

SENATE AMENDMENTS TO SENATE BILL 355

By COMMITTEE ON JUDICIARY

January 28

1 On page 1 of the printed bill, line 4, after “40.210,” insert “73.0417, 74.2080,”.

2 On page 19, after line 22, insert:

3 “**SECTION 20a.** ORS 73.0417 is amended to read:

4 “73.0417. (1) If an unaccepted draft is presented to the drawee for payment or acceptance and
5 the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of
6 presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee
7 making payment or accepting the draft in good faith that:

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

11 “(b) The draft has not been altered;

12 “(c) The warrantor has no knowledge that the signature of the drawer of the draft is unau-
13 thorized; and

14 “(d) If the draft is a demand draft, creation of the draft according to the terms on its face was
15 authorized by the person identified as drawer.

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

24 “(3) If a drawee asserts a claim for breach of warranty under subsection (1) of this section based
25 on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend
26 by proving that the indorsement is effective under ORS 73.0404 or 73.0405 or the drawer is precluded
27 under ORS [73.0405] **73.0406** or 74.4060 from asserting against the drawee the unauthorized in-
28 dorsement or alteration.

29 “(4) If a dishonored draft is presented for payment to the drawer or an indorser or any other
30 instrument is presented for payment to a party obliged to pay the instrument, and payment is re-
31 ceived, the following rules apply:

32 “(a) The person obtaining payment and a prior transferor of the instrument warrant to the per-
33 son making payment in good faith that the warrantor is, or was, at the time the warrantor trans-
34 ferred in the instrument, a person entitled to enforce the instrument or authorized to obtain payment
35 on behalf of a person entitled to enforce the instrument.

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

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

8 “(6) A claim for relief for breach of warranty under this section accrues when the claimant has
9 reason to know of the breach.

10 “(7) A demand draft is a check, as defined in ORS 73.0104 (6).

11 “(8) If the warranty in subsection (1)(d) of this section is not given by a transferor under appli-
12 cable conflict of law rules, then the warranty is not given to that transferor when that transferor
13 is a transferee.

14 “**NOTE:** Corrects statutory reference in (3).

15 “**SECTION 20b.** ORS 74.2080 is amended to read:

16 “74.2080. (1) If an unaccepted draft is presented to the drawee for payment or acceptance and
17 the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of
18 presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee
19 that pays or accepts the draft in good faith that:

20 “(a) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled
21 to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person
22 entitled to enforce the draft;

23 “(b) The draft has not been altered;

24 “(c) The warrantor has no knowledge that the signature of the purported drawer of the draft is
25 unauthorized; and

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

28 “(2) A drawee making payment may recover from a warrantor damages for breach of warranty
29 equal to the amount paid by the drawee less the amount the drawee received or is entitled to re-
30 ceive from the drawer because of the payment. In addition, the drawee is entitled to compensation
31 for expenses and loss of interest resulting from the breach. The right of the drawee to recover
32 damages under this subsection is not affected by any failure of the drawee to exercise ordinary care
33 in making payment. If the drawee accepts the draft:

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

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

37 “(3) If a drawee asserts a claim for breach of warranty under subsection (1) of this section based
38 on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend
39 by proving that the indorsement is effective under ORS 73.0404 or 73.0405 or the drawer is precluded
40 under ORS [73.0405] **73.0406** or 74.4060 from asserting against the drawee the unauthorized in-
41 dorsement or alteration.

42 “(4) If a dishonored draft is presented for payment to the drawer or an indorser or any item is
43 presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining
44 payment and a prior transferor of the item warrant to the person making payment in good faith that
45 the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce

1 the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The
2 person making payment may recover from any warrantor for breach of warranty an amount equal
3 to the amount paid plus expenses and loss of interest resulting from the breach.

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

8 “(6) A claim for relief for breach of warranty under this section accrues when the claimant has
9 reason to know of the breach.

10 “(7) A demand draft is a check, as defined in ORS 73.0104 (6).

11 “(8) If the warranty in subsection (1)(d) of this section is not given by a transferor under appli-
12 cable conflict of law rules, then the warranty is not given to that transferor when that transferor
13 is a transferee.

14 “**NOTE:** Corrects statutory reference in (3).”
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