

Part 4 Liability of Parties

70A-3-401 Signature.

- (1) A person is not liable on an instrument unless:
 - (a) the person signed the instrument; or
 - (b) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 70A-3-402.
- (2) A signature may be made:
 - (a) manually or by means of a device or machine; and
 - (b) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-402 Signature by representative.

- (1) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.
- (2) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:
 - (a) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.
 - (b) Subject to Subsection (3), if the form of the signature does not show unambiguously that the signature is made in a representative capacity or the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.
- (3) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-403 Unauthorized signature.

- (1) Unless otherwise provided in this chapter or Title 70A, Chapter 4, Uniform Commercial Code - Bank Deposits and Collections, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this chapter.

- (2) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.
- (3) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this chapter which makes the unauthorized signature effective for the purposes of this chapter.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-404 Impostors -- Fictitious payees.

- (1) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.
- (2) If a person whose intent determines to whom an instrument is payable, Subsection 70A-3-110(1) or (2) does not intend the person identified as payee to have any interest in the instrument, or the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:
 - (a) Any person in possession of the instrument is its holder.
 - (b) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.
- (3) Under Subsection (1) or (2), an indorsement is made in the name of a payee if it is made in a name substantially similar to that of the payee, or the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.
- (4) With respect to an instrument to which Subsection (1) or (2) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-405 Employer's responsibility for fraudulent indorsement by employee.

- (1) In this section:
 - (a) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.
 - (b) "Fraudulent indorsement" means in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.
 - (c)
 - (i) "Responsibility" with respect to instruments means authority to sign or indorse instruments on behalf of the employer, to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, to prepare or process instruments for issue in the name of the employer, to supply information determining the

names or addresses of payees of instruments to be issued in the name of the employer, to control the disposition of instruments to be issued in the name of the employer, or to act otherwise with respect to instruments in a responsible capacity.

- (ii) "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.
- (2) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.
- (3) Under Subsection (2), an indorsement is made in the name of the person to whom an instrument is payable if it is made in a name substantially similar to the name of that person, or the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-406 Negligence contributing to forged signature or alteration of instrument.

- (1) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.
- (2) Under Subsection (1), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.
- (3) Under Subsection (1), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under Subsection (2), the burden of proving failure to exercise ordinary care is on the person precluded.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-407 Alteration.

- (1) "Alteration" means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.
- (2) Except as provided in Subsection (3), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.
- (3) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the

instrument according to its original terms, or in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-408 Drawee not liable on unaccepted draft.

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-409 Acceptance of draft -- Certified check.

- (1) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.
- (2) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.
- (3) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.
- (4) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in Subsection (1) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

Amended by Chapter 12, 1994 General Session

70A-3-410 Acceptance varying draft.

- (1) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.
- (2) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.
- (3) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-411 Refusal to pay cashier's checks, teller's checks, and certified checks.

- (1) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.
- (2) If the obligated bank wrongfully refuses to pay a cashier's check or certified check, stops payment of a teller's check, or refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

- (3) Expenses or consequential damages under Subsection (2) are not recoverable if the refusal of the obligated bank to pay occurs because the bank suspends payments, the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or payment is prohibited by law.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-412 Obligation of issuer of note or cashier's check.

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 70A-3-115 and 70A-3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under Section 70A-3-415.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-413 Obligation of acceptor.

- (1) The acceptor of a draft is obliged to pay the draft according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in Sections 70A-3-115 and 70A-3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under Section 70A-3-414 or 70A-3-415.
- (2) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If the certification or acceptance does not state an amount, the amount of the instrument is subsequently raised, and the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-414 Obligation of drawer.

- (1) This section does not apply to cashier's checks or other drafts drawn on the drawer.
- (2) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 70A-3-115 and 70A-3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under Section 70A-3-415.
- (3) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.
- (4) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under Subsections 70A-3-415(1) and (3).

