

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 81
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Short Title: UCC Amendments.

(Public)

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

Referred to: Judiciary II/Election Laws.

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
11 **"NEGOTIABLE INSTRUMENTS.**

12
13 **"PART 1.**

14
15 **"GENERAL PROVISIONS AND DEFINITIONS.**

16
17 **"§ 25-3-101. Short title.**

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

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

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

19 **§ 25-3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified**
20 **check.**

21 (a) In this section:

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

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

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

36 (4) 'Obligated bank' means the issuer of a cashier's check or teller's check or
37 the acceptor of a certified check.

38 (b) A claimant may assert a claim to the amount of a check by a communication to
39 the obligated bank describing the check with reasonable certainty and requesting payment
40 of the amount of the check, if (i) the claimant is the drawer or payee of a certified check
41 or the remitter or payee of a cashier's check or teller's check, (ii) the communication
42 contains or is accompanied by a declaration of loss of the claimant with respect to the
43 check, (iii) the communication is received at a time and in a manner affording the bank a

1 reasonable time to act on it before the check is paid, and (iv) the claimant provides
2 reasonable identification if requested by the obligated bank. Delivery of a declaration of
3 loss is a warranty of the truth of the statements made in the declaration. If a claim is
4 asserted in compliance with this subsection, the following rules apply:

5 (1) The claim becomes enforceable at the later of (i) the time the claim is
6 asserted, or (ii) the 90th day following the date of the check, in the case
7 of a cashier's check or teller's check, or the 90th day following the date
8 of the acceptance, in the case of a certified check.

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

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

16 (4) When the claim becomes enforceable, the obligated bank becomes
17 obliged to pay the amount of the check to the claimant if payment of the
18 check has not been made to a person entitled to enforce the check.
19 Subject to G.S. 25-4-302(a)(1), payment to the claimant discharges all
20 liability of the obligated bank with respect to the check.

21 (c) If the obligated bank pays the amount of a check to a claimant under
22 subsection (b)(4) of this section and the check is presented for payment by a person
23 having rights of a holder in due course, the claimant is obliged to (i) refund the payment
24 to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person
25 having rights of a holder in due course if the check is dishonored.

26 (d) If a claimant has the right to assert a claim under subsection (b) of this section
27 and is also a person entitled to enforce a cashier's check, teller's check, or certified check
28 which is lost, destroyed, or stolen, the claimant may assert rights with respect to the
29 check either under this section or G.S. 25-3-309.

30 31 "PART 4.

32 33 "LIABILITY OF PARTIES.

34 35 "§ 25-3-401. Signature.

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

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

42 "§ 25-3-402. Signature by representative.

1 (a) If a person acting, or purporting to act, as a representative signs an instrument
2 by signing either the name of the represented person or the name of the signer, the
3 represented person is bound by the signature to the same extent the represented person
4 would be bound if the signature were on a simple contract. If the represented person is
5 bound, the signature of the representative is the 'authorized signature of the represented
6 person' and the represented person is liable on the instrument, whether or not identified in
7 the instrument.

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

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

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

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

26 **"§ 25-3-403. Unauthorized signature.**

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

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

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

37 **"§ 25-3-404. Impostors; fictitious payees.**

38 (a) If an impostor, by use of the mails or otherwise, induces the issuer of an
39 instrument to issue the instrument to the impostor, or to a person acting in concert with
40 the impostor, by impersonating the payee of the instrument or a person authorized to act
41 for the payee, an indorsement of the instrument by any person in the name of the payee is
42 effective as the indorsement of the payee in favor of a person who, in good faith, pays the
43 instrument or takes it for value or for collection.

1 (b) If (i) a person whose intent determines to whom an instrument is payable (G.S.
2 25-3-110(a) or (b)) does not intend the person identified as payee to have any interest in
3 the instrument, or (ii) the person identified as payee of an instrument is a fictitious
4 person, the following rules apply until the instrument is negotiated by special
5 indorsement:

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

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

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

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

21 **"§ 25-3-405. Employer's responsibility for fraudulent indorsement by employee.**

22 (a) In this section:

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

25 (2) 'Fraudulent indorsement' means (i) in the case of an instrument payable
26 to the employer, a forged indorsement purporting to be that of the
27 employer, or (ii) in the case of an instrument with respect to which the
28 employer is the issuer, a forged indorsement purporting to be that of the
29 person identified as payee.

30 (3) 'Responsibility' with respect to instruments means authority (i) to sign
31 or indorse instruments on behalf of the employer, (ii) to process
32 instruments received by the employer for bookkeeping purposes, for
33 deposit to an account, or for other disposition, (iii) to prepare or process
34 instruments for issue in the name of the employer, (iv) to supply
35 information determining the names or addresses of payees of
36 instruments to be issued in the name of the employer, (v) to control the
37 disposition of instruments to be issued in the name of the employer, or
38 (vi) to act otherwise with respect to instruments in a responsible
39 capacity. 'Responsibility' does not include authority that merely allows
40 an employee to have access to instruments or blank or incomplete
41 instrument forms that are being stored or transported or are part of
42 incoming or outgoing mail, or similar access.

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

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

16 **"§ 25-3-406. Negligence contributing to forged signature or alteration of**
17 **instrument.**

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

22 (b) Under subsection (a) of this section, the burden of proving failure to exercise
23 ordinary care is on the person asserting the preclusion.

24 **"§ 25-3-407. Alteration.**

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

29 (b) Except as provided in subsection (c) of this section, an alteration fraudulently
30 made discharges a party whose obligation is affected by the alteration unless that party
31 assents or is precluded from asserting the alteration. No other alteration discharges a
32 party, and the instrument may be enforced according to its original terms.

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

38 **"§ 25-3-408. Drawee not liable on unaccepted draft.**

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

42 **"§ 25-3-409. Acceptance of draft; certified check.**

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

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

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

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

15 **"§ 25-3-410. Acceptance varying draft.**

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

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

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

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

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

28 (b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified
29 check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's
30 check, the person asserting the right to enforce the check is entitled to compensation for
31 expenses and loss of interest resulting from the nonpayment and may recover
32 consequential damages if the obligated bank refuses to pay after receiving notice of
33 particular circumstances giving rise to the damages.

