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HOUSE BILL NO. 1718

Offered January 12, 2011

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A BILL to amend and reenact §§ 8.3A-103, 8.3A-106, 8.3A-116, 8.3A-119, 8.3A-305, 8.3A-309, 8.3A-312, 8.3A-416, 8.3A-417, 8.3A-419, 8.3A-602, 8.3A-604, 8.3A-605, 8.4-104, 8.4-105, 8.4-207.1, 8.4-207.2, 8.4-210, 8.4-301, and 8.4-403 of the Code of Virginia, relating to the Uniform Commercial Code; negotiable instruments and bank deposits and collections.

Patron—Merricks

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.3A-103, 8.3A-106, 8.3A-116, 8.3A-119, 8.3A-305, 8.3A-309, 8.3A-312, 8.3A-416, 8.3A-417, 8.3A-419, 8.3A-602, 8.3A-604, 8.3A-605, 8.4-104, 8.4-105, 8.4-207.1, 8.4-207.2, 8.4-210, 8.4-301, and 8.4-403 of the Code of Virginia are amended and reenacted as follows:

§ 8.3A-103. Definitions.

(a) In this title:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Consumer account" means an account established by an individual primarily for personal, family, or household purposes.

(3) "Consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes.

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

~~(3)~~(5) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

~~(4)~~(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

~~(5)~~(7) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

~~(6)~~(8) "Order" means a written instruction to pay money signed by the person giving the instruction.

The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

~~(7)~~(9) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this title or Title 8.4.

~~(8)~~(10) "Party" means a party to an instrument.

(11) "Principal obligor," with respect to an instrument, means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this title.

~~(9)~~(12) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

~~(10)~~(13) "Prove" with respect to a fact means to meet the burden of establishing the fact (§ 8.1A-201(b)(8)).

(14) Reserved.

~~(11)~~(15) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(16) "Remotely-created consumer item" means an item drawn on a consumer account, which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer.

(17) "Secondary obligor," with respect to an instrument, means (i) an endorser or an accommodation party, (ii) a drawer having the obligation described in Section 8.3A-414 (d), or (iii) any other party to the instrument that has recourse against another party to the instrument pursuant to § 8.3A-116 (b).

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

"Acceptance," § 8.3A-409.

"Accommodated party," § 8.3A-419.

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59 "Accommodation party," § 8.3A-419.
60 "Alteration," § 8.3A-407.
61 "Anomalous endorsement," § 8.3A-205.
62 "Blank endorsement," § 8.3A-205.
63 "Cashier's check," § 8.3A-104.
64 "Certificate of deposit," § 8.3A-104.
65 "Certified check," § 8.3A-409.
66 "Check," § 8.3A-104.
67 "Consideration," § 8.3A-303.
68 "Draft," § 8.3A-104.
69 "Holder in due course," § 8.3A-302.
70 "Incomplete instrument," § 8.3A-115.
71 "Endorsement," § 8.3A-204.
72 "Endorser," § 8.3A-204.
73 "Instrument," § 8.3A-104.
74 "Issue," § 8.3A-105.
75 "Issuer," § 8.3A-105.
76 "Negotiable instrument," § 8.3A-104.
77 "Negotiation," § 8.3A-201.
78 "Note," § 8.3A-104.
79 "Payable at a definite time," § 8.3A-108.
80 "Payable on demand," § 8.3A-108.
81 "Payable to bearer," § 8.3A-109.
82 "Payable to order," § 8.3A-109.
83 "Payment," § 8.3A-602.
84 "Person entitled to enforce," § 8.3A-301.
85 "Presentment," § 8.3A-501.
86 "Reacquisition," § 8.3A-207.
87 "Special endorsement," § 8.3A-205.
88 "Teller's check," § 8.3A-104.
89 "Transfer of instrument," § 8.3A-203.
90 "Traveler's check," § 8.3A-104.
91 "Value," § 8.3A-303.

