

Calendar No. 168108TH CONGRESS
1ST SESSION**S. 1334****[Report No. 108-79]**

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

JUNE 25, 2003

Mr. SHELBY, from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Check Truncation Act of 2003”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. General provisions governing substitute checks.
- Sec. 5. Substitute check warranties.
- Sec. 6. Indemnity.
- Sec. 7. Expedited recredit for consumers.
- Sec. 8. Expedited recredit procedures for banks.
- Sec. 9. Delays in an emergency.
- Sec. 10. Measure of damages.
- Sec. 11. Statute of limitations and notice of claim.
- Sec. 12. Consumer awareness.
- Sec. 13. Effect on other law.
- Sec. 14. Regulations.
- Sec. 15. Study and report on funds availability.
- Sec. 16. Evaluation and report by the Comptroller General.
- Sec. 17. Variation by agreement.
- Sec. 18. Effective date.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

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

10 (A) directs the Board to consider estab-
11 lishing regulations requiring Federal reserve
12 banks and depository institutions to provide for
13 check truncation, in order to improve the check
14 processing system;

15 (B) authorizes the Board to regulate all
16 aspects of the payment system, including the
17 receipt, payment, collection, and clearing of

1 checks, and related functions of the payment
2 system pertaining to checks; and

3 (C) directs that the exercise of such au-
4 thority by the Board shall supersede any State
5 law, including the Uniform Commercial Code,
6 as in effect in any State; and

7 (2) check truncation is no less desirable in 2003
8 for both financial service customers and the financial
9 services industry, to reduce costs, improve efficiency
10 in check collections, and expedite funds availability
11 for account holders than it was in 1987, when Con-
12 gress first directed the Board to consider estab-
13 lishing such a process.

14 (b) PURPOSES.—The purposes of this Act are—

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

17 (2) to foster innovation in the check collection
18 system without mandating receipt of checks in elec-
19 tronic form; and

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

22 **SEC. 3. DEFINITIONS.**

23 In this Act, the following definitions shall apply:

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

1 (2) BANK.—The term “bank”—

2 (A) means any person located in a State
3 engaged in the business of banking, including
4 any depository institution; and

5 (B) includes—

6 (i) any Federal reserve bank;

7 (ii) any Federal home loan bank; and

8 (iii) to the extent that it acts as a
9 payor—

10 (I) the Treasury of the United
11 States;

12 (II) the United States Postal
13 Service;

14 (III) a State government; and

15 (IV) a unit of general local gov-
16 ernment.

17 (3) BANKING TERMS.—

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

21 (B) 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 endorsed first by another bank.

5 (C) DEPOSITORY INSTITUTION.—The term
6 “depository institution” has the same meaning
7 as in section 19(b)(1)(A) of the Federal Re-
8 serve Act (12 U.S.C. 461(b)(1)(A)).

9 (D) PAYING BANK.—The term “paying
10 bank” means—

11 (i) the bank by which a check is pay-
12 able, unless the check is payable at or
13 through another bank and is sent to the
14 other bank for payment or collection; or

15 (ii) the bank at or through which a
16 check is payable and to which the check is
17 sent for payment or collection.

18 (E) RETURNING BANK.—

19 (i) IN GENERAL.—The term “return-
20 ing bank” means a bank (other than the
21 paying or depository bank) handling a re-
22 turned check or notice in lieu of return.

23 (ii) TREATMENT AS COLLECTING
24 BANK.—No provision of this Act shall be
25 construed as affecting the treatment of a

1 returning bank as a collecting bank for
2 purposes of section 4–202(b) of the Uni-
3 form Commercial Code.

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

6 (5) BUSINESS DAY.—The term “business day”
7 has the same meaning as in section 602(3) of the
8 Expedited Funds Availability Act (12 U.S.C.
9 4001(3)).

10 (6) CHECK.—The term “check”—

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

16 (B) does not include a noncash item or an
17 item payable in a medium other than United
18 States dollars.