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

41 **"§ 25-3-412. Obligation of issuer of note or cashier's check.**

42 The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to
43 pay the instrument (i) according to its terms at the time it was issued or, if not

1 issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an
2 incomplete instrument, according to its terms when completed, to the extent stated in
3 G.S. 25-3-115 and G.S. 25-3-407. The obligation is owed to a person entitled to enforce
4 the instrument or to an indorser who paid the instrument under G.S. 25-3-415.

5 **"§ 25-3-413. Obligation of acceptor.**

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

14 (b) If the certification of a check or other acceptance of a draft states the amount
15 certified or accepted, the obligation of the acceptor is that amount. If (i) the certification
16 or acceptance does not state an amount, (ii) the amount of the instrument is subsequently
17 raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation
18 of the acceptor is the amount of the instrument at the time it was taken by the holder in
19 due course.

20 **"§ 25-3-414. Obligation of drawer.**

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

23 (b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i)
24 according to its terms at the time it was issued or, if not issued, at the time it first came
25 into possession of a holder, or (ii) if the drawer signed an incomplete instrument,
26 according to its terms when completed, to the extent stated in G.S. 25-3-115 and G.S. 25-
27 3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser
28 who paid the draft under G.S. 25-3-415.

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

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

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

38 (f) If (i) a check is not presented for payment or given to a depository bank for
39 collection within 30 days after its date, (ii) the drawee suspends payments after expiration
40 of the 30-day period without paying the check, and (iii) because of the suspension of
41 payments, the drawer is deprived of funds maintained with the drawee to cover payment
42 of the check, the drawer to the extent deprived of funds may discharge its obligation to

1 pay the check by assigning to the person entitled to enforce the check the rights of the
2 drawer against the drawee with respect to the funds.

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

4 (a) Subject to subsections (b), (c), (d), and (e) of this section and to G.S. 25-3-
5 419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on
6 the instrument (i) according to the terms of the instrument at the time it was indorsed, or
7 (ii) if the indorser indorsed an incomplete instrument, according to its terms when
8 completed, to the extent stated in G.S. 25-3-115 and G.S. 25-3-407. The obligation of the
9 indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser
10 who paid the instrument under this section.

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

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

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

19 (e) If an indorser of a check is liable under subsection (a) of this section and the
20 check is not presented for payment, or given to a depository bank for collection, within
21 30 days after the day the indorsement was made, the liability of the indorser under
22 subsection (a) of this section is discharged.

23 **"§ 25-3-416. Transfer warranties.**

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

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

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

28 (3) The instrument has not been altered;

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

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

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

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

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

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

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

8 (1) The warrantor is, or was, at the time the warrantor transferred the draft,
9 a person entitled to enforce the draft or authorized to obtain payment or
10 acceptance of the draft on behalf of a person entitled to enforce the
11 draft;

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

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

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

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

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

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

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

40 (e) The warranties stated in subsections (a) and (d) of this section cannot be
41 disclaimed with respect to checks. Unless notice of a claim for breach of warranty is
42 given to the warrantor within 30 days after the claimant has reason to know of the breach
43 and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d)

1 of this section is discharged to the extent of any loss caused by the delay in giving notice
2 of the claim.

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

5 **"§ 25-3-418. Payment or acceptance by mistake.**

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

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

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

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

27 **"§ 25-3-419. Instruments signed for accommodation.**

28 (a) If an instrument is issued for value given for the benefit of a party to the
29 instrument, the 'accommodated party', and another party to the instrument, the
30 'accommodation party', signs the instrument for the purpose of incurring liability on the
31 instrument without being a direct beneficiary of the value given for the instrument, the
32 instrument is signed by the accommodation party 'for accommodation'.

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

38 (c) A person signing an instrument is presumed to be an accommodation party and
39 there is notice that the instrument is signed for accommodation if the signature is an
40 anomalous indorsement or is accompanied by words indicating that the signer is acting as
41 surety or guarantor with respect to the obligation of another party to the instrument.
42 Except as provided in G.S. 25-3-605, the obligation of an accommodation party to pay
43 the instrument is not affected by the fact that the person enforcing the obligation had

1 notice when the instrument was taken by that person that the accommodation party
2 signed the instrument for accommodation.

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

11 (e) An accommodation party who pays the instrument is entitled to reimbursement
12 from the accommodated party and is entitled to enforce the instrument against the
13 accommodated party. An accommodated party who pays the instrument has no right of
14 recourse against, and is not entitled to contribution from, an accommodation party.

15 **"§ 25-3-420. Conversion of instrument.**

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

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

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

30
31 **"PART 5.**

32
33 **"DISHONOR.**

34
35 **"§ 25-3-501. Presentment.**

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

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

42 (1) Presentment may be made at the place of payment of the instrument and
43 must be made at the place of payment if the instrument is payable at a

1 bank in the United States; may be made by any commercially
2 reasonable means, including an oral, written, or electronic
3 communication; is effective when the demand for payment or
4 acceptance is received by the person to whom presentment is made; and
5 is effective if made to any one of two or more makers, acceptors,
6 drawees, or other payors.

7 (2) Upon demand of the person to whom presentment is made, the person
8 making presentment must (i) exhibit the instrument, (ii) give reasonable
9 identification and, if presentment is made on behalf of another person,
10 reasonable evidence of authority to do so, and (iii) sign a receipt on the
11 instrument for any payment made or surrender the instrument if full
12 payment is made.

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

18 (4) The party to whom presentment is made may treat presentment as
19 occurring on the next business day after the day of presentment if the
20 party to whom presentment is made has established a cutoff hour not
21 earlier than 2:00 p.m. for the receipt and processing of instruments
22 presented for payment or acceptance and presentment is made after the
23 cutoff hour.

24 **"§ 25-3-502. Dishonor.**

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

26 (1) If the note is payable on demand, the note is dishonored if presentment
27 is duly made to the maker and the note is not paid on the day of
28 presentment.

29 (2) If the note is not payable on demand and is payable at or through a bank
30 or the terms of the note require presentment, the note is dishonored if
31 presentment is duly made and the note is not paid on the day it becomes
32 payable or the day of presentment, whichever is later.

33 (3) If the note is not payable on demand and subdivision (2) does not apply,
34 the note is dishonored if it is not paid on the day it becomes payable.

35 (b) Dishonor of an unaccepted draft other than a documentary draft is governed by
36 the following rules:

37 (1) If a check is duly presented for payment to the payor bank otherwise
38 than for immediate payment over the counter, the check is dishonored if
39 the payor bank makes timely return of the check or sends timely notice
40 of dishonor or nonpayment under G.S. 25-4-301 or G.S. 25-4-302, or
41 becomes accountable for the amount of the check under G.S. 25-4-302.

