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1<sup>ST</sup> SESSION

# H. R. 1474

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IN THE SENATE OF THE UNITED STATES

JUNE 5, 2003

Received; read twice and referred to the Committee on Banking, Housing, and  
Urban Affairs

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## AN ACT

To facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Check Clearing for the 21st Century Act” or the “Check  
6 21 Act”.

7 (b) **FINDINGS.**—The Congress finds as follows:

8 (1) In the Expedited Funds Availability Act,  
9 enacted on August 10, 1987, the Congress directed  
10 the Board of Governors of the Federal Reserve Sys-  
11 tem to consider establishing regulations requiring  
12 Federal reserve banks and depository institutions to  
13 provide for check truncation, in order to improve the  
14 check processing system.

15 (2) In that same Act, the Congress—

16 (A) provided the Board of Governors of the  
17 Federal Reserve System with full authority to  
18 regulate all aspects of the payment system, in-  
19 cluding the receipt, payment, collection, and  
20 clearing of checks, and related functions of the  
21 payment system pertaining to checks; and

22 (B) directed that the exercise of such au-  
23 thority by the Board superseded any State law,  
24 including the Uniform Commercial Code, as in  
25 effect in any State.

1           (3) Check truncation is no less desirable today  
2           for both financial service customers and the financial  
3           services industry, to reduce costs, improve efficiency  
4           in check collections, and expedite funds availability  
5           for customers than it was over 15 years ago when  
6           Congress first directed the Board to consider estab-  
7           lishing such a process.

8           (c) PURPOSES.—The purposes of this Act are as fol-  
9           lows:

10           (1) To facilitate check truncation by author-  
11           izing substitute checks.

12           (2) To foster innovation in the check collection  
13           system without mandating receipt of checks in elec-  
14           tronic form.

15           (3) To improve the overall efficiency of the Na-  
16           tion’s payments system.

17 **SEC. 2. DEFINITIONS.**

18           For purposes of this Act, the following definitions  
19           shall apply:

20           (1) ACCOUNT.—The term “account” means a  
21           deposit account at a bank.

22           (2) BANK.—The term “bank” means any per-  
23           son that is located in a State and engaged in the  
24           business of banking and includes—

1 (A) any depository institution (as defined  
2 in section 19(b)(1)(A) of the Federal Reserve  
3 Act);

4 (B) any Federal reserve bank;

5 (C) any Federal home loan bank; or

6 (D) to the extent it acts as a payor—

7 (i) the Treasury of the United States;

8 (ii) the United States Postal Service;

9 (iii) a State government; or

10 (iv) a unit of general local government  
11 (as defined in section 602(24) of the Expe-  
12 dited Funds Availability Act).

13 (3) BANKING TERMS.—

14 (A) CLAIMANT BANK.—The term “claim-  
15 ant bank” means a bank that submits a claim  
16 for recredit under section 7 to an indemnifying  
17 bank.

18 (B) COLLECTING BANK.—The term “col-  
19 lecting bank” means any bank handling a check  
20 for collection except the paying bank.

21 (C) DEPOSITARY BANK.—The term “de-  
22 positary bank” means—

23 (i) the first bank to which a check is  
24 transferred, even if such bank is also the  
25 paying bank or the payee; or

1           (ii) a bank to which a check is trans-  
2           ferred for deposit in an account at such  
3           bank, even if the check is physically re-  
4           ceived and indorsed first by another bank.

5           (D) PAYING BANK.—The term “paying  
6           bank” means—

7           (i) the bank by which a check is pay-  
8           able, unless the check is payable at or  
9           through another bank and is sent to the  
10          other bank for payment or collection; or

11          (ii) the bank at or through which a  
12          check is payable and to which the check is  
13          sent for payment or collection.

14          (E) RETURNING BANK.—

15          (i) IN GENERAL.—The term “return-  
16          ing bank” means a bank (other than the  
17          paying or depository bank) handling a re-  
18          turned check or notice in lieu of return.

19          (ii) TREATMENT AS COLLECTING  
20          BANK.—No provision of this Act shall be  
21          construed as affecting the treatment of a  
22          returning bank as a collecting bank for  
23          purposes of section 4–202(b) of the Uni-  
24          form Commercial Code.

1           (4) BOARD.—The term “Board” means the  
2 Board of Governors of the Federal Reserve System.

3           (5) BUSINESS DAY.—The term “business day”  
4 has the same meaning as in section 602(3) of the  
5 Expedited Funds Availability Act.

6           (6) CHECK.—The term “check”—

7                 (A) means a draft, payable on demand and  
8 drawn on or payable through or at an office of  
9 a bank, whether or not negotiable, that is han-  
10 dled for forward collection or return, including  
11 a substitute check and a travelers check; and

12                 (B) does not include a noncash item or an  
13 item payable in a medium other than United  
14 States dollars.

