

HOUSE No. 29

So much of the recommendations of the Commission on Uniform State Laws (House, No. 26) 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 Year Two Thousand Thirteen

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 inserting the following definitions in alphabetical order and by renumbering all of the definitions
3 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 (6) “Good faith” means honesty in fact and the observance of reasonable commercial
9 standards of fair dealing.

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

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

15 (16) “Remotely-created item” means an item that is not created by the payor bank and
16 does not bear a handwritten signature purporting to be the signature of the drawer.

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

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

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

26 SECTION 4. Section 3-116(b) of said chapter 106 is hereby amended by striking out the words
27 “3-419(e)” in that Section and by inserting in place thereof the following words:-- “3-419(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 word
30 “written” in that Section and by inserting, after the word “litigation”, the following words:-- “in a
31 record”.

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

35 SECTION 8. Section 3-305 of said chapter 106 is hereby amended by inserting the following
36 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 would have
43 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 determined
45 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 inserting
49 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; and

56 (3) the person cannot reasonably obtain possession of the instrument because the instrument was

57 destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an

58 unknown person or a person that cannot be found or is not amenable to service of process.

59 SECTION 10. Section 3-312(a)(3) of said chapter 106 is hereby amended by striking out the

60 word “written” in that Section and by inserting, after the word “made”, the following words:--

61 “in a record”.

62 SECTION 11. Section 3-416(a) of said chapter 106 is hereby amended by striking out the word

63 “and” after the word “warrantor;” in subsection (4), by striking out the period at the end of

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

65 following subsection:--

66 (6) with respect to a remotely-created item, the person on whose account the item is

67 drawn authorized the issuance of the item in the amount for which the item is drawn.

68 SECTION 12. Section 3-416 of said chapter 106 is hereby further amended by inserting the

69 following subsection at the end of Section 3-416:--

70 (e) A claim for breach of the warranty in subsection (a)(6) is available against a previous

71 transferor of the item only to the extent that under applicable law (including the applicable

72 choice-of-law principle) all previous transferors of the item made the warranty in subsection
73 (a)(6).

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

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

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

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

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

88 (e) If the signature of a party to an instrument is accompanied by words indicating that
89 the party guarantees payment or the signer signs the instrument as an accommodation party in
90 some other manner that does not unambiguously indicate an intention to guarantee collection
91 rather than payment, the signer is obliged to pay the amount due on the instrument to a person
92 entitled to enforce the instrument in the same circumstances as the accommodated party would

93 be obliged, without prior resort to the accommodated party by the person entitled to enforce the
94 instrument.

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

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

103 SECTION 3-602. PAYMENT.

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

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

114 entitled to enforce the note is effective for purposes of subsection (c) even if the party obliged to
115 pay the note has received a notification under this subsection.

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

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

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

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

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

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

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

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

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

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

146 SECTION 3-605. DISCHARGE OF SECONDARY OBLIGORS.

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

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

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

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

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

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

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

173 (3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary
174 obligor may perform its obligations to a person entitled to enforce the instrument as if the time
175 for payment had not been extended or, unless the terms of the extension provide that the person

176 entitled to enforce the instrument retains the right to enforce the instrument against the secondary
177 obligor as if the time for payment had not been extended, treat the time for performance of its
178 obligations as having been extended correspondingly.

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

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

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

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

191 (d) If the obligation of a principal obligor is secured by an interest in collateral, another party to
192 the instrument is a secondary obligor with respect to that obligation, and a person entitled to
193 enforce the instrument impairs the value of the interest in collateral, the obligation of the
194 secondary obligor is discharged to the extent of the impairment. The value of an interest in
195 collateral is impaired to the extent the value of the interest is reduced to an amount less than the
196 amount of the recourse of the secondary obligor or the reduction in value of the interest causes
197 an increase in the amount by which the amount of the recourse exceeds the value of the interest.

198 For purposes of this subsection, impairing the value of an interest in collateral includes failure to
199 obtain or maintain perfection or recordation of the interest in collateral; release of collateral
200 without substitution of collateral of equal value or equivalent reduction of the underlying
201 obligation; failure to perform a duty to preserve the value of collateral owed, under Article 9 or
202 other law, to a debtor or other person secondarily liable; and failure to comply with applicable
203 law in disposing of or otherwise enforcing the interest in collateral.

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

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

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

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

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

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

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

231 SECTION 20. Section 4-104(b) of said chapter 106 is hereby amended by striking out the
232 reference to a definition for "Bank".

233 SECTION 21. Section 4-104(c) of said chapter 106 is hereby amended by inserting a reference
234 to a definition for "Record" which appears in "Section 3-103", and by inserting a reference to a
235 definition for "Remotely-created item" which appears in "Section 3-103".

236 SECTION 22. Section 4-207(a) of said chapter 106 is hereby amended by striking out the word
237 "and" after the word "warrantor;" in subsection (4), by striking out the period at the end of
238 subsection (5), by inserting in place thereof the following:-- "; and" and by inserting the
239 following subsection:--

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

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

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

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

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

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

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

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

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

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

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

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