

Check 21 Legislative Overview

The Check Clearing for the 21st Century Act (Check 21) was designed to foster innovation in the payments system and to enhance its efficiency by reducing some of the legal impediments to check truncation.

When Did Check 21 Take Effect?

Check 21 was signed into law on October 28, 2003, and became effective on October 28, 2004.

What Does Check 21 Authorize?

Check 21 authorizes the use of a negotiable instrument called a substitute check. Check 21 provides the legal framework for the creation of substitute checks, which can be used in place of the original paper document, without an agreement in place with other financial institutions.

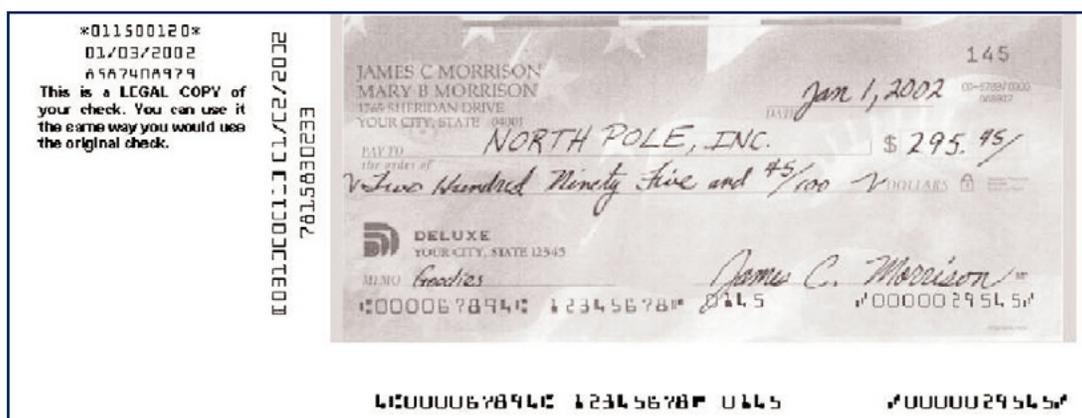
What is a Substitute Check?

The substitute check is a paper reproduction of the original check that must (1) contain an image of the front and back of the original check; (2) bear a MICR line containing all the information appearing on the MICR line of the original check; (3) conform, in paper stock, dimension, and otherwise, with generally applicable industry standards for substitute checks; and (4) be suitable for automated processing in the same manner as the original check.

A substitute check is the legal equivalent of the original check if it (1) accurately represents all the information on the front and back of the original check at the time the original was truncated and (2) bears a legend that states "This is a legal copy of your check. You can use it the same way you would use the original check."

What Does Check 21 Require?

- Check 21 requires financial institutions to accept a substitute check from a presenting institution and grant it equivalent status as the original check, if the substitute check meets prescribed requirements
- Check 21 requires a reconverting bank to meet the warranties and indemnities enacted through the legislation and subsequent regulations
- Check 21 requires financial institutions to provide education to individual consumers on substitute checks and consumer recredit rights



Warranties and Indemnities Under Check 21

Check 21 also provides additional warranties and an indemnity protection. Under Check 21, a bank that transfers, presents or returns a substitute check would:

- Warrant that the substitute check meets legal equivalence requirements
- Warrant that payment will not be requested based on a check that has already been presented (no double debit)
- Indemnify substitute check recipients for a loss that is due to the receipt of a substitute check instead of the original check

Q. What amount is indemnified?

A. The indemnity applies to any loss (up to the amount of the substitute check, interest and expenses) incurred by any recipient of a substitute check if that loss occurred due to the receipt of a substitute check instead of the original check. If the loss is due to a warranty breach, the indemnity could also include proximate caused damages.

Q. Are there limitations on indemnification amounts?

A. The bank is only liable for losses up to when the original or copy is provided, and the bank is entitled to a return of any funds in excess of that amount.

Q. Can the indemnifying bank recover damages from other parties?

A. Yes, the indemnifying bank can recover from other parties. The indemnified party must comply with all reasonable requests for assistance from an indemnifying bank. The comparative negligence provision reduces the indemnity in proportion to the amount of negligence or bad faith.

Expedited Recredit Provisions

Check 21 also includes expedited recredit provisions for consumers who suffer a loss because of a substitute check. A consumer may file a claim for expedited recredit within 40 days of receipt of the relevant statement or substitute check if certain conditions apply. Under the legislation, every bank must distribute to its customers an informational brochure, including descriptions of the substitute check process and consumer recredit rights.