable.

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

<<-(6)->><<+(f)+>> If credit is given in dollars as the equivalent of the value of an item payable in <<-a->> foreign <<-currency->> <<+ money,+>> the dollar amount of any charge-back or refund <<- shall->> <<+must+>> be calculated on the basis of the <<-buying sight->> <<+bank-offered spot+>> rate for the foreign <<- currency->> <<+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.

<< NC ST § 25-4-213 >>

<< NC ST § 25-4-215 >>

"§ <<-25-4-213.->><<+25-4-215.+>> Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal

<<-(1)->><<+(a)+>> An item is finally paid by a payor bank when the bank has <<+first+>> done any of the <<-following, whichever happens first:->> <<+following:+>>

<<-(a)->><<+(1)+>> <<-paid->> <<+Paid+>> the item in cash; <<-or->>

<<-(b)->><<+(2)+>> <<-settled->> <<+Settled+>> for the item without <<-reserving->> <<+having+>> a right to revoke the settlement <<-and without having such right->> under statute, <<- clearing house rule->> <<+clearing-house rule,+>> or agreement; or

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<<-(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or->>

<<-(d)->><<+(3)+>> <<-made->> <<+Made+>> a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, <<-clearing house rule->> <<+clearing-house rule,+>> or agreement.

<<-Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.->>

<<+(b) If provisional settlement for an item does not become final, the item is not finally paid.+>>

<<-(2)->><<+(c)+>> If provisional settlement for an item between the presenting and payor banks is made through a clearing house 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 payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

<<-(3)->><<+(d)+>> If a collecting bank receives a settlement for an item which is or becomes <<-final->> <<+final,+>> <<-(subsection (3) of G.S. 25-4-211, subsection (2) of G.S. 25-4-213)->> 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.

<<-(4)->><<+(e)+>> Subject to <<+(i) applicable law stating a time for availability of funds, and (ii)+>> any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in <<-an account with its customer->> <<+a customer's account+>> becomes available for withdrawal as of <<-right->> <<+right:+>>

<<-(a)->><<+(1)+>> <<-in any case where->> <<+If+>> the bank has received a provisional settlement for the item, when <<- such->> <<+the+>> settlement becomes final and the bank has had a reasonable time to <<-learn that the settlement is final;->> <<+ receive return of the item and the item has not been received within that time.+>>

<<-(b)->><<+(2)+>> <<-in any case where->> <<+If+>> the bank is both <<-a->> <<+the+>> depositary bank and <<-a->> <<+ the+>> payor <<-bank->> <<+bank,+>> and the item is finally paid,--at the opening of the bank's second banking day following receipt of the item.

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

<< NC ST § 25-4 214 >>

<< NC ST § 25-4-216 >>

"§ <<-25-4-214.->><<+25-4-216.+>> Insolvency and preference

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<<-(1)->><<+(a)+>> <<-Any->> <<+If an+>> item <<+is+>> in or <<-coming->> <<+comes+>> into the possession of a payor or collecting bank <<-which->> <<+that+>> suspends payment and <<- which->> <<+the+>> item <<-is->> <<+has+>> not <<+been+>> finally <<-paid shall->> <<+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)->><<+(b)+>> If a payor 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 payor bank.

<<-(3)->><<+(c)+>> If a payor 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->> <<+settlement's+>> becoming final if <<-such->> <<+ the+>> finality occurs automatically upon the lapse of certain time or the happening of certain <<-events (subsection (3) of G.S. 25-4-211, subsections (1)(d), (2) and (3) of G.S. 25-4-213).->> <<+events.+>>

<<-(4)->><<+(d)+>> If a collecting bank receives from subsequent parties settlement for an <<-item->> <<+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 <<- such->> <<+the+>> collecting bank.

"PART 3.
"COLLECTION OF ITEMS: PAYOR BANKS.

<< NC ST § 25-4-301 >>

"§ 25-4-301. Deferred posting; recovery of payment by return of items; time of <<-dishonor.->> <<+dishonor; return of items by payor bank+>>

<<-(1) Where an authorized settlement->> <<+(a) If a payor bank settles+>> for a demand item <<-(other than a documentary draft)->> <<+ other than a documentary draft+>> <<-received by a payor bank->> <<+ presented+>> otherwise than for immediate payment over the counter <<-has been made->> before midnight of the banking day of <<-receipt->> <<+ receipt,+>> the payor bank may revoke the settlement and recover <<-any payment->> <<+the settlement+>> <<-if->> <<+if,+>> before it has made final payment <<-(subsection (1) of G.S. 25-4-213)->> and before its midnight <<-deadline it->> <<+deadline, it:+>>

<<-(a)->><<+(1)+>> <<-returns->> <<+Returns+>> the item; or

<<-(b)->><<+(2)+>> <<-sends->> <<+Sends+>> written notice of dishonor or nonpayment if the item is <<-held for protest or is otherwise->> unavailable for return.

<<-(2)->><<+(b)+>> If a demand item is received by a payor bank for credit on its <<-books->> <<+books,+>> it may return <<- such->> <<+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 <<- the preceding subsection.->> <<+subsection (a) of this section.+>>

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<<-(3)->><<+(c)+>> Unless previous notice of dishonor has been <<- sent->> <<+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)->><<+(d)+>> An item is returned:

<<-(a)->><<+(1)+>> <<-as->> <<+As+>> to an item <<- received->> <<+presented+>> through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with <<-its->> <<+clearing-house+>> rules; or

<<-(b)->><<+(2)+>> <<-in->> <<+In+>> all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to <<-his->> instructions.

<< NC ST § 25-4-302 >>

"§ 25-4-302. Payor bank's responsibility for late return of item

<<-In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of G.S. 25-4-207), settlement effected or the like, if->>

<<+(a) If+>> an item is presented <<-on->> <<+to+>> and received by a payor <<-bank->> <<+bank,+>> the bank is accountable for the amount <<-of->> <<+of:+>>

<<-(a)->><<+(1)+>> <<-a->> <<+A+>> demand <<- item->> <<+item,+>> other than a documentary <<-draft->> <<+ draft,+>> whether properly payable or <<-not->> <<+not,+>> if the bank, in any case <<-where->> <<+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, <<-regardless of->> 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; or

<<-(b)->><<+(2)+>> <<-any->> <<+Any+>> other properly payable item unless within the time allowed for acceptance or payment of that <<- item->> <<+item,+>> the bank either accepts or pays the item or returns it and accompanying documents.

<<+(b) The liability of a payor bank to pay an item pursuant to subsection (a) of this section is subject to defenses based on breach of a presentment warranty (G.S. 25-4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.+>>

<< NC ST § 25-4-303 >>

"§ 25-4-303. When items subject to notice, <<-stop-order,->> <<+stop-payment order,+>> legal <<-process->> <<+process,+>> or setoff; order in which items may be charged or certified

<<-(1)->><<+(a)+>> Any knowledge, <<-notice->> <<+notice,+>> or <<-stop-order->> <<+stop-payment order+>> received by, legal process served <<-upon->> <<+upon,+>> or setoff exercised by a payor <<-bank, whether or not effective under other rules of law->> <<+bank comes too late+>> to terminate, <<-suspend->> <<+suspend,+>> or modify the bank's right or duty to pay an item or to charge its customer's account for the <<-item, comes too late to so terminate, suspend or modify such right or duty->> <<+item+>> if the <<-knowlege,->> <<+knowledge,+>> notice, <<-stop-order->>

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<<+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 <<-bank has done any->> <<+ earliest+>> of the following:

<<-(a)->><<+(1)+>> <<-accepted or certified->> <<+The bank accepts or certifies+>> the item;

<<-(b)->><<+(2)+>> <<-paid->> <<+The bank pays+>> the item in cash;

<<-(c)->><<+(3)+>> <<-settled->> <<+The bank settles+>> for the item without <<-reserving->> <<+having+>> a right to revoke the settlement <<-and without having such right->> under statute, <<- clearing house rule->> <<+clearing-house rule,+>> or agreement;

<<-(d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or->>

<<-(e)->><<+(4)+>> <<-become->> <<+The bank becomes+>> accountable for the amount of the item under <<-subsection (1)(d) of G.S. 25-4-213 and->> <<+G.S.+>> 25 4 302 dealing with the payor bank's responsibility for late return of <<-items.->> <<+item; or+>>

<<+(5) 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)->><<+(b)+>> Subject to <<-the provisions of->> subsection <<-(1)->><<+(a) of this section,+>> items may be accepted, paid, certified or charged to the indicated account of its customer in any <<-order convenient to the bank.->> <<+order.+>>

"PART 4.
"RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER.

