

# House Study Bill 132

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
COMMERCE, REGULATION  
AND LABOR BILL BY  
CHAIRPERSON JENKINS)

Passed House, Date \_\_\_\_\_ Passed Senate, 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:

5 TLSB 1563HC 81

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

1 3 2. Other definitions applying to this Article and the  
1 4 sections in which they appear are:

1 5	<u>a.</u>	"Acceptance"	Section 554.3409.
1 6	<u>b.</u>	"Accommodated party"	Section 554.3419.
1 7	<u>c.</u>	"Accommodation party"	Section 554.3419.
1 8	<u>d.</u>	"Alteration"	Section 554.3407.
1 9	<u>e.</u>	"Anomalous endorsement"	Section 554.3205.
1 10	<u>f.</u>	"Blank endorsement"	Section 554.3205.
1 11	<u>g.</u>	"Cashier's check"	Section 554.3104.
1 12	<u>h.</u>	"Certificate of deposit"	Section 554.3104.
1 13	<u>i.</u>	"Certified check"	Section 554.3409.
1 14	<u>j.</u>	"Check"	Section 554.3104.
1 15	<u>k.</u>	"Consideration"	Section 554.3303.
1 16	<u>l.</u>	"Demand draft"	Section 554.3104.
1 17	<u>m.</u>	"Draft"	Section 554.3104.
1 18	<u>n.</u>	"Holder in due course"	Section 554.3302.
1 19	<u>o.</u>	"Incomplete instrument"	Section 554.3115.
1 20	<u>p.</u>	"Endorsement"	Section 554.3204.
1 21	<u>q.</u>	"Endorser"	Section 554.3204.
1 22	<u>r.</u>	"Instrument"	Section 554.3104.
1 23	<u>s.</u>	"Issue"	Section 554.3105.
1 24	<u>t.</u>	"Issuer"	Section 554.3105.
1 25	<u>u.</u>	"Negotiable instrument"	Section 554.3104.
1 26	<u>v.</u>	"Negotiation"	Section 554.3201.
1 27	<u>w.</u>	"Note"	Section 554.3104.
1 28	<u>x.</u>	"Payable at a 1 29 definite time"	Section 554.3108.
1 30	<u>y.</u>	"Payable on demand"	Section 554.3108.
1 31	<u>z.</u>	"Payable to bearer"	Section 554.3109.
1 32	<u>aa.</u>	"Payable to order"	Section 554.3109.
1 33	<u>ab.</u>	"Payment"	Section 554.3602.
1 34	<u>ac.</u>	"Person entitled 1 35 to enforce"	Section 554.3301.
2 1	<u>ad.</u>	"Presentment"	Section 554.3501.
2 2	<u>ae.</u>	"Reacquisition"	Section 554.3207.
2 3	<u>af.</u>	"Special endorsement"	Section 554.3205.
2 4	<u>ag.</u>	"Teller's check"	Section 554.3104.
2 5	<u>ah.</u>	"Transfer of instrument"	Section 554.3203.
2 6	<u>ai.</u>	"Traveler's check"	Section 554.3104.
2 7	<u>aj.</u>	"Value"	Section 554.3303.

2 8 3. The following definitions in other Articles apply to  
2 9 this Article:

2 10	<u>a.</u>	"Bank"	Section 554.4105.
2 11	<u>b.</u>	"Banking day"	Section 554.4104.
2 12	<u>c.</u>	"Clearing house"	Section 554.4104.
2 13	<u>d.</u>	"Collecting bank"	Section 554.4105.
2 14	<u>e.</u>	"Depositary bank"	Section 554.4105.
2 15	<u>f.</u>	"Documentary draft"	Section 554.4104.
2 16	<u>g.</u>	"Intermediary bank"	Section 554.4105.

