

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 19, 2005 in Room 313-S of the Capitol.

Committee members absent: Becky Hutchins- excused  
Dean Newton- excused  
Jan Pauls- excused  
Jim Ward- excused  
Marti Crow- excused  
Michael Peterson- excused  
Ward Loyd- excused

Committee staff present: Jerry Ann Donaldson, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:  
Kathy Olsen, Kansas Bankers Association  
Ed Jaskinia, Associated Landlords of Kansas

Kathy Olsen, Kansas Bankers Association, appeared before the committee with a bill request that would amend the Uniform Commercial Code, Articles 3 & 4, to cover demand drafts. The proposed language was drafted by the National Conference of Commissioners on Uniform State Laws (Attachment 1). Representative Jack made the motion to have the request introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

Ed Jaskinia, Associated Landlords of Kansas, requested a bill regarding administrative search warrants (Attachment 2). Representative Jack made the motion to have the request introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

Representative O'Neal received a bill request establishing the parameters for a security interest in oil and gas production, including priority interest in certain circumstances. Uniform Commercial Code securities interest in oil and gas production Representative Jack made the motion to have the request introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

The committee meeting adjourned at 3:45 p.m. The next meeting was scheduled for January 24, 2005 at 3:30 p.m. in room 313-S.



To: House Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

Date: January 19, 2005

**Re: Request for Amendments to the UCC: Articles 3 and 4**

Mr. Chairman and Members of the Committee:

On behalf of the Kansas Bankers Association, thank you for the opportunity to request introduction of a bill that would amend several sections of the Uniform Commercial Code (UCC), Articles 3 and 4.

The amendments were originally drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). To date, fifteen states have adopted these specific amendments and we understand that both Missouri and Iowa are considering adoption during this legislative session.

Generally speaking, the amendments define a new class of payment instrument, drawn on a bank customer's account without an authorized signature. This type of payment is called a "demand draft". The amendments: provide that demand drafts are to be included in the definition of a "check"; set forth the warranties that are provided by the transferor; and shift the risk for loss, should the draft be unauthorized, to the depository bank.

Thank you for allowing this request for introduction of this bill, and we would ask that the Committee act favorably upon this request.

**Chapter 84.--UNIFORM COMMERCIAL CODE**  
**Article 3.--NEGOTIABLE INSTRUMENTS**

**84-3-103. Definitions.** (a) In this article:

- (1) "Acceptor" means a drawee who has accepted a draft.
- (2) "Drawee" means a person ordered in a draft to make payment.
- (3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.
- (4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.
- (6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
- (7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or article 4.
- (8) "Party" means a party to an instrument.
- (9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.
- (10) "Prove" with respect to a fact means to meet the burden of establishing the fact (K.S.A. 84-1-201(8)).
- (11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

**K.S.A. 84-3-103, cont.**

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

"Acceptance"  
84-3-409

"Accommodated party"  
84-3-419

"Accommodation party"  
84-3-419

"Alteration"  
84-3-407

"Anomalous endorsement"  
84-3-205

"Blank endorsement"  
84-3-205

"Cashier's check"  
84-3-104

"Certificate of deposit"  
84-3-104

"Certified check"  
84-3-409

"Check"  
84-3-104

"Consideration"  
84-3-303

**"Demand Draft"**

**84-3-104**

"Draft"  
84-3-104

"Endorsement"  
84-3-204

**K.S.A. 84-3-103, cont.**

"Endorser"  
84-3-204

"Holder in due course"  
84-3-302

"Incomplete instrument"  
84-3-115

"Instrument"  
84-3-104

"Issue"  
84-3-105

"Issuer"  
84-3-105

"Negotiable instrument"  
84-3-104

"Negotiation"  
84-3-201

"Note"  
84-3-104

"Payable at a definite time"  
84-3-108

"Payable on demand"  
84-3-108

"Payable to bearer"  
84-3-109

"Payable to order"  
84-3-109

"Payment"  
84-3-602

"Person entitled to enforce"  
84-3-301

**K.S.A. 84-3-103, cont.**

"Presentment"  
84-5-501

"Reacquisition"  
84-3-207

"Special endorsement"  
84-3-205

"Teller's check"  
84-3-104

"Transfer of instrument"  
84-3-203

"Traveler's check"  
84-3-104

"Value"  
84-3-303

(c) The following definitions in other articles apply to this article:

"Bank"  
84-4-105

"Banking day"  
84-4-104

"Clearing house"  
84-4-104

"Collecting bank"  
84-4-105

"Depository bank"  
84-4-105

"Documentary draft"  
84-4-104

"Intermediary bank"  
84-4-105

**K.S.A. 84-3-103, cont.**

"Item"  
84-4-104

"Payor bank"  
84-4-105

"Suspends payments"  
84-4-104

(d) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**History:** L. 1991, ch. 296, § 3; Feb. 1, 1992.

**84-3-104. Negotiable instrument.** (a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

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

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

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

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

**K.S.A. 84-3-104**

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

(f) "Check" means ~~(1) a draft, other than a documentary draft, payable on demand and drawn on a bank or (2) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order.~~  
**"Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, (ii) a cashier's check or teller's check, or (iii) a demand draft. An instrument may be a check even though it is described on its face by another term, such as "money order".**

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

(h) "Teller's check" means a draft drawn by a bank (1) on another bank, or (2) payable at or through a bank.

(i) "Traveler's check" means an instrument that (1) is payable on demand, (2) is drawn on or payable at or through a bank, (3) is designated by the term "traveler's check" or by a substantially similar term, and (4) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

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

**(k) "Demand draft" means a writing not signed by a customer that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a bank. A demand draft shall contain the customer's account number and may contain any or all of the following:**

**(1) The customer's printed or typewritten name.**

**(2) A notation that the customer authorized the draft.**

**(3) The statement "No Signature Required" or words to that effect.**

**A demand draft shall not include a check purportedly drawn by and bearing the signature of a fiduciary, as defined in paragraph (1) of subsection (a) of K.S.A. 84-3-307.**

History: L. 1991, ch. 296, § 4; Feb. 1, 1992.



**84-3-416. Transfer warranties.** (a) 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) The warrantor is a person entitled to enforce the instrument;
- (2) all signatures on the instrument are authentic and authorized;
- (3) the instrument has not been altered;
- (4) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; ~~and~~
- (5) 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

**(6) 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.**

(b) A person to whom the warranties under subsection (a) 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.

(c) The warranties stated in subsection (a) 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 (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

**(e) If the warranty in paragraph (6) of subsection (a) is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.**

**History:** L. 1991, ch. 296, § 53; Feb. 1, 1992.

**84-3-417. Presentment warranties.** (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (1) the person obtaining payment or acceptance, at the time of presentment, and (2) 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:

**K.S.A. 84-3-417, cont.**

(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; ~~and~~

(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.**

(b) 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.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) 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 K.S.A. 84-3-404 or 84-3-405 or the drawer is precluded under K.S.A. 84-3-406 or K.S.A. 84-4-406 and amendments thereto from asserting against the drawee the unauthorized endorsement or alteration.

(d) If (1) a dishonored draft is presented for payment to the drawer or an endorser or (2) any other instrument is presented for payment to a party obliged to pay the instrument, and (3) 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.

