

HOUSE No. 33

So much of the recommendations of the Commission on Uniform State Laws (House, No. 31) as relates to making amendments to the Uniform Commercial Code covering provisions dealing with negotiable instruments and bank deposits and collections. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court

(-)

An Act making amendments to the Uniform Commercial Code covering provisions dealing with negotiable instruments and bank deposits and collections.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 3-103(a) of chapter 106 of the General Laws is hereby amended by
2 striking the definition out of the definition of “good faith”, by inserting the following definitions
3 in alphabetical order and by renumbering all of the definitions in numerical order:--

4 (2) “Consumer account” means an account established by an individual primarily for
5 personal, family, or household purposes.

6 (3) “Consumer transaction” means a transaction in which an individual incurs an
7 obligation primarily for personal, family, or household purposes.

8 (10) “Principal obligor,” with respect to an instrument, means the accommodated party or
9 any other party to the instrument against whom a secondary obligor has recourse under this
10 Article.

11 (13) "Record" means information that is inscribed on a tangible medium or that is stored
12 in an electronic or other medium and is retrievable in perceivable form.

13 (15) "Remotely-created consumer item" means an item drawn on a consumer account,
14 which is not created by the payor bank and does not bear a handwritten signature purporting to
15 be the signature of the drawer.

16 (16) "Secondary obligor," with respect to an instrument, means (i) an indorser or an
17 accommodation party, (ii) a drawer having the obligation described in Section 3-414(d), or (iii)
18 any other party to the instrument that has recourse against another party to the instrument
19 pursuant to Section 3-116(b).

20 SECTION 2. Section 3-103(b) of said chapter 106 is hereby amended by inserting a
21 reference to a definition for "Account" which appears in "Section 4-104".

22 SECTION 3. Section 3-106 of said chapter 106 is hereby amended by striking out the
23 word "writing" wherever it appears in that Section and by inserting in each place thereof the
24 following word:-- "record".

25 SECTION 4. Section 3-116(b) of said chapter 106 is hereby amended by striking out the
26 words "3-419(e)" in that Section and by inserting in place thereof the following words:-- "3-
27 419(f)".

28 SECTION 5. Section 3-116(c) of said chapter 106 is hereby repealed.

29 SECTION 6. Section 3-119 of said chapter 106 is hereby amended by striking out the
30 word "written" in that Section and by inserting, after the word "litigation", the following words:-
31 - "in a record".

32 SECTION 7. Section 3-305(a) of said chapter 106 is hereby amended by striking out the
33 words “stated in subsection (b)” in that Section and by inserting in place thereof the following
34 words:-- “otherwise provided in this section”.

35 SECTION 8. Section 3-305 of said chapter 106 is hereby amended by inserting the
36 following new subsections at the end of Section 3-305:--

37 (e) In a consumer transaction, if law other than this Article requires that an instrument
38 include a statement to the effect that the rights of a holder or transferee are subject to a claim or
39 defense that the issuer could assert against the original payee and the instrument does not include
40 such a statement:

41 (1) the instrument has the same effect as if the instrument included such a statement;

42 (2) the issuer may assert against the holder or transferee all claims and defenses that
43 would have been available if the instrument included such a statement; and

44 (3) the extent to which the claims may be asserted against the holder or transferee is
45 determined as if the instrument included such a statement.

46 (f) This section is subject to law other than this Article which establishes a different rule
47 for consumer transactions.

48 SECTION 9. Said chapter 106 is hereby amended by striking out Section 3-309(a), and
49 inserting in place thereof the following Section:--

50 (a) A person not in possession of an instrument is entitled to enforce the instrument if:

51 (1) the person seeking to enforce the instrument:

52 (A) was entitled to enforce the instrument when loss of possession occurred; or

53 (B) has directly or indirectly acquired ownership of the instrument from a person that was
54 entitled to enforce the instrument when loss of possession occurred;

55 (2) the loss of possession was not the result of a transfer by the person or a lawful seizure;
56 and

57 (3) the person cannot reasonably obtain possession of the instrument because the
58 instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful
59 possession of an unknown person or a person that cannot be found or is not amenable to service
60 of process.

61 SECTION 10. Section 3-312(a)(3) of said chapter 106 is hereby amended by striking out
62 the word “written” in that Section and by inserting, after the word “made”, the following words:-
63 - “in a record”.

