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COMMERCIAL CODE Commercial Paper, Bank Deposits and Collections: Adopt Uniform Commercial Code Provisions Regarding Negotiable Instruments and Bank Deposits and Collections

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COMMERCIAL CODE

Commercial Paper, Bank Deposits and Collections: Adopt Uniform Commercial Code Provisions Regarding Negotiable Instruments and Bank Deposits and Collections

CODE SECTIONS:	O.C.G.A. §§ 9-3-24, 11-1-201, -207, 11-3-101 to -605, 11-4-101 to -108 (amended), -109 to -111 (new), -201 to -214 (amended), -215 to -216 (new), -301 to -303, -401 to -407, -501 to -504 (amended), 24-4-23.1 (new)
BILL NUMBER:	HB 1388
ACT NUMBER	1017
GEORGIA LAWS:	1996 Ga. Laws 1306
SUMMARY:	The Act amends the entirety of those provisions of the Code regarding commercial paper, namely negotiable instruments and bank deposits and collections. The Act largely adopts Uniform Commercial Code Articles 3 and 4. The purpose of the Act is to keep regulations current with technology and business practices and to accommodate efficient payment processing. In its revisions to Article 3, the Act clarifies the requirements for "holder in due course" status, expands the provisions governing the discharge of an obligation, reconciles the law regarding liability for signatures on instruments to conform with general agency law, and provides a comparative negligence standard for liability for fraudulent indorsements. The Act also revises the provisions regarding transfer and presentment warranties, reconciles a split in authority regarding conversion of instruments, and clarifies the suretyship defenses. The Act also makes several changes to Article 4 to reflect the increasing automation of the banking industry.
EFFECTIVE DATE:	July 1, 1996

History

In early 1991, the National Conference of Commissioners on Uniform State Laws and the American Law Institute, co-sponsors of the Uniform Commercial Code (UCC), made substantial changes to Articles 3 and 4

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of the UCC and presented the revised UCC for the states' consideration.[1] Since these revisions were presented to the individual states in 1991, thirty-eight legislatures have passed the revised Articles, generally with few variations.[2]

Georgia's versions of Articles 3 and 4 had been in effect since the 1960s.[3] The old Article 3,[4] dealing with negotiable instruments, was a revision of the Uniform Negotiable Instruments Law of 1896.[5] As such, both its language and its conceptual approach to commercial paper were outmoded,[6] particularly in light of technological advances and changes in business practices since the nineteenth century.[7] Additionally, there was an unresolved conflict in case authority[8] over (1) the definition of "ordinary care" in connection with a bank transaction[9] and (2) the effect of the UCC on the common law of accord and satisfaction.[10]

Although Article 4[11] was revised more recently than Article 3, it is nevertheless similarly outdated.[12] In particular, Magnetic Ink Character Recognition (MICR), the process of encoding numbers on checks for identification in an automated check processing system, was not commonly used until after the passage of the original Article 4.[13] Georgia's Article 4 addressed only manual check processing and did not address MICR automated check processing.[14] Further, the old Article 4 was inadequate to deal with the increasing practice of check truncation, which eliminates the physical handling of paper checks at some point in

1. U.C.C. Subcommittee Report on Articles 3 and 4, 1996 Report, at 1 (1996) [hereinafter Subcommittee Report] (available in Georgia State University College of Law Library). This was a report on the UCC Subcommittee on Articles 3 and 4 of the UCC Committee of the State Bar of Georgia. This report was submitted to the State Bar Advisory Committee on Legislation.

2. *Id.*

3. Telephone Interview with Rep. Greg Kinnamon, House District No. 4 (June 1, 1996) [hereinafter Kinnamon Interview]; *see* 1962 Ga. Laws 156, § 1, at 236-308 (formerly found at O.C.G.A. §§ 11-3-101 to -805, 11-4-101 to -504 (1994)).

4. 1962 Ga. Laws 156, § 1, at 236-82 (formerly found at O.C.G.A. §§ 11-3-101 to -805 (1994)).