19 (7) CONSUMER.—The term “consumer” means
20 an individual who—

21 (A) with respect to a check handled for
22 forward collection, draws the check on a con-
23 sumer account; or

1 (B) with respect to a check handled for re-
2 turn, deposits the check into, or cashes the
3 check against, a consumer account.

4 (8) CONSUMER ACCOUNT.—The term “con-
5 sumer account” has the same meaning as in section
6 602(10) of the Expedited Funds Availability Act (12
7 U.S.C. 4001(10)).

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

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

14 (11) INDEMNIFYING BANK.—The term “indem-
15 nifying bank” means a bank that is providing an in-
16 demnity under section 6 with respect to a substitute
17 check.

18 (12) MICR LINE.—The term “MICR line” or
19 “magnetic ink character recognition line” means the
20 numbers, which may include the bank routing num-
21 ber, account number, check number, check amount,
22 and other information, that are printed near the bot-
23 tom of a check in magnetic ink in accordance with
24 generally applicable industry standards.

1 (13) NONCASH ITEM.—The term “noncash
2 item” has the same meaning as in section 602(14)
3 of the Expedited Funds Availability Act (12 U.S.C.
4 4001(14)).

5 (14) PERSON.—The term “person” means a
6 natural person, corporation, unincorporated com-
7 pany, partnership, government unit or instrumen-
8 tality, trust, or any other entity or organization.

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

11 (A) the bank that creates a substitute
12 check; or

13 (B) if a substitute check is created by a
14 person other than a bank, the first bank that
15 transfers or presents such substitute check.

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

19 (A) contains an image of the front and
20 back of the original check;

21 (B) bears a MICR line containing all the
22 information appearing on the MICR line of the
23 original check, except as provided under gen-
24 erally applicable industry standards for sub-

1 substitute checks to facilitate the processing of
2 substitute checks;

3 (C) conforms, in paper stock, dimension,
4 and otherwise, with generally applicable indus-
5 try standards for substitute checks; and

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

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

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

20 (19) UNIFORM COMMERCIAL CODE.—The term
21 “Uniform Commercial Code” means the Uniform
22 Commercial Code in effect in a State.

23 (20) UNIT OF GENERAL LOCAL GOVERN-
24 MENT.—The term “unit of general local govern-
25 ment” has the same meaning as in section 602(24)

1 of the Expedited Funds Availability Act (12 U.S.C.
2 4001(24)).

3 (21) OTHER TERMS.—Unless the context re-
4 quires otherwise, terms used in this Act that are not
5 defined in this section shall have the same meanings
6 as in the Uniform Commercial Code.

7 **SEC. 4. GENERAL PROVISIONS GOVERNING SUBSTITUTE**
8 **CHECKS.**

9 (a) NO AGREEMENT REQUIRED.—A person may de-
10 posit, present, or send for collection or return a substitute
11 check without an agreement with the recipient, to the ex-
12 tent that the bank has made the warranties described in
13 section 5 with respect to the substitute check.

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

18 (1) accurately represents all of the information
19 on the front and back of the original check as of the
20 time at which the original check was truncated; and

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

24 (c) ENDORSEMENTS.—A reconverting bank shall en-
25 sure that the substitute check for which the bank is the

1 reconverting bank bears all endorsements applied by par-
2 ties that previously handled the check (whether in elec-
3 tronic form or in the form of the original paper check or
4 a substitute check) for forward collection or return.

5 (d) IDENTIFICATION OF RECONVERTING BANK.—A
6 reconverting bank shall identify itself as a reconverting
7 bank on any substitute check for which the bank is a re-
8 converting bank, so as to preserve any previous recon-
9 verting bank identifications, in conformance with generally
10 applicable industry standards.

