Chapter 72

Bank Collection Act

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Chapter 72

<u>Add</u> to General Cross References:

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72.010 Short title. This chapter, excepting ORS 72.110 to 72.130, shall be known as the Bank Collection Act.

72.020 Definitions. For the purposes of this chapter excepting ORS 72.110 to 72.130:

(1) "Bank" includes any corporation or national banking association engaged in the business of receiving and paying deposits of money within this state.

(2) A branch or office of any bank is deemed a separate bank.

(3) "Item" means any check, note or other instrument providing for the payment of money.

72.030 Bank as agent for collection; revocation of credit extended. (1) Except as otherwise provided by agreement and except as to subsequent holders of a negotiable instrument payable to bearer or indorsed specially or in blank, where an item is deposited or received for collection, the bank of deposit is an agent of the depositor for its collection and each subsequent collecting bank is a subagent of the depositor but may follow the instructions of its immediate forwarding bank.

(2) Any credit given by any agent or subagent bank for any such item is revocable until such time as the proceeds are received in actual money or an unconditional credit given on the books of another bank, which the agent has requested or accepted. Where any such bank allows any revocable credit for an item to be withdrawn, the agency relation shall nevertheless continue, except the bank shall have all the rights of an owner thereof against prior and subsequent parties to the extent of the amount withdrawn.

72.040 Legal effect of indorsements. (1) An indorsement of an item by the payee or other depositor "for deposit" is deemed a restrictive indorsement and indicates that the indorsee bank is an agent for collection and not owner of the item.

(2) An indorsement "pay any bank or banker" or having equivalent words is deemed a restrictive indorsement and indicates the creation of an agency relation in any subsequent bank to which the paper is forwarded unless coupled with words indicating the creation of a trustee relationship.

(3) Where a deposited item is payable to bearer or indorsed by the depositor in blank or specially, the fact that such item is so payable or indorsed shall not change the relation of agent of the bank of deposit to the depositor; but the subsequent holders have the right to rely on the presumption that the bank of deposit is the owner of the item.

(4) The indorsement of an item by the bank of deposit or by any subsequent holder in blank or specially, or its delivery, when payable to bearer, carries the presumption that the indorsee or transferee is owner if there is nothing upon the face of the paper or in any prior indorsement to indicate an agency or trustee relation of any prior party.

(5) Where an item is deposited or is received for collection indorsed specially or in blank, the bank may convert such an indorsement into a restrictive indorsement by writing over the signature of the indorser "for deposit," "for collection" or other restrictive words to negative the presumption that the bank of deposit or indorsee bank is owner, and in the case of an item deposited or received for collection payable to bearer, may negative such presumption by writing thereon "received for deposit," "received for collection" or words of like import.

(6) A restrictive indorsement, whether creating an agency or trustee relationship, constitutes a guaranty by the indorser to all subsequent holders and to the drawee or payor of the genuineness of and the authority to make prior indorsements and also to save the drawee or payor harmless in the event any prior indorsement appearing thereon is defective or irregular in any respect, unless such indorsement is coupled with appropriate words disclaiming such liability as guarantor.

72.050 Duty and responsibility of bank collecting agents. It is the duty of the initial or any subsequent agent collecting bank to exercise ordinary care in the collection of an item. When the duty is performed, the agent bank is not responsible if for any cause payment is not received in money or an unconditional credit given on the books of another bank, which the agent bank has requested or accepted. An initial or subsequent agent collecting bank is liable for its own lack of exercise of ordinary care, but is not liable for the neglect, misconduct, mistakes or defaults of any other agent bank or of the drawee or payor bank.

72.060 Rules of ordinary care in forwarding and presentment. (1) Where an item is received on deposit or for collection

payable in another town or city, it is deemed the exercise of ordinary care to forward the item by mail:

(a) Direct to the drawee or payor, in the event the drawee or payor is a bank;

(b) To another bank collecting agent according to the usual banking custom, whether located in the town or city where the item is payable or in another town or city; or

(c) To any federal reserve bank.

