

MAINE STATE LEGISLATURE

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PART 2

COLLECTION OF ITEMS; DEPOSITARY AND
COLLECTING BANKS

Sec.

- 4-201. Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of Article; item indorsed "pay any bank."
- 4-202. Responsibility for collection; when action seasonable.
- 4-203. Effect of instructions.
- 4-204. Methods of sending and presenting; sending direct to payor bank.
- 4-205. Supplying missing indorsement; no notice from prior indorsement.
- 4-206. Transfer between banks.
- 4-207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims.
- 4-208. Security interest of collecting bank in items, accompanying documents and proceeds.
- 4-209. When bank gives value for purposes of holder in due course.
- 4-210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.
- 4-211. Media of remittance; provisional and final settlement in remittance cases.
- 4-212. Right of charge-back or refund.
- 4-213. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.
- 4-214. Insolvency and preference.

§ 4-201. Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of Article; item indorsed "pay any bank"

(1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (section 4-211, subsection (3) and sections 4-212 and 4-213), the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any

rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and valid rights of set-off. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this Article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

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

(a) Until the item has been returned to the customer initiating collection; or

(b) Until the item has been specially indorsed by a bank to a person who is not a bank.

1963, c. 362, § 1.

§ 4-202. Responsibility for collection; when action seasonable

(1) A collecting bank must use ordinary care in

(a) Presenting an item or sending it for presentment; and

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

(c) Settling for an item when the bank receives final settlement; and

(d) Making or providing for any necessary protest; and

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

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

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

1963, c. 362, § 1.

§ 4-203. Effect of instructions

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

1963, c. 362, § 1.

§ 4-204. Methods of sending and presenting; sending direct to payor bank

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

(2) A collecting bank may send

(a) Any item direct to the payor bank;

(b) Any item to any nonbank payor if authorized by its transferor; and

(c) Any item other than documentary drafts to any nonbank payor, if authorized by federal reserve regulation or operating letter, clearing house rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

1963, c. 362, § 1.

§ 4-205. Supplying missing indorsement; no notice from prior indorsement

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

(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a

restrictive indorsement of any person except the bank's immediate transferor.

1963, c. 362, § 1.

§ 4-206. Transfer between banks

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

1963, c. 362, § 1.

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

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

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

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

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

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

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

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

(i) To the maker of a note; or

(ii) To the drawer of a draft, whether or not the drawer is also the drawee; or

(iii) To the acceptor of an item with respect to an alteration made prior to the acceptance, if the holder in

Art. 4 BANK DEPOSITS—COLLECTIONS 11 § 4-207

due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

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

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

(a) He has a 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 subsections (1) and (2) 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.

1963, c. 362, § 1.

§ 4-208. Security interest of collecting bank in items, accompanying documents and proceeds

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

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

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

(c) If it makes an advance on or against the item.

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

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

(a) No security agreement is necessary to make the security interest enforceable (section 9-203, subsection (1), paragraph (b)); and

(b) No filing is required to perfect the security interest; and

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

1963, c. 362, § 1.

§ 4-209. When bank gives value for purposes of holder in due course

For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item, provided that the bank otherwise com-

plies with the requirements of section 3-302 on what constitutes a holder in due course.

1963, c. 362, § 1.

§ 4-210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties

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

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under section 3-505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

1963, c. 362, § 1.

§ 4-211. Media of remittance; provisional and final settlement in remittance cases

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

(a) A check of the remitting bank or of another bank on any bank, except the remitting bank; or

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

(c) Appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

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

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

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

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

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

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

1963, c. 362, § 1.

§ 4-212. Right of charge-back or refund

(1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the

Art. 4 BANK DEPOSITS—COLLECTIONS **11 § 4-213**

facts. These rights to revoke, charge-back and obtain refund terminate if, and when a settlement for the item received by the bank is or becomes final (section 4-211, subsection (3), and section 4-213, subsections (2) and (3)).

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

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

(4) The right to charge-back is not affected by

(a) Prior use of the credit given for the item; or

(b) Failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

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

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

1963, c. 362, § 1.

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

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

(a) Paid the item in cash; or

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

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

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

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

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

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

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right

(a) In any case where the bank has received a provisional settlement for the item, when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) In any case where the bank is both a depository bank and a payor bank and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.

1963, c. 362, § 1.

§ 4-214. Insolvency and preference

(1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

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

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (section 4-211, subsection (3), section 4-213, subsection (1), paragraph (d), subsections (2) and (3)).

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

1963, c. 362, § 1.