

1                   **DEMAND DRAFTS - UNIFORM COMMERCIAL**

2                                   **CODE**

3   1998 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Lyle W. Hillyard**

6 AN ACT RELATING TO UNIFORM COMMERCIAL CODE; DEFINING TERMS;  
7 PROVIDING FOR TRANSFER AND PRESENTMENT; MAKING CONFORMING  
8 AMENDMENTS AND TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE  
9 DATE.

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 AMENDS:

12           **70A-3-103**, as repealed and reenacted by Chapter 237, Laws of Utah 1993

13           **70A-3-104**, as repealed and reenacted by Chapter 237, Laws of Utah 1993

14           **70A-3-416**, as repealed and reenacted by Chapter 237, Laws of Utah 1993

15           **70A-3-417**, as repealed and reenacted by Chapter 237, Laws of Utah 1993

16           **70A-4-207**, as repealed and reenacted by Chapter 237, Laws of Utah 1993

17           **70A-4-208**, as repealed and reenacted by Chapter 237, Laws of Utah 1993

18 *Be it enacted by the Legislature of the state of Utah:*

19           Section 1. Section **70A-3-103** is amended to read:

20           **70A-3-103. Definitions.**

21           (1) In this chapter:

22           (a) "Acceptor" means a drawee who has accepted a draft.

23           (b) "Drawee" means a person ordered in a draft to make payment.

24           (c) "Drawer" means a person who signs or is identified in a draft as a person ordering  
25 payment.

26           (d) "Good faith" means honesty in fact in the conduct or transaction concerned.

27           (e) "Maker" means a person who signs or is identified in a note as a person undertaking

1 to pay.

2 (f) "Order" means a written instruction to pay money signed by the person giving the  
3 instruction. The instruction may be addressed to any person, including the person giving the  
4 instruction, or to one or more persons jointly or in the alternative, but not in succession. An  
5 authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

6 (g) "Ordinary care" in the case of a person engaged in business means observance of  
7 reasonable commercial standards, prevailing in the area in which the person is located, with respect  
8 to the business in which the person is engaged. In the case of a bank that takes an instrument for  
9 processing for collection or payment by automated means, reasonable commercial standards do  
10 not require the bank to examine the instrument if the failure to examine does not violate the bank's  
11 prescribed procedures and the bank's procedures do not vary unreasonably from general banking  
12 usage not disapproved by this chapter or Title 70A, Chapter 4, Uniform Commercial Code -- Bank  
13 Deposits and Collections.

14 (h) "Party" means a party to an instrument.

15 (i) "Promise" means a written undertaking to pay money signed by the person undertaking  
16 to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor  
17 also undertakes to pay the obligation.

18 (j) "Prove" with respect to a fact means to meet the burden of establishing the fact as  
19 defined in Subsection 70A-1-201(8).

20 (k) "Remitter" means a person who purchases an instrument from its issuer if the  
21 instrument is payable to an identified person other than the purchaser.

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

23 (a) "Acceptance," Section 70A-3-409;

24 (b) "Accommodated party," Section 70A-3-419;

25 (c) "Accommodation party," Section 70A-3-419;

26 (d) "Alteration," Section 70A-3-407;

27 (e) "Anomalous indorsement," Section 70A-3-205;

28 (f) "Blank indorsement," Section 70A-3-205;

29 (g) "Cashier's check," Section 70A-3-104;

30 (h) "Certificate of deposit," Section 70A-3-104;

31 (i) "Certified check," Section 70A-3-409;

