

SENATE BILL No. 549

September 25, 2013, Introduced by Senator BOOHER and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1962 PA 174, entitled
"Uniform commercial code,"
by amending sections 4104, 4207, 4208, 4212, 4301, and 4403 (MCL
440.4104, 440.4207, 440.4208, 440.4212, 440.4301, and 440.4403),
section 4104 as amended by 2012 PA 87 and sections 4207, 4208,
4212, 4301, and 4403 as amended by 1993 PA 130.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4104. (1) As used in this article unless the context
2 otherwise requires:

3 (a) "Account" means any depositor credit account with a
4 bank, including a demand, time, savings, passbook, share draft,
5 or like account, other than an account evidenced by a certificate
6 of deposit.

7 (b) "Afternoon" means the period of a day between noon and

1 midnight.

2 (c) "Banking day" means the part of a day on which a bank is
3 open to the public for carrying on substantially all of its
4 banking functions.

5 (d) "Clearing-house" means an association of banks or other
6 payors regularly clearing items.

7 (e) "Customer" means any person having an account with a
8 bank or for whom a bank has agreed to collect items, including a
9 bank that maintains an account at another bank.

10 (f) "Documentary draft" means a draft to be presented for
11 acceptance or payment if specified documents, certificated
12 securities as defined in section 8102 or instructions for
13 uncertificated securities as defined in section 8102, or other
14 certificates, statements, or the like are to be received by the
15 drawee or other payor before acceptance or payment of the draft.

16 (g) "Draft" means a draft as defined in section 3104 or an
17 item, other than an instrument, that is an order.

18 (h) "Drawee" means a person ordered in a draft to make
19 payment.

20 (i) "Item" means an instrument or a promise or order to pay
21 money handled by a bank for collection or pay. The term does not
22 include a payment order governed by article ~~2a-4A~~ or a credit or
23 debit card slip.

24 (j) "Midnight deadline" with respect to a bank is midnight
25 on its next banking day following the banking day on which it
26 receives the relevant item or notice or from which the time for
27 taking action commences to run, whichever is later.

(k) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(l) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this article and the sections in which they appear are:

"Agreement for electronic presentment".	Section 4110.
"Bank".	Section 4105.
"Collecting bank".	Section 4105.
"Depository bank".	Section 4105.
"Intermediary bank".	Section 4105.
"Payor bank".	Section 4105.
"Presenting bank".	Section 4105.
"Presentment notice".	Section 4110.

(3) "Control" as provided in section 7106 and the following definitions in other articles apply to this article:

"Acceptance".	Section 3409.
"Alteration".	Section 3409.
"Certificate of deposit".	Section 3104.
"Cashier's check".	Section 3104.
"Certified check".	Section 3409.
"Check".	Section 3104.
"Draft".	Section 3104.

1	"Holder in due course".	Section 3302.
2	"Instrument".	Section 3104.
3	"Notice of dishonor".	Section 3503.
4	"Order".	Section 3103.
5	"Ordinary care".	Section 3103.
6	"Person entitled to enforce".	Section 3301.
7	"Presentment".	Section 3501.
8	"Promise".	Section 3103.
9	"Prove".	Section 3103.
10	"RECORD".	SECTION 3103.
11	"REMOTELY CREATED CONSUMER ITEM".	SECTION 3103.
12	"Teller's check".	Section 3104.
13	"Unauthorized signature".	Section 3403.

14 (4) In addition, article 1 contains general definitions and
15 principles of construction and interpretation applicable
16 throughout this article.

17 Sec. 4207. (1) A customer or collecting bank that transfers
18 an item and receives a settlement or other consideration warrants
19 to the transferee and to any subsequent collecting bank all of
20 the following:

21 (a) That the warrantor is a person entitled to enforce the
22 item.

23 (b) That all signatures on the item are authentic and
24 authorized.

25 (c) That the item has not been altered.

26 (d) That the item is not subject to a defense or claim in
27 recoupment ~~(section 3305(1))~~ **UNDER SECTION 3305(1)** of any party
28 that can be asserted against the warrantor.

1 (e) That the warrantor has no knowledge of any insolvency
2 proceeding commenced with respect to the maker or acceptor or, in
3 the case of an unaccepted draft, the drawer.