92 (c) The following definitions in other titles apply to this title:

93 "~~Bank~~," § 8.4-105.
94 "*Account*," § 8.4-104.
95 "Banking day," § 8.4-104.
96 "Clearing house," § 8.4-104.
97 "Collecting bank," § 8.4-105.
98 "Depository bank," § 8.4-105.
99 "Documentary draft," § 8.4-104.
100 "Intermediary bank," § 8.4-105.
101 "Item," § 8.4-104.
102 "Payor bank," § 8.4-105.
103 "Suspends payments," § 8.4-104.

104 (d) In addition, Title 8.1A contains general definitions and principles of construction and
105 interpretation applicable throughout this title.

106 § 8.3A-106. Unconditional promise or order.

107 (a) Except as provided in this section, for the purposes of § 8.3A-104 (a), a promise or order is
108 unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject
109 to or governed by another ~~writing~~ *record*, or (iii) that rights or obligations with respect to the promise
110 or order are stated in another ~~writing~~ *record*. A reference to another ~~writing~~ *record* does not of itself
111 make the promise or order conditional.

112 (b) A promise or order is not made conditional (i) by a reference to another ~~writing~~ *record* for a
113 statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is
114 limited to resort to a particular fund or source.

115 (c) If a promise or order requires, as a condition to payment, a countersignature by a person whose
116 specimen signature appears on the promise or order, the condition does not make the promise or order
117 conditional for the purposes of § 8.3A-104 (a). If the person whose specimen signature appears on an
118 instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of
119 the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the
120 instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of § 8.3A-104 (a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

§ 8.3A-116. Joint and several liability; contribution.

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, endorsers who endorse as joint payees, or anomalous endorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in § 8.3A-419 (e) (f) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

~~(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of a party having the same joint and several liability to receive contribution from the party discharged.~~

§ 8.3A-119. Notice of right to defend action.

In an action for breach of an obligation for which a third person is answerable over pursuant to this title or Title 8.4, the defendant may give the third person ~~written~~ notice of the litigation *in a record*, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

§ 8.3A-305. Defenses and claims in recoupment.

(a) Except as ~~stated in subsection (b)~~ *otherwise provided in this section*, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) a defense of the obligor stated in another section of this title or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a) (1), but is not subject to defenses of the obligor stated in subsection (a) (2) or claims in recoupment stated in subsection (a) (3) against a person other than the holder.

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (§ 8.3A-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

(e) In a consumer transaction, if law other than this title requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or defense that the issuer could assert against the original payee, and the instrument does not include such a statement:

(1) the instrument has the same effect as if the instrument included such a statement;

(2) the issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement; and

(3) the extent to which claims may be asserted against the holder or transferee is determined as if

182 *the instrument included such a statement.*

183 *(f) This section is subject to law other than this title that establishes a different rule for consumer*
184 *transactions.*

185 § 8.3A-309. Enforcement of lost, destroyed, or stolen instrument.

186 (a) A person not in possession of an instrument is entitled to enforce the instrument if ~~(i) the person~~
187 ~~was in possession of the instrument and~~

188 *(1) the person seeking to enforce the instrument:*

189 *(A) was entitled to enforce ~~it~~ the instrument when loss of possession, ~~(ii)~~ occurred or*

190 *(B) has directly or indirectly acquired ownership of the instrument from a person who was entitled*
191 *to enforce the instrument when loss of possession occurred;*

192 *(2) the loss of possession was not the result of a transfer by the person or a lawful seizure, and ~~(iii);~~*
193 *and*

194 *(3) the person cannot reasonably obtain possession of the instrument because the instrument was*
195 *destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown*
196 *person or a person that cannot be found or is not amenable to service of process.*

197 (b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the
198 instrument and the person's right to enforce the instrument. If that proof is made, § 8.3A-308 applies to
199 the case as if the person seeking enforcement had produced the instrument. The court may not enter
200 judgment in favor of the person seeking enforcement unless it finds that the person required to pay the
201 instrument is adequately protected against loss that might occur by reason of a claim by another person
202 to enforce the instrument. Adequate protection may be provided by any reasonable means.

203 § 8.3A-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

204 (a) In this section:

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

206 (2) "Claimant" means a person who claims the right to receive the amount of a cashier's check,
207 teller's check, or certified check that was lost, destroyed, or stolen.