15           (7) CONSUMER.—The term “consumer” means  
16 an individual who—

17                 (A) with respect to a check handled for  
18 forward collection, draws the check on a con-  
19 sumer account; or

20                 (B) with respect to a check handled for re-  
21 turn, deposits the check into, or cashes the  
22 check against, a consumer account.

23           (8) CONSUMER ACCOUNT.—The term “con-  
24 sumer account” has the same meaning as in section  
25 602(10) of the Expedited Funds Availability Act.

1           (9) CUSTOMER.—The term “customer” means  
2 a person having an account with a bank.

3           (10) FORWARD COLLECTION.—The term “for-  
4 ward collection” means the transfer by a bank of a  
5 check to a collecting bank for settlement or the pay-  
6 ing bank for payment.

7           (11) INDEMNIFYING BANK.—The term “indem-  
8 nifying bank” means a bank that is providing an in-  
9 demnity under section 5 with respect to a substitute  
10 check.

11           (12) MICR LINE.—The terms “MICR line” and  
12 “magnetic ink character recognition line” mean the  
13 numbers, which may include the bank routing num-  
14 ber, account number, check number, check amount,  
15 and other information, that are printed near the bot-  
16 tom of a check in magnetic ink in accordance with  
17 generally applicable industry standards.

18           (13) NONCASH ITEM.—The term “noncash  
19 item” has the same meaning as in section 602(14)  
20 of the Expedited Funds Availability Act.

21           (14) PERSON.—The term “person” means a  
22 natural person, corporation, unincorporated com-  
23 pany, partnership, government unit or instrumen-  
24 tality, trust, or any other entity or organization.

1           (15) RECONVERTING BANK.—The term “recon-  
2     verting bank” means—

3           (A) the bank that creates a substitute  
4     check; or

5           (B) if a substitute check is created by a  
6     person other than a bank, the first bank that  
7     transfers or presents such substitute check.

8           (16) SUBSTITUTE CHECK.—The term “sub-  
9     stitute check” means a paper reproduction of the  
10    original check that—

11          (A) contains an image of the front and  
12     back of the original check;

13          (B) bears a MICR line containing all the  
14     information appearing on the MICR line of the  
15     original check, except as provided under gen-  
16     erally applicable industry standards for sub-  
17     stitute checks to facilitate the processing of  
18     substitute checks;

19          (C) conforms, in paper stock, dimension,  
20     and otherwise, with generally applicable indus-  
21     try standards for substitute checks; and

22          (D) is suitable for automated processing in  
23     the same manner as the original check.



1           (17) STATE.—The term “State” has the same  
2 meaning as in section 3(a)(3) of the Federal Deposit  
3 Insurance Act.

4           (18) TRUNCATE.—The term “truncate” means  
5 to remove an original paper check from the check  
6 collection or return process and send to a recipient,  
7 in lieu of such original paper check, a substitute  
8 check or, by agreement, information relating to the  
9 original check (including data taken from the MICR  
10 line of the original check or an electronic image of  
11 the original check), whether with or without subse-  
12 quent delivery of the original paper check.

13           (19) UNIFORM COMMERCIAL CODE.—The term  
14 “Uniform Commercial Code” means the Uniform  
15 Commercial Code in effect in a State.

16           (20) OTHER TERMS.—Unless the context re-  
17 quires otherwise, the terms not defined in this sec-  
18 tion shall have the same meanings as in the Uniform  
19 Commercial Code.

20 **SEC. 3. GENERAL PROVISIONS GOVERNING SUBSTITUTE**  
21 **CHECKS.**

22           (a) NO AGREEMENT REQUIRED.—A person may de-  
23 posit, present, or send for collection or return a substitute  
24 check without an agreement with the recipient, so long as

1 a bank has made the warranties in section 4 with respect  
2 to such substitute check.

3 (b) LEGAL EQUIVALENCE.—A substitute check shall  
4 be the legal equivalent of the original check for all pur-  
5 poses, including any provision of any Federal or State law,  
6 and for all persons if the substitute check—

7 (1) accurately represents all of the information  
8 on the front and back of the original check as of the  
9 time the original check was truncated; and

10 (2) bears the legend: “This is a legal copy of  
11 your check. You can use it the same way you would  
12 use the original check.”.

13 (c) ENDORSEMENTS.—A bank shall ensure that the  
14 substitute check for which the bank is the reconverting  
15 bank bears all endorsements applied by parties that pre-  
16 viously handled the check (whether in electronic form or  
17 in the form of the original paper check or a substitute  
18 check) for forward collection or return.