5. Subcommittee Report, *supra* note 1.

6. Kinnamon Interview, *supra* note 3.

7. Subcommittee Report, *supra* note 1.

8. *Id.*

9. *See infra* notes 21-27 and accompanying text.

10. *See infra* notes 57-63 and accompanying text.

11. 1962 Ga. Laws 156, § 1, at 282-308 (formerly found at O.C.G.A. §§ 11-4-101 to -504 (1994)).

12. Kinnamon Interview, *supra* note 3.

13. *Id.*

14. *Id.*

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the check collection process, destroying the paper itself after retaining certain information stored in the MICR coding.[15]

HB 1388

While there were two versions of HB 1388 drafted before it passed, no substantive changes were made between the initial version and the bill as passed.[16]

Definitions

The Act amends Code sections 11-3-103(a)(4) and 11-4-104(c) to provide a new definition of "good faith" as: "honesty in fact and the observance of reasonable commercial standards of fair dealing."[17] The old Code defined good faith as "honesty in fact."[18] This change is significant in that it safeguards commercial parties by requiring those who claim exemption from certain defenses as a "holder in due course" to meet not only the subjective "honesty in fact" test, but also the more objective test of adhering to reasonable commercial standards of fair dealing.[19]

The Act also defines "ordinary care,"[20] which the old Code had specifically refrained from defining.[21] Code section 11-3-103(a)(7) defines "ordinary care" in business dealings as:

> observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or Article 4 of this title.[22]

Thus, this definition augments the new definition of good faith by more specifically delineating a financial institution's burden for

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15. Kinnamon Interview, *supra* note 3.
16. *Compare* HB 1388, as introduced, 1996 Ga. Gen. Assem. *with* O.C.G.A. §§ 11-3-101 to -605, 11-4-101 to -504 (Supp. 1996).
17. O.C.G.A. §§ 11-4-103(a)(4), -104(c) (Supp. 1996).
18. 1962 Ga. Laws 156, § 1, at 164 (formerly found at O.C.G.A. § 11-1-201 (1994)).
19. Subcommittee Report, *supra* note 1, at 4.
20. O.C.G.A. § 11-3-103 (Supp. 1996).
21. 1962 Ga. Laws 156, § 1, at 283-84 (formerly found at O.C.G.A. § 11-4-103 (1994)).
22. O.C.G.A. § 11-3-103(a)(7) (Supp. 1996).

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adhering to reasonable commercial standards.[23] Thus, a bank need not examine each instrument presented for collection if the bank is following procedures it developed in accordance with general banking usage.[24] This new definition resolves a conflict in case law concerning whether the existence of ordinary care in a particular transaction is a question of law or fact.[25] The Act mandates that the question of whether a bank has exercised ordinary care in using procedures which do not require it to review every single instrument depends on the factual circumstances, specifically the general industry standards.[26]

Holder in Due Course Status

A "holder in due course" is a person or entity who acquires a note or other negotiable instrument, subject to certain conditions, such that he (the holder) is free from certain defenses on the underlying transaction.[27] The holder in due course status was presumably conferred upon the holder of the note to facilitate the negotiability of the note.[28] Thus, a party (usually a large financial institution) could buy a note from a local bank, which had in turn taken the note from a customer in exchange for credit, without having to worry about any possible defenses except the credit risk.[29]

One of the prerequisites for holder in due course status is that the holder take the instrument "in good faith."[30] Because the Act has redefined good faith, a holder must observe reasonable commercial standards in addition to meeting the "honesty in fact" requirement.[31]

The Act also provides that holder in due course status will be prevented by apparent evidence of forgery, alteration, irregularity, or incompleteness.[32] Even if the defense made by the obligor to attempt

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23. Subcommittee Report, *supra* note 1, at 4.

24. *Id.*

25. *Compare* Medford Irrigation Dist. v. Western Bank, 676 P.2d 329 (Or. Ct. App. 1984) *with* Wilder Binding Co. v. Oak Park Trust & Sav. Bank, 552 N.E.2d 783 (Ill. 1990).

