Chapter 74

1985 REPLACEMENT PART

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GENERAL PROVISIONS AND DEFINITIONS

74.1010 Short title. ORS 74.1010 to 74.5040 may be cited as Uniform Commercial Code-Bank Deposits and Collections. [1961 c.726 §74.1010]

74.1020 Applicability. (1) To the extent that items within ORS 74.1010 to 74.5040 are also within the scope of ORS 73.1010 to 73.8050 and 78.1010 to 78.4060, they are subject to the provisions of those sections. In the event of conflict the provisions of ORS 74.1010 to 74.5040 govern those of ORS 73.1010 to 73.8050 but the provisions of ORS 78.1010 to 78.4060 govern those of ORS 74.1010 to 74.5040.

(2) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located. [1961 c.726 §74.1020]

74.1030 Variation by agreement; measure of damages; certain action constituting ordinary care. (1) The effect of the provisions of ORS 74.1010 to 74.5040 may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(2) Federal reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1) of this section whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by ORS 74.1010 to 74.5040 or pursuant to federal reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing house rules and the like or with a general banking usage not disapproved by ORS 74.1010 to 74.5040, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by ORS 74.1010 to 74.5040 does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence. [1961 c.726 §74.1030]

74.1040 Definitions and index of definitions. (1) In ORS 74.1010 to 74.5040 unless the context otherwise requires:

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account.

(b) "Afternoon" means the period of a day between noon and midnight.

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions.

(d) "Clearing house" means any association of banks or other payors regularly clearing items.

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank.

(f) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft.

(g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money.

(h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor.

(j) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final.

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to ORS 74.1010 to 74.5040 and the sections in which they appear are:

(a) "Collecting bank," as defined in ORS 74.1050.

(b) "Depositary bank," as defined in ORS 74.1050.

(c) "Intermediary bank," as defined in ORS 74.1050.

(d) "Payor bank," as defined in ORS 74.1050.

(e) "Presenting bank," as defined in ORS 74.1050.

(f) "Remitting bank," as defined in ORS 74.1050.

(3) The following definitions in other sections apply to this section:

(a) "Acceptance," as defined in ORS 73.4100.

(b) "Certificate of deposit," as defined in ORS 73.1040.

(c) "Certification," as defined in ORS 73.4110.

(d) "Check," as defined in ORS 73.1040.

(e) "Draft," as defined in ORS 73.1040.

(f) "Holder in due course," as defined in ORS 73.3020.

(g) "Notice of dishonor," as defined in ORS 73.5080.

(h) "Presentment," as defined in ORS 73.5040.

(i) "Protest," as defined in ORS 73.5090.

(j) "Secondary party," as defined in ORS 73.1020.

(4) In addition, ORS 71.1010 to 71.2080 contain general definitions and principles of construction and interpretation applicable throughout ORS 74.1010 to 74.5040. [1961 c 726 §74 1040]

74.1050 "Depositary bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank." In ORS 74.1010 to 74.5040 unless the context otherwise requires:

(1) "Depositary bank" means the first bank to which an item is transferred for collection even though it is also the payor bank.

(2) "Payor bank" means a bank by which an item is payable as drawn or accepted.

(3) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depositary or payor bank.

(4) "Collecting bank" means any bank handling the item for collection except the payor bank.

(5) "Presenting bank" means any bank presenting an item except a payor bank.

(6) "Remitting bank" means any payor or intermediary bank remitting for an item. [1961 c 726 §74.1050]

74.1060 Separate office of a bank. (1) A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under ORS 73.1010 to 73.8050 and 74.1010 to 74.5040.

(2) The receipt of any notice or order by, or the knowledge of, one branch or separate office of a bank is not actual or constructive notice to or knowledge of any other branch or separate office of the same bank and does not impair the right of such other branch or separate office to be a holder in due course of an item. [1961 c 726 §74.1060, 1963 c 402 §2]

74.1070 Time of receipt of items. (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day. [1961 c 726 §74.1070]

74.1080 Delays. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by the Uniform Commercial Code for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by the Uniform Commercial Code or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require. [1961 c.726 §74.1080]

74.110, 74.120, 74.130, 74.140, 74.150, 74.160, 74.170, 74.180, 74.190, 74.200 [Repealed by 1961 c.726 §427]

COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

74.2010 Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of ORS 74.1010 to 74.5040; item indorsed "pay any bank." (1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final pursuant to ORS 74.2110 (3), 74.2120 and 74.2130 the bank is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of ORS 74.1010 to 74.5040 apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder:

