

2 **SHB 1014** - S COMM AMD
3 By Committee on Labor & Commerce

5 ADOPTED 4/16/93

6 Strike everything after the enacting clause and insert the
7 following:

8 "ARTICLE 1

9 GENERAL PROVISIONS

10 PART 2

11 GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

12 **Sec. 1.** RCW 62A.1-201 and 1992 c 134 s 14 are each amended to read
13 as follows:

14 Subject to additional definitions contained in the subsequent
15 Articles of this Title which are applicable to specific Articles or
16 Parts thereof, and unless the context otherwise requires, in this
17 Title:

18 (1) "Action" in the sense of a judicial proceeding includes
19 recoupment, counterclaim, set-off, suit in equity and any other
20 proceedings in which rights are determined.

21 (2) "Aggrieved party" means a party entitled to resort to a remedy.

22 (3) "Agreement" means the bargain of the parties in fact as found
23 in their language or by implication from other circumstances including
24 course of dealing or usage of trade or course of performance as
25 provided in this Title (RCW 62A.1-205 and RCW 62A.2-208). Whether an
26 agreement has legal consequences is determined by the provisions of
27 this Title, if applicable; otherwise by the law of contracts (RCW
28 62A.1-103). (Compare "Contract".)

29 (4) "Bank" means any person engaged in the business of banking.

30 (5) "Bearer" means the person in possession of an instrument,
31 document of title, or certificated security payable to bearer or
32 indorsed in blank.

33 (6) "Bill of lading" means a document evidencing the receipt of
34 goods for shipment issued by a person engaged in the business of
35 transporting or forwarding goods, and includes an airbill. "Airbill"
36 means a document serving for air transportation as a bill of lading
37 does for marine or rail transportation, and includes an air consignment
38 note or air waybill.

1 (7) "Branch" includes a separately incorporated foreign branch of
2 a bank.

3 (8) "Burden of establishing" a fact means the burden of persuading
4 the triers of fact that the existence of the fact is more probable than
5 its non-existence.

6 (9) "Buyer in ordinary course of business" means a person who in
7 good faith and without knowledge that the sale to him is in violation
8 of the ownership rights or security interest of a third party in the
9 goods buys in ordinary course from a person in the business of selling
10 goods of that kind but does not include a pawnbroker. All persons who
11 sell minerals or the like (including oil and gas) at wellhead or
12 minehead shall be deemed to be persons in the business of selling goods
13 of that kind. "Buying" may be for cash or by exchange of other
14 property or on secured or unsecured credit and includes receiving goods
15 or documents of title under a pre-existing contract for sale but does
16 not include a transfer in bulk or as security for or in total or
17 partial satisfaction of a money debt.

18 (10) "Conspicuous": A term or clause is conspicuous when it is so
19 written that a reasonable person against whom it is to operate ought to
20 have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE
21 BILL OF LADING) is conspicuous. Language in the body of a form is
22 "conspicuous" if it is in larger or other contrasting type or color.
23 But in a telegram any stated term is "conspicuous". Whether a term or
24 clause is "conspicuous" or not is for decision by the court.

25 (11) "Contract" means the total legal obligation which results from
26 the parties' agreement as affected by this Title and any other
27 applicable rules of law. (Compare "Agreement".)

28 (12) "Creditor" includes a general creditor, a secured creditor, a
29 lien creditor and any representative of creditors, including an
30 assignee for the benefit of creditors, a trustee in bankruptcy, a
31 receiver in equity and an executor or administrator of an insolvent
32 debtor's or assignor's estate.

33 (13) "Defendant" includes a person in the position of defendant in
34 a cross-action or counterclaim.

35 (14) "Delivery" with respect to instruments, documents of title,
36 chattel paper, or certificated securities means voluntary transfer of
37 possession.

38 (15) "Document of title" includes bill of lading, dock warrant,
39 dock receipt, warehouse receipt or order for the delivery of goods, and

1 also any other document which in the regular course of business or
2 financing is treated as adequately evidencing that the person in
3 possession of it is entitled to receive, hold and dispose of the
4 document and the goods it covers. To be a document of title a document
5 must purport to be issued by or addressed to a bailee and purport to
6 cover goods in the bailee's possession which are either identified or
7 are fungible portions of an identified mass.

8 (16) "Fault" means wrongful act, omission or breach.

9 (17) "Fungible" with respect to goods or securities means goods or
10 securities of which any unit is, by nature or usage of trade, the
11 equivalent of any other like unit. Goods which are not fungible shall
12 be deemed fungible for the purposes of this Title to the extent that
13 under a particular agreement or document unlike units are treated as
14 equivalents.

15 (18) "Genuine" means free of forgery or counterfeiting.

16 (19) "Good faith" means honesty in fact in the conduct or
17 transaction concerned.

18 (20) "Holder" with respect to ~~((an instrument, certificated~~
19 ~~security, or document of title means the person in possession if (a) in~~
20 ~~the case of an instrument, it is payable to bearer or to the order of~~
21 ~~the person in possession, (b) in the case of a security, the person in~~
22 ~~possession is the registered owner, or the security has been indorsed~~
23 ~~to the person in possession by the registered owner, or the security is~~
24 ~~in bearer form, or (c) in the case of a document of title, the goods~~
25 ~~are deliverable to bearer or to the order of the person in possession))~~
26 a negotiable instrument, means the person in possession if the
27 instrument is payable to bearer or, in the case of an instrument
28 payable to an identified person, if the identified person is in
29 possession. "Holder" with respect to a document of title means the
30 person in possession if the goods are deliverable to bearer or to the
31 order of the person in possession.

32 (21) To "honor" is to pay or to accept and pay, or where a credit
33 so engages to purchase or discount a draft complying with the terms of
34 the credit.

35 (22) "Insolvency proceedings" includes any assignment for the
36 benefit of creditors or other proceedings intended to liquidate or
37 rehabilitate the estate of the person involved.

38 (23) A person is "insolvent" who either has ceased to pay his debts
39 in the ordinary course of business or cannot pay his debts as they

1 become due or is insolvent within the meaning of the federal bankruptcy
2 law.

3 (24) "Money" means a medium of exchange authorized or adopted by a
4 domestic or foreign government (~~(or intergovernmental organization)~~)
5 and includes a monetary unit of account established by an
6 intergovernmental organization or by agreement between two or more
7 nations.

8 (25) A person has "notice" of a fact when

9 (a) he has actual knowledge of it; or

10 (b) he has received a notice or notification of it; or

11 (c) from all the facts and circumstances known to him at the time
12 in question he has reason to know that it exists.

13 A person "knows" or has "knowledge" of a fact when he has actual
14 knowledge of it. "Discover" or "learn" or a word or phrase of similar
15 import refers to knowledge rather than to reason to know. The time and
16 circumstances under which a notice or notification may cease to be
17 effective are not determined by this Title.

18 (26) A person "notifies" or "gives" a notice or notification to
19 another by taking such steps as may be reasonably required to inform
20 the other in ordinary course whether or not such other actually comes
21 to know of it. A person "receives" a notice or notification when

22 (a) it comes to his attention; or

23 (b) it is duly delivered at the place of business through which the
24 contract was made or at any other place held out by him as the place
25 for receipt of such communications.

26 (27) Notice, knowledge or a notice or notification received by an
27 organization is effective for a particular transaction from the time
28 when it is brought to the attention of the individual conducting that
29 transaction, and in any event from the time when it would have been
30 brought to his attention if the organization had exercised due
31 diligence. An organization exercises due diligence if it maintains
32 reasonable routines for communicating significant information to the
33 person conducting the transaction and there is reasonable compliance
34 with the routines. Due diligence does not require an individual acting
35 for the organization to communicate information unless such
36 communication is part of his regular duties or unless he has reason to
37 know of the transaction and that the transaction would be materially
38 affected by the information.

1 (28) "Organization" includes a corporation, government or
2 governmental subdivision or agency, business trust, estate, trust,
3 partnership or association, two or more persons having a joint or
4 common interest, or any other legal or commercial entity.

5 (29) "Party", as distinct from "third party", means a person who
6 has engaged in a transaction or made an agreement within this Title.

7 (30) "Person" includes an individual or an organization (See RCW
8 62A.1-102).

9 (31) "Presumption" or "presumed" means that the trier of fact must
10 find the existence of the fact presumed unless and until evidence is
11 introduced which would support a finding of its nonexistence.

12 (32) "Purchase" includes taking by sale, discount, negotiation,
13 mortgage, pledge, lien, issue or re-issue, gift or any other voluntary
14 transaction creating an interest in property.

15 (33) "Purchaser" means a person who takes by purchase.

16 (34) "Remedy" means any remedial right to which an aggrieved party
17 is entitled with or without resort to a tribunal.

18 (35) "Representative" includes an agent, an officer of a
19 corporation or association, and a trustee, executor or administrator of
20 an estate, or any other person empowered to act for another.

21 (36) "Rights" includes remedies.

22 (37) "Security interest" means an interest in personal property or
23 fixtures which secures payment or performance of an obligation, except
24 for lease-purchase agreements under chapter 63.19 RCW. The retention
25 or reservation of title by a seller of goods notwithstanding shipment
26 or delivery to the buyer (RCW 62A.2-401) is limited in effect to a
27 reservation of a "security interest". The term also includes any
28 interest of a buyer of accounts or chattel paper which is subject to
29 Article 9. The special property interest of a buyer of goods on
30 identification of such goods to a contract for sale under RCW 62A.2-401
31 is not a "security interest", but a buyer may also acquire a "security
32 interest" by complying with Article 9. Unless a lease or consignment
33 is intended as security, reservation of title thereunder is not a
34 "security interest" but a consignment is in any event subject to the
35 provisions on consignment sales (RCW 62A.2-326). Whether a lease is
36 intended as security is to be determined by the facts of each case;
37 however, (a) the inclusion of an option to purchase does not of itself
38 make the lease one intended for security, and (b) an agreement that
39 upon compliance with the terms of the lease the lessee shall become or

1 has the option to become the owner of the property for no additional
2 consideration or for a nominal consideration does make the lease one
3 intended for security.

4 (38) "Send" in connection with any writing or notice means to
5 deposit in the mail or deliver for transmission by any other usual
6 means of communication with postage or cost of transmission provided
7 for and properly addressed and in the case of an instrument to an
8 address specified thereon or otherwise agreed, or if there be none to
9 any address reasonable under the circumstances. The receipt of any
10 writing or notice within the time at which it would have arrived if
11 properly sent has the effect of a proper sending.

12 (39) "Signed" includes any symbol executed or adopted by a party
13 with present intention to authenticate a writing.

14 (40) "Surety" includes guarantor.

15 (41) "Telegram" includes a message transmitted by radio, teletype,
16 cable, any mechanical method of transmission, or the like.

17 (42) "Term" means that portion of an agreement which relates to a
18 particular matter.

19 (43) "Unauthorized" signature means one made without actual,
20 implied or apparent authority and includes a forgery.

21 (44) "Value". Except as otherwise provided with respect to
22 negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-
23 208 and RCW 62A.4-209) a person gives "value" for rights if he acquires
24 them

25 (a) in return for a binding commitment to extend credit or for the
26 extension of immediately available credit whether or not drawn upon and
27 whether or not a charge-back is provided for in the event of
28 difficulties in collection; or

29 (b) as security for or in total or partial satisfaction of a
30 preexisting claim; or

31 (c) by accepting delivery pursuant to a pre-existing contract for
32 purchase; or

33 (d) generally, in return for any consideration sufficient to
34 support a simple contract.

35 (45) "Warehouse receipt" means a receipt issued by a person engaged
36 in the business of storing goods for hire.

37 (46) "Written" or "writing" includes printing, typewriting or any
38 other intentional reduction to tangible form.

1 **Sec. 2.** RCW 62A.1-207 and 1965 ex.s. c 157 s 1-207 are each
2 amended to read as follows:

3 (1) A party who, with explicit reservation of rights performs or
4 promises performance or assents to performance in a manner demanded or
5 offered by the other party does not thereby prejudice the rights
6 reserved. Such words as "without prejudice", "under protest" or the
7 like are sufficient.

8 (2) Subsection (1) of this section shall not apply to an accord and
9 satisfaction.

10 ARTICLE 3

11 ((COMMERCIAL PAPER)) NEGOTIABLE INSTRUMENTS

12 PART I

13 ((SHORT TITLE, FORM AND INTERPRETATION))

14 GENERAL PROVISIONS AND DEFINITIONS

15 **Sec. 3.** RCW 62A.3-101 and 1965 ex.s. c 157 s 3-101 are each
16 amended to read as follows:

17 SHORT TITLE. This Article ((shall be known and)) may be cited as
18 Uniform Commercial Code -- ((Commercial Paper)) Negotiable Instruments.

19 **Sec. 4.** RCW 62A.3-102 and 1965 ex.s. c 157 s 3-102 are each
20 amended to read as follows:

21 ((DEFINITIONS AND INDEX OF DEFINITIONS.—(1) In this Article unless
22 the context otherwise requires

23 (a) "Issue" means the first delivery of an instrument to a holder
24 or a remitter.

25 (b) An "order" is a direction to pay and must be more than an
26 authorization or request. It must identify the person to pay with
27 reasonable certainty. It may be addressed to one or more such persons
28 jointly or in the alternative but not in succession.

29 (c) A "promise" is an undertaking to pay and must be more than an
30 acknowledgment of an obligation.

31 (d) "Secondary party" means a drawer or endorser.

32 (e) "Instrument" means a negotiable instrument.

33 (2) Other definitions applying to this Article and the sections in
34 which they appear are:

1 "Acceptance."—RCW 62A.3-410.
2 "Accommodation party."—RCW 62A.3-415.
3 "Alteration."—RCW 62A.3-407.
4 "Certificate of deposit."—RCW 62A.3-104.
5 "Certification."—RCW 62A.3-411.
6 "Check."—RCW 62A.3-104.
7 "Definite time."—RCW 62A.3-109.
8 "Dishonor."—RCW 62A.3-507.
9 "Draft."—RCW 62A.3-104.
10 "Holder in due course."—RCW 62A.3-302.
11 "Negotiation."—RCW 62A.3-202.
12 "Note."—RCW 62A.3-104.
13 "Notice of dishonor."—RCW 62A.3-508.
14 "On demand."—RCW 62A.3-108.
15 "Presentment."—RCW 62A.3-504.
16 "Protest."—RCW 62A.3-509.
17 "Restrictive indorsement."—RCW 62A.3-205.
18 "Signature."—RCW 62A.3-401.

19 (3) ~~The following definitions in other Articles apply to this~~
20 ~~Article:~~

21 "Account."—RCW 62A.4-104.
22 "Banking day."—RCW 62A.4-104.
23 "Clearing house."—RCW 62A.4-104.
24 "Collecting bank."—RCW 62A.4-105.
25 "Customer."—RCW 62A.4-104.
26 "Depository bank."—RCW 62A.4-105.
27 "Documentary draft."—RCW 62A.4-104.
28 "Intermediary bank."—RCW 62A.4-105.
29 "Item."—RCW 62A.4-104.
30 "Midnight deadline."—RCW 62A.4-104.
31 "Payor bank."—RCW 62A.4-105.

32 (4) ~~In addition Article 1 contains general definitions and~~
33 ~~principles of construction and interpretation applicable throughout~~
34 ~~this Article.))~~

35 SUBJECT MATTER. (a) This Article applies to negotiable
36 instruments. It does not apply to money, to payment orders governed by
37 Article 4A, or to securities governed by Article 8.

38 (b) If there is conflict between this Article and Article 4 or 9,
39 Articles 4 and 9 govern.

1 (c) Regulations of the Board of Governors of the Federal Reserve
2 System and operating circulars of the Federal Reserve Banks supersede
3 any inconsistent provision of this Article to the extent of the
4 inconsistency.

5 **Sec. 5.** RCW 62A.3-103 and 1965 ex.s. c 157 s 3-103 are each
6 amended to read as follows:

7 ~~((LIMITATIONS ON SCOPE OF ARTICLE.—(1) This Article does not apply~~
8 ~~to money, documents of title or investment securities.~~

9 ~~(2) The provisions of this Article are subject to the provisions of~~
10 ~~the Article on Bank Deposits and Collections (Article 4) and Secured~~
11 ~~Transactions (Article 9).)~~

12 DEFINITIONS. (a) In this Article:

13 (1) "Acceptor" means a drawee who has accepted a draft.

14 (2) "Drawee" means a person ordered in a draft to make payment.

15 (3) "Drawer" means a person who signs or is identified in a draft
16 as a person ordering payment.

17 (4) "Good faith" means honesty in fact and the observance of
18 reasonable commercial standards of fair dealing.

19 (5) "Maker" means a person who signs or is identified in a note as
20 a person undertaking to pay.

21 (6) "Order" means a written instruction to pay money signed by the
22 person giving the instruction. The instruction may be addressed to any
23 person, including the person giving the instruction, or to one or more
24 persons jointly or in the alternative but not in succession. An
25 authorization to pay is not an order unless the person authorized to
26 pay is also instructed to pay.

27 (7) "Ordinary care" in the case of a person engaged in business
28 means observance of reasonable commercial standards, prevailing in the
29 area in which the person is located, with respect to the business in
30 which the person is engaged. In the case of a bank that takes an
31 instrument for processing for collection or payment by automated means,
32 reasonable commercial standards do not require the bank to examine the
33 instrument if the failure to examine does not violate the bank's
34 prescribed procedures and the bank's procedures do not vary
35 unreasonably from general banking usage not disapproved by this Article
36 or Article 4.

37 (8) "Party" means a party to an instrument.

1 (9) "Promise" means a written undertaking to pay money signed by
2 the person undertaking to pay. An acknowledgment of an obligation by
3 the obligor is not a promise unless the obligor also undertakes to pay
4 the obligation.

5 (10) "Prove" with respect to a fact means to meet the burden of
6 establishing the fact (RCW 62A.1-201(8)).

7 (11) "Remitter" means a person who purchases an instrument from its
8 issuer if the instrument is payable to an identified person other than
9 the purchaser.

10 (b) Other definitions applying to this Article and the sections in
11 which they appear are:

12	<u>"Acceptance"</u>	<u>RCW 62A.3-409</u>
13	<u>"Accommodated party"</u>	<u>RCW 62A.3-419</u>
14	<u>"Accommodation party"</u>	<u>RCW 62A.3-419</u>
15	<u>"Alteration"</u>	<u>RCW 62A.3-407</u>
16	<u>"Anomalous indorsement"</u>	<u>RCW 62A.3-205</u>
17	<u>"Blank indorsement"</u>	<u>RCW 62A.3-205</u>
18	<u>"Cashier's check"</u>	<u>RCW 62A.3-104</u>
19	<u>"Certificate of deposit"</u>	<u>RCW 62A.3-104</u>
20	<u>"Certified check"</u>	<u>RCW 62A.3-409</u>
21	<u>"Check"</u>	<u>RCW 62A.3-104</u>
22	<u>"Consideration"</u>	<u>RCW 62A.3-303</u>
23	<u>"Draft"</u>	<u>RCW 62A.3-104</u>
24	<u>"Holder in due course"</u>	<u>RCW 62A.3-302</u>
25	<u>"Incomplete instrument"</u>	<u>RCW 62A.3-115</u>
26	<u>"Indorsement"</u>	<u>RCW 62A.3-204</u>
27	<u>"Indorser"</u>	<u>RCW 62A.3-204</u>
28	<u>"Instrument"</u>	<u>RCW 62A.3-104</u>
29	<u>"Issue"</u>	<u>RCW 62A.3-105</u>
30	<u>"Issuer"</u>	<u>RCW 62A.3-105</u>
31	<u>"Negotiable instrument"</u>	<u>RCW 62A.3-104</u>
32	<u>"Negotiation"</u>	<u>RCW 62A.3-201</u>
33	<u>"Note"</u>	<u>RCW 62A.3-104</u>
34	<u>"Payable at a definite</u>	
35	<u>time"</u>	<u>RCW 62A.3-108</u>
36	<u>"Payable on demand"</u>	<u>RCW 62A.3-108</u>
37	<u>"Payable to bearer"</u>	<u>RCW 62A.3-109</u>
38	<u>"Payable to order"</u>	<u>RCW 62A.3-109</u>
39	<u>"Payment"</u>	<u>RCW 62A.3-602</u>

1	<u>"Person entitled to</u>	
2	<u>enforce"</u>	RCW 62A.3-301
3	<u>"Presentment"</u>	RCW 62A.3-501
4	<u>"Reacquisition"</u>	RCW 62A.3-207
5	<u>"Special indorsement"</u>	RCW 62A.3-205
6	<u>"Teller's check"</u>	RCW 62A.3-104
7	<u>"Transfer of instrument"</u>	RCW 62A.3-203
8	<u>"Traveler's check"</u>	RCW 62A.3-104
9	<u>"Value"</u>	RCW 62A.3-303

10 (c) The following definitions in other Articles apply to this
 11 Article:

12	<u>"Bank"</u>	RCW 62A.4-105
13	<u>"Banking day"</u>	RCW 62A.4-104
14	<u>"Clearing house"</u>	RCW 62A.4-104
15	<u>"Collecting bank"</u>	RCW 62A.4-105
16	<u>"Depository bank"</u>	RCW 62A.4-105
17	<u>"Documentary draft"</u>	RCW 62A.4-104
18	<u>"Intermediary bank"</u>	RCW 62A.4-105
19	<u>"Item"</u>	RCW 62A.4-104
20	<u>"Payor bank"</u>	RCW 62A.4-105
21	<u>"Suspends payments"</u>	RCW 62A.4-104

22 (d) In addition, Article 1 contains general definitions and
 23 principles of construction and interpretation applicable throughout
 24 this Article.

25 **Sec. 6.** RCW 62A.3-104 and 1965 ex.s. c 157 s 3-104 are each
 26 amended to read as follows:

27 ~~((FORM OF NEGOTIABLE INSTRUMENTS; "DRAFT"; "CHECK"; "CERTIFICATE OF~~
 28 ~~DEPOSIT"; "NOTE". (1) Any writing to be a negotiable instrument within~~
 29 ~~this Article must~~

- 30 ~~(a) be signed by the maker or drawer; and~~
- 31 ~~(b) contain an unconditional promise or order to pay a sum certain~~
 32 ~~in money and no other promise, order, obligation or power given by the~~
 33 ~~maker or drawer except as authorized by this Article; and~~
- 34 ~~(c) be payable on demand or at a definite time; and~~
- 35 ~~(d) be payable to order or to bearer.~~

36 ~~(2) A writing which complies with the requirements of this section~~
 37 ~~is~~

- 38 ~~(a) a "draft" ("bill of exchange") if it is an order;~~

1 ~~(b) a "check" if it is a draft drawn on a bank and payable on~~
2 ~~demand;~~

3 ~~(c) a "certificate of deposit" if it is an acknowledgment by a bank~~
4 ~~of receipt of money with an engagement to repay it;~~

5 ~~(d) a "note" if it is a promise other than a certificate of~~
6 ~~deposit.~~

7 ~~(3) As used in other Articles of this Title, and as the context may~~
8 ~~require, the terms "draft", "check", "certificate of deposit" and~~
9 ~~"note" may refer to instruments which are not negotiable within this~~
10 ~~Article as well as to instruments which are so negotiable.))~~

11 NEGOTIABLE INSTRUMENT. (a) Except as provided in subsections (c)
12 and (d), "negotiable instrument" means an unconditional promise or
13 order to pay a fixed amount of money, with or without interest or other
14 charges described in the promise or order, if it:

15 (1) Is payable to bearer or to order at the time it is issued or
16 first comes into possession of a holder;

17 (2) Is payable on demand or at a definite time; and

18 (3) Does not state any other undertaking or instruction by the
19 person promising or ordering payment to do any act in addition to the
20 payment of money, but the promise or order may contain (i) an
21 undertaking or power to give, maintain, or protect collateral to secure
22 payment, (ii) an authorization or power to the holder to confess
23 judgment or realize on or dispose of collateral, or (iii) a waiver of
24 the benefit of any law intended for the advantage or protection of an
25 obligor.

26 (b) "Instrument" means a negotiable instrument.

27 (c) An order that meets all of the requirements of subsection (a),
28 except subsection (a)(1), and otherwise falls within the definition of
29 "check" in subsection (f) is a negotiable instrument and a check.

30 (d) A promise or order other than a check is not an instrument if,
31 at the time it is issued or first comes into possession of a holder, it
32 contains a conspicuous statement, however expressed, to the effect that
33 the promise or order is not negotiable or is not an instrument governed
34 by this Article.

35 (e) An instrument is a "note" if it is a promise and is a "draft"
36 if it is an order. If an instrument falls within the definition of
37 both "note" and "draft," a person entitled to enforce the instrument
38 may treat it as either.

1 (f) "Check" means (i) a draft, other than a documentary draft,
2 payable on demand and drawn on a bank, or (ii) a cashier's check or
3 teller's check. An instrument may be a check even though it is
4 described on its face by another term, such as "money order."

5 (g) "Cashier's check" means a draft with respect to which the
6 drawer and drawee are the same bank or branches of the same bank.

7 (h) "Teller's check" means a draft drawn by a bank (i) on another
8 bank, or (ii) payable at or through a bank.

9 (i) "Traveler's check" means an instrument that (i) is payable on
10 demand, (ii) is drawn on or payable at or through a bank, (iii) is
11 designated by the term "traveler's check" or by a substantially similar
12 term, and (iv) requires, as a condition to payment, a countersignature
13 by a person whose specimen signature appears on the instrument.

14 (j) "Certificate of deposit" means an instrument containing an
15 acknowledgment by a bank that a sum of money has been received by the
16 bank and a promise by the bank to repay the sum of money. A
17 certificate of deposit is a note of the bank.

18 **Sec. 7.** RCW 62A.3-105 and 1965 ex.s. c 157 s 3-105 are each
19 amended to read as follows:

20 ~~((WHEN PROMISE OR ORDER UNCONDITIONAL.—(1) A promise or order~~
21 ~~otherwise unconditional is not made conditional by the fact that the~~
22 ~~instrument~~

23 ~~(a) is subject to implied or constructive conditions; or~~

24 ~~(b) states its consideration, whether performed or promised, or the~~
25 ~~transaction which gave rise to the instrument, or that the promise or~~
26 ~~order is made or the instrument matures in accordance with or "as per"~~
27 ~~such transaction; or~~

28 ~~(c) refers to or states that it arises out of a separate agreement~~
29 ~~or refers to a separate agreement for rights as to prepayment or~~
30 ~~acceleration; or~~

31 ~~(d) states that it is drawn under a letter of credit; or~~

32 ~~(e) states that it is secured, whether by mortgage, reservation of~~
33 ~~title or otherwise; or~~

34 ~~(f) indicates a particular account to be debited or any other fund~~
35 ~~or source from which reimbursement is expected; or~~

36 ~~(g) is limited to payment out of a particular fund or the proceeds~~
37 ~~of a particular source, if the instrument is issued by a government or~~
38 ~~governmental agency or unit; or~~

1 ~~(h) is limited to payment out of the entire assets of a~~
2 ~~partnership, unincorporated association, trust or estate by or on~~
3 ~~behalf of which the instrument is issued.~~

4 ~~(2) A promise or order is not unconditional if the instrument~~

5 ~~(a) states that it is subject to or governed by any other~~
6 ~~agreement; or~~

7 ~~(b) states that it is to be paid only out of a particular fund or~~
8 ~~source except as provided in this section.)~~

9 ISSUE OF INSTRUMENT. (a) "Issue" means the first delivery of an
10 instrument by the maker or drawer, whether to a holder or nonholder,
11 for the purpose of giving rights on the instrument to any person.

12 (b) An unissued instrument, or an unissued incomplete instrument
13 that is completed, is binding on the maker or drawer, but nonissuance
14 is a defense. An instrument that is conditionally issued or is issued
15 for a special purpose is binding on the maker or drawer, but failure of
16 the condition or special purpose to be fulfilled is a defense.

17 (c) "Issuer" applies to issued and unissued instruments and means
18 a maker or drawer of an instrument.

19 **Sec. 8.** RCW 62A.3-106 and 1989 c 13 s 1 are each amended to read
20 as follows:

21 ~~((SUM CERTAIN DEFINITIONS. (1) The sum payable is a sum certain~~
22 ~~even though it is to be paid~~

23 ~~(a) with stated interest or by stated installments; or~~

24 ~~(b) with stated different rates of interest before and after~~
25 ~~default or a specified date; or~~

26 ~~(c) with a stated discount or addition if paid before or after the~~
27 ~~date fixed for payment; or~~

28 ~~(d) with exchange or less exchange, whether at a fixed rate or at~~
29 ~~the current rate; or~~

30 ~~(e) with costs of collection or an attorney's fee or both upon~~
31 ~~default.~~

32 ~~(2) A rate of interest that cannot be calculated by looking only to~~
33 ~~the instrument is a stated rate of interest in subsection (1) of this~~
34 ~~section if the rate during any period is readily ascertainable by a~~
35 ~~reference in the instrument to a published statute, regulation, rule of~~
36 ~~court, generally accepted commercial or financial index, compendium of~~
37 ~~interest rates, or announced or established rate of one or more named~~
38 ~~financial institutions.~~

1 ~~(3) Graduated, variable, annuity or price-level adjusted payments~~
2 ~~are stated installments in subsection (1) of this section if such~~
3 ~~payments are provided for in the instrument.~~

4 ~~(4) Nothing in this section shall validate any term which is~~
5 ~~otherwise illegal.))~~

6 UNCONDITIONAL PROMISE OR ORDER. (a) Except as provided in this
7 section, for the purposes of RCW 62A.3-104(a), a promise or order is
8 unconditional unless it states (i) an express condition to payment,
9 (ii) that the promise or order is subject to or governed by another
10 writing, or (iii) that rights or obligations with respect to the
11 promise or order are stated in another writing. A reference to another
12 writing does not of itself make the promise or order conditional.

