

SENATE FILE 139
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1069)

Passed Senate, Date 2-24-05 Passed House, Date 3-14-05
Vote: Ayes 49 Nays 0 Vote: Ayes 97 Nays 0
Approved March 21, 2005

A BILL FOR

1 An Act relating to negotiable instruments, by providing for
2 liabilities among certain parties, and providing a statute of
3 limitations.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 139

1 Section 1. Section 554.3103, subsections 2 and 3, Code
 2 2005, are amended to read as follows:

3 2. Other definitions applying to this Article and the
 4 sections in which they appear are:

5	<u>a.</u>	"Acceptance"	Section 554.3409.
6	<u>b.</u>	"Accommodated party"	Section 554.3419.
7	<u>c.</u>	"Accommodation party"	Section 554.3419.
8	<u>d.</u>	"Alteration"	Section 554.3407.
9	<u>e.</u>	"Anomalous endorsement"	Section 554.3205.
10	<u>f.</u>	"Blank endorsement"	Section 554.3205.
11	<u>g.</u>	"Cashier's check"	Section 554.3104.
12	<u>h.</u>	"Certificate of deposit"	Section 554.3104.
13	<u>i.</u>	"Certified check"	Section 554.3409.
14	<u>j.</u>	"Check"	Section 554.3104.
15	<u>k.</u>	"Consideration"	Section 554.3303.
16	<u>l.</u>	"Demand draft"	Section 554.3104.
17	<u>m.</u>	"Draft"	Section 554.3104.
18	<u>n.</u>	"Holder in due course"	Section 554.3302.
19	<u>o.</u>	"Incomplete instrument"	Section 554.3115.
20	<u>p.</u>	"Endorsement"	Section 554.3204.
21	<u>q.</u>	"Endorser"	Section 554.3204.
22	<u>r.</u>	"Instrument"	Section 554.3104.
23	<u>s.</u>	"Issue"	Section 554.3105.
24	<u>t.</u>	"Issuer"	Section 554.3105.
25	<u>u.</u>	"Negotiable instrument"	Section 554.3104.
26	<u>v.</u>	"Negotiation"	Section 554.3201.
27	<u>w.</u>	"Note"	Section 554.3104.
28	<u>x.</u>	"Payable at a	
29		definite time"	Section 554.3108.
30	<u>y.</u>	"Payable on demand"	Section 554.3108.
31	<u>z.</u>	"Payable to bearer"	Section 554.3109.
32	<u>aa.</u>	"Payable to order"	Section 554.3109.
33	<u>ab.</u>	"Payment"	Section 554.3602.
34	<u>ac.</u>	"Person entitled	
35		to enforce"	Section 554.3301.

- 1 ad. "Presentment" Section 554.3501.
- 2 ae. "Reacquisition" Section 554.3207.
- 3 af. "Special endorsement" Section 554.3205.
- 4 ag. "Teller's check" Section 554.3104.
- 5 ah. "Transfer of instrument" Section 554.3203.
- 6 ai. "Traveler's check" Section 554.3104.
- 7 aj. "Value" Section 554.3303.

8 3. The following definitions in other Articles apply to
9 this Article:

- 10 a. "Bank" Section 554.4105.
- 11 b. "Banking day" Section 554.4104.
- 12 c. "Clearing house" Section 554.4104.
- 13 d. "Collecting bank" Section 554.4105.
- 14 e. "Depository bank" Section 554.4105.
- 15 f. "Documentary draft" Section 554.4104.
- 16 g. "Intermediary bank" Section 554.4105.
- 17 h. "Item" Section 554.4104.
- 18 i. "Payor bank" Section 554.4105.
- 19 j. "Suspends payments" Section 554.4104.

20 Sec. 2. Section 554.3104, Code 2005, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 11. a. "Demand draft" means a writing
23 not signed by a customer as defined in section 554.4104 that
24 is created by a third party under the purported authority of
25 the customer for the purpose of charging the customer's
26 account with a bank. The writing must contain the customer's
27 account number and may contain any of the following:

- 28 (1) The customer's printed or typewritten name;
- 29 (2) A notation that the customer authorized the draft; or
- 30 (3) The statement "no signature required", "authorized on
31 file", "signature on file", or words to that effect.