4 (F) WITH RESPECT TO ANY REMOTELY CREATED CONSUMER ITEM, THAT
5 THE PERSON ON WHOSE ACCOUNT THE ITEM IS DRAWN AUTHORIZED THE
6 ISSUANCE OF THE ITEM IN THE AMOUNT FOR WHICH THE ITEM IS DRAWN.

7 (2) If an item is dishonored, a customer or collecting bank
8 transferring the item and receiving settlement or other
9 consideration is obliged to pay the amount due on the item (i)
10 according to the terms of the item at the time it was
11 transferred, or (ii) if the transfer was of an incomplete item,
12 according to its terms when completed as stated in sections 3115
13 and 3407. The obligation of a transferor is owed to the
14 transferee and to any subsequent collecting bank that takes the
15 item in good faith. A transferor cannot disclaim its obligation
16 under this subsection by an endorsement stating that it is made
17 "without recourse" or otherwise disclaiming liability.

18 (3) A person to whom the warranties under subsection (1) are
19 made and who took the item in good faith may recover from the
20 warrantor as damages for breach of warranty an amount equal to
21 the loss suffered as a result of the breach, but not more than
22 the amount of the item plus expenses and loss of interest
23 incurred as a result of the breach.

24 (4) The warranties stated in subsection (1) cannot be
25 disclaimed with respect to checks. Unless notice of a claim for
26 breach of warranty is given to the warrantor within 30 days after
27 the claimant has reason to know of the breach and the identity of

1 the warrantor, the warrantor is discharged to the extent of any
2 loss caused by the delay in giving notice of the claim.

3 (5) A cause of action for breach of warranty under this
4 section accrues when the claimant has reason to know of the
5 breach.

6 Sec. 4208. (1) If an unaccepted draft is presented to the
7 drawee for payment or acceptance and the drawee pays or accepts
8 the draft, (i) the person obtaining payment or acceptance, at the
9 time of presentment, and (ii) a previous transferor of the draft,
10 at the time of transfer, warrant to the drawee that pays or
11 accepts the draft in good faith all of the following:

12 (a) The warrantor is, or was, at the time the warrantor
13 transferred the draft, a person entitled to enforce the draft or
14 authorized to obtain payment or acceptance of the draft on behalf
15 of a person entitled to enforce the draft.

16 (b) The draft has not been altered.

17 (c) The warrantor has no knowledge that the signature of the
18 purported drawer of the draft is unauthorized.

19 **(D) WITH RESPECT TO ANY REMOTELY CREATED CONSUMER ITEM, THAT**
20 **THE PERSON ON WHOSE ACCOUNT THE ITEM IS DRAWN AUTHORIZED THE**
21 **ISSUANCE OF THE ITEM IN THE AMOUNT FOR WHICH THE ITEM IS DRAWN.**

22 (2) A drawee making payment may recover from a warrantor
23 damages for breach of warranty equal to the amount paid by the
24 drawee less the amount the drawee received or is entitled to
25 receive from the drawer because of the payment. In addition the
26 drawee is entitled to compensation for expenses and loss of
27 interest resulting from the breach. The right of the drawee to

1 recover damages under this subsection is not affected by any
2 failure of the drawee to exercise ordinary care in making
3 payment. If the drawee accepts the draft (i) breach of warranty is
4 a defense to the obligation of the acceptor, and (ii) if the
5 acceptor makes payment with respect to the draft, the acceptor is
6 entitled to recover from a warrantor for breach of warranty the
7 amounts stated in this subsection.

8 (3) If a drawee asserts a claim for breach of warranty under
9 subsection (1) based on an unauthorized endorsement of the draft
10 or an alteration of the draft, the warrantor may defend by
11 proving that the endorsement is effective under section 3404 or
12 3405 or the drawer is precluded under section 3406 or 4406 from
13 asserting against the drawee the unauthorized endorsement or
14 alteration.

15 (4) If (i) a dishonored draft is presented for payment to the
16 drawer or an endorser or (ii) any other item is presented for
17 payment to a party obliged to pay the item, and the item is paid,
18 the person obtaining payment and a prior transferor of the item
19 warrant to the person making payment in good faith that the
20 warrantor is, or was, at the time the warrantor transferred the
21 item, a person entitled to enforce the item or authorized to
22 obtain payment on behalf of a person entitled to enforce the
23 item. The person making payment may recover from any warrantor
24 for breach of warranty an amount equal to the amount paid plus
25 expenses and loss of interest resulting from the breach.

