

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 81

Short Title: UCC Amendments.

(Public)

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Sponsors: Senators Hartsell; Soles, Allran, Simpson, and Odom.

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Referred to: Judiciary II/Election Laws.

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January 30, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE REVISED ARTICLE 3 OF THE UNIFORM  
3 COMMERCIAL CODE AND CONFORMING AND MISCELLANEOUS  
4 AMENDMENTS TO ARTICLES 1 AND 4 OF THE UNIFORM COMMERCIAL  
5 CODE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

6 The General Assembly of North Carolina enacts:

7 Section 1. Article 3 of Chapter 25 of the General Statutes is rewritten to read:  
8

9 **"ARTICLE 3.**

10 **"NEGOTIABLE INSTRUMENTS.**

11 **"PART 1.**

12 **"GENERAL PROVISIONS AND DEFINITIONS.**

13 **"§ 25-3-101. Short title.**

14 This Article may be cited as Uniform Commercial Code – Negotiable Instruments.

15 **"§ 25-3-102. Subject matter.**

1 (a) This Article applies to negotiable instruments. It does not apply to money, to  
2 payment orders governed by Article 4A, or to securities governed by Article 8.

3 (b) If there is conflict between this Article and Article 4 or 9, Articles 4 and 9  
4 govern.

5 (c) Regulations of the Board of Governors of the Federal Reserve System and  
6 operating circulars of the Federal Reserve Banks supersede any inconsistent provision of  
7 this Article to the extent of the inconsistency.

8 **"§ 25-3-103. Definitions.**

9 (a) In this Article:

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

11 (2) 'Drawee' means a person ordered in a draft to make payment.

12 (3) 'Drawer' means a person who signs or is identified in a draft as a person  
13 ordering payment.

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

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

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

24 (7) 'Ordinary care' in the case of a person engaged in business means  
25 observance of reasonable commercial standards, prevailing in the area  
26 in which the person is located, with respect to the business in which the  
27 person is engaged. In the case of a bank that takes an instrument for  
28 processing for collection or payment by automated means, reasonable  
29 commercial standards do not require the bank to examine the instrument  
30 if the failure to examine does not violate the bank's prescribed  
31 procedures and the bank's procedures do not vary unreasonably from  
32 general banking usage not disapproved by this Article or Article 4.

33 (8) 'Party' means a party to an instrument.

34 (9) 'Promise' means a written undertaking to pay money signed by the  
35 person undertaking to pay. An acknowledgment of an obligation by the  
36 obligor is not a promise unless the obligor also undertakes to pay the  
37 obligation.

38 (10) 'Prove' with respect to a fact means to meet the burden of establishing  
39 the fact (G.S. 25-1-201(8)).

40 (11) 'Remitter' means a person who purchases an instrument from its issuer if  
41 the instrument is payable to an identified person other than the  
42 purchaser.

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

3 'Acceptance' G.S. 25-3-409.

4 'Accommodated party' G.S. 25-3-419.

5 'Accommodation party' G.S. 25-3-419.

6 'Alteration' G.S. 25-3-407.

7 'Anomalous indorsement' G.S. 25-3-205.

8 'Blank indorsement' G.S. 25-3-205.

9 'Cashier's check' G.S. 25-3-104.

10 'Certificate of deposit' G.S. 25-3-104.

11 'Certified check' G.S. 25-3-409.

12 'Check' G.S. 25-3-104.

13 'Consideration' G.S. 25-3-303.

14 'Draft' G.S. 25-3-104.

15 'Holder in due course' G.S. 25-3-302.

16 'Incomplete instrument' G.S. 25-3-115.

17 'Indorsement' G.S. 25-3-204.

18 'Indorser' G.S. 25-3-204.

19 'Instrument' G.S. 25-3-104.

20 'Issue' G.S. 25-3-105.

21 'Issuer' G.S. 25-3-105.

22 'Negotiable instrument' G.S. 25-3-104.

23 'Negotiation' G.S. 25-3-201.

24 'Note' G.S. 25-3-104.

25 'Payable at a definite time' G.S. 25-3-108.

26 'Payable on demand' G.S. 25-3-108.

27 'Payable to bearer' G.S. 25-3-109.

28 'Payable to order' G.S. 25-3-109.

29 'Payment' G.S. 25-3-602.

30 'Person entitled to enforce' G.S. 25-3-301.

31 'Presentment' G.S. 25-3-501.

32 'Reacquisition' G.S. 25-3-207.

33 'Special indorsement' G.S. 25-3-205.

34 'Teller's check' G.S. 25-3-104.

35 'Transfer of instrument' G.S. 25-3-203.

36 'Traveler's check' G.S. 25-3-104.

37 'Value' G.S. 25-3-303.

38 (c) The following definitions in other Articles apply to this Article:

39 'Bank' G.S. 25-4-105.

40 'Banking day' G.S. 25-4-104.

41 'Clearing house' G.S. 25-4-104.

42 'Collecting bank' G.S. 25-4-105.

43 'Depository bank' G.S. 25-4-105.

1 'Documentary draft' G.S. 25-4-104.

2 'Intermediary bank' G.S. 25-4-105.

3 'Item' G.S. 25-4-104.

4 'Payor bank' G.S. 25-4-105.

5 'Suspends payments' G.S. 25-4-104.

6 (d) In addition, Article 1 contains general definitions and principles of  
7 construction and interpretation applicable throughout this Article.

8 **"§ 25-3-104. Negotiable instrument.**

9 (a) Except as provided in subsections (c) and (d) of this section, 'negotiable  
10 instrument' means an unconditional promise or order to pay a fixed amount of money,  
11 with or without interest or other charges described in the promise or order, if it:

12 (1) Is payable to bearer or to order at the time it is issued or first comes into  
13 possession of a holder;

14 (2) Is payable on demand or at a definite time; and

15 (3) Does not state any other undertaking or instruction by the person  
16 promising or ordering payment to do any act in addition to the payment  
17 of money, but the promise or order may contain (i) an undertaking or  
18 power to give, maintain, or protect collateral to secure payment, (ii) an  
19 authorization or power to the holder to confess judgment or realize on or  
20 dispose of collateral, or (iii) a waiver of the benefit of any law intended  
21 for the advantage or protection of an obligor.

22 (b) 'Instrument' means a negotiable instrument.

23 (c) An order that meets all of the requirements of subsection (a) of this section,  
24 except subdivision (1), and otherwise falls within the definition of 'check' in subsection  
25 (f) is a negotiable instrument and a check.

26 (d) A promise or order other than a check is not an instrument if, at the time it is  
27 issued or first comes into possession of a holder, it contains a conspicuous statement,  
28 however expressed, to the effect that the promise or order is not negotiable or is not an  
29 instrument governed by this Article.

30 (e) An instrument is a 'note' if it is a promise and is a 'draft' if it is an order. If an  
31 instrument falls within the definition of both 'note' and 'draft', a person entitled to enforce  
32 the instrument may treat it as either.

33 (f) 'Check' means (i) a draft, other than a documentary draft, payable on demand  
34 and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a  
35 check even though it is described on its face by another term, such as 'money order'.

36 (g) 'Cashier's check' means a draft with respect to which the drawer and drawee are  
37 the same bank or branches of the same bank.

38 (h) 'Teller's check' means a draft drawn by a bank (i) on another bank, or (ii)  
39 payable at or through a bank.

40 (i) 'Traveler's check' means an instrument that (i) is payable on demand, (ii) is  
41 drawn on or payable at or through a bank, (iii) is designated by the term 'traveler's check'  
42 or by a substantially similar term, and (iv) requires, as a condition to payment, a  
43 countersignature by a person whose specimen signature appears on the instrument.

1 (j) 'Certificate of deposit' means an instrument containing an acknowledgment by  
2 a bank that a sum of money has been received by the bank and a promise by the bank to  
3 repay the sum of money. A certificate of deposit is a note of the bank.

4 **"§ 25-3-105. Issue of instrument.**

5 (a) 'Issue' means the first delivery of an instrument by the maker or drawer,  
6 whether to a holder or nonholder, for the purpose of giving rights on the instrument to  
7 any person.

8 (b) An unissued instrument, or an unissued incomplete instrument that is  
9 completed, is binding on the maker or drawer, but nonissuance is a defense. An  
10 instrument that is conditionally issued or is issued for a special purpose is binding on the  
11 maker or drawer, but failure of the condition or special purpose to be fulfilled is a  
12 defense.

13 (c) 'Issuer' applies to issued and unissued instruments and means a maker or  
14 drawer of an instrument.

15 **"§ 25-3-106. Unconditional promise or order.**

16 (a) Except as provided in this section, for the purposes of G.S. 25-3-104(a), a  
17 promise or order is unconditional unless it states (i) an express condition to payment, (ii)  
18 that the promise or order is subject to or governed by another writing, or (iii) that rights  
19 or obligations with respect to the promise or order are stated in another writing. A  
20 reference to another writing does not of itself make the promise or order conditional.

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

24 (c) If a promise or order requires, as a condition to payment, a countersignature by  
25 a person whose specimen signature appears on the promise or order, the condition does  
26 not make the promise or order conditional for the purposes of G.S. 25-3-104(a). If the  
27 person whose specimen signature appears on an instrument fails to countersign the  
28 instrument, the failure to countersign is a defense to the obligation of the issuer, but the  
29 failure does not prevent a transferee of the instrument from becoming a holder of the  
30 instrument.

31 (d) If a promise or order at the time it is issued or first comes into possession of a  
32 holder contains a statement, required by applicable statutory or administrative law, to the  
33 effect that the rights of a holder or transferee are subject to claims or defenses that the  
34 issuer could assert against the original payee, the promise or order is not thereby made  
35 conditional for the purposes of G.S. 25-3-104(a); but if the promise or order is an  
36 instrument, there cannot be a holder in due course of the instrument.

37 **"§ 25-3-107. Instrument payable in foreign money.**

38 Unless the instrument otherwise provides, an instrument that states the amount  
39 payable in foreign money may be paid in the foreign money or in an equivalent amount in  
40 dollars calculated by using the current bank-offered spot rate at the place of payment for  
41 the purchase of dollars on the day on which the instrument is paid.

42 **"§ 25-3-108. Payable on demand or at definite time.**

1 (a) A promise or order is 'payable on demand' if it (i) states that it is payable on  
2 demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii)  
3 does not state any time of payment.

4 (b) A promise or order is 'payable at a definite time' if it is payable on elapse of a  
5 definite period of time after sight or acceptance or at a fixed date or dates or at a time or  
6 times readily ascertainable at the time the promise or order is issued, subject to rights of  
7 (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv)  
8 extension to a further definite time at the option of the maker or acceptor or automatically  
9 upon or after a specified act or event.

10 (c) If an instrument, payable at a fixed date, is also payable upon demand made  
11 before the fixed date, the instrument is payable on demand until the fixed date and, if  
12 demand for payment is not made before that date, becomes payable at a definite time on  
13 the fixed date.

14 **"§ 25-3-109. Payable to bearer or to order.**

15 (a) A promise or order is payable to bearer if it:

16 (1) States that it is payable to bearer or to the order of bearer or otherwise  
17 indicates that the person in possession of the promise or order is entitled  
18 to payment;

19 (2) Does not state a payee; or

20 (3) States that it is payable to or to the order of cash or otherwise indicates  
21 that it is not payable to an identified person.

22 (b) A promise or order that is not payable to bearer is payable to order if it is  
23 payable (i) to the order of an identified person or (ii) to an identified person or order. A  
24 promise or order that is payable to order is payable to the identified person.

25 (c) An instrument payable to bearer may become payable to an identified person if  
26 it is specially indorsed pursuant to G.S. 25-3-205(a). An instrument payable to an  
27 identified person may become payable to bearer if it is indorsed in blank pursuant to G.S.  
28 25-3-205(b).

29 **"§ 25-3-110. Identification of person to whom instrument is payable.**

30 (a) The person to whom an instrument is initially payable is determined by the  
31 intent of the person, whether or not authorized, signing as, or in the name or behalf of, the  
32 issuer of the instrument. The instrument is payable to the person intended by the signer  
33 even if that person is identified in the instrument by a name or other identification that is  
34 not that of the intended person. If more than one person signs in the name or behalf of  
35 the issuer of an instrument and all the signers do not intend the same person as payee, the  
36 instrument is payable to any person intended by one or more of the signers.

37 (b) If the signature of the issuer of an instrument is made by automated means,  
38 such as a check-writing machine, the payee of the instrument is determined by the intent  
39 of the person who supplied the name or identification of the payee, whether or not  
40 authorized to do so.

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

1           (1) If an instrument is payable to an account and the account is identified  
2 only by number, the instrument is payable to the person to whom the  
3 account is payable. If an instrument is payable to an account identified  
4 by number and by the name of a person, the instrument is payable to the  
5 named person, whether or not that person is the owner of the account  
6 identified by number.

7           (2) If an instrument is payable to (i) a trust, an estate, or a person described  
8 as trustee or representative of a trust or estate, the instrument is payable  
9 to the trustee, the representative, or a successor of either, whether or not  
10 the beneficiary or estate is also named, (ii) a person described as agent  
11 or similar representative of a named or identified person, the instrument  
12 is payable to the represented person, the representative, or a successor of  
13 the representative, (iii) a fund or organization that is not a legal entity,  
14 the instrument is payable to a representative of the members of the fund  
15 or organization, or (iv) an office or to a person described as holding an  
16 office, the instrument is payable to the named person, the incumbent of  
17 the office, or a successor to the incumbent.

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

25 **"§ 25-3-111. Place of payment.**

26           Except as otherwise provided for items in Article 4, an instrument is payable at the  
27 place of payment stated in the instrument. If no place of payment is stated, an instrument  
28 is payable at the address of the drawee or maker stated in the instrument. If no address is  
29 stated, the place of payment is the place of business of the drawee or maker. If a drawee  
30 or maker has more than one place of business, the place of payment is any place of  
31 business of the drawee or maker chosen by the person entitled to enforce the instrument.  
32 If the drawee or maker has no place of business, the place of payment is the residence of  
33 the drawee or maker.

34 **"§ 25-3-112. Interest.**

35           (a) Unless otherwise provided in the instrument, (i) an instrument is not payable  
36 with interest, and (ii) interest on an interest-bearing instrument is payable from the date  
37 of the instrument.

38           (b) Interest may be stated in an instrument as a fixed or variable amount of money  
39 or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest  
40 may be stated or described in the instrument in any manner and may require reference to  
41 information not contained in the instrument. If an instrument provides for interest, but  
42 the amount of interest payable cannot be ascertained from the description, interest is

1 payable at the judgment rate in effect at the place of payment of the instrument and at the  
2 time interest first accrues.

3 **"§ 25-3-113. Date of instrument.**

4 (a) An instrument may be antedated or postdated. The date stated determines the  
5 time of payment if the instrument is payable at a fixed period after date. Except as  
6 provided in G.S. 25-4-401(c), an instrument payable on demand is not payable before the  
7 date of the instrument.

8 (b) If an instrument is undated, its date is the date of its issue or, in the case of an  
9 unissued instrument, the date it first comes into possession of a holder.

10 **"§ 25-3-114. Contradictory terms of instrument.**

11 If an instrument contains contradictory terms, typewritten terms prevail over printed  
12 terms, handwritten terms prevail over both, and words prevail over numbers.

13 **"§ 25-3-115. Incomplete instrument.**

14 (a) 'Incomplete instrument' means a signed writing, whether or not issued by the  
15 signer, the contents of which show at the time of signing that it is incomplete but that the  
16 signer intended it to be completed by the addition of words or numbers.

