

107TH CONGRESS
2D SESSION

S. 3034

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.

IN THE SENATE OF THE UNITED STATES

OCTOBER 2, 2002

Mr. JOHNSON (for himself and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

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 Truncation Act”.

6 (b) FINDINGS.—Congress finds that—

1 (1) the Expedited Funds Availability Act (12
2 U.S.C. 4001 et seq.)—

3 (A) directs the Board to consider estab-
4 lishing regulations requiring Federal reserve
5 banks and depository institutions to provide for
6 check truncation, in order to improve the check
7 processing system;

8 (B) authorizes the Board to regulate all
9 aspects of the payment system, including the
10 receipt, payment, collection, and clearing of
11 checks, and related functions of the payment
12 system pertaining to checks; and

13 (C) directs that the exercise of such au-
14 thority by the Board shall supersede any State
15 law, including the Uniform Commercial Code,
16 as in effect in any State; and

17 (2) check truncation is no less desirable in 2002
18 for both financial service customers and the financial
19 services industry, to reduce costs, improve efficiency
20 in check collections, and expedite funds availability
21 for account holders than it was in 1987, when Con-
22 gress first directed the Board to consider estab-
23 lishing such a process.

24 (c) PURPOSES.—The purposes of this Act are—

1 (1) to facilitate check truncation by authorizing
2 substitute checks;

3 (2) to foster innovation in the check collection
4 system without mandating receipt of checks in elec-
5 tronic form; and

6 (3) to improve the overall efficiency of the Na-
7 tion's payments system.

8 **SEC. 2. DEFINITIONS.**

9 In this Act, the following definitions shall apply:

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

12 (2) BANK.—The term “bank”—

13 (A) means any person located in a State
14 engaged in the business of banking, including
15 any depository institution (as defined in section
16 19(b)(1)(A) of the Federal Reserve Act (12
17 U.S.C. 461(b)(1)(A)); and

18 (B) includes—

19 (i) any Federal reserve bank;

20 (ii) any Federal home loan bank; and

21 (iii) to the extent that it acts as a

22 payor—

23 (I) the Treasury of the United
24 States;

1 (II) the United States Postal
2 Service;

3 (III) a State government; and

4 (IV) a unit of general local gov-
5 ernment.

6 (3) BANKING DAY.—The term “banking day”
7 means that part of any business day during which
8 an office of a bank is open to the public for carrying
9 on substantially all of the banking business of the
10 bank.

11 (4) BANKING TERMS.—

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

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

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

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

24 (ii) a bank to which a check is trans-
25 ferred for deposit in a consumer account,

1 even if the check is physically received and
2 endorsed first by another bank.

3 (D) PAYING BANK.—The term “paying
4 bank” means, as applicable—

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

9 (ii) the bank at which a check is pay-
10 able and to which it is sent for payment or
11 collection;

12 (iii) the Federal reserve bank or Fed-
13 eral home loan bank by which a check is
14 payable;

15 (iv) the bank through which a check is
16 payable and to which it is sent for pay-
17 ment or collection, if the check is not pay-
18 able by a bank;

19 (v) the State or unit of general local
20 government on which a check is drawn and
21 to which it is sent for payment or collec-
22 tion;

23 (vi) the bank through which a check is
24 payable and to which the check is sent for
25 payment or collection, regardless of wheth-

1 er the check is payable by another bank;
 2 and

3 (vii) the bank the routing number of
 4 which appears on a check in fractional
 5 form or in the MICR line and to which the
 6 check is sent for payment or collection.

7 (E) RETURNING BANK.—

8 (i) IN GENERAL.—The term “return-
 9 ing bank” means a bank (other than the
 10 paying or depository bank) handling a re-
 11 turned check or notice in lieu of return.

12 (ii) TREATMENT AS COLLECTING
 13 BANK.—No provision of this Act shall be
 14 construed as affecting the treatment of a
 15 returning bank as a collecting bank for
 16 purposes of section 4–202(b) of the Uni-
 17 form Commercial Code (or any successor
 18 thereto).

19 (5) BOARD.—The term “Board” means the
 20 Board of Governors of the Federal Reserve System.

21 (6) BUSINESS DAY.—The term “business day”
 22 has the same meaning as in section 602(3) of the
 23 Expedited Funds Availability Act (12 U.S.C.
 24 4001(3)).

