

Fifty-fifth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Monday, the sixth day of January, one thousand nine hundred and ninety-seven

SENATE BILL NO. 2171
(Senators Traynor, Krebsbach, Redlin)
(Representatives Berg, Nicholas)

AN ACT to amend and reenact sections 41-03-03, 41-03-04, 41-03-53, 41-03-54, 41-04-19, and 41-04-20 of the North Dakota Century Code, relating to the liability for paying an unauthorized demand draft.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 41-03-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-03-03. (3-103) Definitions.

1. In this chapter:
 - a. "Acceptor" means a drawee that has accepted a draft.
 - b. "Drawee" means a person ordered in a draft to make payment.
 - c. "Drawer" means a person ~~that~~ who signs or is identified in a draft as a person ordering payment.
 - d. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
 - e. "Maker" means a person ~~that~~ who signs or is identified in a note as promisor of payment.
 - f. "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
 - g. "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards prevailing in the area in which that person is located with respect to the business in which that person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 41-04.
 - h. "Party" means a party to an instrument.
 - i. "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.
 - j. "Prove" with respect to a fact means to meet the burden of establishing the fact (subsection 8 of section 41-01-11).

- k. "Remitter" means a person ~~that~~ who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.
- 2. Other definitions applying to this chapter and the sections in which they appear are:
 - a. "Acceptance". Section 41-03-46.
 - b. "Accommodated party". Section 41-03-56.
 - c. "Accommodation party". Section 41-03-56.
 - d. "Alteration". Section 41-03-44.
 - e. "Anomalous endorsement". Section 41-03-24.
 - f. "Blank endorsement". Section 41-03-24.
 - g. "Cashier's check". Section 41-03-04.
 - h. "Certificate of deposit". Section 41-03-04.
 - i. "Certified check". Section 41-03-46.
 - j. "Check". Section 41-03-04.
 - k. "Consideration". Section 41-03-29.
 - l. ~~"Draft"~~ "Demand draft". Section 41-03-04.
 - m. "Draft". Section 41-03-04.
 - n. "Endorsement". Section 41-03-23.
 - ~~n.~~ o. "Endorser". Section 41-03-23.
 - ~~o.~~ p. "Fiduciary". Section 41-03-33.
 - ~~p.~~ q. "Holder in due course". Section 41-03-28.
 - ~~q.~~ r. "Incomplete instrument". Section 41-03-15.
 - ~~r.~~ s. "Instrument". Section 41-03-04.
 - ~~s.~~ t. "Issue". Section 41-03-05.
 - ~~t.~~ u. "Issuer". Section 41-03-05.
 - ~~u.~~ v. "Negotiable instrument". Section 41-03-04.
 - ~~v.~~ w. "Negotiation". Section 41-03-20.
 - ~~w.~~ x. "Note". Section 41-03-04.
 - ~~x.~~ y. "Payable at a definite time". Section 41-03-08.
 - ~~y.~~ z. "Payable on demand". Section 41-03-08.
 - ~~z.~~ aa. "Payable to bearer". Section 41-03-09.
 - ~~aa.~~ bb. "Payable to order". Section 41-03-09.
 - ~~bb.~~ cc. "Payment". Section 41-03-64.
 - ~~cc.~~ dd. "Person entitled to enforce". Section 41-03-27.

- ~~dd.~~ ee. "Presentment". Section 41-03-58.
- ~~ee.~~ ff. "Reacquisition". Section 41-03-26.
- ~~ff.~~ gg. "Represented person". Section 41-03-33.
- ~~gg.~~ hh. "Special endorsement". Section 41-03-24.
- ~~hh.~~ ii. "Teller's check". Section 41-03-04.
- ~~ii.~~ jj. "Transfer of instrument". Section 41-03-22.
- ~~jj.~~ kk. "Traveler's check". Section 41-03-04.
- ~~kk.~~ ll. "Value". Section 41-03-29.

3. The following definitions in other chapters apply to this chapter:

- a. "Bank". Section 41-04-05.
- b. "Banking day". Section 41-04-04.
- c. "Clearinghouse". Section 41-04-04.
- d. "Collecting bank". Section 41-04-05.
- e. "Customer". Section 41-04-04.
- f. "Depository bank". Section 41-04-05.
- g. "Documentary draft". Section 41-04-04.
- h. "Intermediary bank". Section 41-04-05.
- i. "Item". Section 41-04-04.
- j. "Payor bank". Section 41-04-05.
- k. "Suspends payments". Section 41-04-04.

4. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 2. AMENDMENT. Section 41-03-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-03-04. (3-104) Negotiable instrument.

- 1. "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:
 - a. Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
 - b. Is payable on demand or at a definite time; and
 - c. 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, except that the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment, an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or a waiver of the benefit of any law intended for the advantage or protection of any obligor.
- 2. "Instrument" means a negotiable instrument.