26. O.C.G.A. § 11-3-103(a)(7) (Supp. 1996). Nevertheless, a party could contest those standards as being "unreasonable, arbitrary, or unfair as used by the particular bank." U.C.C. § 4-103 cmt. 4 (1995).

27. SPEIDEL ET AL., PAYMENT SYSTEMS 89 (1993); O.C.G.A. § 11-3-305 (Supp. 1996).

28. SPEIDEL ET AL., *supra* note 27.

29. *Id.* Note, however, that the law has almost completely abolished the status of holder in due course in connection with consumer transactions. *Id.*; 15 C.F.R. 433 (1996). Still, the doctrine continues to be important in commercial transactions. SPEIDEL ET AL., *supra* note 27.

30. O.C.G.A. § 11-3-302(a)(1) (Supp. 1996).

31. Subcommittee Report, *supra* note 1, at 4.

32. O.C.G.A. § 11-3-302(a)(2)(ii) (Supp. 1996). The Act requires, as a precondition for holder in due course status, that "the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not

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avoiding repayment of the obligation is unrelated to the above defects, the holder may not utilize "holder in due course" status to defeat the defense.[33] The former Article 3 did not make clear whether the claim or defense had to be related to the irregular nature of the instrument in order to prevent holder in due course status.[34] The new section thus provides extra protection for commercial parties by preventing a holder from claiming lack of notice of the irregularity if such defect was apparent.[35]

The Act also specifies the rights of a holder who has not paid or performed the full compensation for an instrument.[36] Such a holder has rights as a holder in due course in proportion to the consideration paid or performed.[37] Code section 11-3-302(d) states that, where consideration has been partially performed, "the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance."[38] Before the Act, it had been unclear as to whether a holder who had made only partial performance had any rights at all as a holder in due course.[39]

The Act further amends Article 3 by clarifying the rules concerning notice of breach of fiduciary duty in transactions between fiduciaries.[40] Code section 11-3-307(a)(1) defines a fiduciary as "an agent, trustee, partner, or corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument."[41] The subject matter of this section, which was not covered by the old Article 3,[42] involves situations in which:

> an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary, and the represented person makes a claim to the instrument or its proceeds on the basis

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otherwise so irregular or incomplete as to call into question its authenticity." *Id.*

33. *See id.* § 11-3-302.

34. *See* 1962 Ga. Laws 156, § 1, at 252 (formerly found at O.C.G.A. § 11-3-302 (1994)).

35. Subcommittee Report, *supra* note 1, at 4-5.

36. O.C.G.A. § 11-3-302(d) (Supp. 1996).

37. *Id.*

38. *Id.*

39. Subcommittee Report, *supra* note 1, at 5.

40. O.C.G.A. § 11-3-307 (Supp. 1996).

41. *Id.* § 11-3-307(a)(1).

42. *See* 1962 Ga. Laws 156, § 1, at 252 (formerly found at O.C.G.A. §§ 11-3-301 to -307 (1994)).

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> that the transaction of the fiduciary is a breach of fiduciary duty.[43]

In such situations, takers are not holders in due course.[44] As such, a taker would be liable to the beneficiary of an instrument if the fiduciary misappropriates the proceeds of the instrument, so long as the taker has notice of a possible breach of fiduciary duty.[45] Under Code section 11-3-307(b)(1), notice of a possible breach of fiduciary duty constitutes notice of the claim of the represented person.[46] Under Code section 11-3-307(b)(2), a taker has notice if the instrument is:

> (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary; (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or (iii) deposited to an account other than an account of the . . . represented person.[47]

Code section 11-3-307 differs from the old Code in that the old Code section (1) did not define fiduciary status, (2) did not specifically define the situations in which fiduciary status applied, and (3) did not consider the deposit of an instrument into an account of someone other than the represented person as adequate notice.[48]