19 (d) IDENTIFICATION OF RECONVERTING BANK.—A  
20 bank shall identify itself as a reconverting bank on any  
21 substitute check for which the bank is a reconverting bank  
22 so as to preserve any previous reconverting bank identi-  
23 fications in conformance with generally applicable industry  
24 standards.

1 (e) APPLICABLE LAW.—A substitute check that is  
2 the legal equivalent of the original check under subsection  
3 (b) shall be subject to any provision, including any provi-  
4 sion relating to the protection of customers, of part 229  
5 of title 12 of the Code of Federal Regulations, the Uni-  
6 form Commercial Code, and any other applicable Federal  
7 or State law as if such substitute check were the original  
8 check, to the extent such provision of law is not incon-  
9 sistent with this Act.

10 **SEC. 4. SUBSTITUTE CHECK WARRANTIES.**

11 A bank that transfers, presents, or returns a sub-  
12 stitute check and receives consideration for the check war-  
13 rants, as a matter of law, to the transferee, any subse-  
14 quent collecting or returning bank, the depository bank,  
15 the drawee, the drawer, the payee, the depositor, and any  
16 endorser (regardless of whether the warrantee receives the  
17 substitute check or another paper or electronic form of  
18 the substitute check or original check) that—

19 (1) the substitute check meets all the require-  
20 ments for legal equivalence under section 3(b); and

21 (2) no depository bank, drawee, drawer, or en-  
22 dorser will receive presentment or return of the sub-  
23 stitute check, the original check, or a copy or other  
24 paper or electronic version of the substitute check or  
25 original check such that the bank, drawee, drawer,

1 or endorser will be asked to make a payment based  
2 on a check that the bank, drawee, drawer, or en-  
3 dorser has already paid.

4 **SEC. 5. INDEMNITY.**

5 (a) INDEMNITY.—A reconverting bank and each bank  
6 that subsequently transfers, presents, or returns a sub-  
7 stitute check in any electronic or paper form, and receives  
8 consideration for such transfer, presentment, or return  
9 shall indemnify the transferee, any subsequent collecting  
10 or returning bank, the depositary bank, the drawee, the  
11 drawer, the payee, the depositor, and any endorser, up to  
12 the amount described in subsections (b) and (c), as appli-  
13 cable, to the extent of any loss incurred by any recipient  
14 of a substitute check if that loss occurred due to the re-  
15 ceipt of a substitute check instead of the original check.

16 (b) INDEMNITY AMOUNT.—

17 (1) AMOUNT IN EVENT OF BREACH OF WAR-  
18 RANTY.—The amount of the indemnity under sub-  
19 section (a) shall be the amount of any loss (includ-  
20 ing costs and reasonable attorney’s fees and other  
21 expenses of representation) proximately caused by a  
22 breach of a warranty provided under section 4.

23 (2) AMOUNT IN ABSENCE OF BREACH OF WAR-  
24 RANTY.—In the absence of a breach of a warranty

1 provided under section 4, the amount of the indem-  
2 nity under subsection (a) shall be the sum of—

3 (A) the amount of any loss, up to the  
4 amount of the substitute check; and

5 (B) interest and expenses (including costs  
6 and reasonable attorney's fees and other ex-  
7 penses of representation).

8 (c) COMPARATIVE NEGLIGENCE.—If a loss described  
9 in subsection (a) results in whole or in part from the neg-  
10 ligence or failure to act in good faith on the part of an  
11 indemnified party, then that party's indemnification under  
12 this section shall be reduced in proportion to the amount  
13 of negligence or bad faith attributable to that party.

14 (d) EFFECT OF PRODUCING ORIGINAL CHECK OR  
15 COPY.—

16 (1) IN GENERAL.—If the indemnifying bank  
17 produces the original check or a copy of the original  
18 check (including an image or a substitute check)  
19 that accurately represents all of the information on  
20 the front and back of the original check (as of the  
21 time the original check was truncated) or is other-  
22 wise sufficient to determine whether or not a claim  
23 is valid, the indemnifying bank shall—

24 (A) be liable under this section only for  
25 losses covered by the indemnity that are in-

1 curred up to the time the original check or such  
2 copy is provided to the indemnified party; and

3 (B) have a right to the return of any funds  
4 the bank has paid under the indemnity in ex-  
5 cess of those losses.

6 (2) COORDINATION OF INDEMNITY WITH IM-  
7 PLIED WARRANTY.—The production of the original  
8 check, a substitute check, or a copy under paragraph  
9 (1) by an indemnifying bank shall not absolve the  
10 bank from any liability on a warranty established  
11 under this Act or any other provision of law.

12 (e) SUBROGATION OF RIGHTS.—

13 (1) IN GENERAL.—Each indemnifying bank  
14 shall be subrogated to the rights of any indemnified  
15 party to the extent of the indemnity.