1 (2) If a draft is payable on demand and subdivision (1) does not apply, the
2 draft is dishonored if presentment for payment is duly made to the
3 drawee and the draft is not paid on the day of presentment.

4 (3) If a draft is payable on a date stated in the draft, the draft is dishonored
5 if (i) presentment for payment is duly made to the drawee and payment
6 is not made on the day the draft becomes payable or the day of
7 presentment, whichever is later, or (ii) presentment for acceptance is
8 duly made before the day the draft becomes payable and the draft is not
9 accepted on the day of presentment.

10 (4) If a draft is payable on elapse of a period of time after sight or
11 acceptance, the draft is dishonored if presentment for acceptance is duly
12 made and the draft is not accepted on the day of presentment.

13 (c) Dishonor of an unaccepted documentary draft occurs according to the rules
14 stated in subdivisions (2), (3), and (4) of subsection (b), except that payment or
15 acceptance may be delayed without dishonor until no later than the close of the third
16 business day of the drawee following the day on which payment or acceptance is required
17 by those subdivisions.

18 (d) Dishonor of an accepted draft is governed by the following rules:

19 (1) If the draft is payable on demand, the draft is dishonored if presentment
20 for payment is duly made to the acceptor and the draft is not paid on the
21 day of presentment.

22 (2) If the draft is not payable on demand, the draft is dishonored if
23 presentment for payment is duly made to the acceptor and payment is
24 not made on the day it becomes payable or the day of presentment,
25 whichever is later.

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

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

32 **"§ 25-3-503. Notice of dishonor.**

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

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

42 (c) Subject to G.S. 25-3-504(c), with respect to an instrument taken for collection
43 by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of

1 the next banking day following the banking day on which the bank receives notice of
2 dishonor of the instrument, or (ii) by any other person within 30 days following the day
3 on which the person receives notice of dishonor. With respect to any other instrument,
4 notice of dishonor must be given within 30 days following the day on which dishonor
5 occurs.

6 **"§ 25-3-504. Excused presentment and notice of dishonor.**

7 (a) Presentment for payment or acceptance of an instrument is excused if (i) the
8 person entitled to present the instrument cannot with reasonable diligence make
9 presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument
10 or is in insolvency proceedings or is dead, (iii) by the terms of the instrument presentment
11 is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or
12 indorser whose obligation is being enforced has waived presentment or otherwise has no
13 reason to expect or right to require that the instrument be paid or accepted, or (v) the
14 drawer instructed the drawee not to pay or accept the draft or the drawee was not
15 obligated to the drawer to pay the draft.

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

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

23 **"§ 25-3-505. Evidence of dishonor.**

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

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

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

42 **"§ 25-3-506. Collection of processing fee for returned checks.**

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

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

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

9 (3) Was no smaller than 8 by 11 inches; and

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

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

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

23 "PART 6.

24 "DISCHARGE AND PAYMENT.

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

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

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

32 "§ 25-3-602. Payment.

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

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

- 1 (1) A claim to the instrument under G.S. 25-3-306 is enforceable against the
2 party receiving payment and (i) payment is made with knowledge by the
3 payor that payment is prohibited by injunction or similar process of a
4 court of competent jurisdiction, or (ii) in the case of an instrument other
5 than a cashier's check, teller's check, or certified check, the party
6 making payment accepted, from the person having a claim to the
7 instrument, indemnity against loss resulting from refusal to pay the
8 person entitled to enforce the instrument; or
9 (2) The person making payment knows that the instrument is a stolen
10 instrument and pays a person it knows is in wrongful possession of the
11 instrument.

12 **"§ 25-3-603. Tender of payment.**

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

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

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

26 **"§ 25-3-604. Discharge by cancellation or renunciation.**

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

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

35 **"§ 25-3-605. Discharge of indorsers and accommodation parties.**

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

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

41 (c) If a person entitled to enforce an instrument agrees, with or without
42 consideration, to an extension of the due date of the obligation of a party to pay the
43 instrument, the extension discharges an indorser or accommodation party having a right

1 of recourse against the party whose obligation is extended to the extent the indorser or
2 accommodation party proves that the extension caused loss to the indorser or
3 accommodation party with respect to the right of recourse.

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

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

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

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

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

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

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

7
8 "ARTICLE 4.

9
10 "BANK DEPOSITS AND COLLECTIONS.

11
12 "PART 1.

13
14 "GENERAL PROVISIONS AND DEFINITIONS.

15
16 "§ 25-4-101. Short title.

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

19 "§ 25-4-102. Applicability.

20 (1) (a) To the extent that items within this ~~article~~ Article are also within the scope of
21 ~~articles~~ Articles 3 and 8, they are subject to the provisions of those ~~articles~~ Articles. ~~In the~~
22 ~~event of conflict the provisions of~~ If there is conflict, this article govern those of Article
23 ~~governs~~ article 3 Article 3, but the provisions of ~~article~~ Article 8 govern those of ~~governs~~ this
24 ~~article~~ Article.

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

30 "§ 25-4-103. Variation by agreement; measure of damages; ~~certain~~ action
31 constituting ordinary care.

32 (1) (a) The effect of the provisions of this ~~article~~ Article may be varied by
33 ~~agreement except that no agreement can~~ agreement, but the parties to the agreement cannot
34 disclaim a bank's responsibility for its ~~own~~ lack of good faith or failure to exercise
35 ordinary care or ~~can~~ limit the measure of damages for ~~such~~ the lack or ~~failure~~; but ~~failure~~.
36 However, the parties may determine by agreement ~~determine~~ the standards by which ~~such~~
37 the bank's responsibility is to be measured if ~~such~~ those standards are not manifestly
38 unreasonable.

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

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

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

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

15 **"§ 25-4-104. Definitions and index of definitions.**

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

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

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

23 (e-) (3) 'Banking day' means ~~that-the~~ part of any a day on which a
24 bank is open to the public for carrying on substantially all of its
25 banking functions; functions.

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

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

32 (f-) (6) 'Documentary draft' means ~~any negotiable or nonnegotiable~~
33 ~~draft with accompanying documents, securities or other papers to be~~
34 delivered against honor of the draft; a draft to be presented for
35 acceptance or payment if specified documents, certificated securities
36 (G.S. 25-8-102) or instructions for uncertificated securities (G.S. 25-
37 8-308), or other certificates, statements, or the like are to be received
38 by the drawee or other payor before acceptance or payment of the
39 draft.