25 (7) CHECK.—The term “check”—

1 (A) means a draft, payable on demand and
2 drawn on or payable through or at an office of
3 a bank, whether or not negotiable, that is han-
4 dled for forward collection or return, including
5 a substitute check; and

6 (B) does not include a noncash item or an
7 item payable in a medium other than United
8 States dollars.

9 (8) CONSUMER.—The term “consumer” means
10 an individual who—

11 (A) with respect to a check handled for
12 forward collection, draws the check on a con-
13 sumer account; and

14 (B) with respect to a check handled for re-
15 turn, deposits the check into, or cashes the
16 check against, a consumer account.

17 (9) CONSUMER ACCOUNT.—The term “con-
18 sumer account” has the same meaning as in section
19 602(10) of the Expedited Funds Availability Act (12
20 U.S.C. 4001(10)).

21 (10) CUSTOMER.—The term “customer” means
22 a person having an account with a bank or for whom
23 a bank has agreed to collect items, including a bank
24 that maintains an account at another bank.

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

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

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

16 (14) NONCASH ITEM.—The term “noncash
17 item” has the same meaning as in section 602(14)
18 of the Expedited Funds Availability Act (12 U.S.C.
19 4001(14)).

20 (15) PERSON.—The term “person” includes a
21 government unit or instrumentality.

22 (16) RECONVERTING BANK.—The term “recon-
23 verting bank” means—

24 (A) the bank that creates a substitute
25 check; and

1 (B) if a substitute check is created by a
2 person other than a bank, means the first bank
3 that transfers or presents such substitute
4 check.

5 (17) SUBSTITUTE CHECK.—The term “sub-
6 stitute check” means a paper reproduction of the
7 original check that—

8 (A) contains an image of the front and
9 back of the original check;

10 (B) bears an MICR line containing all in-
11 formation required under generally applicable
12 industry standards for substitute checks;

13 (C) conforms, in paper stock, dimension,
14 and otherwise, with generally applicable indus-
15 try standards for substitute checks; and

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

18 (18) STATE.—The term “State” has the same
19 meaning as in section 3(a) of the Federal Deposit
20 Insurance Act (12 U.S.C. 1813(a)).

21 (19) TRUNCATE.—The term “truncate” means
22 to remove an original paper check from the check
23 collection or return process and send to a recipient,
24 in lieu of such original paper check, a substitute
25 check or, by agreement, information relating to the

1 original check (including data taken from the MICR
 2 line of the original check or an electronic image of
 3 the original check), whether with or without subse-
 4 quent delivery of the original paper check.

5 (20) UNIFORM COMMERCIAL CODE.—The term
 6 “Uniform Commercial Code” means the Uniform
 7 Commercial Code in effect in a State.

8 (21) UNIT OF GENERAL LOCAL GOVERN-
 9 MENT.—The term “unit of general local govern-
 10 ment” has the same meaning as in section 602(24)
 11 of the Expedited Funds Availability Act (12 U.S.C.
 12 4001(24)).

13 (22) OTHER TERMS.—Unless the context re-
 14 quires otherwise, terms used in this Act that are not
 15 defined in this section shall have the same meanings
 16 as in the Uniform Commercial Code.

17 **SEC. 3. GENERAL PROVISIONS GOVERNING SUBSTITUTE**
 18 **CHECKS.**

19 (a) NO AGREEMENT REQUIRED.—A person may de-
 20 posit, present, or send for collection or return a substitute
 21 check without an agreement with the recipient, to the ex-
 22 tent that the bank is treated as having made the warran-
 23 ties described in section 4 with respect to the substitute
 24 check.

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

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

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

11 (c) ENDORSEMENTS.—A reconverting bank shall en-
12 sure that the substitute check that is created by the bank
13 bears all endorsements applied by parties that previously
14 handled the check (whether in electronic form or in the
15 form of the original paper check or a substitute check)
16 for forward collection or return.

17 (d) IDENTIFICATION OF RECONVERTING BANK.—A
18 reconverting bank shall identify itself as a reconverting
19 bank on any substitute check that the bank creates, so
20 as to preserve any previous reconverting bank identifica-
21 tions in conformance with generally applicable industry
22 standards.

23 (e) APPLICABLE LAW.—A substitute check that is
24 the legal equivalent of the original check under subsection
25 (b) shall be subject to any provision of part 229 of title

1 12 of the Code of Federal Regulations (as in effect on
2 the date of enactment of this Act), the Uniform Commer-
3 cial Code, and any other applicable Federal or State law
4 that would apply if the substitute check were the original
5 check, to the extent that such provision of law is not incon-
6 sistent with this Act.