16 (2) RECOVERY UNDER WARRANTY.—A bank  
17 that indemnifies a party under this section may at-  
18 tempt to recover from another party based on a war-  
19 ranty or other claim.

20 (3) DUTY OF INDEMNIFIED PARTY.—Each in-  
21 demnified party shall have a duty to comply with all  
22 reasonable requests for assistance from an indem-  
23 nifying bank in connection with any claim the in-  
24 demnifying bank brings against a warrantor or other

1 party related to a check that forms the basis for the  
2 indemnification.

3 **SEC. 6. EXPEDITED RECREDIT FOR CONSUMERS.**

4 (a) RECREDIT CLAIMS.—

5 (1) IN GENERAL.—A consumer may make a  
6 claim for expedited recredit from the bank that  
7 holds the account of the consumer with respect to a  
8 substitute check, if the consumer asserts in good  
9 faith that—

10 (A) the bank charged the consumer's ac-  
11 count for a substitute check that was provided  
12 to the consumer;

13 (B) either—

14 (i) the check was not properly charged  
15 to the consumer's account; or

16 (ii) the consumer has a warranty  
17 claim with respect to such substitute  
18 check;

19 (C) the consumer suffered a resulting loss;  
20 and

21 (D) the production of the original check or  
22 a better copy of the original check is necessary  
23 to determine the validity of any claim described  
24 in subparagraph (B).

1           (2) 30-DAY PERIOD.—Any claim under para-  
2 graph (1) with respect to a consumer account may  
3 be submitted by a consumer before the end of the  
4 30-day period beginning on the later of—

5           (A) the date on which the consumer re-  
6 ceives the periodic statement of account for  
7 such account which contains information con-  
8 cerning the transaction giving rise to the claim;  
9 or

10           (B) the date the substitute check is made  
11 available to the consumer.

12           (3) EXTENSION UNDER EXTENUATING CIR-  
13 CUMSTANCES.—If the consumer’s ability to submit  
14 the claim within the 30-day period under paragraph  
15 (2) is delayed due to extenuating circumstances, in-  
16 cluding extended travel or the illness of the con-  
17 sumer, the 30-day period shall be extended for a  
18 total not to exceed 30 additional days.

19           (b) PROCEDURES FOR CLAIMS.—

20           (1) IN GENERAL.—To make a claim for an ex-  
21 pedited recredit under subsection (a) with respect to  
22 a substitute check, the consumer shall provide to the  
23 bank that holds the account of such consumer—

24           (A) a description of the claim, including an  
25 explanation of—



1 (i) why the substitute check was not  
2 properly charged to the consumer's ac-  
3 count; or

4 (ii) the warranty claim with respect to  
5 such check;

6 (B) a statement that the consumer suf-  
7 fered a loss and an estimate of the amount of  
8 the loss;

9 (C) the reason why production of the origi-  
10 nal check or a better copy of the original check  
11 is necessary to determine the validity of the  
12 charge to the consumer's account or the war-  
13 ranty claim; and

14 (D) sufficient information to identify the  
15 substitute check and to investigate the claim.

16 (2) CLAIM IN WRITING.—The bank holding the  
17 consumer account that is the subject of a claim by  
18 the consumer under subsection (a) may, in the dis-  
19 cretion of the bank, require the consumer to submit  
20 the information required under paragraph (1) in  
21 writing.

22 (c) RECREDIT TO CONSUMER.—

23 (1) CONDITIONS FOR RECREDIT.—The bank  
24 shall recredit a consumer account in accordance with

1 paragraph (2) for the amount of a substitute check  
2 that was charged against the consumer account if—

3 (A) a consumer submits a claim to the  
4 bank with respect to that substitute check that  
5 meets the requirement of subsection (b); and

6 (B) the bank has not provided to the con-  
7 sumer the original check, a substitute check, or  
8 a copy of the original check and demonstrates  
9 that the substitute check was properly charged  
10 to the consumer's account.

11 (2) TIMING OF RECREDIT.—

12 (A) IN GENERAL.—The bank shall recredit  
13 the consumer's account for the amount de-  
14 scribed in paragraph (1) no later than the end  
15 of the business day following the business day  
16 on which the bank determines the consumer's  
17 claim is valid.

18 (B) RECREDIT PENDING INVESTIGA-  
19 TION.—If the bank has not yet determined that  
20 the consumer's claim is valid before the end of  
21 the 10th business day after the business day on  
22 which the consumer submitted the claim, the  
23 bank shall recredit the consumer's account  
24 for—

1 (i) the lesser of the amount of the  
2 substitute check that was charged against  
3 the consumer account, or \$2,500, together  
4 with interest if the account is an interest-  
5 bearing account, no later than the end of  
6 such 10th business day; and

7 (ii) the remaining amount of the sub-  
8 stitute check that was charged against the  
9 consumer account, if any, together with in-  
10 terest if the account is an interest-bearing  
11 account, not later than the 45th calendar  
12 day following the business day on which  
13 the consumer submits the claim.

