

ASSEMBLY, No. 605

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen LUSTBADER and BATEMAN

1 AN ACT concerning certain negotiable instruments, supplementing  
2 chapter 3 of Title 12A of the New Jersey Statutes and amending  
3 N.J.S.3B:14-58.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

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8 1. (New section) 12A:3-312. Lost, Destroyed, or Stolen Cashier's  
9 Check, Teller's Check or Certified Check.

10 a. In this section:

11 (1) "Check" means a cashier's check, teller's check, or certified  
12 check.

13 (2) "Claimant" means a person who claims the right to receive the  
14 amount of a cashier's check, teller's check, or certified check that was  
15 lost, destroyed, or stolen.

16 (3) "Declaration of loss" means a written statement, made under  
17 penalty of perjury, to the effect that: the declarer lost possession of a  
18 check; the declarer is the drawer or payee of the check, in the case of  
19 a certified check, or the remitter or payee of the check, in the case of  
20 a cashier's check or teller's check; the loss of possession was not the  
21 result of a transfer by the declarer or a lawful seizure; and the declarer  
22 cannot reasonably obtain possession of the check because the check  
23 was destroyed, its whereabouts cannot be determined, or it is in the  
24 wrongful possession of an unknown person or a person that cannot be  
25 found or is not amenable to service of process.

26 (4) "Obligated bank" means the issuer of a cashier's check, teller's  
27 check or the acceptor of a certified check.

28 b. A claimant may assert a claim to the amount of a check by a  
29 communication to the obligated bank describing the check with  
30 reasonable certainty and requesting payment of the amount of the  
31 check, if: the claimant is the drawer or payee of a certified check or  
32 the remitter or payee of a cashier's check or a teller's check; the

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 communication contains or is accompanied by a declaration of loss of  
2 the claimant with respect to the check; the communication is received  
3 at a time and in a manner affording the bank a reasonable time to act  
4 on it before the check is paid; and the claimant provides reasonable  
5 identification if requested by the obligated bank. Delivery of a  
6 declaration of loss is a warranty of the truth of the statements made in  
7 the declaration. If a claim is asserted in compliance with this  
8 subsection, the following rules apply:

9 (1) The claim becomes enforceable at the later of the time the claim  
10 is asserted, or the 90th day following the date of the check, in the case  
11 of a cashier's check or a teller's check, or the 90th day following the  
12 date of the acceptance, in the case of a certified check.

13 (2) Until the claim becomes enforceable, it has no legal effect and  
14 the obligated bank may pay the check or, in the case of a teller's check,  
15 may permit the drawee to pay the check. Payment to a person entitled  
16 to enforce the check discharges all liability of the obligated bank with  
17 respect to the check.

18 (3) If the claim becomes enforceable before the check is presented  
19 for payment, the obligated bank is not obliged to pay the check.

20 (4) When the claim becomes enforceable, the obligated bank  
21 becomes obliged to pay the amount of the check to the claimant if  
22 payment of the check has not been made to a person entitled to  
23 enforce the check. Subject to paragraph (1) of subsection a. of  
24 12A:4-302, payment to the claimant discharges all liability of the  
25 obligated bank with respect to the check.

26 c. If the obligated bank pays the amount of a check to a claimant  
27 under paragraph (4) of subsection b. of this section and the check is  
28 presented for payment by a person having rights of a holder in due  
29 course, the claimant is obliged to refund the payment to the obligated  
30 bank if the check is paid, or pay the amount of the check to the person  
31 having rights of a holder in due course if the check is dishonored.

32 d. If a claimant has the right to assert a claim under subsection b.  
33 of this section and is also a person entitled to enforce a cashier's  
34 check, teller's check, or certified check which is lost, destroyed, or  
35 stolen, the claimant may assert rights with respect to the check either  
36 under this section or 12A:3-309.

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38 2. N.J.S.3B:14-58 is amended to read as follows:

39 3B:14-58. Deposit in fiduciary's personal account; liability of bank  
40 receiving deposit and paying checks.

41 a. If a fiduciary makes a deposit in a bank to his personal credit of  
42 checks drawn by him upon an account in his own name as fiduciary, or  
43 of checks drawn by him upon an account in the name of his principal,  
44 if he is empowered to draw thereon, or, except as provided in  
45 subsection b. of this section, if he otherwise makes a deposit of funds  
46 held by him as fiduciary, the bank receiving the deposit is not bound

1 to inquire whether the fiduciary is committing thereby a breach of his  
2 obligation as fiduciary. The bank is authorized to pay the amount of  
3 the deposit of any part thereof upon the personal check of the  
4 fiduciary without being liable to the principal, unless the bank receives  
5 the deposit or pays the check with actual knowledge that the fiduciary  
6 is committing a breach of his obligation as fiduciary in making the  
7 deposit or in drawing the check, or with knowledge of facts that its  
8 action in receiving the deposit of paying the check amounts to bad  
9 faith.

10 b. In the case of an instrument payable to the principal or the  
11 fiduciary as fiduciary, the bank has notice of the breach of fiduciary  
12 duty if the instrument is deposited to [an account of the principal or]  
13 an account other than an account of the fiduciary, as fiduciary, or an  
14 account of the principal.

15 (cf: P.L.1995, c.28, s.11)

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17 3. This act shall take effect immediately

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#### STATEMENT

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22 This bill adds a section to New Jersey's Uniform Commercial Code  
23 - Negotiable Instruments, Chapter 3 of Title 12A of the New Jersey  
24 Statutes. This section clarifies the rights and obligations of a claimant  
25 and an obligated bank in cases in which a cashier's check, teller's  
26 check, or certified check is lost, destroyed or stolen.

27 In addition, the bill amends N.J.S.3B:14-58 with a correction to the  
28 text as it was enacted in P.L.1995, c.28. It clarifies the conditions  
29 under which a bank has notice of a breach of fiduciary duty with  
30 respect to a deposit of an instrument made payable to the fiduciary as  
31 fiduciary or the principal.

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36 Concerns loss claims and notice of breach of fiduciary duty with  
37 respect to certain negotiable instruments.