(a) Until the item has been returned to the customer initiating collection; or

(b) Until the item has been specially indorsed by a bank to a person who is not a bank. [1961 c 726 §74 2010]

74.2020 Responsibility for collection; when action seasonable. (1) A collecting bank must use ordinary care in:

(a) Presenting an item or sending it for presentment; and

(b) Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be; and

(c) Settling for an item when the bank receives final settlement; and

(d) Making or providing for any necessary protest; and

(e) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(3) Subject to paragraph (a) of subsection (1) of this section, a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others. [1961 c.726 §74.2020]

74.2030 Effect of instructions. Subject to the provisions of ORS 73.4190 concerning conversion of instruments and the provisions of ORS 73.1010 to 73.8050 and 74.1010 to 74.5040 concerning restrictive indorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor. [1961 c 726 §74.2030]

74.2040 Methods of sending and presenting; sending direct to payor bank. (1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send:

(a) Any item direct to the payor bank;

(b) Any item to any nonbank payor if authorized by its transferor;

(c) Any item other than documentary drafts to any nonbank payor, if authorized by federal reserve regulation or operating letter, clearing house rule or the like;

(d) Any item to any Federal Reserve Bank; and

(e) Any item to any other bank or agency thereof.

(3) Items may be sent to the place of business of, or to any place designated by, those to whom items may be sent under paragraph (a), (b), (c), (d) or (e) of subsection (2) of this section. [1961 c 726 §74.2040; 1963 c 402 §3]

74.2050 Supplying missing indorsement; no notice from prior indorsement. (1) A depositary bank which has taken an item

for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to the account of the customer is effective as the customer's indorsement.

(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor. [1961 c.726 §74 2050]

74.2060 Transfer between banks. Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank. [1961 c 726 §74 2060]

74.2070 Warranties of customer and collecting bank on transfer or presentment of items; time for claims. (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that:

(a) The customer or collecting bank has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) The customer or collecting bank has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(A) To a maker with respect to the maker's own signature; or

(B) To a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(C) To an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) The item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(A) To the maker of a note; or

(B) To the drawer of a draft whether or not the drawer is also the drawee; or

(C) To the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(D) To the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to the transferee and to any subsequent collecting bank who takes the item in good faith that:

(a) The customer or collecting bank has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) All signatures are genuine or authorized; and

(c) The item has not been materially altered; and

(d) No defense of any party is good against the customer or collecting bank; and

(e) The customer or collecting bank has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest the customer or collecting bank will take up the item.

(3) The warranties and the engagement to honor set forth in subsections (1) and (2) of this section arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim. [1961 c.726 §74.2070]

74.2080 Security interest of collecting bank in items, accompanying documents and proceeds. (1) A bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) In case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of chargeback; or

(c) If it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of ORS 79.1010 to 79.5070 except that:

(a) No security agreement is necessary to make the security interest enforceable; and

(b) No filing is required to perfect the security interest; and

(c) The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds. [1961 c.726 §74 2080]

74.2090 When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of ORS 73.3020 on what constitutes a holder in due course. [1961 c.726 §74.2090]

74.210 [Repealed by 1961 c.726 §427]

74.2100 Presentment by notice of item not payable by, through or at a bank; liability of secondary parties. (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under ORS 73.5050 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under ORS 73.5050 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending the party notice of the facts. [1961 c.726 §74.2100]

74.2110 Media of remittance; provisional and final settlement in remittance cases. (1) A collecting bank may take in settlement of an item:

(a) A check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) A cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

(c) Appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) If the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) of this section or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement:

(a) If the remittance instrument or authorization to charge is of the kind approved by subsection (1) of this section or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) If the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by paragraph (b) of subsection (1) of this section,—at the time of the receipt of such remittance check or obligation; or

(c) If in a case not covered by paragraph (a) or (b) of this subsection the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline. [1961 c.726 §74.2110]

74.2120 Right of charge-back or refund. (1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final pursuant to ORS 74.2110 (3) and 74.2130 (2) and (3).

(2) Within the time and manner prescribed by this section and ORS 74.3010, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

(3) A depositary bank which is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with ORS 74.3010 governing return of an item received by a payor bank for credit on its books.

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

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

(b) Failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

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

(6) If credit is given in dollars at the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course. [1961 c.726 §74 2120; 1985 c.436 §1]

74.2130 Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal. (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) Paid the item in cash; or

(b) Settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or

(c) Completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

(d) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Upon a final payment under paragraph (b), (c) or (d) of this subsection the payor bank shall be accountable for the amount of the item.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final pursuant to ORS 74.2110 (3) and subsection (2) of this section the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its

customer becomes available for withdrawal as of right:

(a) In any case where the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final.

