

By: McCall

H.B. No. 2232

A BILL TO BE ENTITLED

1 AN ACT

2 relating to uniform law on negotiable instruments and bank deposits
3 and collections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 3.103(a), Business & Commerce Code, is
6 amended to read as follows:

7 (a) In this chapter:

8 (1) "Acceptor" means a drawee who has accepted a
9 draft.

10 (2) "Consumer account" means an account established by
11 an individual primarily for personal, family, or household
12 purposes.

13 (3) "Consumer transaction" means a transaction in
14 which an individual incurs an obligation primarily for personal,
15 family, or household purposes.

16 (4) [~~(2)~~] "Drawee" means a person ordered in a draft
17 to make payment.

18 (5) [~~(3)~~] "Drawer" means a person who signs or is
19 identified in a draft as a person ordering payment.

20 (6) [~~(4)~~] Reserved.

21 (7) [~~(5)~~] "Maker" means a person who signs or is
22 identified in a note as a person undertaking to pay.

23 (8) [~~(6)~~] "Order" means a written instruction to pay
24 money signed by the person giving the instruction. The instruction

1 may be addressed to any person, including the person giving the
2 instruction, or to one or more persons jointly or in the alternative
3 but not in succession. An authorization to pay is not an order
4 unless the person authorized to pay is also instructed to pay.

5 (9) [~~(7)~~] "Ordinary care" in the case of a person
6 engaged in business means observance of reasonable commercial
7 standards, prevailing in the area in which the person is located,
8 with respect to the business in which the person is engaged. In the
9 case of a bank that takes an instrument for processing for
10 collection or payment by automated means, reasonable commercial
11 standards do not require the bank to examine the instrument if the
12 failure to examine does not violate the bank's prescribed
13 procedures and the bank's procedures do not vary unreasonably from
14 general banking usage not disapproved by this chapter or Chapter 4.

15 (10) [~~(8)~~] "Party" means a party to an instrument.

16 (11) "Principal obligor," with respect to an
17 instrument, means the accommodated party or any other party to the
18 instrument against whom a secondary obligor has recourse under this
19 chapter.

20 (12) [~~(9)~~] "Promise" means a written undertaking to
21 pay money signed by the person undertaking to pay. An
22 acknowledgment of an obligation by the obligor is not a promise
23 unless the obligor also undertakes to pay the obligation.

24 (13) [~~(10)~~] "Prove" with respect to a fact means to
25 meet the burden of establishing the fact (Section 1.201(b)(8)).

26 (14) Reserved.

27 (15) [~~(11)~~] "Remitter" means a person who purchases an

1 instrument from its issuer if the instrument is payable to an
2 identified person other than the purchaser.

3 (16) "Remotely-created item" means an item that is
4 created by a third party, other than the payor bank, under the
5 purported authority of the drawer of the item for the purpose of
6 charging the drawer's account with a bank and that does not bear a
7 handwritten signature purporting to be the signature of the drawer.

8 (17) "Secondary obligor," with respect to an
9 instrument, means (A) an indorser or an accommodation party, (B) a
10 drawer having the obligation described in Section 3.414(d), or (C)
11 any other party to the instrument that has recourse against another
12 party to the instrument pursuant to Section 3.116(b).

13 SECTION 2. Sections 3.103(b) and (c), Business & Commerce
14 Code, are amended to read as follows:

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

17 "Acceptance"	Section 3.409.
18 "Accommodated party"	Section 3.419.
19 "Accommodation party"	Section 3.419.
20 <u>"Account"</u>	<u>Section 4.104.</u>
21 "Alteration"	Section 3.407.
22 "Anomalous indorsement"	Section 3.205.
23 "Blank indorsement"	Section 3.205.
24 "Cashier's check"	Section 3.104.
25 "Certificate of deposit"	Section 3.104.
26 "Certified check"	Section 3.409.
27 "Check"	Section 3.104.

1	"Consideration"	Section 3.303.
2	"Demand draft"	Section 3.104.
3	"Draft"	Section 3.104.
4	"Holder in due course"	Section 3.302.
5	"Incomplete instrument"	Section 3.115
6	"Indorsement"	Section 3.204.
7	"Indorser"	Section 3.204.
8	"Instrument"	Section 3.104.
9	"Issue"	Section 3.105.
10	"Issuer"	Section 3.105.
11	"Negotiable instrument"	Section 3.104.
12	"Negotiation"	Section 3.201.
13	"Note"	Section 3.104.
14	"Payable at a definite time"	Section 3.108.
15	"Payable on demand"	Section 3.108.
16	"Payable to bearer"	Section 3.109.
17	"Payable to order"	Section 3.109.
18	"Payment"	Section 3.602.
19	"Person entitled to enforce"	Section 3.301.
20	"Presentment"	Section 3.501.
21	"Reacquisition"	Section 3.207.
22	"Special indorsement"	Section 3.205.
23	"Teller's check"	Section 3.104.
24	"Transfer of instrument"	Section 3.203.
25	"Traveler's check"	Section 3.104.
26	"Value"	Section 3.303.