Effect of Instrument on Underlying Obligation

Prior to the Act, an obligation underlying an instrument was discharged when the bank was a drawer, maker, or acceptor of the instrument and when there was no recourse on the instrument against the obligor;[49] however, the language regarding discharge of obligation effectively excluded situations in which the obligor indorsed cashier's checks, certified checks, or teller's checks.[50] Code section 11-3-310 now specifically includes these instruments as instruments that will also discharge an obligation if taken for the obligation.[51] However, the Act also mandates that such a discharge will not affect any liability that the obligor might otherwise have as an indorser of the instrument.[52]

The Act also resolves conflicting case law[53] regarding the effect of

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43. O.C.G.A. § 11-3-307(b) (Supp. 1996).
44. Subcommittee Report, *supra* note 1, at 5.
45. *Id.*
46. *Id.*
47. O.C.G.A. § 11-3-307(b)(2) (Supp. 1996).
48. *See* 1962 Ga. Laws 156, § 1, at 253 (formerly found at O.C.G.A. § 11-3-307 (1994)).
49. *Id.* at 281 (formerly found at O.C.G.A. § 11-3-802 (1994)).
50. Subcommittee Report, *supra* note 1, at 5.
51. O.C.G.A. § 11-3-310(a) (Supp. 1996).
52. *Id.*
53. *Compare* Rhone v. State Auto Mut. Ins. Co., 858 F.2d 1507 (11th Cir. 1988)

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Article 3 on the common law of accord and satisfaction.[54] While most courts have held that the old Code did not change the existing common law of accord and satisfaction,[55] the Act amends Code section 11-1-207 by codifying the common law rule that a person who receives a check offered to pay off a pre-existing dispute in full waives the balance of the claim by accepting and cashing the check.[56] The previous Article 3 provided that a party who performed or promised performance in a manner demanded by the other party did not prejudice any rights which he had explicitly reserved by doing so.[57] The Act adds a subsection to Article I which states that the existing provisions do not apply to an accord and satisfaction.[58] This change prevents a party from cashing a check offered in accord and satisfaction of a previously existing obligation and then seeking to collect the balance of the debt that would have been owed had it not been for the accord and satisfaction.[59]

Signatures

The Act amends the law regarding liability for instruments by changing the prior rule that "no person is liable on an instrument unless his signature appears thereon"[60] to one which accounts for the signatures of representatives.[61] Prior to the Act, courts had generally interpreted the law regarding liability to mean that an undisclosed principal was not liable on an instrument,[62] although this interpretation directly conflicted with the law of agency, which binds an undisclosed principal on a simple contract.[63] The Act resolves this conflict by providing in Code section 11-3-402(a) that:

> If a person acting or purporting to act as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the

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with AFC Interiors v. DiCello, 544 N.E.2d 869 (Ohio 1989).

54. Subcommittee Report, *supra* note 1, at 5-6.
55. *Id.* at 5; *see, e.g., Rhone*, 858 F.2d at 1511.
56. O.C.G.A. § 11-1-207(2) (Supp. 1996).
57. 1962 Ga. Laws 156, § 1, at 170 (formerly found at O.C.G.A. § 11-1-207 (1994)).
58. O.C.G.A. 11-1-207(2) (Supp. 1996).
59. Subcommittee Report, *supra* note 1, at 6.
60. 1962 Ga. Laws 156, § 1, at 257 (formerly found at O.C.G.A. § 11-3-401 (1994)).
61. O.C.G.A. § 11-3-402(a) (Supp. 1996).
62. Subcommittee Report, *supra* note 1, at 6.
63. *See, e.g.,* United States v. Everett Monte Cristo Hotel, Inc., 524 F.2d 127 (9th Cir. 1975).