<< NC ST § 25-4-401 >>

"§ 25-4-401. When bank may charge customer's account

<<-(1)->><<+(a)+>> <<-As against its customer, a->> <<+A+>> bank may charge against <<-his->> <<+the+>> account <<-any->> <<+ of a customer an+>> item <<-which->> <<+that+>> is <<- otherwise->> 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.+>>

<<+(b) 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.+>>

<<+(c) 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

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for the period stated in G.S. 25-4-403(b) for stop-payment orders, and must be received at a time and in a manner that afforded the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in G.S. 25-4-303. 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 G.S. 25 4-402.+>>

<<-(2)->><<+(d)+>> A bank <<-which->> <<+that+>> in good faith makes payment to a holder may charge the indicated account of its customer according <<-to->> <<+to:+>>

<<-(a)->><<+(1)+>> <<-the->> <<+The+>> original <<- tenor->> <<+terms+>> of <<-his->> <<+the+>> altered item; or

<<-(b)->><<+(2)+>> <<-the->> <<+The+>> <<-tenor->> <<+ terms+>> of <<-his->> <<+the+>> completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

<< NC ST § 25-4-402 >>

"§ 25-4-402. Bank's liability to customer for wrongful <<- dishonor.->> <<+dishonor; time of determining insufficiency of account+>>

<<+(a) Except as otherwise provided in this Article, a payor 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.+>>

<<+(b)+>> A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. <<-When the dishonor occurs through mistake liability->> <<+Liability+>> is limited to actual damages <<-proved. If so proximately caused and proved 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. <<+This subsection does not preclude noncompensatory damages.+>>

<<+(c) A payor 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 payor bank and the time that the payor 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 payor 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.+>>

<< NC ST § 25-4-403 >>

"§ 25-4-403. Customer's right to stop payment; burden of proof of loss

<<-(1)->><<+(a)+>> A customer <<-may by order to his bank stop payment of any item payable for his account but the order must be->> <<+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

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describing the item or account with reasonable certainty+>> received at <<-such->> <<+a+>> time and in <<- such->> <<+a+>> manner <<-as to afford->> <<+that affords+>> the bank a reasonable opportunity to act on it <<-prior to->> <<+before+>> any action by the bank with respect to the item described in G.S. 25-4- 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) An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.->>

<<+(b) A stop-payment order is effective for six 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 six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.+>>

<<-(3)->><<+(c)+>> The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a <<-binding stop payment->> <<+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 G.S. 25-4-402.+>>

<< NC ST § 25-4-404 >>

"§ 25-4-404. Bank not obligated to pay check more than six 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 six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

<< NC ST § 25-4-405 >>

"§ 25-4-405. Death or incompetence of customer

<<-(1)->><<+(a)+>> A payor or collecting bank's authority to accept, <<-pay->> <<+pay,+>> or collect an item or to account for proceeds of its <<-collection->> <<+collection,+>> if otherwise <<- effective->> <<+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 <<- such->> <<+the+>> authority to accept, pay, <<-collect->> <<+ 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)->><<+(b)+>> Even with <<-knowledge->> <<+knowledge,+>> a bank may for ten days after the date of death pay or certify checks drawn on or <<-prior to->> <<+before+>> that date unless ordered to stop payment by a person claiming an interest in the account.

<<-(3)->><<+(c)+>> A transaction, although subject to this <<- article->> <<+Article+>>, is also subject to G.S. 105-24, <<-and G.S.->> 41-2.1, <<+53-146.1, 54-109.58, and 54B-129,+>> and in case of conflict between the provisions of this section and either of those sections, the provisions of those sections control.

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<< NC ST § 25-4-406 >>

"§ 25-4-406. Customer's duty to discover and report unauthorized signature or alteration

<<-(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof. A customer will be considered to have acted with reasonable care and promptness if he notifies the bank within 60 days of receipt of the statement of account accompanied by such items.->>

<<+(a) 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.+>>

<<+(b) 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 seven 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.+>>

<<+(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a) of this section, 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.+>>

<<-(2)->><<+(d)+>> If the bank <<-establishes->> <<+proves+>> that the customer <<-failed->> <<+failed,+>> with respect to an <<- item->> <<+item,+>> to comply with the duties imposed on the customer by subsection <<-(1)->> <<+(c) of this section,+>> the customer is precluded from asserting against the <<-bank->> <<+bank:+>>

<<-(a)->><<+(1)+>> <<-his->> <<+The customer's+>> unauthorized signature or any alteration on the <<-item->> <<+ item,+>> if the bank also <<-establishes->> <<+proves+>> that it suffered a loss by reason of <<-such->> <<+the+>> failure; and

<<-(b)->><<+(2)+>> <<-an->> <<+The customer's+>> unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank <<-after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration->> <<+if the payment was made before the bank received notice from the customer of the

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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+>>.

<<-(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).->>

<<+(e) If subsection (d) of this section 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 subsection (c) of this section 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 subsection (d) of this section does not apply.+>>

<<-(4)->><<+(f)+>> Without regard to care or lack of care of either the customer or the <<-bank->> <<+bank,+>> a customer who does not within one year <<-from the time->> <<+after+>> the statement <<- and->> <<+or+>> items are made available to the customer (subsection <<-(1)->> <<+(a) of this section+>>) discover and report <<-his->> <<+the customer's+>> unauthorized signature <<+ on+>> or any alteration <<-on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement->> <<+on the item+>> is precluded from asserting against the bank <<-such->> <<+the+>> unauthorized signature <<-or indorsement->> or <<-such->> alteration. <<+If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under G.S. 25-4-208 with respect to the unauthorized signature or alteration to which the preclusion applies.+>>

<<-(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.->>

<< NC ST § 25-4-407 >>

"§ 25-4-407. Payor bank's right to subrogation on improper payment

If a payor bank has paid an item over the <<-stop payment->> 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 payor bank <<- shall be->> <<+is+>> subrogated to the <<-rights->> <<+rights:+>>

<<-(a)->><<+(1)+>> <<-of->> <<+Of+>> any holder in due course on the item against the drawer or maker; <<-and->>

<<-(b)->><<+(2)+>> <<-of->> <<+Of+>> 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; and

<<-(c)->><<+(3)+>> <<-of->> <<+Of+>> 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.

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"PART 5.
"COLLECTION OF DOCUMENTARY DRAFTS.