- (5) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under Subsection (2) to pay the draft if the draft is not a check. A disclaimer of the liability stated in Subsection (2) is not effective if the draft is a check.
- (6) If a check is not presented for payment or given to a depository bank for collection within 30 days after its date, the drawee suspends payments after expiration of the 30-day period without paying the check, and because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-415 Obligation of indorser.

- (1) Subject to Subsections (2), (3), and (4) and to Subsection 70A-3-419(4), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument according to the terms of the instrument at the time it was indorsed, or if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 70A-3-115 and 70A-3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.
- (2) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under Subsection (1) to pay the instrument.
- (3) If notice of dishonor of an instrument is required by Section 70A-3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under Subsection (1) is discharged.
- (4) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under Subsection (1) is discharged.
- (5) If an indorser of a check is liable under Subsection (1) and the check is not presented for payment, or given to a depository bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under Subsection (1) is discharged.

Amended by Chapter 13, 1998 General Session

70A-3-416 Transfer warranties.

- (1) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:
 - (a) the warrantor is a person entitled to enforce the instrument;
 - (b) all signatures on the instrument are authentic and authorized;
 - (c) the instrument has not been altered;
 - (d) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;
 - (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 drawer.
- (2) A person to whom the warranties under Subsection (1) are made and who took the instrument in good faith may recover from the warrantor, as damages for breach of warranty, an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

- (3) The warranties stated in Subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under Subsection (2) is discharged to the extent of any loss caused by the delay in giving notice of the claim.
- (4) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.
- (5) If the warranty in Subsection (1)(f) is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

Amended by Chapter 60, 1998 General Session

70A-3-417 Presentment warranties.

- (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:
 - (a) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
 - (b) the draft has not been altered;
 - (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, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.
- (2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.
- (3) If a drawee asserts a claim for breach of warranty under Subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 70A-3-404 or 70A-3-405, or that the drawer is precluded under Section 70A-3-406 or 70A-4-406 from asserting against the drawee the unauthorized indorsement or alteration.
- (4) If a dishonored draft is presented for payment to the drawer or an indorser, or any other instrument is presented for payment to a party obliged to pay the instrument, and payment is received, the following rules apply:
 - (a) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

- (b) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.
- (5) The warranties stated in Subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under Subsection (2) or (4) is discharged to the extent of any loss caused by the delay in giving notice of the claim.
- (6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.
- (7) A demand draft is a check, as provided in Section 70A-3-104.
- (8) If the warranty in Subsection (1)(d) is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when the transferor is a transferee.

Amended by Chapter 60, 1998 General Session

70A-3-418 Payment or acceptance by mistake.

- (1) Except as provided in Subsection (3), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that payment of the draft had not been stopped pursuant to Section 70A-4-403, or the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.
- (2) Except as provided in Subsection (3), if an instrument has been paid or accepted by mistake and the case is not covered by Subsection (1), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, recover the payment from the person to whom or for whose benefit payment was made, or in the case of acceptance, may revoke the acceptance.
- (3) The remedies provided by Subsection (1) or (2) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by Section 70A-3-417 or 70A-4-407.
- (4) Notwithstanding Section 70A-4-215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under Subsection (1) or (2), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-419 Instruments signed for accommodation.

- (1) If an instrument is issued for value given for the benefit of a party to the instrument, the "accommodated party," and another party to the instrument, the "accommodation party," signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

- (2) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to Subsection (4), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.
- (3) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in Section 70A-3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.
- (4) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if execution of judgment against the other party has been returned unsatisfied, the other party is insolvent or in an insolvency proceeding, the other party cannot be served with process, or it is otherwise apparent that payment cannot be obtained from the other party.
- (5) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-420 Conversion of instrument.

- (1) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by the issuer or acceptor of the instrument, or a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a copayee.
- (2) In an action under Subsection (1), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.
- (3) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

Enacted by Chapter 237, 1993 General Session