

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 3012

By: Morgan (Fred)

AS INTRODUCED

An Act relating to the Uniform Commercial Code; amending 12A O.S. 2001, Sections 4-102, 4-104, as amended by Section 56, Chapter 140, O.S.L. 2005, 4-105, 4-207, 4-208, 4-212, 4-301 and 4-403 (12A O.S. Supp. 2005, Section 4-104), which relate to Article 4 of the Uniform Commercial Code which pertains to bank deposits and collections; stating applicable law for certain liability; modifying references to definitions in other articles; eliminating definition now covered by another article; modifying transfer and presentment warranties; modifying terminology to reflect inscription of information in medium other than written document; modifying circumstances under which payor bank may revoke settlement and recover any settlement made; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12A O.S. 2001, Section 4-102, is amended to read as follows:

Section 4-102.

APPLICABILITY

(a) To the extent that items within this article are also within Articles 3 and 8 of this title, they are subject to those articles. If there is conflict, this article governs Article 3, but Article 8 governs this article.

(b) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

SECTION 2. AMENDATORY 12A O.S. 2001, Section 4-104, as amended by Section 56, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 4-104), is amended to read as follows:

Section 4-104.

DEFINITIONS AND INDEX OF DEFINITIONS

(a) In this article unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certified securities (Section 8-102 of this title) or instructions for uncertificated securities (Section 8-102 of this title) or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in Section 3-104 of this title or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does

not include a payment order governed by Article 4A of this title or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final; and

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this article and the sections of this title in which they appear are:

"Agreement for electronic presentment" Section 4-110.

~~"Bank" Section 4-105.~~

"Collecting bank" Section 4-105.

"Depositary bank" Section 4-105.

"Intermediary bank" Section 4-105.

"Payor bank" Section 4-105.

"Presenting bank" Section 4-105.

"Presentment Notice" Section 4-110.

(c) "Control" as provided in Section 7-106 of this title and the following definitions in other articles of this title apply to this article:

"Acceptance" Section 3-409.

"Alteration" Section 3-407.

"Cashier's check" Section 3-104.

"Certificate of deposit" Section 3-104.

"Certified check" Section 3-409.

"Check" Section 3-104.

"Draft" Section 3-104.
"Good faith" Section 3-103.
"Holder in due course" Section 3-302.
"Instrument" Section 3-104.
"Notice of dishonor" Section 3-503.
"Order" Section 3-103.
"Ordinary care" Section 3-103.
"Person entitled to enforce" Section 3-301.
"Presentment" Section 3-501.
"Promise" Section 3-103.
"Prove" Section 3-103.
"Record" Section 3-103
"Remotely-created consumer item" Section 3-103
"Teller's check" Section 3-104.
"Unauthorized signature" Section 3-403.

(d) In addition, Article 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article.

SECTION 3. AMENDATORY 12A O.S. 2001, Section 4-105, is amended to read as follows:

Section 4-105.

~~"BANK"; "DEPOSITARY BANK"; "PAYOR BANK";
"INTERMEDIARY BANK"; "COLLECTING BANK";
"PRESENTING BANK"~~ DEFINITIONS OF TYPES OF BANKS

In this article:

(1) ~~"Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company~~ Reserved;

(2) "Depositary bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) "Payor bank" means a bank that is the drawee of a draft;

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depository or payor bank;

(5) "Collecting bank" means a bank handling an item for collection except the payor bank; and

(6) "Presenting bank" means a bank presenting an item except a payor bank.

SECTION 4. AMENDATORY 12A O.S. 2001, Section 4-207, is amended to read as follows:

Section 4-207.

TRANSFER WARRANTIES

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) The warrantor is a person entitled to enforce the item;

(2) All signatures on the item are authentic and authorized;

(3) The item has not been altered;

(4) The item is not subject to a defense or claim in recoupment (subsection (a) of Section 3-305 of this title) of any party that can be asserted against the warrantor; ~~and~~

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(6) With respect to any remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in Sections 3-115 and 3-407 of this title. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) of this section are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

SECTION 5. AMENDATORY 12A O.S. 2001, Section 4-208, is amended to read as follows:

Section 4-208.

PRESENTMENT WARRANTIES

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i)

the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

- (1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
- (2) The draft has not been altered; ~~and~~
- (3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and
- (4) With respect to any remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3-404 or

3-405 of this title or the drawer is precluded under Section 3-406 or 4-406 of this title from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

SECTION 6. AMENDATORY 12A O.S. 2001, Section 4-212, is amended to read as follows:

Section 4-212.

PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH, OR AT BANK;

LIABILITY OF DRAWER OR INDORSER

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a ~~written~~ record providing notice that the bank holds the item for acceptance or payment. The notice must be

sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3-501 of this title by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 3-501 of this title is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

SECTION 7. AMENDATORY 12A O.S. 2001, Section 4-301, is amended to read as follows:

Section 4-301.

DEFERRED POSTING; RECOVERY OF PAYMENT BY RETURN OF ITEMS;

TIME OF DISHONOR; RETURN OF ITEMS BY PAYOR BANK

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:

- (1) Returns the item; ~~or~~
- (2) ~~Sends written~~ Returns an image of the item, if the party to which the return is made has entered into an agreement to accept an image as a return of the item and the image is returned in accordance with that agreement; or
- (3) Sends a recording providing notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may

revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a) of this section.

(c) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

- (1) As to an item presented through a clearing-house, when it is delivered to the presenting or last collecting bank or to the clearing-house or is sent or delivered in accordance with clearing-house rules; or
- (2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

SECTION 8. AMENDATORY 12A O.S. 2001, Section 4-403, is amended to read as follows:

Section 4-403.

CUSTOMER'S RIGHT TO STOP PAYMENT; BURDEN OF PROOF OF LOSS

(a) A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 4-303 of this title. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six (6) months, but it lapses after fourteen (14) calendar days if the original order was oral and was not confirmed in ~~writing~~ a record within that period. A stop-payment order may be renewed for additional six-

month periods by a ~~writing~~ record given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under Section 4-402 of this title.

SECTION 9. This act shall become effective January 1, 2007.

50-2-8331 SD 01/17/06