7 **SEC. 4. SUBSTITUTE CHECK WARRANTIES.**

8 A bank that transfers, presents, or returns a sub-
9 stitute check and receives consideration for the check shall
10 be deemed to have warranted to the transferee, any subse-
11 quent collecting or returning bank, the depository bank,
12 the drawee, the drawer, the payee, the depositor, and any
13 endorser (regardless of whether the warrantee receives the
14 substitute check or another paper or electronic form of
15 the substitute or original check) that—

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

18 (2) no depository bank, drawee, drawer, or en-
19 dorser will receive presentment or return of the sub-
20 stitute check, the original check, or a copy or other
21 paper or electronic version of the substitute check or
22 original check such that it will be asked to make a
23 payment based on a check it has already paid.

1 **SEC. 5. INDEMNITY.**

2 (a) INDEMNITY.—A reconverting bank that creates a
 3 substitute check, and each bank that subsequently trans-
 4 fers, presents, or returns that substitute check in any elec-
 5 tronic or paper form, and receives consideration for such
 6 transfer, presentment, or return shall be deemed to have
 7 indemnified the transferee, any subsequent collecting or
 8 returning bank, the depositary bank, the drawee, the
 9 drawer, the payee, the depositor, and any endorser, up to
 10 the amounts described in subsections (b) and (c), as appli-
 11 cable, to the extent of any loss incurred by any recipient
 12 of a substitute check if that loss occurred due to the re-
 13 ceipt of a substitute check instead of the original check.

14 (b) INDEMNITY AMOUNT.—

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

21 (2) AMOUNT IN ABSENCE OF BREACH OF WAR-
 22 RANTY.—In the absence of a breach of a warranty
 23 established under section 4, the amount of the in-
 24 demnity under subsection (a) shall be the sum of—

25 (A) the amount of any loss, up to the
 26 amount of the substitute check; and

1 (B) interest and expenses (including costs
2 and reasonable attorney fees and other expenses
3 of representation).

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

10 (d) EFFECT OF PRODUCING ORIGINAL CHECK OR
11 SUBSTITUTE CHECK.—

12 (1) IN GENERAL.—If the indemnifying bank
13 produces the original check or substitute check, the
14 indemnifying bank shall—

15 (A) be liable under this section only for
16 losses covered by the indemnity that are in-
17 curred up to the time that the original check or
18 substitute check is provided to the indemnified
19 party; and

20 (B) have a right to the return of any funds
21 it has paid under the indemnity in excess of
22 those losses.

23 (2) COORDINATION OF INDEMNITY WITH IM-
24 PLIED WARRANTY.—The production of the original
25 check or substitute check under paragraph (1) by an

1 indemnifying bank shall not absolve the bank from
 2 any liability on a warranty established under this
 3 Act or any other provision of law.

4 (e) SUBROGATION OF RIGHTS.—

5 (1) IN GENERAL.—Each indemnifying bank
 6 shall be subrogated to the rights of any indemnified
 7 party to the extent of the indemnity.

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

12 (3) DUTY OF INDEMNIFIED PARTY.—Each in-
 13 demnified party shall have a duty to comply with all
 14 reasonable requests for assistance from an indem-
 15 nifying bank in connection with any claim that the
 16 indemnifying bank brings against a warrantor or
 17 other party related to a check that forms the basis
 18 for the indemnification.

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

20 (a) RECREDIT CLAIMS.—

21 (1) IN GENERAL.—A consumer may make a
 22 claim for expedited recredit from the bank that
 23 holds the account of the consumer with respect to a
 24 substitute check, if the consumer asserts in good
 25 faith that—

1 (A) the bank charged the consumer ac-
2 count for a substitute check that was provided
3 to the consumer;

4 (B) either—

5 (i) the check was not properly charged
6 to, or chargeable against, the consumer ac-
7 count; or

8 (ii) the consumer has a warranty
9 claim with respect to such substitute
10 check;

11 (C) the consumer suffered a resulting loss;

12 and

13 (D) the production of the original check or
14 substitute check is necessary to determine the
15 validity of any claim under subparagraph (B).