27 (c) The following definitions in other chapters apply to

1 this chapter:

2	["Bank"	Section 4.105.
3	"Banking day"	Section 4.104.
4	"Clearing house"	Section 4.104.
5	"Collecting bank"	Section 4.105.
6	"Depository bank"	Section 4.105.
7	"Documentary draft"	Section 4.104.
8	"Intermediary bank"	Section 4.105.
9	"Item"	Section 4.104.
10	"Payor bank"	Section 4.105.
11	"Suspends payments"	Section 4.104.

12 SECTION 3. Sections 3.106(a) and (b), Business & Commerce
13 Code, are amended to read as follows:

14 (a) Except as provided in this section, for the purposes of
15 Section 3.104(a), a promise or order is unconditional unless it
16 states (i) an express condition to payment, (ii) that the promise or
17 order is subject to or governed by another record [~~writing~~], or
18 (iii) that rights or obligations with respect to the promise or
19 order are stated in another record [~~writing~~]. A reference to
20 another record [~~writing~~] does not of itself make the promise or
21 order conditional.

22 (b) A promise or order is not made conditional (i) by a
23 reference to another record [~~writing~~] for a statement of rights
24 with respect to collateral, prepayment, or acceleration, or (ii)
25 because payment is limited to resort to a particular fund or source.

26 SECTION 4. Section 3.119, Business & Commerce Code, is
27 amended to read as follows:

1 Sec. 3.119. NOTICE OF RIGHT TO DEFEND ACTION. In an action
2 for breach of an obligation for which a third person is answerable
3 over pursuant to this chapter or Chapter 4, the defendant may give
4 the third person [~~written~~] notice of the litigation in a record, and
5 the person notified may then give similar notice to any other person
6 who is answerable over. If the notice states (i) that the person
7 notified may come in and defend, and (ii) that failure to do so will
8 bind the person notified in an action later brought by the person
9 giving the notice as to any determination of fact common to the two
10 litigations, the person notified is so bound unless after
11 reasonable receipt of the notice the person notified does come in
12 and defend.

13 SECTION 5. Section 3.305, Business & Commerce Code, is
14 amended by amending Subsection (a) and by adding Subsections (e)
15 and (f) to read as follows:

16 (a) Except as otherwise provided in this section
17 [~~Subsection (b)~~], the right to enforce the obligation of a party to
18 pay an instrument is subject to the following:

19 (1) a defense of the obligor based on:

20 (A) infancy of the obligor to the extent it is a
21 defense to a simple contract;

22 (B) duress, lack of legal capacity, or illegality
23 of the transaction that, under other law, nullifies the obligation
24 of the obligor;

25 (C) fraud that induced the obligor to sign the
26 instrument with neither knowledge nor reasonable opportunity to
27 learn of its character or its essential terms; or

1 (D) discharge of the obligor in insolvency
2 proceedings;

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

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

13 (e) In a consumer transaction, if law other than this
14 chapter requires that an instrument include a statement to the
15 effect that the rights of a holder or transferee are subject to a
16 claim or defense that the issuer could assert against the original
17 payee, and the instrument does not include such a statement:

18 (1) the instrument has the same effect as if the
19 instrument included such a statement;

20 (2) the issuer may assert against the holder or
21 transferee all claims and defenses that would have been available
22 if the instrument included such a statement; and

23 (3) the extent to which claims may be asserted against
24 the holder or transferee is determined as if the instrument
25 included such a statement.

26 If an instrument includes or is deemed to include a statement
27 under this subsection, a holder or transferee who is liable under

1 the statement to the issuer, but who is not the seller of the goods
2 or services, shall be entitled to full indemnity from the seller for
3 any liability under the statement incurred by the holder or
4 transferee that results from the issuer's claims or defenses
5 against the seller, plus reasonable attorney's fees. The provision
6 in this section for express indemnity does not affect any right of
7 indemnity, subrogation, or recovery to which a holder or transferee
8 may be entitled under any rule, written contract, judicial
9 decision, or other statute. This section is not intended to provide
10 a holder or transferee indemnity from the seller with respect to the
11 holder or transferee's direct liability to the issuer for the
12 holder or transferee's own actionable misconduct unrelated to
13 derivative liability under the statement.

