

12A:3-312

LEGISLATIVE HISTORY CHECKLIST
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(Lost Bank Checks)

NJSA: 12A:3-312

LAWS OF: 1996 CHAPTER: 134

BILL NO: A605

SPONSOR(S): Lustbader and Bateman

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Financial Institutions
SENATE: State Management

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: May 2, 1996
SENATE: October 24, 1996

DATE OF APPROVAL: December 5, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

P.L. 1996, CHAPTER 134, *approved December 5, 1996*
Assembly, No. 605

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.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
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
33 communication contains or is accompanied by a declaration of loss of

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

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

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

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

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

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

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

36
37 2. N.J.S.3B:14-58 is amended to read as follows:

38 3B:14-58. Deposit in fiduciary's personal account; liability of bank
39 receiving deposit and paying checks.

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

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

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

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

15

16 3. This act shall take effect immediately

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19

20

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

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20 STATEMENT
21

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

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 605

STATE OF NEW JERSEY

DATED: FEBRUARY 15, 1996

The Assembly Financial Institutions Committee reports favorably Assembly Bill No. 605.

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

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

This bill was pre-filed for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE STATE MANAGEMENT, INVESTMENT AND
FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 605

STATE OF NEW JERSEY

DATED: JUNE 6, 1996

The Senate State Management, Investment and Financial Institutions Committee reports favorably Assembly Bill No. 605.

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

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