14 (d) AVAILABILITY OF RECREDIT.—

15 (1) NEXT BUSINESS DAY AVAILABILITY.—Ex-  
16 cept as provided in paragraph (2), a bank that pro-  
17 vides a recredit to a consumer account under sub-  
18 section (c) shall make the recredited funds available  
19 for withdrawal by the consumer by the start of the  
20 next business day after the business day on which  
21 the bank recredits the consumer's account under  
22 subsection (c).

23 (2) SAFEGUARD EXCEPTIONS.—A bank may  
24 delay availability to a consumer of a recredit pro-  
25 vided under subsection (c)(2)(B)(i) until the start of

1       either the business day following the business day on  
2       which the bank determines that the consumer's  
3       claim is valid or the 45th calendar day following the  
4       business day on which the consumer submits a claim  
5       for such recredit in accordance with subsection (b),  
6       whichever is earlier, in any of the following cir-  
7       cumstances:

8               (A) NEW ACCOUNTS.—The claim is made  
9               during the 30-day period beginning on the busi-  
10              ness day the consumer account was established.

11             (B) REPEATED OVERDRAFTS.—Without  
12             regard to the charge that is the subject of the  
13             claim for which the recredit was made—

14               (i) on 6 or more business days during  
15               the 6-month period ending on the date on  
16               which the consumer submits the claim, the  
17               balance in the consumer account was nega-  
18               tive or would have become negative if  
19               checks or other charges to the account had  
20               been paid; or

21               (ii) on 2 or more business days during  
22               such 6-month period, the balance in the  
23               consumer account was negative or would  
24               have become negative in the amount of

1                   \$5,000 or more if checks or other charges  
2                   to the account had been paid.

3                   (C) PREVENTION OF FRAUD LOSSES.—The  
4                   bank has reasonable cause to believe that the  
5                   claim is fraudulent, based on facts (other than  
6                   the fact that the check in question or the con-  
7                   sumer is of a particular class) that would cause  
8                   a well-grounded belief in the mind of a reason-  
9                   able person that the claim is fraudulent.

10                  (3) OVERDRAFT FEES.—No bank that, in ac-  
11                  cordance with paragraph (2), delays the availability  
12                  of a recredit under subsection (c) to any consumer  
13                  account may impose any overdraft fees with respect  
14                  to drafts drawn by the consumer on such recredited  
15                  amount before the end of the 5-day period beginning  
16                  on the date notice of the delay in the availability of  
17                  such amount is sent by the bank to the consumer.

18                  (e) REVERSAL OF RECREDIT.—A bank may reverse  
19                  a recredit to a consumer account if the bank—

20                   (1) determines that a substitute check for which  
21                   the bank recredited a consumer account under sub-  
22                   section (c) was in fact properly charged to the con-  
23                   sumer account; and

24                   (2) notifies the consumer in accordance with  
25                   subsection (f)(3).

1 (f) NOTICE TO CONSUMER.—

2 (1) NOTICE IF CONSUMER CLAIM NOT VALID.—

3 If a bank determines that a substitute check subject  
4 to the consumer's claim was in fact properly charged  
5 to the consumer's account, the bank shall send to  
6 the consumer, no later than the business day fol-  
7 lowing the business day on which the bank makes a  
8 determination—

9 (A) the original check or a copy of the  
10 original check (including an image or a sub-  
11 stitute check) that—

12 (i) accurately represents all of the in-  
13 formation on the front and back of the  
14 original check (as of the time the original  
15 check was truncated); or

16 (ii) is otherwise sufficient to deter-  
17 mine whether or not the consumer's claim  
18 is valid; and

19 (B) an explanation of the basis for the de-  
20 termination by the bank that the substitute  
21 check was properly charged, including copies of  
22 any information or documents on which the  
23 bank relied in making the determination.

24 (2) NOTICE OF RECREDIT.—If a bank recredits  
25 a consumer account under subsection (c), the bank

1 shall send to the consumer, no later than the busi-  
2 ness day following the business day on which the  
3 bank makes the recredit, a notice of—

4 (A) the amount of the recredit; and

5 (B) the date the recredited funds will be  
6 available for withdrawal.

7 (3) NOTICE OF REVERSAL OF RECREDIT.—In  
8 addition to the notice required under paragraph (1),  
9 if a bank reverses a recredited amount under sub-  
10 section (e), the bank shall send to the consumer, no  
11 later than the business day following the business  
12 day on which the bank reverses the recredit, a notice  
13 of—

14 (A) the amount of the reversal; and

15 (B) the date the recredit was reversed.