<< NC ST § 25-4-501 >>

"§ 25 4-501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor

A bank <<-which->> <<+that+>> takes a documentary draft for collection <<-must->> <<+shall+>> present or send the draft and accompanying documents for <<-presentment->> <<+presentment,+>> and upon learning that the draft has not been paid or accepted in due <<- course->> <<+course,+>> <<-must->> <<+shall+>> seasonably notify its customer of <<-such->> <<+the+>> fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

<< NC ST § 25-4-502 >>

"§ 25-4-502. Presentment of 'on arrival' drafts

<<-When->> <<+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 <<-such->> <<+ the+>> refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

<< NC ST § 25-4-503 >>

"§ 25-4-503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need

Unless otherwise instructed and except as provided in <<-article 5->> <<+Article 5,+>> a bank presenting a documentary <<- draft->> <<+draft:+>>

<<-(a)->><<+(1)+>> <<-must->> <<+Must+>> deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

<<-(b)->><<+(2)+>> <<-upon->> <<+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->> <<+or,+>> if the presenting bank does not choose to utilize <<-his->> <<+the referee's+>> <<-services->> <<+ 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->> <<+ therefor,+>> and must request instructions.

<<-But->> <<+However,+>> 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 <<-such->> <<+those+>>

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expenses.

<< NC ST § 25-4-504 >>

"§ 25-4-504. Privilege of presenting bank to deal with goods; security interest for expenses

<<-(1)->><<+(a)+>> A presenting bank <<-which->> <<+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)->><<+(b)+>> For its reasonable expenses incurred by action under subsection <<-(1)->><<+(a) of this section,+>> 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."

Sec. 3. G.S. 25-1-201 reads as rewritten:

<< NC ST § 25-1-201 >>

"§ 25-1-201. General definitions

Subject to additional definitions contained in the subsequent articles of this chapter which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this chapter:

(1) 'Action' in the sense of a judicial proceeding includes recoupment, counterclaim, set off, suit in equity and any other proceedings in which rights are determined.

(2) 'Aggrieved party' means a party entitled to resort to a remedy.

(3) 'Agreement' means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (G.S. <<-25-1-205 and 25-2-208).->> <<+25-1-205, 25-2-208, and 25-2A-207).+>> Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (G.S. 25-1-103). (Compare 'Contract.')

(4) 'Bank' means any person engaged in the business of banking.

(5) 'Bearer' means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) 'Bill of lading' means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. 'Airbill' means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) 'Branch' includes a separately incorporated foreign branch of a bank.

(8) 'Burden of establishing a fact' means the burden of persuading the triers of

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fact that the existence of the fact is more probable than its nonexistence.

(9) 'Buyer in ordinary course of business' means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. 'Buying' may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) 'Conspicuous': A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is 'conspicuous' if it is in larger or other contrasting type or color. But in a telegram any stated term is 'conspicuous.' Whether a term or clause is 'conspicuous' or not is for decision by the court.

(11) 'Contract' means the total legal obligation which results from the parties' agreement as affected by this chapter and any other applicable rules of law. (Compare 'Agreement.')

(12) 'Creditor' includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) 'Defendant' includes a person in the position of defendant in a cross action or counterclaim.

(14) 'Delivery' with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) 'Document of title' includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) 'Fault' means wrongful act, omission or breach.

(17) 'Fungible' with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) 'Genuine' means free of forgery or counterfeiting.

(19) 'Good faith' means honesty in fact in the conduct or transaction concerned.

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(20) 'Holder' <<-means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank.->> <<+with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. 'Holder' with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.+>>

(21) To 'honor' is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) 'Insolvency proceedings' includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is 'insolvent' who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the Federal Bankruptcy Law.

(24) 'Money' means a medium of exchange authorized or adopted by a domestic or foreign government <<-as a part of its currency.->> <<+and includes a monetary unit of account established by an intergovernmental organization or by an agreement between two or more nations.+>>

(25) A person has 'notice' of a fact <<-when->> <<+when:+>>

(a) <<-he->> <<+The person+>> has actual knowledge of it; or

(b) <<-he->> <<+The person+>> has received a notice or notification of it; or

(c) <<-from->> <<+From+>> all the facts and circumstances known to <<-him->> <<+the person+>> at the time in question he has reason to know that it exists.

A person 'knows' or has 'knowledge' of a fact when he has actual knowledge of it. 'Discover' or 'learn' or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

(26) A person 'notifies' or 'gives' a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person 'receives' a notice or notification <<-when->> <<+when:+>>

(a) <<-it->> <<+It+>> comes to <<-his->> <<+the person's+>> attention; or

(b) <<-it->> <<+It+>> is duly delivered at the place of business through which the contract was made or at any other place held out by <<- him->> <<+the person+>> as the place for receipt of <<- such->> <<+the+>> communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to <<- his->> <<+the individual's+>> attention if the organization had exercised due diligence. An organization exercises due

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diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of <<-his->> <<+the individual's+>> regular duties or unless <<-he->> <<+the individual+>> has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) 'Organization' includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) 'Party,' as distinct from 'third party,' means a person who has engaged in a transaction or made an agreement within this chapter.

(30) 'Person' includes an individual or an organization (See G.S. 25-1-102).

(31) 'Presumption' or 'presumed' means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) 'Purchase' includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) 'Purchaser' means a person who takes by purchase.

(34) 'Remedy' means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) 'Representative' includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) 'Rights' includes remedies.

(37) 'Security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (G.S. 25-2-401) is limited in effect to a reservation of a 'security interest'. The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9 of this Chapter. The special property interest of a buyer of goods on identification of those goods to a contract for sale under G.S. 25-2-401 is not a 'security interest,' but a buyer may also acquire a 'security interest' by complying with Article 9 of this Chapter. Unless a consignment is intended as security, reservation of title thereunder is not a 'security interest' but a consignment is in any event subject to the provisions on consignment sales (G.S. 25-2-326).

(a) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if:

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods, or

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(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods, or

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(i) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(ii) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(iii) The lessee has an option to renew the lease or to become the owner of the goods,

(iv) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(v) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(ii) 'Reasonably predictable' and 'remaining economic life of the goods' are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iii) 'Present value' means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

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(38) 'Send' in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) 'Signed' includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) 'Surety' includes guarantor.

(41) 'Telegram' includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) 'Term' means that portion of an agreement which relates to a particular matter.

(43) 'Unauthorized' signature <<-or indorsement->> means one made without actual, <<-implied->> <<+implied,+>> or apparent authority and includes a forgery.

(44) 'Value.' Except as otherwise provided with respect to negotiable instruments and bank collections (G.S. 25-3-303, <<-25-4-208->> <<+25- 4-210,+>> and <<-25-4-209->> <<+25-4-211+>> a person gives 'value' for rights if <<-he->> <<+the person+>> acquires <<- them->> <<+them:+>>

(a) <<-in->> <<+In+>> return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) <<-as->> <<+As+>> security for or in total or partial satisfaction of a pre-existing claim; or

(c) <<-by->> <<+By+>> accepting delivery pursuant to a pre-existing contract for purchase; or

(d) <<-generally,->> <<+Generally,+>> in return for any consideration sufficient to support a simple contract.

(45) 'Warehouse receipt' means a receipt issued by a person engaged in the business of storing goods for hire.

(46) 'Written' or 'writing' includes printing, typewriting or any other intentional reduction to tangible form."

Sec. 4. G.S. 25-1-207 reads as rewritten:

<< NC ST § 25-1-207 >>

"§ 25-1-207. Performance or acceptance under reservation of rights

<<+(1)+>> A party <<-who->> <<+who,+>> with explicit reservation of <<-rights->> <<+rights,+>> performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights

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reserved. Such words as 'without prejudice,' 'under protest' or the like are sufficient.