16 (2) 30-DAY PERIOD.—Any claim under para-
17 graph (1) with respect to a consumer account may
18 be submitted by a consumer before the end of the
19 30-day period beginning on the later of—

20 (A) the date on which the consumer re-
21 ceives the periodic statement of account for
22 such account which contains information con-
23 cerning the transaction giving rise to the claim;

24 and

1 (B) the date on which the substitute check
2 is made available to the consumer.

3 (3) EXTENSION UNDER EXTENUATING CIR-
4 CUMSTANCES.—If the ability of the consumer to
5 submit the claim within the 30-day period under
6 paragraph (2) is delayed due to extenuating cir-
7 cumstances, including extended travel or the illness
8 of the consumer, the 30-day period may be extended
9 for a total of not to exceed 30 additional days, in
10 accordance with regulations prescribed by the Board.

11 (b) PROCEDURES FOR CLAIMS.—

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

16 (A) a description of the claim, including an
17 explanation of—

18 (i) why the substitute check was not
19 properly charged to, or chargeable against,
20 the consumer account; or

21 (ii) the warranty claim with respect to
22 such check;

23 (B) a statement that the consumer suf-
24 fered a loss, and an estimate of the amount of
25 the loss;

1 (C) the reason why production of the origi-
2 nal check or substitute check is necessary to de-
3 termine the validity of the charge to the con-
4 sumer account or the warranty claim; and

5 (D) sufficient information to identify the
6 substitute check and to investigate the claim.

7 (2) CLAIM IN WRITING.—The bank holding the
8 consumer account that is the subject of a claim by
9 the consumer under subsection (a) may, in the dis-
10 cretion of the bank, require that the consumer sub-
11 mit, in writing, the information required under para-
12 graph (1).

13 (c) RECREDIT TO CONSUMER.—

14 (1) PROMPT ACTION REQUIRED.—If a consumer
15 submits a claim to a bank under subsection (a), with
16 respect to a substitute check, that meets the require-
17 ments of subsection (b), the bank shall—

18 (A) produce the original or substitute
19 check and demonstrate to the consumer that
20 the substitute check was properly charged to
21 the consumer account; or

22 (B) recredit the consumer account in an
23 amount equal to the sum of—

24 (i) an amount not to exceed the lesser
25 of—

1 (I) the amount of the substitute
2 check that was improperly charged
3 against the consumer account; or

4 (II) \$2,500; and

5 (ii) interest on the amount recredited
6 under clause (i).

7 (2) TIMING.—A bank shall take the action re-
8 quired under paragraph (1) not later than the ear-
9 lier of—

10 (A) the end of the business day on which
11 the bank determines that it will take such ac-
12 tion; or

13 (B) the end of the 10th business day fol-
14 lowing the submission of a claim by the con-
15 sumer under subsection (a).

16 (3) NOTICE TO CONSUMER.—

17 (A) IN GENERAL.—If a bank does not pro-
18 vide the original check or a substitute check
19 under paragraph (1)(A), the bank shall send to
20 the consumer, by the end of the business day on
21 which the bank makes its determination regard-
22 ing a claim for recredit, a notice stating that—

23 (i) the bank will recredit the consumer
24 account; and

1 (ii) the date on which the bank will
2 make the recredited funds available for
3 withdrawal.

4 (B) MODE OF DELIVERY.—The notice
5 under subparagraph (A) shall be delivered by
6 United States mail, or by any other means
7 through which the consumer has agreed to re-
8 ceive account information.

9 (4) RECREDIT OF AMOUNTS IN EXCESS OF
10 \$2,500.—

11 (A) IN GENERAL.—If, in connection with a
12 claim by a consumer under subsection (a), the
13 bank determines that an amount in excess of
14 any amount recredited to the consumer account
15 under paragraph (1) was improperly charged
16 against the consumer account in connection
17 with a substitute check, the bank shall credit
18 the consumer account for such excess amount,
19 plus interest, before the end of the business day
20 following the banking day on which the bank
21 makes such determination.

22 (B) PERIOD FOR DETERMINATION.—A
23 bank shall make a determination with respect
24 to the validity of a claim by a consumer under
25 subsection (a) for purposes of this paragraph

1 not later than 45 calendar days after the bank-
2 ing day on which the consumer submits the
3 claim in accordance with subsection (b).