3. An order that meets all of the requirements of subsection 1 except subdivision a and otherwise falls within the definition of "check" in subsection 6 is a negotiable instrument and a check.
4. Notwithstanding subsection 1, 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 chapter.
5. 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", the person entitled to enforce the instrument may treat it as either.
6. "Check" means a draft, other than a documentary draft, payable on demand and drawn on a bank or a cashier's check ~~or~~, teller's check, ~~or demand draft~~. An instrument may be a check even though it is described on its face by another term such as "money order".
7. "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.
8. "Teller's check" means a draft drawn by a bank on another bank or payable at or through a bank.
9. "Traveler's check" means an instrument that is payable on demand, is drawn on or payable at or through a bank, is designated by the term "traveler's check" or by a substantially similar term, and requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.
10. "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.
11. "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 must contain the customer's account number and may contain any or all of the following:
 - a. The customer's printed or typewritten name.
 - b. A notation that the customer authorized the draft.
 - c. The statement "No Signature Required" or words to that effect.

A demand draft may not include a check purportedly drawn by and bearing the signature of a fiduciary.

SECTION 3. AMENDMENT. Section 41-03-53 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-03-53. (3-416) Transfer warranties.

1. A person ~~that~~ who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee that:
 - a. The warrantor is a person entitled to enforce the instrument.
 - b. All signatures on the instrument are authentic and authorized.
 - c. The instrument has not been altered.
 - d. The instrument is not subject to a defense or claim in recoupment (subsection 1 of section 41-03-31) of any party which can be asserted against the warrantor.

- e. 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.
 - f. 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.
- 2. A person to whom the warranties under subsection 1 are made and who took the instrument 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 instrument plus expenses and loss of interest incurred as a result of the breach.
 - 3. The warranties stated in subsection 1 may not 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 2 is discharged to the extent of any loss caused by the delay in giving notice of the claim.
 - 4. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.
 - 5. If the warranty in subdivision f of subsection 1 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 4. AMENDMENT. Section 41-03-54 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-03-54. (3-417) Presentment warranties.

- 1. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and 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:
 - 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.
 - b. The draft has not been altered.
 - c. The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.
 - 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.
- 2. 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 the first two sentences of this subsection.
- 3. If a drawee asserts a claim for breach of warranty under subsection 1 based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 41-03-41 or 41-03-42 or

the drawer is precluded under section 41-03-43 or 41-04-37 from asserting against the drawee the unauthorized endorsement or alteration.

4. If a dishonored draft is presented for payment to the drawer or an endorser or any other instrument is presented for payment to a party obliged to pay the instrument, and payment is received, the following rules apply:
 - 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.
 - 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.
5. The warranties stated in subsections 1 and 4 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 2 or 4 is discharged to the extent of any loss caused by the delay in giving notice of the claim.
6. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.
7. A demand draft is a check, as provided in subsection 6 of section 41-03-04.
8. If the warranty in subdivision d of subsection 1 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. AMENDMENT. Section 41-04-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-04-19. (4-207) Transfer warranties.

1. 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:
 - a. The warrantor is a person entitled to enforce the item.
 - b. All signatures on the item are authentic and authorized.
 - c. The item has not been altered.
 - d. The item is not subject to a defense or claim in recoupment (subsection 1 of section 41-03-31) of any party that can be asserted against the warrantor.
 - e. 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.
 - f. 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.
2. 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 according to the terms of the item at the time it was transferred, or, if the transfer was of an incomplete item, according to its terms when completed as stated in sections 41-03-15 and 41-03-44. 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 may not disclaim its obligation under this subsection by an endorsement stating that it is made "without recourse" or otherwise disclaiming liability.

3. A person to whom the warranties under subsection 1 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.
4. The warranties stated in subsection 1 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.
5. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.
6. If the warranty in subdivision f of subsection 1 is not given by a transferor or collecting bank under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee nor to any prior collecting bank of that transferee.

SECTION 6. AMENDMENT. Section 41-04-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-04-20. (4-208) Presentment warranties.

1. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and 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:
 - 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.
 - b. The draft has not been altered.
 - c. The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.
 - 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.
2. 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 and, 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 the first two sentences of this subsection.
3. If a drawee asserts a claim for breach of warranty under subsection 1 based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 41-03-41 or 41-03-42 or the drawer is precluded under section 41-03-43 or 41-04-37 from asserting against the drawee the unauthorized endorsement or alteration.
4. This subsection applies if a dishonored draft is presented for payment to the drawer or an endorser or if 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.

5. The warranties stated in subsections 1 and 4 may not 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.
6. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.
7. A demand draft is a check as provided in subsection 6 of section 41-03-04.
8. If the warranty in subdivision d of subsection 1 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.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2171.

Senate Vote: Yeas 47 Nays 0 Absent 2

House Vote: Yeas 90 Nays 0 Absent 7

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State