(2) Where an item is received on deposit or for collection payable by or at another bank in the same town or city in which the agent bank is located, it is deemed the exercise of ordinary care to present the item for payment:

(a) At the counter of the drawee or payor by agent or messenger;

(b) Through the local clearing house under the regular established procedure;

(c) As to banks not members of the local clearing house, either through the federal reserve bank, if in the same city as the agent bank, or any other bank in the same city which is a member of the local clearing house, or by mail direct to the drawee or payor bank; or

(d) According to the usual banking custom where the collecting or payor bank is located in an outlying district.

(3) Where an item is received on deposit or for collection payable in, or in the the vicinity of, the same town or city, by a drawee or payor other than another bank, it is deemed the exercise of ordinary care to present the item for payment:

(a) To such drawee or payor, or at his office, residence or place of business, by agent or messenger; or

(b) By mail, messenger or other reasonable manner to another bank collecting agent in the vicinity of such drawee or payor, whether it be in the same city or town as the agent bank or not,

(c) Through the federal reserve bank, if in the same city as the agent bank; or

(d) According to the usual banking custom where the drawee or payor is located in an outlying district.

(4) The designation of the above methods does not exclude any other method of forwarding or presentment which under existing rules of law constitutes ordinary care.

72.070 Items received through the mail, when deemed paid. Where the item is received by mail by a solvent drawee or payor bank, it is deemed paid when the amount is finally charged to the account of the maker or drawer.

72.080 Items lost in transit, responsibility for. Where an agent bank forwards an item for collection, it is not responsible for its loss or destruction in transit, or, when in the possession of others, for its inability to repossess itself thereof if there has been no lack of ordinary care on its part.

72.090 Medium of payment. (1) Where ordinary care is exercised, any agent collecting bank may receive in payment of an item without becoming responsible as debtor therefor, whether presented by mail, through the clearing house or over the counter of the drawee or payor in lieu of money:

(a) The check or draft of the drawee or payor upon another bank;

(b) The check or draft of any other bank upon any bank other than the drawee or payor of the item; or

(c) Such method of settlement as may be customary in a local clearing house or between clearing banks or otherwise.

(2) But if the agent collecting bank requests or accepts in payment an unconditional credit which has been given to it on the books of the drawee or payor or on the books of any other bank, the agent collecting bank becomes debtor for the item and is responsible therefor as if the proceeds were actually received by it in money.

72.100 Medium of remittance. (1) Where ordinary care is exercised, any agent collecting bank may receive from any subsequent bank in the chain of collection in remittance for an item which has been paid in lieu of money:

(a) The check or draft of the remitting bank upon any bank other than itself or the drawee or payor of the item; or

(b) Such other method of settlement as may be customary.

(2) But if the agent collecting bank requests or accepts an unconditional credit which has been given to it on the books of the remitting bank or on the books of any other bank, the agent collecting bank becomes debtor for the item and is responsible therefor as if the proceeds were actually received by it in money.

72.110 Definitions for ORS 72.120. For the purposes of ORS 72.120:

(1) An item received by a bank on a day

other than its business day, on a business day after its regular business hours or during afternoon or evening periods when it has reopened or remained open for limited functions, is deemed to have been received at the opening of its next business day.

(2) "Credit" includes payment, remittance, advice of credit or authorization to charge and, in cases where the item is received for deposit as well as for payment, also includes the making of appropriate entries to the receiving bank's general ledger without regard to whether the item is posted to individual customers' ledgers.

(3) Each branch or office of a bank shall be deemed a separate bank.

72.120 Demand items; revocation of credit extended therefor. (1) When a bank receives, other than for immediate payment over the counter, a demand item payable by, at or through such bank and gives credit therefor before midnight of the day of receipt, the bank may have until midnight of its next business day within which to dishonor or refuse payment of such item.

(2) Any credit so given, together with all related entries on the books of the receiving bank, may be revoked by returning the item, or if the item is held for protest or at the time is lost or not in the possession of the bank, by giving written notice of dishonor, nonpayment or revocation; but the item or notice must be dispatched in the mails or by other expeditious means not later than midnight of the bank's next business day after the item was received.

(3) For the purpose of determining when notice of dishonor must be given or protest made under the Negotiable Instruments Law, an item duly presented, credit for which is revoked as authorized by this section, is deemed dishonored on the day the item or notice is dispatched.