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

42 (8) 'Drawee' means a person ordered in a draft to make payment.

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

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

3 'Notice of dishonor' G.S. 25-3-508.

4 G.S. 25-3-503.

5 'Order' G.S. 25-3-103.

6 'Ordinary care' G.S. 25-3-103.

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

8 'Presentment' G.S. 25-3-504.

9 G.S. 25-3-501.

10 'Protest' G.S. 25-3-509.

11 'Promise' G.S. 25-3-103.

12 'Prove' G.S. 25-3-103.

13 'Secondary party' G.S. 25-3-102.

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

15 'Unauthorized signature' G.S. 25-3-403.

16 (4) (d) In addition ~~article~~ Article 1 contains general definitions and principles of
17 construction and interpretation applicable throughout this ~~article~~ Article.

18 "**§ 25-4-105. 'Depository bank'; 'Bank'; 'depository bank'; 'intermediary bank;
19 'collecting bank'; 'payor bank'; 'presenting bank'; 'remitting bank.' bank'.**

20 In this ~~article~~ unless the context otherwise requires: Article:

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

24 (a) (2) 'Depository bank' means the first bank to ~~which take~~ an item is
25 transferred for collection ~~even though it is also the payor bank; bank,~~
26 unless the item is presented for immediate payment over the counter.

27 (b) (3) 'Payor bank' means a bank ~~by which an item is payable as drawn~~
28 ~~or accepted; that is the drawee of a draft.~~

29 (c) (4) 'Intermediary bank' means ~~any a~~ a bank to which an item is
30 transferred in course of collection except the ~~depository or payor bank;~~
31 bank.

32 (d) (5) 'Collecting bank' means ~~any a~~ a bank handling ~~the an~~ an item for
33 collection except the ~~payor bank; bank.~~

34 (e) (6) 'Presenting bank' means ~~any a~~ a bank presenting an item except
35 a ~~payor bank; bank.~~

36 (f) 'Remitting bank' means ~~any payor or intermediary bank remitting for an item.~~

37 "**§ 25-4-106. Payable through or payable at bank; collecting bank.**

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

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

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

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

7 "§ ~~25-4~~(1) (a) For the purpose of allowing time to process items, prove ~~balances~~
8 balances, and make the necessary entries on its books to determine its position for the
9 day, a bank may fix an afternoon hour of 2:00 ~~o'clock P.M.~~ p.m. or later as a ~~cut-off~~ cutoff
10 hour for the handling of money and items and the making of entries on its books.

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

14 "§ ~~25-4~~y (a) Unless otherwise instructed, a collecting bank in a good faith effort
15 to secure payment ~~may, in the case of a specific items~~ item drawn on a payor other than a
16 bank, and with or without the approval of any person involved, may waive, ~~modify~~
17 modify, or extend time limits imposed or permitted by this ~~chapter~~ Chapter for a period
18 not ~~in excess of an~~ exceeding two additional banking ~~day~~ days without discharge of
19 secondary parties and without drawers or indorsers or liability to its transferor or ~~any~~ a prior
20 party.

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

27 ~~"§ 25-1~~ **The 'process of posting' means the usual procedure followed by a payor bank**
28 **in determining to pay an item and in recording the payment including one**
29 **or more of the following or other steps as determined by the bank:**

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

35 **"§ 25-4-110. Electronic presentment.**

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

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

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

3 **"§ 25-4-111. Statute of limitations.**

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

6
7 **"PART 2.**

8
9 **"COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS.**

10
11 **"§ 25-4-201. ~~Presumption and duration of agency status~~ Status of collecting banks ~~bank~~**
12 **as agent and provisional status of credits; applicability of ~~article~~ Article;**
13 **item indorsed 'pay any bank.'**

14 (1) (a) Unless a contrary intent clearly appears and ~~prior to~~ before the time that a
15 settlement given by a collecting bank for an item is or becomes ~~final~~ (subsection (3) of G.S.
16 25-4-211 and G.S. 25-4-212 and 25-4-213) the bank ~~final~~, the bank, with respect to the item,
17 is an agent or subagent of the owner of the item and any settlement given for the item is
18 provisional. This provision applies regardless of the form of indorsement or lack or
19 indorsement and even though credit given for the item is subject to immediate withdrawal
20 as of right or is in fact withdrawn; but the continuance of ownership of an item by its
21 owner and any rights of the owner to proceeds of the item are subject to rights of a
22 collecting ~~bank~~ bank, such as those resulting from outstanding advances on the item and
23 ~~valid~~ rights of recoupment or setoff. When ~~If~~ an item is handled by banks for purposes of
24 presentment, ~~payment and collection,~~ payment, collection, or return, the relevant provisions
25 of this ~~article~~ Article apply even though action of the parties clearly establishes that a
26 particular bank has purchased the item and is the owner of it.

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

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

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

33 **"§ 25-4-202. Responsibility for ~~collection;~~ collection or return; when action**
34 **seasonable. ~~timely.~~**

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

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

38 (b) (2) ~~sending~~ Sending notice of dishonor or nonpayment or
39 returning an item other than a documentary draft to the bank's
40 transferor ~~or directly to the depositary bank under subsection (2) of G.S.~~
41 25-4-212 after learning that the item has not been paid or accepted, as
42 the case may be; and

1 (e) (3) ~~settling~~ Settling for an item when the bank receives final
2 settlement; and

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

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

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

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

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

17 **"§ 25-4-203. Effect of instructions.**

18 Subject to ~~the provisions of article~~ Article 3 concerning conversion of instruments (G.S.
19 ~~25-3-419~~25-3-420) and ~~the provisions of both article 3 and this article concerning restrictive~~
20 ~~indorsements (G.S. 25-3-206), only a collecting bank's transferor can give instructions~~
21 ~~which that~~ affect the bank or constitute notice to ~~it~~ it, and a collecting bank is not liable to
22 prior parties for any action taken pursuant to ~~such~~ the instructions or in accordance with
23 any agreement with its transferor.

24 **"§ 25-4-204. Methods of sending and presenting; sending ~~direct~~ directly to payor.**

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

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

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

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

33 (e) (3) ~~any~~ An item other than documentary drafts to ~~any non-bank~~ a
34 nonbank payor, if authorized by federal reserve regulation or
35 operating ~~letter, clearing-house rule~~ circular, clearing-house rule, or the
36 like.