14 (f) This section is subject to law other than this chapter
15 that establishes a different rule for consumer transactions.

16 SECTION 6. Section 3.309(a), Business & Commerce Code, is
17 amended to read as follows:

18 (a) A person who is not in possession of an instrument is
19 entitled to enforce the instrument if:

20 (1) the person seeking to enforce the instrument:

21 (A) was entitled to enforce the instrument when
22 loss of possession occurred; or

23 (B) has directly or indirectly acquired
24 ownership of the instrument from a person who was entitled to
25 enforce the instrument when loss of possession occurred [~~was in~~
26 ~~possession of the instrument and entitled to enforce it when loss of~~
27 ~~possession occurred~~];

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

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

8 SECTION 7. Section 3.312(a)(3), Business & Commerce Code,
9 is amended to read as follows:

10 (3) "Declaration of loss" means a [~~written~~] statement,
11 made in a record under penalty of perjury, to the effect that:

12 (A) the declarer lost possession of a check;

13 (B) the declarer is the drawer or payee of the
14 check, in the case of a certified check, or the remitter or payee of
15 the check, in the case of a cashier's check or teller's check;

16 (C) the loss of possession was not the result of a
17 transfer by the declarer or a lawful seizure; and

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

23 SECTION 8. Sections 3.416(a) and (e), Business & Commerce
24 Code, are amended to read as follows:

25 (a) A person who transfers an instrument for consideration
26 warrants to the transferee and, if the transfer is by indorsement,
27 to any subsequent transferee that:

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

3 (2) all signatures on the instrument are authentic and
4 authorized;

5 (3) the instrument has not been altered;

6 (4) the instrument is not subject to a defense or claim
7 in recoupment of any party that can be asserted against the
8 warrantor;

9 (5) the warrantor has no knowledge of any insolvency
10 proceeding commenced with respect to the maker or acceptor or, in
11 the case of an unaccepted draft, the drawer; and

12 (6) with respect to a remotely-created item, that the
13 person on whose account the item is drawn authorized the issuance of
14 the item in the amount for which the item is drawn [~~if the~~
15 ~~instrument is a demand draft, the creation of the instrument~~
16 ~~according to the terms on its face was authorized by the person~~
17 ~~identified as drawer~~].

18 (e) If as to a particular item (1) a transferee (including a
19 collecting bank) asserts a claim for breach of the warranty in
20 Subsection (a)(6), but (2) under applicable law (including the
21 applicable choice-of-law principles) that transferee would not
22 make a warranty substantially similar to the warranty in Subsection
23 (a)(6) if such transferee were a transferor, then that transferee
24 would not receive the warranty in [~~under~~] Subsection (a)(6) from
25 any [~~is not given by a~~] transferor [~~under applicable conflict of law~~
26 ~~rules, the warranty is not given to that transferor when that~~
27 ~~transferor is a transferee~~].

1 SECTION 9. Sections 3.417(a) and (g), Business & Commerce
2 Code, are amended to read as follows:

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

9 (1) the warrantor is, or was, at the time the warrantor
10 transferred the draft, a person entitled to enforce the draft or
11 authorized to obtain payment or acceptance of the draft on behalf of
12 a person entitled to enforce the draft;

13 (2) the draft has not been altered;

14 (3) the warrantor has no knowledge that the signature
15 of the drawer of the draft is unauthorized; and

16 (4) with respect to a remotely-created item, that the
17 person on whose account the item is drawn authorized the issuance of
18 the item in the amount for which the item is drawn [~~if the~~
19 ~~instrument is a demand draft, the creation of the draft according to~~
20 ~~the terms on its face was authorized by the person identified as~~
21 ~~drawer~~].

22 (g) If as to a particular item (1) a transferee (including a
23 collecting bank) asserts a claim for breach of the warranty in
24 Subsection (a)(4), but (2) under applicable law (including the
25 applicable choice-of-law principles) that transferee would not
26 make a warranty substantially similar to the warranty in Subsection
27 (a)(4) if such transferee were a transferor, then that transferee

1 would not receive the warranty in [~~under~~] Subsection (a)(4) from
2 any [~~is not given by a~~] transferor [~~under applicable conflict of law~~
3 ~~rules, the warranty is not given to that transferor when that~~
4 ~~transferor is a transferee~~].