13 (b) A promise or order is not made conditional (i) by a reference
14 to another writing for a statement of rights with respect to
15 collateral, prepayment, or acceleration, or (ii) because payment is
16 limited to resort to a particular fund or source.

17 (c) If a promise or order requires, as a condition to payment, a
18 countersignature by a person whose specimen signature appears on the
19 promise or order, the condition does not make the promise or order
20 conditional for the purposes of RCW 62A.3-104(a). If the person whose
21 specimen signature appears on an instrument fails to countersign the
22 instrument, the failure to countersign is a defense to the obligation
23 of the issuer, but the failure does not prevent a transferee of the
24 instrument from becoming a holder of the instrument.

25 (d) If a promise or order at the time it is issued or first comes
26 into possession of a holder contains a statement, required by
27 applicable statutory or administrative law, to the effect that the
28 rights of a holder or transferee are subject to claims or defenses that
29 the issuer could assert against the original payee, the promise or
30 order is not thereby made conditional for the purposes of RCW
31 62A.3-104(a); but if the promise or order is an instrument, there
32 cannot be a holder in due course of the instrument.

33 **Sec. 9.** RCW 62A.3-107 and 1965 ex.s. c 157 s 3-107 are each
34 amended to read as follows:

35 ~~((MONEY.—(1) An instrument is payable in money if the medium of~~
36 ~~exchange in which it is payable is money at the time the instrument is~~
37 ~~made.— An instrument payable in "currency" or "current funds" is~~
38 ~~payable in money.~~

1 ~~(2) A promise or order to pay a sum stated in a foreign currency is~~
2 ~~for a sum certain in money and, unless a different medium of payment is~~
3 ~~specified in the instrument, may be satisfied by payment of that number~~
4 ~~of dollars which the stated foreign currency will purchase at the~~
5 ~~buying sight rate for that currency on the day on which the instrument~~
6 ~~is payable or, if payable on demand, on the day of demand. If such an~~
7 ~~instrument specifies a foreign currency as the medium of payment the~~
8 ~~instrument is payable in that currency.))~~

9 INSTRUMENT PAYABLE IN FOREIGN MONEY. Unless the instrument
10 otherwise provides, an instrument that states the amount payable in
11 foreign money may be paid in the foreign money or in an equivalent
12 amount in dollars calculated by using the current bank-offered spot
13 rate at the place of payment for the purchase of dollars on the day on
14 which the instrument is paid.

15 **Sec. 10.** RCW 62A.3-108 and 1965 ex.s. c 157 s 3-108 are each
16 amended to read as follows:

17 ~~((PAYABLE ON DEMAND. Instruments payable on demand include those~~
18 ~~payable at sight or on presentation and those in which no time for~~
19 ~~payment is stated.))~~

20 PAYABLE ON DEMAND OR AT DEFINITE TIME. (a) A promise or order is
21 "payable on demand" if it (i) states that it is payable on demand or at
22 sight, or otherwise indicates that it is payable at the will of the
23 holder, or (ii) does not state any time of payment.

24 (b) A promise or order is "payable at a definite time" if it is
25 payable on elapse of a definite period of time after sight or
26 acceptance or at a fixed date or dates or at a time or times readily
27 ascertainable at the time the promise or order is issued, subject to
28 rights of (i) prepayment, (ii) acceleration, (iii) extension at the
29 option of the holder, or (iv) extension to a further definite time at
30 the option of the maker or acceptor or automatically upon or after a
31 specified act or event.

32 (c) If an instrument, payable at a fixed date, is also payable upon
33 demand made before the fixed date, the instrument is payable on demand
34 until the fixed date and, if demand for payment is not made before that
35 date, becomes payable at a definite time on the fixed date.

36 **Sec. 11.** RCW 62A.3-109 and 1989 c 13 s 2 are each amended to read
37 as follows:

1 ~~((DEFINITE TIME.—(1) An instrument is payable at a definite time~~
2 ~~if by its terms it is payable~~
3 ~~(a) on or before a stated date or at a fixed period after a stated~~
4 ~~date; or~~
5 ~~(b) at a fixed period after sight; or~~
6 ~~(c) at a definite time subject to any acceleration; or~~
7 ~~(d) at a definite time subject to extension at the option of the~~
8 ~~holder, or to extension to a further definite time at the option of the~~
9 ~~maker or acceptor or automatically upon or after a specified act or~~
10 ~~event; or~~
11 ~~(e) by variable, graduated, annuity or price level adjusted~~
12 ~~payments.~~

13 ~~(2) An instrument which by its terms is otherwise payable only upon~~
14 ~~an act or event uncertain as to time of occurrence is not payable at a~~
15 ~~definite time even though the act or event has occurred.))~~

16 PAYABLE TO BEARER OR TO ORDER. (a) A promise or order is payable
17 to bearer if it:

18 (1) States that it is payable to bearer or to the order of bearer
19 or otherwise indicates that the person in possession of the promise or
20 order is entitled to payment;

21 (2) Does not state a payee; or

22 (3) States that it is payable to or to the order of cash or
23 otherwise indicates that it is not payable to an identified person.

24 (b) A promise or order that is not payable to bearer is payable to
25 order if it is payable (i) to the order of an identified person or (ii)
26 to an identified person or order. A promise or order that is payable
27 to order is payable to the identified person.

28 (c) An instrument payable to bearer may become payable to an
29 identified person if it is specially indorsed pursuant to RCW
30 62A.3-205(a). An instrument payable to an identified person may become
31 payable to bearer if it is indorsed in blank pursuant to RCW
32 62A.3-205(b).

33 **Sec. 12.** RCW 62A.3-110 and 1965 ex.s. c 157 s 3-110 are each
34 amended to read as follows:

35 ~~((PAYABLE TO ORDER.—(1) An instrument is payable to order when by~~
36 ~~its terms it is payable to the order or assigns of any person therein~~
37 ~~specified with reasonable certainty, or to him or his order, or when it~~

1 is conspicuously designated on its face as "exchange" or the like and
2 names a payee. It may be payable to the order of

3 (a) the maker or drawer; or

4 (b) the drawee; or

5 (c) a payee who is not maker, drawer or drawee; or

6 (d) two or more payees together or in the alternative; or

7 (e) an estate, trust or fund, in which case it is payable to the
8 order of the representative of such estate, trust or fund or his
9 successors; or

10 (f) an office, or an officer by his title as such in which case it
11 is payable to the principal but the incumbent of the office or his
12 successors may act as if he or they were the holder; or

13 (g) a partnership or unincorporated association, in which case it
14 is payable to the partnership or association and may be indorsed or
15 transferred by any person thereto authorized.

16 (2) An instrument not payable to order is not made so payable by
17 such words as "payable upon return of this instrument properly
18 indorsed."

19 (3) An instrument made payable both to order and to bearer is
20 payable to order unless the bearer words are handwritten or
21 typewritten.)

22 IDENTIFICATION OF PERSON TO WHOM INSTRUMENT IS PAYABLE. (a) The
23 person to whom an instrument is initially payable is determined by the
24 intent of the person, whether or not authorized, signing as, or in the
25 name or behalf of, the issuer of the instrument. The instrument is
26 payable to the person intended by the signer even if that person is
27 identified in the instrument by a name or other identification that is
28 not that of the intended person. If more than one person signs in the
29 name or behalf of the issuer of an instrument and all the signers do
30 not intend the same person as payee, the instrument is payable to any
31 person intended by one or more of the signers.

32 (b) If the signature of the issuer of an instrument is made by
33 automated means, such as a check-writing machine, the payee of the
34 instrument is determined by the intent of the person who supplied the
35 name or identification of the payee, whether or not authorized to do
36 so.

37 (c) A person to whom an instrument is payable may be identified in
38 any way, including by name, identifying number, office, or account

1 number. For the purpose of determining the holder of an instrument,
2 the following rules apply:

3 (1) If an instrument is payable to an account and the account is
4 identified only by number, the instrument is payable to the person to
5 whom the account is payable. If an instrument is payable to an account
6 identified by number and by the name of a person, the instrument is
7 payable to the named person, whether or not that person is the owner of
8 the account identified by number.

9 (2) If an instrument is payable to:

10 (i) A trust, an estate, or a person described as trustee or
11 representative of a trust or estate, the instrument is payable to the
12 trustee, the representative, or a successor of either, whether or not
13 the beneficiary or estate is also named;

14 (ii) A person described as agent or similar representative of a
15 named or identified person, the instrument is payable to the
16 represented person, the representative, or a successor of the
17 representative;

18 (iii) A fund or organization that is not a legal entity, the
19 instrument is payable to a representative of the members of the fund or
20 organization; or

21 (iv) An office or to a person described as holding an office, the
22 instrument is payable to the named person, the incumbent of the office,
23 or a successor to the incumbent.

24 (d) If an instrument is payable to two or more persons
25 alternatively, it is payable to any of them and may be negotiated,
26 discharged, or enforced by any or all of them in possession of the
27 instrument. If an instrument is payable to two or more persons not
28 alternatively, it is payable to all of them and may be negotiated,
29 discharged, or enforced only by all of them. If an instrument payable
30 to two or more persons is ambiguous as to whether it is payable to the
31 persons alternatively, the instrument is payable to the persons
32 alternatively.

33 **Sec. 13.** RCW 62A.3-111 and 1965 ex.s. c 157 s 3-111 are each
34 amended to read as follows:

35 ~~((PAYABLE TO BEARER. An instrument is payable to bearer when by~~
36 ~~its terms it is payable to~~

37 ~~(a) bearer or the order of bearer; or~~

38 ~~(b) a specified person or bearer; or~~

1 ~~(c) "cash" or the order of "cash", or any other indication which~~
2 ~~does not purport to designate a specific payee.))~~

3 PLACE OF PAYMENT. Except as otherwise provided for items in
4 Article 4, an instrument is payable at the place of payment stated in
5 the instrument. If no place of payment is stated, an instrument is
6 payable at the address of the drawee or maker stated in the instrument.
7 If no address is stated, the place of payment is the place of business
8 of the drawee or maker. If a drawee or maker has more than one place
9 of business, the place of payment is any place of business of the
10 drawee or maker chosen by the person entitled to enforce the
11 instrument. If the drawee or maker has no place of business, the place
12 of payment is the residence of the drawee or maker.

13 **Sec. 14.** RCW 62A.3-112 and 1965 ex.s. c 157 s 3-112 are each
14 amended to read as follows:

15 ~~((TERMS AND OMISSIONS NOT AFFECTING NEGOTIABILITY. (1) The~~
16 ~~negotiability of an instrument is not affected by~~

17 ~~(a) the omission of a statement of any consideration or of the~~
18 ~~place where the instrument is drawn or payable; or~~

19 ~~(b) a statement that collateral has been given to secure~~
20 ~~obligations either on the instrument or otherwise of an obligor on the~~
21 ~~instrument or that in case of default on those obligations the holder~~
22 ~~may realize on or dispose of the collateral; or~~

23 ~~(c) a promise or power to maintain or protect collateral or to give~~
24 ~~additional collateral; or~~

25 ~~(d) a term authorizing a confession of judgment on the instrument~~
26 ~~if it is not paid when due; or~~

27 ~~(e) a term purporting to waive the benefit of any law intended for~~
28 ~~the advantage or protection of any obligor; or~~

29 ~~(f) a term in a draft providing that the payee by indorsing or~~
30 ~~cashing it acknowledges full satisfaction of an obligation of the~~
31 ~~drawer; or~~

32 ~~(g) a statement in a draft drawn in a set of parts (RCW 62A.3-801)~~
33 ~~to the effect that the order is effective only if no other part has~~
34 ~~been honored.~~

35 ~~(2) Nothing in this section shall validate any term which is~~
36 ~~otherwise illegal.))~~

1 INTEREST. (a) Unless otherwise provided in the instrument, (i) an
2 instrument is not payable with interest, and (ii) interest on an
3 interest-bearing instrument is payable from the date of the instrument.

4 (b) Interest may be stated in an instrument as a fixed or variable
5 amount of money or it may be expressed as a fixed or variable rate or
6 rates. The amount or rate of interest may be stated or described in
7 the instrument in any manner and may require reference to information
8 not contained in the instrument. If an instrument provides for
9 interest, but the amount of interest payable cannot be ascertained from
10 the description, interest is payable at the judgment rate in effect at
11 the place of payment of the instrument and at the time interest first
12 accrues.

13 **Sec. 15.** RCW 62A.3-113 and 1965 ex.s. c 157 s 3-113 are each
14 amended to read as follows:

15 ~~((SEAL. An instrument otherwise negotiable is within this Article~~
16 ~~even though it is under a seal.))~~

17 DATE OF INSTRUMENT. (a) An instrument may be antedated or
18 postdated. The date stated determines the time of payment if the
19 instrument is payable at a fixed period after date. Except as provided
20 in RCW 62A.4-401(c), an instrument payable on demand is not payable
21 before the date of the instrument.

22 (b) If an instrument is undated, its date is the date of its issue
23 or, in the case of an unissued instrument, the date it first comes into
24 possession of a holder.

25 **Sec. 16.** RCW 62A.3-114 and 1965 ex.s. c 157 s 3-114 are each
26 amended to read as follows:

27 ~~((DATE, ANTEDATING, POSTDATING. (1) The negotiability of an~~
28 ~~instrument is not affected by the fact that it is undated, antedated or~~
29 ~~postdated.~~

30 ~~(2) Where an instrument is antedated or postdated the time when it~~
31 ~~is payable is determined by the stated date if the instrument is~~
32 ~~payable on demand or at a fixed period after date.~~

33 ~~(3) Where the instrument or any signature thereon is dated, the~~
34 ~~date is presumed to be correct.))~~

35 CONTRADICTORY TERMS OF INSTRUMENT. If an instrument contains
36 contradictory terms, typewritten terms prevail over printed terms,
37 handwritten terms prevail over both, and words prevail over numbers.

1 **Sec. 17.** RCW 62A.3-115 and 1965 ex.s. c 157 s 3-115 are each
2 amended to read as follows:

3 (~~INCOMPLETE INSTRUMENTS.—(1) When a paper whose contents at the~~
4 ~~time of signing show that it is intended to become an instrument is~~
5 ~~signed while still incomplete in any necessary respect it cannot be~~
6 ~~enforced until completed, but when it is completed in accordance with~~
7 ~~authority given it is effective as completed.~~

8 ~~(2) If the completion is unauthorized the rules as to material~~
9 ~~alteration apply (RCW 62A.3-407), even though the paper was not~~
10 ~~delivered by the maker or drawer; but the burden of establishing that~~
11 ~~any completion is unauthorized is on the party so asserting.)~~

12 INCOMPLETE INSTRUMENT. (a) "Incomplete instrument" means a signed
13 writing, whether or not issued by the signer, the contents of which
14 show at the time of signing that it is incomplete but that the signer
15 intended it to be completed by the addition of words or numbers.

16 (b) Subject to subsection (c), if an incomplete instrument is an
17 instrument under RCW 62A.3-104, it may be enforced according to its
18 terms if it is not completed, or according to its terms as augmented by
19 completion. If an incomplete instrument is not an instrument under RCW
20 62A.3-104, but, after completion, the requirements of RCW 62A.3-104 are
21 met, the instrument may be enforced according to its terms as augmented
22 by completion.

23 (c) If words or numbers are added to an incomplete instrument
24 without authority of the signer, there is an alteration of the
25 incomplete instrument under RCW 62A.3-407.

26 (d) The burden of establishing that words or numbers were added to
27 an incomplete instrument without authority of the signer is on the
28 person asserting the lack of authority.

29 **Sec. 18.** RCW 62A.3-116 and 1965 ex.s. c 157 s 3-116 are each
30 amended to read as follows:

31 (~~INSTRUMENTS PAYABLE TO TWO OR MORE PERSONS.—An instrument~~
32 ~~payable to the order of two or more persons~~

33 ~~(a) if in the alternative is payable to any one of them and may be~~
34 ~~negotiated, discharged or enforced by any of them who has possession of~~
35 ~~it;~~

36 ~~(b) if not in the alternative is payable to all of them and may be~~
37 ~~negotiated, discharged or enforced only by all of them.)~~

1 JOINT AND SEVERAL LIABILITY; CONTRIBUTION. (a) Except as otherwise
2 provided in the instrument, two or more persons who have the same
3 liability on an instrument as makers, drawers, acceptors, indorsers who
4 indorse as joint payees, or anomalous indorsers are jointly and
5 severally liable in the capacity in which they sign.

6 (b) Except as provided in RCW 62A.3-419(e) or by agreement of the
7 affected parties, a party having joint and several liability who pays
8 the instrument is entitled to receive from any party having the same
9 joint and several liability contribution in accordance with applicable
10 law.

11 (c) Discharge of one party having joint and several liability by a
12 person entitled to enforce the instrument does not affect the right
13 under subsection (b) of a party having the same joint and several
14 liability to receive contribution from the party discharged.

15 **Sec. 19.** RCW 62A.3-117 and 1965 ex.s. c 157 s 3-117 are each
16 amended to read as follows:

17 ~~((INSTRUMENTS PAYABLE WITH WORDS OF DESCRIPTION.— An instrument~~
18 ~~made payable to a named person with the addition of words describing~~
19 ~~him~~

20 ~~(a) as agent or officer of a specified person is payable to his~~
21 ~~principal but the agent or officer may act as if he were the holder;~~

22 ~~(b) as any other fiduciary for a specified person or purpose is~~
23 ~~payable to the payee and may be negotiated, discharged or enforced by~~
24 ~~him;~~

25 ~~(c) in any other manner is payable to the payee unconditionally and~~
26 ~~the additional words are without effect on subsequent parties.))~~

27 OTHER AGREEMENTS AFFECTING INSTRUMENT. Subject to applicable law
28 regarding exclusion of proof of contemporaneous or previous agreements,
29 the obligation of a party to an instrument to pay the instrument may be
30 modified, supplemented, or nullified by a separate agreement of the
31 obligor and a person entitled to enforce the instrument, if the
32 instrument is issued or the obligation is incurred in reliance on the
33 agreement or as part of the same transaction giving rise to the
34 agreement. To the extent an obligation is modified, supplemented, or
35 nullified by an agreement under this section, the agreement is a
36 defense to the obligation.

1 **Sec. 20.** RCW 62A.3-118 and 1965 ex.s. c 157 s 3-118 are each
2 amended to read as follows:

3 ~~((AMBIGUOUS TERMS AND RULES OF CONSTRUCTION. The following rules
4 apply to every instrument:~~

5 ~~(a) Where there is doubt whether the instrument is a draft or a
6 note the holder may treat it as either. A draft drawn on the drawer is
7 effective as a note.~~

8 ~~(b) Handwritten terms control typewritten and printed terms, and
9 typewritten control printed.~~

10 ~~(c) Words control figures except that if the words are ambiguous
11 figures control.~~

12 ~~(d) Unless otherwise specified a provision for interest means
13 interest at the judgment rate at the place of payment from the date of
14 the instrument, or if it is undated from the date of issue.~~

15 ~~(e) Unless the instrument otherwise specifies two or more persons
16 who sign as maker, acceptor or drawer or indorser and as a part of the
17 same transaction are jointly and severally liable even though the
18 instrument contains such words as "I promise to pay."~~

19 ~~(f) Unless otherwise specified consent to extension authorizes a
20 single extension for not longer than the original period. A consent to
21 extension, expressed in the instrument, is binding on secondary parties
22 and accommodation makers. A holder may not exercise his option to
23 extend an instrument over the objection of a maker or acceptor or other
24 party who in accordance with RCW 62A.3-604 tenders full payment when
25 the instrument is due.))~~

26 STATUTE OF LIMITATIONS. (a) Except as provided in subsection (e),
27 an action to enforce the obligation of a party to pay a note payable at
28 a definite time must be commenced within six years after the due date
29 or dates stated in the note or, if a due date is accelerated, within
30 six years after the accelerated due date.

31 (b) Except as provided in subsection (d) or (e), if demand for
32 payment is made to the maker of a note payable on demand, an action to
33 enforce the obligation of a party to pay the note must be commenced
34 within six years after the demand. If no demand for payment is made to
35 the maker, an action to enforce the note is barred if neither principal
36 nor interest on the note has been paid for a continuous period of ten
37 years.

38 (c) Except as provided in subsection (d), an action to enforce the
39 obligation of a party to an unaccepted draft to pay the draft must be

1 commenced within three years after dishonor of the draft or ten years
2 after the date of the draft, whichever period expires first.

3 (d) An action to enforce the obligation of the acceptor of a
4 certified check or the issuer of a teller's check, cashier's check, or
5 traveler's check must be commenced within three years after demand for
6 payment is made to the acceptor or issuer, as the case may be.

7 (e) An action to enforce the obligation of a party to a certificate
8 of deposit to pay the instrument must be commenced within six years
9 after demand for payment is made to the maker, but if the instrument
10 states a due date and the maker is not required to pay before that
11 date, the six-year period begins when a demand for payment is in effect
12 and the due date has passed.

13 (f) An action to enforce the obligation of a party to pay an
14 accepted draft, other than a certified check, must be commenced (i)
15 within six years after the due date or dates stated in the draft or
16 acceptance if the obligation of the acceptor is payable at a definite
17 time, or (ii) within six years after the date of the acceptance if the
18 obligation of the acceptor is payable on demand.

19 (g) Unless governed by other law regarding claims for indemnity or
20 contribution, an action (i) for conversion of an instrument, for money
21 had and received, or like action based on conversion, (ii) for breach
22 of warranty, or (iii) to enforce an obligation, duty, or right arising
23 under this Article and not governed by this section must be commenced
24 within three years after the cause of action accrues.

25 **Sec. 21.** RCW 62A.3-119 and 1965 ex.s. c 157 s 3-119 are each
26 amended to read as follows:

27 ~~((OTHER WRITINGS AFFECTING INSTRUMENT.—(1) As between the obligor~~
28 ~~and his immediate obligee or any transferee the terms of an instrument~~
29 ~~may be modified or affected by any other written agreement executed as~~
30 ~~a part of the same transaction, except that a holder in due course is~~
31 ~~not affected by any limitation of his rights arising out of the~~
32 ~~separate written agreement if he had no notice of the limitation when~~
33 ~~he took the instrument.~~

34 ~~(2) A separate agreement does not affect the negotiability of an~~
35 ~~instrument.))~~

36 NOTICE OF RIGHT TO DEFEND ACTION. In an action for breach of an
37 obligation for which a third person is answerable over pursuant to this
38 Article or Article 4, the defendant may give the third person written

1 notice of the litigation, and the person notified may then give similar
2 notice to any other person who is answerable over. If the notice
3 states (i) that the person notified may come in and defend and (ii)
4 that failure to do so will bind the person notified in an action later
5 brought by the person giving the notice as to any determination of fact
6 common to the two litigations, the person notified is so bound unless
7 after reasonable receipt of the notice the person notified does come in
8 and defend.

9 PART 2

10 NEGOTIATION, TRANSFER, AND ((NEGOTIATION)) INDORSEMENT

11 **Sec. 22.** RCW 62A.3-201 and 1965 ex.s. c 157 s 3-201 are each
12 amended to read as follows:

13 ~~((TRANSFER: RIGHT TO INDORSEMENT. (1) Transfer of an instrument~~
14 ~~vests in the transferee such rights as the transferor has therein,~~
15 ~~except that a transferee who has himself been a party to any fraud or~~
16 ~~illegality affecting the instrument or who as a prior holder had notice~~
17 ~~of a defense or claim against it cannot improve his position by taking~~
18 ~~from a later holder in due course.~~

19 ~~(2) A transfer of a security interest in an instrument vests the~~
20 ~~foregoing rights in the transferee to the extent of the interest~~
21 ~~transferred.~~

22 ~~(3) Unless otherwise agreed any transfer for value of an instrument~~
23 ~~not then payable to bearer gives the transferee the specifically~~
24 ~~enforceable right to have the unqualified indorsement of the~~
25 ~~transferor. Negotiation takes effect only when the indorsement is made~~
26 ~~and until that time there is no presumption that the transferee is the~~
27 ~~owner.))~~

28 NEGOTIATION. (a) "Negotiation" means a transfer of possession,
29 whether voluntary or involuntary, of an instrument by a person other
30 than the issuer to a person who thereby becomes its holder.

31 (b) Except for negotiation by a remitter, if an instrument is
32 payable to an identified person, negotiation requires transfer of
33 possession of the instrument and its indorsement by the holder. If an
34 instrument is payable to bearer, it may be negotiated by transfer of
35 possession alone.

1 **Sec. 23.** RCW 62A.3-202 and 1965 ex.s. c 157 s 3-202 are each
2 amended to read as follows:

3 ~~((NEGOTIATION.—(1) Negotiation is the transfer of an instrument in
4 such form that the transferee becomes a holder.—If the instrument is
5 payable to order it is negotiated by delivery with any necessary
6 indorsement; if payable to bearer it is negotiated by delivery.~~

7 ~~(2) An indorsement must be written by or on behalf of the holder
8 and on the instrument or on a paper so firmly affixed thereto as to
9 become a part thereof.~~

10 ~~(3) An indorsement is effective for negotiation only when it
11 conveys the entire instrument or any unpaid residue.—If it purports to
12 be of less it operates only as a partial assignment.~~

13 ~~(4) Words of assignment, condition, waiver, guaranty, limitation or
14 disclaimer of liability and the like accompanying an indorsement do not
15 affect its character as an indorsement.))~~

16 NEGOTIATION SUBJECT TO RESCISSION. (a) Negotiation is effective
17 even if obtained (i) from an infant, a corporation exceeding its
18 powers, or a person without capacity, (ii) by fraud, duress, or
19 mistake, or (iii) in breach of duty or as part of an illegal
20 transaction.

21 (b) To the extent permitted by other law, negotiation may be
22 rescinded or may be subject to other remedies, but those remedies may
23 not be asserted against a subsequent holder in due course or a person
24 paying the instrument in good faith and without knowledge of facts that
25 are a basis for rescission or other remedy.

26 **Sec. 24.** RCW 62A.3-203 and 1965 ex.s. c 157 s 3-203 are each
27 amended to read as follows:

28 ~~((WRONG OR MISSPELLED NAME.—Where an instrument is made payable to
29 a person under a misspelled name or one other than his own he may
30 indorse in that name or his own or both; but signature in both names
31 may be required by a person paying or giving value for the
32 instrument.))~~

33 TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER. (a) An
34 instrument is transferred when it is delivered by a person other than
35 its issuer for the purpose of giving to the person receiving delivery
36 the right to enforce the instrument.

37 (b) Transfer of an instrument, whether or not the transfer is a
38 negotiation, vests in the transferee any right of the transferor to

1 enforce the instrument, including any right as a holder in due course,
2 but the transferee cannot acquire rights of a holder in due course by
3 a transfer, directly or indirectly, from a holder in due course if the
4 transferee engaged in fraud or illegality affecting the instrument.

5 (c) Unless otherwise agreed, if an instrument is transferred for
6 value and the transferee does not become a holder because of lack of
7 indorsement by the transferor, the transferee has a specifically
8 enforceable right to the unqualified indorsement of the transferor, but
9 negotiation of the instrument does not occur until the indorsement is
10 made.

11 (d) If a transferor purports to transfer less than the entire
12 instrument, negotiation of the instrument does not occur. The
13 transferee obtains no rights under this Article and has only the rights
14 of a partial assignee.

15 **Sec. 25.** RCW 62A.3-204 and 1965 ex.s. c 157 s 3-204 are each
16 amended to read as follows:

17 ~~((SPECIAL INDORSEMENT; BLANK INDORSEMENT. (1) A special~~
18 ~~indorsement specifies the person to whom or to whose order it makes the~~
19 ~~instrument payable. Any instrument specially indorsed becomes payable~~
20 ~~to the order of the special indorsee and may be further negotiated only~~
21 ~~by his indorsement.~~

22 ~~(2) An indorsement in blank specifies no particular indorsee and~~
23 ~~may consist of a mere signature. An instrument payable to order and~~
24 ~~indorsed in blank becomes payable to bearer and may be negotiated by~~
25 ~~delivery alone until specially indorsed.~~

26 ~~(3) The holder may convert a blank indorsement into a special~~
27 ~~indorsement by writing over the signature of the indorser in blank any~~
28 ~~contract consistent with the character of the indorsement.))~~

29 INDORSEMENT. (a) "Indorsement" means a signature, other than that
30 of a signer as maker, drawer, or acceptor, that alone or accompanied by
31 other words is made on an instrument for the purpose of (i) negotiating
32 the instrument, (ii) restricting payment of the instrument, or (iii)
33 incurring indorser's liability on the instrument, but regardless of the
34 intent of the signer, a signature and its accompanying words is an
35 indorsement unless the accompanying words, terms of the instrument,
36 place of the signature, or other circumstances unambiguously indicate
37 that the signature was made for a purpose other than indorsement. For
38 the purpose of determining whether a signature is made on an

1 instrument, a paper affixed to the instrument is a part of the
2 instrument.

3 (b) "Indorser" means a person who makes an indorsement.

4 (c) For the purpose of determining whether the transferee of an
5 instrument is a holder, an indorsement that transfers a security
6 interest in the instrument is effective as an unqualified indorsement
7 of the instrument.

8 (d) If an instrument is payable to a holder under a name that is
9 not the name of the holder, indorsement may be made by the holder in
10 the name stated in the instrument or in the holder's name or both, but
11 signature in both names may be required by a person paying or taking
12 the instrument for value or collection.