208 (3) "Declaration of loss" means a ~~written~~ statement, made *in a record* under penalty of perjury, to
209 the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the
210 check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's
211 check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a
212 lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check
213 was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown
214 person or a person that cannot be found or is not amenable to service of process.

215 (4) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a
216 certified check.

217 (b) A claimant may assert a claim to the amount of a check by a communication to the obligated
218 bank describing the check with reasonable certainty and requesting payment of the amount of the check,
219 if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's
220 check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the
221 claimant with respect to the check, (iii) the communication is received at a time and in a manner
222 affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides
223 reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a
224 warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with
225 this subsection, the following rules apply:

226 (1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the
227 ninetieth day following the date of the check, in the case of a cashier's check or teller's check, or the
228 ninetieth day following the date of the acceptance, in the case of a certified check.

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

232 (3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is
233 not obliged to pay the check.

234 (4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of
235 the check to the claimant if payment of the check has not been made to a person entitled to enforce the
236 check. Subject to § 8.4-302 (a) (1), payment to the claimant discharges all liability of the obligated bank
237 with respect to the check.

238 (c) If the obligated bank pays the amount of a check to a claimant under subsection (b) (4) and the
239 check is presented for payment by a person having rights of a holder in due course, the claimant is
240 obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of
241 the check to the person having rights of a holder in due course if the check is dishonored.

242 (d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to
243 enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the

claimant may assert rights with respect to the check either under this section or § 8.3A-309.

§ 8.3A-416. Transfer warranties.

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee that:

- (1) the warrantor is a person entitled to enforce the instrument;
- (2) all signatures on the instrument are authentic and authorized;
- (3) the instrument has not been altered;
- (4) the instrument is not subject to a defense or claim in recoupment of any party which 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; *and*

(6) *with respect to a remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.*

(b) A person to whom the warranties under subsection (a) are made and who took the instrument 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 instrument plus expenses and loss of interest incurred as a result of the breach.

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

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

§ 8.3A-417. 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 making payment or accepting 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 drawer of the draft is unauthorized; *and*

(4) *with respect to any remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.*

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any 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) based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under § 8.3A-404 or § 8.3A-405 or the drawer is precluded under § 8.3A-406 or § 8.4-406 from asserting against the drawee the unauthorized endorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an endorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

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

(2) 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) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

307 § 8.3A-419. Instruments signed for accommodation.

308 (a) If an instrument is issued for value given for the benefit of a party to the instrument
309 ("accommodated party") and another party to the instrument ("accommodation party") signs the
310 instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of
311 the value given for the instrument, the instrument is signed by the accommodation party "for
312 accommodation."

313 (b) An accommodation party may sign the instrument as maker, drawer, acceptor, or endorser and,
314 subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation
315 party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of
316 frauds and whether or not the accommodation party receives consideration for the accommodation.

317 (c) A person signing an instrument is presumed to be an accommodation party and there is notice
318 that the instrument is signed for accommodation if the signature is an anomalous endorsement or is
319 accompanied by words indicating that the signer is acting as surety or guarantor with respect to the
320 obligation of another party to the instrument. Except as provided in § 8.3A-605, the obligation of an
321 accommodation party to pay the instrument is not affected by the fact that the person enforcing the
322 obligation had notice when the instrument was taken by that person that the accommodation party
323 signed the instrument for accommodation.

324 (d) If the signature of a party to an instrument is accompanied by words indicating unambiguously
325 that the party is guaranteeing collection rather than payment of the obligation of another party to the
326 instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce
327 the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii)
328 the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with
329 process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

330 (e) *If the signature of a party to an instrument is accompanied by words indicating that the party*
331 *guarantees payment or the signer signs the instrument as an accommodation party in some other*
332 *manner that does not unambiguously indicate an intention to guarantee collection rather than payment,*
333 *the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the*
334 *instrument in the same circumstances as the accommodated party would be obliged, without prior resort*
335 *to the accommodated party by the person entitled to enforce the instrument.*

336 (f) An accommodation party who pays the instrument is entitled to reimbursement from the
337 accommodated party and is entitled to enforce the instrument against the accommodated party. *In proper*
338 *circumstances, an accommodation party may obtain relief that requires the accommodated party to*
339 *perform its obligations on the instrument.* An accommodated party ~~who~~ that pays the instrument has no
340 right of recourse against, and is not entitled to contribution from, an accommodation party.