<<+(2) Subsection (1) of this section does not apply to an accord and satisfaction.+>>"

Sec. 5. G.S. 25-2-511 reads as rewritten:

<< NC ST § 25-2-511 >>

"§ 25-2-511. Tender of payment by buyer; payment by check

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this chapter on the effect of an instrument on an obligation <<-(G.S. 25-3-802),->> <<+(G.S. 25-3-310),+>> payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment."

Sec. 6. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Commercial Code, Revised Article 3 and conforming and miscellaneous amendments to Articles 1 and 4, as the Revisor deems appropriate.

Sec. 7. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

NC LEGIS 232 (1995)

END OF DOCUMENT

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EXHIBIT B

N.C. GEN. STAT. § 25-3-311 (Annotated)

N.C.G.S.A. § 25-3-311

West's North Carolina General Statutes Annotated Currentness
Chapter 25. Uniform Commercial Code
Article 3. Negotiable Instruments [Revised] (Refs & Annos)
Part 3. Enforcement of Instruments

→§ 25-3-311. Accord and satisfaction by use of instrument

(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) of this section applies, the 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 of the claim.

(c) Subject to subsection (d) of this section, a claim is not discharged under subsection (b) of this section when the claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

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

Added by Laws 1965, c. 700, § 1. Amended by Laws 1995, c. 232, § 1, eff. Oct. 1, 1995.

UNIFORM COMMERCIAL CODE COMMENT

<For UCC acknowledgments, see NC ST UCC Acknowledgments.>

1. This section deals with an informal method of dispute resolution carried out by use of a negotiable instrument. In the typical case there is a dispute concerning the amount that is owed on a claim.

Case #1. The claim is for the price of goods or services sold to a consumer who asserts that he or she is not obliged to pay the full price for which the consumer was billed because of a defect or breach of warranty with respect to the goods or services.

Case #2. A claim is made on an insurance policy. The insurance company alleges that it is not liable under the policy for the amount of the claim.

In either case the person against whom the claim is asserted may attempt an accord and satisfaction of the disputed claim by tendering a check to the claimant for some amount less than the full amount claimed by the claimant. A statement will be included on the check or in a communication accompanying the check to the effect that the check is offered as full payment or full satisfaction of the claim. Frequently, there is also a statement to the effect that obtaining payment of the check is an agreement by the claimant to a settlement of the dispute for the amount tendered. Before enactment of revised Article 3, the case law was in conflict over the question of whether obtaining payment of the check had the effect of an agreement to the settlement proposed by the debtor. This issue was governed by a common law rule, but some courts hold that the common law was modified by former Section 1-207

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which they interpreted as applying to full settlement checks.

2. Comment d. to Restatement of Contracts, Section 281 discusses the full satisfaction check and the applicable common law rule. In a case like Case #1, the buyer can propose a settlement of the disputed bill by a clear notation on the check indicating that the check is tendered as full satisfaction of the bill. Under the common law rule the seller, by obtaining payment of the check accepts the offer of compromise by the buyer. The result is the same if the seller adds a notation to the check indicating that the check is accepted under protest or in only partial satisfaction of the claim. Under the common law rule the seller can refuse the check or can accept it subject to the condition stated by the buyer, but the seller can't accept the check and refuse to be bound by the condition. The rule applies only to an unliquidated claim or a claim disputed in good faith by the buyer. The dispute in the courts was whether Section 1-207 changed the common law rule. The Restatement states that section "need not be read as changing this well-established rule."

3. As part of the revision of Article 3, Section 1-207 has been amended to add subsection (2) stating that Section 1-207 "does not apply to an accord and satisfaction." Because of that amendment and revised Article 3, Section 3-311 governs full satisfaction checks. Section 3-311 follows the common law rule with some minor variations to reflect modern business conditions. In cases covered by Section 3-311 there will often be an individual on one side of the dispute and a business organization on the other. This section is not designed to favor either the individual or the business organization. In Case #1 the person seeking the accord and satisfaction is an individual. In Case #2 the person seeking the accord and satisfaction is an insurance company. Section 3- 311 is based on a belief that the common law rule produces a fair result and that informal dispute resolution by full satisfaction checks should be encouraged.

4. Subsection (a) states three requirements for application of Section 3-311. "Good faith" in subsection (a)(i) is defined in Section 3-103(a)(4) as not only honesty in fact, but the observance of reasonable commercial standards of fair dealing. The meaning of "fair dealing" will depend upon the facts in the particular case. For example, suppose an insurer tenders a check in settlement of a claim for personal injury in an accident clearly covered by the insurance policy. The claimant is necessitous and the amount of the check is very small in relationship to the extent of the injury and the amount recoverable under the policy. If the trier of fact determines that the insurer was taking unfair advantage of the claimant, an accord and satisfaction would not result from payment of the check because of the absence of good faith by the insurer in making the tender. Another example of lack of good faith is found in the practice of some business debtors in routinely printing full satisfaction language on their check stocks so that all or a large part of the debts of the debtor are paid by checks bearing the full satisfaction language, whether or not there is any dispute with the creditor. Under such a practice the claimant cannot be sure whether a tender in full satisfaction is or is not being made. Use of a check on which full satisfaction language was affixed routinely pursuant to such a business practice may prevent an accord and satisfaction on the ground that the check was not tendered in good faith under subsection (a)(i).

Section 3-311 does not apply to cases in which the debt is a liquidated amount and not subject to a bona fide dispute. Subsection (a)(ii). Other law applies to cases in which a debtor is seeking discharge of such a debt by paying less than the amount owed. For the purpose of subsection (a)(iii) obtaining acceptance of a check is considered to be obtaining payment of the check.

The person seeking the accord and satisfaction must prove that the requirements of subsection (a) are met. If that person also proves that the statement required by subsection (b) was given, the claim is discharged unless subsection (c) applies. Normally the statement required by subsection (b) is written on the check. Thus, the canceled check can be used to prove the statement as well as the fact that the claimant obtained payment of the check. Subsection (b) requires a "conspicuous" statement that the instrument was tendered in full satisfaction of the claim. "Conspicuous" is defined in Section 1-201(10). The statement is conspicuous if "it is so written that a reasonable person against whom it is to operate ought to have noticed it." If the claimant can reasonably be expected to examine the check, almost any statement on the check should be noticed and is therefore conspicuous. In cases in which the claimant is an individual the claimant will receive the check and will normally indorse it. Since the statement concerning tender in full satisfaction normally will appear above the space provided for the claimant's indorsement of the check, the claimant "ought to have noticed" the statement.

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5. Subsection (c)(1) is a limitation on subsection (b) in cases in which the claimant is an organization. It is designed to protect the claimant against inadvertent accord and satisfaction. If the claimant is an organization payment of the check might be obtained without notice to the personnel of the organization concerned with the disputed claim. Some business organizations have claims against very large numbers of customers. Examples are department stores, public utilities and the like. These claims are normally paid by checks sent by customers to a designated office at which clerks employed by the claimant or a bank acting for the claimant process the checks and record the amounts paid. If the processing office is not designed to deal with communications extraneous to recording the amount of the check and the account number of the customer, payment of a full satisfaction check can easily be obtained without knowledge by the claimant of the existence of the full satisfaction statement. This is particularly true if the statement is written on the reverse side of the check in the area in which indorsements are usually written. Normally, the clerks of the claimant have no reason to look at the reverse side of checks. Indorsement by the claimant normally is done by mechanical means or there may be no indorsement at all. Section 4-205(a). Subsection (c)(1) allows the claimant to protect itself by advising customers by a conspicuous statement that communications regarding disputed debts must be sent to a particular person, office, or place. The statement must be given to the customer within a reasonable time before the tender is made. This requirement is designed to assure that the customer has reasonable notice that the full satisfaction check must be sent to a particular place. The reasonable time requirement could be satisfied by a notice on the billing statement sent to the customer. If the full satisfaction check is sent to the designated destination and the check is paid, the claim is discharged. If the claimant proves that the check was not received at the designated destination the claim is not discharged unless subsection (d) applies.