5 SECTION 10. Section 3.419, Business & Commerce Code, is
6 amended by amending Subsection (e) and by adding Subsection (f) to
7 read as follows:

8 (e) If the signature of a party to an instrument is
9 accompanied by words indicating that the party guarantees payment
10 or the signer signs the instrument as an accommodation party in some
11 other manner that does not unambiguously indicate an intention to
12 guarantee collection rather than payment, the signer is obliged to
13 pay the amount due on the instrument to a person entitled to enforce
14 the instrument in the same circumstances as the accommodated party
15 would be obliged, without prior resort to the accommodated party by
16 the person entitled to enforce the instrument.

17 (f) An accommodation party who pays the instrument is
18 entitled to reimbursement from the accommodated party and is
19 entitled to enforce the instrument against the accommodated party.
20 In proper circumstances, an accommodation party may obtain relief
21 that requires the accommodated party to perform its obligations on
22 the instrument. An accommodated party that [~~who~~] pays the
23 instrument has no right of recourse against, and is not entitled to
24 contribution from, an accommodation party.

25 SECTION 11. Section 3.506, Business & Commerce Code, is
26 amended to read as follows:

27 Sec. 3.506. PROCESSING FEE BY HOLDER OF PAYMENT DEVICE

1 ~~[DISHONORED CHECK]~~. (a) For purposes of this section, "payment
2 device" means any check, item, paper or electronic payment, or
3 other payment device used as a medium for payment.

4 (b) On return of a payment device ~~[check]~~ to the holder
5 following dishonor of the payment device ~~[check]~~ by a payor, the
6 holder, the holder's assignee, agent, or representative, or any
7 other person retained by the holder to seek collection of the face
8 value of the dishonored payment device ~~[check]~~ may charge the
9 drawer or indorser ~~[endorser]~~ a reasonable processing fee of not
10 more than \$30.

11 (c) ~~[(b)]~~ A person may not charge a processing fee to a
12 drawer or indorser ~~[endorser]~~ under this section if the fee has been
13 collected under Article 102.007(e) or 102.0071, Code of Criminal
14 Procedure. If a processing fee has been collected under this
15 section and the holder subsequently receives a fee collected under
16 Article 102.007(e) or 102.0071, Code of Criminal Procedure, the
17 holder shall immediately refund the fee previously collected from
18 the drawer or indorser ~~[endorser]~~.

19 (d) ~~[(c)]~~ Notwithstanding Subtitle B, Title 4, Finance
20 Code, or any other law, a contract ~~[loan agreement]~~ made under
21 Subtitle B, Title 4 ~~[Chapter 342]~~, Finance Code, may provide that on
22 return of a dishonored payment device ~~[check]~~ given in payment
23 under the contract ~~[agreement]~~, the holder may charge the obligor
24 under the contract ~~[agreement]~~ the processing fee authorized by
25 this section, and the fee may be added to the unpaid balance owed
26 under the contract ~~[agreement]~~. Interest may not be charged on the
27 fee during the term of the contract ~~[agreement]~~.

1 (e) [~~(d)~~] This section does not affect any right or remedy
2 to which the holder of a payment device [~~check~~] may be entitled
3 under any rule, written contract, judicial decision, or other
4 statute.

5 SECTION 12. Section 3.602, Business & Commerce Code, is
6 amended to read as follows:

7 Sec. 3.602. PAYMENT. (a) Subject to Subsection (e)
8 [~~(b)~~], an instrument is paid to the extent payment is made [~~(i)~~] by
9 or on behalf of a party obliged to pay the instrument, and [~~(ii)~~] to
10 a person entitled to enforce the instrument.

11 (b) Subject to Subsection (e), a note is paid to the extent
12 payment is made by or on behalf of a party obliged to pay the note to
13 a person that formerly was entitled to enforce the note only if at
14 the time of the payment the party obliged to pay has not received
15 adequate notification that the note has been transferred and that
16 payment is to be made to the transferee. A notification is adequate
17 only if it is signed by the transferor or the transferee, reasonably
18 identifies the transferred note, and provides an address at which
19 payments subsequently are to be made. Upon request, a transferee
20 shall seasonably furnish reasonable proof that the note has been
21 transferred. Unless the transferee complies with the request, a
22 payment to the person that formerly was entitled to enforce the note
23 is effective for purposes of Subsection (c) even if the party
24 obliged to pay the note has received a notification under this
25 subsection.

26 (c) Subject to Subsection (e), to [~~To~~] the extent of a a [~~the~~]
27 payment under Subsections (a) and (b), the obligation of the party

1 obliged to pay the instrument is discharged even though payment is
2 made with knowledge of a claim to the instrument under Section 3.306
3 by another person.

