

# MAINE STATE LEGISLATURE

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*M*  
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L.D. 1786

DATE: 3-17-04

(Filing No. H-772)

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**JUDICIARY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
121ST LEGISLATURE  
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1308, L.D. 1786, Bill, "An Act Making Amendments to the Uniform Commercial Code Covering Provisions Dealing with Negotiable Instruments and Bank Deposits and Collections"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 11 MRSA §3-1103, sub-§(2), as enacted by PL 1993, c. 293, Pt. A, §2, is amended to read:

(2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	Section 3-1409
"Accommodated party"	Section 3-1419
"Accommodation party"	Section 3-1419
"Alteration"	Section 3-1407
"Anomalous indorsement"	Section 3-1205
"Blank indorsement"	Section 3-1205
"Cashier's check"	Section 3-1104
"Certificate of deposit"	Section 3-1104
"Certified check"	Section 3-1409
"Check"	Section 3-1104
"Consideration"	Section 3-1303
<u>"Demand draft"</u>	<u>Section 3-1104</u>
"Draft"	Section 3-1104

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2	"Holder in due course"	Section 3-1302
	"Incomplete instrument"	Section 3-1115
	"Indorsement"	Section 3-1204
4	"Indorser"	Section 3-1204
	"Instrument"	Section 3-1104
6	"Issue"	Section 3-1105
	"Issuer"	Section 3-1105
8	"Negotiable instrument"	Section 3-1104
	"Negotiation"	Section 3-1201
10	"Note"	Section 3-1104
	"Payable at a definite time"	Section 3-1108
12	"Payable on demand"	Section 3-1108
	"Payable to bearer"	Section 3-1109
14	"Payable to order"	Section 3-1109
	"Payment"	Section 3-1602
16	"Person entitled to enforce"	Section 3-1301
	"Presentment"	Section 3-1501
18	"Reacquisition"	Section 3-1207
	"Special indorsement"	Section 3-1205
20	"Teller's check"	Section 3-1104
	"Transfer of instrument"	Section 3-1203
22	"Traveler's check"	Section 3-1104
	"Value"	Section 3-1303

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26 **Sec. 2. 11 MRSA §3-1104, sub-§(6),** as enacted by PL 1993, c. 293, Pt. A, §2, is amended to read:

28 (6) "Check" means:

30 (a) A draft, other than a documentary draft, payable on  
demand and drawn on a bank; ~~ex~~

32 (b) A cashier's check or teller's check; or

34 (c) A demand draft.

36 An instrument may be a check even though it is described on its  
38 face by another term, such as "money order."

40 **Sec. 3. 11 MRSA §3-1104, sub-§(11)** is enacted to read:

42 (11) "Demand draft" means a writing not signed by a  
44 customer that is created by a 3rd party under the purported  
46 authority of the customer for the purpose of charging the  
customer's account with a bank. A demand draft must contain the  
customer's account number and may contain any or all of the  
48 following:

50 (a) The customer's printed or typewritten name;

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(b) A notation that the customer authorized the draft; and

(c) The statement "No Signature Required" or words to that effect.

"Demand draft" does not include a check purportedly drawn by and bearing the signature of a fiduciary, as defined in section 3-1307, subsection 1, paragraph (a).

**Sec. 4. 11 MRSA §3-1416, sub-§(1), ¶¶(d) and (e), as enacted by PL 1993, c. 293, Pt. A, §2, are amended to read:**

(d) The instrument is not subject to a defense or claim in recoupment of any party that may be asserted against the warrantor; and

(e) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

**Sec. 5. 11 MRSA §3-1416, sub-§(1), ¶(f) is enacted to read:**

(f) If the instrument is a demand draft, creation of the instrument according to the terms on its face was authorized by the person identified as the drawer.

**Sec. 6. 11 MRSA §3-1416, sub-§(5) is enacted to read:**

(5) If the warranty in subsection (1), paragraph (f) is not given by a transferor under applicable conflict of laws rules, then the warranty is not given to that transferor when that transferor is a transferee.

**Sec. 7. 11 MRSA §3-1417, sub-§(1), as enacted by PL 1993, c. 293, Pt. A, §2, is amended to read:**

(1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, shall warrant to the drawee making payment or accepting the draft in good faith that:

(a) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) The draft has not been altered; and

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2 (c) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

4 (d) If the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as the drawer.

8 **Sec. 8. 11 MRSA §3-1417, sub-§§(7) and (8)** are enacted to read:

10 (7) A demand draft is a check, as provided in section 3-1104, subsection (6).

12 (8) If the warranty in subsection (1), paragraph (d) is not given by a transferor under applicable conflict of laws rules, then the warranty is not given to that transferor when that transferor is a transferee.

18 **Sec. 9. 11 MRSA §4-104, sub-§(3)**, as amended by PL 1993, c. 293, Pt. B, §9, is further amended to read:

20 (3) The following definitions in other Articles apply to this Article:

24	"Acceptance."	Section 3-1409.
	"Alteration."	Section 3-1407.
26	"Cashier's check."	Section 3-1104.
	"Certificate of deposit."	Section 3-1104.
28	"Certified Check."	Section 3-1409.
	"Check."	Section 3-1104.
30	<u>"Demand draft."</u>	<u>Section 3-1104.</u>
	"Draft."	Section 3-1104.
32	"Good faith."	Section 3-1103.
	"Holder in due course."	Section 3-1102.
34	"Instrument."	Section 3-1104.
	"Notice of dishonor."	Section 3-1503.
36	"Order."	Section 3-1103.
	"Ordinary care."	Section 3-1103.
38	"Person entitled to enforce."	Section 3-1301.
	"Presentment."	Section 3-1501.
40	"Promise."	Section 3-1103.
	"Prove."	Section 3-1103.
42	"Teller's check."	Section 3-1104.
	"Unauthorized signature."	Section 3-1403.