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

39 **"§ 25-4-205. ~~Supplying missing indorsement; no notice from prior indorsement.~~**
40 **Depository bank holder of unindorsed item.**

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

42 (1) A depository bank ~~which has taken an item for collection may supply any~~
43 ~~indorsement of the customer which is necessary to title unless the item contains the words~~

1 ~~'payee's indorsement required' or the like. In the absence of such a requirement a~~
2 ~~statement placed on the item by the depository bank to the effect that the item was~~
3 ~~deposited by a customer or credited to his account is effective as the customer's~~
4 ~~indorsement.~~

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

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

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

16 **"§ 25-4-206. Transfer between banks.**

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

19 ~~"§ 25 transfer or presentment of items; time for claims.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 25-4-207. Transfer warranties.

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

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

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

(3) The item has not been altered;

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

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

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

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

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

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

13 **"§ 25-4-208. Presentment warranties.**

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

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

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

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

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

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

39 (d) If (i) a dishonored draft is presented for payment to the drawer or an indorser
40 or (ii) any other item is presented for payment to a party obliged to pay the item, and the
41 item is paid, the person obtaining payment and a prior transferor of the item warrant to
42 the person making payment in good faith that the warrantor is, or was, at the time the
43 warrantor transferred the item, a person entitled to enforce the item or authorized to

1 obtain payment on behalf of a person entitled to enforce the item. The person making
2 payment may recover from any warrantor for breach of warranty an amount equal to the
3 amount paid plus expenses and loss of interest resulting from the breach.

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

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

11 **"§ 25-4-209. Encoding and retention warranties.**

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

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

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

25 **"§ 25-4-210. Items, accompanying documents and proceeds.**

26 (1) (a) A collecting bank has a security interest in an item and any accompanying
27 documents or the proceeds of either either:

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

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

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

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

40 (3) (c) Receipt by a collecting bank of a final settlement for an item is a realization
41 on its security interest in the item, accompanying ~~documents~~ documents, and proceeds.
42 To the extent and so So long as the bank does not receive final settlement for the item or
43 give up possession of the item or accompanying documents for purposes other than

1 collection, the security interest continues to that extent and is subject to ~~the provisions of~~
2 ~~article 9~~ Article 9, ~~except that but:~~

- 3 (a) (1) ~~no~~ No security agreement is necessary to make the security
4 interest enforceable (~~subsection (1) (b) of G.S. 25-9-203~~ G.S. 25-9-
5 203(1)(a)); ~~and~~
6 (b) ~~(2)~~ (2) ~~no~~ No filing is required to perfect the security interest; and
7 (c) ~~(3)~~ (3) ~~the~~ The security interest has priority over conflicting
8 perfected security interests in the item, accompanying documents or
9 proceeds.

10 **"§ 25-holder in due course.**

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

15 **"§ 25-by, through-through, or at a bank; liability of secondary parties. drawer or**
16 **indorser.**

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

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

29 **"§ 25~~final settlement in remittance cases.~~ Medium and time of settlement by bank.**

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

31 (a) ~~a check of the remitting bank or of another bank on any bank except the~~
32 ~~remitting bank; or~~

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

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

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

40 (2) ~~If before its midnight deadline the collecting bank properly dishonors a~~
41 ~~remittance check or authorization to charge on itself or presents or forwards for collection~~
42 ~~a remittance instrument of or on another bank which is of a kind approved by subsection~~

1 ~~(1) or has not been authorized by it, the collecting bank is not liable to prior parties in the~~
2 ~~event of the dishonor of such check, instrument or authorization.~~

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

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

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

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

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

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

25 (2) The time of settlement is:

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

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

31 (iii) With respect to tender of settlement by a credit or debit to an
32 account in a bank, when the credit or debit is made or, in the
33 case of tender of settlement by authority to charge an account,
34 when the authority is sent or delivered; or

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

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

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

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

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

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

9 **"§ 25-liability of collecting bank; return of item.**

10 (4) (a) If a collecting bank has made provisional settlement with its customer for
11 an item and itself fails by reason of dishonor, suspension of payments by a bank or
12 otherwise to receive a settlement for the item which is or becomes final, the bank may
13 revoke the settlement given by it, ~~charge back~~ charge back the amount of any credit given
14 for the item to its customer's ~~account~~ account, or obtain refund from its ~~eustomer~~ customer,
15 whether or not it is able to return the ~~item~~ item, if by its midnight deadline or within a
16 longer reasonable time after it learns the facts it returns the item or sends notification of
17 the facts. If the return or notice is delayed beyond the bank's midnight deadline or a
18 longer reasonable time after it learns the facts, the bank may revoke the settlement,
19 charge back the credit, or obtain refund from its customer, but it is liable for any loss
20 resulting from the delay. These rights to revoke, ~~charge back~~ charge back, and obtain
21 refund terminate if and when a settlement for the item received by the bank is or becomes
22 final. ~~final.~~ (subsection (3) of G.S. 25-4-211 and subsections (2) and (3) of G.S. 25-4-213).

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

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

31 (3) (c) A depository bank ~~which~~ that is also the payor may ~~charge back~~ charge back
32 the amount of an item to its customer's account or obtain refund in accordance with the
33 section governing return of an item received by a payor bank for credit on its books (G.S.
34 25-4-301).

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

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

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

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

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

1 money prevailing on the day when the person entitled to the charge-back or refund learns
2 that it will not receive payment in ordinary course.

3 **"§ 25nprovisional debits and credits become final; when certain credits become**
4 **available for withdrawal.**

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

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

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

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

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

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

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

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

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

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

34 (a) (1) ~~in any case where~~ If the bank has received a provisional
35 settlement for the item, when ~~such~~ the settlement becomes final and
36 the bank has had a reasonable time to ~~learn that the settlement is final;~~
37 receive return of the item and the item has not been received within
38 that time.

39 (b) (2) ~~in any case where~~ If the bank is both ~~a~~ the depositary bank and
40 ~~a~~ the payor bank ~~bank~~, and the item is finally paid, – at the opening of
41 the bank's second banking day following receipt of the item.

42 (5) (f) ~~A deposit of money in a bank is final when made but, subject~~ Subject to
43 applicable law stating a time for availability of funds and any right of the ~~a~~ bank to apply

1 ~~the a~~ deposit to an obligation of the ~~customer, depositor, the a~~ deposit of money becomes
2 available for withdrawal as of right at the opening of the bank's next banking day
3 following ~~after~~ receipt of the deposit.

