

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1162  
By: Carona  
Economic Development  
4-2-97  
Committee Report (Substituted)

### **DIGEST**

Currently, demand drafts are being used by merchants, telemarketers and out-of-state collection agencies as a way of directly debiting a consumer's bank account without the consumer writing a check. Because of the volume of such transactions banks cannot determine which drafts are authorized, and so the bank typically pays these drafts. This bill would allow a bank that pays an unauthorized demand draft to return it to the originating bank or other financial institution for restitution.

### **PURPOSE**

As proposed, C.S.S.B. 1162 allows a bank that pays an unauthorized demand draft to return it to the originating bank or other financial institution for restitution.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 3.103(b), Business & Commerce Code, to provide that the definition of demand draft in Section 3.104, Business & Commerce Code, applies to this chapter.

SECTION 2. Amends Section 3.014, Business & Commerce Code, to define "demand draft."

SECTION 3. Amends Section 3.416, Business & Commerce Code, by amending Subsection (a) and adding Subsection (e), to provide that a person warrants that the creation of the instrument according to the terms on its face was authorized by the person identified as drawer, if the instrument is a demand draft. Provides that if the warranty in Subsection (a)(6) is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when the transferor is a transferee.

SECTION 4. Amends Section 3.417, Business & Commerce Code, to provide that certain persons warrant to the drawee making payment or accepting the draft in good faith that if the instrument is a demand draft, the creation of the draft according to the terms on its face was authorized by the person identified as drawer. Provides that if the warranty under Subsection (a)(4) is not given by a transferor under applicable conflict of laws rules, the warranty is not given to that transferor when that transferor is a transferee.

SECTION 5. Amends Section 4.207, Business & Commerce Code, by amending Subsection (a) and adding Subsection (f), to provide that if the warranty under Subsection (a)(6) is not given by a transferor or collecting bank under applicable conflict of law rules, a warranty is not given to that transferor when that transferor is a transferee or to any prior collecting bank of that transferee. Makes a conforming change.

SECTION 6. Amends Section 4.208, Business and Commerce Code, to make conforming changes.

SECTION 7. Effective date: September 1, 1997.

SECTION 8. Emergency clause.

**SUMMARY OF COMMITTEE CHANGES**

SECTION 2.

Amends Section 3.014, Business & Commerce Code, to define "demand draft."

SECTION 4.

Amends Section 3.417, Business & Commerce Code, to delete a provision that a demand draft is a check.

SECTION 6.

Amends Section 4.208, Business & Commerce Code, to make conforming changes.