64 SECTION 11. Section 3-416(a) of said chapter 106 is hereby amended by striking out the
65 word “and” after the word “warrantor;” in subsection (4), by striking out the period at the end of
66 subsection (5), by inserting in place thereof the following:-- “; and” and by inserting the
67 following subsection:--

68 (6) with respect to a remotely-created consumer item, that the person on whose account
69 the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

70 SECTION 12. Section 3-416 of said chapter 106 is hereby further amended by inserting
71 the following subsection at the end of Section 3-416:--

72 (e) A claim for breach of the warranty in subsection (a)(6) is available against a previous
73 transferor of the item only to the extent that under applicable law (including the applicable
74 choice-of-law principle) all previous transferors of the item made the warranty in subsection
75 (a)(6).

76 SECTION 13. Section 3-417(a) of said chapter 106 is hereby amended by striking out the
77 word “and” after the word “altered;” in subsection (2), by striking out the period at the end of
78 subsection (3), by inserting in place thereof the following:-- “; and” and by inserting the
79 following subsection:--

80 (4) with respect to any remotely-created consumer item, that the person on whose account
81 the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

82 SECTION 14. Section 3-417 of said chapter 106 is hereby further amended by inserting
83 the following subsection at the end of Section 3-417:--

84 (g) A claim for breach of the warranty in subsection (a)(4) is available against a previous
85 transferor of the item only to the extent that under applicable law (including the applicable
86 choice-of-law principle) all previous transferors of the item made the warranty in subsection
87 (a)(4).

88 SECTION 15. Section 3-419 of said chapter 106 is hereby amended by striking out
89 subsection (e) and by inserting the following new subsections at the end of Section 3-419:--

90 (e) If the signature of a party to an instrument is accompanied by words indicating that
91 the party guarantees payment or the signer signs the instrument as an accommodation party in
92 some other manner that does not unambiguously indicate an intention to guarantee collection

93 rather than payment, the signer is obliged to pay the amount due on the instrument to a person
94 entitled to enforce the instrument in the same circumstances as the accommodated party would
95 be obliged, without prior resort to the accommodated party by the person entitled to enforce the
96 instrument.

97 (f) An accommodation party who pays the instrument is entitled to reimbursement from
98 the accommodated party and is entitled to enforce the instrument against the accommodated
99 party. In proper circumstances, an accommodation party may obtain relief that requires the
100 accommodated party to perform its obligations on the instrument. An accommodated party that
101 pays the instrument has no right of recourse against, and is not entitled to contribution from, an
102 accommodation party.

103 SECTION 16. Said chapter 106 is hereby amended by striking out Section 3-602, and
104 inserting in place thereof the following Section:--

105 SECTION 3-602. PAYMENT.

106 (a) Subject to subsection (e), an instrument is paid to the extent payment is made by or on
107 behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument.

108 (b) Subject to subsection (e), a note is paid to the extent payment is made by or on behalf
109 of a party obliged to pay the note to a person that formerly was entitled to enforce the note only
110 if at the time of the payment the party obliged to pay has not received adequate notification that
111 the note has been transferred and that payment is to be made to the transferee. A notification is
112 adequate only if it is signed by the transferor or the transferee, reasonably identifies the
113 transferred note, and provides an address at which payments subsequently are to be made. Upon
114 request, a transferee shall seasonably furnish reasonable proof that the note has been transferred.

115 Unless the transferee complies with the request, a payment to the person that formerly was
116 entitled to enforce the note is effective for purposes of subsection (c) even if the party obliged to
117 pay the note has received a notification under this subsection.

118 (c) Subject to subsection (e), to the extent of a payment under subsections (a) and (b), the
119 obligation of the party obliged to pay the instrument is discharged even if payment is made with
120 knowledge of a claim to the instrument under Section 3-306 by another person.

121 (d) Subject to subsection (e), a transferee, or any party that has acquired rights in the
122 instrument directly or indirectly from a transferee, including a party that has rights as a holder in
123 due course, is deemed to have notice of any payment that is made under subsection (b) after the
124 note is transferred to the transferee but before the party obliged to pay the note receives adequate
125 notification of the transfer.

126 (e) The obligation of a party to pay an instrument is not discharged under subsections (a)
127 through (d) if:

128 (1) a claim to the instrument under Section 3-306 is enforceable against the party
129 receiving payment and (i) payment is made with knowledge by the payor that payment is
130 prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case
131 of an instrument other than a cashier's check, teller's check, or certified check, the party making
132 payment accepted, from the person having a claim to the instrument, indemnity against loss
133 resulting from refusal to pay the person entitled to enforce the instrument; or

134 (2) the person making payment knows that the instrument is a stolen instrument and pays
135 a person it knows is in wrongful possession of the instrument.

136 (f) In this section, "signed," with respect to a record that is not a writing, includes the
137 attachment to or logical association with the record of an electronic symbol, sound, or process
138 with the present intent to adopt or accept the record.