17 (b) Subject to subsection (c) of this section, if an incomplete instrument is an  
18 instrument under G.S. 25-3-104, it may be enforced according to its terms if it is not  
19 completed, or according to its terms as augmented by completion. If an incomplete  
20 instrument is not an instrument under G.S. 25-3-104, but, after completion, the  
21 requirements of G.S. 25-3-104 are met, the instrument may be enforced according to its  
22 terms as augmented by completion.

23 (c) If words or numbers are added to an incomplete instrument without authority  
24 of the signer, there is an alteration of the incomplete instrument under G.S. 25-3-407.

25 (d) The burden of establishing that words or numbers were added to an incomplete  
26 instrument without authority of the signer is on the person asserting the lack of authority.

27 **"§ 25-3-116. Joint and several liability; contribution.**

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

32 (b) Except as provided in G.S. 25-3-419(e) or by agreement of the affected parties,  
33 a party having joint and several liability who pays the instrument is entitled to receive  
34 from any party having the same joint and several liability contribution in accordance with  
35 applicable law.

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

40 **"§ 25-3-117. Other agreements affecting instrument.**

41 Subject to applicable law regarding exclusion of proof of contemporaneous or  
42 previous agreements, the obligation of a party to an instrument to pay the instrument may  
43 be modified, supplemented, or nullified by a separate agreement of the obligor and a



1 person entitled to enforce the instrument, if the instrument is issued or the obligation is  
2 incurred in reliance on the agreement or as part of the same transaction giving rise to the  
3 agreement. To the extent an obligation is modified, supplemented, or nullified by an  
4 agreement under this section, the agreement is a defense to the obligation.

5 **"§ 25-3-118. Statute of limitations.**

6 (a) Except as provided in subsection (e) of this section, an action to enforce the  
7 obligation of a party to pay a note payable at a definite time must be commenced within  
8 six years after the due date or dates stated in the note or, if a due date is accelerated,  
9 within six years after the accelerated due date.

10 (b) Except as provided in subsection (d) or (e) of this section, if demand for  
11 payment is made to the maker of a note payable on demand, an action to enforce the  
12 obligation of a party to pay the note must be commenced within six years after the  
13 demand. If no demand for payment is made to the maker, an action to enforce the note is  
14 barred if neither principal nor interest on the note has been paid for a continuous period  
15 of 10 years.

16 (c) Except as provided in subsection (d) of this section, an action to enforce the  
17 obligation of a party to an unaccepted draft to pay the draft must be commenced within  
18 three years after dishonor of the draft or 10 years after the date of the draft, whichever  
19 period expires first.

20 (d) An action to enforce the obligation of the acceptor of a certified check or the  
21 issuer of a teller's check, cashier's check, or traveler's check must be commenced within  
22 three years after demand for payment is made to the acceptor or issuer, as the case may  
23 be.

24 (e) An action to enforce the obligation of a party to a certificate of deposit to pay  
25 the instrument must be commenced within six years after demand for payment is made to  
26 the maker, but if the instrument states a due date and the maker is not required to pay  
27 before that date, the six-year period begins when a demand for payment is in effect and  
28 the due date has passed.

29 (f) An action to enforce the obligation of a party to pay an accepted draft, other  
30 than a certified check, must be commenced (i) within six years after the due date or dates  
31 stated in the draft or acceptance if the obligation of the acceptor is payable at a definite  
32 time, or (ii) within six years after the date of the acceptance if the obligation of the  
33 acceptor is payable on demand.

34 (g) Unless governed by other law regarding claims for indemnity or contribution,  
35 an action (i) for conversion of an instrument, for money had and received, or like action  
36 based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or  
37 right arising under this Article and not governed by this section must be commenced  
38 within three years after the cause of action accrues.

39 (h) A seal instrument otherwise subject to this Article is governed by the time  
40 limits of G.S. 1-47(2).

41 **"§ 25-3-119. Notice of right to defend action.**

42 In an action for breach of an obligation for which a third person is answerable over  
43 pursuant to this Article or Article 4, the defendant may give the third person written

1 notice of the litigation, and the person notified may then give similar notice to any other  
2 person who is answerable over. If the notice states (i) that the person notified may come  
3 in and defend and (ii) that failure to do so will bind the person notified in an action later  
4 brought by the person giving the notice as to any determination of fact common to the  
5 two litigations, the person notified is so bound unless, after reasonable receipt of the  
6 notice, the person notified does come in and defend.

7  
8 **"PART 2.**

9  
10 **"NEGOTIATION, TRANSFER, AND INDORSEMENT.**

11  
12 **"§ 25-3-201. Negotiation.**

13 (a) 'Negotiation' means a transfer of possession, whether voluntary or involuntary,  
14 of an instrument by a person other than the issuer to a person who thereby becomes its  
15 holder.

16 (b) Except for negotiation by a remitter, if an instrument is payable to an identified  
17 person, negotiation requires transfer of possession of the instrument and its indorsement  
18 by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of  
19 possession alone.

20 **"§ 25-3-202. Negotiation subject to rescission.**

21 (a) Negotiation is effective even if obtained (i) from an infant, a corporation  
22 exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or  
23 (iii) in breach of duty or as part of an illegal transaction.

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

28 **"§ 25-3-203. Transfer of instrument; rights acquired by transfer.**

29 (a) An instrument is transferred when it is delivered by a person other than its  
30 issuer for the purpose of giving to the person receiving delivery the right to enforce the  
31 instrument.

32 (b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in  
33 the transferee any right of the transferor to enforce the instrument, including any right as  
34 a holder in due course, but the transferee cannot acquire rights of a holder in due course  
35 by a transfer, directly or indirectly, from a holder in due course if the transferee engaged  
36 in fraud or illegality affecting the instrument.

37 (c) Unless otherwise agreed, if an instrument is transferred for value and the  
38 transferee does not become a holder because of lack of indorsement by the transferor, the  
39 transferee has a specifically enforceable right to the unqualified indorsement of the  
40 transferor, but negotiation of the instrument does not occur until the indorsement is made.

41 (d) If a transferor purports to transfer less than the entire instrument, negotiation of  
42 the instrument does not occur. The transferee obtains no rights under this Article and has  
43 only the rights of a partial assignee.

**"§ 25-3-204. Indorsement.**

(a) 'Indorsement' means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) 'Indorser' means a person who makes an indorsement.

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

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

**"§ 25-3-205. Special indorsement; blank indorsement; anomalous indorsement.**

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a 'special indorsement'. When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in G.S. 25-3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a 'blank indorsement'. When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) 'Anomalous indorsement' means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

**"§ 25-3-206. Restrictive indorsement.**

(a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition,

1 and the rights and liabilities of that person are not affected by whether the condition has  
2 been fulfilled.

3 (c) If an instrument bears an indorsement (i) described in G.S. 25-4-201(b), or (ii)  
4 in blank or to a particular bank using the words 'for deposit', 'for collection', or other  
5 words indicating a purpose of having the instrument collected by a bank for the indorser  
6 or for a particular account, the following rules apply:

7 (1) A person, other than a bank, who purchases the instrument when so  
8 indorsed converts the instrument unless the amount paid for the  
9 instrument is received by the indorser or applied consistently with the  
10 indorsement.

11 (2) A depository bank that purchases the instrument or takes it for collection  
12 when so indorsed converts the instrument unless the amount paid by the  
13 bank with respect to the instrument is received by the indorser or  
14 applied consistently with the indorsement.

15 (3) A payor bank that is also the depository bank or that takes the  
16 instrument for immediate payment over the counter from a person other  
17 than a collecting bank converts the instrument unless the proceeds of the  
18 instrument are received by the indorser or applied consistently with the  
19 indorsement.

20 (4) Except as otherwise provided in subdivision (3), a payor bank or  
21 intermediary bank may disregard the indorsement and is not liable if the  
22 proceeds of the instrument are not received by the indorser or applied  
23 consistently with the indorsement.

24 (d) Except for an indorsement covered by subsection (c) of this section, if an  
25 instrument bears an indorsement using words to the effect that payment is to be made to  
26 the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another  
27 person, the following rules apply:

28 (1) Unless there is notice of breach of fiduciary duty as provided in G.S. 25-  
29 3-307, a person who purchases the instrument from the indorsee or takes  
30 the instrument from the indorsee for collection or payment may pay the  
31 proceeds of payment or the value given for the instrument to the  
32 indorsee without regard to whether the indorsee violates a fiduciary duty  
33 to the indorser.

34 (2) A subsequent transferee of the instrument or person who pays the  
35 instrument is neither given notice nor otherwise affected by the  
36 restriction in the indorsement unless the transferee or payor knows that  
37 the fiduciary dealt with the instrument or its proceeds in breach of  
38 fiduciary duty.

39 (e) The presence on an instrument of an indorsement to which this section applies  
40 does not prevent a purchaser of the instrument from becoming a holder in due course of  
41 the instrument unless the purchaser is a converter under subsection (c) of this section or  
42 has notice or knowledge of breach of fiduciary duty as stated in subsection (d) of this  
43 section.

1 (f) In an action to enforce the obligation of a party to pay the instrument, the  
2 obligor has a defense if payment would violate an indorsement to which this section  
3 applies and the payment is not permitted by this section.

4 **"§ 25-3-207. Reacquisition.**

5 Reacquisition of an instrument occurs if it is transferred to a former holder by  
6 negotiation or otherwise. A former holder who reacquires the instrument may cancel  
7 indorsements made after the reacquirer first became a holder of the instrument. If the  
8 cancellation causes the instrument to be payable to the reacquirer or to bearer, the  
9 reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is  
10 discharged, and the discharge is effective against any subsequent holder.

11  
12 **"PART 3.**

13  
14 **"ENFORCEMENT OF INSTRUMENTS.**

15  
16 **"§ 25-3-301. Person entitled to enforce instrument.**

17 'Person entitled to enforce' an instrument means (i) the holder of the instrument, (ii) a  
18 nonholder in possession of the instrument who has the rights of a holder, or (iii) a person  
19 not in possession of the instrument who is entitled to enforce the instrument pursuant to  
20 G.S. 25-3-309 or G.S. 25-3-418(d). A person may be a person entitled to enforce the  
21 instrument even though the person is not the owner of the instrument or is in wrongful  
22 possession of the instrument.

23 **"§ 25-3-302. Holder in due course.**

24 (a) Subject to subsection (c) of this section and G.S. 25-3-106(d), 'holder in due  
25 course' means the holder of an instrument if:

- 26 (1) The instrument when issued or negotiated to the holder does not bear  
27 such apparent evidence of forgery or alteration or is not otherwise so  
28 irregular or incomplete as to call into question its authenticity; and  
29 (2) The holder took the instrument (i) for value, (ii) in good faith, (iii)  
30 without notice that the instrument is overdue or has been dishonored or  
31 that there is an uncured default with respect to payment of another  
32 instrument issued as part of the same series, (iv) without notice that the  
33 instrument contains an unauthorized signature or has been altered, (v)  
34 without notice of any claim to the instrument described in G.S. 25-3-  
35 306, and (vi) without notice that any party has a defense or claim in  
36 recoupment described in G.S. 25-3-305(a).

37 (b) Notice of discharge of a party, other than discharge in an insolvency  
38 proceeding, is not notice of a defense under subsection (a) of this section, but discharge is  
39 effective against a person who became a holder in due course with notice of the  
40 discharge. Public filing or recording of a document does not of itself constitute notice of  
41 a defense, claim in recoupment, or claim to the instrument.

42 (c) Except to the extent a transferor or predecessor in interest has rights as a holder  
43 in due course, a person does not acquire rights of a holder in due course of an instrument

1 taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or  
2 similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of  
3 business of the transferor, or (iii) as the successor in interest to an estate or other  
4 organization.

5 (d) If, under G.S. 25-3-303(a)(1), the promise of performance that is the  
6 consideration for an instrument has been partially performed, the holder may assert rights  
7 as a holder in due course of the instrument only to the fraction of the amount payable  
8 under the instrument equal to the value of the partial performance divided by the value of  
9 the promised performance.

10 (e) If (i) the person entitled to enforce an instrument has only a security interest in  
11 the instrument and (ii) the person obliged to pay the instrument has a defense, claim in  
12 recoupment, or claim to the instrument that may be asserted against the person who  
13 granted the security interest, the person entitled to enforce the instrument may assert  
14 rights as a holder in due course only to an amount payable under the instrument which, at  
15 the time of enforcement of the instrument, does not exceed the amount of the unpaid  
16 obligation secured.

17 (f) To be effective, notice must be received at a time and in a manner that gives a  
18 reasonable opportunity to act on it.

19 (g) This section is subject to any law limiting status as a holder in due course in  
20 particular classes of transactions.

21 **"§ 25-3-303. Value and consideration.**

22 (a) An instrument is issued or transferred for value if:

- 23 (1) The instrument is issued or transferred for a promise of performance, to  
24 the extent the promise has been performed;
- 25 (2) The transferee acquires a security interest or other lien in the instrument  
26 other than a lien obtained by judicial proceeding;
- 27 (3) The instrument is issued or transferred as payment of, or as security for,  
28 an antecedent claim against any person, whether or not the claim is due;
- 29 (4) The instrument is issued or transferred in exchange for a negotiable  
30 instrument; or
- 31 (5) The instrument is issued or transferred in exchange for the incurring of  
32 an irrevocable obligation to a third party by the person taking the  
33 instrument.

34 (b) 'Consideration' means any consideration sufficient to support a simple contract.  
35 The drawer or maker of an instrument has a defense if the instrument is issued without  
36 consideration. If an instrument is issued for a promise of performance, the issuer has a  
37 defense to the extent performance of the promise is due, and the promise has not been  
38 performed. If an instrument is issued for value as stated in subsection (a) of this section,  
39 the instrument is also issued for consideration.

40 **"§ 25-3-304. Overdue instrument.**

41 (a) An instrument payable on demand becomes overdue at the earliest of the  
42 following times:

- 43 (1) On the day after the day demand for payment is duly made;

- 1           (2) If the instrument is a check, 90 days after its date; or  
2           (3) If the instrument is not a check, when the instrument has been  
3                 outstanding for a period of time after its date which is unreasonably  
4                 long under the circumstances of the particular case in light of the nature  
5                 of the instrument and usage of the trade.  
6       (b) With respect to an instrument payable at a definite time the following rules  
7 apply:  
8           (1) If the principal is payable in installments and a due date has not been  
9                 accelerated, the instrument becomes overdue upon default under the  
10                instrument for nonpayment of an installment, and the instrument  
11                remains overdue until the default is cured.  
12           (2) If the principal is not payable in installments and the due date has not  
13                 been accelerated, the instrument becomes overdue on the day after the  
14                 due date.  
15           (3) If a due date with respect to principal has been accelerated, the  
16                 instrument becomes overdue on the day after the accelerated due date.  
17       (c) Unless the due date of principal has been accelerated, an instrument does not  
18 become overdue if there is default in payment of interest but no default in payment of  
19 principal.

20 **"§ 25-3-305. Defenses and claims in recoupment.**

- 21       (a) Except as stated in subsection (b) of this section, the right to enforce the  
22 obligation of a party to pay an instrument is subject to the following:  
23           (1) A defense of the obligor based on (i) infancy of the obligor to the extent  
24                 it is a defense to a simple contract, (ii) duress, lack of legal capacity, or  
25                 illegality of the transaction which, under other law, nullifies the  
26                 obligation of the obligor, (iii) fraud that induced the obligor to sign the  
27                 instrument with neither knowledge nor reasonable opportunity to learn  
28                 of its character or its essential terms, or (iv) discharge of the obligor in  
29                 insolvency proceedings;  
30           (2) A defense of the obligor stated in another section of this Article or a  
31                 defense of the obligor that would be available if the person entitled to  
32                 enforce the instrument were enforcing a right to payment under a simple  
33                 contract; and  
34           (3) A claim in recoupment of the obligor against the original payee of the  
35                 instrument if the claim arose from the transaction that gave rise to the  
36                 instrument; but the claim of the obligor may be asserted against a  
37                 transferee of the instrument only to reduce the amount owing on the  
38                 instrument at the time the action is brought.  
39       (b) The right of a holder in due course to enforce the obligation of a party to pay  
40 the instrument is subject to defenses of the obligor stated in subsection (a)(1) of this  
41 section, but is not subject to defenses of the obligor stated in subsection (a)(2) of this  
42 section or claims in recoupment stated in subsection (a)(3) of this section against a person  
43 other than the holder.