32 b. "Demand draft" does not include a check purportedly
33 drawn by and bearing the signature of a fiduciary as defined
34 in section 554.3307.

35 Sec. 3. Section 554.3309, subsection 1, Code 2005, is

1 amended to read as follows:

2 1. A person not in possession of an instrument is entitled
3 to enforce the instrument if: (i)

4 a. the person ~~was in possession of the instrument and~~
5 ~~entitled to enforce it~~ seeking to enforce the instrument:

6 (1) was entitled to enforce the instrument when loss or
7 possession occurred, or

8 (2) has directly or indirectly acquired ownership of the
9 instrument from a person who was entitled to the instrument
10 when loss of possession occurred; (ii);

11 b. the loss of possession was not the result of a transfer
12 by the person or a lawful seizure; and (iii)

13 c. the person cannot reasonably obtain possession of the
14 instrument because the instrument was destroyed, its
15 whereabouts cannot be determined, or it is in the wrongful
16 possession of an unknown person or a person that cannot be
17 found or is not amenable to service of process.

18 Sec. 4. Section 554.3416, subsection 1, paragraphs d and
19 e, Code 2005, are amended to read as follows:

20 d. the instrument is not subject to a defense or claim in
21 recoupment of any party which can be asserted against the
22 warrantor; and

23 e. the warrantor has no knowledge of any insolvency
24 proceeding commenced with respect to the maker or acceptor or,
25 in the case of an unaccepted draft, the drawer; and

26 f. if the instrument is a demand draft, creation of the
27 instrument according to the terms on its face was authorized
28 by the person identified as the drawer.

29 Sec. 5. Section 554.3416, Code 2005, is amended by adding
30 the following new subsection:

31 NEW SUBSECTION. 5. If a warranty under subsection 1,
32 paragraph "f", is not given by a transferor under applicable
33 conflict of laws rules, the warranty is not given to that
34 transferor when that transferor is a transferee.

35 Sec. 6. Section 554.3417, subsection 1, paragraphs b and

1 c, Code 2005, are amended to read as follows:

2 b. the draft has not been altered; and

3 c. the warrantor has no knowledge that the signature of
4 the drawer of the draft is unauthorized; and

5 d. if the draft is a demand draft, the creation of the
6 demand draft according to the terms on its face was authorized
7 by the person identified as the drawer.

8 Sec. 7. Section 554.3417, Code 2005, is amended by adding
9 the following new subsections:

10 NEW SUBSECTION. 7. A demand draft is a check as provided
11 in section 554.3104, subsection 6.

12 NEW SUBSECTION. 8. If a warranty under subsection 1,
13 paragraph "d", is not given by a transferor under applicable
14 conflict of laws rules, the warranty is not given to that
15 transferor when that transferor is a transferee.

16 Sec. 8. NEW SECTION. 554.4111 STATUTE OF LIMITATIONS.

17 An action to enforce an obligation, duty, or right arising
18 under this Article must be commenced within three years after
19 the cause of action accrues.

20 Sec. 9. Section 554.4207, subsection 1, paragraphs d and
21 e, Code 2005, are amended to read as follows:

22 d. the item is not subject to a defense or claim in
23 recoupment (section 554.3305, subsection 1) of any party that
24 can be asserted against the warrantor; and

25 e. the warrantor has no knowledge of any insolvency
26 proceeding commenced with respect to the maker or acceptor or,
27 in the case of an unaccepted draft, the drawer; and

28 f. if the item is a demand draft, creation of the item
29 according to the terms on its face was authorized by the
30 person identified as the drawer.

31 Sec. 10. Section 554.4207, Code 2005, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 6. If the warranty under subsection 1,
34 paragraph "f", is not given by a transferor or collecting bank
35 under applicable conflict of laws rules, the warranty is not

1 given to that transferor when the transferor is a transferee
2 or to any prior collecting bank of that transferee.

3 Sec. 11. Section 554.4208, subsection 1, paragraphs b and
4 c, Code 2005, are amended to read as follows:

5 b. the draft has not been altered; and

6 c. the warrantor has no knowledge that the signature of
7 the purported drawer of the draft is unauthorized; and

8 d. if the draft is a demand draft, the creation of the
9 demand draft according to the terms on its face was authorized
10 by the person identified as the drawer.