11 (e) APPLICABLE LAW.—A substitute check that is
12 the legal equivalent of the original check under subsection
13 (b) shall be subject to any provision, including any provi-
14 sion relating to the protection of consumers, of part 229
15 of title 12, Code of Federal Regulations (or any successor
16 thereto), the Uniform Commercial Code, and any other ap-
17 plicable Federal or State law that would apply if the sub-
18 stitute check were the original check, to the extent that
19 such provision of law is not inconsistent with this Act.

20 **SEC. 5. SUBSTITUTE CHECK WARRANTIES.**

21 A bank that transfers, presents, or returns a sub-
22 stitute check and receives consideration for the check war-
23 rants to the transferee, any subsequent collecting or re-
24 turning bank, the depository bank, the drawee, the draw-
25 er, the payee, the depositor, and any endorser (regardless

1 of whether the warrantee receives the substitute check or
 2 another paper or electronic form of the substitute or origi-
 3 nal check) that—

4 (1) the substitute check meets all the require-
 5 ments for legal equivalence under section 4(b); and

6 (2) no depositary bank, drawee, drawer, or en-
 7 dorser will receive presentment or return of the sub-
 8 stitute check, the original check, or a copy or other
 9 paper or electronic version of the substitute check or
 10 original check such that it will be asked to make a
 11 payment based on a check it has already paid.

12 **SEC. 6. INDEMNITY.**

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

24 (b) INDEMNITY AMOUNT.—

1 (1) AMOUNT IN EVENT OF BREACH OF WAR-
2 RANTY.—The amount of the indemnity under sub-
3 section (a) shall be the amount of any loss (includ-
4 ing costs and reasonable attorney fees and other ex-
5 penses of representation) proximately caused by a
6 breach of a warranty established under section 5.

7 (2) AMOUNT IN ABSENCE OF BREACH OF WAR-
8 RANTY.—In the absence of a breach of a warranty
9 established under section 5, the amount of the in-
10 demnity under subsection (a) shall be the sum of—

11 (A) the amount of any loss, up to the
12 amount of the substitute check; and

13 (B) interest and expenses (including costs
14 and reasonable attorney fees and other expenses
15 of representation).

16 (c) COMPARATIVE NEGLIGENCE.—

17 (1) IN GENERAL.—If a loss under subsection
18 (a) results in whole or in part from the negligence
19 or failure to act in good faith on the part of an in-
20 demnified party, then the indemnification of that
21 party under this section shall be reduced in propor-
22 tion to the amount of negligence or bad faith attrib-
23 utable to that party.

24 (2) RULE OF CONSTRUCTION.—Nothing in this
25 subsection reduces the rights of a consumer or any

1 other person under the Uniform Commercial Code or
2 other applicable provision of Federal or State law.

3 (d) EFFECT OF PRODUCING ORIGINAL CHECK OR
4 SUBSTITUTE CHECK.—

5 (1) IN GENERAL.—If the indemnifying bank
6 produces the original check or a copy of the original
7 check (including an image or a substitute check)
8 that accurately represents all of the information on
9 the front and back of the original check (as of the
10 time at which the original check was truncated), or
11 is otherwise sufficient to determine whether or not
12 a claim is valid, the indemnifying bank shall—

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

17 (B) have a right to the return of any funds
18 it has paid under the indemnity in excess of
19 those losses.

20 (2) COORDINATION OF INDEMNITY WITH IM-
21 PLIED WARRANTY.—The production of the original
22 check, substitute check, or copy under paragraph (1)
23 by an indemnifying bank shall not absolve the bank
24 from any liability on a warranty established under
25 this Act or any other provision of law.

1 (e) SUBROGATION OF RIGHTS.—

2 (1) IN GENERAL.—Each indemnifying bank
3 shall be subrogated to the rights of any indemnified
4 party to the extent of the indemnity.