1       (c) Except as stated in subsection (d) of this section, in an action to enforce the  
2 obligation of a party to pay the instrument, the obligor may not assert against the person  
3 entitled to enforce the instrument a defense, claim in recoupment, or claim to the  
4 instrument (G.S. 25-3-306) of another person, but the other person's claim to the  
5 instrument may be asserted by the obligor if the other person is joined in the action and  
6 personally asserts the claim against the person entitled to enforce the instrument. An  
7 obligor is not obliged to pay the instrument if the person seeking enforcement of the  
8 instrument does not have rights of a holder in due course and the obligor proves that the  
9 instrument is a lost or stolen instrument.

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

16 **"§ 25-3-306. Claims to an instrument.**

17       A person taking an instrument, other than a person having rights of a holder in due  
18 course, is subject to a claim of a property or possessory right in the instrument or its  
19 proceeds, including a claim to rescind a negotiation and to recover the instrument or its  
20 proceeds. A person having rights of a holder in due course takes free of the claim to the  
21 instrument.

22 **"§ 25-3-307. Notice of breach of fiduciary duty.**

23       (a) In this section:

24           (1) 'Fiduciary' means an agent, trustee, partner, corporate officer or director,  
25 or other representative owing a fiduciary duty with respect to an  
26 instrument.

27           (2) 'Represented person' means the principal, beneficiary, partnership,  
28 corporation, or other person to whom the duty stated in subdivision (1)  
29 is owed.

30       (b) If (i) an instrument is taken from a fiduciary for payment or collection or for  
31 value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the  
32 represented person makes a claim to the instrument or its proceeds on the basis that the  
33 transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

34           (1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim  
35 of the represented person.

36           (2) In the case of an instrument payable to the represented person or the  
37 fiduciary as such, the taker has notice of the breach of fiduciary duty if  
38 the instrument is (i) taken in payment of or as security for a debt known  
39 by the taker to be the personal debt of the fiduciary, (ii) taken in a  
40 transaction known by the taker to be for the personal benefit of the  
41 fiduciary, or (iii) deposited to an account other than an account of the  
42 fiduciary, as such, or an account of the represented person.



1           (3) If an instrument is issued by the represented person or the fiduciary as  
2 such, and made payable to the fiduciary personally, the taker does not  
3 have notice of the breach of fiduciary duty unless the taker knows of the  
4 breach of fiduciary duty or knows such facts that his action in taking the  
5 instrument is not in good faith.

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

14 **"§ 25-3-308. Proof of signatures and status as holder in due course.**

15           (a) In an action with respect to an instrument, the authenticity of, and authority to  
16 make, each signature on the instrument is admitted unless specifically denied in the  
17 pleadings. If the validity of a signature is denied in the pleadings, the burden of  
18 establishing validity is on the person claiming validity, but the signature is presumed to  
19 be authentic and authorized unless the action is to enforce the liability of the purported  
20 signer and the signer is dead or incompetent at the time of trial of the issue of validity of  
21 the signature. If an action to enforce the instrument is brought against a person as the  
22 undisclosed principal of a person who signed the instrument as a party to the instrument,  
23 the plaintiff has the burden of establishing that the defendant is liable on the instrument  
24 as a represented person under G.S. 25-3-402(a).

25           (b) If the validity of signatures is admitted or proved and there is compliance with  
26 subsection (a) of this section, a plaintiff producing the instrument is entitled to payment if  
27 the plaintiff proves entitlement to enforce the instrument under G.S. 25-3-301, unless the  
28 defendant proves a defense or claim in recoupment. If a defense or claim in recoupment  
29 is proved, the right to payment of the plaintiff is subject to the defense or claim, except to  
30 the extent the plaintiff proves that the plaintiff has rights of a holder in due course which  
31 are not subject to the defense or claim.

32 **"§ 25-3-309. Enforcement of lost, destroyed, or stolen instrument.**

33           (a) A person not in possession of an instrument is entitled to enforce the  
34 instrument if (i) the person was in possession of the instrument and entitled to enforce it  
35 when loss of possession occurred, (ii) the loss of possession was not the result of a  
36 transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain  
37 possession of the instrument because the instrument was destroyed, its whereabouts  
38 cannot be determined, or it is in the wrongful possession of an unknown person or a  
39 person that cannot be found or is not amenable to service of process.

40           (b) A person seeking enforcement of an instrument under subsection (a) of this  
41 section must prove the terms of the instrument and the person's right to enforce the  
42 instrument. If that proof is made, G.S. 25-3-308 applies to the case as if the person  
43 seeking enforcement had produced the instrument. The court may not enter judgment in

1 favor of the person seeking enforcement unless it finds that the person required to pay the  
2 instrument is adequately protected against loss that might occur by reason of a claim by  
3 another person to enforce the instrument. Adequate protection may be provided by any  
4 reasonable means.

5 **"§ 25-3-310. Effect of instrument on obligation for which taken.**

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

11 (b) Unless otherwise agreed and except as provided in subsection (a) of this  
12 section, if a note or an uncertified check is taken for an obligation, the obligation is  
13 suspended to the same extent the obligation would be discharged if an amount of money  
14 equal to the amount of the instrument were taken, and the following rules apply:

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

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

22 (3) Except as provided in subdivision (4), if the check or note is dishonored  
23 and the obligee of the obligation for which the instrument was taken is  
24 the person entitled to enforce the instrument, the obligee may enforce  
25 either the instrument or the obligation. In the case of an instrument of a  
26 third person which is negotiated to the obligee by the obligor, discharge  
27 of the obligor on the instrument also discharges the obligation.

28 (4) If the person entitled to enforce the instrument taken for an obligation is  
29 a person other than the obligee, the obligee may not enforce the  
30 obligation to the extent the obligation is suspended. If the obligee is the  
31 person entitled to enforce the instrument but no longer has possession of  
32 it because it was lost, stolen, or destroyed, the obligation may not be  
33 enforced to the extent of the amount payable on the instrument, and to  
34 that extent the obligee's rights against the obligor are limited to  
35 enforcement of the instrument.

36 (c) If an instrument other than one described in subsection (a) or (b) of this section  
37 is taken for an obligation, the effect is (i) that stated in subsection (a) of this section if the  
38 instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in  
39 subsection (b) of this section in any other case.

40 **"§ 25-3-311. Accord and satisfaction by use of instrument.**

41 (a) If a person against whom a claim is asserted proves that (i) that person in good  
42 faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the

1 amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the  
2 claimant obtained payment of the instrument, the following subsections apply.

3 (b) Unless subsection (c) of this section applies, the claim is discharged if the  
4 person against whom the claim is asserted proves that the instrument or an accompanying  
5 written communication contained a conspicuous statement to the effect that the  
6 instrument was tendered as full satisfaction of the claim.

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

9 (1) The claimant, if an organization, proves that (i) within a reasonable time  
10 before the tender, the claimant sent a conspicuous statement to the  
11 person against whom the claim is asserted that communications  
12 concerning disputed debts, including an instrument tendered as full  
13 satisfaction of a debt, are to be sent to a designated person, office, or  
14 place, and (ii) the instrument or accompanying communication was not  
15 received by that designated person, office, or place.

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

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

26 **§ 25-3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified**  
27 **check.**

28 (a) In this section:

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

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

33 (3) 'Declaration of loss' means a written statement, made under penalty of  
34 perjury, to the effect that (i) the declarer lost possession of a check, (ii)  
35 the declarer is the drawer or payee of the check, in the case of a certified  
36 check, or the remitter or payee of the check, in the case of a cashier's  
37 check or teller's check, (iii) the loss of possession was not the result of a  
38 transfer by the declarer or a lawful seizure, and (iv) the declarer cannot  
39 reasonably obtain possession of the check because the check was  
40 destroyed, its whereabouts cannot be determined, or it is in the wrongful  
41 possession of an unknown person or a person that cannot be found or is  
42 not amenable to service of process.



1       (a) A person is not liable on an instrument unless (i) the person signed the  
2 instrument, or (ii) the person is represented by an agent or representative who signed the  
3 instrument and the signature is binding on the represented person under G.S. 25-3-402.

4       (b) A signature may be made (i) manually or by means of a device or machine, and  
5 (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or  
6 symbol executed or adopted by a person with present intention to authenticate a writing.

7 **"§ 25-3-402. Signature by representative.**

8       (a) If a person acting, or purporting to act, as a representative signs an instrument  
9 by signing either the name of the represented person or the name of the signer, the  
10 represented person is bound by the signature to the same extent the represented person  
11 would be bound if the signature were on a simple contract. If the represented person is  
12 bound, the signature of the representative is the 'authorized signature of the represented  
13 person' and the represented person is liable on the instrument, whether or not identified in  
14 the instrument.

15       (b) If a representative signs the name of the representative to an instrument and the  
16 signature is an authorized signature of the represented person, the following rules apply:

17           (1) If the form of the signature shows unambiguously that the signature is  
18 made on behalf of the represented person who is identified in the  
19 instrument, the representative is not liable on the instrument.

20           (2) Subject to subsection (c) of this section, if (i) the form of the signature  
21 does not show unambiguously that the signature is made in a  
22 representative capacity, or (ii) the represented person is not identified in  
23 the instrument, the representative is liable on the instrument to a holder  
24 in due course that took the instrument without notice that the  
25 representative was not intended to be liable on the instrument. With  
26 respect to any other person, the representative is liable on the instrument  
27 unless the representative proves that the original parties did not intend  
28 the representative to be liable on the instrument.

29       (c) If a representative signs the name of the representative as drawer of a check  
30 without indication of the representative status and the check is payable from an account  
31 of the represented person who is identified on the check, the signer is not liable on the  
32 check if the signature is an authorized signature of the represented person.

33 **"§ 25-3-403. Unauthorized signature.**

34       (a) Unless otherwise provided in this Article or Article 4, an unauthorized  
35 signature is ineffective except as the signature of the unauthorized signer in favor of a  
36 person who in good faith pays the instrument or takes it for value. An unauthorized  
37 signature may be ratified for all purposes of this Article.

38       (b) If the signature of more than one person is required to constitute the authorized  
39 signature of an organization, the signature of the organization is unauthorized if one of  
40 the required signatures is lacking.

41       (c) The civil or criminal liability of a person who makes an unauthorized signature  
42 is not affected by any provision of this Article which makes the unauthorized signature  
43 effective for the purposes of this Article.

1 **"§ 25-3-404. Impostors; fictitious payees.**

2 (a) If an impostor, by use of the mails or otherwise, induces the issuer of an  
3 instrument to issue the instrument to the impostor, or to a person acting in concert with  
4 the impostor, by impersonating the payee of the instrument or a person authorized to act  
5 for the payee, an indorsement of the instrument by any person in the name of the payee is  
6 effective as the indorsement of the payee in favor of a person who, in good faith, pays the  
7 instrument or takes it for value or for collection.

8 (b) If (i) a person whose intent determines to whom an instrument is payable (G.S.  
9 25-3-110(a) or (b)) does not intend the person identified as payee to have any interest in  
10 the instrument, or (ii) the person identified as payee of an instrument is a fictitious  
11 person, the following rules apply until the instrument is negotiated by special  
12 indorsement:

13 (1) Any person in possession of the instrument is its holder.

14 (2) An indorsement by any person in the name of the payee stated in the  
15 instrument is effective as the indorsement of the payee in favor of a  
16 person who, in good faith, pays the instrument or takes it for value or  
17 for collection.

18 (c) Under subsection (a) or (b) of this section, an indorsement is made in the name  
19 of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the  
20 instrument, whether or not indorsed, is deposited in a depository bank to an account in a  
21 name substantially similar to that of the payee.

22 (d) With respect to an instrument to which subsection (a) or (b) of this section  
23 applies, if a person paying the instrument or taking it for value or for collection fails to  
24 exercise ordinary care in paying or taking the instrument and that failure substantially  
25 contributes to loss resulting from payment of the instrument, the person bearing the loss  
26 may recover from the person failing to exercise ordinary care to the extent the failure to  
27 exercise ordinary care contributed to the loss.

28 **"§ 25-3-405. Employer's responsibility for fraudulent indorsement by employee.**

29 (a) In this section:

30 (1) 'Employee' includes an independent contractor and employee of an  
31 independent contractor retained by the employer.

32 (2) 'Fraudulent indorsement' means (i) in the case of an instrument payable  
33 to the employer, a forged indorsement purporting to be that of the  
34 employer, or (ii) in the case of an instrument with respect to which the  
35 employer is the issuer, a forged indorsement purporting to be that of the  
36 person identified as payee.

37 (3) 'Responsibility' with respect to instruments means authority (i) to sign  
38 or indorse instruments on behalf of the employer, (ii) to process  
39 instruments received by the employer for bookkeeping purposes, for  
40 deposit to an account, or for other disposition, (iii) to prepare or process  
41 instruments for issue in the name of the employer, (iv) to supply  
42 information determining the names or addresses of payees of  
43 instruments to be issued in the name of the employer, (v) to control the

1 disposition of instruments to be issued in the name of the employer, or  
2 (vi) to act otherwise with respect to instruments in a responsible  
3 capacity. 'Responsibility' does not include authority that merely allows  
4 an employee to have access to instruments or blank or incomplete  
5 instrument forms that are being stored or transported or are part of  
6 incoming or outgoing mail, or similar access.

7 (b) For the purpose of determining the rights and liabilities of a person who, in  
8 good faith, pays an instrument or takes it for value or for collection, if an employer  
9 entrusted an employee with responsibility with respect to the instrument and the  
10 employee or a person acting in concert with the employee makes a fraudulent  
11 indorsement of the instrument, the indorsement is effective as the indorsement of the  
12 person to whom the instrument is payable if it is made in the name of that person. If the  
13 person paying the instrument or taking it for value or for collection fails to exercise  
14 ordinary care in paying or taking the instrument and that failure substantially contributes  
15 to loss resulting from the fraud, the person bearing the loss may recover from the person  
16 failing to exercise ordinary care to the extent the failure to exercise ordinary care  
17 contributed to the loss.

18 (c) Under subsection (b) of this section, an indorsement is made in the name of the  
19 person to whom an instrument is payable if (i) it is made in a name substantially similar  
20 to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a  
21 depository bank to an account in a name substantially similar to the name of that person.

22 **"§ 25-3-406. Negligence contributing to forged signature or alteration of**  
23 **instrument.**

24 (a) A person whose failure to exercise ordinary care substantially contributes to an  
25 alteration of an instrument or to the making of a forged signature on an instrument is  
26 precluded from asserting the alteration or the forgery against a person who, in good faith,  
27 pays the instrument or takes it for value or for collection.

28 (b) Under subsection (a) of this section, if the person asserting the preclusion fails  
29 to exercise ordinary care in paying or taking the instrument and that failure substantially  
30 contributes to loss, the loss is allocated between the person precluded and the person  
31 asserting the preclusion according to the extent to which the failure of each to exercise  
32 ordinary care contributed to the loss.

33 (c) Under subsection (a) of this section, the burden of proving failure to exercise  
34 ordinary care is on the person asserting the preclusion. Under subsection (b) of this  
35 section, the burden of proving failure to exercise ordinary care is on the person precluded.

