

§ 28:4—303. 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 subsection (1)(d) of section 28:4—213 and section 28:4—302 dealing with the payor bank's responsibility for late return items.
- (2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

PART 4—RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

§ 28:4—401. When bank may charge customer's account

(1) As against its customer, a bank may charge against his account 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 his altered item; or
- (b) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

§ 28:4—402. 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.

§ 28:4—403. Customer's right to stop payment; burden of proof of loss

(1) A customer may by order to his bank stop payment of any item payable for his account 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 section 28:4—303. No such order shall be valid, however, unless it shall be in writing specifically describing the item to which it relates by stating the amount, date and payee thereof.

(2) Anything in this section 28:4—403 to the contrary notwithstanding, any stop payment order transmitted by telephone by a customer to an officer of a bank, while such officer is on the premises thereof, shall be accepted by such bank, upon such identification that will insure the order has been transmitted by such customer, as an effective order for a period of twenty-four hours, after which time it shall not longer be valid unless followed by a written order as provided in this section 28:4—403. A written order is effective for only six month unless renewed in writing. The bank may, at its option and without liability, stop payment of an item after the expiration of a stop payment order or any renewal thereof relating to such item.