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

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

16 **SEC. 7. EXPEDITED RECREDIT FOR CONSUMERS.**

17 (a) RECREDIT CLAIMS.—

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

23 (A) the bank charged the consumer ac-
24 count for a substitute check that was provided
25 to the consumer;

1 (B) either—

2 (i) the check was not properly charged
3 to the consumer account; or

4 (ii) the consumer has a warranty
5 claim with respect to such substitute
6 check;

7 (C) the consumer suffered a resulting loss;

8 and

9 (D) the production of the original check or
10 a better copy of the original check is necessary
11 to determine the validity of any claim described
12 in subparagraph (B).

13 (2) 40-DAY PERIOD.—Any claim under para-
14 graph (1) with respect to a consumer account may
15 be submitted by a consumer before the end of the
16 40-day period beginning on the later of—

17 (A) the date on which the financial institu-
18 tion mails or delivers, by a means agreed to by
19 the consumer, the periodic statement of account
20 for such account which contains information
21 concerning the transaction giving rise to the
22 claim; or

23 (B) the date on which the substitute check
24 is made available to the consumer.

1 (3) EXTENSION UNDER EXTENUATING CIR-
 2 CUMSTANCES.—If the ability of the consumer to
 3 submit the claim within the 40-day period under
 4 paragraph (2) is delayed due to extenuating cir-
 5 cumstances, including extended travel or the illness
 6 of the consumer, the 40-day period shall be extended
 7 by a reasonable amount of time.

8 (b) PROCEDURES FOR CLAIMS.—

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

13 (A) a description of the claim, including an
 14 explanation of—

15 (i) why the substitute check was not
 16 properly charged to the subject consumer
 17 account; or

18 (ii) the warranty claim with respect to
 19 such check;

20 (B) a statement that the consumer suf-
 21 fered a loss and an estimate of the amount of
 22 the loss;

23 (C) the reason why production of the origi-
 24 nal check or a better copy of the original check
 25 is necessary to determine the validity of the

1 charge to the subject consumer account or the
2 warranty claim; and

3 (D) sufficient information to identify the
4 substitute check and to investigate the claim.

5 (2) CLAIM IN WRITING.—

6 (A) IN GENERAL.—The bank holding the
7 consumer account that is the subject of a claim
8 by the consumer under subsection (a) may, in
9 the discretion of the bank, require the consumer
10 to submit the information required under para-
11 graph (1) in writing.

12 (B) MEANS OF SUBMISSION.—A bank that
13 requires a submission of information under sub-
14 paragraph (A) may permit the consumer to
15 make the submission electronically, if the con-
16 sumer has agreed to communicate with the
17 bank in that manner.

18 (c) RECREDIT TO CONSUMER.—

19 (1) CONDITIONS FOR RECREDIT.—The bank
20 shall recredit a consumer account in accordance with
21 paragraph (2) for the amount of a substitute check
22 that was charged against the consumer account, if—

23 (A) a consumer submits a claim to the
24 bank with respect to that substitute check that
25 meets the requirement of subsection (b); and

- 1 (B) the bank has not—
- 2 (i) provided to the consumer—
- 3 (I) the original check; or
- 4 (II) a copy of the original check
- 5 (including an image or a substitute
- 6 check) that accurately represents all
- 7 of the information on the front and
- 8 back of the original check, as of the
- 9 time at which the original check was
- 10 truncated; and
- 11 (ii) demonstrated to the consumer
- 12 that the substitute check was properly
- 13 charged to the consumer account.

14 (2) TIMING OF RECREDIT.—

15 (A) IN GENERAL.—The bank shall recredit

16 the subject consumer account for the amount

17 described in paragraph (1) not later than the

18 end of the business day following the business

19 day on which the bank determines the claim of

20 the consumer is valid.