2 17 h. "Item" Section 554.4104.  
2 18 i. "Payor bank" Section 554.4105.  
2 19 j. "Suspends payments" Section 554.4104.  
2 20 Sec. 2. Section 554.3104, Code 2005, is amended by adding  
2 21 the following new subsection:  
2 22 NEW SUBSECTION. 11. a. "Demand draft" means a writing  
2 23 not signed by a customer as defined in section 554.4104 that  
2 24 is created by a third party under the purported authority of  
2 25 the customer for the purpose of charging the customer's  
2 26 account with a bank. The writing must contain the customer's  
2 27 account number and may contain any of the following:  
2 28 (1) The customer's printed or typewritten name;  
2 29 (2) A notation that the customer authorized the draft; or  
2 30 (3) The statement "no signature required", "authorized on  
2 31 file", "signature on file", or words to that effect.  
2 32 b. "Demand draft" does not include a check purportedly  
2 33 drawn by and bearing the signature of a fiduciary as defined  
2 34 in section 554.3307.  
2 35 Sec. 3. Section 554.3309, subsection 1, Code 2005, is  
3 1 amended to read as follows:  
3 2 1. A person not in possession of an instrument is entitled  
3 3 to enforce the instrument if: ~~(i)~~  
3 4 a. the person was in possession of the instrument and  
3 5 entitled to enforce it seeking to enforce the instrument:  
3 6 (1) was entitled to enforce the instrument when loss or  
3 7 possession occurred, or  
3 8 (2) has directly or indirectly acquired ownership of the  
3 9 instrument from a person who was entitled to the instrument  
3 10 when loss of possession occurred, ~~(ii);~~  
3 11 b. the loss of possession was not the result of a transfer  
3 12 by the person or a lawful seizure, ~~(iii);~~ and  
3 13 c. the person cannot reasonably obtain possession of the  
3 14 instrument because the instrument was destroyed, its  
3 15 whereabouts cannot be determined, or it is in the wrongful  
3 16 possession of an unknown person or a person that cannot be  
3 17 found or is not amenable to service of process.  
3 18 Sec. 4. Section 554.3416, subsection 1, paragraphs d and  
3 19 e, Code 2005, are amended to read as follows:  
3 20 d. the instrument is not subject to a defense or claim in  
3 21 recoupment of any party which can be asserted against the  
3 22 warrantor; ~~and~~  
3 23 e. the warrantor has no knowledge of any insolvency  
3 24 proceeding commenced with respect to the maker or acceptor or,  
3 25 in the case of an unaccepted draft, the drawer; ~~and~~  
3 26 f. if the instrument is a demand draft, creation of the  
3 27 instrument according to the terms on its face was authorized  
3 28 by the person identified as the drawer.  
3 29 Sec. 5. Section 554.3416, Code 2005, is amended by adding  
3 30 the following new subsection:  
3 31 NEW SUBSECTION. 5. If a warranty under subsection 1,  
3 32 paragraph "f", is not given by a transferor under applicable  
3 33 conflict of laws rules, the warranty is not given to that  
3 34 transferor when that transferor is a transferee.  
3 35 Sec. 6. Section 554.3417, subsection 1, paragraphs b and  
4 1 c, Code 2005, are amended to read as follows:  
4 2 b. the draft has not been altered; ~~and~~  
4 3 c. the warrantor has no knowledge that the signature of  
4 4 the drawer of the draft is unauthorized; ~~and~~  
4 5 d. if the draft is a demand draft, the creation of the  
4 6 demand draft according to the terms on its face was authorized  
4 7 by the person identified as the drawer.  
4 8 Sec. 7. Section 554.3417, Code 2005, is amended by adding  
4 9 the following new subsections:  
4 10 NEW SUBSECTION. 7. A demand draft is a check as provided  
4 11 in section 554.3104, subsection 6.  
4 12 NEW SUBSECTION. 8. If a warranty under subsection 1,  
4 13 paragraph "d", is not given by a transferor under applicable  
4 14 conflict of laws rules, the warranty is not given to that  
4 15 transferor when that transferor is a transferee.  
4 16 Sec. 8. NEW SECTION. 554.4111 STATUTE OF LIMITATIONS.  
4 17 An action to enforce an obligation, duty, or right arising  
4 18 under this Article must be commenced within three years after  
4 19 the cause of action accrues.  
4 20 Sec. 9. Section 554.4207, subsection 1, paragraphs d and  
4 21 e, Code 2005, are amended to read as follows:  
4 22 d. the item is not subject to a defense or claim in  
4 23 recoupment (section 554.3305, subsection 1) of any party that  
4 24 can be asserted against the warrantor; ~~and~~  
4 25 e. the warrantor has no knowledge of any insolvency  
4 26 proceeding commenced with respect to the maker or acceptor or,  
4 27 in the case of an unaccepted draft, the drawer; ~~and~~

4 28 f. if the item is a demand draft, creation of the item  
4 29 according to the terms on its face was authorized by the  
4 30 person identified as the drawer.

4 31 Sec. 10. Section 554.4207, Code 2005, is amended by adding  
4 32 the following new subsection:

4 33 NEW SUBSECTION. 6. If the warranty under subsection 1,  
4 34 paragraph "f", is not given by a transferor or collecting bank  
4 35 under applicable conflict of laws rules, the warranty is not  
5 1 given to that transferor when the transferor is a transferee  
5 2 or to any prior collecting bank of that transferee.

