

UNIFORM COMMERCIAL CODE PROPOSED REVISED UCC §§4-214, 4-406

§4-214. Right of Charge-Back or Refund; Liability of Collecting Bank: Return of Item.

(a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive 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 facts (such as an image of the item). If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. 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.

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

(c) A depository bank that 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 4B301).

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

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

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

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

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

(g) (1) If a bank provides the customer an image of the item rather than the item, the bank warrants to the customer, to any later transferee of the item, to any indorser, and to the drawer, that without the consent of the customer neither the item nor any image of the item will either

(A) be presented to the payor bank for payment, or

(B) enforced against the drawer or any other party obligated on the item.

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

(2) Any such image of the item shall be deemed to be the item for purposes of Section 3-308 and any other issue related to enforcement of the item, so that the right to enforce the item shall not be diminished solely because the customer possess an image of the item rather than the original item itself.

§ 4-406. Customer's Duty to Discover and Report Unauthorized Signature or Alteration.

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

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of both sides of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of both sides of the item. Notwithstanding any agreement to the contrary, the bank upon request shall provide without charge at least three items (or legible copies of both sides of those items) per statement period, but shall have no obligation to provide more than twelve such items without charge during any twelve consecutive statement periods.

(c) If a bank acting pursuant to subsection (b) provides the customer a copy or an image of the item rather than the item, the copy or the image of the item, together with a statement of account showing payment of the item, shall not be excluded from evidence solely because it is a copy or an image of the item.

(d) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(e) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection (d), the customer is precluded from asserting against the bank:

(1) the customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

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

(g) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer under subsection (a) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under Section 4B208 with respect to the unauthorized signature or alteration to which the preclusion applies. With respect to a consumer account, the payor bank and the customer may agree to shorten the one-year period prescribed by this subsection, but any agreement that shortens that period to a time less than three months shall be deemed to be an agreement to shorten that period to three months.