16 (4) MODE OF DELIVERY.—A notice described in  
17 this subsection shall be delivered by United States  
18 mail or by any other means through which the con-  
19 sumer has agreed to receive account information.

20 (g) OTHER CLAIMS NOT AFFECTED.—Providing a  
21 recredit in accordance with this section shall not absolve  
22 the bank from liability for a claim made under any other  
23 law, such as a claim for wrongful dishonor under the Uni-  
24 form Commercial Code, or from liability for additional  
25 damages under section 5 or 9.

1 (h) CLARIFICATION CONCERNING CONSUMER POS-  
2 SESSION.—A consumer who was provided a substitute  
3 check may make a claim for an expedited recredit under  
4 this section with regard to a transaction involving the sub-  
5 stitute check whether or not the consumer is in possession  
6 of the substitute check.

7 (i) SCOPE OF APPLICATION.—This section shall only  
8 apply to customers who are consumers.

9 **SEC. 7. EXPEDITED RECREDIT PROCEDURES FOR BANKS.**

10 (a) RECREDIT CLAIMS.—

11 (1) IN GENERAL.—A bank may make a claim  
12 against an indemnifying bank for expedited recredit  
13 for which that bank is indemnified if—

14 (A) the claimant bank (or a bank that the  
15 claimant bank has indemnified) has received a  
16 claim for expedited recredit from a consumer  
17 under section 6 with respect to a substitute  
18 check or would have been subject to such a  
19 claim had the consumer's account been charged;

20 (B) the claimant bank has suffered a re-  
21 sulting loss or is obligated to recredit a con-  
22 sumer account under section 6 with respect to  
23 such substitute check; and

24 (C) production of the original check, an-  
25 other substitute check, or a better copy of the



1 original check is necessary to determine the va-  
2 lidity of the charge to the customer account or  
3 any warranty claim connected with such sub-  
4 stitute check.

5 (2) 120-DAY PERIOD.—Any claim under para-  
6 graph (1) may be submitted by the claimant bank  
7 to an indemnifying bank before the end of the 120-  
8 day beginning on the date of the transaction that  
9 gave rise to the claim.

10 (b) PROCEDURES FOR CLAIMS.—

11 (1) IN GENERAL.—To make a claim under sub-  
12 section (a) for an expedited recredit relating to a  
13 substitute check, the claimant bank shall send to the  
14 indemnifying bank—

15 (A) a description of—

16 (i) the claim, including an explanation  
17 of why the substitute check cannot be  
18 properly charged to the consumer account;  
19 or

20 (ii) the warranty claim;

21 (B) a statement that the claimant bank  
22 has suffered a loss or is obligated to recredit  
23 the consumer's account under section 6, to-  
24 gether with an estimate of the amount of the  
25 loss or recredit;

1 (C) the reason why production of the origi-  
2 nal check, another substitute check, or a better  
3 copy of the original check is necessary to deter-  
4 mine the validity of the charge to the consumer  
5 account or the warranty claim; and

6 (D) information sufficient for the indem-  
7 nifying bank to identify the substitute check  
8 and to investigate the claim.

9 (2) REQUIREMENTS RELATING TO COPIES OF  
10 SUBSTITUTE CHECKS.—If the information submitted  
11 by a claimant bank pursuant to paragraph (1) in  
12 connection with a claim for an expedited recredit in-  
13 cludes a copy of any substitute check for which any  
14 such claim is made, the claimant bank shall take  
15 reasonable steps to ensure that any such copy can-  
16 not be—

17 (A) mistaken for the legal equivalent of the  
18 check under section 3(b); or

19 (B) sent or handled by any bank, including  
20 the indemnifying bank, as a forward collection  
21 or returned check.

22 (3) CLAIM IN WRITING.—An indemnifying bank  
23 may, in the bank’s discretion, require the claimant  
24 bank to submit in writing the information required  
25 by paragraph (1), including a copy of the written

1 claim, if any, that the consumer submitted in ac-  
2 cordance with section 6(b).

3 (c) RECREDIT BY INDEMNIFYING BANK.—

4 (1) PROMPT ACTION REQUIRED.—No later than  
5 10 business days after the business day on which an  
6 indemnifying bank receives a claim under subsection  
7 (a) from a claimant bank with respect to a sub-  
8 stitute check, the indemnifying bank shall—

9 (A) provide, to the claimant bank, the  
10 original check (with respect to such substitute  
11 check) or a copy of the original check (including  
12 an image or a substitute check) that—

13 (i) accurately represents all of the in-  
14 formation on the front and back of the  
15 original check (as of the time the original  
16 check was truncated); or

17 (ii) is otherwise sufficient to deter-  
18 mine the bank's claim is not valid; and

19 (B) recredit the claimant bank for the  
20 amount of the claim up to the amount of the  
21 substitute check, plus interest if applicable; or

22 (C) provide information to the claimant  
23 bank as to why the indemnifying bank is not  
24 obligated to comply with subparagraph (A) or  
25 (B).