4 "§ 25x (1)-(a) ~~Any~~ If an item is in or ~~coming comes~~ into the possession of a payor
5 or collecting bank ~~which that~~ suspends payment and ~~which the item is has not been finally~~
6 ~~paid shall paid~~, the item must be returned by the receiver, trustee or agent in charge of the
7 closed bank to the presenting bank or the closed bank's customer.

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

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

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

21 "PART 3.

22 "COLLECTION OF ITEMS: PAYOR BANKS.

23 "§ 25-4-301. Deferred posting; recovery of payment by return of items; time of 24 dishonor. ~~dishonor; return of items by payor bank.~~

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

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

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

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

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

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

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

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

7 "**§ 25-4-302. Payor bank's responsibility for late return of item.**

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

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

12 (a) (1) ~~a~~A demand item ~~item~~, other than a documentary ~~draft~~draft,
13 whether properly payable or ~~not~~not, if the bank, in any case ~~where~~in
14 ~~which~~ it is not also the depository bank, retains the item beyond
15 midnight of the banking day of receipt without settling for it or,
16 ~~regardless of whether~~ or not it is also the depository bank, does not pay
17 or return the item or send notice of dishonor until after its midnight
18 deadline; or

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

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

26 "**§ 25-4-303. When items subject to notice, ~~stop~~* payment order, legal ~~process~~**
27 **process, or setoff; order in which items may be charged or certified.**

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

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

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

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

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

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

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

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

14 "PART 4.

15 "RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER.

16 "§ 25-4-401. When bank may charge customer's account.

17
18 (1) (a) ~~As against its customer, a~~ A bank may charge against his ~~the~~ account any of a
19 customer an item which that is otherwise properly payable from that account even though
20 the charge creates an overdraft. An item is properly payable if it is authorized by the
21 customer and is in accordance with any agreement between the customer and bank.

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

24 (c) A bank may charge against the account of a customer a check that is otherwise
25 properly payable from the account, even though payment was made before the date of the
26 check, unless the customer has given notice to the bank of the postdating describing the
27 check with reasonable certainty. The notice is effective for the period stated in G.S. 25-
28 4-403(b) for stop-payment orders, and must be received at a time and in a manner that
29 afforded the bank a reasonable opportunity to act on it before the bank takes any action
30 with respect to the check described in G.S. 25-4-303. If a bank charges against the
31 account of a customer a check before the date stated in the notice of postdating, the bank
32 is liable for damages for the loss resulting from its act. The loss may include damages for
33 dishonor of subsequent items under G.S. 25-4-402.

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

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

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

40
41 **"§ 25-4-402. Bank's liability to customer for wrongful ~~dishonor~~ dishonor; time of**
42 **determining insufficiency of account.**

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

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

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

19 **"§ 25-4-403. Customer's right to stop payment; burden of proof of loss.**

20 (1) (a) A customer may by order to his bank stop payment of any item payable for his
21 account but the order must be or any person authorized to draw on the account if there is
22 more than one person may stop payment of any item drawn on the customer's account or
23 close the account by an order to the bank describing the item or account with reasonable
24 certainty received at such a time and in such a manner as to afford that affords the bank a
25 reasonable opportunity to act on it prior to before any action by the bank with respect to
26 the item described in G.S. 25-4-303. If the signature of more than one person is required
27 to draw on an account, any of these persons may stop payment or close the account.

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

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

35 (3) (c) The burden of establishing the fact and amount of loss resulting from the
36 payment of an item contrary to a ~~binding stop payment~~ stop-payment order or order to
37 close an account is on the customer. The loss from payment of an item contrary to a
38 stop-payment order may include damages for dishonor of subsequent items under G.S.
39 25-4-402.

40 **"§ 25-4-404. Bank not obligated to pay check more than six months old.**

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

1 **"§ 25-4-405. Death or incompetence of customer.**

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

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

12 ~~(3)~~ (c) A transaction, although subject to this ~~articleArticle,~~ is also subject to G.S.
13 105-24, and ~~G.S. 41-2.1, 53-146.1, 54-109.58, and 54B-129,~~ and in case of conflict
14 between the provisions of this section and either of those sections, the provisions of those
15 sections control.

16 **"§ 25-4-406. Customer's duty to discover and report unauthorized signature or**
17 **alteration.**

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

27 (a) A bank that sends or makes available to a customer a statement of account
28 showing payment of items for the account shall either return or make available to the
29 customer the items paid or provide information in the statement of account sufficient to
30 allow the customer reasonably to identify the items paid. The statement of account
31 provides sufficient information if the item is described by item number, amount, and date
32 of payment.

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

39 (c) If a bank sends or makes available a statement of account or items pursuant to
40 subsection (a) of this section, the customer must exercise reasonable promptness in
41 examining the statement or the items to determine whether any payment was not
42 authorized because of an alteration of an item or because a purported signature by or on
43 behalf of the customer was not authorized. If, based on the statement or items provided,

1 the customer should reasonably have discovered the unauthorized payment, the customer
2 must promptly notify the bank of the relevant facts.

3 (2) (d) If the bank ~~establishes~~ proves that the customer ~~failed~~ failed, with respect to
4 an ~~item~~ item, to comply with the duties imposed on the customer by subsection ~~(4)~~ (c) of
5 this section, the customer is precluded from asserting against the ~~bank~~ bank:

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

9 (b) (2) ~~an~~ The customer's unauthorized signature or alteration by the
10 same wrongdoer on any other item paid in good faith by the bank ~~after~~
11 ~~the first item and statement was available to the customer for a reasonable~~
12 ~~period not exceeding fourteen calendar days and before the bank receives~~
13 ~~notification from the customer of any such unauthorized signature or~~
14 ~~alteration~~ if the payment was made before the bank received notice
15 from the customer of the unauthorized signature or alteration and after
16 the customer had been afforded a reasonable period of time, not
17 exceeding 30 days, in which to examine the item or statement of
18 account and notify the bank.

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

21 (e) If subsection (d) of this section applies and the customer proves that the bank
22 failed to exercise ordinary care in paying the item and that the failure substantially
23 contributed to loss, the loss is allocated between the customer precluded and the bank
24 asserting the preclusion according to the extent to which the failure of the customer to
25 comply with subsection (c) of this section and the failure of the bank to exercise ordinary
26 care contributed to the loss. If the customer proves that the bank did not pay the item in
27 good faith, the preclusion under subsection (d) of this section does not apply.