- 1 (j) "Check," Section 70A-3-104;
- 2 (k) "Consideration," Section 70A-3-303;
- 3 (l) "Demand draft," Section 70A-3-104;
- 4 ~~(f)~~ (m) "Draft," Section 70A-3-104;
- 5 ~~(m)~~ (n) "Holder in due course," Section 70A-3-302;
- 6 ~~(n)~~ (o) "Incomplete instrument," Section 70A-3-115;
- 7 ~~(o)~~ (p) "Indorsement," Section 70A-3-204;
- 8 ~~(p)~~ (q) "Indorser," Section 70A-3-204;
- 9 ~~(q)~~ (r) "Instrument," Section 70A-3-104;
- 10 ~~(r)~~ (s) "Issue," Section 70A-3-105;
- 11 ~~(s)~~ (t) "Issuer," Section 70A-3-105;
- 12 ~~(t)~~ (u) "Negotiable instrument," Section 70A-3-104;
- 13 ~~(u)~~ (v) "Negotiation," Section 70A-3-201;
- 14 ~~(v)~~ (w) "Note," Section 70A-3-104;
- 15 ~~(w)~~ (x) "Payable at a definite time," Section 70A-3-108;
- 16 ~~(x)~~ (y) "Payable on demand," Section 70A-3-108;
- 17 ~~(y)~~ (z) "Payable to bearer," Section 70A-3-109;
- 18 ~~(z)~~ (aa) "Payable to order," Section 70A-3-109;
- 19 ~~(aa)~~ (bb) "Payment," Section 70A-3-602;
- 20 ~~(bb)~~ (cc) "Person entitled to enforce," Section 70A-3-301;
- 21 ~~(cc)~~ (dd) "Presentment," Section 70A-3-501;
- 22 ~~(dd)~~ (ee) "Reacquisition," Section 70A-3-207;
- 23 ~~(ee)~~ (ff) "Special indorsement," Section 70A-3-205;
- 24 ~~(ff)~~ (gg) "Teller's check," Section 70A-3-104;
- 25 ~~(gg)~~ (hh) "Transfer of instrument," Section 70A-3-203;
- 26 ~~(hh)~~ (ii) "Traveler's check," Section 70A-3-104;
- 27 ~~(ii)~~ (jj) "Value," Section 70A-3-303[;].
- 28 (3) The following definitions in other chapters apply to this chapter:
- 29 (a) "Bank," Section 70A-4-105;
- 30 (b) "Banking day," Section 70A-4-104;
- 31 (c) "Clearinghouse," Section 70A-4-104;

- 1 (d) "Collecting bank," Section 70A-4-105;
- 2 (e) "Depository bank," Section 70A-4-105;
- 3 (f) "Documentary draft," Section 70A-4-104;
- 4 (g) "Intermediary bank," Section 70A-4-105;
- 5 (h) "Item," Section 70A-4-104;
- 6 (i) "Payor bank," Section 70A-4-105;
- 7 (j) "Suspends payments," Section 70A-4-104[;].

8 (4) In addition, Chapter 1 contains general definitions and principles of construction and  
9 interpretation applicable throughout this chapter.

10 Section 2. Section **70A-3-104** is amended to read:

11 **70A-3-104. Negotiable instrument.**

12 (1) Except as provided in Subsections (3) and (4), "negotiable instrument" means an  
13 unconditional promise or order to pay a fixed amount of money, with or without interest or other  
14 charges described in the promise or order, if it:

15 (a) is payable to bearer or to order at the time it is issued or first comes into possession of  
16 a holder;

17 (b) is payable on demand or at a definite time; and

18 (c) does not state any other undertaking or instruction by the person promising or ordering  
19 payment to do any act in addition to the payment of money, but the promise or order may contain:

20 (i) an undertaking or power to give, maintain, or protect collateral to secure payment;

21 (ii) an authorization or power to the holder to confess judgment or realize on or dispose  
22 of collateral; or

23 (iii) a waiver of the benefit of any law intended for the advantage or protection of an  
24 obligor.

25 (2) "Instrument" means a negotiable instrument.

26 (3) An order that meets all of the requirements of Subsection (1), except Subsection (1)(a),  
27 and otherwise falls within the definition of "check" in Subsection (6) is a negotiable instrument  
28 and a check.

29 (4) A promise or order other than a check is not an instrument if, at the time it is issued  
30 or first comes into possession of a holder, it contains a conspicuous statement, however expressed,  
31 to the effect that the promise or order is not negotiable or is not an instrument governed by this

1 chapter.

2 (5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an  
3 instrument falls within the definition of both "note" and "draft," a person entitled to enforce the  
4 instrument may treat it as either.

5 (6) (a) "Check" means:

6 (i) a draft, other than a documentary draft, payable on demand and drawn on a bank; [or]

7 (ii) a cashier's check or teller's check[-]; or

8 (iii) a demand draft.

9 (b) An instrument may be a check even though it is described on its face by another term,  
10 such as "money order."

11 (7) "Cashier's check" means a draft with respect to which the drawer and drawee are the  
12 same bank or branches of the same bank.