36 **"§ 25-3-407. Alteration.**

37 (a) 'Alteration' means (i) an unauthorized change in an instrument that purports to  
38 modify in any respect the obligation of a party, or (ii) an unauthorized addition of words  
39 or numbers or other change to an incomplete instrument relating to the obligation of a  
40 party.

41 (b) Except as provided in subsection (c) of this section, an alteration fraudulently  
42 made discharges a party whose obligation is affected by the alteration unless that party

1 assents or is precluded from asserting the alteration. No other alteration discharges a  
2 party, and the instrument may be enforced according to its original terms.

3 (c) A payor bank or drawee paying a fraudulently altered instrument or a person  
4 taking it for value, in good faith and without notice of the alteration, may enforce rights  
5 with respect to the instrument (i) according to its original terms, or (ii) in the case of an  
6 incomplete instrument altered by unauthorized completion, according to its terms as  
7 completed.

8 **"§ 25-3-408. Drawee not liable on unaccepted draft.**

9 A check or other draft does not of itself operate as an assignment of funds in the  
10 hands of the drawee available for its payment, and the drawee is not liable on the  
11 instrument until the drawee accepts it.

12 **"§ 25-3-409. Acceptance of draft; certified check.**

13 (a) 'Acceptance' means the drawee's signed agreement to pay a draft as presented.  
14 It must be written on the draft and may consist of the drawee's signature alone.  
15 Acceptance may be made at any time and becomes effective when notification pursuant  
16 to instructions is given or the accepted draft is delivered for the purpose of giving rights  
17 on the acceptance to any person.

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

20 (c) If a draft is payable at a fixed period after sight and the acceptor fails to date  
21 the acceptance, the holder may complete the acceptance by supplying a date in good  
22 faith.

23 (d) 'Certified check' means a check accepted by the bank on which it is drawn.  
24 Acceptance may be made as stated in subsection (a) of this section or by a writing on the  
25 check which indicates that the check is certified. The drawee of a check has no  
26 obligation to certify the check, and refusal to certify is not dishonor of the check.

27 **"§ 25-3-410. Acceptance varying draft.**

28 (a) If the terms of a drawee's acceptance vary from the terms of the draft as  
29 presented, the holder may refuse the acceptance and treat the draft as dishonored. In that  
30 case, the drawee may cancel the acceptance.

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

34 (c) If the holder assents to an acceptance varying the terms of a draft, the  
35 obligation of each drawer and indorser that does not expressly assent to the acceptance is  
36 discharged.

37 **"§ 25-3-411. Refusal to pay cashier's checks, teller's checks, and certified checks.**

38 (a) In this section, 'obligated bank' means the acceptor of a certified check or the  
39 issuer of a cashier's check or teller's check bought from the issuer.

40 (b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified  
41 check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's  
42 check, the person asserting the right to enforce the check is entitled to compensation for  
43 expenses and loss of interest resulting from the nonpayment and may recover



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

3 (c) Expenses or consequential damages under subsection (b) of this section are not  
4 recoverable if the refusal of the obligated bank to pay occurs because (i) the bank  
5 suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it  
6 has reasonable grounds to believe is available against the person entitled to enforce the  
7 instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding  
8 payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by  
9 law.

10 **"§ 25-3-412. Obligation of issuer of note or cashier's check.**

11 The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to  
12 pay the instrument (i) according to its terms at the time it was issued or, if not  
13 issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an  
14 incomplete instrument, according to its terms when completed, to the extent stated in  
15 G.S. 25-3-115 and G.S. 25-3-407. The obligation is owed to a person entitled to enforce  
16 the instrument or to an indorser who paid the instrument under G.S. 25-3-415.

17 **"§ 25-3-413. Obligation of acceptor.**

18 (a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at  
19 the time it was accepted, even though the acceptance states that the draft is payable 'as  
20 originally drawn' or equivalent terms, (ii) if the acceptance varies the terms of the  
21 draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft  
22 that is an incomplete instrument, according to its terms when completed, to the extent  
23 stated in G.S. 25-3-115 and G.S. 25-3-407. The obligation is owed to a person entitled to  
24 enforce the draft or to the drawer or an indorser who paid the draft under G.S. 25-3-414  
25 or G.S. 25-3-415.

26 (b) If the certification of a check or other acceptance of a draft states the amount  
27 certified or accepted, the obligation of the acceptor is that amount. If (i) the certification  
28 or acceptance does not state an amount, (ii) the amount of the instrument is subsequently  
29 raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation  
30 of the acceptor is the amount of the instrument at the time it was taken by the holder in  
31 due course.

32 **"§ 25-3-414. Obligation of drawer.**

33 (a) This section does not apply to cashier's checks or other drafts drawn on the  
34 drawer.

35 (b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i)  
36 according to its terms at the time it was issued or, if not issued, at the time it first came  
37 into possession of a holder, or (ii) if the drawer signed an incomplete instrument,  
38 according to its terms when completed, to the extent stated in G.S. 25-3-115 and G.S. 25-  
39 3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser  
40 who paid the draft under G.S. 25-3-415.

41 (c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or  
42 by whom acceptance was obtained.

1 (d) If a draft is accepted and the acceptor is not a bank, the obligation of the  
2 drawer to pay the draft if the draft is dishonored by the acceptor is the same as the  
3 obligation of an indorser under G.S. 25-3-415(a) and (c).

4 (e) If a draft states that it is drawn 'without recourse' or otherwise disclaims  
5 liability of the drawer to pay the draft, the drawer is not liable under subsection (b) of this  
6 section to pay the draft if the draft is not a check. A disclaimer of the liability stated in  
7 subsection (b) of this section is not effective if the draft is a check.

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

15 **"§ 25-3-415. Obligation of indorser.**

16 (a) Subject to subsections (b), (c), and (d) of this section and to G.S. 25-3-419(d),  
17 if an instrument is dishonored, an indorser is obliged to pay the amount due on the  
18 instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii)  
19 if the indorser indorsed an incomplete instrument, according to its terms when completed,  
20 to the extent stated in G.S. 25-3-115 and G.S. 25-3-407. The obligation of the indorser is  
21 owed to a person entitled to enforce the instrument or to a subsequent indorser who paid  
22 the instrument under this section.

23 (b) If an indorsement states that it is made 'without recourse' or otherwise  
24 disclaims liability of the indorser, the indorser is not liable under subsection (a) of this  
25 section to pay the instrument.

26 (c) If notice of dishonor of an instrument is required by G.S. 25-3-503 and notice  
27 of dishonor complying with that section is not given to an indorser, the liability of the  
28 indorser under subsection (a) of this section is discharged.

29 (d) If a draft is accepted by a bank after an indorsement is made, the liability of the  
30 indorser under subsection (a) of this section is discharged.

31 (e) If an indorser of a check is liable under subsection (a) of this section and the  
32 check is not presented for payment, or given to a depository bank for collection, within  
33 30 days after the day the indorsement was made, the liability of the indorser under  
34 subsection (a) of this section is discharged.

35 **"§ 25-3-416. Transfer warranties.**

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

38 (1) The warrantor is a person entitled to enforce the instrument;

39 (2) All signatures on the instrument are authentic and authorized;

40 (3) The instrument has not been altered;

41 (4) The instrument is not subject to a defense or claim in recoupment of any  
42 party which can be asserted against the warrantor; and

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

4           (b) A person to whom the warranties under subsection (a) of this section are made  
5           and who took the instrument in good faith may recover from the warrantor as damages  
6           for breach of warranty an amount equal to the loss suffered as a result of the breach, but  
7           not more than the amount of the instrument plus expenses and loss of interest incurred as  
8           a result of the breach.

9           (c) The warranties stated in subsection (a) of this section cannot be disclaimed  
10          with respect to checks. Unless notice of a claim for breach of warranty is given to the  
11          warrantor within 30 days after the claimant has reason to know of the breach and the  
12          identity of the warrantor, the liability of the warrantor under subsection (b) of this section  
13          is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

16          **"§ 25-3-417. Presentment warranties.**

17          (a) If an unaccepted draft is presented to the drawee for payment or acceptance  
18          and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance,  
19          at the time of presentment, and (ii) a previous transferor of the draft, at the time of  
20          transfer, warrant to the drawee making payment or accepting the draft in good faith that:

21               (1) The warrantor is, or was, at the time the warrantor transferred the draft,  
22               a person entitled to enforce the draft or authorized to obtain payment or  
23               acceptance of the draft on behalf of a person entitled to enforce the  
24               draft;

25               (2) The draft has not been altered; and

26               (3) The warrantor has no knowledge that the signature of the drawer of the  
27               draft is unauthorized.

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

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

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

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

9           (2) The person making payment may recover from any warrantor for breach  
10 of warranty an amount equal to the amount paid plus expenses and loss  
11 of interest resulting from the breach.

12       (e) The warranties stated in subsections (a) and (d) of this section cannot be  
13 disclaimed with respect to checks. Unless notice of a claim for breach of warranty is  
14 given to the warrantor within 30 days after the claimant has reason to know of the breach  
15 and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d)  
16 of this section is discharged to the extent of any loss caused by the delay in giving notice  
17 of the claim.

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

20 **"§ 25-3-418. Payment or acceptance by mistake.**

21       (a) Except as provided in subsection (c) of this section, if the drawee of a draft  
22 pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of  
23 the draft had not been stopped pursuant to G.S. 25-4-403 or (ii) the signature of the  
24 drawer of the draft was authorized, the drawee may recover the amount of the draft from  
25 the person to whom or for whose benefit payment was made or, in the case of acceptance,  
26 may revoke the acceptance. Rights of the drawee under this subsection are not affected  
27 by failure of the drawee to exercise ordinary care in paying or accepting the draft.

28       (b) Except as provided in subsection (c) of this section, if an instrument has been  
29 paid or accepted by mistake and the case is not covered by subsection (a) of this section,  
30 the person paying or accepting may, to the extent permitted by the law governing mistake  
31 and restitution, (i) recover the payment from the person to whom or for whose benefit  
32 payment was made or (ii) in the case of acceptance, may revoke the acceptance.

33       (c) The remedies provided by subsection (a) or (b) of this section may not be  
34 asserted against a person who took the instrument in good faith and for value or who in  
35 good faith changed position in reliance on the payment or acceptance. This subsection  
36 does not limit remedies provided by G.S. 25-3-417, 25-4-208, or 25-4-407.

37       (d) Notwithstanding G.S. 25-4-215, if an instrument is paid or accepted by mistake  
38 and the payor or acceptor recovers payment or revokes acceptance under subsection (a)  
39 or (b) of this section, the instrument is deemed not to have been paid or accepted and is  
40 treated as dishonored, and the person from whom payment is recovered has rights as a  
41 person entitled to enforce the dishonored instrument.

42 **"§ 25-3-419. Instruments signed for accommodation.**

1       (a) If an instrument is issued for value given for the benefit of a party to the  
2 instrument, the 'accommodated party', and another party to the instrument, the  
3 'accommodation party', signs the instrument for the purpose of incurring liability on the  
4 instrument without being a direct beneficiary of the value given for the instrument, the  
5 instrument is signed by the accommodation party 'for accommodation'.

6       (b) An accommodation party may sign the instrument as maker, drawer, acceptor,  
7 or indorser and, subject to subsection (d) of this section, is obliged to pay the instrument  
8 in the capacity in which the accommodation party signs. The obligation of an  
9 accommodation party may be enforced notwithstanding any statute of frauds and whether  
10 or not the accommodation party receives consideration for the accommodation.

11       (c) A person signing an instrument is presumed to be an accommodation party and  
12 there is notice that the instrument is signed for accommodation if the signature is an  
13 anomalous indorsement or is accompanied by words indicating that the signer is acting as  
14 surety or guarantor with respect to the obligation of another party to the instrument.  
15 Except as provided in G.S. 25-3-605, the obligation of an accommodation party to pay  
16 the instrument is not affected by the fact that the person enforcing the obligation had  
17 notice when the instrument was taken by that person that the accommodation party  
18 signed the instrument for accommodation.

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

27       (e) An accommodation party who pays the instrument is entitled to reimbursement  
28 from the accommodated party and is entitled to enforce the instrument against the  
29 accommodated party. An accommodated party who pays the instrument has no right of  
30 recourse against, and is not entitled to contribution from, an accommodation party.

31 **"§ 25-3-420. Conversion of instrument.**

32       (a) The law applicable to conversion of personal property applies to instruments.  
33 An instrument is also converted if it is taken by transfer, other than a negotiation, from a  
34 person not entitled to enforce the instrument or a bank makes or obtains payment with  
35 respect to the instrument for a person not entitled to enforce the instrument or receive  
36 payment. An action for conversion of an instrument may not be brought by (i) the issuer  
37 or acceptor of the instrument, or (ii) a payee or indorsee who did not receive delivery of  
38 the instrument either directly or through delivery to an agent or a co-payee.

39       (b) In an action under subsection (a) of this section, the measure of liability is  
40 presumed to be the amount payable on the instrument, but recovery may not exceed the  
41 amount of the plaintiff's interest in the instrument.

42       (c) A representative, other than a depository bank, who has in good faith dealt with  
43 an instrument or its proceeds on behalf of one who was not the person entitled to enforce

1 the instrument is not liable in conversion to that person beyond the amount of any  
2 proceeds that it has not paid out.

3  
4 **"PART 5.**

5  
6 **"DISHONOR.**

7  
8 **"§ 25-3-501. Presentment.**

9 (a) 'Presentment' means a demand made by or on behalf of a person entitled to  
10 enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to  
11 pay the instrument or, in the case of a note or accepted draft payable at a bank, to the  
12 bank, or (ii) to accept a draft made to the drawee.

13 (b) The following rules are subject to Article 4, agreement of the parties, and  
14 clearing-house rules and the like:

15 (1) Presentment may be made at the place of payment of the instrument and  
16 must be made at the place of payment if the instrument is payable at a  
17 bank in the United States; may be made by any commercially  
18 reasonable means, including an oral, written, or electronic  
19 communication; is effective when the demand for payment or  
20 acceptance is received by the person to whom presentment is made; and  
21 is effective if made to any one of two or more makers, acceptors,  
22 drawees, or other payors.

23 (2) Upon demand of the person to whom presentment is made, the person  
24 making presentment must (i) exhibit the instrument, (ii) give reasonable  
25 identification and, if presentment is made on behalf of another person,  
26 reasonable evidence of authority to do so, and (iii) sign a receipt on the  
27 instrument for any payment made or surrender the instrument if full  
28 payment is made.

29 (3) Without dishonoring the instrument, the party to whom presentment is  
30 made may (i) return the instrument for lack of a necessary indorsement,  
31 or (ii) refuse payment or acceptance for failure of the presentment to  
32 comply with the terms of the instrument, an agreement of the parties, or  
33 other applicable law or rule.

34 (4) The party to whom presentment is made may treat presentment as  
35 occurring on the next business day after the day of presentment if the  
36 party to whom presentment is made has established a cutoff hour not  
37 earlier than 2:00 p.m. for the receipt and processing of instruments  
38 presented for payment or acceptance and presentment is made after the  
39 cutoff hour.