6. Subsection (c)(2) is also designed to prevent inadvertent accord and satisfaction. It can be used by a claimant other than an organization or by a claimant as an alternative to subsection (c)(1). Some organizations may be reluctant to use subsection (c)(1) because it may result in confusion of customers that causes checks to be routinely sent to the special designated person, office, or place. Thus, much of the benefit of rapid processing of checks may be lost. An organization that chooses not to send a notice complying with subsection (c)(1)(i) may prevent an inadvertent accord and satisfaction by complying with subsection (c)(2). If the claimant discovers that it has obtained payment of a full satisfaction check, it may prevent an accord and satisfaction if, within 90 days of the payment of the check, the claimant tenders repayment of the amount of the check to the person against whom the claim is asserted.

7. Subsection (c) is subject to subsection (d). If a person against whom a claim is asserted proves that the claimant obtained payment of a check known to have been tendered in full satisfaction of the claim by "the claimant or an agent of the claimant having direct responsibility with respect to the disputed obligation," the claim is discharged even if (i) the check was not sent to the person, office, or place required by a notice complying with subsection (c)(1), or (ii) the claimant tendered repayment of the amount of the check in compliance with subsection (c)(2).

A claimant knows that a check was tendered in full satisfaction of a claim when the claimant "has actual knowledge" of that fact. Section 1-201(25). Under Section 1-201(27), if the claimant is an organization, it has knowledge that a check was tendered in full satisfaction of the claim when that fact is

"brought to the attention of the individual conducting that transaction, and in any event when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information."

With respect to an attempted accord and satisfaction the "individual conducting that transaction" is an employee or other agent of the organization having direct responsibility with respect to the dispute. For example, if the check and communication are received by a collection agency acting for the claimant to collect the disputed claim, obtaining payment of the check will result in an accord and satisfaction even if the claimant gave notice, pursuant to subsection (c)(1), that full satisfaction checks be sent to some other office. Similarly, if a customer asserting a claim for breach of warranty with respect to defective goods purchased in a retail outlet of a large chain store delivers the full satisfaction check to the manager of the retail outlet at which the goods were purchased, obtaining payment of the check will also result in an accord and satisfaction. On the other hand, if the check is mailed to the chief

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executive officer of the chain store subsection (d) would probably not be satisfied. The chief executive officer of a large corporation may have general responsibility for operations of the company, but does not normally have direct responsibility for resolving a small disputed bill to a customer. A check for a relatively small amount mailed to a high executive officer of a large organization is not likely to receive the executive's personal attention. Rather, the check would normally be routinely sent to the appropriate office for deposit and credit to the customer's account. If the check does receive the personal attention of the high executive officer and the officer is aware of the full-satisfaction language, collection of the check will result in an accord and satisfaction because subsection (d) applies. In this case the officer has assumed direct responsibility with respect to the disputed transaction.

If a full satisfaction check is sent to a lock box or other office processing checks sent to the claimant, it is irrelevant whether the clerk processing the check did or did not see the statement that the check was tendered as full satisfaction of the claim. Knowledge of the clerk is not imputed to the organization because the clerk has no responsibility with respect to an accord and satisfaction. Moreover, there is no failure of "due diligence" under Section 1-201(27) if the claimant does not require its clerks to look for full satisfaction statements on checks or accompanying communications. Nor is there any duty of the claimant to assign that duty to its clerks. Section 3-311(c) is intended to allow a claimant to avoid an inadvertent accord and satisfaction by complying with either subsection (c)(1) or (2) without burdening the check-processing operation with extraneous and wasteful additional duties.

8. In some cases the disputed claim may have been assigned to a finance company or bank as part of a financing arrangement with respect to accounts receivable. If the account debtor was notified of the assignment, the claimant is the assignee of the account receivable and the "agent of the claimant" in subsection (d) refers to an agent of the assignee.

LAW REVIEW COMMENTARIES

Revised Article 3 of the UCC in North Carolina. Charles C. Lewis, 13 Campbell L.Rev. 259, (1991).

LIBRARY REFERENCES

Accord and Satisfaction ⚿1.
Bills and Notes ⚿23, 48.1.
Westlaw Key Number Searches: 56k23; 56k48.1; 8k1.
C.J.S. Accord and Satisfaction § § 2 to 17, 25 to 33.
C.J.S. Bills and Notes.
C.J.S. Letters of Credit § § 9, 18, 20 to 21, 23, 81.

RESEARCH REFERENCES

ALR Library

42 ALR 4th 12, Modern Status of Rule that Acceptance of Check Purporting to be Final Settlement of Disputed Amount Constitutes Accord and Satisfaction.

Encyclopedias

Strong's N.C. Index 4th, Negotiable Instruments § 81, Accord and Satisfaction by Use of Instrument.

NOTES OF DECISIONS

Burden of proof 2
Construction and application 1

1. Construction and application

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Genuine issue of material fact regarding whether subcontractor's claim against general contractor was unliquidated or subject to a bona fide dispute precluded summary judgment on claim of accord and satisfaction arising out of check tendered by general contractor. Hunter-McDonald, Inc. v. Edison Foard, Inc., 2003, 157 N.C.App. 560, 579 S.E.2d 490, review denied 357 N.C. 459, 585 S.E.2d 759. Judgment 181(6)

Demonstrating that the parties presently disagree as to the amount due does not satisfy statutory requirement to show that the claim was unliquidated or subject to a bona fide dispute; to qualify for accord and satisfaction under the statute, the amount of the claim must be unliquidated or subject to a bona fide dispute prior to submission of the instrument representing full and final payment. Hunter-McDonald, Inc. v. Edison Foard, Inc., 2003, 157 N.C.App. 560, 579 S.E.2d 490, review denied 357 N.C. 459, 585 S.E.2d 759. Accord And Satisfaction 10(1)

2. Burden of proof

Defendant alleging accord and satisfaction bears the burden of proving that: (1) defendant in good faith tendered an instrument to the claimant as full satisfaction of the claim; (2) the instrument or an accompanying written communication contained a conspicuous statement stating it was tendered as full satisfaction of the claim; (3) the claim was unliquidated or subject to a bona fide dispute; and (4) plaintiff obtained payment of the instrument. Hunter-McDonald, Inc. v. Edison Foard, Inc., 2003, 157 N.C.App. 560, 579 S.E.2d 490, review denied 357 N.C. 459, 585 S.E.2d 759. Accord And Satisfaction 1; Accord And Satisfaction 10(1); Accord And Satisfaction 11(1)

N.C.G.S.A. § 25-3-311, NC ST § 25-3-311

Current through the 2004 Regular and Extra Sessions

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EXHIBIT C

GA. CODE § 11-3-311 (Annotated)
and Superseded Statutes

Ga. Code Ann., § 11-3-311

West's Code of Georgia Annotated Currentness
Title 11. Commercial Code (Refs & Annos)
Article 3. Negotiable Instruments
Part 3. Enforcement of Instruments

→§ 11-3-311. Accord and satisfaction by use of instrument

(a) If a person against whom a claim is asserted proves that (i) such person in good faith tendered an instrument to the claimant as full satisfaction of the claim; (ii) the amount of the claim was unliquidated or subject to a bona fide dispute; and (iii) the claimant obtained payment of the instrument, then subsections (b), (c), and (d) of this Code section shall apply.

(b) Unless subsection (c) of this Code section applies, the 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 of the claim.

