

2003 SENATE BILL 53

February 26, 2003 – Introduced by Senators SCHULTZ, ERPENBACH, KEDZIE, ROBSON, S. FITZGERALD, M. MEYER, ROESSLER, KANAVAS, STEPP and HANSEN, cosponsored by Representatives JESKEWITZ, MONTGOMERY, RICHARDS, KERKMAN, FRISKE, MUSSER, VAN ROY, KRAWCZYK, LADWIG, STONE, ALBERS, FREESE, BIES, KESTELL, TOWNSEND, J. WOOD, BALOW, HINES, SERATTI, LASSA, SHILLING, HUNDERTMARK, HUBER, TOWNS, WIECKERT and McCORMICK. Referred to Committee on Agriculture, Financial Institutions and Insurance.

1 **AN ACT** *to amend* 403.104 (6); and *to create* 403.103 (2) (hr), 403.104 (11),
 2 403.416 (1) (f), 403.417 (1) (d), 404.104 (3) (fe), 404.207 (1) (f) and 404.208 (1)
 3 (d) of the statutes; **relating to:** regulating the negotiation and collection of
 4 demand drafts.

Analysis by the Legislative Reference Bureau

This bill regulates the negotiation and collection of demand drafts. A demand draft is generally an instrument, similar to a check, which is created by a third party, often a merchant, under the purported authority of another person for the purpose of charging that person's account at a bank, savings and loan, credit union, or other banking institution (bank). Like a check, a demand draft contains the routing and account numbers necessary to route the demand draft through a bank's check clearing system. Unlike a check, though, a demand draft does not contain the signature of the account holder. Rather, it typically contains a statement such as "No signature required" or "Authorization on file."

Under Articles 3 and 4 of the Uniform Commercial Code (UCC), as enacted in this state, a demand draft is treated like a check. Thus, in order to be effective, a demand draft generally must be authenticated by the account holder, through the use of a signature or any other word, mark, or symbol executed or adopted by the account holder. The UCC imposes certain warranties with regard to this authentication. For example, when the third party that created the demand draft deposits it with his or her bank, the third party warrants that all signatures, words, marks, or symbols used to authenticate the demand draft are authentic and

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authorized. The same warranty applies to any bank that subsequently handles the demand draft for collection, other than the account holder's bank. When the account holder's bank pays or accepts the demand draft, the person obtaining payment or acceptance warrants to the bank that the person has no knowledge that the signature of the account holder is unauthorized. The UCC permits the account holder's bank to charge the amount of a demand draft against the relevant account if, among other things, the demand draft is authorized by the account holder. In addition, the UCC requires the account holder to examine its bank statements in order to determine whether any payment by the bank was improper as a result of an unauthorized authentication.

This bill incorporates into the UCC additional warranties that apply specifically to demand drafts. Under this bill, a person who transfers a demand draft for consideration or who obtains payment for a demand draft from the account holder's bank warrants that the account holder authorized the creation of the demand draft according to the terms on its face. In addition, under the bill, when the third party that created the demand draft deposits it with his or her bank, the third party warrants that the account holder authorized the creation of the demand draft according to the terms on its face. The same warranty applies to any bank that subsequently handles the demand draft for collection, other than the account holder's bank.

The acceptance of demand drafts by certain telemarketers is currently regulated under federal law and rules of the Department of Agriculture, Trade and Consumer Protection. This bill has no effect on those regulations and rules.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 403.103 (2) (hr) of the statutes is created to read:

2 403.103 **(2)** (hr) "Demand draft" — s. 403.104 (11).

3 **SECTION 2.** 403.104 (6) of the statutes is amended to read:

4 403.104 **(6)** "Check" means a draft, other than a documentary draft, payable
5 on demand and drawn on a bank or means a cashier's check or, teller's check, or
6 demand draft. An instrument may be a check even though it is described on its face
7 by another term, such as money order.

8 **SECTION 3.** 403.104 (11) of the statutes is created to read:

9 403.104 **(11)** (a) Except as provided under par. (b), "demand draft" means a
10 writing that is not signed by a customer, as defined in s. 404.104 (1) (e), that is created

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1 by a 3rd party under the purported authority of the customer for the purpose of
2 charging the customer's account with a bank, that contains the account number of
3 that account, and that contains at least one of the following:

4 1. The customer's name.

5 2. A notation that the customer authorized the demand draft.

6 3. The statement "No signature required," "Authorization on file," or
7 "Signature on file," or words to that effect.

8 (b) "Demand draft" does not include a check drawn by a fiduciary, as defined
9 in s. 403.307 (1) (a).

10 **SECTION 4.** 403.416 (1) (f) of the statutes is created to read:

11 403.416 (1) (f) If the instrument is a demand draft, the creation of the
12 instrument according to the terms on its face was authorized by the person identified
13 as the drawer.

14 **SECTION 5.** 403.417 (1) (d) of the statutes is created to read:

15 403.417 (1) (d) If the instrument is a demand draft, the creation of the
16 instrument according to the terms on its face was authorized by the person identified
17 as the drawer.

18 **SECTION 6.** 404.104 (3) (fe) of the statutes is created to read:

19 404.104 (3) (fe) "Demand draft" — s. 403.104 (11).

20 **SECTION 7.** 404.207 (1) (f) of the statutes is created to read:

21 404.207 (1) (f) If the item is a demand draft, the creation of the item according
22 to the terms on its face was authorized by the person identified as the drawer.

23 **SECTION 8.** 404.208 (1) (d) of the statutes is created to read:

