

SENATE BILL NO. 198—SENATORS CARE AND AMODEI

MARCH 17, 2005

JOINT SPONSOR: ASSEMBLYWOMAN OHRENSCHALL

Referred to Committee on Judiciary

SUMMARY—Revises provisions of Articles 3 and 4 of Uniform Commercial Code. (BDR 8-542)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to the Uniform Commercial Code; revising the provisions of Articles 3 and 4 of the Uniform Commercial Code; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Uniform Commercial Code is a set of uniform laws governing commercial transactions, which was originally adopted by the National Conference of Commissioners on Uniform State Laws in 1951. Under existing law, negotiable instruments such as drafts, checks and certificates of deposit are regulated by Article 3 of the Uniform Commercial Code. (NRS 104.3101-104.3605) Bank deposits and collections are regulated by Article 4 of the Uniform Commercial Code. (NRS 104.4101-104.4504) The Uniform Law Commissioners have adopted certain revisions to Articles 3 and 4 of the Uniform Commercial Code and recommend that states incorporate these revisions into their statutes.

This bill incorporates many of the revisions recommended by the Uniform Law Commissioners to Articles 3 and 4 of the Uniform Commercial Code into the Nevada Revised Statutes. The substance of those revisions included in this bill govern: (1) the transfer and enforcement of a lost, destroyed or stolen negotiable instrument to clarify that the party seeking to enforce such an instrument does not have to be in possession of the instrument at the time that it was lost; (2) the payments by a person on a negotiable instrument after the instrument has been transferred when the person has not received notice of the transfer, and the requirements for providing such notice; and (3) the responsibilities of banks with respect to telephonically generated checks. This bill also makes various changes to accommodate and address electronic transactions for purposes of Articles 3 and 4 of the Uniform Commercial Code and makes various technical changes.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 104.3103 is hereby amended to read as
2 follows:

3 104.3103 1. In this Article:

4 (a) “Acceptor” means a drawee who has accepted a draft.

5 (b) “Drawee” means a person ordered in a draft to make
6 payment.

7 (c) “Drawer” means a person who signs or is identified in a draft
8 as a person ordering payment.

9 (d) “Good faith” means honesty in fact and the observance of
10 reasonable commercial standards of fair dealing.

11 (e) “Maker” means a person who signs or is identified in a note
12 as a person undertaking to pay.

13 (f) “Order” means a written instruction to pay money signed by
14 the person giving the instruction. The instruction may be addressed
15 to any person, including the person giving the instruction, or to one
16 or more persons jointly or in the alternative but not in succession.
17 An authorization to pay is not an order unless the person authorized
18 to pay is also instructed to pay.

19 (g) “Ordinary care” in the case of a person engaged in business
20 means observance of reasonable commercial standards, prevailing in
21 the area in which he is located, with respect to the business in which
22 he is engaged. In the case of a bank that takes an instrument for
23 processing for collection or payment by automated means,
24 reasonable commercial standards do not require the bank to examine
25 the instrument if the failure to examine does not violate its
26 prescribed procedures and its procedures do not vary unreasonably
27 from general banking usage not disapproved by this Article or
28 Article 4.

29 (h) “Party” means a party to an instrument.

30 (i) “Promise” means a written undertaking to pay money signed
31 by the person undertaking to pay. An acknowledgment of an
32 obligation by the obligor is not a promise unless the obligor also
33 undertakes to pay the obligation.

34 (j) “Prove” with respect to a fact means to meet the burden of
35 establishing the fact (subsection 8 of NRS 104.1201).

36 (k) *“Record” means information that is inscribed on a tangible*
37 *medium or that is stored in an electronic or other medium and is*
38 *retrievable in perceivable form.*



1 (l) "Remitter" means a person who purchases an instrument
2 from its issuer if the instrument is payable to an identified person
3 other than the purchaser.

4 (m) *"Remotely-created item" means an item drawn on an*
5 *account, which is not created by the payor bank and does not bear*
6 *a signature purporting to be the signature of the drawer.*

7 2. Other definitions applying to this Article and the sections in
8 which they appear are:
9

10 "Acceptance." NRS 104.3409.
11 "Accommodated party." NRS 104.3419.
12 "Accommodation party." NRS 104.3419.
13 ***"Account." NRS 104.4104.***
14 "Alteration." NRS 104.3407.
15 "Anomalous endorsement." NRS 104.3205.
16 "Blank endorsement." NRS 104.3205.
17 "Cashier's check." NRS 104.3104.
18 "Certificate of deposit." NRS 104.3104.
19 "Certified check." NRS 104.3409.
20 "Check." NRS 104.3104.
21 "Consideration." NRS 104.3303.
22 "Draft." NRS 104.3104.
23 "Endorsement." NRS 104.3204.
24 "Endorser." NRS 104.3204.
25 "Holder in due course." NRS 104.3302.
26 "Incomplete instrument." NRS 104.3115.
27 "Instrument." NRS 104.3104.
28 "Issue." NRS 104.3105.
29 "Issuer." NRS 104.3105.
30 "Negotiable instrument." NRS 104.3104.
31 "Negotiation." NRS 104.3201.
32 "Note." NRS 104.3104.
33 "Payable at a definite time." NRS 104.3108.
34 "Payable on demand." NRS 104.3108.
35 "Payable to bearer." NRS 104.3109.
36 "Payable to order." NRS 104.3109.
37 "Payment." NRS 104.3602.
38 "Person entitled to enforce." NRS 104.3301.
39 "Presentment." NRS 104.3501.
40 "Reacquisition." NRS 104.3207.
41 "Special endorsement." NRS 104.3205.
42 "Teller's check." NRS 104.3104.
43 "Transfer of instrument." NRS 104.3203.
44 "Traveler's check." NRS 104.3104.
45 "Value." NRS 104.3303.



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

- "Bank." NRS 104.4105.
- "Banking day." NRS 104.4104.
- "Clearinghouse." NRS 104.4104.
- "Collecting bank." NRS 104.4105.
- "Customer." NRS 104.4104.
- "Depository bank." NRS 104.4105.
- "Documentary draft." NRS 104.4104.
- "Intermediary bank." NRS 104.4105.
- "Item." NRS 104.4104.
- "Payor bank." NRS 104.4105.
- "Suspends payments." NRS 104.4104.

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 2. NRS 104.3106 is hereby amended to read as follows:

104.3106 1. Except as otherwise provided in this section, for the purposes of subsection 1 of NRS 104.3104, a promise or order is unconditional unless it states:

- (a) An express condition to payment;
 - (b) That the promise or order is subject to or governed by another ~~writing~~ *record*; or
 - (c) That rights or obligations with respect to the promise or order are stated in another ~~writing~~ *record*.
- ➔ A reference to another ~~writing~~ *record* does not of itself make the promise or order conditional.

2. A promise or order is not made conditional by a reference to another ~~writing~~ *record* for a statement of rights with respect to collateral, prepayment or acceleration, or because payment is limited to resort to a particular fund or source.

3. If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of subsection 1 of NRS 104.3104. If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

4. If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the



rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of subsection 1 of NRS 104.3104; but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

Sec. 3. NRS 104.3116 is hereby amended to read as follows:

104.3116 1. Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, endorsers who endorse as joint payees, or anomalous endorsers are jointly and severally liable in the capacity in which they sign.

2. Except as otherwise provided in subsection ~~5~~ 6 of NRS 104.3419 or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

3. Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection 2 of a party having the same joint and several liability to receive contribution from the party discharged.

Sec. 4. NRS 104.3119 is hereby amended to read as follows:

104.3119 In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person ~~written~~ notice of the litigation ~~in a record~~, and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

Sec. 5. NRS 104.3305 is hereby amended to read as follows:

104.3305 1. Except as otherwise provided in ~~subsection 2,~~ *this section*, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(a) A defense of the obligor based on:

(1) Infancy of the obligor to the extent it is a defense to a simple contract;

(2) Duress, lack of legal capacity or illegality of the transaction which, under other law, nullifies the obligation of the obligor;

(3) Fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; or



1 (4) Discharge of the obligor in insolvency proceedings;

2 (b) A defense of the obligor stated in another section of this
3 Article or a defense of the obligor that would be available if the
4 person entitled to enforce the instrument were enforcing a right to
5 payment under a simple contract; and

6 (c) A claim in recoupment of the obligor against the original
7 payee of the instrument if the claim arose from the transaction that
8 gave rise to the instrument; but the claim of the obligor may be
9 asserted against a transferee of the instrument only to reduce the
10 amount owing on the instrument at the time the action is brought.

11 2. The right of a holder in due course to enforce the obligation
12 of a party to pay the instrument is subject to defenses of the obligor
13 stated in paragraph (a) of subsection 1, but is not subject to defenses
14 of the obligor stated in paragraph (b) of subsection 1 or claims in
15 recoupment stated in paragraph (c) of subsection 1 against a person
16 other than the holder.

17 3. Except as otherwise provided in subsection 4, in an action to
18 enforce the obligation of a party to pay the instrument, the obligor
19 may not assert against the person entitled to enforce the instrument a
20 defense, claim in recoupment or claim to the instrument (NRS
21 104.3306) of another person, but the other person's claim to the
22 instrument may be asserted by the obligor if the other person is
23 joined in the action and personally asserts the claim against the
24 person entitled to enforce the instrument. An obligor is not obliged
25 to pay the instrument if the person seeking enforcement of the
26 instrument does not have rights of a holder in due course and the
27 obligor proves that the instrument is a lost or stolen instrument.

28 4. In an action to enforce the obligation of an accommodation
29 party to pay an instrument, the accommodation party may assert
30 against the person entitled to enforce the instrument any defense or
31 claim in recoupment under subsection 1 that the accommodated
32 party could assert against the person entitled to enforce the
33 instrument, except the defenses of discharge in insolvency
34 proceedings, infancy and lack of legal capacity.

35 **Sec. 6.** NRS 104.3309 is hereby amended to read as follows:

36 104.3309 1. A person not in possession of an instrument is
37 entitled to enforce the instrument if:

38 (a) ~~He was in possession of~~ *The person seeking to enforce* the
39 instrument ~~and~~ :

40 (1) *Was* entitled to enforce ~~it~~ *the instrument* when loss of
41 possession occurred; *or*

42 (2) *Has directly or indirectly acquired ownership of the*
43 *instrument from a person who was entitled to enforce the*
44 *instrument when loss of possession occurred;*



(b) The loss of possession was not the result of a transfer by ~~him~~ *the person* or a lawful seizure; and

(c) ~~He~~ *The person* cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

2. A person seeking enforcement of an instrument under subsection 1 must prove the terms of the instrument and his right to enforce the instrument. If that proof is made, NRS 104.3308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

Sec. 7. NRS 104.3312 is hereby amended to read as follows:

104.3312 1. In this section:

(a) "Check" means a cashier's check, teller's check or certified check.

(b) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check or certified check that was lost, destroyed or stolen.

(c) "Declaration of loss" means a ~~written~~ statement, made *in a record* under penalty of perjury, to the effect that:

(1) The declarer lost possession of a check;

(2) The declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check;

(3) The loss of possession was not the result of a transfer by the declarer or a lawful seizure; and

(4) The declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(d) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

2. A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if:

(a) The claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check;



(b) The communication contains or is accompanied by a declaration of loss of the claimant with respect to the check;

(c) The communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid; and

(d) The claimant provides reasonable identification if requested by the obligated bank.

3. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(a) The claim becomes enforceable at the later of:

(1) The time the claim is asserted; or

(2) The 90th day following the date of the check, in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance, in the case of a certified check.

(b) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(c) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(d) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to paragraph (a) of subsection 1 of NRS 104.4302, payment to the claimant discharges all liability of the obligated bank with respect to the check.

4. If the obligated bank pays the amount of a check to a claimant under paragraph (d) of subsection 2 and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to refund the payment to the obligated bank if the check is paid, or pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

5. If a claimant has the right to assert a claim under subsection 2 and is also a person entitled to enforce a cashier's check, teller's check or certified check which is lost, destroyed or stolen, the claimant may assert rights with respect to the check either under this section or NRS 104.3309.

Sec. 8. NRS 104.3416 is hereby amended to read as follows:

104.3416 1. A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee that:



- 1 (a) The warrantor is a person entitled to enforce the instrument;
- 2 (b) All signatures on the instrument are authentic and
- 3 authorized;
- 4 (c) The instrument has not been altered;
- 5 (d) The instrument is not subject to a defense or claim in
- 6 recoupment of any party which can be asserted against the
- 7 warrantor; ~~{and}~~
- 8 (e) The warrantor has no knowledge of any insolvency
- 9 proceeding commenced with respect to the maker or acceptor or, in
- 10 the case of an unaccepted draft, the drawer ~~{and}~~; and
- 11 *(f) With respect to a remotely-created item, that the person on*
- 12 *whose account the item is drawn authorized the issuance of the*
- 13 *item in the amount for which the item is drawn.*

14 2. A person to whom the warranties under subsection 1 are

15 made and who took the instrument in good faith may recover from

16 the warrantor as damages for breach of warranty an amount equal to

17 the loss suffered as a result of the breach, but not more than the

18 amount of the instrument plus expenses and loss of interest incurred

19 as a result of the breach.

20 3. The warranties stated in subsection 1 cannot be disclaimed

21 with respect to checks. Unless notice of a claim for breach of

22 warranty is given to the warrantor within 30 days after the claimant

23 has reason to know of the breach and the identity of the warrantor,

24 the liability of the warrantor under subsection 2 is discharged to the

25 extent of any loss caused by the delay in giving notice of the claim.

26 4. A cause of action for breach of warranty under this section

27 accrues when the claimant has reason to know of the breach.

28 *5. No claim for breach of warranty in paragraph (f) of*

29 *subsection 1 is available against a person to which an item was*

30 *transferred to the extent that under applicable law, including the*

31 *applicable choice-of-law principles, the person that transferred the*

32 *item did not make the warranty in paragraph (f) of subsection 1.*

33 **Sec. 9.** NRS 104.3417 is hereby amended to read as follows:

34 104.3417 1. If an unaccepted draft is presented to the drawee

35 for payment or acceptance and the drawee pays or accepts the draft,

36 the person obtaining payment or acceptance, at the time of

37 presentment, and a previous transferor of the draft, at the time of

38 transfer, warrant to the drawee making payment or accepting the

39 draft in good faith that:

40 (a) The warrantor is, or was, at the time the warrantor

41 transferred the draft, a person entitled to enforce the draft or

42 authorized to obtain payment or acceptance of the draft on behalf of

43 a person entitled to enforce the draft;

44 (b) The draft has not been altered; ~~{and}~~



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

(d) With respect to a remotely-created item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

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 endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under NRS 104.3404 or 104.3405 or the drawer is precluded under NRS 104.3406 or 104.4406 from asserting against the drawee the unauthorized endorsement or alteration.

4. If a dishonored draft is presented for payment to the drawer or an endorser 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 he 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.



1 *7. No claim for breach of warranty in paragraph (d) of*
2 *subsection 1 is available against a person to which an item was*
3 *transferred to the extent that under applicable law, including the*
4 *applicable choice-of-law principles, the person that transferred the*
5 *item did not make the warranty in paragraph (d) of subsection 1.*

6 **Sec. 10.** NRS 104.3419 is hereby amended to read as follows:

7 104.3419 1. If an instrument is issued for value given for the
8 benefit of a party to the instrument ("accommodated party") and
9 another party to the instrument ("accommodation party") signs the
10 instrument for the purpose of incurring liability on the instrument
11 without being a direct beneficiary of the value given for the
12 instrument, the instrument is signed by the accommodation party
13 "for accommodation."

14 2. An accommodation party may sign the instrument as maker,
15 drawer, acceptor or endorser and, subject to subsection 4, is obliged
16 to pay the instrument in the capacity in which he signs. The
17 obligation of an accommodation party may be enforced
18 notwithstanding any statute of frauds and whether or not he receives
19 consideration for the accommodation.

20 3. A person signing an instrument is presumed to be an
21 accommodation party and there is notice that the instrument is
22 signed for accommodation if the signature is an anomalous
23 endorsement or is accompanied by words indicating that the signer
24 is acting as surety or guarantor with respect to the obligation of
25 another party to the instrument. Except as otherwise provided in
26 NRS 104.3605, the obligation of an accommodation party to pay the
27 instrument is not affected by the fact that the person enforcing the
28 obligation had notice when the instrument was taken by that person
29 that the accommodation party signed the instrument for
30 accommodation.