40 **"§ 25-3-502. Dishonor.**

41 (a) Dishonor of a note is governed by the following rules:

- 1           (1) If the note is payable on demand, the note is dishonored if presentment  
2 is duly made to the maker and the note is not paid on the day of  
3 presentment.
- 4           (2) If the note is not payable on demand and is payable at or through a bank  
5 or the terms of the note require presentment, the note is dishonored if  
6 presentment is duly made and the note is not paid on the day it becomes  
7 payable or the day of presentment, whichever is later.
- 8           (3) If the note is not payable on demand and subdivision (2) does not apply,  
9 the note is dishonored if it is not paid on the day it becomes payable.
- 10       (b) Dishonor of an unaccepted draft other than a documentary draft is governed by  
11 the following rules:
- 12           (1) If a check is duly presented for payment to the payor bank otherwise  
13 than for immediate payment over the counter, the check is dishonored if  
14 the payor bank makes timely return of the check or sends timely notice  
15 of dishonor or nonpayment under G.S. 25-4-301 or G.S. 25-4-302, or  
16 becomes accountable for the amount of the check under G.S. 25-4-302.
- 17           (2) If a draft is payable on demand and subdivision (1) does not apply, the  
18 draft is dishonored if presentment for payment is duly made to the  
19 drawee and the draft is not paid on the day of presentment.
- 20           (3) If a draft is payable on a date stated in the draft, the draft is dishonored  
21 if (i) presentment for payment is duly made to the drawee and payment  
22 is not made on the day the draft becomes payable or the day of  
23 presentment, whichever is later, or (ii) presentment for acceptance is  
24 duly made before the day the draft becomes payable and the draft is not  
25 accepted on the day of presentment.
- 26           (4) If a draft is payable on elapse of a period of time after sight or  
27 acceptance, the draft is dishonored if presentment for acceptance is duly  
28 made and the draft is not accepted on the day of presentment.
- 29       (c) Dishonor of an unaccepted documentary draft occurs according to the rules  
30 stated in subdivisions (2), (3), and (4) of subsection (b), except that payment or  
31 acceptance may be delayed without dishonor until no later than the close of the third  
32 business day of the drawee following the day on which payment or acceptance is required  
33 by those subdivisions.
- 34       (d) Dishonor of an accepted draft is governed by the following rules:
- 35           (1) If the draft is payable on demand, the draft is dishonored if presentment  
36 for payment is duly made to the acceptor and the draft is not paid on the  
37 day of presentment.
- 38           (2) If the draft is not payable on demand, the draft is dishonored if  
39 presentment for payment is duly made to the acceptor and payment is  
40 not made on the day it becomes payable or the day of presentment,  
41 whichever is later.

1 (e) In any case in which presentment is otherwise required for dishonor under this  
2 section and presentment is excused under G.S. 25-3-504, dishonor occurs without  
3 presentment if the instrument is not duly accepted or paid.

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

7 **"§ 25-3-503. Notice of dishonor.**

8 (a) The obligation of an indorser stated in G.S. 25-3-415(a) and the obligation of a  
9 drawer stated in G.S. 25-3-414(d) may not be enforced unless (i) the indorser or drawer is  
10 given notice of dishonor of the instrument complying with this section or (ii) notice of  
11 dishonor is excused under G.S. 25-3-504(b).

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

17 (c) Subject to G.S. 25-3-504(c), with respect to an instrument taken for collection  
18 by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of  
19 the next banking day following the banking day on which the bank receives notice of  
20 dishonor of the instrument, or (ii) by any other person within 30 days following the day  
21 on which the person receives notice of dishonor. With respect to any other instrument,  
22 notice of dishonor must be given within 30 days following the day on which dishonor  
23 occurs.

24 **"§ 25-3-504. Excused presentment and notice of dishonor.**

25 (a) Presentment for payment or acceptance of an instrument is excused if (i) the  
26 person entitled to present the instrument cannot with reasonable diligence make  
27 presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument  
28 or is in insolvency proceedings or is dead, (iii) by the terms of the instrument presentment  
29 is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or  
30 indorser whose obligation is being enforced has waived presentment or otherwise has no  
31 reason to expect or right to require that the instrument be paid or accepted, or (v) the  
32 drawer instructed the drawee not to pay or accept the draft or the drawee was not  
33 obligated to the drawer to pay the draft.

34 (b) Notice of dishonor is excused if (i) by the terms of the instrument notice of  
35 dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii)  
36 the party whose obligation is being enforced waived notice of dishonor. A waiver of  
37 presentment is also a waiver of notice of dishonor.

38 (c) Delay in giving notice of dishonor is excused if the delay was caused by  
39 circumstances beyond the control of the person giving the notice and the person giving  
40 the notice exercised reasonable diligence after the cause of the delay ceased to operate.

41 **"§ 25-3-505. Evidence of dishonor.**

42 (a) The following are admissible as evidence and create a presumption of dishonor  
43 and of any notice of dishonor stated:



- 1           (1) A document regular in form as provided in subsection (b) of this section  
2           which purports to be a protest.
- 3           (2) A purported stamp or writing of the drawee, payor bank, or presenting  
4           bank on or accompanying the instrument stating that acceptance or  
5           payment has been refused unless reasons for the refusal are stated and  
6           the reasons are not consistent with dishonor.
- 7           (3) A book or record of the drawee, payor bank, or collecting bank, kept in  
8           the usual course of business which shows dishonor, even if there is no  
9           evidence of who made the entry.

10       (b) A protest is a certificate of dishonor made by a United States consul or vice-  
11 consul, or a notary public or other person authorized to administer oaths by the law of the  
12 place where dishonor occurs. It may be made upon information satisfactory to that  
13 person. The protest must identify the instrument and certify either that presentment has  
14 been made or, if not made, the reason why it was not made, and that the instrument has  
15 been dishonored by nonacceptance or nonpayment. The protest may also certify that  
16 notice of dishonor has been given to some or all parties.

17 **"§ 25-3-506. Collection of processing fee for returned checks.**

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

- 23           (1) Was conspicuously posted on or in the immediate vicinity of the cash  
24           register or other place where the check is received;
- 25           (2) Was in plain view of anyone paying for goods or services by check;
- 26           (3) Was no smaller than 8 by 11 inches; and
- 27           (4) Stated the amount of the fee that would be charged for returned checks.

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

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

40  
41                                   **"PART 6.**

42  
43                                   **"DISCHARGE AND PAYMENT.**

1  
2 **"§ 25-3-601. Discharge and effect of discharge.**

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

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

9 **"§ 25-3-602. Payment.**

10 (a) Subject to subsection (b) of this section, an instrument is paid to the extent  
11 payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a  
12 person entitled to enforce the instrument. To the extent of the payment, the obligation of  
13 the party obliged to pay the instrument is discharged even though payment is made with  
14 knowledge of a claim to the instrument under G.S. 25-3-306 by another person.

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

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

25 (2) The person making payment knows that the instrument is a stolen  
26 instrument and pays a person it knows is in wrongful possession of the  
27 instrument.

28 **"§ 25-3-603. Tender of payment.**

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

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

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

42 **"§ 25-3-604. Discharge by cancellation or renunciation.**

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

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

9 **"§ 25-3-605. Discharge of indorsers and accommodation parties.**

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

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

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

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

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

40 (f) If the obligation of a party is secured by an interest in collateral not provided  
41 by an accommodation party and a person entitled to enforce the instrument impairs the  
42 value of the interest in collateral, the obligation of any party who is jointly and severally  
43 liable with respect to the secured obligation is discharged to the extent the impairment

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

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

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

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

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

23  
24 "ARTICLE 4.

25  
26 "BANK DEPOSITS AND COLLECTIONS.

27  
28 "PART 1.

29  
30 "GENERAL PROVISIONS AND DEFINITIONS.

31  
32 "§ 25-4-101. Short title.

33 This ~~article shall be known and~~ Article may be cited as Uniform Commercial Code –  
34 Bank Deposits and Collections.

35 "§ 25-4-102. Applicability.

36 (1) (a) To the extent that items within this ~~article~~ Article are also within the scope of  
37 ~~articles~~ Articles 3 and 8, they are subject to the provisions of those ~~articles~~ Articles. In the  
38 event of conflict the provisions of ~~If there is conflict, this article govern those of~~ Article  
39 ~~governs article 3~~ Article 3, but the provisions of ~~article~~ Article 8 ~~govern those of~~ governs this  
40 ~~article~~ Article.

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

1 ~~action-nonaction~~ by or at a branch or separate office of a bank, its liability is governed by  
2 the law of the place where the branch or separate office is located.

3 **"§ 25-4-103. Variation by agreement; measure of damages; ~~certain-action~~  
4 constituting ordinary care.**

5 (1) (a) The effect of the provisions of this ~~article~~-Article may be varied by  
6 ~~agreement except that no agreement can~~-agreement, but the parties to the agreement cannot  
7 disclaim a bank's responsibility for its ~~own~~-lack of good faith or failure to exercise  
8 ordinary care or ~~can~~-limit the measure of damages for ~~such~~-the lack or ~~failure~~-but-failure.  
9 However, the parties may determine by agreement ~~determine~~-the standards by which ~~such~~  
10 the bank's responsibility is to be measured if ~~such~~-those standards are not manifestly  
11 unreasonable.

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

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

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

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

29 **"§ 25-4-104. Definitions and index of definitions.**

30 (1) (a) In this ~~article~~-Article, unless the context otherwise ~~requires~~-requires:

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

35 (b) (2) 'Afternoon' means the period of a day between noon and  
36 ~~midnight;~~-midnight.

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

40 (d) (4) 'Clearing house' means ~~any~~-an association of banks or other  
41 payors regularly clearing ~~items;~~-items.  
42

- 1       ~~(e)~~           (5)     'Customer' means ~~any a~~ person having an account with a bank  
2                    or for whom a bank has agreed to collect ~~items and includes items,~~  
3                    including a bank carrying that maintains an account with at another  
4                    ~~bank; bank.~~
- 5       ~~(f)~~           (6)     'Documentary draft' means ~~any negotiable or nonnegotiable~~  
6                    ~~draft with accompanying documents, securities or other papers to be~~  
7                    ~~delivered against honor of the draft; a draft to be presented for~~  
8                    acceptance or payment if specified documents, certificated securities  
9                    (G.S. 25-8-102) or instructions for uncertificated securities (G.S. 25-  
10                   8-308), or other certificates, statements, or the like are to be received  
11                   by the drawee or other payor before acceptance or payment of the  
12                    draft.
- 13       (7)     'Draft' means a draft as defined in G.S. 25-3-104 or an item, other than  
14                    an instrument, that is an order.
- 15       (8)     'Drawee' means a person ordered in a draft to make payment.
- 16       ~~(g)~~           (9)     'Item' means ~~any instrument for the payment of money even~~  
17                    ~~though it is not negotiable but does not include money; an instrument or a~~  
18                    promise or order to pay money handled by a bank for collection or  
19                    payment. The term does not include a payment order governed by  
20                    Article 4A or a credit or debit card slip.
- 21       ~~(h)~~           (10)    'Midnight deadline' with respect to a bank is midnight on its  
22                    next banking day following the banking day on which it receives the  
23                    relevant item or notice or from which the time for taking action  
24                    commences to run, whichever is ~~later; later.~~
- 25       ~~(i)~~     'Properly payable' ~~includes the availability of funds for payment at the time of~~  
26                    ~~decision to pay or dishonor;~~
- 27       ~~(j)~~           (11)    'Settle' means to pay in cash, by ~~clearing house clearing-house~~  
28                    settlement, in a charge or ~~credit or credit,~~ by remittance, or otherwise  
29                    as ~~instructed agreed.~~ A settlement may be either provisional or ~~final;~~  
30                    final.
- 31       ~~(k)~~           (12)    'Suspends payments' with respect to a bank means that it has  
32                    been closed by order of the supervisory authorities, that a public  
33                    officer has been appointed to take it ~~over over,~~ or that it ceases or  
34                    refuses to make payments in the ordinary course of business.
- 35       ~~(2)~~    (b) Other definitions applying to this ~~article Article~~ and the sections in which  
36                    they appear are:
- 37                    'Agreement for electronic  
38                    presentment'     G.S. 25-4-110.  
39                    'Bank' G.S. 25-4-105.  
40                    'Collecting bank' G.S. 25-4-105.  
41                    'Depository bank'     G.S. 25-4-105.  
42                    'Intermediary bank'   G.S. 25-4-105.  
43                    'Payor bank'         G.S. 25-4-105.

- 1 'Presenting bank' G.S. 25-4-105.  
 2 'Presentment notice' G.S. 25-4-110.  
 3 '~~Remitting bank~~' ~~G.S. 25-4-105.~~  
 4 (3) (c) ~~The following definitions in other articles—Articles apply to this article:~~  
 5 Article:  
 6 'Acceptance' ~~G.S. 25-3-410.~~ G.S. 25-3-409.  
 7  
 8 'Alteration' G.S. 25-3-407.  
 9 'Cashier's check' G.S. 25-3-104.  
 10 'Certificate of deposit' G.S. 25-3-104.  
 11 '~~Certification~~' ~~G.S. 25-3-411.~~  
 12 'Certified check' G.S. 25-3-409.  
 13 'Check' G.S. 25-3-104.  
 14 'Good faith' G.S. 25-3-103.  
 15 'Draft' G.S. 25-3-104.  
 16 'Holder in due course' G.S. 25-3-302.  
 17 'Instrument' G.S. 25-3-104.  
 18 '~~Notice of dishonor~~' ~~G.S. 25-3-508.~~ G.S. 25-3-503.  
 19  
 20 'Order' G.S. 25-3-103.  
 21 'Ordinary care' G.S. 25-3-103.  
 22 'Person entitled to enforce' G.S. 25-3-301.  
 23 'Presentment' ~~G.S. 25-3-504.~~ G.S. 25-3-501.  
 24  
 25 '~~Protest~~' ~~G.S. 25-3-509.~~  
 26 'Promise' G.S. 25-3-103.  
 27 'Prove' G.S. 25-3-103.  
 28 'Secondary party' G.S. 25-3-102.  
 29 'Teller's check' G.S. 25-3-104.  
 30 'Unauthorized signature' G.S. 25-3-403.  
 31 (4) (d) ~~In addition article—Article 1 contains general definitions and principles of~~  
 32 ~~construction and interpretation applicable throughout this article—Article.~~  
 33 "**§ 25-4-105. '~~Depository bank~~'; 'Bank'; 'depository bank'; 'intermediary bank;**  
 34 **'collecting bank'; 'payor bank'; 'presenting bank'; 'remitting bank.' bank.'**  
 35 ~~In this article unless the context otherwise requires—Article:~~  
 36 (1) 'Bank' means a person engaged in the business of banking, including a  
 37 savings bank, savings and loan association, credit union, or trust  
 38 company.  
 39 (a) (2) 'Depository bank' means the first bank to which take an item is  
 40 transferred for collection—even though it is also the payor bank—bank,  
 41 unless the item is presented for immediate payment over the counter.  
 42 (b) (3) 'Payor bank' means a bank by which an item is payable as drawn  
 43 or accepted; that is the drawee of a draft.

- 1 (e) (4) 'Intermediary bank' means ~~any~~ a bank to which an item is  
2 transferred in course of collection except the depository or payor ~~bank;~~  
3 bank.
- 4 (d) (5) 'Collecting bank' means ~~any~~ a bank handling ~~the~~ an item for  
5 collection except the payor ~~bank;~~ bank.
- 6 (e) (6) 'Presenting bank' means ~~any~~ a bank presenting an item except  
7 a payor ~~bank;~~ bank.
- 8 (f) 'Remitting bank' means ~~any payor or intermediary bank remitting for an item.~~

9 **"§ 25-4-106. Payable through or payable at bank; collecting bank.**

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

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

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

18 **"§ 25-4—A branch or separate office of a bank is a separate bank for the purpose of**  
19 **computing the time within which and determining the place at ~~or to~~ which**  
20 **action may be taken or to which notices or orders ~~shall~~ must be given**  
21 **under this article ~~Article~~ and under ~~article 3.~~ Article 3.**

22 **"§ 25-4—(1) (a)** For the purpose of allowing time to process items, prove ~~balances~~  
23 balances, and make the necessary entries on its books to determine its position for the  
24 day, a bank may fix an afternoon hour of 2:00 ~~o'clock P.M.~~ p.m. or later as a ~~cut-off~~ cutoff  
25 hour for the handling of money and items and the making of entries on its books.