11 Sec. 12. Section 554.4208, Code 2005, is amended by adding
12 the following new subsections:

13 NEW SUBSECTION. 7. A demand draft is a check as provided
14 in section 554.3104, subsection 6.

15 NEW SUBSECTION. 8. If a warranty under subsection 1,
16 paragraph "d", is not given by a transferor under applicable
17 conflict of laws rules, the warranty is not given to that
18 transferor when that transferor is a transferee.

19 EXPLANATION

20 GENERAL. This bill amends provisions in Articles 3 and 4
21 of the Uniform Commercial Code, a model Act governing
22 commercial transactions as drafted by the national conference
23 of commissioners on uniform state laws and the American law
24 institute. Articles 3 and 4 govern negotiable instruments
25 (sometimes referred to as simply "items"). Together the
26 articles regulate the payment of items as they are processed
27 through the collection stream, including the writing
28 ("drawing") of checks and drafts, and liabilities associated
29 with lost or fraudulent items as it affects banks (depository
30 banks, collecting banks, and payor banks).

31 WARRANTY -- DEMAND DRAFTS. A demand draft is an item
32 resembling a check which is usually printed by a merchant
33 (identified in the bill as the "third party") that has
34 purportedly obtained permission from a buyer (the "drawer") to
35 create the draft on their behalf. The drawer is called the

1 "customer", meaning a customer of the drawer's bank. The
2 merchant may deposit the draft at any willing bank (a
3 "depository bank") for ultimate presentment and collection at
4 the customer's bank (the "payor bank").

5 Generally, a payor bank will recredit its customer's
6 account in cases where wrongful items have been presented and
7 honored. The question then is under what circumstances may
8 the payor bank seek recovery from parties in the collection
9 stream acting between it and the third-party merchant (e.g.,
10 anyone who cashes the draft for the merchant, the depository
11 bank which accepts the draft, or a collecting bank which
12 receives the draft and either presents it to the payor bank or
13 passes it along to another collecting bank for ultimate
14 presentment). Under UCC's warranty provisions special terms
15 are used to describe these parties. A bank which accepts and
16 passes on an item, such as a depository bank, is known as a
17 "transferor", and a bank which receives an item such as a
18 payor bank is known as a "transferee". A collecting bank is
19 both a transferor and transferee. A transferor warrants that
20 all signatures on the item are authentic, and that it has no
21 knowledge that the signature of the drawer of the draft is
22 unauthorized (see Code sections 554.3416, 554.3417, and
23 554.4208).

24 Under the bill, a demand draft must at least contain the
25 customer's account number. The bill expressly refers to
26 demand drafts in the warranty provisions, and specifies that a
27 transferor is warranting that the demand draft has been
28 authorized by the person identified as the payor bank's
29 customer, as evidenced by the customer's account number
30 printed on the face of the demand draft. Under the bill, if a
31 breach is proved, the payor bank as a transferee will have a
32 breach of warranty claim against the upstream transferor bank,
33 and each upstream bank will have a similar claim as a
34 transferee back up the stream to the depository bank.

35 RECIPROCITY. The bill also contains a conflict of laws

1 provision which applies in cases where the payor bank or
2 collecting bank (transferee) is located in another state and
3 the depository bank or collecting bank (transferor) is located
4 in Iowa. The bill provides that an Iowa bank does not have to
5 warrant a demand draft which has been transferred by an out-
6 of-state bank if the other state law does not have a
7 reciprocal warranty provision similar to the one contained in
8 the bill. For example, a merchant in Iowa could create a
9 demand draft and cash it at an Iowa depository bank for
10 transfer and presentment to an out-of-state payor bank. If
11 the out-of-state law did not have a reciprocity provision, and
12 the demand draft were fraudulent, the out-of-state payor bank
13 would have to recredit its customer's account, but could not
14 pass that liability upstream to the Iowa depository bank under
15 rules of warranty.