13 **Sec. 26.** RCW 62A.3-205 and 1965 ex.s. c 157 s 3-205 are each
14 amended to read as follows:

15 ~~((RESTRICTIVE INDORSEMENTS.—An indorsement is restrictive which~~
16 ~~either~~

17 ~~(a) is conditional; or~~

18 ~~(b) purports to prohibit further transfer of the instrument; or~~

19 ~~(c) includes the words "for collection", "for deposit", "pay any~~
20 ~~bank", or like terms signifying a purpose of deposit or collection; or~~

21 ~~(d) otherwise states that it is for the benefit or use of the~~
22 ~~indorser or of another person.))~~

23 SPECIAL INDORSEMENT; BLANK INDORSEMENT; ANOMALOUS INDORSEMENT. (a)
24 If an indorsement is made by the holder of an instrument, whether
25 payable to an identified person or payable to bearer, and the
26 indorsement identifies a person to whom it makes the instrument
27 payable, it is a "special indorsement." When specially indorsed, an
28 instrument becomes payable to the identified person and may be
29 negotiated only by the indorsement of that person. The principles
30 stated in RCW 62A.3-110 apply to special indorsements.

31 (b) If an indorsement is made by the holder of an instrument and it
32 is not a special indorsement, it is a "blank indorsement." When
33 indorsed in blank, an instrument becomes payable to bearer and may be
34 negotiated by transfer of possession alone until specially indorsed.

35 (c) The holder may convert a blank indorsement that consists only
36 of a signature into a special indorsement by writing, above the
37 signature of the indorser, words identifying the person to whom the
38 instrument is made payable.

1 (d) "Anomalous indorsement" means an indorsement made by a person
2 who is not the holder of the instrument. An anomalous indorsement does
3 not affect the manner in which the instrument may be negotiated.

4 **Sec. 27.** RCW 62A.3-206 and 1965 ex.s. c 157 s 3-206 are each
5 amended to read as follows:

6 (~~EFFECT OF RESTRICTIVE INDORSEMENT. (1) No restrictive~~
7 ~~indorsement prevents further transfer or negotiation of the instrument.~~

8 ~~(2) An intermediary bank, or a payor bank which is not the~~
9 ~~depository bank, is neither given notice nor otherwise affected by a~~
10 ~~restrictive indorsement of any person except the bank's immediate~~
11 ~~transferor or the person presenting for payment.~~

12 ~~(3) Except for an intermediary bank, any transferee under an~~
13 ~~indorsement which is conditional or includes the words "for~~
14 ~~collection", "for deposit", "pay any bank", or like terms~~
15 ~~(subparagraphs (a) and (c) of RCW 62A.3-205) must pay or apply any~~
16 ~~value given by him for or on the security of the instrument~~
17 ~~consistently with the indorsement and to the extent that he does so he~~
18 ~~becomes a holder for value. In addition such transferee is a holder in~~
19 ~~due course if he otherwise complies with the requirements of RCW 62A.3-~~
20 ~~302 on what constitutes a holder in due course.~~

21 ~~(4) The first taker under an indorsement for the benefit of the~~
22 ~~indorser or another person (subparagraph (d) of RCW 62A.3-205) must pay~~
23 ~~or apply any value given by him for or on the security of the~~
24 ~~instrument consistently with the indorsement and to the extent that he~~
25 ~~does so he becomes a holder for value. In addition such taker is a~~
26 ~~holder in due course if he otherwise complies with the requirements of~~
27 ~~RCW 62A.3-302 on what constitutes a holder in due course. A later~~
28 ~~holder for value is neither given notice nor otherwise affected by such~~
29 ~~restrictive indorsement unless he has knowledge that a fiduciary or~~
30 ~~other person has negotiated the instrument in any transaction for his~~
31 ~~own benefit or otherwise in breach of duty (subsection (2) of RCW~~
32 ~~62A.3-304).)~~

33 RESTRICTIVE INDORSEMENT. (a) An indorsement limiting payment to a
34 particular person or otherwise prohibiting further transfer or
35 negotiation of the instrument is not effective to prevent further
36 transfer or negotiation of the instrument.

37 (b) An indorsement stating a condition to the right of the indorsee
38 to receive payment does not affect the right of the indorsee to enforce

1 the instrument. A person paying the instrument or taking it for value
2 or collection may disregard the condition, and the rights and
3 liabilities of that person are not affected by whether the condition
4 has been fulfilled.

5 (c) If an instrument bears an indorsement (i) described in RCW
6 62A.4-201(b), or (ii) in blank or to a particular bank using the words
7 "for deposit," "for collection," or other words indicating a purpose of
8 having the instrument collected by a bank for the indorser or for a
9 particular account, the following rules apply:

10 (1) A person, other than a bank, who purchases the instrument when
11 so indorsed converts the instrument unless the amount paid for the
12 instrument is received by the indorser or applied consistently with the
13 indorsement.

14 (2) A depositary bank that purchases the instrument or takes it for
15 collection when so indorsed converts the instrument unless the amount
16 paid by the bank with respect to the instrument is received by the
17 indorser or applied consistently with the indorsement.

18 (3) A payor bank that is also the depositary bank or that takes the
19 instrument for immediate payment over the counter from a person other
20 than a collecting bank converts the instrument unless the proceeds of
21 the instrument are received by the indorser or applied consistently
22 with the indorsement.

23 (4) Except as otherwise provided in subsection (c)(3), a payor bank
24 or intermediary bank may disregard the indorsement and is not liable if
25 the proceeds of the instrument are not received by the indorser or
26 applied consistently with the indorsement.

27 (d) Except for an indorsement covered by subsection (c), if an
28 instrument bears an indorsement using words to the effect that payment
29 is to be made to the indorsee as agent, trustee, or other fiduciary for
30 the benefit of the indorser or another person, the following rules
31 apply:

32 (1) Unless there is notice of breach of fiduciary duty as provided
33 in RCW 62A.3-307, a person who purchases the instrument from the
34 indorsee or takes the instrument from the indorsee for collection or
35 payment may pay the proceeds of payment or the value given for the
36 instrument to the indorsee without regard to whether the indorsee
37 violates a fiduciary duty to the indorser.

38 (2) A subsequent transferee of the instrument or person who pays
39 the instrument is neither given notice nor otherwise affected by the

1 restriction in the indorsement unless the transferee or payor knows
2 that the fiduciary dealt with the instrument or its proceeds in breach
3 of fiduciary duty.

4 (e) The presence on an instrument of an indorsement to which this
5 section applies does not prevent a purchaser of the instrument from
6 becoming a holder in due course of the instrument unless the purchaser
7 is a converter under subsection (c) or has notice or knowledge of
8 breach of fiduciary duty as stated in subsection (d).

9 (f) In an action to enforce the obligation of a party to pay the
10 instrument, the obligor has a defense if payment would violate an
11 indorsement to which this section applies and the payment is not
12 permitted by this section.

13 **Sec. 28.** RCW 62A.3-207 and 1965 ex.s. c 157 s 3-207 are each
14 amended to read as follows:

15 ~~((NEGOTIATION EFFECTIVE ALTHOUGH IT MAY BE RESCINDED. (1)~~
16 ~~Negotiation is effective to transfer the instrument although the~~
17 ~~negotiation is~~

18 ~~(a) made by an infant, a corporation exceeding its powers, or any~~
19 ~~other person without capacity; or~~

20 ~~(b) obtained by fraud, duress or mistake of any kind; or~~

21 ~~(c) part of an illegal transaction; or~~

22 ~~(d) made in breach of duty.~~

23 ~~(2) Except as against a subsequent holder in due course such~~
24 ~~negotiation is in an appropriate case subject to rescission, the~~
25 ~~declaration of a constructive trust or any other remedy permitted by~~
26 ~~law.))~~

27 REACQUISITION. Reacquisition of an instrument occurs if it is
28 transferred to a former holder, by negotiation or otherwise. A former
29 holder who reacquires the instrument may cancel indorsements made after
30 the reacquirer first became a holder of the instrument. If the
31 cancellation causes the instrument to be payable to the reacquirer or
32 to bearer, the reacquirer may negotiate the instrument. An indorser
33 whose indorsement is canceled is discharged, and the discharge is
34 effective against any subsequent holder.

35 PART 3

36 ~~((RIGHTS OF A HOLDER))~~ ENFORCEMENT OF INSTRUMENTS

1 **Sec. 29.** RCW 62A.3-301 and 1965 ex.s. c 157 s 3-301 are each
2 amended to read as follows:

3 (~~(RIGHTS OF A HOLDER. The holder of an instrument whether or not~~
4 ~~he is the owner may transfer or negotiate it and, except as otherwise~~
5 ~~provided in RCW 62A.3-603 on payment or satisfaction, discharge it or~~
6 ~~enforce payment in his own name.))~~)

7 PERSON ENTITLED TO ENFORCE INSTRUMENT. "Person entitled to
8 enforce" an instrument means (i) the holder of the instrument, (ii) a
9 nonholder in possession of the instrument who has the rights of a
10 holder, or (iii) a person not in possession of the instrument who is
11 entitled to enforce the instrument pursuant to RCW 62A.3-309 (section
12 37 of this act) or 62A.3-418(d). A person may be a person entitled to
13 enforce the instrument even though the person is not the owner of the
14 instrument or is in wrongful possession of the instrument.

15 **Sec. 30.** RCW 62A.3-302 and 1965 ex.s. c 157 s 3-302 are each
16 amended to read as follows:

17 ~~HOLDER IN DUE COURSE. ((1) A holder in due course is a holder who~~
18 ~~takes the instrument~~

19 ~~(a) for value; and~~

20 ~~(b) in good faith; and~~

21 ~~(c) without notice that it is overdue or has been dishonored or of~~
22 ~~any defense against or claim to it on the part of any person.~~

23 ~~(2) A payee may be a holder in due course.~~

24 ~~(3) A holder does not become a holder in due course of an~~
25 ~~instrument:~~

26 ~~(a) by purchase of it at judicial sale or by taking it under legal~~
27 ~~process; or~~

28 ~~(b) by acquiring it in taking over an estate; or~~

29 ~~(c) by purchasing it as part of a bulk transaction not in regular~~
30 ~~course of business of the transferor.~~

31 ~~(4) A purchaser of a limited interest can be a holder in due course~~
32 ~~only to the extent of the interest purchased.))~~

33 (a) Subject to subsection (c) and RCW 62A.3-106(d), "holder in due
34 course" means the holder of an instrument if:

35 (1) The instrument when issued or negotiated to the holder does not
36 bear such apparent evidence of forgery or alteration or is not
37 otherwise so irregular or incomplete as to call into question its
38 authenticity; and

1 (2) The holder took the instrument (i) for value, (ii) in good
2 faith, (iii) without notice that the instrument is overdue or has been
3 dishonored or that there is an uncured default with respect to payment
4 of another instrument issued as part of the same series, (iv) without
5 notice that the instrument contains an unauthorized signature or has
6 been altered, (v) without notice of any claim to the instrument
7 described in RCW 62A.3-306, and (vi) without notice that any party has
8 a defense or claim in recoupment described in RCW 62A.3-305(a).

9 (b) Notice of discharge of a party, other than discharge in an
10 insolvency proceeding, is not notice of a defense under subsection (a),
11 but discharge is effective against a person who became a holder in due
12 course with notice of the discharge. Public filing or recording of a
13 document does not of itself constitute notice of a defense, claim in
14 recoupment, or claim to the instrument.

15 (c) Except to the extent a transferor or predecessor in interest
16 has rights as a holder in due course, a person does not acquire rights
17 of a holder in due course of an instrument taken (i) by legal process
18 or by purchase in an execution, bankruptcy, or creditor's sale or
19 similar proceeding, (ii) by purchase as part of a bulk transaction not
20 in ordinary course of business of the transferor, or (iii) as the
21 successor in interest to an estate or other organization.

22 (d) If, under RCW 62A.3-303(a)(1), the promise of performance that
23 is the consideration for an instrument has been partially performed,
24 the holder may assert rights as a holder in due course of the
25 instrument only to the fraction of the amount payable under the
26 instrument equal to the value of the partial performance divided by the
27 value of the promised performance.

28 (e) If (i) the person entitled to enforce an instrument has only a
29 security interest in the instrument and (ii) the person obliged to pay
30 the instrument has a defense, claim in recoupment, or claim to the
31 instrument that may be asserted against the person who granted the
32 security interest, the person entitled to enforce the instrument may
33 assert rights as a holder in due course only to an amount payable under
34 the instrument which, at the time of enforcement of the instrument,
35 does not exceed the amount of the unpaid obligation secured.

36 (f) To be effective, notice must be received at a time and in a
37 manner that gives a reasonable opportunity to act on it.

38 (g) This section is subject to any law limiting status as a holder
39 in due course in particular classes of transactions.

1 **Sec. 31.** RCW 62A.3-303 and 1965 ex.s. c 157 s 3-303 are each
2 amended to read as follows:

3 (~~TAKING FOR VALUE. A holder takes the instrument for value~~
4 ~~(a) to the extent that the agreed consideration has been performed~~
5 ~~or that he acquires a security interest in or a lien on the instrument~~
6 ~~otherwise than by legal process; or~~

7 ~~(b) when he takes the instrument in payment of or as security for~~
8 ~~an antecedent claim against any person whether or not the claim is due;~~
9 ~~or~~

10 ~~(c) when he gives a negotiable instrument for it or makes an~~
11 ~~irrevocable commitment to a third person.))~~

12 VALUE AND CONSIDERATION. (a) An instrument is issued or
13 transferred for value if:

14 (1) The instrument is issued or transferred for a promise of
15 performance, to the extent the promise has been performed;

16 (2) The transferee acquires a security interest or other lien in
17 the instrument other than a lien obtained by judicial proceeding;

18 (3) The instrument is issued or transferred as payment of, or as
19 security for, an antecedent claim against any person, whether or not
20 the claim is due;

21 (4) The instrument is issued or transferred in exchange for a
22 negotiable instrument; or

23 (5) The instrument is issued or transferred in exchange for the
24 incurring of an irrevocable obligation to a third party by the person
25 taking the instrument.

26 (b) "Consideration" means any consideration sufficient to support
27 a simple contract. The drawer or maker of an instrument has a defense
28 if the instrument is issued without consideration. If an instrument is
29 issued for a promise of performance, the issuer has a defense to the
30 extent performance of the promise is due and the promise has not been
31 performed. If an instrument is issued for value as stated in
32 subsection (a), the instrument is also issued for consideration.

33 **Sec. 32.** RCW 62A.3-304 and 1965 ex.s. c 157 s 3-304 are each
34 amended to read as follows:

35 (~~NOTICE TO PURCHASER. (1) The purchaser has notice of a claim or~~
36 ~~defense if~~

37 ~~(a) the instrument is so incomplete, bears such visible evidence of~~
38 ~~forgery or alteration, or is otherwise so irregular as to call into~~

1 ~~question its validity, terms or ownership or to create an ambiguity as~~
2 ~~to the party to pay; or~~
3 ~~(b) the purchaser has notice that the obligation of any party is~~
4 ~~voidable in whole or in part, or that all parties have been discharged.~~
5 ~~(2) The purchaser has notice of a claim against the instrument when~~
6 ~~he has knowledge that a fiduciary has negotiated the instrument in~~
7 ~~payment of or as security for his own debt or in any transaction for~~
8 ~~his own benefit or otherwise in breach of duty.~~
9 ~~(3) The purchaser has notice that an instrument is overdue if he~~
10 ~~has reason to know~~
11 ~~(a) that any part of the principal amount is overdue or that there~~
12 ~~is an uncured default in payment of another instrument of the same~~
13 ~~series; or~~
14 ~~(b) that acceleration of the instrument has been made; or~~
15 ~~(c) that he is taking a demand instrument after demand has been~~
16 ~~made or more than a reasonable length of time after its issue. A~~
17 ~~reasonable time for a check drawn and payable within the states and~~
18 ~~territories of the United States and the District of Columbia is~~
19 ~~presumed to be thirty days.~~
20 ~~(4) Knowledge of the following facts does not of itself give the~~
21 ~~purchaser notice of a defense or claim~~
22 ~~(a) that the instrument is antedated or postdated;~~
23 ~~(b) that it was issued or negotiated in return for an executory~~
24 ~~promise or accompanied by a separate agreement, unless the purchaser~~
25 ~~has notice that a defense or claim has arisen from the terms thereof;~~
26 ~~(c) that any party has signed for accommodation;~~
27 ~~(d) that an incomplete instrument has been completed, unless the~~
28 ~~purchaser has notice of any improper completion;~~
29 ~~(e) that any person negotiating the instrument is or was a~~
30 ~~fiduciary;~~
31 ~~(f) that there has been default in payment of interest on the~~
32 ~~instrument or in payment of any other instrument, except one of the~~
33 ~~same series.~~
34 ~~(5) The filing or recording of a document does not of itself~~
35 ~~constitute notice within the provisions of this Article to a person who~~
36 ~~would otherwise be a holder in due course.~~
37 ~~(6) To be effective notice must be received at such time and in~~
38 ~~such manner as to give a reasonable opportunity to act on it.))~~

1 OVERDUE INSTRUMENT. (a) An instrument payable on demand becomes
2 overdue at the earliest of the following times:

3 (1) On the day after the day demand for payment is duly made;

4 (2) If the instrument is a check, 90 days after its date; or

5 (3) If the instrument is not a check, when the instrument has been
6 outstanding for a period of time after its date which is unreasonably
7 long under the circumstances of the particular case in light of the
8 nature of the instrument and usage of the trade.

9 (b) With respect to an instrument payable at a definite time the
10 following rules apply:

11 (1) If the principal is payable in installments and a due date has
12 not been accelerated, the instrument becomes overdue upon default under
13 the instrument for nonpayment of an installment, and the instrument
14 remains overdue until the default is cured.

15 (2) If the principal is not payable in installments and the due
16 date has not been accelerated, the instrument becomes overdue on the
17 day after the due date.

18 (3) If a due date with respect to principal has been accelerated,
19 the instrument becomes overdue on the day after the accelerated due
20 date.

21 (c) Unless the due date of principal has been accelerated, an
22 instrument does not become overdue if there is default in payment of
23 interest but no default in payment of principal.

24 **Sec. 33.** RCW 62A.3-305 and 1965 ex.s. c 157 s 3-305 are each
25 amended to read as follows:

26 ~~((RIGHTS OF A HOLDER IN DUE COURSE. To the extent that a holder is~~
27 ~~a holder in due course he takes the instrument free from~~

28 ~~(1) all claims to it on the part of any person; and~~

29 ~~(2) all defenses of any party to the instrument with whom the~~
30 ~~holder has not dealt except~~

31 ~~(a) infancy, to the extent that it is a defense to a simple~~
32 ~~contract; and~~

33 ~~(b) such other incapacity, or duress, or illegality of the~~
34 ~~transaction, as renders the obligation of the party a nullity; and~~

35 ~~(c) such misrepresentation as has induced the party to sign the~~
36 ~~instrument with neither knowledge nor reasonable opportunity to obtain~~
37 ~~knowledge of its character or its essential terms; and~~

38 ~~(d) discharge in insolvency proceedings; and~~

1 ~~(e) any other discharge of which the holder has notice when he~~
2 ~~takes the instrument.)~~)

3 DEFENSES AND CLAIMS IN RECOUPMENT. (a) Except as stated in
4 subsection (b), the right to enforce the obligation of a party to pay
5 an instrument is subject to the following:

6 (1) A defense of the obligor based on (i) infancy of the obligor to
7 the extent it is a defense to a simple contract, (ii) duress, lack of
8 legal capacity, or illegality of the transaction which, under other
9 law, nullifies the obligation of the obligor, (iii) fraud that induced
10 the obligor to sign the instrument with neither knowledge nor
11 reasonable opportunity to learn of its character or its essential
12 terms, or (iv) discharge of the obligor in insolvency proceedings;

13 (2) A defense of the obligor stated in another section of this
14 Article or a defense of the obligor that would be available if the
15 person entitled to enforce the instrument were enforcing a right to
16 payment under a simple contract; and

17 (3) A claim in recoupment of the obligor against the original payee
18 of the instrument if the claim arose from the transaction that gave
19 rise to the instrument; but the claim of the obligor may be asserted
20 against a transferee of the instrument only to reduce the amount owing
21 on the instrument at the time the action is brought.

22 (b) The right of a holder in due course to enforce the obligation
23 of a party to pay the instrument is subject to defenses of the obligor
24 stated in subsection (a)(1), but is not subject to defenses of the
25 obligor stated in subsection (a)(2) or claims in recoupment stated in
26 subsection (a)(3) against a person other than the holder.

27 (c) Except as stated in subsection (d), in an action to enforce the
28 obligation of a party to pay the instrument, the obligor may not assert
29 against the person entitled to enforce the instrument a defense, claim
30 in recoupment, or claim to the instrument (RCW 62A.3-306) of another
31 person, but the other person's claim to the instrument may be asserted
32 by the obligor if the other person is joined in the action and
33 personally asserts the claim against the person entitled to enforce the
34 instrument. An obligor is not obliged to pay the instrument if the
35 person seeking enforcement of the instrument does not have rights of a
36 holder in due course and the obligor proves that the instrument is a
37 lost or stolen instrument.

38 (d) In an action to enforce the obligation of an accommodation
39 party to pay an instrument, the accommodation party may assert against

1 the person entitled to enforce the instrument any defense or claim in
2 recoupment under subsection (a) that the accommodated party could
3 assert against the person entitled to enforce the instrument, except
4 the defenses of discharge in insolvency proceedings, infancy, and lack
5 of legal capacity.

6 **Sec. 34.** RCW 62A.3-306 and 1965 ex.s. c 157 s 3-306 are each
7 amended to read as follows:

8 ~~((RIGHTS OF ONE NOT HOLDER IN DUE COURSE. Unless he has the rights~~
9 ~~of a holder in due course any person takes the instrument subject to~~

10 ~~(a) all valid claims to it on the part of any person; and~~

11 ~~(b) all defenses of any party which would be available in an action~~
12 ~~on a simple contract; and~~

13 ~~(c) the defenses of want or failure of consideration, non-~~
14 ~~performance of any condition precedent, non-delivery, or delivery for~~
15 ~~a special purpose (RCW 62A.3-408); and~~

16 ~~(d) the defense that he or a person through whom he holds the~~
17 ~~instrument acquired it by theft, or that payment or satisfaction to~~
18 ~~such holder would be inconsistent with the terms of a restrictive~~
19 ~~indorsement. The claim of any third person to the instrument is not~~
20 ~~otherwise available as a defense to any party liable thereon unless the~~
21 ~~third person himself defends the action for such party.))~~

22 CLAIMS TO AN INSTRUMENT. A person taking an instrument, other than
23 a person having rights of a holder in due course, is subject to a claim
24 of a property or possessory right in the instrument or its proceeds,
25 including a claim to rescind a negotiation and to recover the
26 instrument or its proceeds. A person having rights of a holder in due
27 course takes free of the claim to the instrument.

28 **Sec. 35.** RCW 62A.3-307 and 1965 ex.s. c 157 s 3-307 are each
29 amended to read as follows:

30 ~~((BURDEN OF ESTABLISHING SIGNATURES, DEFENSES AND DUE COURSE. (1)~~
31 ~~Unless specifically denied in the pleadings each signature on an~~
32 ~~instrument is admitted. When the effectiveness of a signature is put~~
33 ~~in issue~~

34 ~~(a) the burden of establishing it is on the party claiming under~~
35 ~~the signature; but~~

1 ~~(b) the signature is presumed to be genuine or authorized except~~
2 ~~where the action is to enforce the obligation of a purported signer who~~
3 ~~has died or become incompetent before proof is required.~~

4 ~~(2) When signatures are admitted or established, production of the~~
5 ~~instrument entitles a holder to recover on it unless the defendant~~
6 ~~establishes a defense.~~

7 ~~(3) After it is shown that a defense exists a person claiming the~~
8 ~~rights of a holder in due course has the burden of establishing that he~~
9 ~~or some person under whom he claims is in all respects a holder in due~~
10 ~~course.)~~

11 NOTICE OF BREACH OF FIDUCIARY DUTY. (a) In this section:

12 (1) "Fiduciary" means an agent, trustee, partner, corporate officer
13 or director, or other representative owing a fiduciary duty with
14 respect to an instrument.

15 (2) "Represented person" means the principal, beneficiary,
16 partnership, corporation, or other person to whom the duty stated in
17 subsection (a)(1) is owed.

18 (b) If (i) an instrument is taken from a fiduciary for payment or
19 collection or for value, (ii) the taker has knowledge of the fiduciary
20 status of the fiduciary, and (iii) the represented person makes a claim
21 to the instrument or its proceeds on the basis that the transaction of
22 the fiduciary is a breach of fiduciary duty, the following rules apply:

23 (1) Notice of breach of fiduciary duty by the fiduciary is notice
24 of the claim of the represented person.

25 (2) In the case of an instrument payable to the represented person
26 or the fiduciary as such, the taker has notice of the breach of
27 fiduciary duty if the instrument is (i) taken in payment of or as
28 security for a debt known by the taker to be the personal debt of the
29 fiduciary, (ii) taken in a transaction known by the taker to be for the
30 personal benefit of the fiduciary, or (iii) deposited to an account
31 other than an account of the fiduciary, as such, or an account of the
32 represented person.

33 (3) If an instrument is issued by the represented person or the
34 fiduciary as such, and made payable to the fiduciary personally, the
35 taker does not have notice of the breach of fiduciary duty unless the
36 taker knows of the breach of fiduciary duty.

37 (4) If an instrument is issued by the represented person or the
38 fiduciary as such, to the taker as payee, the taker has notice of the
39 breach of fiduciary duty if the instrument is (i) taken in payment of

1 or as security for a debt known by the taker to be the personal debt of
2 the fiduciary, (ii) taken in a transaction known by the taker to be for
3 the personal benefit of the fiduciary, or (iii) deposited to an account
4 other than an account of the fiduciary, as such, or an account of the
5 represented person.

6 NEW SECTION. Sec. 36. A new section is added to Title 62A RCW, to
7 be codified as RCW 62A.3-308, to read as follows:

8 PROOF OF SIGNATURES AND STATUS AS HOLDER IN DUE COURSE. (a) In an
9 action with respect to an instrument, the authenticity of, and
10 authority to make, each signature on the instrument is admitted unless
11 specifically denied in the pleadings. If the validity of a signature
12 is denied in the pleadings, the burden of establishing validity is on
13 the person claiming validity, but the signature is presumed to be
14 authentic and authorized unless the action is to enforce the liability
15 of the purported signer and the signer is dead or incompetent at the
16 time of trial of the issue of validity of the signature. If an action
17 to enforce the instrument is brought against a person as the
18 undisclosed principal of a person who signed the instrument as a party
19 to the instrument, the plaintiff has the burden of establishing that
20 the defendant is liable on the instrument as a represented person under
21 RCW 62A.3-402(a).

22 (b) If the validity of signatures is admitted or proved and there
23 is compliance with subsection (a), a plaintiff producing the instrument
24 is entitled to payment if the plaintiff proves entitlement to enforce
25 the instrument under RCW 62A.3-301, unless the defendant proves a
26 defense or claim in recoupment. If a defense or claim in recoupment is
27 proved, the right to payment of the plaintiff is subject to the defense
28 or claim, except to the extent the plaintiff proves that the plaintiff
29 has rights of a holder in due course which are not subject to the
30 defense or claim.

31 NEW SECTION. Sec. 37. A new section is added to Title 62A RCW, to
32 be codified as RCW 62A.3-309, to read as follows:

33 ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT. (a) A person
34 not in possession of an instrument is entitled to enforce the
35 instrument if (i) the person was in possession of the instrument and
36 entitled to enforce it when loss of possession occurred, (ii) the loss
37 of possession was not the result of a transfer by the person or a

1 lawful seizure, and (iii) the person cannot reasonably obtain
2 possession of the instrument because the instrument was destroyed, its
3 whereabouts cannot be determined, or it is in the wrongful possession
4 of an unknown person or a person that cannot be found or is not
5 amenable to service of process.

6 (b) A person seeking enforcement of an instrument under subsection
7 (a) must prove the terms of the instrument and the person's right to
8 enforce the instrument. If that proof is made, RCW 62A.3-308 (section
9 36 of this act) applies to the case as if the person seeking
10 enforcement had produced the instrument. The court may not enter
11 judgment in favor of the person seeking enforcement unless it finds
12 that the person required to pay the instrument is adequately protected
13 against loss that might occur by reason of a claim by another person to
14 enforce the instrument. Adequate protection may be provided by any
15 reasonable means.

16 NEW SECTION. Sec. 38. A new section is added to Title 62A RCW, to
17 be codified as RCW 62A.3-310, to read as follows:

18 EFFECT OF INSTRUMENT ON OBLIGATION FOR WHICH TAKEN. (a) Unless
19 otherwise agreed, if a certified check, cashier's check, or teller's
20 check is taken for an obligation, the obligation is discharged to the
21 same extent discharge would result if an amount of money equal to the
22 amount of the instrument were taken in payment of the obligation.
23 Discharge of the obligation does not affect any liability that the
24 obligor may have as an indorser of the instrument.

25 (b) Unless otherwise agreed and except as provided in subsection
26 (a), if a note or an uncertified check is taken for an obligation, the
27 obligation is suspended to the same extent the obligation would be
28 discharged if an amount of money equal to the amount of the instrument
29 were taken, and the following rules apply:

30 (1) In the case of an uncertified check, suspension of the
31 obligation continues until dishonor of the check or until it is paid or
32 certified. Payment or certification of the check results in discharge
33 of the obligation to the extent of the amount of the check.