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

29 **"§ 25-4y (a)** Unless otherwise instructed, a collecting bank in a good faith effort  
30 to secure payment ~~may, in the case of a specific items~~ item drawn on a payor other than a  
31 bank, and with or without the approval of any person involved, may waive, ~~modify~~  
32 modify, or extend time limits imposed or permitted by this ~~chapter~~ Chapter for a period  
33 not ~~in excess of an~~ exceeding two additional banking day ~~days~~ without discharge of  
34 secondary parties and without drawers or indorsers or liability to its transferor or any a prior  
35 party.

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



1 ~~"§ 251 The 'process of posting' means the usual procedure followed by a payor bank~~  
2 ~~in determining to pay an item and in recording the payment including one~~  
3 ~~or more of the following or other steps as determined by the bank:~~

- 4 (a) ~~verification of any signature;~~  
5 (b) ~~ascertaining that sufficient funds are available;~~  
6 (c) ~~affixing a 'paid' or other stamp;~~  
7 (d) ~~entering a charge or entry to a customer's account;~~  
8 (e) ~~correcting or reversing an entry or erroneous action with respect to the item.~~

9 **"§ 25-4-110. Electronic presentment.**

10 (a) 'Agreement for electronic presentment' means an agreement, clearing-house  
11 rule, or federal reserve regulation or operating circular, providing that presentment of an  
12 item may be made by transmission of an image of the item or information describing the  
13 item ('presentment notice') rather than delivery of the item itself. The agreement may  
14 provide for procedures governing retention, presentment, payment, dishonor, and other  
15 matters concerning items subject to the agreement.

16 (b) Presentment of an item pursuant to an agreement for presentment is made  
17 when the presentment notice is received.

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

20 **"§ 25-4-111. Statute of limitations.**

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

23  
24 **"PART 2.**

25  
26 **"COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS.**

27  
28 **"§ 25-4-201. ~~Presumption and duration of agency status~~ Status of collecting banks ~~bank~~**  
29 **as agent and provisional status of credits; applicability of ~~article;~~ Article;**  
30 **item indorsed 'pay any bank.'**

31 (a) Unless a contrary intent clearly appears and ~~prior to~~ before the time that a  
32 settlement given by a collecting bank for an item is or becomes ~~final~~ final ~~(subsection (3) of G.S.~~  
33 ~~25-4-211 and G.S. 25-4-212 and 25-4-213) the bank~~ final, the bank, with respect to the item,  
34 is an agent or subagent of the owner of the item and any settlement given for the item is  
35 provisional. This provision applies regardless of the form of indorsement or lack or  
36 indorsement and even though credit given for the item is subject to immediate withdrawal  
37 as of right or is in fact withdrawn; but the continuance of ownership of an item by its  
38 owner and any rights of the owner to proceeds of the item are subject to rights of a  
39 collecting ~~bank~~ bank, such as those resulting from outstanding advances on the item and  
40 valid rights of recoupment or setoff. ~~When~~ If an item is handled by banks for purposes of  
41 presentment, ~~payment and collection,~~ payment, collection, or return, the relevant provisions  
42 of this ~~article~~ Article apply even though action of the parties clearly establishes that a  
43 particular bank has purchased the item and is the owner of it.

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

3       (a)           (1) ~~until the item has been returned~~ Returned to the customer  
4                    initiating collection; or

5       (b)           (2) ~~until the item has been specially~~ Specially indorsed by a bank to  
6                    a person who is not a bank.

7 **"§ 25-4-202. Responsibility for ~~collection;~~ collection or return; when action**  
8 **~~seasonable.~~ timely.**

9       (1) (a) A collecting bank must ~~use~~ exercise ordinary care ~~in~~ in:

10       (a)           (1) ~~presenting~~ Presenting an item or sending it for presentment;  
11                    and

12       (b)           (2) ~~sending~~ Sending notice of dishonor or nonpayment or  
13                    returning an item other than a documentary draft to the bank's  
14                    transferor ~~or directly to the depository bank under subsection (2) of G.S.~~  
15                    ~~25-4-212~~ after learning that the item has not been paid or accepted, as  
16                    the case may be; and

17       (c)           (3) ~~settling~~ Settling for an item when the bank receives final  
18                    settlement; and

19       (d)           ~~making or providing for any necessary protest; and~~

20       (e)           (4) ~~notifying~~ Notifying its transferor of any loss ~~or~~ of delay in  
21                    transit within a reasonable time after discovery thereof.

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

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

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

33 **"§ 25-4-203. Effect of instructions.**

34       Subject to ~~the provisions of article~~ Article 3 concerning conversion of instruments (G.S.  
35 ~~25-3-419~~ 25-3-420) and ~~the provisions of both article 3 and this article concerning~~ restrictive  
36 indorsements (G.S. 25-3-206), only a collecting bank's transferor can give instructions  
37 ~~which~~ that affect the bank or constitute notice to ~~it~~ it, and a collecting bank is not liable to  
38 prior parties for any action taken pursuant to ~~such~~ the instructions or in accordance with  
39 any agreement with its transferor.

40 **"§ 25-4-204. Methods of sending and presenting; sending ~~direct~~ directly to payor.**

41       (1) (a) A collecting bank ~~must~~ shall send items by a reasonably prompt ~~method~~  
42 method, taking into consideration ~~any~~ relevant instructions, the nature of the item, the

1 number of ~~such~~ those items on hand, and the cost of collection ~~involved~~ involved, and the  
2 method generally used by it or others to present ~~such~~ those items.

3 (2) (b) A collecting bank may ~~send~~ send:

4 (a) (1) ~~any~~ An item ~~direct~~ directly to the payor bank;

5 (b) (2) ~~any~~ An item to ~~any non-bank~~ a nonbank payor if authorized by  
6 its transferor; and

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

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

13 **~~"§ 25-4-205. Supplying missing indorsement; no notice from prior indorsement.~~**  
14 **Depository bank holder of unindorsed item.**

15 If a customer delivers an item to a depository bank for collection:

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

22 (2) ~~An intermediary bank, or payor bank which is not a depository bank, is neither~~  
23 ~~given notice nor otherwise affected by a restrictive indorsement of any person except the~~  
24 ~~bank's immediate transferor.~~

25 (1) The depository bank becomes a holder of the item at the time it receives  
26 the item for collection if the customer at the time of delivery was a  
27 holder of the item, whether or not the customer indorses the item, and, if  
28 the bank satisfies the other requirements of G.S. 25-3-302, it is a holder  
29 in due course; and

30 (2) The depository bank warrants to collecting banks, the payor bank or  
31 other payor, and the drawer that the amount of the item was paid to the  
32 customer or deposited to the customer's account.

33 **~~"§ 25-4-206. Transfer between banks.~~**

34 Any agreed method ~~which~~ that identifies the transferor bank is sufficient for the item's  
35 further transfer to another bank.

36 **~~"§ 25-4-207. Transfer or presentment of items; time for claims.~~**

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

40 (a) ~~he has a good title to the item or is authorized to obtain payment or acceptance~~  
41 ~~on behalf of one who has a good title; and~~

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

4       (i) ~~to a maker with respect to the maker's own signature; or~~

5       (ii) ~~to a drawer with respect to the drawer's own signature, whether or not the~~  
6 ~~drawer is also the drawee; or~~

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

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

12       (i) ~~to the maker of a note; or~~

13       (ii) ~~to the drawer of a draft whether or not the drawer is also the drawee; or~~

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

17       (iv) ~~to the acceptor of an item with respect to an alteration made after the~~  
18 ~~acceptance.~~

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

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

24       (b) ~~all signatures are genuine or authorized; and~~

25       (c) ~~the item has not been materially altered; and~~

26       (d) ~~no defense of any party is good against him; and~~

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

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

32       (3) ~~The warranties and the engagement to honor set forth in the two preceding~~  
33 ~~subsections arise notwithstanding the absence of indorsement or words of guaranty or~~  
34 ~~warranty in the transfer or presentment and a collecting bank remains liable for their~~  
35 ~~breach despite remittance to its transferor. Damages for breach of such warranties or~~  
36 ~~engagement to honor shall not exceed the consideration received by the customer or~~  
37 ~~collecting bank responsible plus finance charges and expenses related to the item, if any.~~

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

41       "§ 25-4-207. Transfer warranties.

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

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

5           (2) All signatures on the item are authentic and authorized;

6           (3) The item has not been altered;

7           (4) The item is not subject to a defense or claim in recoupment (G.S. 25-3-  
8 305(a)) of any party that can be asserted against the warrantor; and

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

12       (b) If an item is dishonored, a customer or collecting bank transferring the item  
13 and receiving settlement or other consideration is obliged to pay the amount due on the  
14 item (i) according to the terms of the item at the time it was transferred, or (ii) if the  
15 transfer was of an incomplete item, according to its terms when completed as stated in  
16 G.S. 25-3-115 and G.S. 25-3-407. The obligation of a transferor is owed to the transferee  
17 and to any subsequent collecting bank that takes the item in good faith. A transferor  
18 cannot disclaim its obligation under this subsection by an indorsement stating that it is  
19 made 'without recourse' or otherwise disclaiming liability.

20       (c) A person to whom the warranties under subsection (a) of this section are made  
21 and who took the item in good faith may recover from the warrantor as damages for  
22 breach of warranty an amount equal to the loss suffered as a result of the breach, but not  
23 more than the amount of the item plus expenses and loss of interest incurred as a result of  
24 the breach.

25       (d) The warranties stated in subsection (a) of this section cannot be disclaimed  
26 with respect to checks. Unless notice of a claim for breach of warranty is given to the  
27 warrantor within 30 days after the claimant has reason to know of the breach and the  
28 identity of the warrantor, the warrantor is discharged to the extent of any loss caused by  
29 the delay in giving notice of the claim.

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

32 **"§ 25-4-208. Presentment warranties.**

33       (a) If an unaccepted draft is presented to the drawee for payment or acceptance  
34 and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance,  
35 at the time of presentment, and (ii) a previous transferor of the draft, at the time of  
36 transfer, warrant to the drawee that pays or accepts the draft in good faith that:

37           (1) The warrantor is, or was, at the time the warrantor transferred the draft,  
38 a person entitled to enforce the draft or authorized to obtain payment or  
39 acceptance of the draft on behalf of a person entitled to enforce the  
40 draft;

41           (2) The draft has not been altered; and

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

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

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

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

23 (e) The warranties stated in subsections (a) and (d) of this section cannot be  
24 disclaimed with respect to checks. Unless notice of a claim for breach of warranty is  
25 given to the warrantor within 30 days after the claimant has reason to know of the breach  
26 and the identity of the warrantor, the warrantor is discharged to the extent of any loss  
27 caused by the delay in giving notice of the claim.

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

30 **"§ 25-4-209. Encoding and retention warranties.**

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

35 (b) A person who undertakes to retain an item pursuant to an agreement for  
36 electronic presentment warrants to any subsequent collecting bank and to the payor bank  
37 or other payor that retention and presentment of the item comply with the agreement. If a  
38 customer of a depository bank undertakes to retain an item, that bank also makes this  
39 warranty.

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

1 **"§ 25**items, accompanying documents and proceeds.

2 (4) (a) A collecting bank has a security interest in an item and any accompanying  
3 documents or the proceeds of ~~either~~ either:

4 (a) (1) ~~in~~ In case of an item deposited in an ~~account~~ account, to the  
5 extent to which credit given for the item has been withdrawn or  
6 applied;

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

11 (c) (3) ~~if~~ If it makes an advance on or against the item.

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

16 (3) (c) Receipt by a collecting bank of a final settlement for an item is a realization  
17 on its security interest in the item, accompanying ~~documents~~ documents, and proceeds.  
18 ~~To the extent and so~~ So long as the bank does not receive final settlement for the item or  
19 give up possession of the item or accompanying documents for purposes other than  
20 collection, the security interest continues to that extent and is subject to ~~the provisions of~~  
21 Article 9, ~~except that~~ but:

22 (a) (1) ~~no~~ No security agreement is necessary to make the security  
23 interest enforceable (~~subsection (1) (b) of G.S. 25-9-203~~ G.S. 25-9-  
24 203(1)(a)); and

25 (b) (2) ~~no~~ No filing is required to perfect the security interest; and

26 (c) (3) ~~the~~ The security interest has priority over conflicting  
27 perfected security interests in the item, accompanying documents or  
28 proceeds.

29 **"§ 25**holder in due course.

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

34 **"§ 25**by, ~~through~~ through, or at a bank; liability of secondary parties. drawer or  
35 indorser.

36 (4) (a) Unless otherwise instructed, a collecting bank may present an item not  
37 payable by, through or at a bank by sending to the party to accept or pay a written notice  
38 that the bank holds the item for acceptance or payment. The notice must be sent in time to  
39 be received on or before the day when presentment is due and the bank must meet any  
40 requirement of the party to accept or pay under G.S. ~~25-3-505~~ 25-3-501 by the close of the  
41 bank's next banking day after it knows of the requirement.

42 (2) (b) ~~Where~~ If presentment is made by notice and ~~neither honor nor payment~~,  
43 acceptance, or request for compliance with a requirement under G.S. ~~25-3-505~~ 25-3-501 is

1 ~~not received by the close of business on the day after maturity or~~ or, in the case of  
2 ~~demand items~~ items, by the close of business on the third banking day after notice was  
3 sent, the presenting bank may treat the item as dishonored and charge any ~~secondary party~~  
4 ~~drawer or indorser~~ by sending ~~him~~ it notice of the facts.

5 ~~"§ 25h~~ final settlement in remittance cases. **Medium and time of settlement by bank.**

6 (1) ~~A collecting bank may take in settlement of an item~~

7 (a) ~~a check of the remitting bank or of another bank on any bank except the~~  
8 ~~remitting bank; or~~

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

12 (c) ~~appropriate authority to charge an account of the remitting bank or of another~~  
13 ~~bank with the collecting bank; or~~

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

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

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

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

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

34 (c) ~~if in a case not covered by subparagraphs (a) or (b) the person receiving the~~  
35 ~~settlement fails to seasonably present, forward for collection, pay or return a remittance~~  
36 ~~instrument or authorization to it to charge before its midnight deadline, at such~~  
37 ~~midnight deadline:~~

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

41 (1) The medium of settlement is cash or credit to an account in a Federal  
42 Reserve Bank of or specified by the person to receive settlement; and

43 (2) The time of settlement is:



1           (i)       With respect to tender of settlement by cash, a cashier's  
2                   check, or teller's check, when the cash or check is sent or  
3                   delivered;

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

6           (iii)       With respect to tender of settlement by a credit or debit to an  
7                   account in a bank, when the credit or debit is made or, in the  
8                   case of tender of settlement by authority to charge an account,  
9                   when the authority is sent or delivered; or

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

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

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

18               (1)       Presents or forwards the check for collection, settlement is final when  
19                   the check is finally paid; or

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

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

26       **"§ 25-~~liability of collecting bank; return of item.~~**

27               (+)       (a) If a collecting bank has made provisional settlement with its customer for  
28                   an item and itself fails by reason of dishonor, suspension of payments by a bank or  
29                   otherwise to receive a settlement for the item which is or becomes final, the bank may  
30                   revoke the settlement given by it, ~~charge back~~ charge back the amount of any credit given  
31                   for the item to its customer's ~~account~~ account, or obtain refund from its ~~customer~~ customer,  
32                   whether or not it is able to return the ~~item~~ item, if by its midnight deadline or within a  
33                   longer reasonable time after it learns the facts it returns the item or sends notification of  
34                   the facts. If the return or notice is delayed beyond the bank's midnight deadline or a  
35                   longer reasonable time after it learns the facts, the bank may revoke the settlement,  
36                   charge back the credit, or obtain refund from its customer, but it is liable for any loss  
37                   resulting from the delay. These rights to revoke, ~~charge back~~ charge back, and obtain  
38                   refund terminate if and when a settlement for the item received by the bank is or becomes  
39                   ~~final~~ final. (~~subsection (3) of G.S. 25-4-211 and subsections (2) and (3) of G.S. 25-4-213~~).

