

Assembly Bill No. 1566

Passed the Assembly April 27, 2009

Chief Clerk of the Assembly

Passed the Senate June 24, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 4406 of the Commercial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1566, Committee on Banking and Finance. Banking: disclosures.

Existing law provides that a bank that sends or makes available account statements to its customers either return or make available items paid from the account, or provide information in the statement sufficient to allow the customer reasonably to identify the items paid. Existing law specifies that an account statement provides sufficient information, if it includes the item number, the amount, and the date of payment. The requirements that the account enable a customer to “reasonably” identify items paid and specifying the minimum information sufficient to identify the items paid will cease to be operative on January 1, 2010.

This bill would extend the operation of those provisions until January 1, 2015.

The people of the State of California do enact as follows:

SECTION 1. Section 4406 of the Commercial Code, as amended by Section 1 of Chapter 41 of the Statutes of 2005, is amended to read:

4406. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items, it shall provide in the statement of account the telephone number that the customer may call to request an item, a substitute check, or a legible copy thereof pursuant to subdivision (b).

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank shall provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. If the paid item requested by a customer was presented as a substitute check, the bank shall provide, in a reasonable time, either the substitute check or, if the substitute check has been destroyed or is not otherwise obtainable, a legible copy of the substitute check. A bank shall provide, upon request, and without charge to the customer, at least two items, substitute checks, or legible copies thereof, with respect to each statement of account sent to the customer.

(c) If a bank sends or makes available a statement of account or items pursuant to subdivision (a), the customer shall exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer shall promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subdivision (c), the customer is precluded from asserting any of the following against the bank:

(1) The customer's unauthorized signature or any alteration on the item if the bank also proves that it suffered a loss by reason of the failure.

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subdivision (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that

the failure contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subdivision (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subdivision (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subdivision (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subdivision, the payer bank may not recover for breach of warranty under Section 4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

(g) As used in this section, "substitute check" shall have the same meaning as used in Section 229.2 of Title 12 of the Code of Federal Regulations.

(h) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2015, deletes or extends that date.

SEC. 2. Section 4406 of the Commercial Code, as amended by Section 2 of Chapter 41 of the Statutes of 2005, is amended to read:

4406. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer to identify the items paid. If the bank does not return the items, it shall provide in the statement of account the telephone number that the customer may call to request an item, a substitute check, or a legible copy thereof pursuant to subdivision (b).

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank shall provide in a reasonable time either the item or,

if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. If the paid item requested by a customer was presented as a substitute check, the bank shall provide, in a reasonable time, either the substitute check or, if the substitute check has been destroyed or is not otherwise obtainable, a legible copy of the substitute check. A bank shall provide, upon request, and without charge to the customer, at least two items, substitute checks, or legible copies thereof, with respect to each statement of account sent to the customer.

(c) If a bank sends or makes available a statement of account or items pursuant to subdivision (a), the customer shall exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer shall promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subdivision (c), the customer is precluded from asserting any of the following against the bank:

(1) The customer's unauthorized signature or any alteration on the item if the bank also proves that it suffered a loss by reason of the failure.

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subdivision (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subdivision (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank

did not pay the item in good faith, the preclusion under subdivision (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subdivision (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subdivision, the payer bank may not recover for breach of warranty under Section 4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

(g) As used in this section, "substitute check" shall have the same meaning as used in Section 229.2 of Title 12 of the Code of Federal Regulations.

(h) This section shall become operative on January 1, 2015.

Approved _____, 2009

Governor