16 LOSS OF POSSESSION. The bill amends a provision which
17 provides that a person is entitled to obtain payment of an
18 item ("enforce the instrument") even if the person has lost
19 possession of the item (it has been misplaced, destroyed, or
20 stolen). A payee's or transferee's acceptance of the item
21 does not discharge the underlying obligation to pay regardless
22 of its physical loss. The bill originates from language
23 promulgated by the commissioners on uniform state laws.
24 According to comments from the commissioners, it is intended
25 to address the result of a court case, Dennis Joslin Co. v.
26 Robinson Broadcasting Corp., 977 F. Supp. 491 (D.D.C. 1997),
27 which held that a transferee of the item must have been in
28 actual possession of the item when it was lost. The bill
29 provides that a person need only prove that the person was
30 entitled to enforce the instrument at the time it was lost
31 (even when lost in transit regardless of the precise status of
32 ownership at the point of loss).

33 STATUTE OF LIMITATIONS. The bill includes a provision in
34 Article 4, which provides an express statute of limitations of
35 three years in order to enforce an obligation, duty, or right

1 arising under the Article. The provision is part of the model
2 Act under 4-111 but was not included in 1994 when the general
3 assembly enacted its provisions (1994 Iowa Acts, ch. 1167).

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Rielly Co-chair
Kettering Co-chair
Stewart
Zawn

Succeeded By
(SF) HF 139

SSB# 1069
Commerce

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL
BY CO-CHAIRPERSONS
BEHN and WARNSTADT)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to negotiable instruments, by providing for
2 liabilities among certain parties, and providing a statute of
3 limitations.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 554.3103, subsections 2 and 3, Code
 2 2005, are amended to read as follows:

3 2. Other definitions applying to this Article and the
 4 sections in which they appear are:

5	<u>a.</u>	"Acceptance"	Section 554.3409.
6	<u>b.</u>	"Accommodated party"	Section 554.3419.
7	<u>c.</u>	"Accommodation party"	Section 554.3419.
8	<u>d.</u>	"Alteration"	Section 554.3407.
9	<u>e.</u>	"Anomalous endorsement"	Section 554.3205.
10	<u>f.</u>	"Blank endorsement"	Section 554.3205.
11	<u>g.</u>	"Cashier's check"	Section 554.3104.
12	<u>h.</u>	"Certificate of deposit"	Section 554.3104.
13	<u>i.</u>	"Certified check"	Section 554.3409.
14	<u>j.</u>	"Check"	Section 554.3104.
15	<u>k.</u>	"Consideration"	Section 554.3303.
16	<u>l.</u>	"Demand draft"	Section 554.3104.
17	<u>m.</u>	"Draft"	Section 554.3104.
18	<u>n.</u>	"Holder in due course"	Section 554.3302.
19	<u>o.</u>	"Incomplete instrument"	Section 554.3115.
20	<u>p.</u>	"Endorsement"	Section 554.3204.
21	<u>q.</u>	"Endorser"	Section 554.3204.
22	<u>r.</u>	"Instrument"	Section 554.3104.
23	<u>s.</u>	"Issue"	Section 554.3105.
24	<u>t.</u>	"Issuer"	Section 554.3105.
25	<u>u.</u>	"Negotiable instrument"	Section 554.3104.
26	<u>v.</u>	"Negotiation"	Section 554.3201.
27	<u>w.</u>	"Note"	Section 554.3104.
28	<u>x.</u>	"Payable at a	
29		definite time"	Section 554.3108.
30	<u>y.</u>	"Payable on demand"	Section 554.3108.
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32	<u>aa.</u>	"Payable to order"	Section 554.3109.
33	<u>ab.</u>	"Payment"	Section 554.3602.
34	<u>ac.</u>	"Person entitled	
35		to enforce"	Section 554.3301.

- 1 ad. "Presentment" Section 554.3501.
- 2 ae. "Reacquisition" Section 554.3207.
- 3 af. "Special endorsement" Section 554.3205.
- 4 ag. "Teller's check" Section 554.3104.
- 5 ah. "Transfer of instrument" Section 554.3203.
- 6 ai. "Traveler's check" Section 554.3104.
- 7 aj. "Value" Section 554.3303.

8 3. The following definitions in other Articles apply to
9 this Article:

- 10 a. "Bank" Section 554.4105.
- 11 b. "Banking day" Section 554.4104.
- 12 c. "Clearing house" Section 554.4104.
- 13 d. "Collecting bank" Section 554.4105.
- 14 e. "Depositary bank" Section 554.4105.
- 15 f. "Documentary draft" Section 554.4104.
- 16 g. "Intermediary bank" Section 554.4105.
- 17 h. "Item" Section 554.4104.
- 18 i. "Payor bank" Section 554.4105.
- 19 j. "Suspend payments" Section 554.4104.