40               (2)       ~~Within the time and manner prescribed by this section and G.S. 25-4-301, an~~  
41                   ~~intermediary or payor bank, as the case may be, may return an unpaid item directly to the~~  
42                   ~~depository bank and may send for collection a draft on the depository bank and obtain~~  
43                   ~~reimbursement. In such case, if the depository bank has received provisional settlement~~

1 for the item, it must reimburse the bank drawing the draft and any provisional credits for  
2 the item between banks shall become and remain final.

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

5 (3) (c) A depository bank ~~which~~ that is also the payor may ~~charge back~~ charge back  
6 the amount of an item to its customer's account or obtain refund in accordance with the  
7 section governing return of an item received by a payor bank for credit on its books (G.S.  
8 25-4-301).

9 (4) (d) The right to ~~charge back~~ charge back is not affected ~~by~~ by:

10 (a) (1) ~~prior~~ Previous use of ~~the~~ a credit given for the item; or

11 (b) (2) ~~failure~~ Failure by any bank to exercise ordinary care with  
12 respect to the ~~item~~ item, but ~~any~~ a bank so failing remains liable.

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

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

20 **"§ 25nprovisional debits and credits become final; when certain credits become**  
21 **available for withdrawal.**

22 (4) (a) An item is finally paid by a payor bank when the bank has first done any of  
23 the following, ~~whichever happens first:~~ following:

24 (a) (1) ~~paid~~ Paid the item in cash; or

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

28 (c) ~~completed the process of posting the item to the indicated account of the~~  
29 ~~drawer, maker or other person to be charged therewith; or~~

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

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

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

37 (2) (c) If provisional settlement for an item between the presenting and payor  
38 banks is made through a clearing house or by debits or credits in an account between  
39 them, then to the extent that provisional debits or credits for the item are entered in  
40 accounts between the presenting and payor banks or between the presenting and  
41 successive prior collecting banks seriatim, they become final upon final payment of the  
42 item by the payor bank.

1       ~~(3)~~ (d) If a collecting bank receives a settlement for an item which is or becomes  
2 ~~final-final~~, (~~subsection (3) of G.S. 25-4-211, subsection (2) of G.S. 25-4-213~~) the bank is  
3 accountable to its customer for the amount of the item and any provisional credit given  
4 for the item in an account with its customer becomes final.

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

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

14       ~~(b)~~           ~~(2)~~     ~~in any case where~~ If the bank is both ~~a-the~~ depository bank and  
15 ~~a-the~~ payor bank-bank, and the item is finally paid, – at the opening of  
16 the bank's second banking day following receipt of the item.

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

22       "~~§ 25x (1)~~-(a) ~~Any~~ If an item is in or coming-comes into the possession of a payor  
23 or collecting bank ~~which-that~~ suspends payment and which-the item is-has not been finally  
24 ~~paid-shall-paid~~, the item must be returned by the receiver, trustee or agent in charge of the  
25 closed bank to the presenting bank or the closed bank's customer.

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

29       ~~(3)~~ (c) If a payor bank gives or a collecting bank gives or receives a provisional  
30 settlement for an item and thereafter suspends payments, the suspension does not prevent  
31 or interfere with the ~~settlement-settlement's~~ becoming final if such-the finality occurs  
32 automatically upon the lapse of certain time or the happening of certain ~~events~~ (~~subsection~~  
33 ~~(3) of G.S. 25-4-211, subsections (1) (d), (2) and (3) of G.S. 25-4-213~~). events.

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

### "PART 3.

### "COLLECTION OF ITEMS: PAYOR BANKS.

1 **"§ 25-4-301. Deferred posting; recovery of payment by return of items; time of**  
2 **~~dishonor.~~ dishonor; return of items by payor bank.**

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

9 (a) (1) ~~returns~~ Returns the item; or

10 (b) (2) ~~sends~~ Sends written notice of dishonor or nonpayment if the  
11 item is ~~held for protest or is otherwise unavailable for return.~~

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

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

19 (4) (d) An item is returned:

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

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

26 **"§ 25-4-302. Payor bank's responsibility for late return of item.**

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

29 (a) If an item is presented ~~on to~~ and received by a payor ~~bank~~ bank, the bank is  
30 accountable for the amount ~~of~~ of:

31 (a) (1) ~~a~~ A demand ~~item~~ item, other than a documentary ~~draft~~ draft,  
32 whether properly payable or ~~not~~ not, if the bank, in any case ~~where in~~  
33 which it is not also the depository bank, retains the item beyond  
34 midnight of the banking day of receipt without settling for it or,  
35 ~~regardless of whether~~ or not it is also the depository bank, does not pay  
36 or return the item or send notice of dishonor until after its midnight  
37 deadline; or

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

41 (b) The liability of a payor bank to pay an item pursuant to subsection (a) of this  
42 section is subject to defenses based on breach of a presentment warranty (G.S. 25-4-208)

1 or proof that the person seeking enforcement of the liability presented or transferred the  
2 item for the purpose of defrauding the payor bank.

3 "**§ 25-4-303. When items subject to notice, ~~stop~~\* payment order, legal process**  
4 **process, or setoff; order in which items may be charged or certified.**

5 (1) (a) Any knowledge, ~~notice~~-notice, or ~~stop order~~-stop-payment order received by,  
6 legal process served ~~upon~~-upon, or setoff exercised by a payor bank, ~~whether or not~~  
7 ~~effective under other rules of law~~-bank comes too late to terminate, suspend-suspend, or  
8 modify the bank's right or duty to pay an item or to charge its customer's account for the  
9 item, ~~comes too late to so terminate, suspend or modify such right or duty~~-item if the knowlege,  
10 knowledge, notice, ~~stop order~~-stop-payment order, or legal process is received or served  
11 and a reasonable time for the bank to act thereon expires or the setoff is exercised after  
12 the bank has ~~done any~~-earliest of the following:

13 (a)- (1) ~~accepted or certified~~-The bank accepts or certifies the item;

14 (b)- (2) ~~paid~~-The bank pays the item in cash;

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

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

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

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

30 (2) (b) Subject to ~~the provisions of subsection (1) (a) of this section,~~ items may be  
31 accepted, paid, certified or charged to the indicated account of its customer in any ~~order~~  
32 ~~convenient to the bank.~~-order.

#### 33 34 "PART 4.

#### 35 36 "RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER.

37  
38 "**§ 25-4-401. When bank may charge customer's account.**

39 (1) (a) ~~As against its customer, a~~-A bank may charge against ~~his~~-the account ~~any of a~~  
40 ~~customer an item which that is otherwise properly payable from that account even though~~  
41 ~~the charge creates an overdraft. An item is properly payable if it is authorized by the~~  
42 ~~customer and is in accordance with any agreement between the customer and bank.~~-customer and is in accordance with any agreement between the customer and bank.

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

3 (c) A bank may charge against the account of a customer a check that is otherwise  
4 properly payable from the account, even though payment was made before the date of the  
5 check, unless the customer has given notice to the bank of the postdating describing the  
6 check with reasonable certainty. The notice is effective for the period stated in G.S. 25-  
7 4-403(b) for stop-payment orders, and must be received at a time and in a manner that  
8 afforded the bank a reasonable opportunity to act on it before the bank takes any action  
9 with respect to the check described in G.S. 25-4-303. If a bank charges against the  
10 account of a customer a check before the date stated in the notice of postdating, the bank  
11 is liable for damages for the loss resulting from its act. The loss may include damages for  
12 dishonor of subsequent items under G.S. 25-4-402.

13 ~~(2)~~ (d) A bank which that in good faith makes payment to a holder may charge the  
14 indicated account of its customer according to:

15 ~~(a)~~ (1) the The original tenor terms of his the altered item; or

16 ~~(b)~~ (2) the The tenor terms of his the completed item, even though the  
17 bank knows the item has been completed unless the bank has notice  
18 that the completion was improper.

19 "**§ 25-4-402. Bank's liability to customer for wrongful ~~dishonor.~~ dishonor; time of**  
20 **determining insufficiency of account.**

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

24 (b) A payor bank is liable to its customer for damages proximately caused by the  
25 wrongful dishonor of an item. ~~When the dishonor occurs through mistake liability~~ Liability  
26 is limited to actual damages ~~proved. If so proximately caused and proved damages proved~~  
27 and may include damages for an arrest or prosecution of the customer or other  
28 consequential damages. Whether any consequential damages are proximately caused by  
29 the wrongful dishonor is a question of fact to be determined in each case. This  
30 subsection does not preclude noncompensatory damages.

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

39 "**§ 25-4-403. Customer's right to stop payment; burden of proof of loss.**

40 ~~(1)~~ (a) A customer may by order to his bank stop payment of any item payable for his  
41 account but the order must be or any person authorized to draw on the account if there is  
42 more than one person may stop payment of any item drawn on the customer's account or  
43 close the account by an order to the bank describing the item or account with reasonable

1 ~~certainty received at such a time and in such a manner as to afford that affords~~ the bank a  
2 reasonable opportunity to act on it ~~prior to before~~ any action by the bank with respect to  
3 the item described in G.S. 25-4-303. If the signature of more than one person is required  
4 to draw on an account, any of these persons may stop payment or close the account.

5 (2) ~~An oral order is binding upon the bank only for fourteen calendar days unless~~  
6 ~~confirmed in writing within that period. A written order is effective for only six months~~  
7 ~~unless renewed in writing.~~

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

12 (3) (c) ~~The burden of establishing the fact and amount of loss resulting from the~~  
13 ~~payment of an item contrary to a binding stop payment stop-payment order or order to~~  
14 ~~close an account is on the customer. The loss from payment of an item contrary to a~~  
15 ~~stop-payment order may include damages for dishonor of subsequent items under G.S.~~  
16 ~~25-4-402.~~

17 **"§ 25-4-404. Bank not obligated to pay check more than six months old.**

18 A bank is under no obligation to a customer having a checking account to pay a  
19 check, other than a certified check, which is presented more than six months after its date,  
20 but it may charge its customer's account for a payment made thereafter in good faith.

21 **"§ 25-4-405. Death or incompetence of customer.**

22 (4) (a) A payor or collecting bank's authority to accept, ~~pay pay,~~ or collect an item  
23 or to account for proceeds of its ~~collection collection,~~ if otherwise ~~effective effective,~~ is not  
24 rendered ineffective by incompetence of a customer of either bank existing at the time the  
25 item is issued or its collection is undertaken if the bank does not know of an adjudication  
26 of incompetence. Neither death nor incompetence of a customer revokes ~~such the~~  
27 authority to accept, pay, ~~collect collect,~~ or account until the bank knows of the fact of  
28 death or of an adjudication of incompetence and has reasonable opportunity to act on it.

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

32 (3) (c) A transaction, although subject to this ~~article Article,~~ is also subject to G.S.  
33 105-24, ~~and G.S. 41-2.1, 53-146.1, 54-109.58, and 54B-129,~~ and in case of conflict  
34 between the provisions of this section and either of those sections, the provisions of those  
35 sections control.

36 **"§ 25-4-406. Customer's duty to discover and report unauthorized signature or**  
37 **alteration.**

38 (1) ~~When a bank sends to its customer a statement of account accompanied by~~  
39 ~~items paid in good faith in support of the debit entries or holds the statement and items~~  
40 ~~pursuant to a request or instructions of its customer or otherwise in a reasonable manner~~  
41 ~~makes the statement and items available to the customer, the customer must exercise~~  
42 ~~reasonable care and promptness to examine the statement and items to discover his~~  
43 ~~unauthorized signature or any alteration on an item and must notify the bank promptly~~

1 after discovery thereof. A customer will be considered to have acted with reasonable care  
2 and promptness if he notifies the bank within 60 days of receipt of the statement of  
3 account accompanied by such items.

4 (a) A bank that sends or makes available to a customer a statement of account  
5 showing payment of items for the account shall either return or make available to the  
6 customer the items paid or provide information in the statement of account sufficient to  
7 allow the customer reasonably to identify the items paid. The statement of account  
8 provides sufficient information if the item is described by item number, amount, and date  
9 of payment.

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

16 (c) If a bank sends or makes available a statement of account or items pursuant to  
17 subsection (a) of this section, the customer must exercise reasonable promptness in  
18 examining the statement or the items to determine whether any payment was not  
19 authorized because of an alteration of an item or because a purported signature by or on  
20 behalf of the customer was not authorized. If, based on the statement or items provided,  
21 the customer should reasonably have discovered the unauthorized payment, the customer  
22 must promptly notify the bank of the relevant facts.

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

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

29 (b) (2) ~~an~~ The customer's unauthorized signature or alteration by the  
30 same wrongdoer on any other item paid in good faith by the bank ~~after~~  
31 ~~the first item and statement was available to the customer for a reasonable~~  
32 ~~period not exceeding fourteen calendar days and before the bank receives~~  
33 ~~notification from the customer of any such unauthorized signature or~~  
34 ~~alteration~~ if the payment was made before the bank received notice  
35 from the customer of the unauthorized signature or alteration and after  
36 the customer had been afforded a reasonable period of time, not  
37 exceeding 30 days, in which to examine the item or statement of  
38 account and notify the bank.

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

41 (e) If subsection (d) of this section applies and the customer proves that the bank  
42 failed to exercise ordinary care in paying the item and that the failure substantially  
43 contributed to loss, the loss is allocated between the customer precluded and the bank



1 asserting the preclusion according to the extent to which the failure of the customer to  
2 comply with subsection (c) of this section and the failure of the bank to exercise ordinary  
3 care contributed to the loss. If the customer proves that the bank did not pay the item in  
4 good faith, the preclusion under subsection (d) of this section does not apply.

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

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

19 **"§ 25-4-407. Payor bank's right to subrogation on improper payment.**

20 If a payor bank has paid an item over the ~~stop payment order~~ of the drawer or maker to  
21 stop payment, or after an account has been closed, or otherwise under circumstances  
22 giving a basis for objection by the drawer or maker, to prevent unjust enrichment and  
23 only to the extent necessary to prevent loss to the bank by reason of its payment of the  
24 item, the payor bank ~~shall be~~ is subrogated to the ~~rights~~ rights:

- 25 (a) (1) ~~of~~ Of any holder in due course on the item against the drawer  
26 or maker; ~~and~~
- 27 (b) (2) ~~of~~ Of the payee or any other holder of the item against the  
28 drawer or maker either on the item or under the transaction out of  
29 which the item arose; and
- 30 (c) (3) ~~of~~ Of the drawer or maker against the payee or any other  
31 holder of the item with respect to the transaction out of which the item  
32 arose.

33  
34 **"PART 5.**

35  
36 **"COLLECTION OF DOCUMENTARY DRAFTS.**

37  
38 **"§ 25-4-501. Handling of documentary drafts; duty to send for presentment and to**  
39 **notify customer of dishonor.**

40 A bank ~~which that~~ takes a documentary draft for collection ~~must shall~~ present or send  
41 the draft and accompanying documents for presentment ~~presentment~~, and upon learning  
42 that the draft has not been paid or accepted in due ~~course~~ course, ~~must shall~~ seasonably

1 notify its customer of ~~such~~the fact even though it may have discounted or bought the  
2 draft or extended credit available for withdrawal as of right.