13 (8) "Teller's check" means a draft drawn by a bank either on another bank, or payable at  
14 or through a bank.

15 (9) "Traveler's check" means an instrument that:

16 (a) is payable on demand;

17 (b) is drawn on or payable at or through a bank;

18 (c) is designated by the term "traveler's check" or by a substantially similar term; and

19 (d) requires, as a condition to payment, a countersignature by a person whose specimen  
20 signature appears on the instrument.

21 (10) "Certificate of deposit" means an instrument containing an acknowledgment by a  
22 bank that a sum of money has been received by the bank and a promise by the bank to repay the  
23 sum of money. A certificate of deposit is a note of the bank.

24 (11) (a) "Demand draft" means a writing not signed by a customer that is created by a  
25 third party under the purported authority of the customer for the purpose of charging the customer's  
26 account with a bank.

27 (b) A demand draft:

28 (i) shall contain the customer's account number;

29 (ii) may contain any or all of the following:

30 (A) the customer's printed or typewritten name;

31 (B) a notation that the customer authorized the draft; or

1           (C) the statement "No Signature Required" or words to that effect; and  
2           (iii) may not include a check purportedly drawn by and bearing the signature of a  
3           fiduciary, as defined in Section 70A-3-307.

4           Section 3. Section **70A-3-416** is amended to read:

5           **70A-3-416. Transfer warranties.**

6           (1) A person who transfers an instrument for consideration warrants to the transferee and,  
7 if the transfer is by indorsement, to any subsequent transferee that:

8           (a) the warrantor is a person entitled to enforce the instrument;

9           (b) all signatures on the instrument are authentic and authorized;

10          (c) the instrument has not been altered;

11          (d) the instrument is not subject to a defense or claim in recoupment of any party which  
12 can be asserted against the warrantor; [and]

13          (e) the warrantor has no knowledge of any insolvency proceeding commenced with respect  
14 to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

15          (f) if the instrument is a demand draft, creation of the instrument according to the terms  
16 on its face was authorized by the person identified as drawer.

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

21          (3) The warranties stated in Subsection (1) cannot be disclaimed with respect to checks.  
22 Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the  
23 claimant has reason to know of the breach and the identity of the warrantor, the liability of the  
24 warrantor under Subsection (2) is discharged to the extent of any loss caused by the delay in giving  
25 notice of the claim.

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

28          (5) If the warranty in Subsection (1)(f) is not given by a transferor under applicable  
29 conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

30          Section 4. Section **70A-3-417** is amended to read:

31          **70A-3-417. Presentment warranties.**

1 (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the  
2 drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of  
3 presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee  
4 making payment or accepting the draft in good faith that:

5 (a) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled  
6 to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person  
7 entitled to enforce the draft;

8 (b) the draft has not been altered; [and]

9 (c) the warrantor has no knowledge that the signature of the drawer of the draft is  
10 unauthorized[-]; and

11 (d) if the draft is a demand draft, creation of the demand draft according to the terms on  
12 its face was authorized by the person identified as drawer.

13 (2) A drawee making payment may recover from any warrantor damages for breach of  
14 warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled  
15 to receive from the drawer because of the payment. In addition, the drawee is entitled to  
16 compensation for expenses and loss of interest resulting from the breach. The right of the drawee  
17 to recover damages under this subsection is not affected by any failure of the drawee to exercise  
18 ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense  
19 to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the  
20 acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this  
21 subsection.

22 (3) If a drawee asserts a claim for breach of warranty under Subsection (1) based on an  
23 unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by  
24 proving that the indorsement is effective under Section 70A-3-404 or 70A-3-405, or that the  
25 drawer is precluded under Section 70A-3-406 or 70A-4-406 from asserting against the drawee the  
26 unauthorized indorsement or alteration.

27 (4) If a dishonored draft is presented for payment to the drawer or an indorser, or any other  
28 instrument is presented for payment to a party obliged to pay the instrument, and payment is  
29 received, the following rules apply:

30 (a) The person obtaining payment and a prior transferor of the instrument warrant to the  
31 person making payment in good faith that the warrantor is, or was, at the time the warrantor

1 transferred the instrument, a person entitled to enforce the instrument or authorized to obtain  
2 payment on behalf of a person entitled to enforce the instrument.

