

CHAPTER 244

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 01-1252

BY REPRESENTATIVE(S) White and Rippy;
also SENATOR(S) Taylor, Cairns, Evans, and May.

AN ACT

CONCERNING DEMAND DRAFTS UNDER THE "UNIFORM COMMERCIAL CODE".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds that modern check collection methods have increased the risk on payor banks that items not bearing authorized signatures may be paid against customer accounts. The general assembly determines that adding a new class of payment instrument, drawn on a bank customer's account without an authorized signature, is necessary to shift the risk of loss for processing this instrument to the depository-collecting bank which is in the best position to prevent its introduction into the check collection system. Therefore, the general assembly declares that such a shift will more adequately protect consumers and allow for new check collection methods.

(2) The general assembly also finds that a new definition of "demand draft" is intended to identify a payment instrument created to debit a bank customer's account with the bank by a party who is not a signer on the account. This payment instrument is not signed by an authorized signer on the account and does not bear or purport to bear a signature of an authorized signer. This payment instrument is intended to debit the bank customer's account by deposit and collection through the normal check collection system. A demand draft may be created by a third party, such as a telemarketer, with the authorization of the bank customer to obtain payment from the bank customer's account as a means to pay the third party. A demand draft may also be created by a third party, such as a home banking service provider, as a means to pay itself or others. The customer's account number and other processing information is encoded on the demand draft and the demand draft deposited in a bank for collection through normal banking channels and payment by the payor bank. Because checks and other items deposited for collection are processed rapidly and in high volume, payor banks are not able to determine if customers authorize the creation of

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

demand drafts. The general assembly, therefore, further declares the depository bank, which is charged with knowing its customer, is in the best position to avoid the introduction into the check collection system of an unauthorized demand draft by scrutinizing the customers allowed to deposit those drafts. Thus, the general assembly declares that an additional warranty is justified in the case of a demand draft to each transferee that the demand draft was authorized by the bank customer upon whose account it is drawn. This change shifts the risk to the depository bank if its customer deposits an unauthorized demand draft for collection.

(3) The general assembly further finds, determines, and declares that demand drafts do not include instruments that bear forged or unauthorized signatures of customers. Demand drafts do not include instruments drawn or purportedly drawn and signed by a "fiduciary" as defined in section 4-3-307 (a) (1), Colorado Revised Statutes. Instruments bearing forged or unauthorized signatures should be handled under the forgery provisions and unauthorized signature provisions of articles 3 and 4 of the "Uniform Commercial Code", as applicable.

SECTION 2. 4-3-103 (b), Colorado Revised Statutes, is amended to read:

4-3-103. Definitions. (b) Other definitions applying to this article and the sections in which they appear are:

"Acceptance"	Section 4-3-409
"Accommodated party"	Section 4-3-419
"Accommodation party"	Section 4-3-419
"Alteration"	Section 4-3-407
"Anomalous indorsement"	Section 4-3-205
"Blank indorsement"	Section 4-3-205
"Cashier's check"	Section 4-3-104
"Certificate of deposit"	Section 4-3-104
"Certified check"	Section 4-3-409
"Check"	Section 4-3-104
"Consideration"	Section 4-3-303
"DEMAND DRAFT"	SECTION 4-3-104
"Draft"	Section 4-3-104
"Holder in due course"	Section 4-3-302
"Incomplete instrument"	Section 4-3-115

"Indorsement"	Section 4-3-204
"Indorser"	Section 4-3-204
"Instrument"	Section 4-3-104
"Issue"	Section 4-3-105
"Issuer"	Section 4-3-105
"Negotiable instrument"	Section 4-3-104
"Negotiation"	Section 4-3-201
"Note"	Section 4-3-104
"Payable at a definite time"	Section 4-3-108
"Payable on demand"	Section 4-3-108
"Payable to bearer"	Section 4-3-109
"Payable to order"	Section 4-3-109
"Payment"	Section 4-3-602
"Person entitled to enforce"	Section 4-3-301
"Presentment"	Section 4-3-501
"Reacquisition"	Section 4-3-207
"Special indorsement"	Section 4-3-205
"Teller's check"	Section 4-3-104
"Transfer of instrument"	Section 4-3-203
"Traveler's check"	Section 4-3-104
"Value"	Section 4-3-303

SECTION 3. 4-3-104 (f), Colorado Revised Statutes, is amended, and the said 4-3-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

4-3-104. Negotiable instrument. (f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, ~~or~~ (ii) a cashier's check or teller's check, OR (iii) A DEMAND DRAFT. An instrument may be a check even though it is described on its face by another term, such as "money order."

