

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 355**

1 On page 1 of the printed bill, line 4, after “40.210,” insert “73.0417,
2 74.2080.”.

3 On page 19, after line 22, insert:

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

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

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

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

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

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

18 “(2) A drawee making payment may recover from any warrantor damages
19 for breach of warranty equal to the amount paid by the drawee less the
20 amount the drawee received or is entitled to receive from the drawer because
21 of the payment. In addition, the drawee is entitled to compensation for ex-

1 penses and loss of interest resulting from the breach. The right of the drawee
2 to recover damages under this subsection is not affected by any failure of the
3 drawee to exercise ordinary care in making payment. If the drawee accepts
4 the draft, breach of warranty is a defense to the obligation of the acceptor.
5 If the acceptor makes payment with respect to the draft, the acceptor is en-
6 titled to recover from any warrantor for breach of warranty the amounts
7 stated in this subsection.

8 “(3) If a drawee asserts a claim for breach of warranty under subsection
9 (1) of this section based on an unauthorized indorsement of the draft or an
10 alteration of the draft, the warrantor may defend by proving that the
11 indorsement is effective under ORS 73.0404 or 73.0405 or the drawer is pre-
12 cluded under ORS [73.0405] **73.0406** or 74.4060 from asserting against the
13 drawee the unauthorized indorsement or alteration.

14 “(4) If a dishonored draft is presented for payment to the drawer or an
15 indorser or any other instrument is presented for payment to a party obliged
16 to pay the instrument, and payment is received, the following rules apply:

17 “(a) The person obtaining payment and a prior transferor of the instru-
18 ment warrant to the person making payment in good faith that the warrantor
19 is, or was, at the time the warrantor transferred in the instrument, a person
20 entitled to enforce the instrument or authorized to obtain payment on behalf
21 of a person entitled to enforce the instrument.

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

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

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

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

4 “(8) If the warranty in subsection (1)(d) of this section is not given by a
5 transferor under applicable conflict of law rules, then the warranty is not
6 given to that transferor when that transferor is a transferee.

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

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

9 “74.2080. (1) If an unaccepted draft is presented to the drawee for payment
10 or acceptance and the drawee pays or accepts the draft, the person obtaining
11 payment or acceptance, at the time of presentment, and a previous transferor
12 of the draft, at the time of transfer, warrant to the drawee that pays or ac-
13 cepts the draft in good faith that:

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

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

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

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

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

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

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

4 “(3) If a drawee asserts a claim for breach of warranty under subsection
5 (1) of this section based on an unauthorized indorsement of the draft or an
6 alteration of the draft, the warrantor may defend by proving that the
7 indorsement is effective under ORS 73.0404 or 73.0405 or the drawer is pre-
8 cluded under ORS [~~73.0405~~] **73.0406** or 74.4060 from asserting against the
9 drawee the unauthorized indorsement or alteration.

10 “(4) If a dishonored draft is presented for payment to the drawer or an
11 indorser or any item is presented for payment to a party obliged to pay the
12 item, and the item is paid, the person obtaining payment and a prior
13 transferor of the item warrant to the person making payment in good faith
14 that the warrantor is, or was, at the time the warrantor transferred the item,
15 a person entitled to enforce the item or authorized to obtain payment on
16 behalf of a person entitled to enforce the item. The person making payment
17 may recover from any warrantor for breach of warranty an amount equal to
18 the amount paid plus expenses and loss of interest resulting from the breach.

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

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

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

28 “(8) If the warranty in subsection (1)(d) of this section is not given by a
29 transferor under applicable conflict of law rules, then the warranty is not
30 given to that transferor when that transferor is a transferee.

1 **NOTE:** Corrects statutory reference in (3).
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