31 4. If the signature of a party to an instrument is accompanied
32 by words indicating unambiguously that the party is guaranteeing
33 collection rather than payment of the obligation of another party to
34 the instrument, the signer is obliged to pay the amount due on the
35 instrument to a person entitled to enforce the instrument only if:

36 (a) Execution of judgment against the other party has been
37 returned unsatisfied;

38 (b) The other party is insolvent or in an insolvency proceeding;

39 (c) The other party cannot be served with process; or

40 (d) It is otherwise apparent that payment cannot be obtained
41 from the other party.

42 5. *If the signature of a party to an instrument is accompanied*
43 *by words indicating that the party guarantees payment or the*
44 *signer signs the instrument as an accommodation party in some*
45 *other manner that does not unambiguously indicate an intention*



1 *to guarantee collection rather than payment, the signer is obliged*
2 *to pay the amount due on the instrument to a person entitled to*
3 *enforce the instrument in the same circumstances as the*
4 *accommodated party would be obliged, without prior resort to*
5 *the accommodated party by the person entitled to enforce the*
6 *instrument.*

7 6. An accommodation party ~~[who]~~ *that* pays the instrument is
8 entitled to reimbursement from the accommodated party and is
9 entitled to enforce the instrument against the accommodated party.
10 *In proper circumstances, an accommodation party may obtain*
11 *relief that requires the accommodated party to perform its*
12 *obligations on the instrument.* An accommodated party ~~[who]~~ *that*
13 pays the instrument has no right of recourse against, and is not
14 entitled to contribution from, an accommodation party.

15 **Sec. 11.** NRS 104.3602 is hereby amended to read as follows:

16 104.3602 1. ~~[Except as otherwise provided in subsection 2,]~~
17 *Subject to subsection 5,* an instrument is paid to the extent payment
18 is made by or on behalf of a party obliged to pay the instrument, and
19 to a person entitled to enforce the instrument. ~~[To the extent of the~~
20 ~~payment,]~~

21 2. *Subject to subsection 5, a note is paid to the extent payment*
22 *is made by or on behalf of a party obliged to pay the note to a*
23 *person who formerly was entitled to enforce the note only if at the*
24 *time of the payment the party obliged to pay has not received*
25 *adequate notification that the note has been transferred and that*
26 *payment is to be made to the transferee. A notification is adequate*
27 *only if it:*

- 28 (a) *Is signed by the transferor or the transferee;*
29 (b) *Reasonably identifies the transferred note; and*
30 (c) *Provides an address at which payments subsequently are to*
31 *be made.*

32 *↪ Upon request, a transferee shall seasonably furnish reasonable*
33 *proof that the note has been transferred. Unless the transferee*
34 *complies with the request, a payment to the person that formerly*
35 *was entitled to enforce the note is effective for purposes of*
36 *subsection 3 even if the party obliged to pay the note has received*
37 *a notification under this subsection.*

38 3. *Subject to subsection 5, to the extent of a payment under*
39 *subsections 1 and 2,* the obligation of the party obliged to pay the
40 instrument is discharged even though payment is made with
41 knowledge of a claim to the instrument under NRS 104.3306 by
42 another person.

43 ~~[2-]~~ 4. *Subject to subsection 5, a transferee, or any party that*
44 *has acquired rights in the instrument directly or indirectly from a*
45 *transferee, including any such party that has rights as a holder in*



due course, is deemed to have notice of any payment that is made under subsection 2 after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

5. The obligation of a party to pay the instrument is not discharged under ~~[subsection 1]~~ *subsections 1 to 4, inclusive*, if:

(a) A claim to the instrument under NRS 104.3306 is enforceable against the party receiving payment and:

(1) Payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction; or

(2) In the case of an instrument other than a cashier's check, teller's check or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(b) The person making payment knows that the instrument is a stolen instrument and pays a person he knows is in wrongful possession of the instrument.

6. As used in this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

Sec. 12. NRS 104.3604 is hereby amended to read as follows:

104.3604 1. A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument:

(a) By an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge; or

(b) By agreeing not to sue or otherwise renouncing rights against the party by a signed ~~[writing]~~ *record*.

2. Cancellation or striking out of an endorsement pursuant to subsection 1 does not affect the status and rights of a party derived from the endorsement.

3. As used in this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

Sec. 13. (Deleted by amendment.)