139 SECTION 17. Section 3-604(a) of said chapter 106 is hereby amended by striking out the
140 word "writing" in that Section and by inserting in place thereof the following word:-- "record".

141 SECTION 18. Section 3-604 of said chapter 106 is hereby amended by inserting the
142 following new subsection at the end of Section 3-604:--

143 (c) As used in this section, "signed" with respect to a record that is not a writing, includes
144 the attachment to or logical association with the record of an electronic symbol, sound, or
145 process with the present intent to adopt or accept the record.

146 SECTION 19. Said chapter 106 is hereby amended by striking out Section 3-605, and
147 inserting in place thereof the following Section:--

148 SECTION 3-605. DISCHARGE OF SECONDARY OBLIGORS.

149 (a) If a person entitled to enforce an instrument releases the obligation of a principal
150 obligor in whole or in part and another party to the instrument is a secondary obligor with respect
151 to the obligation of that principal obligor, the following rules apply:

152 (1) Any obligations of the principal obligor to the secondary obligor with respect to any
153 previous payment by the secondary obligor are not affected. Unless the terms of the release
154 preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the
155 release, from any other duties to the secondary obligor under this Article.

156 (2) Unless the terms of the release provide that the person entitled to enforce the
157 instrument retains the right to enforce the instrument against the secondary obligor, the
158 secondary obligor is discharged to the same extent as the principal obligor from any unperformed
159 portion of its obligation on the instrument. If the instrument is a check and the obligation of the
160 secondary obligor is based on an indorsement of the check, the secondary obligor is discharged
161 without regard to the language or circumstances of the discharge or other release.

162 (3) If the secondary obligor is not discharged under paragraph (2), the secondary obligor
163 is discharged to the extent of the value of the consideration for the release and to the extent that
164 the release would otherwise cause loss to the secondary obligor.

165 (b) If a person entitled to enforce an instrument grants a principal obligor an extension of
166 the time at which one or more payments are due on the instrument and another party to the
167 instrument is a secondary obligor with respect to the obligation of that principal obligor, the
168 following rules apply:

169 (1) Any obligations of the principal obligor to the secondary obligor with respect to any
170 previous payment by the secondary obligor are not affected. Unless the terms of the extension
171 preserve the secondary obligor's recourse, the extension correspondingly extends the time for
172 performance of any other duties owed to the secondary obligor by the principal obligor under
173 this Article.

174 (2) The secondary obligor is discharged to the extent that the extension would otherwise
175 cause loss to the secondary obligor.

176 (3) To the extent that the secondary obligor is not discharged under paragraph (2), the
177 secondary obligor may perform its obligations to a person entitled to enforce the instrument as if

178 the time for payment had not been extended or, unless the terms of the extension provide that the
179 person entitled to enforce the instrument retains the right to enforce the instrument against the
180 secondary obligor as if the time for payment had not been extended, treat the time for
181 performance of its obligations as having been extended correspondingly.

182 (c) If a person entitled to enforce an instrument agrees, with or without consideration, to a
183 modification of the obligation of a principal obligor other than a complete or partial release or an
184 extension of the due date and another party to the instrument is a secondary obligor with respect
185 to the obligation of that principal obligor, the following rules apply:

186 (1) Any obligations of the principal obligor to the secondary obligor with respect to any
187 previous payment by the secondary obligor are not affected. The modification correspondingly
188 modifies any other duties owed to the secondary obligor by the principal obligor under this
189 Article.

190 (2) The secondary obligor is discharged from any unperformed portion of its obligation to
191 the extent that the modification would otherwise cause loss to the secondary obligor.

192 (3) To the extent that the secondary obligor is not discharged under paragraph (2), the
193 secondary obligor may satisfy its obligation on the instrument as if the modification had not
194 occurred or treat its obligation on the instrument as having been modified correspondingly.

195 (d) If the obligation of a principal obligor is secured by an interest in collateral, another
196 party to the instrument is a secondary obligor with respect to that obligation, and a person
197 entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of
198 the secondary obligor is discharged to the extent of the impairment. The value of an interest in
199 collateral is impaired to the extent the value of the interest is reduced to an amount less than the

200 amount of the recourse of the secondary obligor or the reduction in value of the interest causes
201 an increase in the amount by which the amount of the recourse exceeds the value of the interest.
202 For purposes of this subsection, impairing the value of an interest in collateral includes failure to
203 obtain or maintain perfection or recordation of the interest in collateral; release of collateral
204 without substitution of collateral of equal value or equivalent reduction of the underlying
205 obligation; failure to perform a duty to preserve the value of collateral owed, under Article 9 or
206 other law, to a debtor or other person secondarily liable; and failure to comply with applicable
207 law in disposing of or otherwise enforcing the interest in collateral.