3 (b) The person making payment may recover from any warrantor for breach of warranty  
4 an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

5 (5) The warranties stated in Subsections (1) and (4) cannot be disclaimed with respect to  
6 checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days  
7 after the claimant has reason to know of the breach and the identity of the warrantor, the liability  
8 of the warrantor under Subsection (2) or (4) is discharged to the extent of any loss caused by the  
9 delay in giving notice of the claim.

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

12 (7) A demand draft is a check, as provided in Section 70A-3-104.

13 (8) If the warranty in Subsection (1)(d) is not given by a transferor under applicable  
14 conflict of law rules, the warranty is not given to that transferor when the transferor is a transferee.

15 Section 5. Section **70A-4-207** is amended to read:

16 **70A-4-207. Transfer warranties.**

17 (1) A customer or collecting bank that transfers an item and receives a settlement or other  
18 consideration warrants to the transferee and to any subsequent collecting bank that:

19 (a) the warrantor is a person entitled to enforce the item;

20 (b) all signatures on the item are authentic and authorized;

21 (c) the item has not been altered;

22 (d) the item is not subject to a defense or claim in recoupment, Section 70A-3-305, of any  
23 party that can be asserted against the warrantor; [and]

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

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

28 (2) If an item is dishonored, a customer or collecting bank transferring the item and  
29 receiving settlement or other consideration is obliged to pay the amount due on the item according  
30 to the terms of the item at the time it was transferred, or if the transfer was of an incomplete item,  
31 according to its terms when completed as stated in Sections 70A-3-115 and 70A-3-407. The

1 obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes  
2 the item in good faith. A transferor cannot disclaim its obligation under this subsection by an  
3 indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

4 (3) A person to whom the warranties under Subsection (1) are made and who took the item  
5 in good faith may recover from the warrantor, as damages for breach of warranty, an amount equal  
6 to the loss suffered as a result of the breach, but not more than the amount of the item plus  
7 expenses and loss of interest incurred as a result of the breach.

8 (4) The warranties stated in Subsection (1) cannot be disclaimed with respect to checks.  
9 Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the  
10 claimant has reason to know of the breach and the identity of the warrantor, the warrantor is  
11 discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

14 (6) If the warranty in Subsection (1)(f) is not given by a transferor or collecting bank under  
15 applicable conflict of law rules, the warranty is not given to that transferor when that transferor is  
16 a transferee nor to any prior collecting bank of that transferee.

17 Section 6. Section **70A-4-208** is amended to read:

18 **70A-4-208. Presentment warranties.**

19 (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the  
20 drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of  
21 presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee  
22 that pays or accepts the draft in good faith that:

23 (a) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled  
24 to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person  
25 entitled to enforce the draft;

26 (b) the draft has not been altered; [and]

27 (c) the warrantor has no knowledge that the signature of the purported drawer of the draft  
28 is unauthorized[-]; and

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

31 (2) A drawee making payment may recover from a warrantor damages for breach of

1 warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled  
2 to receive from the drawer because of the payment. In addition, the drawee is entitled to  
3 compensation for expenses and loss of interest resulting from the breach. The right of the drawee  
4 to recover damages under this subsection is not affected by any failure of the drawee to exercise  
5 ordinary care in making payment. If the drawee accepts the draft:

6 (a) breach of warranty is a defense to the obligation of the acceptor; and

7 (b) if the acceptor makes payment with respect to the draft, the acceptor is entitled to  
8 recover from a warrantor for breach of warranty the amounts stated in this subsection.

9 (3) If a drawee asserts a claim for breach of warranty under Subsection (1) based on an  
10 unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by  
11 proving that the indorsement is effective under Section 70A-3-404 or 70A-3-405, or the drawer  
12 is precluded under Section 70A-3-406 or 70A-4-406 from asserting against the drawee the  
13 unauthorized indorsement or alteration.

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

21 (5) The warranties stated in Subsections (1) and (4) cannot be disclaimed with respect to  
22 checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days  
23 after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor  
24 is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

27 (7) A demand draft is a check as provided in Section 70A-3-104.

28 (8) If the warranty in Subsection (1)(d) is not given by a transferor under applicable  
29 conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

30 **Section 7. Effective date.**

31 This act takes effect on July 1, 1998.

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**Legislative Review Note**

**as of 10-24-97 10:09 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**Committee Note**

The Business, Labor, and Economic Development Interim Committee recommended this bill.