

ACT 241

S.B. NO. 1362

A Bill for an Act Relating to Negotiable Instruments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 490:3-103, Hawaii Revised Statutes, is amended by adding a new definition to subsection (b) to be appropriately inserted and to read as follows:

““Demand draft”. Section 490:3-104.”

SECTION 2. Section 490:3-104, Hawaii Revised Statutes, is amended to read as follows:

“§490:3-104 Negotiable instrument. (a) Except as provided in subsections (c) and (d), “negotiable instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- (1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) Is payable on demand or at a definite time; and
- (3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain [(i) an];
 - (A) An undertaking or power to give, maintain, or protect collateral to secure payment[, (ii) an];
 - (B) An authorization or power to the holder to confess judgment or realize on or dispose of collateral[.]; or [(iii) a]
 - (C) A waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) “Instrument” means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1) and otherwise falls within the definition of “check” in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a “note” if it is a promise and is a “draft” if it is an order. If an instrument falls within the definition of both “note” and “draft”, a person entitled to enforce the instrument may treat it as either.

(f) “Check” means [(i) a]:

- (1) A draft, other than a documentary draft, payable on demand and drawn on a bank; [or (ii) a]
- (2) A cashier’s check or teller’s check[.]; or
- (3) A demand draft.

An instrument may be a check even though it is described on its face by another term, such as “money order”.

(g) “Cashier’s check” means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) “Teller’s check” means a draft drawn by a bank [(i) on]:

- (1) On another bank[.]; or [(ii) payable]
- (2) Payable at or through a bank.

(i) “Traveler’s check” means an instrument that [(i) is]:

- (1) Is payable on demand[, (ii) is];
- (2) Is drawn on or payable at or through a bank[, (iii) is];
- (3) Is designated by the term “traveler’s check” or by a substantially similar term[.]; and [(iv) requires,]

(4) Requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) “Certificate of deposit” means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

(k) “Demand draft” means a writing not signed by a customer that is created by a third party under the purported authority of the customer for the purpose of charging the customer’s account with a bank. A demand draft may contain any or all of the following:

- (1) The customer’s printed or typewritten name or account number;

- (2) A notation that the customer authorized the draft; or
- (3) The statement “No Signature Required” or words to that effect.

A demand draft shall not include a check drawn by a fiduciary, as defined in section 490:3-307(a)(1).”

SECTION 3. Section 490:3-416, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

- (1) The warrantor is a person entitled to enforce the instrument;
- (2) All signatures on the instrument are authentic and authorized;
- (3) The instrument has not been altered;
- (4) The instrument is not subject to a defense or claim in recoupment of any party which 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) If the instrument is a demand draft, creation of the instrument according to the terms on its face was authorized by the person identified as drawer.”

SECTION 4. Section 490:3-417, Hawaii Revised Statutes, is amended to read as follows:

“**§490:3-417 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[.];

- (1) The person obtaining payment or acceptance, at the time of presentment[.]; and [(ii) a]

- (2) A previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

- [(1) (A) 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) (B) The draft has not been altered; [and]

- [(3) (C) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized[.]; and

- (D) If the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.

(b) A drawee making payment may recover from any 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, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any 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) 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 490:3-404 or 490:3-405 or the drawer is precluded under section 490:3-406 or 490:4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If [(i) a]:

(1) A dishonored draft is presented for payment to the drawer or an indorser [or (ii) any]; or

(2) Any other instrument is presented for payment to a party obliged to pay the instrument[.]; and [(iii) payment]

(3) Payment is received, the following rules apply:

[(1)] (A) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument[.]; and

[(2)] (B) 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) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

(g) A demand draft is a check, as provided in section 490:3-104(f).''

SECTION 5. Section 490:4-207, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 (section 490:3-305(a)) 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) If the item is a demand draft, creation of the item according to the terms on its face was authorized by the person identified as drawer.’’

SECTION 6. Section 490:4-208, Hawaii Revised Statutes, is amended to read as follows:

“**§490:4-208 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]:

- (1) The person obtaining payment or acceptance, at the time of presentment[.]; and [(ii) a]
- (2) 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)] (A) 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)] (B) The draft has not been altered; [and]
 - [(3)] (C) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized[.]; and
 - (D) If the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.

(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]:

- (1) Breach of warranty is a defense to the obligation of the acceptor[.]; and [(ii) if]
- (2) 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) 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 490:3-404 or 490:3-405 or the drawer is precluded under section 490:3-406 or 490:4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If [(i) a]:

- (1) A dishonored draft is presented for payment to the drawer or an indorser; or [(ii) any]
- (2) 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) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty 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 cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(g) A demand check is a check, as provided in section 490:3-104(f).''

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved July 20, 1998.)