4 (d) Subject to Subsection (e), a transferee, or any party
5 that has acquired rights in the instrument directly or indirectly
6 from a transferee, including any such party that has rights as a
7 holder in due course, is deemed to have notice of any payment that
8 is made under Subsection (b) after the date that the note is
9 transferred to the transferee but before the party obliged to pay
10 the note receives adequate notification of the transfer.

11 (e) [~~(b)~~] The obligation of a party to pay the instrument is
12 not discharged under Subsections [~~Subsection~~] (a) through (d) if:

13 (1) a claim to the instrument under Section 3.306 is
14 enforceable against the party receiving payment and:

15 (A) payment is made with knowledge by the payor
16 that payment is prohibited by injunction or similar process of a
17 court of competent jurisdiction; or

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

23 (2) the person making payment knows that the
24 instrument is a stolen instrument and pays a person it knows is in
25 wrongful possession of the instrument.

26 (f) As used in this section, "signed," with respect to a
27 record that is not a writing, includes the attachment to or logical

1 association with the record of an electronic symbol, sound, or
2 process with the present intent to adopt or accept the record.

3 SECTION 13. Section 3.604, Business & Commerce Code, is
4 amended by amending Subsection (a) and by adding Subsection (c) to
5 read as follows:

6 (a) A person entitled to enforce an instrument, with or
7 without consideration, may discharge the obligation of a party to
8 pay the instrument:

9 (1) by an intentional voluntary act, such as surrender
10 of the instrument to the party, destruction, mutilation, or
11 cancellation of the instrument, cancellation or striking out of the
12 party's signature, or the addition of words to the instrument
13 indicating discharge; or

14 (2) by agreeing not to sue or otherwise renouncing
15 rights against the party by a signed record [~~writing~~].

16 (c) In this section, "signed," with respect to a record that
17 is not a writing, includes the attachment to or logical association
18 with the record of an electronic symbol, sound, or process with the
19 present intent to adopt or accept the record.

20 SECTION 14. Section 3.605, Business & Commerce Code, is
21 amended to read as follows:

22 Sec. 3.605. DISCHARGE OF SECONDARY OBLIGORS [~~INDORSERS AND~~
23 ~~ACCOMMODATION PARTIES~~]. (a) If a person entitled to enforce an
24 instrument releases the obligation of a principal obligor in whole
25 or in part, and another party to the instrument is a secondary
26 obligor with respect to the obligation of that principal obligor,
27 the following rules apply:

1 (1) Any obligations of the principal obligor to the
2 secondary obligor with respect to any previous payment by the
3 secondary obligor are not affected. Unless the terms of the release
4 preserve the secondary obligor's recourse, the principal obligor is
5 discharged, to the extent of the release, from any other duties to
6 the secondary obligor under this chapter.

7 (2) Unless the terms of the release provide that the
8 person entitled to enforce the instrument retains the right to
9 enforce the instrument against the secondary obligor, the secondary
10 obligor is discharged to the same extent as the principal obligor
11 from any unperformed portion of its obligation on the instrument.
12 If the instrument is a check and the obligation of the secondary
13 obligor is based on an indorsement of the check, the secondary
14 obligor is discharged without regard to the language or
15 circumstances of the discharge or other release.

16 (3) If the secondary obligor is not discharged under
17 Subdivision (2), the secondary obligor is discharged to the extent
18 of the value of the consideration for the release, and to the extent
19 that the release would otherwise cause the secondary obligor a
20 loss.

21 (b) If a person entitled to enforce an instrument grants a
22 principal obligor an extension of the time at which one or more
23 payments are due on the instrument and another party to the
24 instrument is a secondary obligor with respect to the obligation of
25 that principal obligor, the following rules apply:

26 (1) Any obligations of the principal obligor to the
27 secondary obligor with respect to any previous payment by the

1 secondary obligor are not affected. Unless the terms of the
2 extension preserve the secondary obligor's recourse, the extension
3 correspondingly extends the time for performance of any other
4 duties owed to the secondary obligor by the principal obligor under
5 this chapter.

6 (2) The secondary obligor is discharged to the extent
7 that the extension would otherwise cause the secondary obligor a
8 loss.

9 (3) To the extent that the secondary obligor is not
10 discharged under Subdivision (2), the secondary obligor may perform
11 its obligations to a person entitled to enforce the instrument as if
12 the time for payment had not been extended or, unless the terms of
13 the extension provide that the person entitled to enforce the
14 instrument retains the right to enforce the instrument against the
15 secondary obligor as if the time for payment had not been extended,
16 treat the time for performance of its obligations as having been
17 extended correspondingly.