(4) A bank which revokes credit pursuant to the authority of this section is entitled to refund of, or credit for the amount of the item.

72.130 Effect of ORS 72.110 and 72.120. The effect of ORS 72.110 and 72.120 may be varied by agreement.

72.140 Election to treat as dishonored items presented by mail. (1) Where an item is presented by mail to the drawee or payor, the agent collecting bank so presenting may, at its election, exercised with reasonable diligence, treat the item as dishonored by nonpayment and recourse may be had upon prior parties thereto in any of the following cases:

(a) Where the check or draft of the drawee or payor bank upon another bank received in payment therefor is not paid in due course;

(b) Where the drawee or payor bank, without request or authority, tenders as payment its own check, a draft upon itself or other instrument upon which it is primarily liable;

(c) Where the drawee or payor bank gives an unrequested or unauthorized credit therefor on its books or the books of another bank; or

(d) Where the drawee or payor retains the item without remitting therefor on the day of receipt or on the day of maturity if payable otherwise than on demand and received by it prior to or on the day of maturity.

(2) However, where the drawee or payor bank returns the item unpaid not later than the day of receipt or of maturity, as aforesaid, in the exercise of its right to make payment only at its own counter, the item cannot be treated as dishonored by nonpayment and the delay caused thereby does not relieve prior parties from liability.

(3) No agent collecting bank is liable to the owner of an item where, in the exercise of ordinary care in the interest of the owner, it makes or does not make the election above provided or takes such steps as it may deem necessary in cases (b), (c) and (d) of subsection (1).

72.150 Notice of dishonor of items presented by mail. In case of dishonor of an item presented by mail, as provided in ORS 72.140, notice of dishonor of the item to prior parties is sufficient if given with reasonable diligence after dishonor. In the event of failure to obtain the return of the item, notice of dishonor may be given upon a copy or written particulars thereof, and delay in giving notice of dishonor caused by an attempt with reasonable diligence to obtain return of such item is excused.

72.160 Insolvency and preference. (1) When the drawee, payor or any other agent collecting bank fails or is closed for business by the Superintendent of Banks or the Comptroller of the Currency, by action of the board of directors or by other proper legal action, after an item is mailed or otherwise

entrusted to it for collection or payment but before the actual collection or payment thereof, it is the duty of the receiver or other official in charge of its assets to return the item, if it is in his possession, to the forwarding or presenting bank with reasonable diligence.

(2) Except in cases where an item is treated as dishonored by nonpayment, as provided in ORS 72.140, when a drawee or payor bank has presented to it for payment an item drawn upon, or payable by, or at such bank and at the time has on deposit to the credit of the maker or drawer an amount equal to the item and the drawee or payor fails or is closed for business, as above, after having charged the item to the account of the maker or drawer thereof or otherwise discharged his liability thereon but without the item having been paid or settled for by the drawee or payor either in money or by an unconditional credit given on its books or on the books of any other bank, which has been requested or accepted so as to constitute the drawee or payor or other bank debtor therefor, the assets of the drawee or payor are impressed with a trust in favor of the owner of the item for the amount thereof or for the balance payable upon a number of items which have been exchanged, and the owner is entitled to a preferred claim upon the assets, irrespective of whether the fund representing the item can be traced and identified as part of the assets or has been intermingled with or converted into other assets of the failed bank.

(3) Where an agent collecting bank other than the drawee or payor fails or is closed for business, as above, after having received in any form the proceeds of an item entrusted to it for collection, but without the item having been paid or remitted for by it either in money or by an unconditional credit given on its books or on the books of any other bank which has been requested or accepted so as to constitute the failed collecting or other bank debtor therefor, the assets of the agent collecting bank which has failed or been closed for business, as above, are impressed with a trust in favor of the owner of the item for the amount of the proceeds and the owner is entitled to a preferred claim upon the assets irrespective of whether the fund representing the item can be traced and identified as part of the assets or has been intermingled with or converted into other assets of the failed bank.

72.170 Cases not provided for. In any case not provided for in this chapter the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, continue to apply.

72.180 Relation to Negotiable Instruments Law. Nothing in this chapter, not including ORS 72.110 to 72.130, alters or changes the provisions of the Negotiable Instruments Law, but is supplementary thereto.