20 Sec. 2. Section 554.3104, Code 2005, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 11. a. "Demand draft" means a writing
23 not signed by a customer as defined in section 554.4104 that
24 is created by a third party under the purported authority of
25 the customer for the purpose of charging the customer's
26 account with a bank. The writing must contain the customer's
27 account number and may contain any of the following:

- 28 (1) The customer's printed or typewritten name;
- 29 (2) A notation that the customer authorized the draft; or
- 30 (3) The statement "no signature required", "authorized on
31 file", "signature on file", or words to that effect.

32 b. "Demand draft" does not include a check purportedly
33 drawn by and bearing the signature of a fiduciary as defined
34 in section 554.3307.

35 Sec. 3. Section 554.3309, subsection 1, Code 2005, is

1 amended to read as follows:

2 1. A person not in possession of an instrument is entitled
3 to enforce the instrument if: ~~(i)~~

4 a. the person was-in-possession-of-the-instrument-and
5 entitled-to-enforce-it seeking to enforce the instrument:

6 (1) was entitled to enforce the instrument when loss or
7 possession occurred, or

8 (2) has directly or indirectly acquired ownership of the
9 instrument from a person who was entitled to the instrument
10 when loss of possession occurred~~-(i);~~

11 b. the loss of possession was not the result of a transfer
12 by the person or a lawful seizure~~-(i);~~ and

13 c. the person cannot reasonably obtain possession of the
14 instrument because the instrument was destroyed, its
15 whereabouts cannot be determined, or it is in the wrongful
16 possession of an unknown person or a person that cannot be
17 found or is not amenable to service of process.

18 Sec. 4. Section 554.3416, subsection 1, paragraphs d and
19 e, Code 2005, are amended to read as follows:

20 d. the instrument is not subject to a defense or claim in
21 recoupment of any party which can be asserted against the
22 warrantor; and

23 e. the warrantor has no knowledge of any insolvency
24 proceeding commenced with respect to the maker or acceptor or,
25 in the case of an unaccepted draft, the drawer; and

26 f. if the instrument is a demand draft, creation of the
27 instrument according to the terms on its face was authorized
28 by the person identified as the drawer.

29 Sec. 5. Section 554.3416, Code 2005, is amended by adding
30 the following new subsection:

31 NEW SUBSECTION. 5. If a warranty under subsection 1,
32 paragraph "f", is not given by a transferor under applicable
33 conflict of laws rules, the warranty is not given to that
34 transferor when that transferor is a transferee.

35 Sec. 6. Section 554.3417, subsection 1, paragraphs b and

1 c, Code 2005, are amended to read as follows:

2 b. the draft has not been altered; and

3 c. the warrantor has no knowledge that the signature of
4 the drawer of the draft is unauthorized; and

5 d. if the draft is a demand draft, the creation of the
6 demand draft according to the terms on its face was authorized
7 by the person identified as the drawer.

8 Sec. 7. Section 554.3417, Code 2005, is amended by adding
9 the following new subsections:

10 NEW SUBSECTION. 7. A demand draft is a check as provided
11 in section 554.3104, subsection 6.

12 NEW SUBSECTION. 8. If a warranty under subsection 1,
13 paragraph "d", is not given by a transferor under applicable
14 conflict of laws rules, the warranty is not given to that
15 transferor when that transferor is a transferee.

16 Sec. 8. NEW SECTION. 554.4111 STATUTE OF LIMITATIONS.

17 An action to enforce an obligation, duty, or right arising
18 under this Article must be commenced within three years after
19 the cause of action accrues.

20 Sec. 9. Section 554.4207, subsection 1, paragraphs d and
21 e, Code 2005, are amended to read as follows:

22 d. the item is not subject to a defense or claim in
23 recoupment (section 554.3305, subsection 1) of any party that
24 can be asserted against the warrantor; and

25 e. the warrantor has no knowledge of any insolvency
26 proceeding commenced with respect to the maker or acceptor or,
27 in the case of an unaccepted draft, the drawer; and

28 f. if the item is a demand draft, creation of the item
29 according to the terms on its face was authorized by the
30 person identified as the drawer.