(c) Subject to subsection (d) of this Code section, a claim is not discharged under subsection (b) of this Code section if either of the following applies:

(1) The claimant, if an organization, proves that:

(i) Within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place; and

(ii) The instrument or accompanying communication was not received by that designated person, office, or place; or

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with subparagraph (i) of paragraph (1) of this subsection.

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

Laws 1996, p. 1306, § 3.

UNIFORM COMMERCIAL CODE COMMENT

<For UCC acknowledgments, see GA ST UCC Acknowledgments.>

1. This section deals with an informal method of dispute resolution carried out by use of a negotiable instrument. In the typical case there is a dispute concerning the amount that is owed on a claim.

Case #1. The claim is for the price of goods or services sold to a consumer who asserts that he or she is not obliged to pay the full price for which the consumer was billed because of a defect or breach of warranty with respect to the goods or services.

Case #2. A claim is made on an insurance policy. The insurance company alleges that it is not liable under the

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policy for the amount of the claim.

In either case the person against whom the claim is asserted may attempt an accord and satisfaction of the disputed claim by tendering a check to the claimant for some amount less than the full amount claimed by the claimant. A statement will be included on the check or in a communication accompanying the check to the effect that the check is offered as full payment or full satisfaction of the claim. Frequently, there is also a statement to the effect that obtaining payment of the check is an agreement by the claimant to a settlement of the dispute for the amount tendered. Before enactment of revised Article 3, the case law was in conflict over the question of whether obtaining payment of the check had the effect of an agreement to the settlement proposed by the debtor. This issue was governed by a common law rule, but some courts hold that the common law was modified by former Section 1-207 which they interpreted as applying to full settlement checks.

2. Comment d. to Restatement of Contracts, Section 281 discusses the full satisfaction check and the applicable common law rule. In a case like Case #1, the buyer can propose a settlement of the disputed bill by a clear notation on the check indicating that the check is tendered as full satisfaction of the bill. Under the common law rule the seller, by obtaining payment of the check accepts the offer of compromise by the buyer. The result is the same if the seller adds a notation to the check indicating that the check is accepted under protest or in only partial satisfaction of the claim. Under the common law rule the seller can refuse the check or can accept it subject to the condition stated by the buyer, but the seller can't accept the check and refuse to be bound by the condition. The rule applies only to an unliquidated claim or a claim disputed in good faith by the buyer. The dispute in the courts was whether Section 1-207 changed the common law rule. The Restatement states that section "need not be read as changing this well-established rule."

3. As part of the revision of Article 3, Section 1-207 has been amended to add subsection (2) stating that Section 1-207 "does not apply to an accord and satisfaction." Because of that amendment and revised Article 3, Section 3-311 governs full satisfaction checks. Section 3-311 follows the common law rule with some minor variations to reflect modern business conditions. In cases covered by Section 3-311 there will often be an individual on one side of the dispute and a business organization on the other. This section is not designed to favor either the individual or the business organization. In Case #1 the person seeking the accord and satisfaction is an individual. In Case #2 the person seeking the accord and satisfaction is an insurance company. Section 3- 311 is based on a belief that the common law rule produces a fair result and that informal dispute resolution by full satisfaction checks should be encouraged.

4. Subsection (a) states three requirements for application of Section 3-311. "Good faith" in subsection (a)(i) is defined in Section 3-103(a)(4) as not only honesty in fact, but the observance of reasonable commercial standards of fair dealing. The meaning of "fair dealing" will depend upon the facts in the particular case. For example, suppose an insurer tenders a check in settlement of a claim for personal injury in an accident clearly covered by the insurance policy. The claimant is necessitous and the amount of the check is very small in relationship to the extent of the injury and the amount recoverable under the policy. If the trier of fact determines that the insurer was taking unfair advantage of the claimant, an accord and satisfaction would not result from payment of the check because of the absence of good faith by the insurer in making the tender. Another example of lack of good faith is found in the practice of some business debtors in routinely printing full satisfaction language on their check stocks so that all or a large part of the debts of the debtor are paid by checks bearing the full satisfaction language, whether or not there is any dispute with the creditor. Under such a practice the claimant cannot be sure whether a tender in full satisfaction is or is not being made. Use of a check on which full satisfaction language was affixed routinely pursuant to such a business practice may prevent an accord and satisfaction on the ground that the check was not tendered in good faith under subsection (a)(i).

Section 3-311 does not apply to cases in which the debt is a liquidated amount and not subject to a bona fide dispute. Subsection (a)(ii). Other law applies to cases in which a debtor is seeking discharge of such a debt by paying less than the amount owed. For the purpose of subsection (a)(iii) obtaining acceptance of a check is considered to be obtaining payment of the check.

The person seeking the accord and satisfaction must prove that the requirements of subsection (a) are met. If that person also proves that the statement required by subsection (b) was given, the claim is discharged unless subsection

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(c) applies. Normally the statement required by subsection (b) is written on the check. Thus, the canceled check can be used to prove the statement as well as the fact that the claimant obtained payment of the check. Subsection (b) requires a "conspicuous" statement that the instrument was tendered in full satisfaction of the claim. "Conspicuous" is defined in Section 1-201(10). The statement is conspicuous if "it is so written that a reasonable person against whom it is to operate ought to have noticed it." If the claimant can reasonably be expected to examine the check, almost any statement on the check should be noticed and is therefore conspicuous. In cases in which the claimant is an individual the claimant will receive the check and will normally indorse it. Since the statement concerning tender in full satisfaction normally will appear above the space provided for the claimant's indorsement of the check, the claimant "ought to have noticed" the statement.

5. Subsection (c)(1) is a limitation on subsection (b) in cases in which the claimant is an organization. It is designed to protect the claimant against inadvertent accord and satisfaction. If the claimant is an organization payment of the check might be obtained without notice to the personnel of the organization concerned with the disputed claim. Some business organizations have claims against very large numbers of customers. Examples are department stores, public utilities and the like. These claims are normally paid by checks sent by customers to a designated office at which clerks employed by the claimant or a bank acting for the claimant process the checks and record the amounts paid. If the processing office is not designed to deal with communications extraneous to recording the amount of the check and the account number of the customer, payment of a full satisfaction check can easily be obtained without knowledge by the claimant of the existence of the full satisfaction statement. This is particularly true if the statement is written on the reverse side of the check in the area in which indorsements are usually written. Normally, the clerks of the claimant have no reason to look at the reverse side of checks. Indorsement by the claimant normally is done by mechanical means or there may be no indorsement at all. Section 4-205(a). Subsection (c)(1) allows the claimant to protect itself by advising customers by a conspicuous statement that communications regarding disputed debts must be sent to a particular person, office, or place. The statement must be given to the customer within a reasonable time before the tender is made. This requirement is designed to assure that the customer has reasonable notice that the full satisfaction check must be sent to a particular place. The reasonable time requirement could be satisfied by a notice on the billing statement sent to the customer. If the full satisfaction check is sent to the designated destination and the check is paid, the claim is discharged. If the claimant proves that the check was not received at the designated destination the claim is not discharged unless subsection (d) applies.

6. Subsection (c)(2) is also designed to prevent inadvertent accord and satisfaction. It can be used by a claimant other than an organization or by a claimant as an alternative to subsection (c)(1). Some organizations may be reluctant to use subsection (c)(1) because it may result in confusion of customers that causes checks to be routinely sent to the special designated person, office, or place. Thus, much of the benefit of rapid processing of checks may be lost. An organization that chooses not to send a notice complying with subsection (c)(1)(i) may prevent an inadvertent accord and satisfaction by complying with subsection (c)(2). If the claimant discovers that it has obtained payment of a full satisfaction check, it may prevent an accord and satisfaction if, within 90 days of the payment of the check, the claimant tenders repayment of the amount of the check to the person against whom the claim is asserted.

