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BILL



ANALYSIS

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Senate Bill 549 (as introduced 9-25-13)  
Sponsor: Senator Darwin L. Booher  
Committee: Banking and Financial Institutions

Date Completed: 10-10-13

### **CONTENT**

**The bill would amend Article 4 of the Uniform Commercial Code, which governs bank deposits and collections, to provide a warranty for the transfer of a remotely created consumer item.**

Article 4 provides that a customer or collecting bank that transfers an item, commonly known as a check, makes certain warranties to the transferee and to any subsequent collecting bank.

If a drawee pays or accepts a draft for payment or acceptance, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, makes warranties to the drawee. (A drawee is the person ordered in a draft to make payment.)

The bill would include an additional warranty for both circumstances. For any remotely created consumer item, the respective party would warrant that the person on whose account the item was drawn had authorized the item to be issued for the amount drawn.

The bill would refer to the definition of "remotely created consumer item" contained in Section 3103 of the Code. (Senate Bill 547 would amend that section and define the term as an item drawn on a consumer account, which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer.)

Article 4 contains provisions that: 1) require a collecting bank to provide written notice if it holds an item for acceptance or payment; 2) require a payor bank to provide written notice of dishonor or nonpayment if an item is unavailable for return and the payor bank wishes to revoke a settlement; and 3) require a consumer stop-payment order to be effective for six months, but lapse after 14 days if the original order was oral and was not confirmed in writing within that period. In these provisions, the bill would require a record rather than a written notice or a writing.

(Under the Code, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.)

MCL 440.4104 et al.

Legislative Analyst: Glenn Steffens

## **BACKGROUND**

Remotely created consumer items are checks that a consumer authorizes to be issued in his or her name over the telephone or through other remote means. This type of check is a relatively new phenomenon that is not addressed within Article 4 of the Uniform Commercial Code. General warranties in Articles 3 and 4 apply to checks, but no warranty applies specifically to the authenticity of a remotely created consumer item. The National Conference of Commissioners on Uniform State Laws (the Uniform Law Commission, or ULC) recommended an amendment to Article 4 to provide that a customer or bank that transfers a remotely created check for payment warrants that the check is authorized for the amount which it was drawn.

The ULC also recommended modifying several requirements for certain documents to be in writing. According to the ULC, requiring a record, rather than a writing, would bring consistency between the Uniform Electronic Transactions Act and Article 4, and allow electronic records in these circumstances to satisfy statute of frauds requirements.

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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