21 (B) RECREDIT PENDING INVESTIGA-

22 TION.—If the bank has not determined that the

23 claim of the consumer is valid before the end of

24 the 10th business day after the business day on

25 which the consumer submitted the claim, the

1 bank shall recredit the subject consumer ac-
2 count for—

3 (i) the lesser of the amount of the
4 substitute check that was charged against
5 the consumer account, or \$2,500, together
6 with interest if the account is an interest-
7 bearing account, not later than the end of
8 such 10th business day; and

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

16 (d) AVAILABILITY OF RECREDIT.—

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

1 (2) SAFEGUARD EXCEPTIONS.—A bank may
2 delay availability to a consumer of a recredit pro-
3 vided under subsection (c)(2)(B)(i) until the start of
4 either the business day following the business day on
5 which the bank determines that the claim of the con-
6 sumer is valid, or the 45th calendar day following
7 the business day on which the consumer submits a
8 claim for such recredit in accordance with subsection
9 (b), whichever is earlier, in any of the following cir-
10 cumstances:

11 (A) NEW ACCOUNTS.—The claim is made
12 during the 30-day period beginning on the busi-
13 ness day on which the consumer account was
14 established.

15 (B) REPEATED OVERDRAFTS.—Without
16 regard to the charge that is the subject of the
17 claim for which the recredit was made—

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

1 (ii) on 2 or more business days during
2 such 6-month period, the balance in the
3 consumer account was negative or would
4 have become negative in the amount of
5 \$5,000 or more if checks or other charges
6 to the account had been paid.

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

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

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

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

5 (2) notifies the consumer in accordance with
6 subsection (f)(3).

7 (f) NOTICE TO CONSUMER.—

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

9 If a bank determines that a substitute check subject
10 to the claim of a consumer under this section was
11 in fact properly charged to the consumer account,
12 the bank shall send to the consumer, not later than
13 the business day following the business day on which
14 the bank makes the determination—

15 (A) the original check or a copy of the
16 original check (including an image or a sub-
17 stitute check) that—

18 (i) accurately represents all of the in-
19 formation on the front and back of the
20 original check (as of the time at which the
21 original check was truncated); or

22 (ii) is otherwise sufficient to deter-
23 mine whether or not the claim of the con-
24 sumer is valid; and

1 (B) an explanation of the basis for the de-
2 termination by the bank that the substitute
3 check was properly charged, including a state-
4 ment that the consumer may request copies of
5 any information or documents on which the
6 bank relied in making the determination.

7 (2) NOTICE OF RECREDIT.—If a bank recredits
8 a consumer account under subsection (c), the bank
9 shall send to the consumer, not later than the busi-
10 ness day following the business day on which the
11 bank makes the recredit, a notice of—

12 (A) the amount of the recredit; and

13 (B) the date on which the recredited funds
14 will be available for withdrawal.

15 (3) NOTICE OF REVERSAL OF RECREDIT.—In
16 addition to the notice required under paragraph (1),
17 if a bank reverses a recredited amount under sub-
18 section (e), the bank shall send to the consumer, not
19 later than the business day following the business
20 day on which the bank reverses the recredit, a notice
21 of—

22 (A) the amount of the reversal; and

23 (B) the date on which the recredit was re-
24 versed.

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

5 (g) OTHER CLAIMS NOT AFFECTED.—Providing a
6 recredit in accordance with this section shall not absolve
7 the bank from liability for a claim made under any other
8 provision of law, such as a claim for wrongful dishonor
9 under the Uniform Commercial Code, or from liability for
10 additional damages under section 6 or 10.

11 (h) SCOPE OF APPLICATION.—This section shall only
12 apply to customers who are consumers.

13 **SEC. 8. EXPEDITED RECREDIT PROCEDURES FOR BANKS.**

14 (a) RECREDIT CLAIMS.—

15 (1) IN GENERAL.—A bank may make a claim
16 against an indemnifying bank for expedited recredit
17 for which that bank is indemnified, if—

18 (A) the claimant bank (or a bank that the
19 claimant bank has indemnified) has received a
20 claim for expedited recredit from a consumer
21 under section 7 with respect to a substitute
22 check, or would have been subject to such a
23 claim had the subject consumer account been
24 charged;

1 (B) the claimant bank has suffered a re-
2 sulting loss or is obligated to recredit the con-
3 sumer account under section 7 with respect to
4 such substitute check; and

5 (C) production of the original check or a
6 better copy of the original check is necessary to
7 determine the validity of the charge to the con-
8 sumer account or any warranty claim connected
9 with such substitute check.