7. Subsection (c) is subject to subsection (d). If a person against whom a claim is asserted proves that the claimant obtained payment of a check known to have been tendered in full satisfaction of the claim by "the claimant or an agent of the claimant having direct responsibility with respect to the disputed obligation," the claim is discharged even if (i) the check was not sent to the person, office, or place required by a notice complying with subsection (c)(1), or (ii) the claimant tendered repayment of the amount of the check in compliance with subsection (c)(2).

A claimant knows that a check was tendered in full satisfaction of a claim when the claimant "has actual knowledge" of that fact. Section 1-201(25). Under Section 1-201(27), if the claimant is an organization, it has knowledge that a check was tendered in full satisfaction of the claim when that fact is

"brought to the attention of the individual conducting that transaction, and in any event when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has

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reason to know of the transaction and that the transaction would be materially affected by the information."

With respect to an attempted accord and satisfaction the "individual conducting that transaction" is an employee or other agent of the organization having direct responsibility with respect to the dispute. For example, if the check and communication are received by a collection agency acting for the claimant to collect the disputed claim, obtaining payment of the check will result in an accord and satisfaction even if the claimant gave notice, pursuant to subsection (c)(1), that full satisfaction checks be sent to some other office. Similarly, if a customer asserting a claim for breach of warranty with respect to defective goods purchased in a retail outlet of a large chain store delivers the full satisfaction check to the manager of the retail outlet at which the goods were purchased, obtaining payment of the check will also result in an accord and satisfaction. On the other hand, if the check is mailed to the chief executive officer of the chain store subsection (d) would probably not be satisfied. The chief executive officer of a large corporation may have general responsibility for operations of the company, but does not normally have direct responsibility for resolving a small disputed bill to a customer. A check for a relatively small amount mailed to a high executive officer of a large organization is not likely to receive the executive's personal attention. Rather, the check would normally be routinely sent to the appropriate office for deposit and credit to the customer's account. If the check does receive the personal attention of the high executive officer and the officer is aware of the full-satisfaction language, collection of the check will result in an accord and satisfaction because subsection (d) applies. In this case the officer has assumed direct responsibility with respect to the disputed transaction.

If a full satisfaction check is sent to a lock box or other office processing checks sent to the claimant, it is irrelevant whether the clerk processing the check did or did not see the statement that the check was tendered as full satisfaction of the claim. Knowledge of the clerk is not imputed to the organization because the clerk has no responsibility with respect to an accord and satisfaction. Moreover, there is no failure of "due diligence" under Section 1-201(27) if the claimant does not require its clerks to look for full satisfaction statements on checks or accompanying communications. Nor is there any duty of the claimant to assign that duty to its clerks. Section 3-311(c) is intended to allow a claimant to avoid an inadvertent accord and satisfaction by complying with either subsection (c)(1) or (2) without burdening the check-processing operation with extraneous and wasteful additional duties.

8. In some cases the disputed claim may have been assigned to a finance company or bank as part of a financing arrangement with respect to accounts receivable. If the account debtor was notified of the assignment, the claimant is the assignee of the account receivable and the "agent of the claimant" in subsection (d) refers to an agent of the assignee.

LIBRARY REFERENCES

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Westlaw Key Number Search: 8k6.
C.J.S. Accord and Satisfaction § 34.

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Encyclopedias

Ga. Jur. Uniform Commercial Code § 4:320, Generally.

Ga. Jur. Uniform Commercial Code § 4:321, Discharge.

NOTES OF DECISIONS

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Refusal of satisfaction 3
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1. Acceptance of instruments

Contractor's claims under road contracts being unliquidated, his acceptance and retention of amounts, tendered on implied condition that they be accepted in discharge of all claims or demands under contracts, held accords and satisfactions of claims. Civ.Code Ga.1926, § 4329. Chandler v. State Highway Bd. of Georgia, 1932, 61 F.2d 601. Compromise And Settlement 5(2); Accord And Satisfaction 11(1)

Under Georgia law, mere act of accepting and cashing check containing language of accord and satisfaction or act of cashing check with knowledge that tendered sum is less than the amount owed because of certain claimed deductions is often sufficient to constitute an accord and satisfaction; in such circumstances act of depositing check coupled with knowledge that it is tendered in full settlement of disputed claim completes contract of accord and satisfaction. Eldon Industries, Inc. v. Paradies & Co., 1975, 397 F.Supp. 535. Accord And Satisfaction 11(2)

While every payment on an account does not amount to an accord and satisfaction of whole account, where check is tendered, accepted and cashed in full settlement of account the debt evidenced by that account is discharged. Eldon Industries, Inc. v. Paradies & Co., 1975, 397 F.Supp. 535. Accord And Satisfaction 11(1)

Under Georgia law, tender must be offered and accepted on condition that it is full settlement of outstanding debt for there to be an accord and satisfaction. Code Ga. § 20-1204. Vintage Enterprises, Inc. v. Guerdon Industries, Inc., 1973, 365 F.Supp. 465. Accord And Satisfaction 11(1)

The delivery and acceptance of a check stating on its face that it constitutes final settlement of a claim, whether the amount of the claim is established or uncertain, amounts to an "accord and satisfaction" which discharges the claim. Rabenstein v. Cannizzo, 2000, 244 Ga.App. 107, 534 S.E.2d 847. Accord And Satisfaction 11(2)

Where bona fide dispute existed as to amount due contractor under contract, and owner tendered check as full satisfaction of all claims asserted by contractor, contractor's acceptance and deposit of check made upon condition that it was final payment carried with it acceptance of condition, and thus worked accord and satisfaction; it was irrelevant that contractor's president was in meeting, and was unable to look at check before it was endorsed and deposited. O.C.G.A. § 13-4-103(b). Wood Bros. Const. Co. v. Simons-Eastern Co., 1989, 193 Ga.App. 874, 389 S.E.2d 382, certiorari denied. Accord And Satisfaction 11(2)

Bank's "acceptance" of insurer's check issued following death of debtor covered by credit life policy, even with notice of conditional language on statement attached to check which indicated that claim had been denied, did not constitute an accord and satisfaction as to extent of insurer's liability under the policy, where insurer had unilaterally limited coverage based on its determination that debtor had committed suicide and there was no preexisting bona fide controversy or independent agreement regarding the amount due. O.C.G.A. § § 13-4-101, 13-4-103(b). Sunbelt Life Ins. Co. v. Bank of Alapaha, 1985, 176 Ga.App. 628, 337 S.E.2d 410. Accord And Satisfaction 11(2)

If debtor tendered sum of money less than amount claimed upon condition, express or implied, that it satisfied the entire debt, and creditor accepts tender, an accord and satisfaction results; the compromise, or mutual accord and satisfaction, is binding on both parties but to make it binding there must be meeting of minds as to subject matter embraced in agreement. Chrietzberg v. Kristopher Woods, Ltd., 1982, 162 Ga.App. 517, 292 S.E.2d 100. Accord And Satisfaction 11(1); Compromise And Settlement 5(1)

Where when landlord sent itemized accounting of deductions totaling $143 from tenants' $200 security deposits accompanied by a check for $57, it was perfectly apparent that check was tendered in full satisfaction of all claims to return of security deposits, and where tenants accepted and negotiated the check, it was an accord and satisfaction. Chrietzberg v. Kristopher Woods, Ltd., 1982, 162 Ga.App. 517, 292 S.E.2d 100. Accord And Satisfaction

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11(1)