4 (d) AVAILABILITY OF RECREDIT.—

5 (1) NEXT BUSINESS DAY AVAILABILITY.—Ex-
6 cept as provided in paragraphs (2) and (3), a bank
7 that provides a recredit to a consumer account
8 under subsection (c) shall make the recredited funds
9 available for withdrawal by the consumer by the
10 start of the next business day after the business day
11 by which the bank is required to recredit the con-
12 sumer under subsection (c).

13 (2) SAFEGUARD EXCEPTIONS.—A bank may
14 delay availability to a consumer of a recredit pro-
15 vided to a consumer account under subsection (c)
16 until the start of the 45th business day following the
17 banking day on which the consumer submits a claim
18 for such recredit in accordance with subsection (b),
19 if—

20 (A) the claim is made during the 30-day
21 period beginning on the banking day the con-
22 sumer account was established;

23 (B) without regard to the charge that is
24 the subject of the claim for which the recredit
25 was made;

1 (i) on 6 or more banking days during
2 that 6-month period ending on the date on
3 which the consumer submits the claim, the
4 balance in the consumer account was nega-
5 tive or would have become negative if
6 checks or other charges to the account had
7 been paid; or

8 (ii) on 2 or more banking days during
9 that 6-month period, the balance in the
10 consumer account was negative or would
11 have become negative in the amount of
12 \$5,000 or more if checks or other charges
13 to the account had been paid; or

14 (C) the bank has reasonable cause to be-
15 lieve that the claim is fraudulent, based on
16 facts that would cause a well-grounded belief in
17 the mind of a reasonable person that the claim
18 is fraudulent.

19 (3) EMERGENCY CONDITIONS.—If there has
20 been an interruption of communications, computer,
21 or equipment facilities, or other emergency condition
22 beyond the control of a bank, the bank may delay
23 availability of a recredit provided to a consumer ac-
24 count under subsection (c) until a reasonable period
25 after the emergency has ceased, to the extent that

1 the bank exercises such diligence as the cir-
2 cumstances require and complies with paragraph
3 (4).

4 (4) NOTICE TO CONSUMER.—

5 (A) PROMPT NOTICE OF DELAY IN AVAIL-
6 ABILITY.—A bank that, in accordance with
7 paragraph (2) or (3), delays the availability of
8 a recredit under subsection (c) to any consumer
9 account shall notify the consumer of such
10 delay—

11 (i) at the time of the recredit; or

12 (ii) if the determination is made after
13 the recredit, in as expeditious a manner as
14 possible after the delay is put into effect.

15 (B) OVERDRAFT FEES.—No bank that, in
16 accordance with paragraph (2) or (3), delays
17 the availability of a recredit under subsection
18 (c) to any consumer account may impose any
19 overdraft fee with respect to any draft drawn by
20 the consumer on such recredited amount before
21 the end of the 5-day period beginning on the
22 date on which the notice under subparagraph
23 (A) with respect to the availability of such
24 amount was sent by the bank to the consumer.

1 (e) REVERSAL OF RECREDIT.—If a bank determines
2 that a substitute check for which the bank recredited a
3 consumer account under subsection (c) was in fact prop-
4 erly charged to the consumer account, the bank may re-
5 verse the recredit to the consumer account if, upon revers-
6 ing the recredited amount, the bank—

7 (1) notifies the consumer of the date and the
8 amount of the reversal;

9 (2) provides the original check or the substitute
10 check to the consumer; and

11 (3) provides to the consumer an explanation of
12 the basis for the determination by the bank that the
13 substitute check was properly charged, including
14 copies of any information or documents on which the
15 bank relied in making the determination.

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

17 (a) RECREDIT CLAIMS.—

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

21 (A) the claimant bank (or a bank that it
22 has indemnified) has received a claim for expe-
23 dited recredit from a consumer under section 6
24 with respect to the substitute check, or would

1 have been subject to such a claim had the ac-
2 count of the consumer been charged;

3 (B) the claimant bank has suffered a re-
4 sulting loss or is obligated to recredit a con-
5 sumer account under section 6 with respect to
6 the substitute check; and

7 (C) production of the original check or
8 substitute check is necessary to determine the
9 validity of the charge to the consumer account
10 or any warranty claim connected with the sub-
11 stitute check.

12 (2) 120-DAY PERIOD.—Any claim under para-
13 graph (1) shall be submitted by the claimant bank
14 to an indemnifying bank before the end of the 120-
15 day beginning on the date of the transaction that
16 gave rise to the claim.