10 (2) 120-DAY PERIOD.—Any claim under para-
11 graph (1) may be submitted by the claimant bank
12 to an indemnifying bank before the end of the 120-
13 day period beginning on the date of the transaction
14 that gave rise to the claim.

15 (b) PROCEDURES FOR CLAIMS.—

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

20 (A) a description of—

21 (i) the claim, including an explanation
22 of why the substitute check cannot be
23 properly charged to the consumer account;
24 or

25 (ii) the warranty claim;

1 (B) a statement that the claimant bank
2 has suffered a loss or is obligated to recredit
3 the subject consumer account under section 7,
4 together with an estimate of the amount of the
5 loss or recredit;

6 (C) the reason why production of the origi-
7 nal check or a better copy of the original check
8 is necessary to determine the validity of the
9 charge to the consumer account or the warranty
10 claim; and

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

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

22 (A) mistaken for the legal equivalent of the
23 check under section 4(b); or

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

4 (3) CLAIM IN WRITING.—

5 (A) IN GENERAL.—An indemnifying bank
6 may, in the discretion of the bank, require the
7 claimant bank to submit the information re-
8 quired by paragraph (1) in writing, including a
9 copy of the written or electronically submitted
10 claim, if any, that the consumer provided in ac-
11 cordance with section 7(b).

12 (B) MEANS OF SUBMISSION.—An indem-
13 nifying bank that requires a submission of in-
14 formation under subparagraph (A) may permit
15 the claimant bank to make the submission elec-
16 tronically, if the claimant bank has agreed to
17 communicate with the indemnifying bank in
18 that manner.

19 (c) RECREDIT BY INDEMNIFYING BANK.—

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

1 (A) provide, to the claimant bank, the
2 original check (with respect to such substitute
3 check) or a copy of the original check (including
4 an image or a substitute check) that—

5 (i) accurately represents all of the in-
6 formation on the front and back of the
7 original check (as of the time at which the
8 original check was truncated); or

9 (ii) is otherwise sufficient to deter-
10 mine that the claim of the bank is not
11 valid;

12 (B) recredit the claimant bank for the
13 amount of the claim up to the amount of the
14 substitute check, plus interest if applicable; or

15 (C) provide information to the claimant
16 bank as to why the indemnifying bank is not
17 obligated to comply with subparagraph (A) or
18 (B).

19 (2) RECREDIT DOES NOT ABROGATE OTHER LI-
20 ABILITIES.—Providing a recredit under this sub-
21 section to a claimant bank with respect to a sub-
22 stitute check shall not absolve the indemnifying bank
23 from liability for claims brought under any other law
24 or from additional damages under section 6 or 10
25 with respect to such check.

1 (3) REFUND TO INDEMNIFYING BANK.—If a
2 claimant bank reverses, in accordance with section
3 7(e), a recredit previously made to a consumer ac-
4 count under section 7(e), or otherwise receives a
5 credit or recredit with regard to such substitute
6 check, the claimant bank shall promptly refund to
7 any indemnifying bank any amount previously ad-
8 vanced by the indemnifying bank in connection with
9 such substitute check.

10 (d) PRODUCTION OF ORIGINAL CHECK OR A SUFFI-
11 CIENT COPY GOVERNED BY SECTION 6(d).—If the indem-
12 nifying bank provides the claimant bank with the original
13 check or a copy of the original check (including an image
14 or a substitute check) under subsection (c)(1)(A) of this
15 section, section 6(d) shall govern any right of the indem-
16 nifying bank to any repayment of any funds that the in-
17 demnifying bank has recredited to the claimant bank pur-
18 suant to subsection (c).