18 (c) If a person entitled to enforce an instrument agrees,
19 with or without consideration, to a modification of the obligation
20 of a principal obligor other than a complete or partial release or
21 an extension of the due date and another party to the instrument is
22 a secondary obligor with respect to the obligation of that
23 principal obligor, the following rules apply:

24 (1) Any obligations of the principal obligor to the
25 secondary obligor with respect to any previous payment by the
26 secondary obligor are not affected. The modification
27 correspondingly modifies any other duties owed to the secondary

1 obligor by the principal obligor under this chapter.

2 (2) The secondary obligor is discharged from any
3 unperformed portion of its obligation to the extent that the
4 modification would otherwise cause the secondary obligor a loss.

5 (3) To the extent that the secondary obligor is not
6 discharged under Subdivision (2), the secondary obligor may satisfy
7 its obligation on the instrument as if the modification had not
8 occurred, or treat its obligation on the instrument as having been
9 modified correspondingly.

10 (d) If the obligation of a principal obligor is secured by
11 an interest in collateral, another party to the instrument is a
12 secondary obligor with respect to that obligation, and a person
13 entitled to enforce the instrument impairs the value of the
14 interest in collateral, the obligation of the secondary obligor is
15 discharged to the extent of the impairment. The value of an
16 interest in collateral is impaired to the extent the value of the
17 interest is reduced to an amount less than the amount of the
18 recourse of the secondary obligor, or the reduction in value of the
19 interest causes an increase in the amount by which the amount of the
20 recourse exceeds the value of the interest. For purposes of this
21 subsection, impairing the value of an interest in collateral
22 includes failure to obtain or maintain perfection or recordation of
23 the interest in collateral, release of collateral without
24 substitution of collateral of equal value or equivalent reduction
25 of the underlying obligation, failure to perform a duty to preserve
26 the value of collateral owed, under Chapter 9 or other law, to a
27 debtor or other person secondarily liable, and failure to comply

1 with applicable law in disposing of or otherwise enforcing the
2 interest in collateral.

3 (e) A secondary obligor is not discharged under Subsection
4 (a)(3), (b), (c), or (d) unless the person entitled to enforce the
5 instrument knows that the person is a secondary obligor or has
6 notice under Section 3.419(c) that the instrument was signed for
7 accommodation.

8 (f) A secondary obligor is not discharged under this section
9 if the secondary obligor consents to the event or conduct that is
10 the basis of the discharge, or the instrument or a separate
11 agreement of the party provides for waiver of discharge under this
12 section specifically or by general language indicating that parties
13 wave defenses based on suretyship or impairment of collateral.
14 Unless the circumstances indicate otherwise, consent by the
15 principal obligor to an act that would lead to a discharge under
16 this section constitutes consent to that act by the secondary
17 obligor if the secondary obligor controls the principal obligor or
18 deals with the person entitled to enforce the instrument on behalf
19 of the principal obligor.

20 (g) A release or extension preserves a secondary obligor's
21 recourse if the terms of the release or extension provide that the
22 person entitled to enforce the instrument retains the right to
23 enforce the instrument against the secondary obligor. The recourse
24 of the secondary obligor continues as though the release or
25 extension had not been granted.

26 (h) Except as otherwise provided in Subsection (i), a
27 secondary obligor asserting discharge under this section has the

1 burden of persuasion both with respect to the occurrence of the acts
2 alleged to harm the secondary obligor and loss or prejudice caused
3 by those acts.

4 (i) If the secondary obligor demonstrates prejudice caused
5 by an impairment of its recourse, and the circumstances of the case
6 indicate that the amount of loss is not reasonably susceptible of
7 calculation or requires proof of facts that are not ascertainable,
8 it is presumed that the act impairing recourse caused a loss or
9 impairment equal to the liability of the secondary obligor on the
10 instrument. In that event, the burden of persuasion as to any
11 lesser amount of the loss is on the person entitled to enforce the
12 instrument. [In this section, the term "indorser" includes a drawer
13 having the obligation described in Section 3.414(d).