34 (2) In the case of a note, suspension of the obligation continues
35 until dishonor of the note or until it is paid. Payment of the note
36 results in discharge of the obligation to the extent of the payment.

37 (3) Except as provided in subsection (b)(4), if the check or note
38 is dishonored and the obligee of the obligation for which the

1 instrument was taken is the person entitled to enforce the instrument,
2 the obligee may enforce either the instrument or the obligation. In
3 the case of an instrument of a third person which is negotiated to the
4 obligee by the obligor, discharge of the obligor on the instrument also
5 discharges the obligation.

6 (4) If the person entitled to enforce the instrument taken for an
7 obligation is a person other than the obligee, the obligee may not
8 enforce the obligation to the extent the obligation is suspended. If
9 the obligee is the person entitled to enforce the instrument but no
10 longer has possession of it because it was lost, stolen, or destroyed,
11 the obligation may not be enforced to the extent of the amount payable
12 on the instrument, and to that extent the obligee's rights against the
13 obligor are limited to enforcement of the instrument.

14 (c) If an instrument other than one described in subsection (a) or
15 (b) is taken for an obligation, the effect is (i) that stated in
16 subsection (a) if the instrument is one on which a bank is liable as
17 maker or acceptor, or (ii) that stated in subsection (b) in any other
18 case.

19 NEW SECTION. **Sec. 39.** A new section is added to Title 62A RCW, to
20 be codified as RCW 62A.3-311, to read as follows:

21 ACCORD AND SATISFACTION BY USE OF INSTRUMENT. (a) If a person
22 against whom a claim is asserted proves that (i) that person in good
23 faith tendered an instrument to the claimant as full satisfaction of
24 the claim, (ii) the amount of the claim was unliquidated or subject to
25 a bona fide dispute, and (iii) the claimant obtained payment of the
26 instrument, the following subsections apply.

27 (b) Unless subsection (c) applies, the claim is discharged if the
28 person against whom the claim is asserted proves that the instrument or
29 an accompanying written communication contained a conspicuous statement
30 to the effect that the instrument was tendered as full satisfaction of
31 the claim.

32 (c) Subject to subsection (d), a claim is not discharged under
33 subsection (b) if either of the following applies:

34 (1) The claimant, if an organization, proves that (i) within a
35 reasonable time before the tender, the claimant sent a conspicuous
36 statement to the person against whom the claim is asserted that
37 communications concerning disputed debts, including an instrument
38 tendered as full satisfaction of a debt, are to be sent to a designated

1 person, office, or place, and (ii) the instrument or accompanying
2 communication was not received by that designated person, office, or
3 place.

4 (2) The claimant, whether or not an organization, proves that
5 within 90 days after payment of the instrument, the claimant tendered
6 repayment of the amount of the instrument to the person against whom
7 the claim is asserted. This subsection (c)(2) does not apply if the
8 claimant is an organization that sent a statement complying with
9 subsection (c)(1)(i).

10 (d) A claim is discharged if the person against whom the claim is
11 asserted proves that within a reasonable time before collection of the
12 instrument was initiated, the claimant, or an agent of the claimant
13 having direct responsibility with respect to the disputed obligation,
14 knew that the instrument was tendered in full satisfaction of the
15 claim.

16 NEW SECTION. Sec. 40. A new section is added to Title 62A RCW, to
17 be codified as RCW 62A.3-312, to read as follows:

18 LOST, DESTROYED, OR STOLEN CASHIER'S CHECK, TELLER'S CHECK, OR
19 CERTIFIED CHECK. (a) In this section:

20 (1) "Check" means a cashier's check, teller's check, or certified
21 check.

22 (2) "Claimant" means a person who claims the right to receive the
23 amount of a cashier's check, teller's check, or certified check that
24 was lost, destroyed, or stolen.

25 (3) "Declaration of loss" means a written statement, made under
26 penalty of perjury, to the effect that (i) the declarer lost possession
27 of a check, (ii) the declarer is the drawer or payee of the check, in
28 the case of a certified check, or the remitter or payee of the check,
29 in the case of a cashier's check or teller's check, (iii) the loss of
30 possession was not the result of a transfer by the declarer or a lawful
31 seizure, and (iv) the declarer cannot reasonably obtain possession of
32 the check because the check was destroyed, its whereabouts cannot be
33 determined, or it is in the wrongful possession of an unknown person or
34 a person that cannot be found or is not amendable to service of
35 process.

36 (4) "Obligated bank" means the insurer of a cashier's check or
37 teller's check or the acceptor of a certified check.

1 (b) A claimant may assert a claim to the amount of a check by a
2 communication to the obligated bank describing the check with
3 reasonable certainty and requesting payment of the amount of the check,
4 if (i) the claimant is the drawer or payee of a certified check or the
5 remitter or payee of a cashier's check or teller's check, (ii) the
6 communication contains or is accompanied by a declaration of loss of
7 the claimant with respect to the check, (iii) the communication is
8 received at a time and in a manner affording the bank a reasonable time
9 to act on it before the check is paid, and (iv) the claimant provides
10 reasonable identification if requested by the obligated bank. Delivery
11 of a declaration of loss is a warranty of the truth of the statements
12 made in the declaration. If a claim is asserted in compliance with
13 this subsection, the following rules apply:

14 (1) The claim becomes enforceable at the later of (i) the time the
15 claim is asserted, or (ii) the ninetieth day following the date of the
16 check, in the case of a cashier's check or teller's check, or the
17 ninetieth day following the date of the acceptance, in the case of a
18 certified check.

19 (2) Until the claim becomes enforceable, it has no legal effect and
20 the obligated bank may pay the check or, in the case of a teller's
21 check, may permit the drawee to pay the check. Payment to a person
22 entitled to enforce the check discharges all liability of the obligated
23 bank with respect to the check.

24 (3) If the claim becomes enforceable before the check is presented
25 for payment, the obligated bank is not obliged to pay the check.

26 (4) When the claim becomes enforceable, the obligated bank becomes
27 obliged to pay the amount of the check to the claimant if payment of
28 the check has not been made to a person entitled to enforce the check.
29 Subject to RCW 62A.4-302(a), payment to the claimant discharges all
30 liability of the obligated bank with respect to the check.

31 (c) If the obligated bank pays the amount of a check to a claimant
32 under subsection (b)(4) and the check is presented for payment by a
33 person having rights of a holder in due course, the claimant is obliged
34 to (i) refund the payment to the obligated bank if the check is paid,
35 or (ii) pay the amount of the check to the person having rights of a
36 holder in due course if the check is dishonored.

37 (d) If a claimant has the right to assert a claim under subsection
38 (b) and is also a person entitled to enforce a cashier's check,
39 teller's check, or certified check that is lost, destroyed, or stolen,

1 the claimant may assert rights with respect to the check under this
2 section.

3 PART 4

4 LIABILITY OF PARTIES

5 **Sec. 41.** RCW 62A.3-401 and 1965 ex.s. c 157 s 3-401 are each
6 amended to read as follows:

7 SIGNATURE. (~~((1) No~~) (a) A person is not liable on an instrument
8 unless (~~(his signature appears thereon)~~) (i) the person signed the
9 instrument, or (ii) the person is represented by an agent or
10 representative who signed the instrument and the signature is binding
11 on the represented person under RCW 62A.3-402.

12 (~~((2))~~) (b) A signature (~~(is)~~) may be made (by use of any name,
13 including any trade or assumed name, upon an instrument, or by any word
14 or mark used in lieu of a written signature) (i) manually or by means
15 of a device or machine, and (ii) by the use of any name, including a
16 trade or assumed name, or by a word, mark, or symbol executed or
17 adopted by a person with present intention to authenticate a writing.

18 **Sec. 42.** RCW 62A.3-402 and 1965 ex.s. c 157 s 3-402 are each
19 amended to read as follows:

20 (~~(SIGNATURE IN AMBIGUOUS CAPACITY. Unless the instrument clearly~~
21 ~~indicates that a signature is made in some other capacity it is an~~
22 ~~indorsement.)~~)

23 SIGNATURE BY REPRESENTATIVE. (a) If a person acting, or purporting
24 to act, as a representative signs an instrument by signing either the
25 name of the represented person or the name of the signer, the
26 represented person is bound by the signature to the same extent the
27 represented person would be bound if the signature were on a simple
28 contract. If the represented person is bound, the signature of the
29 representative is the "authorized signature of the represented person"
30 and the represented person is liable on the instrument, whether or not
31 identified in the instrument.

32 (b) If a representative signs the name of the representative to an
33 instrument and the signature is an authorized signature of the
34 represented person, the following rules apply:

1 (1) If the form of the signature shows unambiguously that the
2 signature is made on behalf of the represented person who is identified
3 in the instrument, the representative is not liable on the instrument.

4 (2) Subject to subsection (c), if (i) the form of the signature
5 does not show unambiguously that the signature is made in a
6 representative capacity or (ii) the represented person is not
7 identified in the instrument, the representative is liable on the
8 instrument to a holder in due course that took the instrument without
9 notice that the representative was not intended to be liable on the
10 instrument. With respect to any other person, the representative is
11 liable on the instrument unless the representative proves that the
12 original parties did not intend the representative to be liable on the
13 instrument.

14 (c) If a representative signs the name of the representative as
15 drawer of a check without indication of the representative status and
16 the check is payable from an account of the represented person who is
17 identified on the check, the signer is not liable on the check if the
18 signature is an authorized signature of the represented person.

19 **Sec. 43.** RCW 62A.3-403 and 1965 ex.s. c 157 s 3-403 are each
20 amended to read as follows:

21 ~~((SIGNATURE BY AUTHORIZED REPRESENTATIVE.—(1) A signature may be~~
22 ~~made by an agent or other representative, and his authority to make it~~
23 ~~may be established as in other cases of representation. No particular~~
24 ~~form of appointment is necessary to establish such authority.~~

25 ~~(2) An authorized representative who signs his own name to an~~
26 ~~instrument~~

27 ~~(a) is personally obligated if the instrument neither names the~~
28 ~~person represented nor shows that the representative signed in a~~
29 ~~representative capacity;~~

30 ~~(b) except as otherwise established between the immediate parties,~~
31 ~~is personally obligated if the instrument names the person represented~~
32 ~~but does not show that the representative signed in a representative~~
33 ~~capacity, or if the instrument does not name the person represented but~~
34 ~~does show that the representative signed in a representative capacity.~~

35 ~~(3) Except as otherwise established the name of an organization~~
36 ~~preceded or followed by the name and office of an authorized individual~~
37 ~~is a signature made in a representative capacity.))~~

1 UNAUTHORIZED SIGNATURE. (a) Unless otherwise provided in this
2 Article or Article 4, an unauthorized signature is ineffective except
3 as the signature of the unauthorized signer in favor of a person who in
4 good faith pays the instrument or takes it for value. An unauthorized
5 signature may be ratified for all purposes of this Article.

6 (b) If the signature of more than one person is required to
7 constitute the authorized signature of an organization, the signature
8 of the organization is unauthorized if one of the required signatures
9 is lacking.

10 (c) The civil or criminal liability of a person who makes an
11 unauthorized signature is not affected by any provision of this Article
12 which makes the unauthorized signature effective for the purposes of
13 this Article.

14 **Sec. 44.** RCW 62A.3-404 and 1965 ex.s. c 157 s 3-404 are each
15 amended to read as follows:

16 ~~((UNAUTHORIZED SIGNATURES.—(1) Any unauthorized signature is~~
17 ~~wholly inoperative as that of the person whose name is signed unless he~~
18 ~~ratifies it or is precluded from denying it; but it operates as the~~
19 ~~signature of the unauthorized signer in favor of any person who in good~~
20 ~~faith pays the instrument or takes it for value.~~

21 ~~(2) Any unauthorized signature may be ratified for all purposes of~~
22 ~~this Article. Such ratification does not of itself affect any rights~~
23 ~~of the person ratifying against the actual signer.))~~

24 IMPOSTORS; FICTITIOUS PAYEES. (a) If an impostor, by use of the
25 mails or otherwise, induces the issuer of an instrument to issue the
26 instrument to the impostor, or to a person acting in concert with the
27 impostor, by impersonating the payee of the instrument or a person
28 authorized to act for the payee, an indorsement of the instrument by
29 any person in the name of the payee is effective as the indorsement of
30 the payee in favor of a person who, in good faith, pays the instrument
31 or takes it for value or for collection.

32 (b) If (i) a person whose intent determines to whom an instrument
33 is payable (RCW 62A.3-110 (a) or (b)) does not intend the person
34 identified as payee to have any interest in the instrument, or (ii) the
35 person identified as payee of an instrument is a fictitious person, the
36 following rules apply until the instrument is negotiated by special
37 indorsement:

38 (1) Any person in possession of the instrument is its holder.

1 (2) An indorsement by any person in the name of the payee stated in
2 the instrument is effective as the indorsement of the payee in favor of
3 a person who, in good faith, pays the instrument or takes it for value
4 or for collection.

5 (c) Under subsection (a) or (b), an indorsement is made in the name
6 of a payee if (i) it is made in a name substantially similar to that of
7 the payee or (ii) the instrument, whether or not indorsed, is deposited
8 in a depository bank to an account in a name substantially similar to
9 that of the payee.

10 (d) With respect to an instrument to which subsection (a) or (b)
11 applies, if a person paying the instrument or taking it for value or
12 for collection fails to exercise ordinary care in paying or taking the
13 instrument and that failure contributes to loss resulting from payment
14 of the instrument, the person bearing the loss may recover from the
15 person failing to exercise ordinary care to the extent the failure to
16 exercise ordinary care contributed to the loss.

17 **Sec. 45.** RCW 62A.3-405 and 1965 ex.s. c 157 s 3-405 are each
18 amended to read as follows:

19 ~~((IMPOSTORS; SIGNATURE IN NAME OF PAYEE.—(1) An indorsement by any~~
20 ~~person in the name of a named payee is effective if~~

21 ~~(a) an impostor by use of the mails or otherwise has induced the~~
22 ~~maker or drawer to issue the instrument to him or his confederate in~~
23 ~~the name of the payee; or~~

24 ~~(b) a person signing as or on behalf of a maker or drawer intends~~
25 ~~the payee to have no interest in the instrument; or~~

26 ~~(c) an agent or employee of the maker or drawer has supplied him~~
27 ~~with the name of the payee intending the latter to have no such~~
28 ~~interest.~~

29 ~~(2) Nothing in this section shall affect the criminal or civil~~
30 ~~liability of the person so indorsing.))~~

31 EMPLOYER'S RESPONSIBILITY FOR FRAUDULENT INDORSEMENT BY EMPLOYEE.

32 (a) In this section:

33 (1) "Employee" includes an independent contractor and employee of
34 an independent contractor retained by the employer.

35 (2) "Fraudulent indorsement" means (i) in the case of an instrument
36 payable to the employer, a forged indorsement purporting to be that of
37 the employer, or (ii) in the case of an instrument with respect to

1 which the employer is the issuer, a forged indorsement purporting to be
2 that of the person identified as payee.

3 (3) "Responsibility" with respect to instruments means authority
4 (i) to sign or indorse instruments on behalf of the employer, (ii) to
5 process instruments received by the employer for bookkeeping purposes,
6 for deposit to an account, or for other disposition, (iii) to prepare
7 or process instruments for issue in the name of the employer, (iv) to
8 supply information determining the names or addresses of payees of
9 instruments to be issued in the name of the employer, (v) to control
10 the disposition of instruments to be issued in the name of the
11 employer, or (vi) to act otherwise with respect to instruments in a
12 responsible capacity. "Responsibility" does not include authority that
13 merely allows an employee to have access to instruments or blank or
14 incomplete instrument forms that are being stored or transported or are
15 part of incoming or outgoing mail, or similar access.

16 (b) For the purpose of determining the rights and liabilities of a
17 person who, in good faith, pays an instrument or takes it for value or
18 for collection, if an employer entrusted an employee with
19 responsibility with respect to the instrument and the employee or a
20 person acting in concert with the employee makes a fraudulent
21 indorsement of the instrument, the indorsement is effective as the
22 indorsement of the person to whom the instrument is payable if it is
23 made in the name of that person. If the person paying the instrument
24 or taking it for value or for collection fails to exercise ordinary
25 care in paying or taking the instrument and that failure contributes to
26 loss resulting from the fraud, the person bearing the loss may recover
27 from the person failing to exercise ordinary care to the extent the
28 failure to exercise ordinary care contributed to the loss.

29 (c) Under subsection (b), an indorsement is made in the name of the
30 person to whom an instrument is payable if (i) it is made in a name
31 substantially similar to the name of that person or (ii) the
32 instrument, whether or not indorsed, is deposited in a depository bank
33 to an account in a name substantially similar to the name of that
34 person.

35 **Sec. 46.** RCW 62A.3-406 and 1965 ex.s. c 157 s 3-406 are each
36 amended to read as follows:

37 NEGLIGENCE CONTRIBUTING TO FORGED SIGNATURE OR ALTERATION ((OR
38 UNAUTHORIZED SIGNATURE)) OF INSTRUMENT. ((Any)) (a) A person ((who by

1 ~~his negligence substantially))~~ whose failure to exercise ordinary care
2 contributes to ((a material)) an alteration of ((the)) an instrument or
3 to the making of ((an unauthorized signature)) a forged signature on an
4 instrument is precluded from asserting the alteration or ((lack of
5 authority)) the forgery against a ((holder in due course or against a
6 drawee or other payor)) person who, in good faith, pays the instrument
7 ((in good faith and in accordance with the reasonable commercial
8 standards of the drawee's or payor's business)) or takes it for value
9 or for collection.

10 (b) Under subsection (a), if the person asserting the preclusion
11 fails to exercise ordinary care in paying or taking the instrument and
12 that failure contributes to loss, the loss is allocated between the
13 person precluded and the person asserting the preclusion according to
14 the extent to which the failure of each to exercise ordinary care
15 contributed to the loss.

16 (c) Under subsection (a), the burden of proving failure to exercise
17 ordinary care is on the person asserting the preclusion. Under
18 subsection (b), the burden of proving failure to exercise ordinary care
19 is on the person precluded.

20 **Sec. 47.** RCW 62A.3-407 and 1965 ex.s. c 157 s 3-407 are each
21 amended to read as follows:

22 ALTERATION. ((1) Any alteration of an instrument is material
23 which changes the contract of any party thereto in any respect,
24 including any such change in

25 (a) the number or relations of the parties; or

26 (b) an incomplete instrument, by completing it otherwise than as
27 authorized; or

28 (c) the writing as signed, by adding to it or by removing any part
29 of it.

30 (2) As against any person other than a subsequent holder in due
31 course

32 (a) alteration by the holder which is both fraudulent and material
33 discharges any party whose contract is thereby changed unless that
34 party assents or is precluded from asserting the defense;

35 (b) no other alteration discharges any party and the instrument may
36 be enforced according to its original tenor, or as to incomplete
37 instruments according to the authority given.

1 ~~(3) A subsequent holder in due course may in all cases enforce the~~
2 ~~instrument according to its original tenor, and when an incomplete~~
3 ~~instrument has been completed, he may enforce it as completed.)) (a)~~
4 "Alteration" means (i) an unauthorized change in an instrument that
5 purports to modify in any respect the obligation of a party, or (ii) an
6 unauthorized addition of words or numbers or other change to an
7 incomplete instrument relating to the obligation of a party.

8 (b) Except as provided in subsection (c), an alteration
9 fraudulently made discharges a party whose obligation is affected by
10 the alteration unless that party assents or is precluded from asserting
11 the alteration. No other alteration discharges a party, and the
12 instrument may be enforced according to its original terms.

13 (c) A payor bank or drawee paying a fraudulently altered instrument
14 or a person taking it for value, in good faith and without notice of
15 the alteration, may enforce rights with respect to the instrument (i)
16 according to its original terms, or (ii) in the case of an incomplete
17 instrument altered by unauthorized completion, according to its terms
18 as completed.

19 **Sec. 48.** RCW 62A.3-408 and 1965 ex.s. c 157 s 3-408 are each
20 amended to read as follows:

21 ~~((CONSIDERATION. Want or failure of consideration is a defense as~~
22 ~~against any person not having the rights of a holder in due course (RCW~~
23 ~~62A.3-305), except that no consideration is necessary for an instrument~~
24 ~~or obligation thereon given in payment of or as security for an~~
25 ~~antecedent obligation of any kind. Nothing in this section shall be~~
26 ~~taken to displace any statute outside this Title under which a promise~~
27 ~~is enforceable notwithstanding lack or failure of consideration.~~
28 ~~Partial failure of consideration is a defense pro tanto whether or not~~
29 ~~the failure is in an ascertained or liquidated amount.))~~

30 DRAWEE NOT LIABLE ON UNACCEPTED DRAFT. A check or other draft does
31 not of itself operate as an assignment of funds in the hands of the
32 drawee available for its payment, and the drawee is not liable on the
33 instrument until the drawee accepts it.

34 **Sec. 49.** RCW 62A.3-409 and 1965 ex.s. c 157 s 3-409 are each
35 amended to read as follows:

36 ~~((DRAFT NOT AN ASSIGNMENT. (1) A check or other draft does not of~~
37 ~~itself operate as an assignment of any funds in the hands of the drawee~~

1 available for its payment, and the drawee is not liable on the
2 instrument until he accepts it.

3 (2) Nothing in this section shall affect any liability in contract,
4 tort or otherwise arising from any letter of credit or other obligation
5 or representation which is not an acceptance.))

6 ACCEPTANCE OF DRAFT; CERTIFIED CHECK. (a) "Acceptance" means the
7 drawee's signed agreement to pay a draft as presented. It must be
8 written on the draft and may consist of the drawee's signature alone.
9 Acceptance may be made at any time and becomes effective when
10 notification pursuant to instructions is given or the accepted draft is
11 delivered for the purpose of giving rights on the acceptance to any
12 person.

13 (b) A draft may be accepted although it has not been signed by the
14 drawer, is otherwise incomplete, is overdue, or has been dishonored.

15 (c) If a draft is payable at a fixed period after sight and the
16 acceptor fails to date the acceptance, the holder may complete the
17 acceptance by supplying a date in good faith.

18 (d) "Certified check" means a check accepted by the bank on which
19 it is drawn. Acceptance may be made as stated in subsection (a) or by
20 a writing on the check which indicates that the check is certified.
21 The drawee of a check has no obligation to certify the check, and
22 refusal to certify is not dishonor of the check.

23 **Sec. 50.** RCW 62A.3-410 and 1965 ex.s. c 157 s 3-410 are each
24 amended to read as follows:

25 ((DEFINITION AND OPERATION OF ACCEPTANCE.—(1) Acceptance is the
26 drawee's signed engagement to honor the draft as presented. It must be
27 written on the draft, and may consist of his signature alone. It
28 becomes operative when completed by delivery or notification.

29 (2) A draft may be accepted although it has not been signed by the
30 drawer or is otherwise incomplete or is overdue or has been dishonored.

31 (3) Where the draft is payable at a fixed period after sight and
32 the acceptor fails to date his acceptance the holder may complete it by
33 supplying a date in good faith.))

34 ACCEPTANCE VARYING DRAFT. (a) If the terms of a drawee's
35 acceptance vary from the terms of the draft as presented, the holder
36 may refuse the acceptance and treat the draft as dishonored. In that
37 case, the drawee may cancel the acceptance.

1 (b) The terms of a draft are not varied by an acceptance to pay at
2 a particular bank or place in the United States, unless the acceptance
3 states that the draft is to be paid only at that bank or place.

4 (c) If the holder assents to an acceptance varying the terms of a
5 draft, the obligation of each drawer and indorser that does not
6 expressly assent to the acceptance is discharged.

7 **Sec. 51.** RCW 62A.3-411 and 1965 ex.s. c 157 s 3-411 are each
8 amended to read as follows:

9 ~~((CERTIFICATION OF A CHECK.—(1) Certification of a check is~~
10 ~~acceptance.— Where a holder procures certification the drawer and all~~
11 ~~prior indorsers are discharged.~~

12 ~~(2) Unless otherwise agreed a bank has no obligation to certify a~~
13 ~~check.~~

14 ~~(3) A bank may certify a check before returning it for lack of~~
15 ~~proper indorsement. If it does so the drawer is discharged.))~~

16 REFUSAL TO PAY CASHIER'S CHECKS, TELLER'S CHECKS, AND CERTIFIED
17 CHECKS. (a) In this section, "obligated bank" means the acceptor of a
18 certified check or the issuer of a cashier's check or teller's check
19 bought from the issuer.

20 (b) If the obligated bank wrongfully (i) refuses to pay a cashier's
21 check or certified check, (ii) stops payment of a teller's check, or
22 (iii) refuses to pay a dishonored teller's check, the person asserting
23 the right to enforce the check is entitled to compensation for expenses
24 and loss of interest resulting from the nonpayment and may recover
25 consequential damages if the obligated bank refuses to pay after
26 receiving notice of particular circumstances giving rise to the
27 damages.

28 (c) Expenses or consequential damages under subsection (b) are not
29 recoverable if the refusal of the obligated bank to pay occurs because
30 (i) the bank suspends payments, (ii) the obligated bank asserts a claim
31 or defense of the bank that it has reasonable grounds to believe is
32 available against the person entitled to enforce the instrument, (iii)
33 the obligated bank has a reasonable doubt whether the person demanding
34 payment is the person entitled to enforce the instrument, or (iv)
35 payment is prohibited by law.

36 **Sec. 52.** RCW 62A.3-412 and 1965 ex.s. c 157 s 3-412 are each
37 amended to read as follows:

1 ((ACCEPTANCE VARYING DRAFT. — (1) Where the drawee's proffered
2 acceptance in any manner varies the draft as presented the holder may
3 refuse the acceptance and treat the draft as dishonored in which case
4 the drawee is entitled to have his acceptance cancelled.

5 (2) The terms of the draft are not varied by an acceptance to pay
6 at any particular bank or place in the United States, unless the
7 acceptance states that the draft is to be paid only at such bank or
8 place.

9 (3) Where the holder assents to an acceptance varying the terms of
10 the draft each drawer and indorser who does not affirmatively assent is
11 discharged.))

12 OBLIGATION OF ISSUER OF NOTE OR CASHIER'S CHECK. The issuer of a
13 note or cashier's check or other draft drawn on the drawer is obliged
14 to pay the instrument (i) according to its terms at the time it was
15 issued or, if not issued, at the time it first came into possession of
16 a holder, or (ii) if the issuer signed an incomplete instrument,
17 according to its terms when completed, to the extent stated in RCW
18 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled
19 to enforce the instrument or to an indorser who paid the instrument
20 under RCW 62A.3-415.

21 **Sec. 53.** RCW 62A.3-413 and 1965 ex.s. c 157 s 3-413 are each
22 amended to read as follows:

23 ((CONTRACT OF MAKER, DRAWER AND ACCEPTOR. — (1) The maker or
24 acceptor engages that he will pay the instrument according to its tenor
25 at the time of his engagement or as completed pursuant to RCW 62A.3-115
26 on incomplete instruments.

27 (2) The drawer engages that upon dishonor of the draft and any
28 necessary notice of dishonor or protest he will pay the amount of the
29 draft to the holder or to any indorser who takes it up. The drawer may
30 disclaim this liability by drawing without recourse.

31 (3) By making, drawing or accepting the party admits as against all
32 subsequent parties including the drawee the existence of the payee and
33 his then capacity to indorse.))

34 OBLIGATION OF ACCEPTOR. (a) The acceptor of a draft is obliged to
35 pay the draft (i) according to its terms at the time it was accepted,
36 even though the acceptance states that the draft is payable "as
37 originally drawn" or equivalent terms, (ii) if the acceptance varies
38 the terms of the draft, according to the terms of the draft as varied,

1 or (iii) if the acceptance is of a draft that is an incomplete
2 instrument, according to its terms when completed, to the extent stated
3 in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person
4 entitled to enforce the draft or to the drawer or an indorser who paid
5 the draft under RCW 62A.3-414 or 62A.3-415.

6 (b) If the certification of a check or other acceptance of a draft
7 states the amount certified or accepted, the obligation of the acceptor
8 is that amount. If (i) the certification or acceptance does not state
9 an amount, (ii) the amount of the instrument is subsequently raised,
10 and (iii) the instrument is then negotiated to a holder in due course,
11 the obligation of the acceptor is the amount of the instrument at the
12 time it was taken by the holder in due course.

13 **Sec. 54.** RCW 62A.3-414 and 1965 ex.s. c 157 s 3-414 are each
14 amended to read as follows:

15 ~~((CONTRACT OF INDORSER; ORDER OF LIABILITY. (1) Unless the~~
16 ~~indorsement otherwise specifies (as by such words as "without~~
17 ~~recourse") every indorser engages that upon dishonor and any necessary~~
18 ~~notice of dishonor and protest he will pay the instrument according to~~
19 ~~its tenor at the time of his indorsement to the holder or to any~~
20 ~~subsequent indorser who takes it up, even though the indorser who takes~~
21 ~~it up was not obligated to do so.~~

22 ~~(2) Unless they otherwise agree indorsers are liable to one another~~
23 ~~in the order in which they indorse, which is presumed to be the order~~
24 ~~in which their signatures appear on the instrument.))~~

25 OBLIGATION OF DRAWER. (a) This section does not apply to cashier's
26 checks or other drafts drawn on the drawer.

27 (b) If an unaccepted draft is dishonored, the drawer is obliged to
28 pay the draft (i) according to its terms at the time it was issued or,
29 if not issued, at the time it first came into possession of a holder,
30 or (ii) if the drawer signed an incomplete instrument, according to its
31 terms when completed, to the extent stated in RCW 62A.3-115 and
32 62A.3-407. The obligation is owed to a person entitled to enforce the
33 draft or to an indorser who paid the draft under RCW 62A.3-415.