31 Sec. 10. Section 554.4207, Code 2005, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 6. If the warranty under subsection 1,
34 paragraph "f", is not given by a transferor or collecting bank
35 under applicable conflict of laws rules, the warranty is not

1 given to that transferor when the transferor is a transferee
2 or to any prior collecting bank of that transferee.

3 Sec. 11. Section 554.4208, subsection 1, paragraphs b and
4 c, Code 2005, are amended to read as follows:

5 b. the draft has not been altered; and

6 c. the warrantor has no knowledge that the signature of
7 the purported drawer of the draft is unauthorized; and

8 d. if the draft is a demand draft, the creation of the
9 demand draft according to the terms on its face was authorized
10 by the person identified as the drawer.

11 Sec. 12. Section 554.4208, Code 2005, is amended by adding
12 the following new subsections:

13 NEW SUBSECTION. 7. A demand draft is a check as provided
14 in section 554.3104, subsection 6.

15 NEW SUBSECTION. 8. If a warranty under subsection 1,
16 paragraph "d", is not given by a transferor under applicable
17 conflict of laws rules, the warranty is not given to that
18 transferor when that transferor is a transferee.

19 EXPLANATION

20 GENERAL. This bill amends provisions in Articles 3 and 4
21 of the Uniform Commercial Code, a model Act governing
22 commercial transactions as drafted by the national conference
23 on commissioners on uniform state laws and the American law
24 institute. Articles 3 and 4 govern negotiable instruments
25 (sometimes referred to as simply "items"). Together the
26 articles regulate the payment of items as they are processed
27 through the collection stream, including the writing
28 ("drawing") of checks and drafts, and liabilities associated
29 with lost or fraudulent items as it affects banks (depository
30 banks, collecting banks, and payor banks).

31 WARRANTY -- DEMAND DRAFTS. A demand draft is an item
32 resembling a check which is usually printed by a merchant
33 (identified in the bill as the "third party") that has
34 purportedly obtained permission from a buyer (the "drawer") to
35 create the draft on their behalf. The drawer is called the

1 "customer", meaning a customer of the drawer's bank. The
2 merchant may deposit the draft at any willing bank (a
3 "depository bank") for ultimate presentment and collection at
4 the customer's bank (the "payor bank").

5 Generally, a payor bank will recredit its customer's
6 account in cases where wrongful items have been presented and
7 honored. The question then is under what circumstances may
8 the payor bank seek recovery from parties in the collection
9 stream acting between it and the third-party merchant (e.g.,
10 anyone who cashes the draft for the merchant, the depository
11 bank which accepts the draft, or a collecting bank which
12 receives the draft and either presents it to the payor bank or
13 passes it along to another collecting bank for ultimate
14 presentment). Under UCC's warranty provisions special terms
15 are used to describe these parties. A bank which accepts and
16 passes on an item, such as a depository bank, is known as a
17 "transferor", and a bank which receives an item such as a
18 payor bank is known as a "transferee". A collecting bank is
19 both a transferor and transferee. A transferor warrants that
20 all signatures on the item are authentic, and that it has no
21 knowledge that the signature of the drawer of the draft is
22 unauthorized (see Code sections 554.3416, 554.3417, and
23 554.4208).

24 Under the bill, a demand draft must at least contain the
25 customer's account number. The bill expressly refers to
26 demand drafts in the warranty provisions, and specifies that a
27 transferor is warranting that the demand draft has been
28 authorized by the person identified as the payor bank's
29 customer, as evidenced by the customer's account number
30 printed on the face of the demand draft. Under the bill, if a
31 breach is proved, the payor bank as a transferee will have a
32 breach of warranty claim against the upstream transferor bank,
33 and each upstream bank will have a similar claim as a
34 transferee back up the stream to the depository bank.

35 RECIPROCALITY. The bill also contains a conflict of laws

1 provision which applies in cases where the payor bank or
2 collecting bank (transferee) is located in another state and
3 the depository bank or collecting bank (transferor) is located
4 in Iowa. The bill provides that an Iowa bank does not have to
5 warrant a demand draft which has been transferred by an out-
6 of-state bank if the other state law does not have a
7 reciprocal warranty provision similar to the one contained in
8 the bill. For example, a merchant in Iowa could create a
9 demand draft and cash it at an Iowa depository bank for
10 transfer and presentment to an out-of-state payor bank. If
11 the out-of-state law did not have a reciprocity provision, and
12 the demand draft were fraudulent, the out-of-state payor bank
13 would have to recredit its customer's account, but could not
14 pass that liability upstream to the Iowa depository bank under
15 rules of warranty.