(k) (i) "DEMAND DRAFT" MEANS A WRITING NOT SIGNED BY THE 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 SHALL CONTAIN THE CUSTOMER'S ACCOUNT NUMBER AND SHALL CONTAIN ANY OR ALL OF THE FOLLOWING:

- (1) THE CUSTOMER'S PRINTED OR TYPEWRITTEN NAME;
- (2) A NOTATION THAT THE CUSTOMER AUTHORIZED THE DRAFT; OR
- (3) THE STATEMENT "NO SIGNATURE REQUIRED" OR WORDS TO THAT EFFECT.

(ii) A DEMAND DRAFT SHALL NOT INCLUDE A CHECK PURPORTEDLY DRAWN BY AND BEARING THE SIGNATURE OF A FIDUCIARY, AS DEFINED IN SECTION 4-3-307 (a) (1).

SECTION 4. 4-3-416 (a), Colorado Revised Statutes, is amended, and the said 4-3-416 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

4-3-416. Transfer warranties. (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. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPAIR THE RIGHTS OF THE DRAWER AGAINST THE DRAWEE.
- (e) IF THE WARRANTY IN PARAGRAPH (6) OF SUBSECTION (a) OF THIS SECTION IS NOT GIVEN BY A TRANSFEROR UNDER APPLICABLE CONFLICT OF LAW RULES, THEN THE WARRANTY IS NOT GIVEN TO THAT TRANSFEROR WHEN THAT TRANSFEROR IS A TRANSFEREE.

SECTION 5. 4-3-417 (a), Colorado Revised Statutes, is amended, and the said 4-3-417 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

4-3-417. Presentment warranties. (a) If an unaccepted draft is presented to the

drawee or 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 making payment or accepting 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 drawer of the draft is unauthorized; AND

(4) 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. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPAIR THE RIGHTS OF THE DRAWER AGAINST THE DRAWEE.

(g) A DEMAND DRAFT IS A CHECK, AS PROVIDED IN SECTION 4-3-104 (f).

(h) IF THE WARRANTY IN PARAGRAPH (4) OF SUBSECTION (a) OF THIS SECTION IS NOT GIVEN BY A TRANSFEROR UNDER APPLICABLE CONFLICT OF LAW RULES, THEN THE WARRANTY IS NOT GIVEN TO THAT TRANSFEROR WHEN THAT TRANSFEROR IS A TRANSFEREE.

SECTION 6. 4-4-207 (a), Colorado Revised Statutes, is amended, and the said 4-4-207 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

4-4-207. 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 (section 4-3-305 (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. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPAIR THE RIGHTS OF THE DRAWER AGAINST THE DRAWEE.

(f) IF THE WARRANTY IN PARAGRAPH (6) OF SUBSECTION (a) OF THIS SECTION IS NOT GIVEN BY A TRANSFEROR OR COLLECTING BANK UNDER APPLICABLE CONFLICT OF LAW RULES, THEN THE WARRANTY IS NOT GIVEN TO THAT TRANSFEROR WHEN THAT TRANSFEROR IS A TRANSFEREE, NOR TO ANY PRIOR COLLECTING BANK OF THAT TRANSFEREE.

SECTION 7. 4-4-208 (a), Colorado Revised Statutes, is amended, and the said 4-4-208 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

4-4-208. 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) 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. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPAIR THE RIGHTS OF THE DRAWER AGAINST THE DRAWEE.

(g) A DEMAND DRAFT IS A CHECK, AS PROVIDED IN SECTION 4-3-104 (f).

(h) IF THE WARRANTY IN PARAGRAPH (4) OF SUBSECTION (a) OF THIS SECTION IS NOT GIVEN BY A TRANSFEROR UNDER APPLICABLE CONFLICT OF LAW RULES, THEN THE WARRANTY IS NOT GIVEN TO THAT TRANSFEROR WHEN THAT TRANSFEROR IS A TRANSFEREE.

SECTION 8. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to demand drafts issued on or after the applicable effective date of this act.

Approved: June 1, 2001