14 ~~[(b) Discharge of the obligation of a party to pay an~~
15 ~~instrument under Section 3.604 does not discharge the obligation of~~
16 ~~an indorser or accommodation party having a right of recourse~~
17 ~~against the discharged party.~~

18 ~~[(c) If a person entitled to enforce an instrument agrees,~~
19 ~~with or without consideration, to an extension of the due date of~~
20 ~~the obligation of a party to pay the instrument, the extension~~
21 ~~discharges an indorser or accommodation party having a right of~~
22 ~~recourse against the party whose obligation is extended to the~~
23 ~~extent the indorser or accommodation party proves that the~~
24 ~~extension caused loss to the indorser or accommodation party with~~
25 ~~respect to the right of recourse.~~

26 ~~[(d) If a person entitled to enforce an instrument agrees,~~
27 ~~with or without consideration, to a material modification of the~~

1 ~~obligation of a party other than an extension of the due date, the~~
2 ~~modification discharges the obligation of an indorser or~~
3 ~~accommodation party having a right of recourse against the person~~
4 ~~whose obligation is modified to the extent the modification causes~~
5 ~~loss to the indorser or accommodation party with respect to the~~
6 ~~right of recourse. The loss suffered by the indorser or~~
7 ~~accommodation party as a result of the modification is equal to the~~
8 ~~amount of the right of recourse unless the person enforcing the~~
9 ~~instrument proves that no loss was caused by the modification or~~
10 ~~that the loss caused by the modification was an amount less than the~~
11 ~~amount of the right of recourse.~~

12 ~~[(c) If the obligation of a party to pay an instrument is~~
13 ~~secured by an interest in collateral and a person entitled to~~
14 ~~enforce the instrument impairs the value of the interest in~~
15 ~~collateral, the obligation of an indorser or accommodation party~~
16 ~~having a right of recourse against the obligor is discharged to the~~
17 ~~extent of the impairment. The value of an interest in collateral is~~
18 ~~impaired to the extent (i) the value of the interest is reduced to~~
19 ~~an amount less than the amount of the right of recourse of the party~~
20 ~~asserting discharge, or (ii) the reduction in value of the interest~~
21 ~~causes an increase in the amount by which the amount of the right of~~
22 ~~recourse exceeds the value of the interest. The burden of proving~~
23 ~~impairment is on the party asserting discharge.~~

24 ~~[(f) If the obligation of a party is secured by an interest~~
25 ~~in collateral not provided by an accommodation party and a person~~
26 ~~entitled to enforce the instrument impairs the value of the~~
27 ~~interest in collateral, the obligation of any party who is jointly~~

1 ~~and severally liable with respect to the secured obligation is~~
2 ~~discharged to the extent the impairment causes the party asserting~~
3 ~~discharge to pay more than that party would have been obliged to~~
4 ~~pay, taking into account rights of contribution, if impairment had~~
5 ~~not occurred. If the party asserting discharge is an accommodation~~
6 ~~party not entitled to discharge under Subsection (e), the party is~~
7 ~~deemed to have a right to contribution based on joint and several~~
8 ~~liability rather than a right to reimbursement. The burden of~~
9 ~~proving impairment is on the party asserting discharge.~~

10 ~~[(g) Under Subsection (e) or (f), impairing value of an~~
11 ~~interest in collateral includes:~~

12 ~~[(1) failure to obtain or maintain perfection or~~
13 ~~recordation of the interest in collateral;~~

14 ~~[(2) release of collateral without substitution of~~
15 ~~collateral of equal value;~~

16 ~~[(3) failure to perform a duty to preserve the value of~~
17 ~~collateral owed, under Chapter 9 or other law, to a debtor or surety~~
18 ~~or other person secondarily liable; or~~

19 ~~[(4) failure to comply with applicable law in~~
20 ~~disposing of collateral.~~

21 ~~[(h) An accommodation party is not discharged under~~
22 ~~Subsection (c), (d), or (e) unless the person entitled to enforce~~
23 ~~the instrument knows of the accommodation or has notice under~~
24 ~~Section 3.419(c) that the instrument was signed for accommodation.~~

25 ~~[(i) A party is not discharged under this section if:~~

26 ~~[(1) the party asserting discharge consents to the~~
27 ~~event or conduct that is the basis of the discharge; or~~

1 ~~[(2) the instrument or a separate agreement of the~~
2 ~~party provides for waiver of discharge under this section.]~~

3 SECTION 15. Sections 4.104(b) and (c), Business & Commerce
4 Code, are amended to read as follows:

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

7 "Agreement for electronic 8 presentment"	Section 4.110.
9 ["Bank"	Section 4.105.]
10 "Collecting bank"	Section 4.105.
11 "Depository bank"	Section 4.105.
12 "Intermediary bank"	Section 4.105.
13 "Payor bank"	Section 4.105.
14 "Presenting bank"	Section 4.105.
15 "Presentment notice"	Section 4.110.