5 3 Sec. 11. Section 554.4208, subsection 1, paragraphs b and  
5 4 c, Code 2005, are amended to read as follows:

5 5 b. the draft has not been altered; ~~and~~

5 6 c. the warrantor has no knowledge that the signature of  
5 7 the purported drawer of the draft is unauthorized; ~~and~~

5 8 d. if the draft is a demand draft, the creation of the  
5 9 demand draft according to the terms on its face was authorized  
5 10 by the person identified as the drawer.

5 11 Sec. 12. Section 554.4208, Code 2005, is amended by adding  
5 12 the following new subsections:

5 13 NEW SUBSECTION. 7. A demand draft is a check as provided  
5 14 in section 554.3104, subsection 6.

5 15 NEW SUBSECTION. 8. If a warranty under subsection 1,  
5 16 paragraph "d", is not given by a transferor under applicable  
5 17 conflict of laws rules, the warranty is not given to that  
5 18 transferor when that transferor is a transferee.

#### 5 19 EXPLANATION

5 20 GENERAL. This bill amends provisions in Articles 3 and 4  
5 21 of the Uniform Commercial Code, a model Act governing  
5 22 commercial transactions as drafted by the national conference  
5 23 on commissioners on uniform state laws and the American law  
5 24 institute. Articles 3 and 4 govern negotiable instruments  
5 25 (sometimes referred to as simply "items"). Together the  
5 26 articles regulate the payment of items as they are processed  
5 27 through the collection stream, including the writing  
5 28 ("drawing") of checks and drafts, and liabilities associated  
5 29 with lost or fraudulent items as it affects banks (depository  
5 30 banks, collecting banks, and payor banks).

5 31 WARRANTY == DEMAND DRAFTS. A demand draft is an item  
5 32 resembling a check which is usually printed by a merchant  
5 33 (identified in the bill as the "third party") that has  
5 34 purportedly obtained permission from a buyer (the "drawer") to  
5 35 create the draft on their behalf. The drawer is called the  
6 1 "customer", meaning a customer of the drawer's bank. The  
6 2 merchant may deposit the draft at any willing bank (a  
6 3 "depository bank") for ultimate presentment and collection at  
6 4 the customer's bank (the "payor bank").

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

6 24 Under the bill, a demand draft must at least contain the  
6 25 customer's account number. The bill expressly refers to  
6 26 demand drafts in the warranty provisions, and specifies that a  
6 27 transferor is warranting that the demand draft has been  
6 28 authorized by the person identified as the payor bank's  
6 29 customer, as evidenced by the customer's account number  
6 30 printed on the face of the demand draft. Under the bill, if a  
6 31 breach is proved, the payor bank as a transferee will have a  
6 32 breach of warranty claim against the upstream transferor bank,  
6 33 and each upstream bank will have a similar claim as a  
6 34 transferee back up the stream to the depository bank.

6 35 RECIPROCITY. The bill also contains a conflict of laws  
7 1 provision which applies in cases where the payor bank or  
7 2 collecting bank (transferee) is located in another state and  
7 3 the depository bank or collecting bank (transferor) is located

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

7 16 LOSS OF POSSESSION. The bill amends a provision which  
7 17 provides that a person is entitled to obtain payment of an  
7 18 item ("enforce the instrument") even if the person has lost  
7 19 possession of the item (it has been misplaced, destroyed, or  
7 20 stolen). A payee's or transferee's acceptance of the item  
7 21 does not discharge the underlying obligation to pay regardless  
7 22 of its physical loss. The bill originates from language  
7 23 promulgated by the commissioners on uniform state laws.

7 24 According to comments from the commissioners, it is intended  
7 25 to address the result of a court case, Dennis Joslin Co. v.

7 26 Robinson Broadcasting Corp., 977 F. Supp. 491 (D.D.C. 1997),

7 27 which held that a transferee of the item must have been in  
7 28 actual possession of the item when it was lost. The bill  
7 29 provides that a person need only prove that the person was  
7 30 entitled to enforce the instrument at the time it was lost  
7 31 (even when lost in transit regardless of the precise status of  
7 32 ownership at the point of loss).

7 33 STATUTE OF LIMITATIONS. The bill includes a provision in  
7 34 Article 4, which provides an express statute of limitations of  
7 35 three years in order to enforce an obligation, duty, or right  
8 1 arising under the Article. The provision is part of the model  
8 2 Act under 4-111 but was not included in 1994 when the general  
8 3 assembly enacted its provisions (1994 Iowa Acts, ch. 1167).

8 4 LSB 1563HC 81

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