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> signature of the representative is the "authorized signature of the representative person" and the represented person is liable on the instrument, whether or not identified in the instrument.[64]

Thus, an undisclosed principal is liable on the instrument.[65]

The Act further amends Article 3 to provide that a corporate agent is not individually liable on a check drawn on a corporate account that he signed without indicating his representative capacity and without naming the principal.[66] This amendment departs from the clear language of the old Code, which had indicated that a person would be liable for any instruments upon which his signature appeared.[67] So long as the corporation is identified on the check, Code section 11-3-402(c) provides that the corporate agent will not be personally liable.[68] The Act further amends Code section 11-3-402 to provide that an agent may use parol evidence to prove that his signature was made in a representative capacity, except against a holder in due course.[69]

Fictitious Payees, Impostors, and Faithless Employees; Comparative Negligence

In regard to transactions made by impostors, fictitious payees, and faithless employees, the Act clarifies the responsibility of the drawer in terms of loss allocation.[70] The old Code made a distinction between persons who impersonate payees of a check and persons who pretend to be agents of the principal.[71] In the former case, a person who forged the check was able to pass good title,[72] while in the latter case impostors had no power to forge the name of the principal,[73] and thus such forgeries were ineffective and rendered the instrument non-negotiable.[74] The Act does away with this distinction in Code section

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64. O.C.G.A. § 11-3-402(a) (Supp. 1996).
65. Subcommittee Report, *supra* note 1, at 6.
66. O.C.G.A. § 11-3-402(c) (Supp. 1996).
67. 1962 Ga. Laws 156, § 1, at 257 (formerly found at O.C.G.A. § 11-3-403(2) (1994)).
68. O.C.G.A. § 11-3-402(c) (Supp. 1996).
69. *Id.* § 11-3-402(b)(2).
70. *Id.* §§ 11-3-404 to -405.
71. 1962 Ga. Laws 156, § 1, at 258 (formerly found at O.C.G.A. § 11-3-405 (1994)). This distinction between impostors who pass themselves off as agents of the payee and those who purport to be agents of the principal is highlighted in *Thornton & Co. v. Gwinnett Bank & Trust Co.*, which held that the old Code section was not applicable to one who represents himself as an agent of the principal and procures a check payable to the order of the principal. 151 Ga. App. 641, 260 S.E.2d 765 (1979).
72. Subcommittee Report, *supra* note 1, at 7.
73. *Id.*
74. 1962 Ga. Laws 156, § 1, at 258-59 (formerly found at O.C.G.A. § 11-3-405

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11-3-404, making instruments negotiable even when the check is made out to an imposter's purported principal.[75]

Before the Act, many courts held that any indorsement that deviates even slightly from the name of the payee on the face of the check prevents a bank from asserting that the indorsement is effective under Code section 11-3-404, thus causing the loss to fall on the bank.[76] The Act amends this section by adding new language defining what constitutes an effective indorsement.[77] Under Code section 11-3-404(c), an indorsement is made in the name of the payee, and is thus effective, if: "(1) it is made in a name substantially similar to that of the payee; or (2) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee."[78]

Finally, the Act provides a comparative negligence standard for allocating liability for acts of impostors or fictitious payees.[79] Because the former Article 3 did not require a bank to exercise reasonable care in paying the forged instrument,[80] some courts held the drawer liable regardless of the degree of the bank's negligence.[81] However, Code section 11-3-404(d) provides that:

> [I]f a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.[82]

The Act also changes prior law by applying comparative negligence to other matters.[83] Thus, the Act amends Code section 11-3-405 by providing that all parties, including banks, are liable to the extent of their negligence.[84]

(1994)).

75. O.C.G.A. § 11-3-404 (Supp. 1996).
76. Subcommittee Report, *supra* note 1, at 7.
77. O.C.G.A. § 11-3-404(c) (Supp. 1996).
78. *Id.*
79. *Id.* § 11-3-404(d).
80. *See* 1962 Ga. Laws 156, § 1, at 258-59 (formerly found at O.C.G.A. § 11-3-404 (1994)).
81. Subcommittee Report, *supra* note 1, at 8.
82. O.C.G.A. § 11-3-404(d) (Supp. 1996).
83. *See id.* § 11-3-406(b) to (e).
84. Subcommittee Report, *supra* note 1, at 8.