Sec. 14. NRS 104.4104 is hereby amended to read as follows:

104.4104 1. In this Article, unless the context otherwise requires:



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

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

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

(d) "Clearinghouse" means any association of banks or other payors regularly clearing items.

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

(f) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities or instructions for uncertificated securities, or other certificates, statements or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

(g) "Draft" means a draft as defined in NRS 104.3104 or an item, other than an instrument, that is an order.

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

(i) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip.

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

(k) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as instructed. 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." NRS 104.4110.

"Bank." NRS 104.4105.

"Collecting bank." NRS 104.4105.

"Depository bank." NRS 104.4105.

"Intermediary bank." NRS 104.4105.



1 "Payor bank." NRS 104.4105.

2 "Presenting bank." NRS 104.4105.

3 "Presentment notice." NRS 104.4110.

4
5 3. The following definitions in other Articles apply to this
6 Article:

7
8 "Acceptance." NRS 104.3409.

9 "Alteration." NRS 104.3407.

10 "Cashier's check." NRS 104.3104.

11 "Certificate of deposit." NRS 104.3104.

12 "Certified check." NRS 104.3409.

13 "Check." NRS 104.3104.

14 "Good faith." NRS 104.3103.

15 "Holder in due course." NRS 104.3302.

16 "Instrument." NRS 104.3104.

17 "Notice of dishonor." NRS 104.3503.

18 "Order." NRS 104.3103.

19 "Ordinary care." NRS 104.3103.

20 "Person entitled to enforce." NRS 104.3301.

21 "Presentment." NRS 104.3501.

22 "Promise." NRS 104.3103.

23 "Prove." NRS 104.3103.

24 *"Record." NRS 104.3103.*

25 *"Remotely-created item." NRS 104.3103.*

26 "Teller's check." NRS 104.3104.

27 "Unauthorized signature." NRS 104.3403.

28
29 4. In addition, Article 1 contains general definitions and
30 principles of construction and interpretation applicable throughout
31 this Article.

32 **Sec. 15.** NRS 104.4207 is hereby amended to read as follows:

33 104.4207 1. A customer or collecting bank that transfers an
34 item and receives a settlement or other consideration warrants to the
35 transferee and to any subsequent collecting bank that:

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

37 (b) All signatures on the item are authentic and authorized;

38 (c) The item has not been altered;

39 (d) The item is not subject to a defense or claim in recoupment
40 (subsection 1 of NRS 104.3305) of any party that can be asserted
41 against the warrantor; ~~and~~

42 (e) The warrantor has no knowledge of any insolvency
43 proceeding commenced with respect to the maker or acceptor or, in
44 the case of an unaccepted draft, the drawer ~~and~~; *and*



1 (f) *With respect to a remotely-created item, that the person on*
2 *whose account the item is drawn authorized the issuance of the*
3 *item in the amount for which the item is drawn.*

4 2. If an item is dishonored, a customer or collecting bank
5 transferring the item and receiving settlement or other consideration
6 is obliged to pay the amount due on the item according to the terms
7 of the item at the time it was transferred, or if the transfer was of an
8 incomplete item, according to its terms when completed as stated in
9 NRS 104.3115 and 104.3407. The obligation of a transferor is owed
10 to the transferee and to any subsequent collecting bank that takes the
11 item in good faith. A transferor cannot disclaim its obligation under
12 this subsection by an endorsement stating that it is made "without
13 recourse" or otherwise disclaiming liability.

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

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

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

28 6. *No claim for breach of warranty in paragraph (f) of*
29 *subsection 1 is available against a person to which an item was*
30 *transferred to the extent that under applicable law, including the*
31 *applicable choice-of-law principles, the person that transferred the*
32 *item did not make the warranty in paragraph (f) of subsection 1.*

33 **Sec. 16.** NRS 104.4208 is hereby amended to read as follows:

34 104.4208 1. If an unaccepted draft is presented to the drawee
35 for payment or acceptance and the drawee pays or accepts the draft,
36 the person obtaining payment or acceptance, at the time of
37 presentment, and a previous transferor of the draft, at the time of
38 transfer, warrant to the drawee that pays or accepts the draft in good
39 faith that:

40 (a) The warrantor is, or was at the time he transferred the draft, a
41 person entitled to enforce the draft or authorized to obtain payment
42 or acceptance of the draft on behalf of a person entitled to enforce
43 the draft;

44 (b) The draft has not been altered; ~~and~~



(c) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized **H**; and

(d) With respect to a remotely-created item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

2. A drawee making payment may recover from a 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:

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

(b) If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a 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 endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under NRS 104.3404 or 104.3405 or the drawer is precluded under NRS 104.3406 or 104.4406 from asserting against the drawee the unauthorized endorsement or alteration.