Where without the practice of any fraud a claimant accepts in full satisfaction of claim a lesser amount than that claimed due, there is an accord and satisfaction and claimant is not entitled to recover. Mullinax v. Shaw, 1977, 143 Ga.App. 657, 239 S.E.2d 547. Accord And Satisfaction 11(1)

Where creditor, without practice of any fraud upon it, accepts, in full satisfaction of debt owed it, a lesser amount than that which it claims was due, it will operate as an accord and satisfaction. Warner Robins Supply Co. v. Malone, 1977, 143 Ga.App. 332, 238 S.E.2d 709. Accord And Satisfaction 11(1)

Where creditor accepted from debtor and retained an amount less than indebtedness due with either express or implied understanding that it was received in satisfaction of claim or demand, "accord and satisfaction" of demand resulted therefrom and creditor could not recover the balance, regardless of whether claim or demand was disputed or undisputed, liquidated or unliquidated, unless contract was executory and must be enforced in court of law. Blanchard v. Georgia S. & F. Ry. Co., 1968, 117 Ga.App. 858, 162 S.E.2d 442. Accord And Satisfaction 11(1); Compromise And Settlement 5(2)

In absence of consent by tenant to landlord's obliteration of indorsement which tenant had placed on check and which stated that landlord released tenant from further obligations on leasing the premises, landlord's presentment of check for payment constituted acceptance of terms of the conditional indorsement, which in effect canceled the lease and relieved tenant from liability for rent for the following month. Thompson v. Hecht, 1964, 110 Ga.App. 505, 139 S.E.2d 126. Accord And Satisfaction 11(2)

Acceptance of payment made on condition carries with it acceptance of the condition. Thompson v. Hecht, 1964, 110 Ga.App. 505, 139 S.E.2d 126. Accord And Satisfaction 11(1)

Where debtor tenders to creditor a sum of money, less than that actually owed, an accord and satisfaction results only where tender is made upon condition, express or implied, that it satisfies entire debt, and creditor accepts the tender. American Associated Companies v. Vaughan, 1957, 213 Ga. 119, 97 S.E.2d 144. Accord And Satisfaction 11(1)

Where creditor accepted from debtor and retained an amount less than indebtedness due with either express or implied understanding that it was received in satisfaction of claim or demand, "accord and satisfaction" of demand resulted therefrom and creditor could not recover the balance, regardless of whether claim or demand was disputed or undisputed, liquidated or unliquidated, unless contract was executory and must be enforced in court of law. Code, § 20-1204. Rivers v. Cole Corp., 1952, 209 Ga. 406, 73 S.E.2d 196, on remand 87 Ga.App. 322, 73 S.E.2d 583. Accord And Satisfaction 11(1); Compromise And Settlement 5(2)

Only when amount due is disputed, and one party tenders and other accepts check subsequently paid, reciting it is payment in full, does reception and retention of check constitute "accord and satisfaction." Meeks v. Moulton, 1932, 46 Ga.App. 35, 166 S.E. 445. Compromise And Settlement 5(2); Accord And Satisfaction 11(1)

When a party offers a certain sum to settle a claim, the amount of which is in bona fide dispute, with the condition that the sum offered, if taken at all, must be received in full satisfaction, and the offeree receives the money, he takes it subject to the attached condition, and the payment operates as an accord and satisfaction. J.L. Riley & Co. v. London Guaranty & Acc. Co., 1921, 27 Ga.App. 686, 109 S.E. 676. Accord And Satisfaction 11(1)

The acceptance of an amount offered on condition that it be received, if at all, in full satisfaction of a claim, is not an accord and satisfaction where the claim is not in bona fide dispute, and the payee merely accepts a portion of that which already belongs to him, and which the payor could not have withheld under any bona fide right or claim. J.L. Riley & Co. v. London Guaranty & Acc. Co., 1921, 27 Ga.App. 686, 109 S.E. 676. Accord And Satisfaction 11(1)

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Where any part of a claim is in good faith disputed, a payment thereon, made and accepted as a discharge of the whole indebtedness, is binding accordingly, though the payment does no more than to cover an amount admitted to be due. J.L. Riley & Co. v. London Guaranty & Acc. Co., 1921, 27 Ga.App. 686, 109 S.E. 676. Accord And Satisfaction 11(1)

Where, under a contract, stated amounts are to become due at fixed periods a remittance by one party to the other by check for the amount due under the contract, and which is admitted to be presently due, with a request that it be accepted in full settlement and termination of the contract, will not operate as an accord and satisfaction of the entire contract, though the check be retained by the creditor in payment of the amount due at the time of its receipt. A.G. Rhodes & Son Co. v. Outcault Advertising Co., 1910, 135 Ga. 516, 69 S.E. 705. Accord And Satisfaction 11(2)

A right of action for a tort is not extinguished by a "compromise settlement" in which a given sum is to be paid to the injured party, unless it be expressly agreed between the parties that the promise to pay the amount fixed by the settlement shall be accepted as a satisfaction of the original claim. Fouche v. Morris, 1900, 112 Ga. 143, 37 S.E. 182. Compromise And Settlement 5(1); Accord And Satisfaction 11(1)

Where plaintiff, who had borrowed a sum of money from defendant company, made a calculation of the amount necessary to pay the balance due thereon after several partial payments, and remitted such amount to defendant's agent, stating that it was to be received in full discharge of his liability to defendant, and the latter retained the money an unreasonable time, this amounted to an election to treat the payment as a full settlement; and defendant could not thereafter foreclose a trust deed which plaintiff had executed to it as security therefor. Jenkins v. National Mut. Building & Loan Ass'n of New York, 1900, 111 Ga. 732, 36 S.E. 945. Accord And Satisfaction 11(2)

Unliquidated debt is satisfied by acceptance of check, tendered as payment in full. Hamilton v. Stewart, 1898, 105 Ga. 300, 31 S.E. 184. Accord And Satisfaction 11(1)

2. Statements of satisfaction

Payee's alteration of restrictive endorsement expressed on draft was not an express reservation of rights against the maker. O.C.G.A. § 11-1-207. Rhone v. State Auto. Mut. Ins. Co., 1988, 858 F.2d 1507. Accord And Satisfaction 11(3)

Payee's restrictive endorsement on check, which had been tendered with maker's own restrictive endorsement that it was offered as settlement in full, adding the language "Accepted as partial payment only," and payee's alteration of maker's restrictive endorsement were of no effect. Rhone v. State Auto. Mut. Ins. Co., 1988, 858 F.2d 1507. Accord And Satisfaction 11(2)

Under Georgia law, accord and satisfaction existed when employee signed waiver and cashed check tendered in satisfaction of dispute over amount due for time she was taken off work schedule; employee's unilateral alteration of waiver form did not preclude finding of accord and satisfaction. Zentiska v. Pooler Motel, Ltd., 1988, 708 F.Supp. 1321. Accord And Satisfaction 9

Landscaping subcontractor's acceptance of contractor's check was an accord and satisfaction with regard to subcontractor's claim for breach of contract, where contractor mailed letters to subcontractor detailing their dispute, indicating that it was tendering amount less than total indebtedness set forth under the contract, and stating that enclosed check, marked "final payment," constituted remuneration for "the balance of the contract," and subcontractor accepted the check without condition. O.C.G.A. § 13-4-103(b). Bridges v. Mann, 2001, 247 Ga.App. 730, 544 S.E.2d 755. Accord And Satisfaction 11(2)

Check by automobile liability insurer was an accord and satisfaction settling tort claim; the check stated that it was a final settlement of all bodily injury claims, and the accident victim merely stated that she could not recall the settlement provision on the check. Rabenstein v. Cannizzo, 2000, 244 Ga.App. 107, 534 S.E.2d 847. Accord And

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