(e) The warranties stated in subsections (a) and (d) 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 (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

**(g) A demand draft is a check, as provided in subsection (f) of K.S.A. 84-3-104.**

**(h) If the warranty in paragraph (4) of subsection (a) is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.**

**History:** L. 1991, ch. 296, § 54; Feb. 1, 1992.

**84-4-207. Transfer warranties.** (a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) The warrantor is a person entitled to enforce the item;
- (2) all signatures on the item are authentic and authorized;
- (3) the item has not been altered;
- (4) the item is not subject to a defense or claim in recoupment (K.S.A. 84-3-305(a)) of any party that can be asserted against the warrantor; ~~and~~
- (5) 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**
- (6) **if the item is a demand draft, creation of the item according to the terms on its face was authorized by the person identified as drawer.**

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (1) according to the terms of the item at the time it was transferred, or (2) if the transfer was of an incomplete item, according to its terms when completed as stated in K.S.A. 84-3-115 and 84-3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an endorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item 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 item plus expenses and loss of interest incurred as a result of the breach.

**K.S.A. 84-4-207, cont.**

(d) The warranties stated in subsection (a) 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.

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

**(f) If the warranty in paragraph (6) of subsection (a) is not given by a transferor or collecting bank under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee nor to any prior collecting bank of that transferee.**

**History:** L. 1991, ch. 296, § 88; Feb. 1, 1992.

**84-4-208. Presentment warranties.** (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (1) the person obtaining payment or acceptance, at the time of presentment, and (2) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts 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; ~~and~~

(C) the warrantor has no knowledge that the signature of the purported 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.**

(b) 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 (1) breach of warranty is a defense to the obligation of the acceptor, and (2) 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.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) 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 K.S.A. 84-3-404 or 84-3-405 or the drawer is precluded under K.S.A. 84-3-406 or K.S.A. 84-4-406 from asserting against the drawee the unauthorized endorsement or alteration.

**K.S.A. 84-4-208, cont.**

(d) If (1) a dishonored draft is presented for payment to the drawer or an endorser or (2) 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 the warrantor 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.

(e) The warranties stated in subsections (a) and (d) 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.

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

**(g) A demand draft is a check, as provided in subsection (f) of K.S.A. 84-3-104.**

**(h) If the warranty in paragraph (4) of subsection (a) is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.**

**History:** L. 1991, ch. 296, § 89; Feb. 1, 1992.

~~— **84-3-309. Enforcement of lost, destroyed or stolen instrument.** (a) A person not in possession of an instrument is entitled to enforce the instrument if (1) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (2) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (3) 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.~~

~~— (b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, K.S.A. 84-3-308 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.~~

—84-3-309. Enforcement of lost, destroyed or stolen instrument. (a) A person not in possession of an instrument is entitled to enforce the instrument if;

(1) the person seeking to enforce the instrument: (A) was entitled to enforce the instrument when loss of possession occurred; or (B) has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

(2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and

(3) 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.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, K.S.A. 84-3-308 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.

History: L. 1991, ch. 296, § 35; Feb. 1, 1992

Ed Jay's inc.

HOUSE BILL No. 2842

By Representative Boroughs

2-12

AN ACT relating to criminal procedure; concerning search and administrative warrants; establishing how search and administrative warrants may be issued in violation of health, safety, building or animal cruelty laws or ordinances.

Be it enacted by the Legislature of the State of Kansas:

Section 1. In addition to other warrants provided by K.S.A. 22-2501 et seq., and amendments thereto, magistrates, upon showing of probable cause to believe a state, county or municipal law or ordinance has been violated in relation to health, safety, building or animal cruelty, may issue a warrant for the purpose of obtaining evidence of a violation. Warrants may be obtained from a magistrate upon request of a law enforcement official of the state and state, county, municipal health, fire, building and animal control personnel only after approval by a district attorney or county attorney. A search warrant issued under this section shall be directed to any law enforcement official of the state within the county where the warrant is to be executed, who shall serve the same. Other concerned personnel may accompany the officer.

Sec. 2. (a) Property or evidence seized pursuant to a search warrant may not be suppressed at a motion, trial or other proceeding, unless the unlawful conduct of the law enforcement officer is shown to be substantial.

(b) Any unlawful search or seizure shall be considered substantial and in bad faith if the warrant was obtained with malicious purpose and with out probable cause or was executed maliciously and willfully beyond the authority of the warrant or with unnecessary severity.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.