4. If a dishonored draft is presented for payment to the drawer or an endorser, or any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was at the time he transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. 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 warrantor 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.



1 *7. No claim for breach of warranty in paragraph (d) of*
2 *subsection 1 is available against a person to which an item was*
3 *transferred to the extent that under applicable law, including the*
4 *applicable choice-of-law principles, the person that transferred the*
5 *item did not make the warranty in paragraph (d) of subsection 1.*

6 **Sec. 17.** NRS 104.4212 is hereby amended to read as follows:

7 104.4212 1. Unless otherwise instructed, a collecting bank
8 may present an item not payable by, through or at a bank by sending
9 to the party to accept or pay a ~~written~~ *record providing* notice that
10 the bank holds the item for acceptance or payment. The notice must
11 be sent in time to be received on or before the day when
12 presentment is due and the bank must meet any requirement of the
13 party to accept or pay under NRS 104.3501 by the close of the
14 bank's next banking day after it knows of the requirement.

15 2. If presentment is made by notice and payment, acceptance or
16 request for compliance with a requirement under NRS 104.3501 is
17 not received by the close of business on the day after maturity or in
18 the case of demand items by the close of business on the third
19 banking day after notice was sent, the presenting bank may treat the
20 item as dishonored and charge any drawer or endorser by sending
21 him notice of the facts.

22 **Sec. 18.** NRS 104.4301 is hereby amended to read as follows:

23 104.4301 1. If a payor bank settles for a demand item other
24 than a documentary draft presented otherwise than for immediate
25 payment over the counter before midnight of the banking day of
26 receipt the payor bank may revoke the settlement and recover the
27 settlement if, before it has made final payment and before its
28 midnight deadline, it:

29 (a) Returns the item; ~~for~~

30 ~~—(b) Sends written~~

31 *(b) Returns an image of the item, if the party to which the*
32 *return is made has entered into an agreement to accept an image*
33 *as a return of the item and the image is returned in accordance*
34 *with that agreement; or*

35 *(c) Sends a record providing* notice of dishonor or nonpayment
36 if the item is unavailable for return.

37 2. If a demand item is received by a payor bank for credit on its
38 books it may return the item or send notice of dishonor and may
39 revoke any credit given or recover the amount thereof withdrawn by
40 its customer, if it acts within the time limit and in the manner
41 specified in subsection 1.

42 3. Unless previous notice of dishonor has been sent an item is
43 dishonored at the time when for purposes of dishonor it is returned
44 or notice sent in accordance with this section.

45 4. An item is returned:



1 (a) As to an item presented through a clearinghouse, when it is
2 delivered to the presenting or last collecting bank or to the
3 clearinghouse or is sent or delivered in accordance with
4 clearinghouse rules; or

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

7 **Sec. 19.** NRS 104.4403 is hereby amended to read as follows:

8 104.4403 1. A customer or any person authorized to draw on
9 the account if there is more than one person, may stop payment of
10 any item drawn on the customer's account or close the account by
11 an order to the bank describing the item or account with reasonable
12 certainty received at a time and in a manner that affords the bank a
13 reasonable opportunity to act on it before the happening of any of
14 the events described in NRS 104.4303. If the signature of more than
15 one person is required to draw on an account, any of these persons
16 may stop payment or close the account.

17 2. A stop-payment order is effective for 6 months, but it lapses
18 after 14 calendar days if the original order was oral and was not
19 confirmed in ~~writing~~ *a record* within that period. A stop-payment
20 order may be renewed for additional 6-month periods by a ~~writing~~
21 *record* given to the bank within a period during which the stop-
22 payment order is effective.

23 3. The burden of establishing the fact and amount of loss
24 resulting from the payment of an item contrary to a stop-payment
25 order or order to close an account is on the customer. The loss from
26 payment of an item contrary to a stop-payment order may include
27 damages for dishonor of subsequent items under NRS 104.4402.



