

## ACT 33

H.B. NO. 1717

A Bill for an Act Relating to Negotiable Instruments.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Article 3 of the uniform commercial code was repealed and replaced by Act 118, Session Laws of Hawaii 1991, effective January 1, 1992. However, section 708-857 of the Hawaii penal code, relating to the negotiation of worthless negotiable instruments, contains several cross-references to the old version of article 3. The purpose of this Act is to update these obsolete cross-references to article 3 contained in that section, retroactive to the effective date of the repeal and replacement of that article.

This Act replaces each of the cross-references contained in section 708-856 by direct substitution of the new reference contained in article 3, except for the reference to section 490:3-503 contained in section 708-857(2)(b), regarding a reasonable time for presentment with respect to the liability of a drawer. This reference is deleted since the new version of article 3 does not specifically carry over the reasonable time provisions. Instead, a thirty-day period of time for presentment for payment by a drawer is inserted in place of the obsolete cross-reference since: (1) the presumed reasonable period under the old version of section 490:3-503(2)(a) was thirty days after date or issue, whichever was later, for uncertified checks drawn and payable within the United States and which are not drafts drawn by a bank; and (2) a thirty-day time period for presentment by a drawer is also contained in new section 490:3-414(f)(i) with respect to checks, other than cashier's checks or other drafts drawn on the drawer.

SECTION 2. Section 708-857, Hawaii Revised Statutes, is amended by amending subsections (1), (2), and (3) to read as follows:

“(1) A person commits the offense of negotiating a worthless negotiable instrument if [he] that person intentionally issues or negotiates a negotiable instrument knowing that it will not be honored by the maker or drawee.

(2) For the purpose of this section, as well as in any prosecution for theft committed by means of a worthless negotiable instrument, either of the following

## ACT 33

shall be prima facie evidence that the drawer knew that the negotiable instrument would not be honored upon presentation:

- (a) The drawer had no account with the drawee at the time the negotiable instrument was negotiated; or
- (b) Payment was refused by the drawee for lack of funds upon presentation within [a reasonable time] thirty days after [negotiation or delivery, as determined according to section 490:3-503,] date or issue, whichever is later, and the drawer failed to make good within ten days after actual receipt of a notice of dishonor, as defined in section [490:3-508.] 490:3-503.
- (3) The definitions of the following terms shall apply to this section:
  - (a) "Issue" as defined in section [490:3-102;] 490:3-105;
  - (b) "Negotiable instrument" as defined in section 490:3-104;
  - (c) "Negotiation" as defined in section [490:3-202.] 490:3-201."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 15, 1993.)