



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 02/05/04, by Karen May

**SYNOPSIS AS INTRODUCED:**

810 ILCS 5/4-402

from Ch. 26, par. 4-402

Amends the Uniform Commercial Code. Provides that a payor bank may not impose a charge or fee more than once for each check returned due to insufficiency of available funds. Provides that a payor bank may impose a charge or fee only once per day regardless of the number of transactions resulting in insufficiency of available funds. Provides that a payor bank must process checks drawn against an account in a manner that is based upon debiting the smallest checks first each day. Provides that a bank wrongfully dishonors an item if it dishonors a check solely because it did not process checks in this manner.

LRB093 16011 SAS 41635 b

1 AN ACT concerning financial regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Uniform Commercial Code is amended by  
5 changing Section 4-402 as follows:

6 (810 ILCS 5/4-402) (from Ch. 26, par. 4-402)

7 Sec. 4-402. Bank's liability to customer for wrongful  
8 dishonor; time of determining insufficiency of account.

9 (a) Except as otherwise provided in this Article, a payor  
10 bank wrongfully dishonors an item if it dishonors an item that  
11 is properly payable, but a bank may dishonor an item that would  
12 create an overdraft unless it had agreed to pay the overdraft.

13 (b) A payor bank is liable to its customer for damages  
14 proximately caused by the wrongful dishonor of an item.  
15 Liability is limited to actual damages proved and may include  
16 damages for an arrest or prosecution of the customer or other  
17 consequential damages. Whether any consequential damages are  
18 proximately caused by the wrongful dishonor is a question of  
19 fact to be determined in each case.

20 (c) A payor bank's determination of the customer's account  
21 balance on which a decision to dishonor for insufficiency of  
22 available funds is based may be made at any time between the  
23 time the item is received by the payor bank and the time that  
24 the payor bank returns the item or gives notice in lieu of  
25 return, and no more than one determination need be made. If, at  
26 the election of the payor bank, a subsequent balance  
27 determination is made for the purpose of reevaluating the  
28 bank's decision to dishonor the item, the account balance at  
29 that time is determinative of whether a dishonor for  
30 insufficiency of available funds is wrongful. No charge or fee  
31 may be imposed more than once for each check returned due to  
32 insufficiency of available funds. A charge or fee may be

1 imposed only once per day regardless of the number of  
2 transactions resulting in insufficiency of available funds.

3 (d) A payor bank must process checks drawn against an  
4 account in a manner that is based upon debiting the smallest  
5 checks first each day. A bank wrongfully dishonors an item if  
6 it dishonors a check solely because it did not process checks  
7 in this manner.

8 (Source: P.A. 87-582; 87-1135.)