17 (b) PROCEDURES FOR CLAIMS.—

18 (1) IN GENERAL.—To make a claim under sub-
19 section (a) for an expedited recredit relating to a
20 substitute check, the claimant bank shall provide to
21 the indemnifying bank—

22 (A) a description, as applicable, of—

23 (i) the claim, including an explanation
24 of why the substitute check cannot be

1 properly charged to the consumer account;

2 or

3 (ii) the warranty claim;

4 (B) a statement that the claimant bank
5 has suffered a loss or is obligated to recredit
6 the account of a consumer under section 6, to-
7 gether with an estimate of the amount of the
8 loss or recredit;

9 (C) the reason why production of the origi-
10 nal check or substitute check is necessary to de-
11 termine the validity of the charge to the con-
12 sumer account or the warranty claim; and

13 (D) information sufficient for the indem-
14 nifying bank to identify the substitute check
15 and to investigate the claim.

16 (2) REQUIREMENTS RELATING TO COPIES OF
17 SUBSTITUTE CHECKS.—If the information submitted
18 by a claimant bank under paragraph (1) in connec-
19 tion with a claim for an expedited recredit includes
20 a copy of any substitute check for which any such
21 claim is made, the claimant bank shall take reason-
22 able steps to ensure that any such copy cannot be—

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

1 (B) sent or handled by any bank, including
2 the indemnifying bank, as forward collection or
3 returned checks.

4 (3) CLAIM IN WRITING.—At the request of the
5 indemnifying bank, the claimant bank shall provide
6 a copy of any written claim submitted by a con-
7 sumer in accordance with section 6(b), if the claim-
8 ant bank has obtained such claim in writing.

9 (c) RECREDIT BY INDEMNIFYING BANK.—

10 (1) PROMPT ACTION REQUIRED.—Not later
11 than 10 business days after the business day on
12 which an indemnifying bank receives a claim under
13 subsection (a) from a claimant bank with respect to
14 the substitute check, the indemnifying bank shall—

15 (A) provide the original check (with respect
16 to the substitute check) or another substitute
17 check to the claimant bank;

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

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

24 (2) RECREDIT DOES NOT ABROGATE OTHER LI-
25 ABILITIES.—Providing a recredit under this sub-

1 section to a claimant bank with respect to a sub-
 2 stitute check shall not absolve the indemnifying bank
 3 from any liability for additional damages under sec-
 4 tion 5 or 8 with respect to the check.

5 (3) REFUND TO INDEMNIFYING BANK.—If a
 6 claimant bank reverses, in accordance with section
 7 6(e), a recredit previously made to a consumer ac-
 8 count under section 6(c), otherwise receives a credit
 9 or recredit with regard to a substitute check, the
 10 claimant bank shall promptly refund to any indem-
 11 nifying bank any amount previously advanced by the
 12 indemnifying bank in connection with the substitute
 13 check.

14 (d) PRODUCTION OF ORIGINAL CHECK OR SUB-
 15 STITUTE CHECK GOVERNED BY SECTION 5(d).—If the in-
 16 demnifying bank provides the claimant bank with the
 17 original check or substitute check, section 5(d) shall gov-
 18 ern any right of the indemnifying bank to any repayment
 19 of any funds that the indemnifying bank has recredited
 20 to the claimant bank pursuant to subsection (c).

21 **SEC. 8. MEASURE OF DAMAGES.**

22 (a) LIABILITY.—

23 (1) IN GENERAL.—Except as provided in sec-
 24 tion 5, any person who, in connection with a sub-
 25 stitute check, breaches any warranty under this Act

1 or fails to comply with any requirement imposed by
2 or regulation prescribed pursuant to this Act, with
3 respect to any other person shall be liable to such
4 person in an amount equal to the sum of—

5 (A) the lesser of—

6 (i) the amount of the loss suffered by
7 the other person as a result of the breach
8 or failure; or

9 (ii) the amount of the substitute
10 check; and

11 (B) interest and expenses (including costs
12 and reasonable attorney fees and other expenses
13 of representation) related to the substitute
14 check.

15 (2) OFFSET OF RECREDITS.—Any amount of
16 damages that any person receives under paragraph
17 (1) shall be reduced by the amount, if any, that the
18 claimant receives and retains as a recredit under
19 section 6 or 7.

20 (b) COMPARATIVE NEGLIGENCE.—If a person incurs
21 damages that resulted in whole or in part from the neg-
22 ligence or failure of that person to act in good faith, then
23 the amount of any liability due to that person under sub-
24 section (a) shall be reduced in proportion to the amount
25 of negligence or bad faith attributable to that person.