34 (c) If a draft is accepted by a bank, the drawer is discharged,
35 regardless of when or by whom acceptance was obtained.

36 (d) If a draft is accepted and the acceptor is not a bank, the
37 obligation of the drawer to pay the draft if the draft is dishonored by

1 the acceptor is the same as the obligation of an indorser under RCW
2 62A.3-415 (a) and (c).

3 (e) If a draft states that it is drawn "without recourse" or
4 otherwise disclaims liability of the drawer to pay the draft, the
5 drawer is not liable under subsection (b) to pay the draft if the draft
6 is not a check. A disclaimer of the liability stated in subsection (b)
7 is not effective if the draft is a check.

8 (f) If (i) a check is not presented for payment or given to a
9 depository bank for collection within 30 days after its date, (ii) the
10 drawee suspends payments after expiration of the 30-day period without
11 paying the check, and (iii) because of the suspension of payments, the
12 drawer is deprived of funds maintained with the drawee to cover payment
13 of the check, the drawer to the extent deprived of funds may discharge
14 its obligation to pay the check by assigning to the person entitled to
15 enforce the check the rights of the drawer against the drawee with
16 respect to the funds.

17 **Sec. 55.** RCW 62A.3-415 and 1965 ex.s. c 157 s 3-415 are each
18 amended to read as follows:

19 ~~((CONTRACT OF ACCOMMODATION PARTY. (1) An accommodation party is~~
20 ~~one who signs the instrument in any capacity for the purpose of lending~~
21 ~~his name to another party to it.~~

22 ~~(2) When the instrument has been taken for value before it is due~~
23 ~~the accommodation party is liable in the capacity in which he has~~
24 ~~signed even though the taker knows of the accommodation.~~

25 ~~(3) As against a holder in due course and without notice of the~~
26 ~~accommodation oral proof of the accommodation is not admissible to give~~
27 ~~the accommodation party the benefit of discharges dependent on his~~
28 ~~character as such. In other cases the accommodation character may be~~
29 ~~shown by oral proof.~~

30 ~~(4) An indorsement which shows that it is not in the chain of title~~
31 ~~is notice of its accommodation character.~~

32 ~~(5) An accommodation party is not liable to the party accommodated,~~
33 ~~and if he pays the instrument has a right of recourse on the instrument~~
34 ~~against such party.))~~

35 OBLIGATION OF INDORSER. (a) Subject to subsections (b), (c), (d),
36 and (e) and to RCW 62A.3-419(d), if an instrument is dishonored, an
37 indorser is obliged to pay the amount due on the instrument (i)
38 according to the terms of the instrument at the time it was indorsed,

1 or (ii) if the indorser indorsed an incomplete instrument, according to
2 its terms when completed, to the extent stated in RCW 62A.3-115 and
3 62A.3-407. The obligation of the indorser is owed to a person entitled
4 to enforce the instrument or to a subsequent indorser who paid the
5 instrument under this section.

6 (b) If an indorsement states that it is made "without recourse" or
7 otherwise disclaims liability of the indorser, the indorser is not
8 liable under subsection (a) to pay the instrument.

9 (c) If notice of dishonor of an instrument is required by RCW
10 62A.3-503 and notice of dishonor complying with that section is not
11 given to an indorser, the liability of the indorser under subsection
12 (a) is discharged.

13 (d) If a draft is accepted by a bank after an indorsement is made,
14 the liability of the indorser under subsection (a) is discharged.

15 (e) If an indorser of a check is liable under subsection (a) and
16 the check is not presented for payment, or given to a depository bank
17 for collection, within 30 days after the day the indorsement was made,
18 the liability of the indorser under subsection (a) is discharged.

19 **Sec. 56.** RCW 62A.3-416 and 1965 ex.s. c 157 s 3-416 are each
20 amended to read as follows:

21 ~~((CONTRACT OF GUARANTOR.—(1) "Payment guaranteed" or equivalent~~
22 ~~words added to a signature mean that the signer engages that if the~~
23 ~~instrument is not paid when due he will pay it according to its tenor~~
24 ~~without resort by the holder to any other party.~~

25 ~~(2) "Collection guaranteed" or equivalent words added to a~~
26 ~~signature mean that the signer engages that if the instrument is not~~
27 ~~paid when due he will pay it according to its tenor, but only after the~~
28 ~~holder has reduced his claim against the maker or acceptor to judgment~~
29 ~~and execution has been returned unsatisfied, or after the maker or~~
30 ~~acceptor has become insolvent or it is otherwise apparent that it is~~
31 ~~useless to proceed against him.~~

32 ~~(3) Words of guaranty which do not otherwise specify guarantee~~
33 ~~payment.~~

34 ~~(4) No words of guaranty added to the signature of a sole maker or~~
35 ~~acceptor affect his liability on the instrument. Such words added to~~
36 ~~the signature of one of two or more makers or acceptors create a~~
37 ~~presumption that the signature is for the accommodation of the others.~~

1 ~~(5) When words of guaranty are used presentment, notice of dishonor~~
2 ~~and protest are not necessary to charge the user.~~

3 ~~(6) Any guaranty written on the instrument is enforceable~~
4 ~~notwithstanding any statute of frauds.))~~

5 TRANSFER WARRANTIES. (a) A person who transfers an instrument for
6 consideration warrants to the transferee and, if the transfer is by
7 indorsement, to any subsequent transferee that:

8 (1) The warrantor is a person entitled to enforce the instrument;

9 (2) All signatures on the instrument are authentic and authorized;

10 (3) The instrument has not been altered;

11 (4) The instrument is not subject to a defense or claim in
12 recoupment of any party which can be asserted against the warrantor;
13 and

14 (5) The warrantor has no knowledge of any insolvency proceeding
15 commenced with respect to the maker or acceptor or, in the case of an
16 unaccepted draft, the drawer.

17 (b) A person to whom the warranties under subsection (a) are made
18 and who took the instrument in good faith may recover from the
19 warrantor as damages for breach of warranty an amount equal to the loss
20 suffered as a result of the breach, but not more than the amount of the
21 instrument plus expenses and loss of interest incurred as a result of
22 the breach.

23 (c) The warranties stated in subsection (a) cannot be disclaimed
24 with respect to checks. Unless notice of a claim for breach of
25 warranty is given to the warrantor within 30 days after the claimant
26 has reason to know of the breach and the identity of the warrantor, the
27 liability of the warrantor under subsection (b) is discharged to the
28 extent of any loss caused by the delay in giving notice of the claim.

29 (d) A cause of action for breach of warranty under this section
30 accrues when the claimant has reason to know of the breach.

31 **Sec. 57.** RCW 62A.3-417 and 1965 ex.s. c 157 s 3-417 are each
32 amended to read as follows:

33 ~~((WARRANTIES ON PRESENTMENT AND TRANSFER.—(1) Any person who~~
34 ~~obtains payment or acceptance and any prior transferor warrants to a~~
35 ~~person who in good faith pays or accepts that~~

36 ~~(a) he has a good title to the instrument or is authorized to~~
37 ~~obtain payment or acceptance on behalf of one who has a good title; and~~

1 ~~(b) he has no knowledge that the signature of the maker or drawer~~
2 ~~is unauthorized, except that this warranty is not given by a holder in~~
3 ~~due course acting in good faith~~

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

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

7 ~~(iii) to an acceptor of a draft if the holder in due course took~~
8 ~~the draft after the acceptance or obtained the acceptance without~~
9 ~~knowledge that the drawer's signature was unauthorized; and~~

10 ~~(c) the instrument has not been materially altered, except that~~
11 ~~this warranty is not given by a holder in due course acting in good~~
12 ~~faith~~

13 ~~(i) to the maker of a note; or~~

14 ~~(ii) to the drawer of a draft whether or not the drawer is also the~~
15 ~~drawee; or~~

16 ~~(iii) to the acceptor of a draft with respect to an alteration made~~
17 ~~prior to the acceptance if the holder in due course took the draft~~
18 ~~after the acceptance, even though the acceptance provided "payable as~~
19 ~~originally drawn" or equivalent terms; or~~

20 ~~(iv) to the acceptor of a draft with respect to an alteration made~~
21 ~~after the acceptance.~~

22 ~~(2) Any person who transfers an instrument and receives~~
23 ~~consideration warrants to his transferee and if the transfer is by~~
24 ~~indorsement to any subsequent holder who takes the instrument in good~~
25 ~~faith that~~

26 ~~(a) he has a good title to the instrument or is authorized to~~
27 ~~obtain payment or acceptance on behalf of one who has a good title and~~
28 ~~the transfer is otherwise rightful; and~~

29 ~~(b) all signatures are genuine or authorized; and~~

30 ~~(c) the instrument has not been materially altered; and~~

31 ~~(d) no defense of any party is good against him; and~~

32 ~~(e) he has no knowledge of any insolvency proceeding instituted~~
33 ~~with respect to the maker or acceptor or the drawer of an unaccepted~~
34 ~~instrument.~~

35 ~~(3) By transferring "without recourse" the transferor limits the~~
36 ~~obligation stated in subsection (2)(d) to a warranty that he has no~~
37 ~~knowledge of such a defense.~~

38 ~~(4) A selling agent or broker who does not disclose the fact that~~
39 ~~he is acting only as such gives the warranties provided in this~~

1 ~~section, but if he makes such disclosure warrants only his good faith~~
2 ~~and authority.))~~

3 PRESENTMENT WARRANTIES. (a) If an unaccepted draft is presented to
4 the drawee for payment or acceptance and the drawee pays or accepts the
5 draft, (i) the person obtaining payment or acceptance, at the time of
6 presentment, and (ii) a previous transferor of the draft, at the time
7 of transfer, warrant to the drawee making payment or accepting the
8 draft in good faith that:

9 (1) The warrantor is, or was, at the time the warrantor transferred
10 the draft, a person entitled to enforce the draft or authorized to
11 obtain payment or acceptance of the draft on behalf of a person
12 entitled to enforce the draft;

13 (2) The draft has not been altered; and

14 (3) The warrantor has no knowledge that the signature of the drawer
15 of the draft is unauthorized.

16 (b) A drawee making payment may recover from any warrantor damages
17 for breach of warranty equal to the amount paid by the drawee less the
18 amount the drawee received or is entitled to receive from the drawer
19 because of the payment. In addition, the drawee is entitled to
20 compensation for expenses and loss of interest resulting from the
21 breach. The right of the drawee to recover damages under this
22 subsection is not affected by any failure of the drawee to exercise
23 ordinary care in making payment. If the drawee accepts the draft,
24 breach of warranty is a defense to the obligation of the acceptor. If
25 the acceptor makes payment with respect to the draft, the acceptor is
26 entitled to recover from any warrantor for breach of warranty the
27 amounts stated in this subsection.

28 (c) If a drawee asserts a claim for breach of warranty under
29 subsection (a) based on an unauthorized indorsement of the draft or an
30 alteration of the draft, the warrantor may defend by proving that the
31 indorsement is effective under RCW 62A.3-404 or 62A.3-405 or the drawer
32 is precluded under RCW 62A.3-406 or 62A.4-406 from asserting against
33 the drawee the unauthorized indorsement or alteration.

34 (d) If (i) a dishonored draft is presented for payment to the
35 drawer or an indorser or (ii) any other instrument is presented for
36 payment to a party obliged to pay the instrument, and (iii) payment is
37 received, the following rules apply:

38 (1) The person obtaining payment and a prior transferor of the
39 instrument warrant to the person making payment in good faith that the

1 warrantor is, or was, at the time the warrantor transferred the
2 instrument, a person entitled to enforce the instrument or authorized
3 to obtain payment on behalf of a person entitled to enforce the
4 instrument.

5 (2) The person making payment may recover from any warrantor for
6 breach of warranty an amount equal to the amount paid plus expenses and
7 loss of interest resulting from the breach.

8 (e) The warranties stated in subsections (a) and (d) cannot be
9 disclaimed with respect to checks. Unless notice of a claim for breach
10 of warranty is given to the warrantor within 30 days after the claimant
11 has reason to know of the breach and the identity of the warrantor, the
12 liability of the warrantor under subsection (b) or (d) is discharged to
13 the extent of any loss caused by the delay in giving notice of the
14 claim.

15 (f) A cause of action for breach of warranty under this section
16 accrues when the claimant has reason to know of the breach.

17 **Sec. 58.** RCW 62A.3-418 and 1965 ex.s. c 157 s 3-418 are each
18 amended to read as follows:

19 ~~((FINALITY OF PAYMENT OR ACCEPTANCE. Except for recovery of bank~~
20 ~~payments as provided in the Article on Bank Deposits and Collections~~
21 ~~(Article 4) and except for liability for breach of warranty on~~
22 ~~presentment under the preceding section, payment or acceptance of any~~
23 ~~instrument is final in favor of a holder in due course, or a person who~~
24 ~~has in good faith changed his position in reliance on the payment.))~~

25 PAYMENT OR ACCEPTANCE BY MISTAKE. (a) Except as provided in
26 subsection (c), if the drawee of a draft pays or accepts the draft and
27 the drawee acted on the mistaken belief that (i) payment of the draft
28 had not been stopped pursuant to RCW 62A.4-403 or (ii) the signature of
29 the drawer of the draft was authorized, the drawee may recover the
30 amount of the draft from the person to whom or for whose benefit
31 payment was made or, in the case of acceptance, may revoke the
32 acceptance. Rights of the drawee under this subsection are not
33 affected by failure of the drawee to exercise ordinary care in paying
34 or accepting the draft.

35 (b) Except as provided in subsection (c), if an instrument has been
36 paid or accepted by mistake and the case is not covered by subsection
37 (a), the person paying or accepting may, to the extent permitted by the
38 law governing mistake and restitution, (i) recover the payment from the

1 person to whom or for whose benefit payment was made or (ii) in the
2 case of acceptance, may revoke the acceptance.

3 (c) The remedies provided by subsection (a) or (b) may not be
4 asserted against a person who took the instrument in good faith and for
5 value or who in good faith changed position in reliance on the payment
6 or acceptance. This subsection does not limit remedies provided by RCW
7 62A.3-417 or 62A.4-407.

8 (d) Notwithstanding RCW 62A.4-213, if an instrument is paid or
9 accepted by mistake and the payor or acceptor recovers payment or
10 revokes acceptance under subsection (a) or (b), the instrument is
11 deemed not to have been paid or accepted and is treated as dishonored,
12 and the person from whom payment is recovered has rights as a person
13 entitled to enforce the dishonored instrument.

14 **Sec. 59.** RCW 62A.3-419 and 1965 ex.s. c 157 s 3-419 are each
15 amended to read as follows:

16 ~~((CONVERSION OF INSTRUMENT; INNOCENT REPRESENTATIVE. (1) An~~
17 ~~instrument is converted when~~

18 ~~(a) a drawee to whom it is delivered for acceptance refuses to~~
19 ~~return it on demand; or~~

20 ~~(b) any person to whom it is delivered for payment refuses on~~
21 ~~demand either to pay or to return it; or~~

22 ~~(c) it is paid on a forged indorsement.~~

23 ~~(2) In an action against a drawee under subsection (1) the measure~~
24 ~~of the drawee's liability is the face amount of the instrument. In any~~
25 ~~other action under subsection (1) the measure of liability is presumed~~
26 ~~to be the face amount of the instrument.~~

27 ~~(3) Subject to the provisions of this Title concerning restrictive~~
28 ~~indorsements a representative, including a depositary or collecting~~
29 ~~bank, who has in good faith and in accordance with the reasonable~~
30 ~~commercial standards applicable to the business of such representative~~
31 ~~dealt with an instrument or its proceeds on behalf of one who was not~~
32 ~~the true owner is not liable in conversion or otherwise to the true~~
33 ~~owner beyond the amount of any proceeds remaining in his hands.~~

34 ~~(4) An intermediary bank or payor bank which is not a depositary~~
35 ~~bank is not liable in conversion solely by reason of the fact that~~
36 ~~proceeds of an item indorsed restrictively (RCW 62A.3-205 and RCW~~
37 ~~62A.3-206) are not paid or applied consistently with the restrictive~~
38 ~~indorsement of an indorser other than its immediate transferor.))~~

1 INSTRUMENTS SIGNED FOR ACCOMMODATION. (a) If an instrument is
2 issued for value given for the benefit of a party to the instrument
3 ("accommodated party") and another party to the instrument
4 ("accommodation party") signs the instrument for the purpose of
5 incurring liability on the instrument without being a direct
6 beneficiary of the value given for the instrument, the instrument is
7 signed by the accommodation party "for accommodation."

8 (b) An accommodation party may sign the instrument as maker,
9 drawer, acceptor, or indorser and, subject to subsection (d), is
10 obliged to pay the instrument in the capacity in which the
11 accommodation party signs. The obligation of an accommodation party
12 may be enforced notwithstanding any statute of frauds and whether or
13 not the accommodation party receives consideration for the
14 accommodation.

15 (c) A person signing an instrument is presumed to be an
16 accommodation party and there is notice that the instrument is signed
17 for accommodation if the signature is an anomalous indorsement or is
18 accompanied by words indicating that the signer is acting as surety or
19 guarantor with respect to the obligation of another party to the
20 instrument. Except as provided in RCW 62A.3-605, the obligation of an
21 accommodation party to pay the instrument is not affected by the fact
22 that the person enforcing the obligation had notice when the instrument
23 was taken by that person that the accommodation party signed the
24 instrument for accommodation.

25 (d) If the signature of a party to an instrument is accompanied by
26 words indicating unambiguously that the party is guaranteeing
27 collection rather than payment of the obligation of another party to
28 the instrument, the signer is obliged to pay the amount due on the
29 instrument to a person entitled to enforce the instrument only if (i)
30 execution of judgment against the other party has been returned
31 unsatisfied, (ii) the other party is insolvent or in an insolvency
32 proceeding, (iii) the other party cannot be served with process, or
33 (iv) it is otherwise apparent that payment cannot be obtained from the
34 other party.

35 (e) An accommodation party who pays the instrument is entitled to
36 reimbursement from the accommodated party and is entitled to enforce
37 the instrument against the accommodated party. An accommodated party
38 who pays the instrument has no right of recourse against, and is not
39 entitled to contribution from, an accommodation party.

1 payment is necessary, but failure to make presentment discharges such
2 drawer, acceptor or maker only as stated in RCW 62A.3-502(1)(b).

3 (2) ~~Unless excused (RCW 62A.3-511)~~

4 (a) ~~notice of any dishonor is necessary to charge any indorser;~~

5 (b) ~~in the case of any drawer, the acceptor of a draft payable at
6 a bank or the maker of a note payable at a bank, notice of any dishonor
7 is necessary, but failure to give such notice discharges such drawer,
8 acceptor or maker only as stated in RCW 62A.3-502(1)(b).~~

9 (3) ~~Unless excused (RCW 62A.3-511) protest of any dishonor is
10 necessary to charge the drawer and indorsers of any draft which on its
11 face appears to be drawn or payable outside of the states and
12 territories of the United States and the District of Columbia. The
13 holder may at his option make protest of any dishonor of any other
14 instrument and in the case of a foreign draft may on insolvency of the
15 acceptor before maturity make protest for better security.~~

16 (4) ~~Notwithstanding any provision of this section, neither
17 presentment nor notice of dishonor nor protest is necessary to charge
18 an indorser who has indorsed an instrument after maturity.)~~

19 PRESENTMENT. (a) "Presentment" means a demand made by or on behalf
20 of a person entitled to enforce an instrument (i) to pay the instrument
21 made to the drawee or a party obliged to pay the instrument or, in the
22 case of a note or accepted draft payable at a bank, to the bank, or
23 (ii) to accept a draft made to the drawee.

24 (b) The following rules are subject to Article 4, agreement of the
25 parties, and clearinghouse rules and the like:

26 (1) Presentment may be made at the place of payment of the
27 instrument and must be made at the place of payment if the instrument
28 is payable at a bank in the United States; may be made by any
29 commercially reasonable means, including an oral, written, or
30 electronic communication; is effective when the demand for payment or
31 acceptance is received by the person to whom presentment is made; and
32 is effective if made to any one of two or more makers, acceptors,
33 drawees, or other payors.

34 (2) Upon demand of the person to whom presentment is made, the
35 person making presentment must (i) exhibit the instrument, (ii) give
36 reasonable identification and, if presentment is made on behalf of
37 another person, reasonable evidence of authority to do so, and (iii)
38 sign a receipt on the instrument for any payment made or surrender the
39 instrument if full payment is made.

1 (3) Without dishonoring the instrument, the party to whom
2 presentment is made may (i) return the instrument for lack of a
3 necessary indorsement, or (ii) refuse payment or acceptance for failure
4 of the presentment to comply with the terms of the instrument, an
5 agreement of the parties, or other applicable law or rule.

6 (4) The party to whom presentment is made may treat presentment as
7 occurring on the next business day after the day of presentment if the
8 party to whom presentment is made has established a cut-off hour not
9 earlier than 2:00 p.m. for the receipt and processing of instruments
10 presented for payment or acceptance and presentment is made after the
11 cut-off hour.

12 **Sec. 62.** RCW 62A.3-502 and 1965 ex.s. c 157 s 3-502 are each
13 amended to read as follows:

14 ~~((UNEXCUSED DELAY; DISCHARGE. — (1) Where without excuse any~~
15 ~~necessary presentment or notice of dishonor is delayed beyond the time~~
16 ~~when it is due~~

17 ~~(a) any indorser is discharged; and~~

18 ~~(b) any drawer or the acceptor of a draft payable at a bank or the~~
19 ~~maker of a note payable at a bank who because the drawee or payor bank~~
20 ~~becomes insolvent during the delay is deprived of funds maintained with~~
21 ~~the drawee or payor bank to cover the instrument may discharge his~~
22 ~~liability by written assignment to the holder of his rights against the~~
23 ~~drawee or payor bank in respect of such funds, but such drawer,~~
24 ~~acceptor or maker is not otherwise discharged.~~

25 ~~(2) Where without excuse a necessary protest is delayed beyond the~~
26 ~~time when it is due any drawer or indorser is discharged.))~~

27 DISHONOR. (a) Dishonor of a note is governed by the following
28 rules:

29 (1) If the note is payable on demand, the note is dishonored if
30 presentment is duly made to the maker and the note is not paid on the
31 day of presentment.

32 (2) If the note is not payable on demand and is payable at or
33 through a bank or the terms of the note require presentment, the note
34 is dishonored if presentment is duly made and the note is not paid on
35 the day it becomes payable or the day of presentment, whichever is
36 later.

1 (3) If the note is not payable on demand and subsection (a)(2) does
2 not apply, the note is dishonored if it is not paid on the day it
3 becomes payable.

4 (b) Dishonor of an unaccepted draft other than a documentary draft
5 is governed by the following rules:

6 (1) If a check is duly presented for payment to the payor bank
7 otherwise than for immediate payment over the counter, the check is
8 dishonored if the payor bank makes timely return of the check or sends
9 timely notice of dishonor or nonpayment under RCW 62A.4-301 or
10 62A.4-302, or becomes accountable for the amount of the check under RCW
11 62A.4-302.

12 (2) If a draft is payable on demand and subsection (b)(1) does not
13 apply, the draft is dishonored if presentment for payment is duly made
14 to the drawee and the draft is not paid on the day of presentment.

15 (3) If a draft is payable on a date stated in the draft, the draft
16 is dishonored if (i) presentment for payment is duly made to the drawee
17 and payment is not made on the day the draft becomes payable or the day
18 of presentment, whichever is later, or (ii) presentment for acceptance
19 is duly made before the day the draft becomes payable and the draft is
20 not accepted on the day of presentment.

21 (4) If a draft is payable on elapse of a period of time after sight
22 or acceptance, the draft is dishonored if presentment for acceptance is
23 duly made and the draft is not accepted on the day of presentment.

24 (c) Dishonor of an unaccepted documentary draft occurs according to
25 the rules stated in subsection (b) (2), (3), and (4), except that
26 payment or acceptance may be delayed without dishonor until no later
27 than the close of the third business day of the drawee following the
28 day on which payment or acceptance is required by subsection (b) (2),
29 (3), and (4).

30 (d) Dishonor of an accepted draft is governed by the following
31 rules:

32 (1) If the draft is payable on demand, the draft is dishonored if
33 presentment for payment is duly made to the acceptor and the draft is
34 not paid on the day of presentment; or

35 (2) If the draft is not payable on demand, the draft is dishonored
36 if presentment for payment is duly made to the acceptor and payment is
37 not made on the day it becomes payable or the day of presentment,
38 whichever is later.

1 (e) In any case in which presentment is otherwise required for
2 dishonor under this section and presentment is excused under RCW
3 62A.3-504, dishonor occurs without presentment if the instrument is not
4 duly accepted or paid.

5 (f) If a draft is dishonored because timely acceptance of the draft
6 was not made and the person entitled to demand acceptance consents to
7 a late acceptance, from the time of acceptance the draft is treated as
8 never having been dishonored.

9 **Sec. 63.** RCW 62A.3-503 and 1965 ex.s. c 157 s 3-503 are each
10 amended to read as follows:

11 ~~((TIME OF PRESENTMENT.—(1) Unless a different time is expressed in~~
12 ~~the instrument the time for any presentment is determined as follows:~~

13 ~~(a) where an instrument is payable at or a fixed period after a~~
14 ~~stated date any presentment for acceptance must be made on or before~~
15 ~~the date it is payable;~~

16 ~~(b) where an instrument is payable after sight it must either be~~
17 ~~presented for acceptance or negotiated within a reasonable time after~~
18 ~~date or issue whichever is later;~~

19 ~~(c) where an instrument shows the date on which it is payable~~
20 ~~presentment for payment is due on that date;~~

21 ~~(d) where an instrument is accelerated presentment for payment is~~
22 ~~due within a reasonable time after the acceleration;~~

23 ~~(e) with respect to the liability of any secondary party~~
24 ~~presentment for acceptance or payment of any other instrument is due~~
25 ~~within a reasonable time after such party becomes liable thereon.~~

26 ~~(2) A reasonable time for presentment is determined by the nature~~
27 ~~of the instrument, any usage of banking or trade and the facts of the~~
28 ~~particular case.— In the case of an uncertified check which is drawn~~
29 ~~and payable within the United States and which is not a draft drawn by~~
30 ~~a bank the following are presumed to be reasonable periods within which~~
31 ~~to present for payment or to initiate bank collection:~~

32 ~~(a) with respect to the liability of the drawer, thirty days after~~
33 ~~date or issue whichever is later; and~~

34 ~~(b) with respect to the liability of an endorser, seven days after~~
35 ~~his indorsement.~~

36 ~~(3) Where any presentment is due on a day which is not a full~~
37 ~~business day for either the person making presentment or the party to~~

1 pay or accept, presentment is due on the next following day which is a
2 full business day for both parties.

3 ~~(4) Presentment to be sufficient must be made at a reasonable hour,
4 and if at a bank during its banking day.)~~

5 NOTICE OF DISHONOR. (a) The obligation of an indorser stated in
6 RCW 62A.3-415(a) and the obligation of a drawer stated in RCW
7 62A.3-414(d) may not be enforced unless (i) the indorser or drawer is
8 given notice of dishonor of the instrument complying with this section
9 or (ii) notice of dishonor is excused under RCW 62A.3-504(b).

10 (b) Notice of dishonor may be given by any person; may be given by
11 any commercially reasonable means, including an oral, written, or
12 electronic communication; and is sufficient if it reasonably identifies
13 the instrument and indicates that the instrument has been dishonored or
14 has not been paid or accepted. Return of an instrument given to a bank
15 for collection is sufficient notice of dishonor.

16 (c) Subject to RCW 62A.3-504(c), with respect to an instrument
17 taken for collection by a collecting bank, notice of dishonor must be
18 given (i) by the bank before midnight of the next banking day following
19 the banking day on which the bank receives notice of dishonor of the
20 instrument, or (ii) by any other person within 30 days following the
21 day on which the person receives notice of dishonor. With respect to
22 any other instrument, notice of dishonor must be given within 30 days
23 following the day on which dishonor occurs.

24 **Sec. 64.** RCW 62A.3-504 and 1965 ex.s. c 157 s 3-504 are each
25 amended to read as follows:

26 ~~((HOW PRESENTMENT MADE. (1) Presentment is a demand for acceptance
27 or payment made upon the maker, acceptor, drawee or other payor by or
28 on behalf of the holder.~~

29 ~~(2) Presentment may be made~~

30 ~~(a) by mail, in which event the time of presentment is determined
31 by the time of receipt of the mail; or~~

32 ~~(b) through a clearing house; or~~

33 ~~(c) at the place of acceptance or payment specified in the
34 instrument or if there be none at the place of business or residence of
35 the party to accept or pay. If neither the party to accept or pay nor
36 anyone authorized to act for him is present or accessible at such place
37 presentment is excused.~~

38 ~~(3) It may be made~~

1 ~~(a) to any one of two or more makers, acceptors, drawees or other~~
2 ~~payors; or~~

3 ~~(b) to any person who has authority to make or refuse the~~
4 ~~acceptance or payment.~~

5 ~~(4) A draft accepted or a note made payable at a bank in the United~~
6 ~~States must be presented at such bank.~~

7 ~~(5) In the cases described in RCW 62A.4-210 presentment may be made~~
8 ~~in the manner and with the result stated in that section.))~~

9 EXCUSED PRESENTMENT AND NOTICE OF DISHONOR. (a) Presentment for
10 payment or acceptance of an instrument is excused if (i) the person
11 entitled to present the instrument cannot with reasonable diligence
12 make presentment, (ii) the maker or acceptor has repudiated an
13 obligation to pay the instrument or is dead or in insolvency
14 proceedings, (iii) by the terms of the instrument presentment is not
15 necessary to enforce the obligation of indorsers or the drawer, (iv)
16 the drawer or indorser whose obligation is being enforced has waived
17 presentment or otherwise has no reason to expect or right to require
18 that the instrument be paid or accepted, or (v) the drawer instructed
19 the drawee not to pay or accept the draft or the drawee was not
20 obligated to the drawer to pay the draft.

21 (b) Notice of dishonor is excused if (i) by the terms of the
22 instrument notice of dishonor is not necessary to enforce the
23 obligation of a party to pay the instrument, or (ii) the party whose
24 obligation is being enforced waived notice of dishonor. A waiver of
25 presentment is also a waiver of notice of dishonor.

26 (c) Delay in giving notice of dishonor is excused if the delay was
27 caused by circumstances beyond the control of the person giving the
28 notice and the person giving the notice exercised reasonable diligence
29 after the cause of the delay ceased to operate.

30 **Sec. 65.** RCW 62A.3-505 and 1965 ex.s. c 157 s 3-505 are each
31 amended to read as follows:

32 ~~((RIGHTS OF PARTY TO WHOM PRESENTMENT IS MADE.—(1) The party to~~
33 ~~whom presentment is made may without dishonor require~~

34 ~~(a) exhibition of the instrument; and~~

35 ~~(b) reasonable identification of the person making presentment and~~
36 ~~evidence of his authority to make it if made for another; and~~

1 ~~(c) that the instrument be produced for acceptance or payment at a~~
2 ~~place specified in it, or if there be none at any place reasonable in~~
3 ~~the circumstances; and~~

4 ~~(d) a signed receipt on the instrument for any partial or full~~
5 ~~payment and its surrender upon full payment.~~

6 ~~(2) Failure to comply with any such requirement invalidates the~~
7 ~~presentment but the person presenting has a reasonable time in which to~~
8 ~~comply and the time for acceptance or payment runs from the time of~~
9 ~~compliance.)~~

10 EVIDENCE OF DISHONOR. (a) The following are admissible as evidence
11 and create a presumption of dishonor and of any notice of dishonor
12 stated:

13 (1) A document regular in form as provided in subsection (b) that
14 purports to be a protest;

15 (2) A purported stamp or writing of the drawee, payor bank, or
16 presenting bank on or accompanying the instrument stating that
17 acceptance or payment has been refused unless reasons for the refusal
18 are stated and the reasons are not consistent with dishonor;

19 (3) A book or record of the drawee, payor bank, or collecting bank,
20 kept in the usual course of business which shows dishonor, even if
21 there is no evidence of who made the entry.

22 (b) A protest is a certificate of dishonor made by a United States
23 consul or vice-consul, or a notary public or other person authorized to
24 administer oaths by the law of the place where dishonor occurs. It may
25 be made upon information satisfactory to that person. The protest must
26 identify the instrument and certify either that presentment has been
27 made or, if not made, the reason why it was not made, and that the
28 instrument has been dishonored by nonacceptance or nonpayment. The
29 protest may also certify that notice of dishonor has been given to some
30 or all parties.

31 **Sec. 66.** RCW 62A.3-512 and 1990 c 203 s 2 are each amended to read
32 as follows:

33 ~~((No))~~ A person may not record the number of a credit card given as
34 identification under RCW ~~((62A.3-505(1)(b))~~ 62A.3-501(a)(2) or given
35 as proof of credit worthiness when payment for goods or services is
36 made by check or draft. Nothing in this section prohibits the
37 recording of the number of a credit card given in lieu of a deposit to

1 secure payment in the event of a default, loss, damage, or other
2 occurrence.

3 **Sec. 67.** RCW 62A.3-515 and 1991 c 168 s 1 are each amended to read
4 as follows:

5 ~~((1) Whenever))~~ (a) If a check as defined in RCW 62A.3-104 ~~((has
6 been))~~ is dishonored by nonacceptance or nonpayment, the payee or
7 holder of the check is entitled to collect a reasonable handling fee
8 for each ~~((such))~~ instrument. ~~((When such))~~ If the check ~~((has))~~ is
9 not ~~((been))~~ paid within fifteen days and after the holder of ~~((such))~~
10 the check sends ~~((such))~~ a notice of dishonor as provided by RCW
11 62A.3-520 to the drawer at ~~((his or her))~~ the drawer's last known
12 address, ~~((then))~~ and if the instrument does not provide for the
13 payment of interest, or collection costs and attorneys fees, the drawer
14 of ~~((such))~~ the instrument ~~((shall also be))~~ is liable for payment of
15 interest at the rate of twelve percent per annum from the date of
16 dishonor, and cost of collection not to exceed forty dollars or the
17 face amount of the check, whichever is ~~((the lesser))~~ less. In
18 addition, in the event of court action on the check, the court, after
19 ~~((such))~~ notice and the expiration of ~~((said))~~ the fifteen days, shall
20 award a reasonable attorneys fee, and three times the face amount of
21 the check or three hundred dollars, whichever is less, as part of the
22 damages payable to the holder of the check. This section ~~((shall))~~
23 does not apply to ~~((any))~~ an instrument ~~((which has been))~~ that is
24 dishonored by reason of ~~((any))~~ a justifiable stop payment order.

25 ~~((2)(a))~~ (b)(1) Subsequent to the commencement of ~~((the))~~ an
26 action on the check (subsection (a)) but prior to the hearing, the
27 defendant may tender to the plaintiff as satisfaction of the claim, an
28 amount of money equal to the ~~((sum of the))~~ face amount of the check,
29 a reasonable handling fee, accrued interest, collection costs equal to
30 the face amount of the check not to exceed forty dollars, and the
31 incurred court and service costs.

32 ~~((b))~~ (2) Nothing in this section precludes the right to commence
33 action in ~~((any))~~ a court under chapter 12.40 RCW for small claims.

34 **Sec. 68.** RCW 62A.3-520 and 1991 c 168 s 2 are each amended to read
35 as follows:

1 The notice of dishonor shall be sent by mail to the drawer at ((his
2 or her)) the drawer's last known address, and ((said)) the notice shall
3 be substantially in the following form:

4 NOTICE OF DISHONOR OF CHECK

5 A check drawn by you and made payable by you to in the
6 amount of has not been accepted for payment by,
7 which is the drawee bank designated on your check. This check is dated
8, and it is numbered, No.

9 You are CAUTIONED that unless you pay the amount of this check
10 within fifteen days after the date this letter is postmarked, you may
11 very well have to pay the following additional amounts:

12 (1) Costs of collecting the amount of the check, including an
13 attorney's fee which will be set by the court;

14 (2) Interest on the amount of the check which shall accrue at the
15 rate of twelve percent per annum from the date of dishonor; and

16 (3) Three hundred dollars or three times the face amount of the
17 check, whichever is less, by award of the court.

18 You are also CAUTIONED that law enforcement agencies may be
19 provided with a copy of this notice of dishonor and the check drawn by
20 you for the possibility of proceeding with criminal charges if you do
21 not pay the amount of this check within fifteen days after the date
22 this letter is postmarked.

23 You are advised to make your payment to at the following
24 address:

25 **Sec. 69.** RCW 62A.3-522 and 1981 c 254 s 3 are each amended to read
26 as follows:

27 In addition to sending a notice of dishonor to the drawer of the
28 check under RCW 62A.3-520, the holder of the check shall execute an
29 affidavit certifying service of the notice by mail. The affidavit of
30 service by mail ((shall)) must be attached to a copy of the notice of
31 dishonor and ((shall)) must be substantially in the following form:

32 AFFIDAVIT OF SERVICE BY MAIL

33 I,, hereby certify that on the day of
34, 19.., a copy of the foregoing Notice was served on

1 by mailing via the United States Postal Service, postage
2 prepaid, at, Washington.

3 Dated:
4 (Signature)

5 The holder shall retain the affidavit (~~shall be retained~~) with
6 the check but shall file a copy of the affidavit (~~shall be filed~~)
7 with the clerk of the court in which an action on the check is
8 commenced.

9 **Sec. 70.** RCW 62A.3-525 and 1981 c 254 s 4 are each amended to read
10 as follows:

11 No interest, collection costs, and attorneys' fees, except handling
12 fees, (~~shall be recovered~~) are recoverable on any dishonored check
13 under the provisions of RCW 62A.3-515 where the holder of (~~such~~) the
14 check or any agent, employee, or assign of the holder has demanded:

15 (1) Interest or collection costs in excess of that provided by RCW
16 62A.3-515; or

17 (2) Interest or collection costs prior to the expiration of fifteen
18 days after the mailing of notice of dishonor, as provided by RCW 62A.3-
19 515 and 62A.3-520; or

20 (3) Attorneys' fees either without having (~~such~~) the fees set by
21 the court, or prior to the expiration of fifteen days after the mailing
22 of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520.

23 PART 6
24 DISCHARGE AND PAYMENT

25 **Sec. 71.** RCW 62A.3-601 and 1965 ex.s. c 157 s 3-601 are each
26 amended to read as follows:

27 (~~DISCHARGE OF PARTIES.—(1) The extent of the discharge of any~~
28 ~~party from liability on an instrument is governed by the sections on~~

29 ~~(a) payment or satisfaction (RCW 62A.3-603); or~~

30 ~~(b) tender of payment (RCW 62A.3-604); or~~

31 ~~(c) cancellation or renunciation (RCW 62A.3-605); or~~

32 ~~(d) impairment of right of recourse or of collateral (RCW 62A.3-~~
33 ~~606); or~~

34 ~~(e) reacquisition of the instrument by a prior party (RCW 62A.3-~~
35 ~~208); or~~

1 ~~(f) fraudulent and material alteration (RCW 62A.3-407); or~~
2 ~~(g) certification of a check (RCW 62A.3-411); or~~
3 ~~(h) acceptance varying a draft (RCW 62A.3-412); or~~
4 ~~(i) unexcused delay in presentment or notice of dishonor or protest~~
5 ~~(RCW 62A.3-502).~~

6 ~~(2) Any party is also discharged from his liability on an~~
7 ~~instrument to another party by any other act or agreement with such~~
8 ~~party which would discharge his simple contract for the payment of~~
9 ~~money.~~

10 ~~(3) The liability of all parties is discharged when any party who~~
11 ~~has himself no right of action or recourse on the instrument~~

12 ~~(a) reacquires the instrument in his own right; or~~

13 ~~(b) is discharged under any provision of this Article, except as~~
14 ~~otherwise provided with respect to discharge for impairment of recourse~~
15 ~~or of collateral (RCW 62A.3-606).))~~

16 DISCHARGE AND EFFECT OF DISCHARGE. (a) The obligation of a party
17 to pay the instrument is discharged as stated in this Article or by an
18 act or agreement with the party which would discharge an obligation to
19 pay money under a simple contract.

20 (b) Discharge of the obligation of a party is not effective against
21 a person acquiring rights of a holder in due course of the instrument
22 without notice of the discharge.

23 **Sec. 72.** RCW 62A.3-602 and 1965 ex.s. c 157 s 3-602 are each
24 amended to read as follows:

25 ~~((EFFECT OF DISCHARGE AGAINST HOLDER IN DUE COURSE. No discharge~~
26 ~~of any party provided by this Article is effective against a subsequent~~
27 ~~holder in due course unless he has notice thereof when he takes the~~
28 ~~instrument.))~~

29 PAYMENT. (a) Subject to subsection (b), an instrument is paid to
30 the extent payment is made (i) by or on behalf of a party obliged to
31 pay the instrument, and (ii) to a person entitled to enforce the
32 instrument. To the extent of the payment, the obligation of the party
33 obliged to pay the instrument is discharged even though payment is made
34 with knowledge of a claim to the instrument under RCW 62A.3-306 by
35 another person.

36 (b) The obligation of a party to pay the instrument is not
37 discharged under subsection (a) if:

1 (1) A claim to the instrument under RCW 62A.3-306 is enforceable
2 against the party receiving payment and (i) payment is made with
3 knowledge by the payor that payment is prohibited by injunction or
4 similar process of a court of competent jurisdiction, or (ii) in the
5 case of an instrument other than a cashier's check, teller's check, or
6 certified check, the party making payment accepted, from the person
7 having a claim to the instrument, indemnity against loss resulting from
8 refusal to pay the person entitled to enforce the instrument; or

9 (2) The person making payment knows that the instrument is a stolen
10 instrument and pays a person it knows is in wrongful possession of the
11 instrument.

12 **Sec. 73.** RCW 62A.3-603 and 1965 ex.s. c 157 s 3-603 are each
13 amended to read as follows:

14 ~~((PAYMENT OR SATISFACTION.—(1) The liability of any party is~~
15 ~~discharged to the extent of his payment or satisfaction to the holder~~
16 ~~even though it is made with knowledge of a claim of another person to~~
17 ~~the instrument unless prior to such payment or satisfaction the person~~
18 ~~making the claim either supplies indemnity deemed adequate by the party~~
19 ~~seeking the discharge or enjoins payment or satisfaction by order of a~~
20 ~~court of competent jurisdiction in an action in which the adverse~~
21 ~~claimant and the holder are parties.— This subsection does not,~~
22 ~~however, result in the discharge of the liability~~

23 ~~(a) of a party who in bad faith pays or satisfies a holder who~~
24 ~~acquired the instrument by theft or who (unless having the rights of a~~
25 ~~holder in due course) holds through one who so acquired it; or~~

26 ~~(b) of a party (other than an intermediary bank or a payor bank~~
27 ~~which is not a depositary bank) who pays or satisfies the holder of an~~
28 ~~instrument which has been restrictively indorsed in a manner not~~
29 ~~consistent with the terms of such restrictive indorsement.~~

30 ~~(2) Payment or satisfaction may be made with the consent of the~~
31 ~~holder by any person including a stranger to the instrument. Surrender~~
32 ~~of the instrument to such a person gives him the rights of a transferee~~
33 ~~(RCW 62A.3-201).))~~

34 TENDER OF PAYMENT. (a) If tender of payment of an obligation to
35 pay an instrument is made to a person entitled to enforce the
36 instrument, the effect of tender is governed by principles of law
37 applicable to tender of payment under a simple contract.

1 (b) If tender of payment of an obligation to pay an instrument is
2 made to a person entitled to enforce the instrument and the tender is
3 refused, there is discharge, to the extent of the amount of the tender,
4 of the obligation of an indorser or accommodation party having a right
5 of recourse with respect to the obligation to which the tender relates.

6 (c) If tender of payment of an amount due on an instrument is made
7 to a person entitled to enforce the instrument, the obligation of the
8 obligor to pay interest after the due date on the amount tendered is
9 discharged. If presentment is required with respect to an instrument
10 and the obligor is able and ready to pay on the due date at every place
11 of payment stated in the instrument, the obligor is deemed to have made
12 tender of payment on the due date to the person entitled to enforce the
13 instrument.

14 **Sec. 74.** RCW 62A.3-604 and 1965 ex.s. c 157 s 3-604 are each
15 amended to read as follows:

16 ~~((TENDER OF PAYMENT.—(1) Any party making tender of full payment~~
17 ~~to a holder when or after it is due is discharged to the extent of all~~
18 ~~subsequent liability for interest, costs and attorney's fees.~~

19 ~~(2) The holder's refusal of such tender wholly discharges any party~~
20 ~~who has a right of recourse against the party making the tender.~~

21 ~~(3) Where the maker or acceptor of an instrument payable otherwise~~
22 ~~than on demand is able and ready to pay at every place of payment~~
23 ~~specified in the instrument when it is due, it is equivalent to~~
24 ~~tender.))~~

25 DISCHARGE BY CANCELLATION OR RENUNCIATION. (a) A person entitled
26 to enforce an instrument, with or without consideration, may discharge
27 the obligation of a party to pay the instrument (i) by an intentional
28 voluntary act, such as surrender of the instrument to the party,
29 destruction, mutilation, or cancellation of the instrument,
30 cancellation or striking out of the party's signature, or the addition
31 of words to the instrument indicating discharge, or (ii) by agreeing
32 not to sue or otherwise renouncing rights against the party by a signed
33 writing.

34 (b) Cancellation or striking out of an indorsement pursuant to
35 subsection (a) does not affect the status and rights of a party derived
36 from the indorsement.

1 **Sec. 75.** RCW 62A.3-605 and 1965 ex.s. c 157 s 3-605 are each
2 amended to read as follows:

3 (~~CANCELLATION AND RENUNCIATION.—(1) The holder of an instrument~~
4 ~~may even without consideration discharge any party~~

5 ~~(a) in any manner apparent on the face of the instrument or the~~
6 ~~indorsement, as by intentionally cancelling the instrument or the~~
7 ~~party's signature by destruction or mutilation, or by striking out the~~
8 ~~party's signature; or~~

9 ~~(b) by renouncing his rights by a writing signed and delivered or~~
10 ~~by surrender of the instrument to the party to be discharged.~~

11 ~~(2) Neither cancellation nor renunciation without surrender of the~~
12 ~~instrument affects the title thereto.)~~

13 DISCHARGE OF INDORSERS AND ACCOMMODATION PARTIES. (a) In this
14 section, the term "indorser" includes a drawer having the obligation
15 described in RCW 62A.3-414(d).

16 (b) Discharge, under RCW 62A.3-604, of the obligation of a party to
17 pay an instrument does not discharge the obligation of an indorser or
18 accommodation party having a right of recourse against the discharged
19 party.

20 (c) If a person entitled to enforce an instrument agrees, with or
21 without consideration, to an extension of the due date of the
22 obligation of a party to pay the instrument, the extension discharges
23 an indorser or accommodation party having a right of recourse against
24 the party whose obligation is extended to the extent the indorser or
25 accommodation party proves that the extension caused loss to the
26 indorser or accommodation party with respect to the right of recourse.

27 (d) If a person entitled to enforce an instrument agrees, with or
28 without consideration, to a material modification of the obligation of
29 a party other than an extension of the due date, the modification
30 discharges the obligation of an indorser or accommodation party having
31 a right of recourse against the person whose obligation is modified to
32 the extent the modification causes loss to the indorser or
33 accommodation party with respect to the right of recourse. The loss
34 suffered by the indorser or accommodation party as a result of the
35 modification is equal to the amount of the right of recourse unless the
36 person enforcing the instrument proves that no loss was caused by the
37 modification or that the loss caused by the modification was an amount
38 less than the amount of the right of recourse.

1 (e) If the obligation of a party to pay an instrument is secured by
2 an interest in collateral and a person entitled to enforce the
3 instrument impairs the value of the interest in collateral, the
4 obligation of an indorser or accommodation party having a right of
5 recourse against the obligor is discharged to the extent of the
6 impairment. The value of an interest in collateral is impaired to the
7 extent (i) the value of the interest is reduced to an amount less than
8 the amount of the right of recourse of the party asserting discharge,
9 or (ii) the reduction in value of the interest causes an increase in
10 the amount by which the amount of the right of recourse exceeds the
11 value of the interest. The burden of proving impairment is on the
12 party asserting discharge.

13 (f) If the obligation of a party is secured by an interest in
14 collateral not provided by an accommodation party and a person entitled
15 to enforce the instrument impairs the value of the interest in
16 collateral, the obligation of any party who is jointly and severally
17 liable with respect to the secured obligation is discharged to the
18 extent the impairment causes the party asserting discharge to pay more
19 than that party would have been obliged to pay, taking into account
20 rights of contribution, if impairment had not occurred. If the party
21 asserting discharge is an accommodation party not entitled to discharge
22 under subsection (e), the party is deemed to have a right to
23 contribution based on joint and several liability rather than a right
24 to reimbursement. The burden of proving impairment is on the party
25 asserting discharge.

26 (g) Under subsection (e) or (f), impairing value of an interest in
27 collateral includes (i) failure to obtain or maintain perfection or
28 recordation of the interest in collateral, (ii) release of collateral
29 without substitution of collateral of equal value, (iii) failure to
30 perform a duty to preserve the value of collateral owed, under Article
31 9 or other law, to a debtor or surety or other person secondarily
32 liable, or (iv) failure to comply with applicable law in disposing of
33 collateral.

34 (h) An accommodation party is not discharged under subsection (c),
35 (d), or (e) unless the person entitled to enforce the instrument knows
36 of the accommodation or has notice under RCW 62A.3-419(c) that the
37 instrument was signed for accommodation.

38 (i) A party is not discharged under this section if (i) the party
39 asserting discharge consents to the event or conduct that is the basis

1 of the discharge, or (ii) the instrument or a separate agreement of the
2 party provides for waiver of discharge under this section either
3 specifically or by general language indicating that parties waive
4 defenses based on suretyship or impairment of collateral.

5 NEW SECTION. **Sec. 76.** The following acts or parts of acts are
6 each repealed:

- 7 (1) RCW 62A.3-120 and 1965 ex.s. c 157 s 3-120;
- 8 (2) RCW 62A.3-121 and 1965 ex.s. c 157 s 3-121;
- 9 (3) RCW 62A.3-122 and 1965 ex.s. c 157 s 3-122;
- 10 (4) RCW 62A.3-208 and 1965 ex.s. c 157 s 3-208;
- 11 (5) RCW 62A.3-506 and 1965 ex.s. c 157 s 3-506;
- 12 (6) RCW 62A.3-507 and 1965 ex.s. c 157 s 3-507;
- 13 (7) RCW 62A.3-508 and 1965 ex.s. c 157 s 3-508;
- 14 (8) RCW 62A.3-509 and 1965 ex.s. c 157 s 3-509;
- 15 (9) RCW 62A.3-510 and 1965 ex.s. c 157 s 3-510;
- 16 (10) RCW 62A.3-511 and 1965 ex.s. c 157 s 3-511;
- 17 (11) RCW 62A.3-606 and 1965 ex.s. c 157 s 3-606;
- 18 (12) RCW 62A.3-701 and 1965 ex.s. c 157 s 3-701;
- 19 (13) RCW 62A.3-801 and 1965 ex.s. c 157 s 3-801;
- 20 (14) RCW 62A.3-802 and 1965 ex.s. c 157 s 3-802;
- 21 (15) RCW 62A.3-803 and 1965 ex.s. c 157 s 3-803;
- 22 (16) RCW 62A.3-804 and 1965 ex.s. c 157 s 3-804; and
- 23 (17) RCW 62A.3-805 and 1965 ex.s. c 157 s 3-805.

24 ARTICLE 4

25 BANK DEPOSITS AND COLLECTIONS

26 PART 1

27 GENERAL PROVISIONS AND DEFINITIONS

28 **Sec. 77.** RCW 62A.4-101 and 1965 ex.s. c 157 s 4-101 are each
29 amended to read as follows:

30 SHORT TITLE. This Article (~~(shall be known and)~~) may be cited as
31 Uniform Commercial Code--Bank Deposits and Collections.

32 **Sec. 78.** RCW 62A.4-102 and 1965 ex.s. c 157 s 4-102 are each
33 amended to read as follows:

34 APPLICABILITY. (~~(+1)~~) (a) To the extent that items within this
35 Article are also within (~~(the scope of)~~) Articles 3 and 8, they are

1 subject to ~~((the provisions of))~~ those Articles. ~~((In the event of))~~
2 If there is conflict ~~((the provisions of))~~, this Article governs
3 ~~((those of))~~ Article 3, but ~~((the provisions of))~~ Article 8 governs
4 ~~((those of))~~ this Article.

5 ~~((+2))~~ (b) The liability of a bank for action or non-action with
6 respect to ~~((any))~~ an item handled by it for purposes of presentment,
7 payment, or collection is governed by the law of the place where the
8 bank is located. In the case of action or non-action by or at a branch
9 or separate office of a bank, its liability is governed by the law of
10 the place where the branch or separate office is located.

11 **Sec. 79.** RCW 62A.4-103 and 1965 ex.s. c 157 s 4-103 are each
12 amended to read as follows:

13 VARIATION BY AGREEMENT; MEASURE OF DAMAGES; ~~((CERTAIN))~~ ACTION
14 CONSTITUTING ORDINARY CARE. ~~((+1))~~ (a) The effect of the provisions
15 of this Article may be varied by agreement ~~((except that no agreement~~
16 ~~can))~~, but the parties to the agreement cannot disclaim a bank's
17 responsibility for its ~~((own))~~ lack of good faith or failure to
18 exercise ordinary care or ~~((can))~~ limit the measure of damages for
19 ~~((such))~~ the lack or failure~~((; but))~~. However, the parties may
20 determine by agreement ~~((determine))~~ the standards by which ~~((such))~~
21 the bank's responsibility is to be measured if ~~((such))~~ those standards
22 are not manifestly unreasonable.

23 ~~((+2))~~ (b) Federal Reserve regulations and operating ~~((letters))~~
24 circulars, clearing-house rules, and the like~~((;))~~ have the effect of
25 agreements under subsection ~~((+1))~~ (a), whether or not specifically
26 assented to by all parties interested in items handled.

27 ~~((+3))~~ (c) Action or non-action approved by this Article or
28 pursuant to Federal Reserve regulations or operating ~~((letters~~
29 ~~constitutes))~~ circulars is the exercise of ordinary care and, in the
30 absence of special instructions, action or non-action consistent with
31 clearing-house rules and the like or with a general banking usage not
32 disapproved by this Article, is prima facie ~~((constitutes))~~ the
33 exercise of ordinary care.

34 ~~((+4))~~ (d) The specification or approval of certain procedures by
35 this Article ~~((does))~~ is not ~~((constitute))~~ disapproval of other
36 procedures ~~((which))~~ that may be reasonable under the circumstances.

37 ~~((+5))~~ (e) The measure of damages for failure to exercise ordinary
38 care in handling an item is the amount of the item reduced by an amount

1 (~~which~~) that could not have been realized by the (~~use~~) exercise of
2 ordinary care(~~, and where~~). If there is also bad faith it includes
3 any other damages(~~, if any, suffered by~~) the party suffered as a
4 proximate consequence.

5 **Sec. 80.** RCW 62A.4-104 and 1981 c 122 s 1 are each amended to read
6 as follows:

7 DEFINITIONS AND INDEX OF DEFINITIONS. (~~(+1)~~) (a) In this Article,
8 unless the context otherwise requires:

9 (~~(+a)~~) (1) "Account" means any deposit or credit account with a
10 bank (~~and includes~~), including a (~~checking~~) demand, time,
11 (~~interest or~~) savings, passbook, share draft, or like account, other
12 than an account evidenced by a certificate of deposit;

13 (~~(+b)~~) (2) "Afternoon" means the period of a day between noon and
14 midnight;

15 (~~(+c)~~) (3) "Banking day" means (~~that~~) the part of (~~any~~) a day
16 on which a bank is open to the public for carrying on substantially all
17 of its banking functions, except that it shall not include a Saturday,
18 Sunday, or legal holiday;

19 (~~(+d)~~) (4) "Clearing house" means (~~any~~) an association of banks
20 or other payors regularly clearing items;

21 (~~(+e)~~) (5) "Customer" means (~~any~~) a person having an account
22 with a bank or for whom a bank has agreed to collect items (~~and~~
23 ~~includes~~), including a bank (~~carrying~~) that maintains an account
24 (~~with~~) at another bank;

25 (~~(+f)~~) (6) "Documentary draft" means (~~any negotiable or non-~~
26 ~~negotiable draft with accompanying documents, securities or other~~
27 ~~papers to be delivered against honor of the draft~~) a draft to be
28 presented for acceptance or payment if specified documents,
29 certificated securities (RCW 62A.8-102) or instructions for
30 uncertificated securities (RCW 62A.8-308), or other certificates,
31 statements, or the like are to be received by the drawee or other payor
32 before acceptance or payment of the draft;

33 (7) "Draft" means a draft as defined in RCW 62A.3-104 or an item,
34 other than an instrument, that is an order;

35 (8) "Drawee" means a person ordered in a draft to make payment;

36 (~~(+g)~~) (9) "Item" means (~~any~~) an instrument (~~for the~~) or a
37 promise or order to pay money handled by a bank for collection or
38 payment (~~of money even though it is not negotiable but does not~~

1 ~~include money~~)). The term does not include a payment order governed by
2 Article 4A or a credit or debit card slip;

3 ~~((h))~~ (10) "Midnight deadline" with respect to a bank is midnight
4 on its next banking day following the banking day on which it receives
5 the relevant item or notice or from which the time for taking action
6 commences to run, whichever is later;

7 ~~((i) "Properly payable" includes the availability of funds for~~
8 ~~payment at the time of decision to pay or dishonor;~~

9 ~~(j))~~ (11) "Settle" means to pay in cash, by clearing-house
10 settlement, in a charge or credit or by remittance, or otherwise as
11 ~~(instructed)~~ agreed. A settlement may be either provisional or
12 final;

13 ~~((k))~~ (12) "Suspends payments" with respect to a bank means that
14 it has been closed by order of the supervisory authorities, that a
15 public officer has been appointed to take it over or that it ceases or
16 refuses to make payments in the ordinary course of business.

17 ~~((2))~~ (b) Other definitions applying to this Article and the
18 sections in which they appear are:

19 "Agreement for electronic presentment" section 86 of this act.

20 "Bank" RCW 62A.4-105.

21 "Collecting bank" RCW 62A.4-105.

22 "Depository bank" RCW 62A.4-105.

23 "Intermediary bank" RCW 62A.4-105.

24 "Payor bank" RCW 62A.4-105.