26 (5) The warranties stated in subsections (1) and (4) cannot
27 be disclaimed with respect to checks. Unless notice of a claim

1 for breach of warranty is given to the warrantor within 30 days
2 after the claimant has reason to know of the breach and the
3 identity of the warrantor, the warrantor is discharged to the
4 extent of any loss caused by the delay in giving notice of the
5 claim.

6 (6) A cause of action for breach of warranty under this
7 section accrues when the claimant has reason to know of the
8 breach.

9 Sec. 4212. (1) Unless otherwise instructed, a collecting
10 bank may present an item not payable by, through or at a bank by
11 sending to the party to accept or pay a ~~written~~**RECORD PROVIDING**
12 notice that the bank holds the item for acceptance or payment.
13 The notice must be sent in time to be received on or before the
14 day when presentment is due and the bank must meet any
15 requirement of the party to accept or pay under section 3501 by
16 the close of the bank's next banking day after it knows of the
17 requirement.

18 (2) If presentment is made by notice and payment,
19 acceptance, or request for compliance with a requirement under
20 section 3501 is not received by the close of business on the day
21 after maturity or in the case of demand items by the close of
22 business on the third banking day after notice was sent, the
23 presenting bank may treat the item as dishonored and charge any
24 drawer or endorser by sending it notice of the facts.

25 Sec. 4301. (1) If a payor bank settles for a demand item
26 other than a documentary draft presented otherwise than for
27 immediate payment over the counter before midnight of the banking

1 day of receipt the payor bank may revoke the settlement and
2 recover the settlement if, before it has made final payment and
3 before its midnight deadline, it does ~~either~~ **ANY** of the
4 following:

5 (a) Returns the item.

6 **(B) RETURNS AN IMAGE OF THE ITEM, IF THE PARTY TO WHICH THE**
7 **RETURN IS MADE HAS ENTERED INTO AN AGREEMENT TO ACCEPT AN IMAGE**
8 **AS A RETURN OF THE ITEM AND THE IMAGE IS RETURNED IN ACCORDANCE**
9 **WITH THAT AGREEMENT.**

10 **(C) ~~(b)~~ Sends written-A RECORD PROVIDING** notice of dishonor
11 or nonpayment if the item is unavailable for return.

12 (2) If a demand item is received by a payor bank for credit
13 on its books, it may return the item or send notice of dishonor
14 and may revoke any credit given or recover the amount thereof
15 withdrawn by its customer, if it acts within the time limit and
16 in the manner specified in subsection (1).

17 (3) Unless previous notice of dishonor has been sent, an
18 item is dishonored at the time when for purposes of dishonor it
19 is returned or notice sent in accordance with this section.

20 (4) An item is returned when 1 of the following occurs:

21 (a) As to an item presented through a clearing-house, when
22 it is delivered to the presenting or last collecting bank or to
23 the clearing-house or is sent or delivered in accordance with its
24 rules.

25 (b) In all other cases, when it is sent or delivered to the
26 bank's customer or transferor or pursuant to his or her
27 instructions.

1 Sec. 4403. (1) A customer or any person authorized to draw
2 on the account if there is more than 1 person may stop payment of
3 any item drawn on the customer's account or close the account by
4 an order to the bank describing the item or account with
5 reasonable certainty received at a time and in a manner that
6 affords the bank a reasonable opportunity to act on it before any
7 action by the bank with respect to the item described in section
8 4303. If the signature of more than 1 person is required to draw
9 on an account, any of these persons may stop payment or close the
10 account.

11 (2) A stop-payment order is effective for 6 months, but it
12 lapses after 14 calendar days if the original order was oral and
13 was not confirmed in ~~writing~~ **A RECORD** within that period. A stop-
14 payment order may be renewed for additional 6-month periods by a
15 ~~writing~~ **RECORD** given to the bank within a period during which the
16 stop-payment order is effective.

17 (3) The burden of establishing the fact and amount of loss
18 resulting from the payment of an item contrary to a stop-payment
19 order or order to close an account is on the customer. The loss
20 from payment of an item contrary to a stop-payment order may
21 include damages for dishonor of subsequent items under section
22 4402.