16 (c) The following definitions in other chapters apply to
17 this chapter:

18 "Acceptance"	Section 3.409.
19 "Alteration"	Section 3.407.
20 "Cashier's check"	Section 3.104.
21 "Certificate of deposit"	Section 3.104.
22 "Certified check"	Section 3.409.
23 "Check"	Section 3.104.
24 "Holder in due course"	Section 3.302.
25 "Instrument"	Section 3.104.
26 "Notice of dishonor"	Section 3.503.
27 "Order"	Section 3.103.

1	"Ordinary care"	Section 3.103.
2	"Person entitled to enforce"	Section 3.301.
3	"Presentment"	Section 3.501.
4	"Promise"	Section 3.103.
5	"Prove"	Section 3.103.
6	<u>"Record"</u>	<u>Section 1.202.</u>
7	<u>"Remotely-created item"</u>	<u>Section 3.103.</u>
8	"Teller's check"	Section 3.104.
9	"Unauthorized signature"	Section 3.403.

10 SECTION 16. Section 4.207(a), Business & Commerce Code, is
11 amended to read as follows:

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

15 (1) the warrantor is a person entitled to enforce the
16 item;

17 (2) all signatures on the item are authentic and
18 authorized;

19 (3) the item has not been altered;

20 (4) the item is not subject to a defense or claim in
21 recoupment (Section 3.305(a)) of any party that can be asserted
22 against the warrantor;

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

26 (6) with respect to a remotely-created item, that the
27 person on whose account the item is drawn authorized the issuance of

1 the item in the amount for which the item is drawn [~~if the item is a~~
2 ~~demand draft, the creation of the item according to the terms on its~~
3 ~~face was authorized by the person identified as drawer~~].

4 SECTION 17. Sections 4.208(a) and (g), Business & Commerce
5 Code, are amended to read as follows:

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

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

16 (2) the draft has not been altered;

17 (3) the warrantor has no knowledge that the signature
18 of the purported drawer of the draft is unauthorized; and

19 (4) with respect to any remotely-created item, that
20 the person on whose account the item is drawn authorized the
21 issuance of the item in the amount for which the item is drawn [~~if~~
22 ~~the instrument is a demand draft, the creation of the draft~~
23 ~~according to the terms on its face was authorized by the person~~
24 ~~identified as drawer~~].

25 (g) If as to a particular item (1) a transferee (including a
26 collecting bank) asserts a claim for breach of the warranty under
27 Subsection (a)(4), but (2) [~~is not given by a transferor~~] under

1 applicable ~~[conflict of]~~ law (including the applicable
2 choice-of-law principles) that transferee would not make a warranty
3 substantially similar to ~~[rules,~~ the warranty in Subsection (a)(4)
4 if such ~~[is not given to that transferor when that transferor is a]~~
5 transferee were a transferor, then that transferee would not
6 receive the warranty in Subsection (a)(4) from any transferor.

7 SECTION 18. Section 4.212(a), Business & Commerce Code, is
8 amended to read as follows:

9 (a) Unless otherwise instructed, a collecting bank may
10 present an item not payable by, through, or at a bank by sending to
11 the party to accept or pay a record providing ~~[written]~~ notice that
12 the bank holds the item for acceptance or payment. The notice must
13 be sent in time to be received on or before the day when presentment
14 is due, and the bank must meet any requirement of the party to
15 accept or pay under Section 3.501 by the close of the bank's next
16 banking day after it knows of the requirement.

17 SECTION 19. Section 4.301(a), Business & Commerce Code, is
18 amended to read as follows:

19 (a) If a payor bank settles for a demand item other than a
20 documentary draft presented otherwise than for immediate payment
21 over the counter before midnight of the banking day of receipt, the
22 payor bank may revoke the settlement and recover the settlement if,
23 before it has made final payment and before its midnight deadline,
24 it:

25 (1) returns the item; ~~[or]~~

26 (2) returns an image of the item, if the party to which
27 the return is made has entered into an agreement to accept an image

1 as a return of the item, and the image is returned in accordance
2 with that agreement; or

3 (3) sends a record providing [~~written~~] notice of
4 dishonor or nonpayment if the item is unavailable for return.

5 SECTION 20. Section 4.403(b), Business & Commerce Code, is
6 amended to read as follows:

7 (b) A stop-payment order is effective for six months and is
8 binding on the bank only if it is in a [~~writing,~~] dated,
9 authenticated record that [~~and signed and~~] describes the item with
10 certainty. A stop-payment order may be renewed for additional
11 six-month periods by an authenticated record [~~a writing~~] given to
12 the bank within a period during which the stop-payment order is
13 effective.

14 SECTION 21. Section 3.116(c), Business & Commerce Code, is
15 repealed.

16 SECTION 22. This Act takes effect September 1, 2005.