16 **LOSS OF POSSESSION.** The bill amends a provision which
17 provides that a person is entitled to obtain payment of an
18 item ("enforce the instrument") even if the person has lost
19 possession of the item (it has been misplaced, destroyed, or
20 stolen). A payee's or transferee's acceptance of the item
21 does not discharge the underlying obligation to pay regardless
22 of its physical loss. The bill originates from language
23 promulgated by the commissioners on uniform state laws.
24 According to comments from the commissioners, it is intended
25 to address the result of a court case, Dennis Joslin Co. v.
26 Robinson Broadcasting Corp., 977 F. Supp. 491 (D.D.C. 1997),
27 which held that a transferee of the item must have been in
28 actual possession of the item when it was lost. The bill
29 provides that a person need only prove that the person was
30 entitled to enforce the instrument at the time it was lost
31 (even when lost in transit regardless of the precise status of
32 ownership at the point of loss).

33 **STATUTE OF LIMITATIONS.** The bill includes a provision in
34 Article 4, which provides an express statute of limitations of
35 three years in order to enforce an obligation, duty, or right

1 arising under the Article. The provision is part of the model
2 Act under 4-111 but was not included in 1994 when the general
3 assembly enacted its provisions (1994 Iowa Acts, ch. 1167).

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SENATE FILE 139

AN ACT

RELATING TO NEGOTIABLE INSTRUMENTS, BY PROVIDING FOR
LIABILITIES AMONG CERTAIN PARTIES, AND PROVIDING A STATUTE
OF LIMITATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 554.3103, subsections 2 and 3, Code
2005, are amended to read as follows:

2. Other definitions applying to this Article and the
sections in which they appear are:

<u>a.</u>	"Acceptance"	Section 554.3409.
<u>b.</u>	"Accommodated party"	Section 554.3419.
<u>c.</u>	"Accommodation party"	Section 554.3419.
<u>d.</u>	"Alteration"	Section 554.3407.
<u>e.</u>	"Anomalous endorsement"	Section 554.3205.
<u>f.</u>	"Blank endorsement"	Section 554.3205.
<u>g.</u>	"Cashier's check"	Section 554.3104.
<u>h.</u>	"Certificate of deposit"	Section 554.3104.
<u>i.</u>	"Certified check"	Section 554.3409.
<u>j.</u>	"Check"	Section 554.3104.
<u>k.</u>	"Consideration"	Section 554.3303.
<u>l.</u>	"Demand draft"	Section 554.3104.
<u>m.</u>	"Draft"	Section 554.3104.
<u>n.</u>	"Holder in due course"	Section 554.3302.

<u>o.</u>	"Incomplete instrument"	Section 554.3115.
<u>p.</u>	"Endorsement"	Section 554.3204.
<u>q.</u>	"Endorser"	Section 554.3204.
<u>r.</u>	"Instrument"	Section 554.3104.
<u>s.</u>	"Issue"	Section 554.3105.
<u>t.</u>	"Issuer"	Section 554.3105.
<u>u.</u>	"Negotiable instrument"	Section 554.3104.
<u>v.</u>	"Negotiation"	Section 554.3201.
<u>w.</u>	"Note"	Section 554.3104.
<u>x.</u>	"Payable at a definite time"	Section 554.3108.
<u>y.</u>	"Payable on demand"	Section 554.3108.
<u>z.</u>	"Payable to bearer"	Section 554.3109.
<u>aa.</u>	"Payable to order"	Section 554.3109.
<u>ab.</u>	"Payment"	Section 554.3602.
<u>ac.</u>	"Person entitled to enforce"	Section 554.3301.
<u>ad.</u>	"Presentment"	Section 554.3501.
<u>ae.</u>	"Reacquisition"	Section 554.3207.
<u>af.</u>	"Special endorsement"	Section 554.3205.
<u>ag.</u>	"Teller's check"	Section 554.3104.
<u>ah.</u>	"Transfer of instrument"	Section 554.3203.
<u>ai.</u>	"Traveler's check"	Section 554.3104.
<u>aj.</u>	"Value"	Section 554.3303.
3.	The following definitions in other Articles apply to this Article:	
<u>a.</u>	"Bank"	Section 554.4105.
<u>b.</u>	"Banking day"	Section 554.4104.
<u>c.</u>	"Clearing house"	Section 554.4104.
<u>d.</u>	"Collecting bank"	Section 554.4105.
<u>e.</u>	"Depository bank"	Section 554.4105.
<u>f.</u>	"Documentary draft"	Section 554.4104.
<u>g.</u>	"Intermediary bank"	Section 554.4105.
<u>h.</u>	"Item"	Section 554.4104.