341 § 8.3A-602. Payment.

342 (a) Subject to subsection ~~(b)~~ (e), an instrument is paid to the extent payment is made ~~(i)~~ by or on
343 behalf of a party obliged to pay the instrument, and ~~(ii)~~ to a person entitled to enforce the instrument.
344 ~~To~~

345 (b) *Subject to subsection (e), a note is paid to the extent payment is made by or on behalf of a party*
346 *obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of*
347 *the payment the party obliged to pay has not received adequate notification that the note has been*
348 *transferred and that payment is to be made to the transferee. A notification is adequate only if it is*
349 *signed by the transferor or the transferee; reasonably identifies the transferred note; and provides an*
350 *address at which payments subsequently are to be made. Upon request, a transferee shall seasonably*
351 *furnish reasonable proof that the note has been transferred. Unless the transferee complies with the*
352 *request, a payment to the person that formerly was entitled to enforce the note is effective for purposes*
353 *of subsection (c) even if the party obliged to pay the note has received a notification under this*
354 *subsection.*

355 (c) *Subject to subsection (e), to the extent of the payment, a payment under subsections (a) and (b),*
356 *the obligation of the party obliged to pay the instrument is discharged even though payment is made*
357 *with knowledge of a claim to the instrument under § 8.3A-306 by another person.*

358 (d) *Subject to subsection (e), a transferee, or any party that has acquired rights in the instrument*
359 *directly or indirectly from a transferee, including any such party that has rights as a holder in due*
360 *course, is deemed to have notice of any payment that is made under subsection (b) after the date that*
361 *the note is transferred to the transferee but before the party obliged to pay the note receives adequate*
362 *notification of the transfer.*

363 ~~(b)(e)~~ (e) The obligation of a party to pay the instrument is not discharged under ~~subsection (a)~~
364 *subsections (a) through (d) if:*

365 (1) a claim to the instrument under § 8.3A-306 is enforceable against the party receiving payment
366 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.

~~(e)~~(f) *As used in this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.*

(g) Within 90 days following payment in full of the obligation represented by an instrument, the holder of the instrument shall return it to the maker or his agent, unless it no longer is in existence. If the instrument no longer is in existence, upon request from the maker or his agent, the holder shall give written confirmation that the instrument no longer is in existence and the obligation has been paid in full, within 90 days of such request. In such event the holder shall be deemed to have satisfied its obligation under this subsection.

§ 8.3A-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~~ record.

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

(c) In this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

§ 8.3A-605. Discharge of secondary obligors.

(a) ~~In this section, the term "endorser" includes a drawer having the obligation described in § 8.3A-414 (d).~~

(b) ~~Discharge, under § 8.3A-604, of the obligation of a party to pay an instrument does not discharge the obligation of an endorser 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 endorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the endorser or accommodation party proves that the extension caused loss to the endorser 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 endorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the endorser or accommodation party with respect to the right of recourse. The loss suffered by the endorser 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 endorser 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), 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

428 asserting discharge.

429 (g) Under subsection (e) or (f), impairing value of an interest in collateral includes (i) failure to
430 obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without
431 substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral
432 owed, under Title 8.9A or other law, to a debtor or surety or other person secondarily liable, or (iv)
433 failure to comply with applicable law in disposing of collateral.

434 (h) An accommodation party is not discharged under subsection (c), (d), or (e) unless the person
435 entitled to enforce the instrument knows of the accommodation or has notice under § 8.3A-419 (c) that
436 the instrument was signed for accommodation.

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

441 (a) If a person entitled to enforce an instrument releases the obligation of a principal obligor in
442 whole or in part, and another party to the instrument is a secondary obligor with respect to the
443 obligation of that principal obligor, the following rules apply:

444 (1) Any obligations of the principal obligor to the secondary obligor with respect to any previous
445 payment by the secondary obligor are not affected. Unless the terms of the release preserve the
446 secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any
447 other duties to the secondary obligor under this title.