25 "Presenting bank" RCW 62A.4-105.

26 ~~(("Remitting bank" RCW 62A.4-105.))~~

27 "Presentment notice" section 86 of this act.

28 ~~((3))~~ (c) The following definitions in other Articles apply to
29 this Article:

30 "Acceptance" RCW ~~((62A.3-410))~~ 62A.3-409.

31 "Alteration" RCW 62A.3-407.

32 "Cashier's check" RCW 62A.3-104.

33 "Certificate of deposit" RCW 62A.3-104.

34 ~~(("Certification" RCW 62A.3-411.))~~

35 "Certified check" RCW 62A.3-409.

36 "Check" RCW 62A.3-104.

37 "Draft" RCW 62A.3-104.

38 "Good faith" RCW 62A.3-103.

39 "Holder in due course" RCW 62A.3-302.

1 "Instrument" RCW 62A.3-104.
2 "Notice of dishonor" RCW ((62A.3-508)) 62A.3-503.
3 "Order" RCW 62A.3-103.
4 "Ordinary care" RCW 62A.3-103.
5 "Person entitled to enforce" RCW 62A.3-301.
6 "Presentment" RCW ((62A.3-504)) 62A.3-501.
7 "Promise" RCW 62A.3-103.
8 ~~((("Protest" RCW 62A.3-509.))~~
9 "Prove" RCW 62A.3-103.
10 ~~((("Secondary party" RCW 62A.3-102.))~~
11 "Teller's check" RCW 62A.3-104.
12 "Unauthorized signature" RCW 62A.3-403.
13 ~~((4)) (d) In addition Article 1 contains general definitions and
14 principles of construction and interpretation applicable throughout
15 this Article.~~

16 **Sec. 81.** RCW 62A.4-105 and 1965 ex.s. c 157 s 4-105 are each
17 amended to read as follows:

18 "BANK"; "DEPOSITARY BANK"; "PAYOR BANK"; "INTERMEDIARY BANK";
19 "COLLECTING BANK"; ((("PAYOR BANK";)) "PRESENTING BANK"((("REMITTING
20 BANK"))). In this Article ((unless the context otherwise requires)):

21 ~~((a)) (1) "Bank" means a person engaged in the business of~~
22 banking, including a savings bank, savings and loan association, credit
23 union, or trust company;

24 (2) "Depositary bank" means the first bank to ~~((which))~~ take an
25 item ((is transferred for collection)) even though it is also the payor
26 bank, unless the item is presented for immediate payment over the
27 counter;

28 ~~((b)) (3) "Payor bank" means a bank ((by which an item)) that is~~
29 ~~((payable as drawn or accepted))~~ the drawee of a draft;

30 ~~((c)) (4) "Intermediary bank" means ((any)) a bank to which an~~
31 item is transferred in course of collection except the depositary or
32 payor bank;

33 ~~((d)) (5) "Collecting bank" means ((any)) a bank handling the~~
34 item for collection except the payor bank;

35 ~~((e)) (6) "Presenting bank" means ((any)) a bank presenting an~~
36 item except a payor bank((;

37 ~~(f) "Remitting bank" means any payor or intermediary bank remitting~~
38 for an item)).

1 **Sec. 82.** RCW 62A.4-106 and 1965 ex.s. c 157 s 4-106 are each
2 amended to read as follows:

3 (~~SEPARATE OFFICE OF A BANK. A branch or separate office of a bank~~
4 ~~is a separate bank for the purpose of computing the time within which~~
5 ~~and determining the place at or to which action may be taken or notices~~
6 ~~or orders shall be given under this Article and under Article 3.))~~
7 PAYABLE THROUGH OR PAYABLE AT BANK; COLLECTING BANK. (a) If an item
8 states that it is "payable through" a bank identified in the item, (i)
9 the item designates the bank as a collecting bank and does not by
10 itself authorize the bank to pay the item, and (ii) the item may be
11 presented for payment only by or through the bank.

12 (b) If an item states that it is "payable at" a bank identified in
13 the item, (i) the item designates the bank as a collecting bank and
14 does not by itself authorize the bank to pay the item, and (ii) the
15 item may be presented for payment only by or through the bank.

16 (c) If a draft names a nonbank drawee and it is unclear whether a
17 bank named in the draft is a codrawee or a collecting bank, the bank is
18 a collecting bank.

19 **Sec. 83.** RCW 62A.4-107 and 1965 ex.s. c 157 s 4-107 are each
20 amended to read as follows:

21 (~~TIME OF RECEIPT OF ITEMS. (1) For the purpose of allowing time~~
22 ~~to process items, prove balances, and make the necessary entries on its~~
23 ~~books to determine its position for the day, a bank may fix an~~
24 ~~afternoon hour of two P.M. or later as a cut-off hour for the handling~~
25 ~~of money and items and the making of entries on its books.~~

26 (2) Any item or deposit of money received on any day after a cut-
27 off hour so fixed or after the close of the banking day may be treated
28 as being received at the opening of the next banking day.)) SEPARATE
29 OFFICE OF A BANK. A branch or separate office of a bank is a separate
30 bank for the purpose of computing the time within which and determining
31 the place at or to which action may be taken or notices or orders must
32 be given under this Article and under Article 3.

33 **Sec. 84.** RCW 62A.4-108 and 1965 ex.s. c 157 s 4-108 are each
34 amended to read as follows:

35 (~~DELAYS. (1) Unless otherwise instructed, a collecting bank in a~~
36 ~~good faith effort to secure payment may, in the case of specific items~~
37 ~~and with or without the approval of any person involved, waive, modify~~

1 or extend time limits imposed or permitted by this Title for a period
2 not in excess of an additional banking day without discharge of
3 secondary parties and without liability to its transferor or any prior
4 party.

5 (2) Delay by a collecting bank or payor bank beyond time limits
6 prescribed or permitted by this Title or by instructions is excused if
7 caused by interruption of communication facilities, suspension of
8 payments by another bank, war, emergency conditions or other
9 circumstances beyond the control of the bank provided it exercises such
10 diligence as the circumstances require.)) TIME OF RECEIPT OF ITEMS.

11 (a) For the purpose of allowing time to process items, prove balances,
12 and make the necessary entries on its books to determine its position
13 for the day, a bank may fix an afternoon hour of two P.M. or later as
14 a cut-off hour for the handling of money and items and the making of
15 entries on its books.

16 (b) An item or deposit of money received on any day after a cut-off
17 hour so fixed or after the close of the banking day may be treated as
18 being received at the opening of the next banking day.

19 **Sec. 85.** RCW 62A.4-109 and 1965 ex.s. c 157 s 4-109 are each
20 amended to read as follows:

21 ((The "process of posting" means the usual procedure followed by a
22 payor bank in determining to pay an item and in recording the payment
23 including one or more of the following or other steps as determined by
24 the bank:

- 25 (a) verification of any signature;
- 26 (b) ascertaining that sufficient funds are available;
- 27 (c) affixing a "paid" or other stamp;
- 28 (d) entering a charge or entry to a customer's account;
- 29 (e) correcting or reversing an entry or erroneous action with

30 respect to the item.)) DELAYS. (a) Unless otherwise instructed, a
31 collecting bank in a good faith effort to secure payment of a specific
32 item drawn on a payor other than a bank, and with or without the
33 approval of any person involved, may waive, modify, or extend time
34 limits imposed or permitted by this Title for a period not exceeding
35 two additional banking days without discharge of drawers or indorsers
36 or liability to its transferor or a prior party.

37 (b) Delay by a collecting bank or payor bank beyond time limits
38 prescribed or permitted by this Title or by instructions is excused if

1 (i) the delay is caused by interruption of communication or computer
2 facilities, suspension of payments by another bank, war, emergency
3 conditions, failure of equipment, or other circumstances beyond the
4 control of the bank, and (ii) the bank exercises such diligence as the
5 circumstances require.

6 NEW SECTION. Sec. 86. A new section is added to Title 62A RCW, to
7 be codified as RCW 62A.4-110, to read as follows:

8 ELECTRONIC PRESENTMENT. (a) "Agreement for electronic presentment"
9 means an agreement, clearing-house rule, or Federal Reserve regulation
10 or operating circular, providing that presentment of an item may be
11 made by transmission of an image of an item or information describing
12 the item ("presentment notice") rather than delivery of the item
13 itself. The agreement may provide for procedures governing retention,
14 presentment, payment, dishonor, and other matters concerning items
15 subject to the agreement.

16 (b) Presentment of an item pursuant to an agreement for presentment
17 is made when the presentment notice is received.

18 (c) If presentment is made by presentment notice, a reference to
19 "item" or "check" in this Article means the presentment notice unless
20 the context otherwise indicates.

21 NEW SECTION. Sec. 87. A new section is added to Title 62A RCW, to
22 be codified as RCW 62A.4-111, to read as follows:

23 STATUTE OF LIMITATIONS. An action to enforce an obligation, duty,
24 or right arising under this Article must be commenced within three
25 years after the cause of action accrues.

26 PART 2

27 COLLECTION OF ITEMS:

28 DEPOSITORY AND COLLECTING BANKS

29 **Sec. 88.** RCW 62A.4-201 and 1965 ex.s. c 157 s 4-201 are each
30 amended to read as follows:

31 (~~(PRESUMPTION AND DURATION OF AGENCY)~~) STATUS OF COLLECTING
32 BANK(S) AS AGENT AND PROVISIONAL STATUS OF CREDITS; APPLICABILITY OF
33 ARTICLE; ITEM INDORSED "PAY ANY BANK". (~~(+1)~~) (a) Unless a contrary
34 intent clearly appears and (~~(prior to)~~) before the time that a
35 settlement given by a collecting bank for an item is or becomes final

1 (~~(subsection (3) of RCW 62A.4-211 and RCW 62A.4-212 and RCW 62A.4-~~
2 ~~213))~~, the bank, with respect to the item, is an agent or sub-agent of
3 the owner of the item and any settlement given for the item is
4 provisional. This provision applies regardless of the form of
5 indorsement or lack of indorsement and even though credit given for the
6 item is subject to immediate withdrawal as of right or is in fact
7 withdrawn; but the continuance of ownership of an item by its owner and
8 any rights of the owner to proceeds of the item are subject to rights
9 of a collecting bank such as those resulting from outstanding advances
10 on the item and ~~((valid))~~ rights of recoupment or setoff. ~~((When))~~ If
11 an item is handled by banks for purposes of presentment, payment
12 ~~((and))~~, collection, or return, the relevant provisions of this Article
13 apply even though action of the parties clearly establishes that a
14 particular bank has purchased the item and is the owner of it.

15 ~~((2))~~ (b) After an item has been indorsed with the words "pay any
16 bank" or the like, only a bank may acquire the rights of a holder until
17 the item has been:

18 ~~((a) until the item has been))~~ (1) Returned to the customer
19 initiating collection; or

20 ~~((b) until the item has been))~~ (2) Specially indorsed by a bank to
21 a person who is not a bank.

22 **Sec. 89.** RCW 62A.4-202 and 1965 ex.s. c 157 s 4-202 are each
23 amended to read as follows:

24 RESPONSIBILITY FOR COLLECTION OR RETURN; WHEN ACTION ~~((SEASONABLE))~~
25 TIMELY. ~~((1))~~ (a) A collecting bank must ~~((use))~~ exercise ordinary
26 care in:

27 ~~((a))~~ (1) Presenting an item or sending it for presentment; ~~((and~~
28 ~~(b))~~ (2) Sending notice of dishonor or non-payment or returning an
29 item other than a documentary draft to the bank's transferor ~~((or~~
30 ~~directly to the depository bank under subsection (2) of RCW 62A.4-212))~~
31 after learning that the item has not been paid or accepted, as the case
32 may be; ~~((and~~

33 ~~(c))~~ (3) Settling for an item when the bank receives final
34 settlement; and

35 ~~((d) making or providing for any necessary protest; and~~
36 ~~(e))~~ (4) Notifying its transferor of any loss or delay in transit
37 within a reasonable time after discovery thereof.

1 ~~((2))~~ A collecting bank taking proper action before its midnight
2 deadline following receipt of an item, notice or payment acts
3 seasonably; taking proper action within a reasonably longer time may be
4 seasonable but the bank has the burden of so establishing.) (b) A
5 collecting bank exercises ordinary care under subsection (a) by taking
6 proper action before its midnight deadline following receipt of an
7 item, notice, or settlement. Taking proper action within a reasonably
8 longer time may constitute the exercise of ordinary care, but the bank
9 has the burden of establishing timeliness.

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

14 **Sec. 90.** RCW 62A.4-203 and 1965 ex.s. c 157 s 4-203 are each
15 amended to read as follows:

16 EFFECT OF INSTRUCTIONS. Subject to ~~((the provisions of))~~ Article
17 3 concerning conversion of instruments ~~((RCW 62A.3-419))~~ (RCW 62A.3-
18 420 (section 60 of this act)) and ~~((the provisions of both Article 3~~
19 ~~and this Article concerning))~~ restrictive indorsements (RCW 62A.3-206),
20 only a collecting bank's transferor can give instructions ~~((which))~~
21 that affect the bank or constitute notice to it, and a collecting bank
22 is not liable to prior parties for any action taken pursuant to
23 ~~((such))~~ the instructions or in accordance with any agreement with its
24 transferor.

25 **Sec. 91.** RCW 62A.4-204 and 1965 ex.s. c 157 s 4-204 are each
26 amended to read as follows:

27 METHODS OF SENDING AND PRESENTING; SENDING ~~((DIRECT))~~ DIRECTLY TO
28 PAYOR BANK. ~~((1))~~ (a) A collecting bank ~~((must))~~ shall send items by
29 a reasonably prompt method, taking into consideration ~~((any))~~ relevant
30 instructions, the nature of the item, the number of ~~((such))~~ those
31 items on hand, ~~((and))~~ the cost of collection involved, and the method
32 generally used by it or others to present ~~((such))~~ those items.

33 ~~((2))~~ (b) A collecting bank may send:

34 ~~((a) any))~~ (1) An item ~~((direct))~~ directly to the payor bank;

35 ~~((b) any))~~ (2) An item to ~~((any))~~ a non-bank payor if authorized
36 by its transferor; and

1 ~~((c) any))~~ (3) An item other than documentary drafts to ((any)) a
2 non-bank payor, if authorized by Federal Reserve regulation or
3 operating ((letter)) circular, clearing-house rule, or the like.

4 ~~((3))~~ (c) Presentment may be made by a presenting bank at a place
5 where the payor bank or other payor has requested that presentment be
6 made.

7 **Sec. 92.** RCW 62A.4-205 and 1965 ex.s. c 157 s 4-205 are each
8 amended to read as follows:

9 ~~((SUPPLYING MISSING INDORSEMENT; NO NOTICE FROM PRIOR~~
10 ~~INDORSEMENT.))~~ DEPOSITARY BANK HOLDER OF UNINDORSED ITEM.

11 If a customer delivers an item to a depositary bank for collection:

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

19 ~~(2) An intermediary bank, or payor bank which is not a depositary~~
20 ~~bank, is neither given notice nor otherwise affected by a restrictive~~
21 ~~indorsement of any person except the bank's immediate transferor.))~~ (a)
22 The depositary bank becomes a holder of the item at the time it
23 receives the item for collection if the customer at the time of
24 delivery was a holder of the item, whether or not the customer indorses
25 the item, and, if the bank satisfies the other requirements of RCW
26 62A.3-302, it is a holder in due course; and

27 (b) The depositary bank warrants to collecting banks, the payor
28 bank or other payor, and the drawer that the amount of the item was
29 paid to the customer or deposited to the customer's account.

30 **Sec. 93.** RCW 62A.4-206 and 1965 ex.s. c 157 s 4-206 are each
31 amended to read as follows:

32 TRANSFER BETWEEN BANKS. Any agreed method ~~((which))~~ that
33 identifies the transferor bank is sufficient for the item's further
34 transfer to another bank.

35 **Sec. 94.** RCW 62A.4-207 and 1965 ex.s. c 157 s 4-207 are each
36 amended to read as follows:

1 ~~TRANSFER WARRANTIES ((OF CUSTOMER AND COLLECTING BANK ON TRANSFER~~
2 ~~OR PRESENTMENT OF ITEMS; TIME FOR CLAIMS.—(1) Each customer or~~
3 ~~collecting bank who obtains payment or acceptance of an item and each~~
4 ~~prior customer and collecting bank warrants to the payor bank or other~~
5 ~~payor who in good faith pays or accepts the item that~~
6 ~~(a) he has a good title to the item or is authorized to obtain~~
7 ~~payment or acceptance on behalf of one who has a good title; and~~
8 ~~(b) he has no knowledge that the signature of the maker or drawer~~
9 ~~is unauthorized, except that this warranty is not given by any customer~~
10 ~~or collecting bank that is a holder in due course and acts in good~~
11 ~~faith~~
12 ~~(i) to a maker with respect to the maker's own signature; or~~
13 ~~(ii) to a drawer with respect to the drawer's own signature,~~
14 ~~whether or not the drawer is also the drawee; or~~
15 ~~(iii) to an acceptor of an item if the holder in due course took~~
16 ~~the item after the acceptance or obtained the acceptance without~~
17 ~~knowledge that the drawer's signature was unauthorized; and~~
18 ~~(c) the item has not been materially altered, except that this~~
19 ~~warranty is not given by any customer or collecting bank that is a~~
20 ~~holder in due course and acts in good faith~~
21 ~~(i) to the maker of a note; or~~
22 ~~(ii) to the drawer of a draft whether or not the drawer is also the~~
23 ~~drawee; or~~
24 ~~(iii) to the acceptor of an item with respect to an alteration made~~
25 ~~prior to the acceptance if the holder in due course took the item after~~
26 ~~the acceptance, even though the acceptance provided "payable as~~
27 ~~originally drawn" or equivalent terms; or~~
28 ~~(iv) to the acceptor of an item with respect to an alteration made~~
29 ~~after the acceptance.~~
30 ~~(2) Each customer and collecting bank who transfers an item and~~
31 ~~receives a settlement or other consideration for it warrants to his~~
32 ~~transferee and to any subsequent collecting bank who takes the item in~~
33 ~~good faith that~~
34 ~~(a) he has a good title to the item or is authorized to obtain~~
35 ~~payment or acceptance on behalf of one who has a good title and the~~
36 ~~transfer is otherwise rightful; and~~
37 ~~(b) all signatures are genuine or authorized; and~~
38 ~~(c) the item has not been materially altered; and~~
39 ~~(d) no defense of any party is good against him; and~~

1 ~~(e) he has no knowledge of any insolvency proceeding instituted~~
2 ~~with respect to the maker or acceptor or the drawer of an unaccepted~~
3 ~~item.~~

4 ~~In addition each customer and collecting bank so transferring an item~~
5 ~~and receiving a settlement or other consideration engages that upon~~
6 ~~dishonor and any necessary notice of dishonor and protest he will take~~
7 ~~up the item.~~

8 ~~(3) The warranties and the engagement to honor set forth in the two~~
9 ~~preceding subsections arise notwithstanding the absence of indorsement~~
10 ~~or words of guaranty or warranty in the transfer or presentment and a~~
11 ~~collecting bank remains liable for their breach despite remittance to~~
12 ~~its transferor. Damages for breach of such warranties or engagement to~~
13 ~~honor shall not exceed the consideration received by the customer or~~
14 ~~collecting bank responsible plus finance charges and expenses related~~
15 ~~to the item, if any.~~

16 ~~(4) Unless a claim for breach of warranty under this section is~~
17 ~~made within a reasonable time after the person claiming learns of the~~
18 ~~breach, the person liable is discharged to the extent of any loss~~
19 ~~caused by the delay in making claim)).~~ (a) A customer or collecting
20 bank that transfers an item and receives a settlement or other
21 consideration warrants to the transferee and to any subsequent
22 collecting bank that:

23 (1) The warrantor is a person entitled to enforce the item;

24 (2) All signatures on the item are authentic and authorized;

25 (3) The item has not been altered;

26 (4) The item is not subject to a defense or claim in recoupment
27 (RCW 62A.3-305(a)) of any party that can be asserted against the
28 warrantor; and

29 (5) The warrantor has no knowledge of any insolvency proceeding
30 commenced with respect to the maker or acceptor or, in the case of an
31 unaccepted draft, the drawer.

32 (b) If an item is dishonored, a customer or collecting bank
33 transferring the item and receiving settlement or other consideration
34 is obliged to pay the amount due on the item (i) according to the terms
35 of the item at the time it was transferred, or (ii) if the transfer was
36 of an incomplete item, according to its terms when completed as stated
37 in RCW 62A.3-115 and 62A.3-407. The obligation of a transferor is owed
38 to the transferee and to any subsequent collecting bank that takes the
39 item in good faith. A transferor cannot disclaim its obligation under

1 this subsection by an indorsement stating that it is made "without
2 recourse" or otherwise disclaiming liability.

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

8 (d) The warranties stated in subsection (a) cannot be disclaimed
9 with respect to checks. Unless notice of a claim for breach of
10 warranty is given to the warrantor within thirty days after the
11 claimant has reason to know of the breach and the identity of the
12 warrantor, the warrantor is discharged to the extent of any loss caused
13 by the delay in giving notice of the claim.

14 (e) A cause of action for breach of warranty under this section
15 accrues when the claimant has reason to know of the breach.

16 **Sec. 95.** RCW 62A.4-208 and 1965 ex.s. c 157 s 4-208 are each
17 amended to read as follows:

18 ~~((SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING~~
19 ~~DOCUMENTS AND PROCEEDS.—(1) A bank has a security interest in an item~~
20 ~~and any accompanying documents or the proceeds of either~~

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

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

27 ~~(c) if it makes an advance on or against the item.~~

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

33 ~~(3) Receipt by a collecting bank of a final settlement for an item~~
34 ~~is a realization on its security interest in the item, accompanying~~
35 ~~documents and proceeds. To the extent and so long as the bank does not~~
36 ~~receive final settlement for the item or give up possession of the item~~
37 ~~or accompanying documents for purposes other than collection, the~~

1 security interest continues and is subject to the provisions of Article
2 9 except that

3 (a) no security agreement is necessary to make the security
4 interest enforceable (subsection (1)(b) of RCW 62A.9-203); and

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

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

8 PRESENTMENT WARRANTIES. (a) If an unaccepted draft is presented to the
9 drawee for payment or acceptance and the drawee pays or accepts the
10 draft, (i) the person obtaining payment or acceptance, at the time of
11 presentment, and (ii) a previous transferor of the draft, at the time
12 of transfer, warrant to the drawee that pays or accepts the draft in
13 good faith that:

14 (1) The warrantor is, or was, at the time the warrantor transferred
15 the draft, a person entitled to enforce the draft or authorized to
16 obtain payment or acceptance of the draft on behalf of a person
17 entitled to enforce the draft;

18 (2) The draft has not been altered; and

19 (3) The warrantor has no knowledge that the signature of the
20 purported drawer of the draft is unauthorized.

21 (b) A drawee making payment may recover from a warrantor damages
22 for breach of warranty equal to the amount paid by the drawee less the
23 amount the drawee received or is entitled to receive from the drawer
24 because of the payment. In addition, the drawee is entitled to
25 compensation for expenses and loss of interest resulting from the
26 breach. The right of the drawee to recover damages under this
27 subsection is not affected by any failure of the drawee to exercise
28 ordinary care in making payment. If the drawee accepts the draft (i)
29 breach of warranty is a defense to the obligation of the acceptor, and
30 (ii) if the acceptor makes payment with respect to the draft, the
31 acceptor is entitled to recover from a warrantor for breach of warranty
32 the amounts stated in this subsection.

33 (c) If a drawee asserts a claim for breach of warranty under
34 subsection (a) based on an unauthorized indorsement of the draft or an
35 alteration of the draft, the warrantor may defend by proving that the
36 indorsement is effective under RCW 62A.3-404 or 62A.3-405 or the drawer
37 is precluded under RCW 62A.3-406 or 62A.4-406 from asserting against
38 the drawee the unauthorized indorsement or alteration.

1 (d) If (i) a dishonored draft is presented for payment to the
2 drawer or an indorser or (ii) any other item is presented for payment
3 to a party obliged to pay the item, and the item is paid, the person
4 obtaining payment and a prior transferor of the item warrant to the
5 person making payment in good faith that the warrantor is, or was, at
6 the time the warrantor transferred the item, a person entitled to
7 enforce the item or authorized to obtain payment on behalf of a person
8 entitled to enforce the item. The person making payment may recover
9 from any warrantor for breach of warranty an amount equal to the amount
10 paid plus expenses and loss of interest resulting from the breach.

11 (e) The warranties stated in subsections (a) and (d) cannot be
12 disclaimed with respect to checks. Unless notice of a claim for breach
13 of warranty is given to the warrantor within thirty days after the
14 claimant has reason to know of the breach and the identity of the
15 warrantor, the warrantor is discharged to the extent of any loss caused
16 by the delay in giving notice of the claim.

17 (f) A cause of action for breach of warranty under this section
18 accrues when the claimant has reason to know of the breach.

19 **Sec. 96.** RCW 62A.4-209 and 1965 ex.s. c 157 s 4-209 are each
20 amended to read as follows:

21 ~~((WHEN BANK GIVES VALUE FOR PURPOSES OF HOLDER IN DUE COURSE. For~~
22 ~~purposes of determining its status as a holder in due course, the bank~~
23 ~~has given value to the extent that it has a security interest in an~~
24 ~~item provided that the bank otherwise complies with the requirements of~~
25 ~~RCW 62A.3-302 on what constitutes a holder in due course.)) ENCODING~~

26 AND RETENTION WARRANTIES. (a) A person who encodes information on or
27 with respect to an item after issue warrants to any subsequent
28 collecting bank and to the payor bank or other payor that the
29 information is correctly encoded. If the customer of a depository bank
30 encodes, that bank also makes the warranty.

31 (b) A person who undertakes to retain an item pursuant to an
32 agreement for electronic presentment warrants to any subsequent
33 collecting bank and to the payor bank or other payor that retention and
34 presentment of the item comply with the agreement. If a customer of a
35 depository bank undertakes to retain an item, that bank also makes this
36 warranty.

37 (c) A person to whom warranties are made under this section and who
38 took the item in good faith may recover from the warrantor as damages

1 for breach of warranty an amount equal to the loss suffered as a result
2 of the breach, plus expenses and loss of interest incurred as a result
3 of the breach.

4 **Sec. 97.** RCW 62A.4-210 and 1965 ex.s. c 157 s 4-210 are each
5 amended to read as follows:

6 ~~((PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH OR AT A~~
7 ~~BANK; LIABILITY OF SECONDARY PARTIES.—(1) Unless otherwise instructed,~~
8 ~~a collecting bank may present an item not payable by, through or at a~~
9 ~~bank by sending to the party to accept or pay a written notice that the~~
10 ~~bank holds the item for acceptance or payment. The notice must be sent~~
11 ~~in time to be received on or before the day when presentment is due and~~
12 ~~the bank must meet any requirement of the party to accept or pay under~~
13 ~~RCW 62A.3-505 by the close of the bank's next banking day after it~~
14 ~~knows of the requirement.~~

15 ~~(2) Where presentment is made by notice and neither honor nor~~
16 ~~request for compliance with a requirement under RCW 62A.3-505 is~~
17 ~~received by the close of business on the day after maturity or in the~~
18 ~~case of demand items by the close of business on the third banking day~~
19 ~~after notice was sent, the presenting bank may treat the item as~~
20 ~~dishonored and charge any secondary party by sending him notice of the~~
21 ~~facts.))~~ SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING

22 DOCUMENTS AND PROCEEDS. (a) A collecting bank has a security interest
23 in an item and any accompanying documents or the proceeds of either:

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

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

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

30 (b) If credit given for several items received at one time or
31 pursuant to a single agreement is withdrawn or applied in part, the
32 security interest remains upon all the items, any accompanying
33 documents or the proceeds of either. For the purpose of this section,
34 credits first given are first withdrawn.

35 (c) Receipt by a collecting bank of a final settlement for an item
36 is a realization on its security interest in the item, accompanying
37 documents, and proceeds. So long as the bank does not receive final
38 settlement for the item or give up possession of the item or

1 accompanying documents for purposes other than collection, the security
2 interest continues to that extent and is subject to Article 9, but:

3 (1) No security agreement is necessary to make the security
4 interest enforceable (subsection (1) of RCW 62A.9-203);

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

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

8 **Sec. 98.** RCW 62A.4-211 and 1965 ex.s. c 157 s 4-211 are each
9 amended to read as follows:

10 ~~((MEDIA OF REMITTANCE; PROVISIONAL AND FINAL SETTLEMENT IN~~
11 ~~REMITTANCE CASES.—(1) A collecting bank may take in settlement of an~~
12 ~~item~~

13 ~~(a) a check of the remitting bank or of another bank on any bank~~
14 ~~except the remitting bank; or~~

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

18 ~~(c) appropriate authority to charge an account of the remitting~~
19 ~~bank or of another bank with the collecting bank; or~~

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

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

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

33 ~~(a) if the remittance instrument or authorization to charge is of~~
34 ~~a kind approved by subsection (1) or has not been authorized by the~~
35 ~~person receiving the settlement and in either case the person receiving~~
36 ~~the settlement acts seasonably before its midnight deadline in~~
37 ~~presenting, forwarding for collection or paying the instrument or~~

1 authorization, at the time the remittance instrument or authorization
2 is finally paid by the payor by which it is payable;

3 (b) if the person receiving the settlement has authorized
4 remittance by a non bank check or obligation or by a cashier's check or
5 similar primary obligation of or a check upon the payor or other
6 remitting bank which is not of a kind approved by subsection (1)(b),
7 at the time of the receipt of such remittance check or obligation; or

8 (c) if in a case not covered by sub paragraphs (a) or (b) the
9 person receiving the settlement fails to seasonably present, forward
10 for collection, pay or return a remittance instrument or authorization
11 to it to charge before its midnight deadline, at such midnight
12 deadline.)) WHEN BANK GIVES VALUE FOR PURPOSES OF HOLDER IN DUE COURSE.