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Transfer and Presentment Warranties

The old Code section 11-3-417[85] covering warranties on presentment and transfer has been separated into two sections under the Act—Code section 11-3-416, which deals with transfer warranties,[86] and Code section 11-3-417, which deals with presentment warranties.[87] The Act requires prompt notice of a breach of transfer or a presentment warranty, or else the warrantor may be discharged to the extent of any loss caused by the delay in giving notice.[88] The old Code contained no provision for timely notice of a breach of these warranties.[89]

The Act also prevents the warrantor from disclaiming either a transfer or presentment warranty in connection with a check.[90] The old Code did not specifically deal with the applicability of presentment and transfer warranties to checks.[91]

Accommodating Modern Technology

Most of the changes made to Article 4 were made to accommodate changes in modern technology and check processing practices since the original Article 4 was drafted.[92] In particular, the advent of Magnetic Ink Character Recognition (MICR) technology, which electronically encodes numbers on checks so that they may be processed in an automated system, has rendered archaic much of Article 4, which contemplates only paper-based systems.[93] One of the most significant aspects of MICR technology is that it facilitates check truncation, a process in which the checks are not returned to the customer; rather, the information on the checks is supplied to the customer.[94] The Act specifically authorizes this practice in Code section 11-4-406, which states that a bank has provided the customer with sufficient information regarding the checks if it provides the "item number, amount, and date of payment."[95] This change was made to facilitate

85. 1962 Ga. Laws 156, § 1, at 263-64 (formerly found at O.C.G.A. § 11-3-417 (1994)).
86. O.C.G.A. § 11-3-416 (Supp. 1996).
87. *Id.* § 11-3-417.
88. *Id.* §§ 11-3-416(c), -417(e).
89. *See* 1962 Ga. Laws 156, § 1, at 263-64 (formerly found at O.C.G.A. § 11-3-417 (1994)).
90. O.C.G.A. § 11-3-417(e) (Supp. 1996).
91. *See* 1962 Ga. Laws 156, § 1, at 263-64 (formerly found at O.C.G.A. § 11-3-417 (1994)).
92. Kinnamon Interview, *supra* note 3.
93. Interview with Mark Budnitz, Consumer Representative, U.C.C. Subcommittee on Articles 3 and 4, in Atlanta (Apr. 23, 1996) [hereinafter Budnitz Interview].
94. Kinnamon Interview, *supra* note 3.
95. O.C.G.A. § 11-4-406(a) (Supp. 1996).

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truncation, which makes banking more efficient by handling less paper.[96]

Interestingly, the Act retained a provision from the old law regarding the time in which claims for the payment of unauthorized signatures and indorsements must be made.[97] Under the UCC, a customer has up to one year after the statements are made available to him to report an unauthorized signature.[98] The Act, however, retains a provision from the prior Georgia law which requires that such reports be made within sixty days of the alteration,[99] although the customer still has up to a year to report an unauthorized indorsement or other alteration to the back of the instrument.[100] The shorter period arose in response to a concern that commercial customers might not promptly review their statements, leaving the banks to suffer a loss.[101] The problem, however, is with smaller customers who do not look at their statements within sixty days; Representative Kinnamon, sponsor of the Act, thinks that the short time period may be deemed unconscionable by the courts in the future.[102]

The Act also amends Article 4 to include in the definition of "separate office" of a bank "the location of any agent of a bank receiving items for data processing purposes."[103] The intent of this amendment is to include new developments such as branches or facilities operating in supermarkets and other locations not generally thought of as "branches" in the definition of "separate offices."[104] Locations such as these are deemed separate banks for determining the time and place in which action must be taken or notice must be given.[105] This clause was added to the UCC provision to insure that certain structures not traditionally defined as "branches" are included in the notice requirements.[106]

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96. Budnitz Interview, *supra* note 93; Kinnamon Interview, *supra* note 3.

97. *Compare* 1963 Ga. Laws 156, § 1, at 305-06 (formerly found at O.C.G.A. § 11-4-406 (1994)) *with* O.C.G.A. § 11-4-406(f) (Supp. 1996).

