

§ 5009. Measure of damages**(a) Liability****(1) In general**

Except as provided in section 5005 of this title, any person who, in connection with a substitute check, breaches any warranty under this chapter or fails to comply with any requirement imposed by, or regulation prescribed pursuant to, this chapter with respect to any other person shall be liable to such person in an amount equal to the sum of—

(A) the lesser of—

(i) the amount of the loss suffered by the other person as a result of the breach or failure; or

(ii) the amount of the substitute check; and

(B) interest and expenses (including costs and reasonable attorney's fees and other expenses of representation) related to the substitute check.

(2) Offset of recredits

The amount of damages any person receives under paragraph (1), if any, shall be reduced by the amount, if any, that the claimant receives and retains as a recredit under section 5006 or 5007 of this title.

(b) Comparative negligence**(1) In general**

If a person incurs damages that resulted in whole or in part from the negligence or failure of that person to act in good faith, then the amount of any liability due to that person under subsection (a) shall be reduced in proportion to the amount of negligence or bad faith attributable to that person.

(2) Rule of construction

Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.

(Pub. L. 108-100, §10, Oct. 28, 2003, 117 Stat. 1188.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original "this Act", meaning Pub. L. 108-100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5010. Statute of limitations and notice of claim**(a) Actions under this chapter****(1) In general**

An action to enforce a claim under this chapter may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 1-year period beginning on the date the cause of action accrues.

(2) Accrual

A cause of action accrues as of the date the injured party first learns, or by which such person reasonably should have learned, of the facts and circumstances giving rise to the cause of action.

(b) Discharge of claims

Except as provided in subsection (c), unless a person gives notice of a claim to the indemnifying or warranting bank within 30 days after the person has reason to know of the claim and the identity of the indemnifying or warranting bank, the indemnifying or warranting bank is discharged from liability in an action to enforce a claim under this chapter to the extent of any loss caused by the delay in giving notice of the claim.

(c) Notice of claim by consumer

A timely claim by a consumer under section 5006 of this title for expedited recredit constitutes timely notice of a claim by the consumer for purposes of subsection (b).

(Pub. L. 108-100, §11, Oct. 28, 2003, 117 Stat. 1188.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b), was in the original "this Act", meaning Pub. L. 108-100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5011. Consumer awareness**(a) In general**

Each bank shall provide, in accordance with subsection (b), a brief notice about substitute checks that describes—

(1) how a substitute check is the legal equivalent of an original check for all purposes, including any provision of any Federal or State law, and for all persons, if the substitute check—

(A) accurately represents all of the information on the front and back of the original check as of the time at which the original check was truncated; and

(B) bears the legend: "This is a legal copy of your check. You can use it in the same way you would use the original check."; and

(2) the consumer recredit rights established under section 5006 of this title when a consumer believes in good faith that a substitute check was not properly charged to the account of the consumer.

(b) Distribution**(1) Existing customers**

With respect to consumers who are customers of a bank on the effective date of this chapter and who receive original checks or substitute checks, a bank shall provide the notice described in subsection (a) to each such consumer no later than the first regularly scheduled communication with the consumer after the effective date of this chapter.

(2) New account holders

A bank shall provide the notice described in subsection (a) to each consumer who will receive original checks or substitute checks, other than existing customers referred to in paragraph (1), at the time at which the customer relationship is initiated.

(3) Mode of delivery

A bank may send the notices required by this subsection by United States mail or by

any other means through which the consumer has agreed to receive account information.

(4) Consumers who request copies of checks

Notice shall be provided to each consumer of the bank that requests a copy of a check and receives a substitute check, at the time of the request.

(c) Model language

(1) In general

Before the end of the 9-month period beginning on October 28, 2003, the Board shall publish model forms and clauses that a bank may use to describe each of the elements required by subsection (a).

(2) Safe harbor

(A) In general

A bank shall be treated as being in compliance with the requirements of subsection (a) if the bank's substitute check notice uses a model form or clause published by the Board and such model form or clause accurately describes the bank's policies and practices.

(B) Deletion or rearrangement

A bank may delete any information in the model form or clause that is not required by this chapter or rearrange the format.

(3) Use of model language not required

This section shall not be construed as requiring any bank to use a model form or clause that the Board prepares under this subsection.

(Pub. L. 108–100, §12, Oct. 28, 2003, 117 Stat. 1189.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b)(1), is at the end of the 12-month period beginning on Oct. 28, 2003, except as otherwise specifically provided in this chapter, see section 20 of Pub. L. 108–100, set out as an Effective Date note under section 5001 of this title.

This chapter, referred to in subsec. (c)(2)(B), was in the original “this Act”, meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5012. Effect on other law

This chapter shall supersede any provision of Federal or State law, including the Uniform Commercial Code, that is inconsistent with this chapter, but only to the extent of the inconsistency.

(Pub. L. 108–100, §13, Oct. 28, 2003, 117 Stat. 1190.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5013. Variation by agreement

(a) Section 5007

Any provision of section 5007 of this title may be varied by agreement of the banks involved.

(b) No other provisions may be varied

Except as provided in subsection (a), no provision of this chapter may be varied by agreement of any person or persons.

(Pub. L. 108–100, §14, Oct. 28, 2003, 117 Stat. 1190.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5014. Regulations

The Board may prescribe such regulations as the Board determines to be necessary to implement, prevent circumvention or evasion of, or facilitate compliance with the provisions of this chapter.

(Pub. L. 108–100, §15, Oct. 28, 2003, 117 Stat. 1190.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5015. Study and report on funds availability

(a) Study

In order to evaluate the implementation and the impact of this chapter, the Board shall conduct a study of—

(1) the percentage of total checks cleared in which the paper check is not returned to the paying bank;

(2) the extent to which banks make funds available to consumers for local and nonlocal checks prior to the expiration of maximum hold periods;

(3) the length of time within which depository banks learn of the nonpayment of local and nonlocal checks;

(4) the increase or decrease in check-related losses over the study period; and

(5) the appropriateness of the time periods and amount limits applicable under sections 4002 and 4003 of this title, as in effect on October 28, 2003.

(b) Report to Congress

Before the end of the 30-month period beginning on the effective date of this chapter, the Board shall submit a report to the Congress containing the results of the study conducted under this section, together with recommendations for legislative action.

(Pub. L. 108–100, §16, Oct. 28, 2003, 117 Stat. 1190.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

The effective date of this chapter, referred to in subsec. (b), is at the end of the 12-month period beginning on Oct. 28, 2003, except as otherwise specifically pro-