i. "Payor bank" Section 554.4105.

j. "Suspends payments" Section 554.4104.

Sec. 2. Section 554.3104, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 11. a. "Demand draft" means a writing not signed by a customer as defined in section 554.4104 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. The writing must contain the customer's account number and may contain any 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", "authorized on file", "signature on file", or words to that effect.

b. "Demand draft" does not include a check purportedly drawn by and bearing the signature of a fiduciary as defined in section 554.3307.

Sec. 3. Section 554.3309, subsection 1, Code 2005, is amended to read as follows:

1. A person not in possession of an instrument is entitled to enforce the instrument if: ~~{i}~~

a. the person was in possession of the instrument and entitled to enforce it seeking to enforce the instrument:

(1) was entitled to enforce the instrument when loss or possession occurred, or

(2) has directly or indirectly acquired ownership of the instrument from a person who was entitled to the instrument when loss of possession occurred, ~~{ii}~~;

b. the loss of possession was not the result of a transfer by the person or a lawful seizure, ~~i~~ and ~~{iii}~~

c. the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

Sec. 4. Section 554.3416, subsection 1, paragraphs d and e, Code 2005, are amended to read as follows:

d. the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

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; and

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 the drawer.

Sec. 5. Section 554.3416, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 5. If a warranty under subsection 1, paragraph "f", is not given by a transferor under applicable conflict of laws rules, the warranty is not given to that transferor when that transferor is a transferee.

Sec. 6. Section 554.3417, subsection 1, paragraphs b and c, Code 2005, are amended to read as follows:

b. the draft has not been altered; and

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, the creation of the demand draft according to the terms on its face was authorized by the person identified as the drawer.

Sec. 7. Section 554.3417, Code 2005, is amended by adding the following new subsections:

NEW SUBSECTION. 7. A demand draft is a check as provided in section 554.3104, subsection 6.

NEW SUBSECTION. 8. If a warranty under subsection 1, paragraph "d", is not given by a transferor under applicable conflict of laws rules, the warranty is not given to that transferor when that transferor is a transferee.

Sec. 8. NEW SECTION. 554.4111 STATUTE OF LIMITATIONS.

An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the cause of action accrues.

Sec. 9. Section 554.4207, subsection 1, paragraphs d and e, Code 2005, are amended to read as follows:

d. the item is not subject to a defense or claim in recoupment (section 554.3305, subsection 1) of any party that can be asserted against the warrantor; and

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; and

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 the drawer.

Sec. 10. Section 554.4207, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 6. If the warranty under subsection 1, paragraph "f", is not given by a transferor or collecting bank under applicable conflict of laws rules, the warranty is not given to that transferor when the transferor is a transferee or to any prior collecting bank of that transferee.

Sec. 11. Section 554.4208, subsection 1, paragraphs b and c, Code 2005, are amended to read as follows:

b. the draft has not been altered; and

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, the creation of the demand draft according to the terms on its face was authorized by the person identified as the drawer.

Sec. 12. Section 554.4208, Code 2005, is amended by adding the following new subsections:

NEW SUBSECTION. 7. A demand draft is a check as provided in section 554.3104, subsection 6.

NEW SUBSECTION. 8. If a warranty under subsection 1, paragraph "d", is not given by a transferor under applicable

conflict of laws rules, the warranty is not given to that transferor when that transferor is a transferee.

JEFFREY M. LAMBERTI
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 139, Eighty-first General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved 3/21, 2005

THOMAS J. VILSACK
Governor