1           (2) RECREDIT DOES NOT ABROGATE OTHER LI-  
2           ABILITIES.—Providing a recredit under this sub-  
3           section to a claimant bank with respect to a sub-  
4           stitute check shall not absolve the indemnifying bank  
5           from liability for claims brought under any other law  
6           or from additional damages under section 5 or 9  
7           with respect to such check.

8           (3) REFUND TO INDEMNIFYING BANK.—If a  
9           claimant bank reverses, in accordance with section  
10          6(e), a recredit previously made to a consumer ac-  
11          count under section 6(e), or otherwise receives a  
12          credit or recredit with regard to such substitute  
13          check, the claimant bank shall promptly refund to  
14          any indemnifying bank any amount previously ad-  
15          vanced by the indemnifying bank in connection with  
16          such substitute check.

17          (d) PRODUCTION OF ORIGINAL CHECK OR A SUFFI-  
18          CIENT COPY GOVERNED BY SECTION 5(d).—If the indem-  
19          nifying bank provides the claimant bank with the original  
20          check or a copy of the original check (including an image  
21          or a substitute check) under subsection (c)(1)(A), section  
22          5(d) shall govern any right of the indemnifying bank to  
23          any repayment of any funds the indemnifying bank has  
24          recredited to the claimant bank pursuant to subsection (c).

1 **SEC. 8. DELAYS IN AN EMERGENCY.**

2 Delay by a bank beyond the time limits prescribed  
3 or permitted by this Act is excused if the delay is caused  
4 by interruption of communication or computer facilities,  
5 suspension of payments by another bank, war, emergency  
6 conditions, failure of equipment, or other circumstances  
7 beyond the control of a bank and if the bank uses such  
8 diligence as the circumstances require.

9 **SEC. 9. MEASURE OF DAMAGES.**

10 (a) LIABILITY.—

11 (1) IN GENERAL.—Except as provided in sec-  
12 tion 5, any person who, in connection with a sub-  
13 stitute check, breaches any warranty under this Act  
14 or fails to comply with any requirement imposed by,  
15 or regulation prescribed pursuant to, this Act with  
16 respect to any other person shall be liable to such  
17 person in an amount equal to the sum of—

18 (A) the lesser of—

19 (i) the amount of the loss suffered by  
20 the other person as a result of the breach  
21 or failure; or

22 (ii) the amount of the substitute  
23 check; and

24 (B) interest and expenses (including costs  
25 and reasonable attorney's fees and other ex-

1           penses of representation) related to the sub-  
2           stitute check.

3           (2) OFFSET OF RECREDITS.—The amount of  
4           damages any person receives under paragraph (1), if  
5           any, shall be reduced by the amount, if any, that the  
6           claimant receives and retains as a recredit under  
7           section 6 or 7.

8           (b) COMPARATIVE NEGLIGENCE.—If a person incurs  
9           damages that resulted in whole or in part from the neg-  
10          ligence or failure of that person to act in good faith, then  
11          the amount of any liability due to that person under sub-  
12          section (a) shall be reduced in proportion to the amount  
13          of negligence or bad faith attributable to that person.

14 **SEC. 10. STATUTE OF LIMITATIONS AND NOTICE OF CLAIM.**

15          (a) ACTIONS UNDER THIS ACT.—

16               (1) IN GENERAL.—An action to enforce a claim  
17               under this Act may be brought in any United States  
18               district court, or in any other court of competent ju-  
19               risdiction, before the end of the 1-year period begin-  
20               ning on the date the cause of action accrues.

21               (2) ACCRUAL.—A cause of action accrues as of  
22               the date the injured party first learns, or by which  
23               such person reasonably should have learned, of the  
24               facts and circumstances giving rise to the cause of  
25               action.

1 (b) DISCHARGE OF CLAIMS.—Except as provided in  
2 subsection (c), unless a person gives notice of a claim to  
3 the indemnifying or warranting bank within 30 days after  
4 the person has reason to know of the claim and the iden-  
5 tity of the indemnifying or warranting bank, the indem-  
6 nifying or warranting bank is discharged to the extent of  
7 any loss caused by the delay in giving notice of the claim.

8 (c) NOTICE OF CLAIM BY CONSUMER.—A timely  
9 claim by a consumer under section 6 for expedited recredit  
10 constitutes timely notice of a claim by the consumer for  
11 purposes of subsection (b).