(b) In any case where the bank is both a depositary bank and a payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit. [1961 c.726 §74.2130]

74.2140 Insolvency and preference. (1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events as provided in ORS 74.2110 (3) and 74.2130 (1)(d), (2) and (3).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank. [1961 c.726 §74.2140]

74.220, 74.230, 74.240, 74.250, 74.260, 74.270, 74.280, 74.290, 74.300 [Repealed by 1961 c.726 §427]

COLLECTION OF ITEMS: PAYOR BANKS

74.3010 Deferred posting; recovery of payment by return of items; time of dishonor. (1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment as provided in ORS 74.2130 (1) and before its midnight deadline it:

(a) Returns the item; or

(b) Sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (1) of this section.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) As to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(b) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions of the customer or transferor. [1961 c.726 §74.3010]

74.3020 Payor bank's responsibility for late return of item. In the absence of a valid defense such as breach of a presentment warranty pursuant to ORS 74.2070 (1), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of:

(1) A demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) Any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents. [1961 c.726 §74.3020]

74.3030 When items subject to notice, stop order, legal process or setoff; order in

which items may be charged or certified. (1) Any knowledge, notice or stop order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

(a) Accepted or certified the item;

(b) Paid the item in cash;

(c) Settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;

(d) Completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

(e) Become accountable for the amount of the item under ORS 74.2130 (1)(d) and 74.3020 dealing with the payor bank's responsibility for late return of items.

(2) Subject to the provisions of subsection (1) of this section items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank. [1961 c.726 §74 3030]

74.310, 74.320, 74.330, 74.340, 74.350, 74.360, 74.370, 74.380, 74.390, 74.400 [Repealed by 1961 c.726 §427]

RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

74.4010 When bank may charge customer's account. (1) As against its customer, a bank may charge against the account of the customer any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to:

(a) The original tenor of the altered item; or

(b) The tenor of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper. [1961 c.726 §74.4010]

74.4020 Bank's liability to customer for wrongful dishonor. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case. [1961 c.726 §74.4020]

74.4030 Customer's right to stop payment; burden of proof of loss. (1) A customer may by order to the bank of the customer stop payment of any item payable for the account of the customer but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in ORS 74.3030.

(2) An oral order is binding upon the bank only for 14 calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer. [1961 c.726 §74.4030]

74.4040 Bank not obligated to pay check more than six months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith. [1961 c 726 §74.4040]

74.4050 Death or incompetence of customer. (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for 10 days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account. [1961 c.726 §74.4050]

74.4060 Customer's duty to discover and report unauthorized signature or alteration. (1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover any unauthorized signature of the customer or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) of this section the customer is precluded from asserting against the bank:

(a) The unauthorized signature of the customer or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) An unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding 14 calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) of this section does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item.

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within one year from the time the statement and items are made available to the customer as provided in subsection (1) of this section discover and report any unauthorized signature of the customer or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim. [1961 c.726 §74.4060]

74.4070 Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights:

(1) Of any holder in due course on the item against the drawer or maker; and

(2) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose. [1961 c.726 §74.4070]

74.410, 74.420, 74.430, 74.440, 74.450, 74.460, 74.470, 74.480, 74.490 [Repealed by 1961 c.726 §427]

74.500 [Renumbered 165.655]

COLLECTION OF DOCUMENTARY DRAFTS

74.5010 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor. A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right. [1961 c.726 §74.5010]

74.5020 Presentment of "on arrival" drafts. When a draft or the relevant instructions require presentment "on arrival," "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods. [1961 c.726 §74.5020]

74.5030 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need. Unless otherwise instructed and except as provided in ORS 75.1010 to 75.1170 a bank presenting a documentary draft:

(1) Must deliver the documents to the drawee on acceptance of the draft if it is payable more

than three days after presentment; otherwise, only on payment; and

(2) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize the services of the referee it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses. [1961 c.726 §74.5030]

74.5040 Privilege of presenting bank to deal with goods; security interest for expenses. (1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) of this section the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien. [1961 c.726 §74.5040]

74.510 [Renumbered 165.660]

74.520 [Renumbered 165.665]

74.530 [Renumbered 165.670]

74.540 [Renumbered 165.675]

74.550 [Renumbered 165.680]

74.560, 74.570, 74.580, 74.590 [Repealed by 1961 c 726 §427]