448 (2) Unless the terms of the release provide that the person entitled to enforce the instrument retains
449 the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to
450 the same extent as the principal obligor from any unperformed portion of its obligation on the
451 instrument. If the instrument is a check and the obligation of the secondary obligor is based on an
452 endorsement of the check, the secondary obligor is discharged without regard to the language or
453 circumstances of the discharge or other release.

454 (3) If the secondary obligor is not discharged under paragraph (2), the secondary obligor is
455 discharged to the extent of the value of the consideration for the release, and to the extent that the
456 release would otherwise cause the secondary obligor a loss.

457 (b) If a person entitled to enforce an instrument grants a principal obligor an extension of the time
458 at which one or more payments are due on the instrument and another party to the instrument is a
459 secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

460 (1) Any obligations of the principal obligor to the secondary obligor with respect to any previous
461 payment by the secondary obligor are not affected. Unless the terms of the extension preserve the
462 secondary obligor's recourse, the extension correspondingly extends the time for performance of any
463 other duties owed to the secondary obligor by the principal obligor under this title.

464 (2) The secondary obligor is discharged to the extent that the extension would otherwise cause the
465 secondary obligor a loss.

466 (3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary
467 obligor may perform its obligations to a person entitled to enforce the instrument as if the time for
468 payment had not been extended or, unless the terms of the extension provide that the person entitled to
469 enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the
470 time for payment had not been extended, treat the time for performance of its obligations as having
471 been extended correspondingly.

472 (c) If a person entitled to enforce an instrument agrees, with or without consideration, to a
473 modification of the obligation of a principal obligor other than a complete or partial release or an
474 extension of the due date and another party to the instrument is a secondary obligor with respect to the
475 obligation of that principal obligor, the following rules apply:

476 (1) Any obligations of the principal obligor to the secondary obligor with respect to any previous
477 payment by the secondary obligor are not affected. The modification correspondingly modifies any other
478 duties owed to the secondary obligor by the principal obligor under this title.

479 (2) The secondary obligor is discharged from any unperformed portion of its obligation to the extent
480 that the modification would otherwise cause the secondary obligor a loss.

481 (3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary
482 obligor may satisfy its obligation on the instrument as if the modification had not occurred, or treat its
483 obligation on the instrument as having been modified correspondingly.

484 (d) If the obligation of a principal obligor is secured by an interest in collateral, another party to
485 the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce
486 the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is
487 discharged to the extent of the impairment. The value of an interest in collateral is impaired to the
488 extent the value of the interest is reduced to an amount less than the amount of the recourse of the
489 secondary obligor, or the reduction in value of the interest causes an increase in the amount by which

the amount of the recourse exceeds the value of the interest. For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation, failure to perform a duty to preserve the value of collateral owed, under Title 8.9A or other law, to a debtor or other person secondarily liable, and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(e) A secondary obligor is not discharged under subsections (a) (3), (b), (c), or (d) unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under § 8A.3-419 (c) that the instrument was signed for accommodation.

(f) A secondary obligor is not discharged under this section if the secondary obligor consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(g) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide that:

(1) the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and

(2) the recourse of the secondary obligor continues as if the release or extension had not been granted.

(h) Except as otherwise provided in subsection (i), a secondary obligor asserting discharge under this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

§ 8.4-104. Definitions and index of definitions.

(a) In this title, unless the context otherwise requires:

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

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions, but shall not include Saturday, Sunday or a legal holiday;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

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

(6) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft; or a draft to be presented for acceptance or payment if specified documents, certificated securities (§ 8.8A-102) or instructions for uncertified securities (§ 8.8A-102), 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 § 8.3A-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means 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~~ Title 8.4A or a credit or debit card slip;

(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;

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

(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 or that it ceases or refuses to make payments in the ordinary course of business.

551 (b) Other definitions applying to this title and the sections in which they appear are:

552 "Agreement for electronic presentment" § 8.4-110.

553 ~~"Bank" § 8.4-105.~~

554 "Collecting bank" § 8.4-105.