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

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

42 **"§ 25-4-407. Payor bank's right to subrogation on improper payment.**

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

- 6 (a) ~~(1)~~ (1) ~~of~~ Of any holder in due course on the item against the drawer
7 or maker; ~~and~~
8 (b) ~~(2)~~ (2) ~~of~~ Of the payee or any other holder of the item against the
9 drawer or maker either on the item or under the transaction out of
10 which the item arose; and
11 (c) ~~(3)~~ (3) ~~of~~ Of the drawer or maker against the payee or any other
12 holder of the item with respect to the transaction out of which the item
13 arose.
14

15 "PART 5.

16 "COLLECTION OF DOCUMENTARY DRAFTS.

17 "§ 25-4-501. Handling of documentary drafts; duty to send for presentment and to 18 notify customer of dishonor.

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

24 "§ 25-4-502. Presentment of 'on arrival' drafts.

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

31 "§ 25-4-503. Responsibility of presenting bank for documents and goods; report of 32 reasons for dishonor; referee in case of need.

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

- 35 (a) ~~(1)~~ (1) ~~must~~ Must deliver the documents to the drawee on acceptance
36 of the draft if it is payable more than three days after presentment;
37 otherwise, only on payment; and
38 (b) ~~(2)~~ (2) ~~upon~~ Upon dishonor, either in the case of presentment for
39 acceptance or presentment for payment, may seek and follow
40 instructions from any referee in case of need designated in the draft ~~or~~
41 or, if the presenting bank does not choose to utilize ~~his~~ the referee's
42
43

1 ~~services~~ services, it must use diligence and good faith to ascertain the
2 reason for dishonor, must notify its transferor of the dishonor and of
3 the results of its effort to ascertain the reasons ~~therefor~~ therefor, and
4 must request instructions.

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

9 **"§ 25-4-504. Privilege of presenting bank to deal with goods; security interest for**
10 **expenses.**

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

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

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

18 **"§ 25-1-201. General definitions.**

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

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

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

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

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

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

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

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

- 1 (8) 'Burden of establishing a fact' means the burden of persuading the triers
2 of fact that the existence of the fact is more probable than its
3 nonexistence.
- 4 (9) 'Buyer in ordinary course of business' means a person who in good faith
5 and without knowledge that the sale to him is in violation of the
6 ownership rights or security interest of a third party in the goods buys in
7 ordinary course from a person in the business of selling goods of that
8 kind but does not include a pawnbroker. All persons who sell minerals
9 or the like (including oil and gas) at wellhead or minehead shall be
10 deemed to be persons in the business of selling goods of that kind.
11 'Buying' may be for cash or by exchange of other property or on secured
12 or unsecured credit and includes receiving goods or documents of title
13 under a preexisting contract for sale but does not include a transfer in
14 bulk or as security for or in total or partial satisfaction of a money debt.
- 15 (10) 'Conspicuous': A term or clause is conspicuous when it is so written that
16 a reasonable person against whom it is to operate ought to have noticed
17 it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF
18 LADING) is conspicuous. Language in the body of a form is
19 'conspicuous' if it is in larger or other contrasting type or color. But in a
20 telegram any stated term is 'conspicuous.' Whether a term or clause is
21 'conspicuous' or not is for decision by the court.
- 22 (11) 'Contract' means the total legal obligation which results from the parties'
23 agreement as affected by this chapter and any other applicable rules of
24 law. (Compare 'Agreement.')
- 25 (12) 'Creditor' includes a general creditor, a secured creditor, a lien creditor
26 and any representative of creditors, including an assignee for the benefit
27 of creditors, a trustee in bankruptcy, a receiver in equity and an executor
28 or administrator of an insolvent debtor's or assignor's estate.
- 29 (13) 'Defendant' includes a person in the position of defendant in a cross
30 action or counterclaim.
- 31 (14) 'Delivery' with respect to instruments, documents of title, chattel paper,
32 or certificated securities means voluntary transfer of possession.
- 33 (15) 'Document of title' includes bill of lading, dock warrant, dock receipt,
34 warehouse receipt or order for the delivery of goods, and also any other
35 document which in the regular course of business or financing is treated
36 as adequately evidencing that the person in possession of it is entitled to
37 receive, hold and dispose of the document and the goods it covers. To
38 be a document of title a document must purport to be issued by or
39 addressed to a bailee and purport to cover goods in the bailee's
40 possession which are either identified or are fungible portions of an
41 identified mass.
- 42 (16) 'Fault' means wrongful act, omission or breach.

- 1 (17) 'Fungible' with respect to goods or securities means goods or securities
2 of which any unit is, by nature or usage of trade, the equivalent of any
3 other like unit. Goods which are not fungible shall be deemed fungible
4 for the purposes of this chapter to the extent that under a particular
5 agreement or document unlike units are treated as equivalents.
- 6 (18) 'Genuine' means free of forgery or counterfeiting.
- 7 (19) 'Good faith' means honesty in fact in the conduct or transaction
8 concerned.
- 9 (20) 'Holder' ~~means a person who is in possession of a document of title or~~
10 ~~an instrument or a certificated investment security drawn, issued, or~~
11 ~~indorsed to him or to his order or to bearer or in blank. with respect to a~~
12 negotiable instrument, means the person in possession if the instrument
13 is payable to bearer or, in the case of an instrument payable to an
14 identified person, if the identified person is in possession. 'Holder' with
15 respect to a document of title means the person in possession if the
16 goods are deliverable to bearer or to the order of the person in
17 possession.
- 18 (21) To 'honor' is to pay or to accept and pay, or where a credit so engages to
19 purchase or discount a draft complying with the terms of the credit.
- 20 (22) 'Insolvency proceedings' includes any assignment for the benefit of
21 creditors or other proceedings intended to liquidate or rehabilitate the
22 estate of the person involved.
- 23 (23) A person is 'insolvent' who either has ceased to pay his debts in the
24 ordinary course of business or cannot pay his debts as they become due
25 or is insolvent within the meaning of the Federal Bankruptcy Law.
- 26 (24) 'Money' means a medium of exchange authorized or adopted by a
27 domestic or foreign government ~~as a part of its currency. and includes a~~
28 monetary unit of account established by an intergovernmental
29 organization or by an agreement between two or more nations.
- 30 (25) A person has 'notice' of a fact ~~when~~ when:
31 (a) ~~he~~ The person has actual knowledge of it; or
32 (b) ~~he~~ The person has received a notice or notification of it; or
33 (c) ~~from~~ From all the facts and circumstances known to ~~him~~ the
34 person at the time in question he has reason to know that it exists.
35 A person 'knows' or has 'knowledge' of a fact when he has actual
36 knowledge of it. 'Discover' or 'learn' or a word or phrase of similar
37 import refers to knowledge rather than to reason to know. The time and
38 circumstances under which a notice or notification may cease to be
39 effective are not determined by this chapter.
- 40 (26) A person 'notifies' or 'gives' a notice or notification to another by taking
41 such steps as may be reasonably required to inform the other in ordinary
42 course whether or not such other actually comes to know of it. A person
43 'receives' a notice or notification ~~when~~ when:

- 1 (a) ~~It~~ comes to ~~his~~ the person's attention; or
- 2 (b) ~~It~~ is duly delivered at the place of business through which the
- 3 contract was made or at any other place held out by ~~him~~ the
- 4 person as the place for receipt of ~~such~~ the communications.
- 5 (27) Notice, knowledge or a notice or notification received by an
- 6 organization is effective for a particular transaction from the time when
- 7 it is brought to the attention of the individual conducting that
- 8 transaction, and in any event from the time when it would have been
- 9 brought to ~~his~~ the individual's attention if the organization had exercised
- 10 due diligence. An organization exercises due diligence if it maintains
- 11 reasonable routines for communicating significant information to the
- 12 person conducting the transaction and there is reasonable compliance
- 13 with the routines. Due diligence does not require an individual acting
- 14 for the organization to communicate information unless such
- 15 communication is part of ~~his~~ the individual's regular duties or unless ~~he~~
- 16 the individual has reason to know of the transaction and that the
- 17 transaction would be materially affected by the information.
- 18 (28) 'Organization' includes a corporation, government or governmental
- 19 subdivision or agency, business trust, estate, trust, partnership or
- 20 association, two or more persons having a joint or common interest, or
- 21 any other legal or commercial entity.
- 22 (29) 'Party,' as distinct from 'third party,' means a person who has engaged in
- 23 a transaction or made an agreement within this chapter.
- 24 (30) 'Person' includes an individual or an organization (See G.S. 25-1-102).
- 25 (31) 'Presumption' or 'presumed' means that the trier of fact must find the
- 26 existence of the fact presumed unless and until evidence is introduced
- 27 which would support a finding of its nonexistence.
- 28 (32) 'Purchase' includes taking by sale, discount, negotiation, mortgage,
- 29 pledge, lien, issue or re-issue, gift or any other voluntary transaction
- 30 creating an interest in property.
- 31 (33) 'Purchaser' means a person who takes by purchase.
- 32 (34) 'Remedy' means any remedial right to which an aggrieved party is
- 33 entitled with or without resort to a tribunal.
- 34 (35) 'Representative' includes an agent, an officer of a corporation or
- 35 association, and a trustee, executor or administrator of an estate, or any
- 36 other person empowered to act for another.
- 37 (36) 'Rights' includes remedies.
- 38 (37) 'Security interest' means an interest in personal property or fixtures
- 39 which secures payment or performance of an obligation. The retention
- 40 or reservation of title by a seller of goods notwithstanding shipment or
- 41 delivery to the buyer (G.S. 25-2-401) is limited in effect to a reservation
- 42 of a 'security interest'. The term also includes any interest of a buyer of
- 43 accounts or chattel paper which is subject to Article 9 of this Chapter.

1 The special property interest of a buyer of goods on identification of
2 those goods to a contract for sale under G.S. 25-2-401 is not a 'security
3 interest,' but a buyer may also acquire a 'security interest' by complying
4 with Article 9 of this Chapter. Unless a consignment is intended as
5 security, reservation of title thereunder is not a 'security interest' but a
6 consignment is in any event subject to the provisions on consignment
7 sales (G.S. 25-2-326).

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

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

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

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

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

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

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

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

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

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

42 (v) The lessee has an option to become the owner of the
43 goods for a fixed price that is equal to or greater than

- 1 the reasonably predictable fair market value of the
2 goods at the time the option is to be performed.
- 3 (c) For purposes of this subsection (37):
- 4 (i) Additional consideration is not nominal if (i) when the
5 option to renew the lease is granted to the lessee the
6 rent is stated to be the fair market rent for the use of
7 the goods for the term of the renewal determined at the
8 time the option is to be performed, or (ii) when the
9 option to become the owner of the goods is granted to
10 the lessee the price is stated to be the fair market value
11 of the goods determined at the time the option is to be
12 performed. Additional consideration is nominal if it is
13 less than the lessee's reasonably predictable cost of
14 performing under the lease agreement if the option is
15 not exercised;
- 16 (ii) 'Reasonably predictable' and 'remaining economic life
17 of the goods' are to be determined with reference to the
18 facts and circumstances at the time the transaction is
19 entered into; and
- 20 (iii) 'Present value' means the amount as of a date certain of
21 one or more sums payable in the future, discounted to
22 the date certain. The discount is determined by the
23 interest rate specified by the parties if the rate is not
24 manifestly unreasonable at the time the transaction is
25 entered into; otherwise, the discount is determined by a
26 commercially reasonable rate that takes into account
27 the facts and circumstances of each case at the time the
28 transaction was entered into.
- 29 (38) 'Send' in connection with any writing or notice means to deposit in the
30 mail or deliver for transmission by any other usual means of
31 communication with postage or cost of transmission provided for and
32 properly addressed and in the case of an instrument to an address
33 specified thereon or otherwise agreed, or if there be none to any address
34 reasonable under the circumstances. The receipt of any writing or notice
35 within the time at which it would have arrived if properly sent has the
36 effect of a proper sending.
- 37 (39) 'Signed' includes any symbol executed or adopted by a party with
38 present intention to authenticate a writing.
- 39 (40) 'Surety' includes guarantor.
- 40 (41) 'Telegram' includes a message transmitted by radio, teletype, cable, any
41 mechanical method of transmission, or the like.
- 42 (42) 'Term' means that portion of an agreement which relates to a particular
43 matter.

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

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

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

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

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

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

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

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

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

22 **"§ 25-1-207. Performance or acceptance under reservation of rights.**

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

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

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

29 **"§ 25-2-511. Tender of payment by buyer; payment by check.**

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

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

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

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

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