13 For purposes of determining its status as a holder in due course, bank
14 has given value to the extent it has a security interest in an item, if
15 the bank otherwise complies with the requirements of RCW 62A.3-302 on
16 what constitutes a holder in due course.

17 **Sec. 99.** RCW 62A.4-212 and 1965 ex.s. c 157 s 4-212 are each
18 amended to read as follows:

19 ((RIGHT OF CHARGE BACK OR REFUND. (1) If a collecting bank has
20 made provisional settlement with its customer for an item and itself
21 fails by reason of dishonor, suspension of payments by a bank or
22 otherwise to receive a settlement for the item which is or becomes
23 final, the bank may revoke the settlement given by it, charge back the
24 amount of any credit given for the item to its customer's account or
25 obtain refund from its customer whether or not it is able to return the
26 items if by its midnight deadline or within a longer reasonable time
27 after it learns the facts it returns the item or sends notification of
28 the facts. These rights to revoke, charge back and obtain refund
29 terminate if and when a settlement for the item received by the bank is
30 or becomes final (subsection (3) of RCW 62A.4-211 and subsections (2)
31 and (3) of RCW 62A.4-213).

32 (2) Within the time and manner prescribed by this section and RCW
33 62A.4-301, an intermediary or payor bank, as the case may be, may
34 return an unpaid item directly to the depositary bank and may send for
35 collection a draft on the depositary bank and obtain reimbursement. In
36 such case, if the depositary bank has received provisional settlement
37 for the item, it must reimburse the bank drawing the draft and any

1 provisional credits for the item between banks shall become and remain
2 final.

3 (3) A depository bank which is also the payor may charge back the
4 amount of an item to its customer's account or obtain refund in
5 accordance with the section governing return of an item received by a
6 payor bank for credit on its books (RCW 62A.4-301)

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

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

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

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

13 (6) If credit is given in dollars as the equivalent of the value of
14 an item payable in a foreign currency the dollar amount of any charge-
15 back or refund shall be calculated on the basis of the buying sight
16 rate for the foreign currency prevailing on the day when the person
17 entitled to the charge back or refund learns that it will not receive
18 payment in ordinary course.)) PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE

19 BY, THROUGH, OR AT A BANK; LIABILITY OF DRAWER OR INDORSER. (a) Unless
20 otherwise instructed, a collecting bank may present an item not payable
21 by, through or at a bank by sending to the party to accept or pay a
22 written notice that the bank holds the item for acceptance or payment.
23 The notice must be sent in time to be received on or before the day
24 when presentment is due and the bank must meet any requirement of the
25 party to accept or pay under RCW 62A.3-501 by the close of the bank's
26 next banking day after it knows of the requirement.

27 (b) If presentment is made by notice and payment, acceptance, or
28 request for compliance with a requirement under RCW 62A.3-501 is not
29 received by the close of business on the day after maturity or, in the
30 case of demand items, by the close of business on the third banking day
31 after notice was sent, the presenting bank may treat the item as
32 dishonored and charge any drawer or indorser by sending it notice of
33 the facts.

34 **Sec. 100.** RCW 62A.4-213 and 1965 ex.s. c 157 s 4-213 are each
35 amended to read as follows:

36 ((FINAL PAYMENT OF ITEM BY PAYOR BANK; WHEN PROVISIONAL DEBITS AND
37 CREDITS BECOME FINAL; WHEN CERTAIN CREDITS BECOME AVAILABLE FOR

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

3 (a) paid the item in cash; or
4 (b) settled for the item without reserving a right to revoke the
5 settlement and without having such right under statute, clearing house
6 rule or agreement; or
7 (c) completed the process of posting the item to the indicated
8 account of the drawer, maker or other person to be charged therewith;
9 or
10 (d) made a provisional settlement for the item and failed to revoke
11 the settlement in the time and manner permitted by statute, clearing
12 house rule or agreement.

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

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

22 (3) If a collecting bank receives a settlement for an item which is
23 or becomes final (subsection (3) of RCW 62A.4 211, subsection (2) of
24 RCW 62A.4 213) the bank is accountable to its customer for the amount
25 of the item and any provisional credit given for the item in an account
26 with its customer becomes final.

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

30 (a) in any case where the bank has received a provisional
31 settlement for the item, when such settlement becomes final and the
32 bank has had a reasonable time to learn that the settlement is final;
33 (b) in any case where the bank is both a depository bank and a
34 payor bank and the item is finally paid, at the opening of the bank's
35 second banking day following receipt of the item.

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

1 deposit.)) MEDIUM AND TIME OF SETTLEMENT BY BANK. (a) With respect to
2 settlement by a bank, the medium and time of settlement may be
3 prescribed by Federal Reserve regulations or circulars, clearing-house
4 rules, and the like, or agreement. In the absence of such
5 prescription:

6 (1) The medium of settlement is cash or credit to an account in a
7 Federal Reserve bank of or specified by the person to receive
8 settlement; and

9 (2) The time of settlement, is:

10 (i) With respect to tender of settlement by cash, a cashier's
11 check, or teller's check, when the cash or check is sent or delivered;

12 (ii) With respect to tender of settlement by credit in an account
13 in a Federal Reserve bank, when the credit is made;

14 (iii) With respect to tender of settlement by a credit or debit to
15 an account in a bank, when the credit or debit is made or, in the case
16 of tender of settlement by authority to charge an account, when the
17 authority is sent or delivered; or

18 (iv) With respect to tender of settlement by a funds transfer, when
19 payment is made pursuant to RCW 62A.4A-406(1) to the person receiving
20 settlement.

21 (b) If the tender of settlement is not by a medium authorized by
22 subsection (a) or the time of settlement is not fixed by subsection
23 (a), no settlement occurs until the tender of settlement is accepted by
24 the person receiving settlement.

25 (c) If settlement for an item is made by cashier's check or
26 teller's check and the person receiving settlement, before its midnight
27 deadline:

28 (1) Presents or forwards the check for collection, settlement is
29 final when the check is finally paid; or

30 (2) Fails to present or forward the check for collection,
31 settlement is final at the midnight deadline of the person receiving
32 settlement.

33 (d) If settlement for an item is made by giving authority to charge
34 the account of the bank giving settlement in the bank receiving
35 settlement, settlement is final when the charge is made by the bank
36 receiving settlement if there are funds available in the account for
37 the amount of the item.

1 **Sec. 101.** RCW 62A.4-214 and 1965 ex.s. c 157 s 4-214 are each
2 amended to read as follows:

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

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

12 ~~(3) If a payor bank gives or a collecting bank gives or receives a~~
13 ~~provisional settlement for an item and thereafter suspends payments,~~
14 ~~the suspension does not prevent or interfere with the settlement~~
15 ~~becoming final if such finality occurs automatically upon the lapse of~~
16 ~~certain time or the happening of certain events (subsection (3) of RCW~~
17 ~~62A.4-211, subsections (1)(d), (2) and (3) of RCW 62A.4-213).~~

18 ~~(4) If a collecting bank receives from subsequent parties~~
19 ~~settlement for an item which settlement is or becomes final and~~
20 ~~suspends payments without making a settlement for the item with its~~
21 ~~customer which is or becomes final, the owner of the item has a~~
22 ~~preferred claim against such collecting bank.)~~) RIGHT OF CHARGE-BACK OR

23 REFUND; LIABILITY OF COLLECTING BANK; RETURN OF ITEM. (a) If a
24 collecting bank has made provisional settlement with its customer for
25 an item and fails by reason of dishonor, suspension of payments by a
26 bank, or otherwise to receive a settlement for the item which is or
27 becomes final, the bank may revoke the settlement given by it, charge
28 back the amount of any credit given for the item to its customer's
29 account, or obtain refund from its customer, whether or not it is able
30 to return the items, if by its midnight deadline or within a longer
31 reasonable time after it learns the facts it returns the item or sends
32 notification of the facts. If the return or notice is delayed beyond
33 the bank's midnight deadline or a longer reasonable time after it
34 learns the facts, the bank may revoke the settlement, charge back the
35 credit, or obtain refund from its customer, but it is liable for any
36 loss resulting from the delay. These rights to revoke, charge-back,
37 and obtain refund terminate if and when a settlement for the item
38 received by the bank is or becomes final.

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

3 (c) A depository bank that is also the payor may charge-back the
4 amount of an item to its customer's account or obtain refund in
5 accordance with the section governing return of an item received by a
6 payor bank for credit on its books (RCW 62A.4-301).

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

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

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

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

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

19 NEW SECTION. Sec. 102. A new section is added to Title 62A RCW,
20 to be codified as RCW 62A.4-215, to read as follows:

21 FINAL PAYMENT OF ITEM BY PAYOR BANK; WHEN PROVISIONAL DEBITS AND
22 CREDITS BECOME FINAL; WHEN CERTAIN CREDITS BECOME AVAILABLE FOR
23 WITHDRAWAL. (a) An item is finally paid by a payor bank when the bank
24 has first done any of the following:

25 (1) Paid the item in cash;

26 (2) Settled for the item without having a right to revoke the
27 settlement under statute, clearing-house rule, or agreement; or

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

31 (b) If provisional settlement for an item does not become final,
32 the item is not finally paid.

33 (c) If provisional settlement for an item between the presenting
34 and payor banks is made through a clearing house or by debits or
35 credits in an account between them, then to the extent that provisional
36 debits or credits for the item are entered in accounts between the
37 presenting and payor banks or between the presenting and successive

1 prior collecting banks seriatim, they become final upon final payment
2 of the item by the payor bank.

3 (d) If a collecting bank receives a settlement for an item which is
4 or becomes final, the bank is accountable to its customer for the
5 amount of the item and any provisional credit given for the item in an
6 account with its customer becomes final.

7 (e) Subject to (i) applicable law stating a time for availability
8 of funds and (ii) any right of the bank to apply the credit to an
9 obligation of the customer, credit given by a bank for an item in a
10 customer's account becomes available for withdrawal as of right:

11 (1) If the bank has received a provisional settlement for the item,
12 when the settlement becomes final and the bank has had a reasonable
13 time to receive return of the item and the item has not been received
14 within that time;

15 (2) If the bank is both the depository bank and the payor bank, and
16 the item is finally paid, at the opening of the bank's second banking
17 day following receipt of the item.

18 (f) Subject to applicable law stating a time for availability of
19 funds and any right of a bank to apply a deposit to an obligation of
20 the depositor, a deposit of money becomes available for withdrawal as
21 of right at the opening of the bank's next banking day after receipt of
22 the deposit.

23 NEW SECTION. **Sec. 103.** A new section is added to Title 62A RCW,
24 to be codified as RCW 62A.4-216, to read as follows:

25 **INSOLVENCY AND PREFERENCE.** (a) If an item is in or comes into the
26 possession of a payor or collecting bank that suspends payment and the
27 item has not been finally paid, the item must be returned by the
28 receiver, trustee, or agent in charge of the closed bank to the
29 presenting bank or the closed bank's customer.

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

34 (c) If a payor bank gives or a collecting bank gives or receives a
35 provisional settlement for an item and thereafter suspends payments,
36 the suspension does not prevent or interfere with the settlement's
37 becoming final if the finality occurs automatically upon the lapse of
38 certain time or the happening of certain events.

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

6 PART 3

7 COLLECTION OF ITEMS: PAYOR BANKS

8 **Sec. 104.** RCW 62A.4-301 and 1965 ex.s. c 157 s 4-301 are each
9 amended to read as follows:

10 DEFERRED POSTING; RECOVERY OF PAYMENT BY RETURN OF ITEMS; TIME OF
11 DISHONOR; RETURN OF ITEMS BY PAYOR BANK. (~~((1) Where an authorized~~
12 ~~settlement)) (a) If a payor bank settles for a demand item (other than~~
13 ~~a documentary draft) ((received by a payor bank)) presented otherwise~~
14 ~~than for immediate payment over the counter ((has been made)) before~~
15 ~~midnight of the banking day of receipt, the payor bank may revoke the~~
16 ~~settlement and recover ((any payment)) the settlement if, before it has~~
17 ~~made final payment ((subsection (1) of RCW 62A.4-213)) and before its~~
18 ~~midnight deadline, it:~~

19 (~~((a))~~) (1) Returns the item; or

20 (~~((b))~~) (2) Sends written notice of dishonor or nonpayment if the
21 item is (~~held for protest or is otherwise~~) unavailable for return.

22 (~~((2))~~) (b) If a demand item is received by a payor bank for credit
23 on its books, it may return (~~such~~) the item or send notice of
24 dishonor and may revoke any credit given or recover the amount thereof
25 withdrawn by its customer, if it acts within the time limit and in the
26 manner specified in (~~the preceding~~) subsection (a).

27 (~~((3))~~) (c) Unless previous notice of dishonor has been sent, an
28 item is dishonored at the time when for purposes of dishonor it is
29 returned or notice sent in accordance with this section.

30 (~~((4))~~) (d) An item is returned:

31 (~~((a))~~) (1) As to an item (~~received~~) presented through a clearing
32 house, when it is delivered to the presenting or last collecting bank
33 or to the clearing house or is sent or delivered in accordance with
34 (~~its~~) clearing-house rules; or

35 (~~((b))~~) (2) In all other cases, when it is sent or delivered to the
36 bank's customer or transferor or pursuant to (~~his~~) instructions.

1 **Sec. 105.** RCW 62A.4-302 and 1965 ex.s. c 157 s 4-302 are each
2 amended to read as follows:

3 PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF ITEM. (~~(In the~~
4 ~~absence of a valid defense such as breach of a presentment warranty~~
5 ~~(subsection (1) of RCW 62A.4-207), settlement effected or the like,)~~)

6 (a) If an item is presented ((~~on~~)) to and received by a payor bank, the
7 bank is accountable for the amount of:

8 (~~((a))~~) (1) A demand item, other than a documentary draft, whether
9 properly payable or not, if the bank, in any case (~~(where)~~) in which it
10 is not also the depository bank, retains the item beyond midnight of
11 the banking day of receipt without settling for it or, (~~(regardless~~
12 ~~of)~~) whether or not it is also the depository bank, does not pay or
13 return the item or send notice of dishonor until after its midnight
14 deadline; or

15 (~~((b))~~) (2) any other properly payable item unless, within the time
16 allowed for acceptance or payment of that item, the bank either accepts
17 or pays the item or returns it and accompanying documents.

18 (b) The liability of a payor bank to pay an item pursuant to
19 subsection (a) is subject to defenses based on breach of a presentment
20 warranty (RCW 62A.4-208) or proof that the person seeking enforcement
21 of the liability presented or transferred the item for the purpose of
22 defrauding the payor bank.

23 **Sec. 106.** RCW 62A.4-303 and 1965 ex.s. c 157 s 4-303 are each
24 amended to read as follows:

25 WHEN ITEMS SUBJECT TO NOTICE, (~~(STOP-ORDER)~~) STOP-PAYMENT ORDER,
26 LEGAL PROCESS, OR SETOFF; ORDER IN WHICH ITEMS MAY BE CHARGED OR
27 CERTIFIED. ((~~+1~~)) (a) Any knowledge, notice, or ((~~stop-order~~)) stop-
28 payment order received by, legal process served upon, or setoff
29 exercised by a payor bank(~~(, whether or not effective under other rules~~
30 of law)) comes too late to terminate, suspend, or modify the bank's
31 right or duty to pay an item or to charge its customer's account for
32 the item(~~(, comes too late to so terminate, suspend or modify such~~
33 right or duty)) if the knowledge, notice, stop-payment order, or legal
34 process is received or served and a reasonable time for the bank to act
35 thereon expires or the setoff is exercised after the ((~~bank has done~~
36 any)) earliest of the following:

37 (~~((a) accepted or certified)~~) (1) The bank accepts or certifies the
38 item;

1 RCW 62A.4-403(b) for stop-payment orders, and must be received at such
2 time and in such manner as to afford the bank a reasonable opportunity
3 to act on it before the bank takes any action with respect to the check
4 described in RCW 62A.4-303. A bank may not collect a fee from a
5 customer based on the customer's giving notice to the bank of a
6 postdating. If a bank charges against the account of a customer a
7 check before the date stated in the notice of postdating, the bank is
8 liable for damages for the loss resulting from its act. The loss may
9 include damages for dishonor of subsequent items under RCW 62A.4-402.

10 (d) A bank (~~which~~) that in good faith makes payment to a holder
11 may charge the indicated account of its customer according to:

12 (~~(a)~~) (1) The original (~~tenor~~) terms of (~~his~~) the altered
13 item; or

14 (~~(b)~~) (2) The (~~tenor~~) terms of (~~his~~) the completed item, even
15 though the bank knows the item has been completed unless the bank has
16 notice that the completion was improper.

17 **Sec. 108.** RCW 62A.4-402 and 1965 ex.s. c 157 s 4-402 are each
18 amended to read as follows:

19 BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL DISHONOR; TIME OF
20 DETERMINING INSUFFICIENCY OF ACCOUNT. (a) Except as otherwise provided
21 in this Article, a payor bank wrongfully dishonors an item if it
22 dishonors an item that is properly payable, but a bank may dishonor an
23 item that would create an overdraft unless it has agreed to pay the
24 overdraft.

25 (b) A payor bank is liable to its customer for damages proximately
26 caused by the wrongful dishonor of an item. (~~When the dishonor occurs~~
27 ~~through mistake~~) Liability is limited to actual damages proved(~~(. If~~
28 ~~so proximately caused~~) and (~~proved damages~~) may include damages for
29 an arrest or prosecution of the customer or other consequential
30 damages. Whether any consequential damages are proximately caused by
31 the wrongful dishonor is a question of fact to be determined in each
32 case.

33 (c) A payor bank's determination of the customer's account balance
34 on which a decision to dishonor for insufficiency of available funds is
35 based may be made at any time between the time the item is received by
36 the payor bank and the time that the payor bank returns the item or
37 gives notice in lieu of return, and no more than one determination need
38 be made. If, at the election of the payor bank, a subsequent balance

1 determination is made for the purpose of reevaluating the bank's
2 decision to dishonor the item, the account balance at that time is
3 determinative of whether a dishonor for insufficiency of available
4 funds is wrongful.

5 **Sec. 109.** RCW 62A.4-403 and 1965 ex.s. c 157 s 4-403 are each
6 amended to read as follows:

7 CUSTOMER'S RIGHT TO STOP PAYMENT; BURDEN OF PROOF OF LOSS. (~~((1))~~)

8 (a) A customer or any other person authorized to draw on the account if
9 there is more than one person may (~~(by order to his bank)~~) stop payment
10 of any item (~~(payable for his)~~) drawn on the customer's account (~~(but)~~)
11 or close the account by an order (~~(must be)~~) to the bank describing the
12 item or account with reasonable certainty received at (~~(such)~~) a time
13 and in (~~(such)~~) a manner (~~(as to)~~) that affords the bank a reasonable
14 opportunity to act on it (~~(prior to)~~) before any action by the bank
15 with respect to the item described in RCW 62A.4-303. If the signature
16 of more than one person is required to draw on an account, any of these
17 persons may stop payment or close the account.

18 (~~((2) An oral order is binding upon the bank only for fourteen~~
19 ~~calendar days unless confirmed in writing within that period. A~~
20 ~~written order is effective for only six months unless renewed in~~
21 ~~writing)) (b) A stop-payment order is effective for six months, but it
22 lapses after fourteen calendar days if the original order was oral and
23 was not confirmed in writing within that period. A stop-payment order
24 may be renewed for additional six-month periods by a writing given to
25 the bank within a period during which the stop-payment order is
26 effective.~~

27 (~~((3))~~) (c) The burden of establishing the fact and amount of loss
28 resulting from the payment of an item contrary to a binding stop-
29 payment order or order to close the account is on the customer. The
30 loss from payment of an item contrary to a stop-payment order may
31 include damages for dishonor of subsequent items under RCW 62A.4-402.

32 **Sec. 110.** RCW 62A.4-405 and 1965 ex.s. c 157 s 4-405 are each
33 amended to read as follows:

34 DEATH OR INCOMPETENCE OF CUSTOMER. (~~((1))~~) (a) A payor or
35 collecting bank's authority to accept, pay, or collect an item or to
36 account for proceeds of its collection, if otherwise effective, is not
37 rendered ineffective by incompetence of a customer of either bank

1 existing at the time the item is issued or its collection is undertaken
2 if the bank does not know of an adjudication of incompetence. Neither
3 death nor incompetence of a customer revokes (~~(such)~~) the authority to
4 accept, pay, collect, or account until the bank knows of the fact of
5 death or of an adjudication of incompetence and has reasonable
6 opportunity to act on it.

7 ~~((2))~~ (b) Even with knowledge, a bank may for ten days after the
8 date of death pay or certify checks drawn on or (~~prior to~~) before
9 that date unless ordered to stop payment by a person claiming an
10 interest in the account.

11 **Sec. 111.** RCW 62A.4-406 and 1991 sp.s. c 19 s 1 are each amended
12 to read as follows:

13 ~~((1) When a bank sends to its customer a statement of account
14 accompanied by items paid in good faith in support of the debit entries
15 or holds the statement and items pursuant to a request or instructions
16 of its customer or otherwise in a reasonable manner makes the statement
17 and items available to the customer, the customer must exercise
18 reasonable care and promptness to examine the statement and items to
19 discover his or her unauthorized signature or any alteration on an item
20 and must notify the bank promptly after discovery thereof.~~

21 ~~(2))~~ (a) A bank that sends or makes available to a customer a
22 statement of account showing payment of items for the account shall
23 either return or make available to the customer the items paid, copies
24 of the items paid, or provide information in the statement of account
25 sufficient to allow the customer reasonably to identify the items paid.
26 Until January 1, 1998, the statement of account provides sufficient
27 information if the item is described by item number, amount, and date
28 of payment. If the bank does not return the items paid or copies of
29 the items paid, it shall provide in the statement of account the
30 telephone number that the customer may call to request an item or copy
31 of an item pursuant to subsection (b) of this section.

32 (b) If the items are not returned to the customer, the person
33 retaining the items shall either retain the items or, if the items are
34 destroyed, maintain the capacity to furnish legible copies of the items
35 until the expiration of seven years after receipt of the items. A
36 customer may request an item from the bank that paid the item, and that
37 bank must provide in a reasonable time either the item or, if the item
38 has been destroyed or is not otherwise obtainable, a legible copy of

1 the item. A bank shall provide, upon request and without charge to the
2 customer, at least five items or copies of items with respect to each
3 statement of account sent to the customer. A bank may charge fees for
4 additional items or copies of items in accordance with section 118 of
5 this act. Requests for ten items or less shall be processed and
6 completed within ten business days.

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

15 (d) If the bank ((establishes)) proves that the customer, failed
16 with respect to an item, to comply with the duties imposed on the
17 customer by subsection ((1) of this section) (c) the customer is
18 precluded from asserting against the bank:

19 ((a) His or her) (1) The customer's unauthorized signature or any
20 alteration on the item, if the bank also ((establishes)) proves that it
21 suffered a loss by reason of ((such)) the failure; and

22 ((b) An) (2) The customer's unauthorized signature or alteration
23 by the same wrong-doer on any other item paid in good faith by the bank
24 ((after the first item and statement was available to the customer for
25 a reasonable period and before the bank receives notification from the
26 customer of any such unauthorized signature or alteration)) if the
27 payment was made before the bank received notice from the customer of
28 the unauthorized signature or alteration and after the customer had
29 been afforded a reasonable period of time, not exceeding thirty days,
30 in which to examine the item or statement of account and notify the
31 bank.

32 ((3) The preclusion under subsection (2) of this section does not
33 apply if the customer establishes lack of ordinary care on the part of
34 the bank in paying the item(s).

35 (4)) (e) If subsection (d) applies and the customer proves that
36 the bank failed to exercise ordinary care in paying the item and that
37 the failure substantially contributed to loss, the loss is allocated
38 between the customer precluded and the bank asserting the preclusion
39 according to the extent to which the failure of the customer to comply

1 with subsection (c) and the failure of the bank to exercise ordinary
2 care contributed to the loss. If the customer proves that the bank did
3 not pay the item in good faith, the preclusion under subsection (d)
4 does not apply.

5 (f) Without regard to care or lack of care of either the customer
6 or the bank, a natural person whose account is primarily for personal,
7 family, or household purposes who does not within one year, and any
8 other customer who does not within sixty days, from the time the
9 statement and items are made available to the customer (subsection
10 ~~((1) of this section)) (a)) discover and report ~~((his or her))~~ the
11 customer's unauthorized signature or any alteration on the face or back
12 of the item or does not within ~~((three years))~~ one year from that time
13 discover and report any unauthorized indorsement is precluded from
14 asserting against the bank such unauthorized signature or indorsement
15 or such alteration(~~-~~~~

16 ~~(5) If under this section a payor bank has a valid defense against~~
17 ~~a claim of a customer upon or resulting from payment of an item and~~
18 ~~waives or fails upon request to assert the defense the bank may not~~
19 ~~assert against any collecting bank or other prior party presenting or~~
20 ~~transferring the item a claim based upon the unauthorized signature or~~
21 ~~alteration giving rise to the customer's claim)). If there is a
22 preclusion under this subsection, the payor bank may not recover for
23 breach of warranty under RCW 62A.4-208 with respect to the unauthorized
24 signature or alteration to which the preclusion applies.~~

25 **Sec. 112.** RCW 62A.4-407 and 1965 ex.s. c 157 s 4-407 are each
26 amended to read as follows:

27 PAYOR BANK'S RIGHT TO SUBROGATION ON IMPROPER PAYMENT. If a payor
28 bank has paid an item over the ~~((stop payment))~~ order of the drawer or
29 maker to stop payment, or after an account has been closed, or
30 otherwise under circumstances giving a basis for objection by the
31 drawer or maker, to prevent unjust enrichment and only to the extent
32 necessary to prevent loss to the bank by reason of its payment of the
33 item, the payor bank ~~((shall be))~~ is subrogated to the rights:

34 ~~((a))~~ (1) Of any holder in due course on the item against the
35 drawer or maker; ~~((and))~~

36 ~~((b))~~ (2) Of the payee or any other holder of the item against
37 the drawer or maker either on the item or under the transaction out of
38 which the item arose; and

1 ~~((b))~~ (2) Upon dishonor, either in the case of presentment for
2 acceptance or presentment for payment, may seek and follow instructions
3 from any referee in case of need designated in the draft or, if the
4 presenting bank does not choose to utilize ~~((his))~~ the referee's
5 services, it must use diligence and good faith to ascertain the reason
6 for dishonor, must notify its transferor of the dishonor and of the
7 results of its effort to ascertain the reasons therefor, and must
8 request instructions. ~~((But))~~ However, the presenting bank is under no
9 obligation with respect to goods represented by the documents except to
10 follow any reasonable instructions seasonably received; it has a right
11 to reimbursement for any expense incurred in following instructions and
12 to prepayment of or indemnity for ~~((such))~~ those expenses.

13 **Sec. 116.** RCW 62A.4-504 and 1965 ex.s. c 157 s 4-504 are each
14 amended to read as follows:

15 PRIVILEGE OF PRESENTING BANK TO DEAL WITH GOODS; SECURITY INTEREST
16 FOR EXPENSES. ~~((1))~~ (a) A presenting bank ~~((which))~~ that, following
17 the dishonor of a documentary draft, has seasonably requested
18 instructions but does not receive them within a reasonable time may
19 store, sell, or otherwise deal with the goods in any reasonable manner.
20 ~~((2))~~ (b) For its reasonable expenses incurred by action under
21 subsection ~~((1))~~ (a) the presenting bank has a lien upon the goods or
22 their proceeds, which may be foreclosed in the same manner as an unpaid
23 seller's lien.

24 NEW SECTION. **Sec. 117.** For the purposes of maintaining the
25 uniformity of the Uniform Commercial Code (Title 62A RCW), the code
26 reviser may reuse the codification numbers of those sections repealed
27 in section 76 of this act.

28 NEW SECTION. **Sec. 118.** A new section is added to chapter 30.22
29 RCW to read as follows:

30 A financial institution may charge a customer for furnishing items
31 or copies of items as defined in RCW 62A.4-104, in excess of the number
32 of free items or copies of items provided for in 62A.4-406(b), fifty
33 cents per copy furnished plus fees for retrieval at a rate not to
34 exceed the rate assessed when complying with summons issued by the
35 Internal Revenue Service.

1 NEW SECTION. Sec. 119. No provision in this act changes or
2 modifies existing common law or other law of Washington state
3 concerning the recovery of attorneys' fees.

4 NEW SECTION. Sec. 120. This act shall take effect July 1,
5 1994."

6 SHB 1014 - S COMM AMD
7 By Committee on Labor & Commerce

8 ADOPTED 4/16/93

9 On page 1, line 1 of the title, after "code;" strike the remainder
10 of the title and insert "amending RCW 62A.1-201, 62A.1-207, 62A.3-101,
11 62A.3-102, 62A.3-103, 62A.3-104, 62A.3-105, 62A.3-106, 62A.3-107,
12 62A.3-108, 62A.3-109, 62A.3-110, 62A.3-111, 62A.3-112, 62A.3-113,
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32 62A.3-803, 62A.3-804, and 62A.3-805; and providing an effective date."

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