555 "Depository bank" § 8.4-105.

556 "Intermediary bank" § 8.4-105.

557 "Payor bank" § 8.4-105.

558 "Presenting bank" § 8.4-105.

559 "Presentment notice" § 8.4-110.

560 (c) The following definitions in other titles apply to this title:

561 "Acceptance" § 8.3A-409.

562 "Alteration" § 8.3A-407.

563 "Cashier's check" § 8.3A-104.

564 "Certificate of deposit" § 8.3A-104.

565 "Certified check" § 8.3A-409.

566 "Check" § 8.3A-104.

567 "Control" § 8.7-106.

568 "Draft" § 8.3A-104.

569 "Good faith" § 8.3A-103.

570 "Holder in due course" § 8.3A-302.

571 "Instrument" § 8.3A-104.

572 "Notice of dishonor" § 8.3A-503.

573 "Order" § 8.3A-103.

574 "Ordinary care" § 8.3A-103.

575 "Person entitled to enforce" § 8.3A-301.

576 "Presentment" § 8.3A-501.

577 "Promise" § 8.3A-103.

578 "Prove" § 8.3A-103.

579 *"Remotely-created consumer item" § 8.3A-103.*

580 "Teller's check" § 8.3A-104.

581 "Unauthorized signature" § 8.3A-403.

582 (d) In addition Title 8.1A contains general definitions and principles of construction and
583 interpretation applicable throughout this title.

584 § 8.4-105. Definitions of types of banks.

585 In this title:

586 (1) ~~"Bank" means a person engaged in the business of banking, including a savings institution, credit
587 union or trust company; Reserved.~~

588 (2) "Depository bank" means the first bank to take an item even though it is also the payor bank,
589 unless the item is presented for immediate payment over the counter;

590 (3) "Payor bank" means a bank that is the drawee of a draft;

591 (4) "Intermediary bank" means a bank to which an item is transferred in the course of collection
592 except the depository or payor bank;

593 (5) "Collecting bank" means a bank handling an item for collection except the payor bank;

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

595 § 8.4-207.1. Transfer warranties.

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

598 (1) the warrantor is a person entitled to enforce the item;

599 (2) all signatures on the item are authentic and authorized;

600 (3) the item has not been altered;

601 (4) the item is not subject to a defense or claim in recoupment (§ 8.3A-305 (a)) of any party that can
602 be asserted against the warrantor; ~~and~~

603 (5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the
604 maker or acceptor or, in the case of an unaccepted draft, the drawer; ~~and~~

605 (6) *with respect to any remotely-created consumer item, that the person on whose account the item is
606 drawn authorized the issuance of the item in the amount for which the item is drawn.*

607 (b) If an item is dishonored, a customer or collecting bank transferring the item and receiving
608 settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms
609 of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to
610 its terms when completed as stated in §§ 8.3A-115 and 8.3A-407. The obligation of a transferor is owed
611 to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor
612 cannot disclaim its obligation under this subsection by an endorsement stating that it is made "without

recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) 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) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty 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.

§ 8.4-207.2. 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; and

(4) *with respect to any remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.*

(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 a 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) based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under § 8.3A-404 or § 8.3A-405 or the drawer is precluded under § 8.3A-406 or § 8.4-406 from asserting against the drawee the unauthorized endorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an endorser 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) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty 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.

§ 8.4-210. Presentment by notice of item not payable by, through or at a bank; liability of drawer or endorser.

(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~~ record providing 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 § 8.3A-501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance or request for compliance with a requirement under § 8.3A-501 is not received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or endorser by sending it notice of the facts.

§ 8.4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it

(1) returns the item; or

(2) *returns an image of the item, if the party to which the return is made has entered into an agreement to accept an image as a return of the item and the image is returned in accordance with that agreement; or*

(3) sends ~~written~~ *a record* providing notice of dishonor or nonpayment if the item is unavailable for return.

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

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

(d) An item is returned:

(1) as to an item 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 clearing-house rules; or

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

§ 8.4-403. Customer's right to stop payment; burden of proof of loss.

(a) A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in § 8.4-303. 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.

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

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under § 8.4-402.