19 **SEC. 9. DELAYS IN AN EMERGENCY.**

20 Delay by a bank beyond the time limits prescribed
21 or permitted by this Act is excused if the delay is caused
22 by interruption of communication or computer facilities,
23 suspension of payments by another bank, war, emergency
24 conditions, failure of equipment, or other circumstances

1 beyond the control of a bank, and if the bank uses such
2 diligence as the circumstances require.

3 **SEC. 10. MEASURE OF DAMAGES.**

4 (a) LIABILITY.—

5 (1) IN GENERAL.—Except as provided in sec-
6 tion 6, any person who, in connection with a sub-
7 stitute check, breaches any warranty under this Act
8 or fails to comply with any requirement imposed by
9 or regulation prescribed pursuant to this Act with
10 respect to any other person shall be liable to such
11 person in an amount equal to the sum of—

12 (A) the lesser of—

13 (i) the amount of the loss suffered by
14 the other person as a result of the breach
15 or failure; or

16 (ii) the amount of the substitute
17 check; and

18 (B) interest and expenses (including costs
19 and reasonable attorney fees and other expenses
20 of representation) related to the substitute
21 check.

22 (2) OFFSET OF RECREDITS.—The amount of
23 damages that any person receives under paragraph
24 (1), if any, shall be reduced by the amount that the

1 claimant receives and retains as a recredit under
2 section 7 or 8, if any.

3 (b) COMPARATIVE NEGLIGENCE.—

4 (1) IN GENERAL.—If a person incurs damages
5 that resulted in whole or in part from the negligence
6 or failure of that person to act in good faith, then
7 the amount of any liability due to that person under
8 subsection (a) shall be reduced in proportion to the
9 amount of negligence or bad faith attributable to
10 that person.

11 (2) RULE OF CONSTRUCTION.—Nothing in this
12 subsection reduces the rights of a consumer or any
13 other person under the Uniform Commercial Code or
14 other applicable provision of Federal or State law.

15 **SEC. 11. STATUTE OF LIMITATIONS AND NOTICE OF CLAIM.**

16 (a) ACTIONS UNDER THIS ACT.—

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

23 (2) ACCRUAL.—For purposes of paragraph (1),
24 a cause of action accrues as of the date on which the
25 injured party first learns, or by which such person

1 reasonably should have learned, of the facts and cir-
 2 cumstances giving rise to the cause of action.

3 (b) NOTICE OF CLAIMS REQUIRED.—Unless a person
 4 gives notice of a claim to the indemnifying or warranting
 5 bank, not later than 30 days after the person has reason
 6 to know of the claim and the identity of the indemnifying
 7 or warranting bank, the indemnifying or warranting bank
 8 is discharged from liability in an action to enforce a claim
 9 under this Act, to the extent of any loss caused by the
 10 delay in giving notice of the claim.

11 (c) NOTICE OF CLAIM BY CONSUMER.—A timely
 12 claim by a consumer under section 7 for expedited recredit
 13 constitutes timely notice of a claim by the consumer for
 14 purposes of subsection (b).

15 **SEC. 12. CONSUMER AWARENESS.**

16 (a) IN GENERAL.—During the 3-year period begin-
 17 ning on the effective date of this Act, each bank shall pro-
 18 vide to each consumer that is a customer of the bank, in
 19 accordance with subsection (b), a brief notice about sub-
 20 stitute checks that describes—

21 (1) how a substitute check is the legal equiva-
 22 lent of an original check for all purposes, including
 23 any provision of any Federal or State law, and for
 24 all persons, if the substitute check—

1 (A) accurately represents all of the infor-
2 mation on the front and back of the original
3 check as of the time at which the original check
4 was truncated; and

5 (B) bears the legend: “This is a legal copy
6 of your check. You can use it in the same way
7 you would use the original check.”; and

8 (2) the consumer recredit rights established
9 under section 7 when a consumer believes in good
10 faith that a substitute check was not properly
11 charged to the account of the consumer.