12 **SEC. 11. CONSUMER AWARENESS.**

13 (a) IN GENERAL.—Each bank shall provide, in ac-  
14 cordance with subsection (b), a brief notice about sub-  
15 stitute checks that describes—

16 (1) the process of check substitution and how  
17 the process may be different than the check clearing  
18 process with which the consumer may be familiar;  
19 and

20 (2) a description of the consumer recredit  
21 rights established under section 6 when a consumer  
22 believes in good faith that a substitute check was  
23 not properly charged to the consumer's account.

24 (b) DISTRIBUTION.—

1           (1) EXISTING CUSTOMERS.—With respect to  
2 consumers that are customers of a bank on the ef-  
3 fective date of this Act, a bank shall provide the no-  
4 tice described in subsection (a) to each such con-  
5 sumer no later than the first regularly scheduled  
6 communication with the consumer after the effective  
7 date of this Act.

8           (2) NEW ACCOUNT HOLDERS.—A bank shall  
9 provide the notice described in subsection (a) to each  
10 consumer, other than existing customers referred to  
11 in paragraph (1), at the time at which the customer  
12 relationship is initiated.

13           (3) MODE OF DELIVERY.—A bank may send  
14 the notices required by this subsection by United  
15 States mail or by any other means through which  
16 the consumer has agreed to receive account informa-  
17 tion.

18           (c) MODEL LANGUAGE.—

19           (1) IN GENERAL.—No later than 1 year after  
20 the date of enactment of this Act, the Board shall  
21 publish model forms and clauses that a depository  
22 institution may use to describe each of the elements  
23 required by subsection (a).

24           (2) SAFE HARBOR.—A bank shall be treated as  
25 being in compliance with the requirements of sub-



1 section (a) if the bank's substitute check notice uses  
2 a model form or clause published by the Board and  
3 such model form or clause accurately describes the  
4 bank's policies and practices. A bank may delete any  
5 information in the model form or clause that is not  
6 required by this Act or rearrange the format.

7 (3) USE OF MODEL LANGUAGE NOT RE-  
8 QUIRED.—This section shall not be construed as re-  
9 quiring any bank to use a model form or clause that  
10 the Board prepares under this subsection.

11 **SEC. 12. EFFECT ON OTHER LAW.**

12 This Act shall supersede any provision of Federal or  
13 State law, including the Uniform Commercial Code, that  
14 is inconsistent with this Act, but only to the extent of the  
15 inconsistency.

16 **SEC. 13. VARIATION BY AGREEMENT.**

17 (a) SECTION 7.—Any provision of section 7 may be  
18 varied by agreement of the banks involved.

19 (b) NO OTHER PROVISIONS MAY BE VARIED.—Ex-  
20 cept as provided in subsection (a), no provision of this Act  
21 may be varied by agreement of any person or persons.

22 **SEC. 14. REGULATIONS.**

23 (a) IN GENERAL.—The Board may, by regulation,  
24 clarify or otherwise implement the provisions of this Act  
25 or may modify the requirements imposed by this Act with

1 respect to substitute checks to further the purposes of this  
2 Act, including reducing risk, accommodating technological  
3 or other developments, and alleviating undue compliance  
4 burdens.

5 (b) BOARD MONITORING OF CHECK COLLECTION  
6 AND RETURN PROCESS; ADJUSTMENT OF TIME PERI-  
7 ODS.—

8 (1) MONITORING OF CHECK COLLECTION AND  
9 RETURN PROCESS.—The Board shall monitor the ex-  
10 tent to which—

11 (A) original checks are converted to sub-  
12 stitute checks in the check collection and return  
13 process, and

14 (B) checks are collected and returned elec-  
15 tronically rather than in paper form.

16 (2) ADJUSTMENT OF TIME PERIODS.—The  
17 Board shall exercise the Board’s authority under  
18 section 603(d)(1) of the Expedited Funds Avail-  
19 ability Act to reduce the time periods applicable  
20 under subsections (b) and (e) of section 603 of such  
21 Act for making funds available for withdrawal, when  
22 warranted.

23 (c) PUBLICATION OF SCHEDULE BY BOARD FOR  
24 CHECK TRANSPORTATION SERVICES.—Section 11A(b) of

1 the Federal Reserve Act (12 U.S.C. 248a(b)) is amend-  
2 ed—

3 (1) by striking “and” at the end of paragraph  
4 (7);

5 (2) by redesignating paragraph (8) as para-  
6 graph (9); and

7 (3) by inserting after paragraph (7) the fol-  
8 lowing new paragraph:

9 “(8) check transportation services; and”.

10 **SEC. 15. EFFECTIVE DATE.**

11 This Act shall take effect at the end of the 18-month  
12 period beginning on the date of the enactment of this Act,  
13 except as otherwise specifically provided in this Act.

Passed the House of Representatives June 5, 2003.

Attest:

JEFF TRANDAHL,

*Clerk.*