98. U.C.C. § 4-406(f) (1995).

99. O.C.G.A. § 11-4-406(f) (Supp. 1996).

100. *Id.* Note that the UCC revision requires customers to report forged customer signatures and alterations only. U.C.C. § 406 (1995). The Georgia revision, however, also requires the customer to discover forged indorsements. O.C.G.A. § 11-4-406(f) (Supp. 1996).

101. Budnitz Interview, *supra* note 93.

102. Kinnamon Interview, *supra* note 3. This is also problematic because it will be difficult for customers whose checks are truncated to discover forged indorsements. Budnitz Interview, *supra* note 93.

103. O.C.G.A. § 11-4-107 (Supp. 1996).

104. Kinnamon Interview, *supra* note 3.

105. O.C.G.A. § 11-4-107 (Supp. 1996).

106. Kinnamon Interview, *supra* note 3.

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Variations from the Uniform Commercial Code

The Act contains several other provisions held over from existing Georgia law that do not mirror the UCC. One of these is an exception to the statute of limitations requirements of Code section 11-3-118.[107] Subsection (h) of that section exempts "sealed instruments that are governed by the provisions of Code section 9-3-23."[108] Code section 9-3-23 provides a twenty-year statute of limitations for actions on such instruments.[109] This holdover from the pre-Act code is unique among the various state commercial provisions.[110]

Similarly, the language at the end of Code section 11-3-503 dealing with notice of dishonor was carried over from the previous Georgia law.[111] The Act requires: "upon request of any party to the instrument, the drawee shall provide a statement to the requesting party giving the specific reason for dishonor, and the drawee shall have no additional liability to the drawer as a result of such statement."[112] The purpose of this non-UCC provision is to help ensure that, through the requirement of a specific reason for dishonor by the drawee, there is no arbitrary reason for the dishonor.[113]

Code section 11-3-602(c) is also a holdover provision from the previous law.[114] This section requires an assignee to notify the maker or drawer of an assigned note that the note was assigned and that payment is to be made to the assignee.[115] Because the assignee must provide notice that the note has been assigned, consumers are protected by the requirement that they receive more information regarding the entities to which they make payments.[116]

Additionally, the assignee notification requirement is intended to avoid a situation in which a customer who has not received notice continues to pay the original holder, though the holder has kept the money instead of transferring it to the assignee.[117] In this situation, the assignee would demand payment from the customer, who would

107. O.C.G.A. § 11-3-118 (Supp. 1996).
108. *Id.* § 11-3-118(h).
109. 1855 Ga. Laws 233, § 11, at 234 (codified at O.C.G.A. § 9-3-23 (1994)).
110. Kinnamon Interview, *supra* note 3.
111. *Compare* O.C.G.A. § 11-3-503 (Supp. 1996) *with* 1962 Ga. Laws 156, § 1, at 272-73 (formerly found at O.C.G.A. § 11-3-508 (1994)).
112. O.C.G.A. § 11-3-503(b) (Supp. 1996).
113. Budnitz Interview, *supra* note 93.
114. *Compare* O.C.G.A. § 11-3-602(c) (Supp. 1996) *with* 1962 Ga. Laws 156, § 1, at 277 (formerly found at O.C.G.A. § 11-3-603 (1994)).
115. O.C.G.A. § 11-3-602(c) (Supp. 1996).
116. Kinnamon Interview, *supra* note 3.
117. Budnitz Interview, *supra* note 93.

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have to pay twice.[118] Instead, the notice requirement ensures that the customer pays only the party entitled to receive payment.[119]

The Act also amends Georgia evidence rules to create "a presumption that the check has been paid," in any dispute concerning payment by check, when a copy of the check is produced along with the original bank statement.[120] This is especially important when checks are truncated and the original check no long exists.[121]

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118. *Id.*
119. *Id.*
120. O.C.G.A. § 24-4-23.1(b) (Supp. 1996).
121. Budnitz Interview, *supra* note 93.

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