3 **"§ 25-4-502. Presentment of 'on arrival' drafts.**

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

10 **"§ 25-4-503. Responsibility of presenting bank for documents and goods; report of  
11 reasons for dishonor; referee in case of need.**

12 Unless otherwise instructed and except as provided in ~~article 5~~Article 5, a bank  
13 presenting a documentary ~~draft~~draft:

14 (a) (1) ~~must~~Must deliver the documents to the drawee on acceptance  
15 of the draft if it is payable more than three days after presentment;  
16 otherwise, only on payment; and

17 (b) (2) ~~upon~~Upon dishonor, either in the case of presentment for  
18 acceptance or presentment for payment, may seek and follow  
19 instructions from any referee in case of need designated in the draft ~~or~~  
20 or, if the presenting bank does not choose to utilize ~~his~~the referee's  
21 ~~services~~services, it must use diligence and good faith to ascertain the  
22 reason for dishonor, must notify its transferor of the dishonor and of  
23 the results of its effort to ascertain the reasons ~~therefor~~therefor, and  
24 must request instructions.

25 ~~But~~However, the presenting bank is under no obligation with respect to goods  
26 represented by the documents except to follow any reasonable instructions seasonably  
27 received; it has a right to reimbursement for any expense incurred in following  
28 instructions and to prepayment of or indemnity for ~~such~~those expenses.

29 **"§ 25-4-504. Privilege of presenting bank to deal with goods; security interest for  
30 expenses.**

31 (1) (a) A presenting bank ~~which~~that, following the dishonor of a documentary  
32 draft, has seasonably requested instructions but does not receive them within a reasonable  
33 time may store, sell, or otherwise deal with the goods in any reasonable manner.

34 (2) (b) For its reasonable expenses incurred by action under subsection (1)~~(a)~~ of  
35 this section, the presenting bank has a lien upon the goods or their proceeds, which may  
36 be foreclosed in the same manner as an unpaid seller's lien."

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

38 **"§ 25-1-201. General definitions.**

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

- 1 (1) 'Action' in the sense of a judicial proceeding includes recoupment,  
2 counterclaim, set-off, suit in equity and any other proceedings in which  
3 rights are determined.
- 4 (2) 'Aggrieved party' means a party entitled to resort to a remedy.
- 5 (3) 'Agreement' means the bargain of the parties in fact as found in their  
6 language or by implication from other circumstances including course  
7 of dealing or usage of trade or course of performance as provided in this  
8 chapter (G.S. ~~25-1-205 and 25-2-208~~, 25-1-205, 25-2-208, and 25-2A-  
9 207). Whether an agreement has legal consequences is determined by  
10 the provisions of this chapter, if applicable; otherwise by the law of  
11 contracts (G.S. 25-1-103). (Compare 'Contract.')
- 12 (4) 'Bank' means any person engaged in the business of banking.
- 13 (5) 'Bearer' means the person in possession of an instrument, document of  
14 title, or certificated security payable to bearer or indorsed in blank.
- 15 (6) 'Bill of lading' means a document evidencing the receipt of goods for  
16 shipment issued by a person engaged in the business of transporting or  
17 forwarding goods, and includes an airbill. 'Airbill' means a document  
18 serving for air transportation as a bill of lading does for marine or rail  
19 transportation, and includes an air consignment note or air waybill.
- 20 (7) 'Branch' includes a separately incorporated foreign branch of a bank.
- 21 (8) 'Burden of establishing a fact' means the burden of persuading the triers  
22 of fact that the existence of the fact is more probable than its  
23 nonexistence.
- 24 (9) 'Buyer in ordinary course of business' means a person who in good faith  
25 and without knowledge that the sale to him is in violation of the  
26 ownership rights or security interest of a third party in the goods buys in  
27 ordinary course from a person in the business of selling goods of that  
28 kind but does not include a pawnbroker. All persons who sell minerals  
29 or the like (including oil and gas) at wellhead or minehead shall be  
30 deemed to be persons in the business of selling goods of that kind.  
31 'Buying' may be for cash or by exchange of other property or on secured  
32 or unsecured credit and includes receiving goods or documents of title  
33 under a preexisting contract for sale but does not include a transfer in  
34 bulk or as security for or in total or partial satisfaction of a money debt.
- 35 (10) 'Conspicuous': A term or clause is conspicuous when it is so written that  
36 a reasonable person against whom it is to operate ought to have noticed  
37 it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF  
38 LADING) is conspicuous. Language in the body of a form is  
39 'conspicuous' if it is in larger or other contrasting type or color. But in a  
40 telegram any stated term is 'conspicuous.' Whether a term or clause is  
41 'conspicuous' or not is for decision by the court.

- 1 (11) 'Contract' means the total legal obligation which results from the parties'  
2 agreement as affected by this chapter and any other applicable rules of  
3 law. (Compare 'Agreement.')
- 4 (12) 'Creditor' includes a general creditor, a secured creditor, a lien creditor  
5 and any representative of creditors, including an assignee for the benefit  
6 of creditors, a trustee in bankruptcy, a receiver in equity and an executor  
7 or administrator of an insolvent debtor's or assignor's estate.
- 8 (13) 'Defendant' includes a person in the position of defendant in a cross  
9 action or counterclaim.
- 10 (14) 'Delivery' with respect to instruments, documents of title, chattel paper,  
11 or certificated securities means voluntary transfer of possession.
- 12 (15) 'Document of title' includes bill of lading, dock warrant, dock receipt,  
13 warehouse receipt or order for the delivery of goods, and also any other  
14 document which in the regular course of business or financing is treated  
15 as adequately evidencing that the person in possession of it is entitled to  
16 receive, hold and dispose of the document and the goods it covers. To  
17 be a document of title a document must purport to be issued by or  
18 addressed to a bailee and purport to cover goods in the bailee's  
19 possession which are either identified or are fungible portions of an  
20 identified mass.
- 21 (16) 'Fault' means wrongful act, omission or breach.
- 22 (17) 'Fungible' with respect to goods or securities means goods or securities  
23 of which any unit is, by nature or usage of trade, the equivalent of any  
24 other like unit. Goods which are not fungible shall be deemed fungible  
25 for the purposes of this chapter to the extent that under a particular  
26 agreement or document unlike units are treated as equivalents.
- 27 (18) 'Genuine' means free of forgery or counterfeiting.
- 28 (19) 'Good faith' means honesty in fact in the conduct or transaction  
29 concerned.
- 30 (20) ~~'Holder' means a person who is in possession of a document of title or~~  
31 ~~an instrument or a certificated investment security drawn, issued, or~~  
32 ~~indorsed to him or to his order or to bearer or in blank. with respect to a~~  
33 negotiable instrument, means the person in possession if the instrument  
34 is payable to bearer or, in the case of an instrument payable to an  
35 identified person, if the identified person is in possession. 'Holder' with  
36 respect to a document of title means the person in possession if the  
37 goods are deliverable to bearer or to the order of the person in  
38 possession.
- 39 (21) To 'honor' is to pay or to accept and pay, or where a credit so engages to  
40 purchase or discount a draft complying with the terms of the credit.
- 41 (22) 'Insolvency proceedings' includes any assignment for the benefit of  
42 creditors or other proceedings intended to liquidate or rehabilitate the  
43 estate of the person involved.

- 1 (23) A person is 'insolvent' who either has ceased to pay his debts in the  
2 ordinary course of business or cannot pay his debts as they become due  
3 or is insolvent within the meaning of the Federal Bankruptcy Law.
- 4 (24) 'Money' means a medium of exchange authorized or adopted by a  
5 domestic or foreign government ~~as a part of its currency~~ and includes a  
6 monetary unit of account established by an intergovernmental  
7 organization or by an agreement between two or more nations.
- 8 (25) A person has 'notice' of a fact ~~when~~ when:  
9 (a) ~~he~~ The person has actual knowledge of it; or  
10 (b) ~~he~~ The person has received a notice or notification of it; or  
11 (c) ~~from~~ From all the facts and circumstances known to ~~him~~ the  
12 person at the time in question he has reason to know that it exists.  
13 A person 'knows' or has 'knowledge' of a fact when he has actual  
14 knowledge of it. 'Discover' or 'learn' or a word or phrase of similar  
15 import refers to knowledge rather than to reason to know. The time and  
16 circumstances under which a notice or notification may cease to be  
17 effective are not determined by this chapter.
- 18 (26) A person 'notifies' or 'gives' a notice or notification to another by taking  
19 such steps as may be reasonably required to inform the other in ordinary  
20 course whether or not such other actually comes to know of it. A person  
21 'receives' a notice or notification ~~when~~ when:  
22 (a) ~~it~~ It comes to ~~his~~ the person's attention; or  
23 (b) ~~it~~ It is duly delivered at the place of business through which the  
24 contract was made or at any other place held out by ~~him~~ the  
25 person as the place for receipt of ~~such~~ the communications.
- 26 (27) Notice, knowledge or a notice or notification received by an  
27 organization is effective for a particular transaction from the time when  
28 it is brought to the attention of the individual conducting that  
29 transaction, and in any event from the time when it would have been  
30 brought to ~~his~~ the individual's attention if the organization had exercised  
31 due diligence. An organization exercises due diligence if it maintains  
32 reasonable routines for communicating significant information to the  
33 person conducting the transaction and there is reasonable compliance  
34 with the routines. Due diligence does not require an individual acting  
35 for the organization to communicate information unless such  
36 communication is part of ~~his~~ the individual's regular duties or unless ~~he~~  
37 the individual has reason to know of the transaction and that the  
38 transaction would be materially affected by the information.
- 39 (28) 'Organization' includes a corporation, government or governmental  
40 subdivision or agency, business trust, estate, trust, partnership or  
41 association, two or more persons having a joint or common interest, or  
42 any other legal or commercial entity.

- 1 (29) 'Party,' as distinct from 'third party,' means a person who has engaged in  
2 a transaction or made an agreement within this chapter.
- 3 (30) 'Person' includes an individual or an organization (See G.S. 25-1-102).
- 4 (31) 'Presumption' or 'presumed' means that the trier of fact must find the  
5 existence of the fact presumed unless and until evidence is introduced  
6 which would support a finding of its nonexistence.
- 7 (32) 'Purchase' includes taking by sale, discount, negotiation, mortgage,  
8 pledge, lien, issue or re-issue, gift or any other voluntary transaction  
9 creating an interest in property.
- 10 (33) 'Purchaser' means a person who takes by purchase.
- 11 (34) 'Remedy' means any remedial right to which an aggrieved party is  
12 entitled with or without resort to a tribunal.
- 13 (35) 'Representative' includes an agent, an officer of a corporation or  
14 association, and a trustee, executor or administrator of an estate, or any  
15 other person empowered to act for another.
- 16 (36) 'Rights' includes remedies.
- 17 (37) 'Security interest' means an interest in personal property or fixtures  
18 which secures payment or performance of an obligation. The retention  
19 or reservation of title by a seller of goods notwithstanding shipment or  
20 delivery to the buyer (G.S. 25-2-401) is limited in effect to a reservation  
21 of a 'security interest'. The term also includes any interest of a buyer of  
22 accounts or chattel paper which is subject to Article 9 of this Chapter.  
23 The special property interest of a buyer of goods on identification of  
24 those goods to a contract for sale under G.S. 25-2-401 is not a 'security  
25 interest,' but a buyer may also acquire a 'security interest' by complying  
26 with Article 9 of this Chapter. Unless a consignment is intended as  
27 security, reservation of title thereunder is not a 'security interest' but a  
28 consignment is in any event subject to the provisions on consignment  
29 sales (G.S. 25-2-326).
- 30 (a) Whether a transaction creates a lease or security interest is  
31 determined by the facts of each case; however, a transaction  
32 creates a security interest if:
- 33 (i) The original term of the lease is equal to or greater than  
34 the remaining economic life of the goods, or
- 35 (ii) The lessee is bound to renew the lease for the remaining  
36 economic life of the goods or is bound to become the  
37 owner of the goods, or
- 38 (iii) The lessee has an option to renew the lease for the  
39 remaining economic life of the goods for no additional  
40 consideration or nominal additional consideration upon  
41 compliance with the lease agreement, or
- 42 (iv) The lessee has an option to become the owner of the  
43 goods for no additional consideration or nominal

- 1 additional consideration upon compliance with the  
2 lease agreement.
- 3 (b) A transaction does not create a security interest merely because it  
4 provides that:
- 5 (i) The present value of the consideration the lessee is  
6 obligated to pay the lessor for the right to possession  
7 and use of the goods is substantially equal to or is  
8 greater than the fair market value of the goods at the  
9 time the lease is entered into,
- 10 (ii) The lessee assumes risk of loss of the goods, or agrees  
11 to pay taxes, insurance, filing, recording, or  
12 registration fees, or service or maintenance costs with  
13 respect to the goods,
- 14 (iii) The lessee has an option to renew the lease or to  
15 become the owner of the goods,
- 16 (iv) The lessee has an option to renew the lease for a fixed  
17 rent that is equal to or greater than the reasonably  
18 predictable fair market rent for the use of the goods for  
19 the term of the renewal at the time the option is to be  
20 performed, or
- 21 (v) The lessee has an option to become the owner of the  
22 goods for a fixed price that is equal to or greater than  
23 the reasonably predictable fair market value of the  
24 goods at the time the option is to be performed.
- 25 (c) For purposes of this subsection (37):
- 26 (i) Additional consideration is not nominal if (i) when the  
27 option to renew the lease is granted to the lessee the  
28 rent is stated to be the fair market rent for the use of  
29 the goods for the term of the renewal determined at the  
30 time the option is to be performed, or (ii) when the  
31 option to become the owner of the goods is granted to  
32 the lessee the price is stated to be the fair market value  
33 of the goods determined at the time the option is to be  
34 performed. Additional consideration is nominal if it is  
35 less than the lessee's reasonably predictable cost of  
36 performing under the lease agreement if the option is  
37 not exercised;
- 38 (ii) 'Reasonably predictable' and 'remaining economic life  
39 of the goods' are to be determined with reference to the  
40 facts and circumstances at the time the transaction is  
41 entered into; and
- 42 (iii) 'Present value' means the amount as of a date certain of  
43 one or more sums payable in the future, discounted to

1 the date certain. The discount is determined by the  
2 interest rate specified by the parties if the rate is not  
3 manifestly unreasonable at the time the transaction is  
4 entered into; otherwise, the discount is determined by a  
5 commercially reasonable rate that takes into account  
6 the facts and circumstances of each case at the time the  
7 transaction was entered into.

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

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

18 (40) 'Surety' includes guarantor.

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

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

23 (43) 'Unauthorized' signature ~~or indorsement~~ means one made without actual,  
24 ~~implied-implied~~, or apparent authority and includes a forgery.

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

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

33 (b) ~~as~~ As security for or in total or partial satisfaction of a pre-  
34 existing claim; or

35 (c) ~~by~~ By accepting delivery pursuant to a pre-existing contract for  
36 purchase; or

37 (d) ~~generally~~, Generally, in return for any consideration sufficient to  
38 support a simple contract.

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

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

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



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

2     (1) A party ~~who~~who, with explicit reservation of ~~rights~~rights, performs or  
3 promises performance or assents to performance in a manner demanded or offered by the  
4 other party does not thereby prejudice the rights reserved. Such words as 'without  
5 prejudice,' 'under protest' or the like are sufficient.

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

7             Sec. 5. The Revisor of Statutes shall cause to be printed along with this act all  
8 relevant portions of the official comments to the Uniform Commercial Code, Revised  
9 Article 3 and conforming and miscellaneous amendments to Articles 1 and 4, as the  
10 Revisor deems appropriate.

11             Sec. 6. This act becomes effective October 1, 1995.