12 (b) DISTRIBUTION.—

13 (1) IN GENERAL.—The notice required by sub-
14 section (a) shall be provided—

15 (A) to each consumer that is a customer of
16 the bank as of the effective date of this Act,
17 and that receives original checks or substitute
18 checks along with periodic account statements,
19 not later than together with the first regularly
20 scheduled communication with the customer
21 after the effective date of this Act;

22 (B) at the time at which a customer rela-
23 tionship is initiated, if such relationship is initi-
24 ated on or after the effective date of this Act
25 and such customer will receive original checks

1 or substitute checks along with periodic account
2 statements; and

3 (C) to each customer of the bank that re-
4 quests a copy of a check and receives a sub-
5 stitute check, at the time of the request.

6 (2) MODE OF DELIVERY.—A bank may provide
7 the notices required by this subsection by United
8 States mail, or by any other means through which
9 the consumer has agreed to receive account informa-
10 tion.

11 (c) MODEL LANGUAGE.—

12 (1) IN GENERAL.—Not later than 9 months
13 after the date of enactment of this Act, the Board
14 shall publish model forms and clauses that a deposi-
15 tory institution may use to describe each of the ele-
16 ments required by subsection (a).

17 (2) SAFE HARBOR.—A bank shall be treated as
18 being in compliance with the requirements of sub-
19 section (a) if the substitute check notice of the bank
20 uses a model form or clause published by the Board,
21 and such model form or clause accurately describes
22 the policies and practices of the bank. A bank may
23 delete any information in the model form or clause
24 that is not required by this Act, or rearrange the
25 format of such form.

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

5 **SEC. 13. EFFECT ON OTHER LAW.**

6 This Act shall supersede any provision of Federal or
7 State law, including the Uniform Commercial Code, that
8 is inconsistent with this Act, but only to the extent of the
9 inconsistency.

10 **SEC. 14. REGULATIONS.**

11 The Board may prescribe such regulations as it
12 deems necessary to implement, prevent circumvention or
13 evasion of, or facilitate compliance with the provisions of
14 this Act.

15 **SEC. 15. STUDY AND REPORT ON FUNDS AVAILABILITY.**

16 (a) STUDY.—In order to evaluate the implementation
17 and the impact of this Act, the Board shall conduct a
18 study of—

19 (1) the percentage of total checks cleared in
20 which the paper check is not returned to the paying
21 bank;

22 (2) the extent to which financial institutions
23 make funds available to consumers for local and
24 nonlocal checks prior to the expiration of maximum
25 hold periods;

1 posits for credit within 1 business day, the impact
2 of fraud losses, and an estimate of consumers' share
3 of the total benefits derived from this Act; and

4 (3) an assessment of consumer acceptance of
5 the check truncation process resulting from this Act,
6 as well as any new costs incurred by consumers who
7 had their original checks returned with their regular
8 monthly statements prior to the date of enactment
9 of this Act.

10 (b) REPORT TO CONGRESS.—Not later than 5 years
11 after the date of enactment of this Act, the Comptroller
12 General shall submit a report to Congress concerning the
13 findings and conclusions of the Comptroller General in
14 connection with the evaluation conducted pursuant to sub-
15 section (a), together with such recommendations for legis-
16 lative and administrative action as the Comptroller Gen-
17 eral may determine to be appropriate.

18 **SEC. 17. VARIATION BY AGREEMENT.**

19 (a) SECTION 8.—Any provision of section 8 may be
20 varied by agreement of the banks involved.

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

1 **SEC. 18. EFFECTIVE DATE.**

2 Except as otherwise specifically provided in this Act,
3 this Act shall become effective 12 months after the date
4 of enactment of this Act.

Calendar No. 168

108TH CONGRESS
1ST SESSION

S. 1334

[Report No. 108-79]

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.

JUNE 25, 2003

Read twice and placed on the calendar