208 (e) A secondary obligor is not discharged under subsections (a)(3), (b), (c), or (d) unless
209 the person entitled to enforce the instrument knows that the person is a secondary obligor or has
210 notice under Section 3-419(c) that the instrument was signed for accommodation.

211 (f) A secondary obligor is not discharged under this section if the secondary obligor
212 consents to the occurrence or nonoccurrence of the event or conduct that is the basis of the
213 discharge or the instrument or a separate agreement of the party provides for waiver of discharge
214 under this section specifically or by general language indicating that parties waive defenses
215 based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise,
216 consent by the principal obligor to an act that would lead to a discharge under this section
217 constitutes consent to that act by the secondary obligor if the secondary obligor controls the
218 principal obligor or deals with the person entitled to enforce the instrument on behalf of the
219 principal obligor.

220 (g) A release or extension preserves a secondary obligor's recourse if the terms of the
221 release or extension provide that:

222 (1) the person entitled to enforce the instrument retains the right to enforce the instrument
223 against the secondary obligor; and

224 (2) the recourse of the secondary obligor continues as if the release or extension had not
225 been granted.

226 (h) Except as otherwise provided in subsection (i), a secondary obligor asserting
227 discharge under this section has the burden of persuasion both with respect to the occurrence of
228 the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

229 (i) If the secondary obligor demonstrates prejudice caused by an impairment of its
230 recourse and the circumstances of the case indicate that the amount of loss is not reasonably
231 susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that
232 the act impairing recourse caused a loss or impairment equal to the liability of the secondary
233 obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the
234 loss is on the person entitled to enforce the instrument.

235 SECTION 20. Section 4-104(b) of said chapter 106 is hereby amended by striking out
236 the reference to a definition for “bank” and to the definition for “good faith”.

237 SECTION 21. Section 4-104(c) of said chapter 106 is hereby amended by inserting a
238 reference to a definition for “record” which appears in “Section 3-103”, and by inserting a
239 reference to a definition for “remotely-created consumer item” which appears in “Section 3-
240 103”.

241 SECTION 22. Section 4-207(a) of said chapter 106 is hereby amended by striking out the
242 word “and” after the word “warrantor;” in subsection (4), by striking out the period at the end of

243 subsection (5), by inserting in place thereof the following:-- “; and” and by inserting the
244 following subsection:--

245 (6) with respect to any remotely-created consumer item, the person on whose account the
246 item is drawn authorized the issuance of the item in the amount for which the item is drawn.

247 SECTION 23. Section 4-207 of said chapter 106 is hereby further amended by inserting
248 the following subsection at the end of Section 4-207:--

249 (f) A claim for breach of the warranty in subsection (a)(6) is available against a previous
250 transferor of the item only to the extent that under applicable law (including the applicable
251 choice-of-law principle) all previous transferors of the item made the warranty in subsection
252 (a)(6).

253 SECTION 24. Section 4-208(a) of said chapter 106 is hereby amended by striking out the
254 word “and” after the word “altered;” in subsection (2), by striking out the period at the end of
255 subsection (3), by inserting in place thereof the following:-- “; and” and by inserting the
256 following subsection:--

257 (4) with respect to any remotely-created consumer item, the person on whose account the
258 item is drawn authorized the issuance of the item in the amount for which the item is drawn.

259 SECTION 25. Section 4-208 of said chapter 106 is hereby further amended by inserting
260 the following subsection at the end of Section 4-208:--

261 (g) A claim for breach of the warranty in subsection (a)(4) is available against a previous
262 transferor of the item only to the extent that under applicable law (including the applicable

263 choice-of-law principle) all previous transferors of the item made the warranty in subsection
264 (a)(4).

265 SECTION 26. Section 4-212(a) of said chapter 106 is hereby amended by striking out
266 the word “written” in that Section and by inserting in place thereof the following words:--
267 “record providing”.

268 SECTION 27. Section 4-301(a) of said chapter 106 is hereby amended by striking out the
269 word “or” in subsection (1), by striking out subsection (2) and by inserting the following new
270 subsections at the end of Section 4-301(a):--

271 (2) returns an image of the item, if the party to which the return is made has entered into
272 an agreement to accept the an image as a return of the item; and the image is returned in
273 accordance with that agreement; or

274 (3) sends a record providing notice of dishonor or nonpayment if the item is unavailable
275 for return.

276 SECTION 28. Section 4-403(b) of said chapter 106 is hereby amended by striking out the
277 word “writing” wherever it appears in that Section and by inserting in each place thereof the
278 following word:-- “a record”.