1 **SEC. 9. STATUTE OF LIMITATIONS AND NOTICE OF CLAIM.**

2 (a) ACTIONS UNDER THIS ACT.—

3 (1) IN GENERAL.—An action to enforce a claim
4 under this Act may be brought in any United States
5 district court, or in any other court of competent ju-
6 risdiction, before the end of the 1-year period begin-
7 ning on the date on which the cause of action ac-
8 crues.

9 (2) ACCRUAL.—For purposes of paragraph (1),
10 a cause of action accrues as of the date on which the
11 injured party first learns, or by which such person
12 reasonably should have learned, of the facts and cir-
13 cumstances giving rise to the cause of action.

14 (b) DISCHARGE OF CLAIMS.—Except as provided in
15 subsection (c), unless a person gives notice of a claim to
16 the indemnifying or warranting bank, not later than 30
17 days after the person has reason to know of the claim and
18 the identity of the indemnifying or warranting bank, the
19 indemnifying or warranting bank is discharged from liabil-
20 ity in an action to enforce a claim under this Act, to the
21 extent of any loss caused by the delay in giving notice of
22 the claim.

23 (c) NOTICE OF CLAIM BY CONSUMER.—A timely
24 claim by a consumer under section 6 for expedited recredit
25 constitutes timely notice of a claim by the consumer for
26 purposes of subsection (b).

1 **SEC. 10. CONSUMER AWARENESS.**

2 (a) IN GENERAL.—Not later than 1 year after the
3 date of enactment of this Act, the Board shall prepare
4 and make available a brief document on substitute checks,
5 for distribution by banks to consumers, which contains a
6 description of—

7 (1) the process of check substitution and how
8 the process may be different than the check clearing
9 process with which the consumer may be familiar;

10 (2) the benefits, if any, of check substitution,
11 including expedited funds availability, for the con-
12 sumer and a notice that shorter check processing
13 times, through check substitution, will reduce the
14 float that may be available to a consumer; and

15 (3) the process for a claim for recredit estab-
16 lished under section 6 when a consumer believes in
17 good faith that a substitute check was not properly
18 charged to, or chargeable against, the consumer ac-
19 count.

20 (b) DISTRIBUTION.—

21 (1) IN GENERAL.—Each bank shall distribute
22 the document prepared by the Board pursuant to
23 subsection (a) to each consumer that is a customer
24 of that bank.

25 (2) EXISTING CUSTOMERS.—With respect to
26 consumers that are customers of a bank on the ef-

1 fective date of this Act, a bank meets the require-
2 ments of paragraph (1) by distributing the docu-
3 ment prepared by the Board to each such
4 consumer—

5 (A) in the first regularly scheduled mailing
6 to such consumer after the effective date of this
7 Act; or

8 (B) through other means through which
9 the consumer has agreed to receive account in-
10 formation.

11 (3) NEW ACCOUNT HOLDERS.—With respect to
12 any consumer that becomes a customer of a bank
13 after the effective date of this Act, a bank meets the
14 requirements of paragraph (1) by distributing the
15 document prepared by the Board to each such con-
16 sumer at the time at which the customer relation-
17 ship is initiated.

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

19 This Act shall supersede any provision of Federal or
20 State law, including the Uniform Commercial Code, that
21 is inconsistent with this Act, but only to the extent of the
22 inconsistency.

23 **SEC. 12. VARIATION BY AGREEMENT.**

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

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

4 **SEC. 13. REGULATIONS.**

5 (a) REQUIRED REGULATIONS.—Not later than 1 year
 6 after the date of enactment of this Act, the Board shall
 7 promulgate final regulations required by this Act.

8 (b) OTHER AUTHORITY.—The Board may, in addi-
 9 tion to regulations described in subsection (a)—

10 (1) issue such other regulations as may be nec-
 11 essary to implement this Act; and

12 (2) by regulation, exempt any person from any
 13 provision of this Act relating to substitute checks, as
 14 may be necessary to—

15 (A) reduce risk;

16 (B) accommodate technological or other
 17 developments; or

18 (C) alleviate undue compliance burdens.

19 **SEC. 14. EFFECTIVE DATE.**

20 This Act shall take effect 18 months after the date
 21 of enactment of this Act, except as otherwise specifically
 22 provided in this Act.

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