44 **Sec. 10. 11 MRSA §4-207-A, sub-§(1), ¶¶(d) and (e)**, as enacted by PL 1993, c. 293, Pt. B, §25, are amended to read:

48 (d) The item is not subject to a defense or claim in recoupment (section 3-1305, subsection (1)) of any party

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that can be asserted against the warrantor; and

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(e) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

**Sec. 11. 11 MRSA §4-207-A, sub-§(1), ¶(f) is enacted to read:**

(f) If the item is a demand draft, creation of the item according to the terms on its face was authorized by the person identified as the drawer.

**Sec. 12. 11 MRSA §4-207-A, sub-§(6) is enacted to read:**

(6) If the warranty in subsection (1), paragraph (f) is not given by a transferor or collecting bank under applicable conflict of laws rules, then the warranty is not given to that transferor when that transferor is a transferee nor to any prior collecting bank of that transferee.

**Sec. 13. 11 MRSA §4-207-B, sub-§(1), as enacted by PL 1993, c. 293, Pt. B, §26, are amended to read:**

(1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(a) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) The draft has not been altered; and

(c) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(d) If the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as the drawer.

**Sec. 14. 11 MRSA §4-207-B, sub-§§(7) and (8) are enacted to read:**

(7) A demand draft is a check, as provided in section 3-1104, subsection (6).

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2 (8) If the warranty in subsection (1), paragraph (d) is not  
3 given by a transferor under applicable conflict of laws rules,  
4 then the warranty is not given to the transferor when that  
5 transferor is a transferee.'

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**SUMMARY**

This amendment replaces the bill.

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Modern check collection methods have increased the risk on payor banks that items not bearing authorized signatures may be paid against customer accounts. The purpose of this amendment is to define a new class of payment instrument, drawn on a bank customer's account without an authorized signature, and to shift the risk of loss for processing this instrument to the depository-collecting bank, which is in the best position to prevent its introduction into the check collection system.

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The definition of "demand draft" is intended to identify a payment instrument created to debit a bank customer's account with the bank by a party who is not a signer on the account. This payment instrument is not signed by an authorized signer on the account and does not bear or purport to bear a signature of an authorized signer. This payment instrument is intended to debit the bank customer's account by deposit and collection through the normal check collection system. A demand draft may be created by a 3rd party, such as a telemarketer, with the authorization by the bank customer to obtain payment from the bank customer's account as a means to pay the 3rd party. A demand draft may also be created by a 3rd party, such as a home banking service provider, as a means to pay itself or others. The customer's account number and other processing information is encoded on the demand draft, and the demand draft is deposited in a bank for collection through normal banking channels and payment by the payor bank. Because checks and other items deposited for collection are processed rapidly and in high volume, payor banks are not able to determine whether customers authorize the creation of demand drafts. The depository bank, which is charged with knowing its customer, is in the best position to avoid the introduction into the check collection system of an unauthorized demand draft by scrutinizing the customers allowed to deposit those drafts. This change creates an additional warranty to each transferee, in the case of a demand draft, that the demand draft was authorized by the bank customer upon whose account it is drawn. This change shifts the risk to the depository bank if its customer deposits an unauthorized demand draft for collection.

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Demand drafts do not include instruments that bear forged or unauthorized signatures of customers. Instruments bearing forged

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or unauthorized signatures should be handled under the forgery provisions and unauthorized signature provisions of Articles 3-A and 4 of the Uniform Commercial Code, as applicable.

Demand drafts also do not include instruments drawn or purportedly drawn and signed by a "fiduciary" as defined in the Uniform Commercial Code, Article 3-A, section 3-1307, subsection (1), paragraph (a).

Application of this section is illustrated by the following examples:

Case No. 1:

X contacts Y by telephone or otherwise. X obtains Y's account number with Bank A and creates an instrument payable to X that lists Y as the maker of the instrument and has Y's bank account information encoded with magnetic ink character recognition symbols on the bottom of the instrument. In the signature block, X affixes a stamp that states "SIGNATURE ON FILE." X deposits the instrument into X's account at Bank B. Bank B presents the instrument to Bank A for payment. Bank A pays the check and deducts the funds from Y's account. Y claims that Y did not authorize the creation of the instrument to debit Y's account and Y did not receive any benefit from the payment. In this case, the instrument qualifies as a demand draft. Bank A has a breach of warranty claim against Bank B under the Uniform Commercial Code, Article 4, section 4-207-B, subsection (1), paragraph (d). Even if X had not affixed the stamp stating "SIGNATURE ON FILE" or included the name of Y on the instrument, the instrument would qualify as a demand draft because Y's bank account information is printed by encoding on the bottom of the instrument.

Case No. 2:

This case has the same facts as Case No. 1, except that X includes Y's name on the instrument and by error or with intent X has Z's bank account information at Bank A encoded on the bottom of the instrument. Both Y and Z claim they did not authorize the instrument and did not receive benefit from the payment. The instrument qualifies as a demand draft. Bank A has a breach of warranty claim against Bank B under the Uniform Commercial Code, Article 4, section 4-207-B, subsection (1), paragraph (d) and section 4-207-C.

Case No. 3:

X fraudulently issues a check payable to Y drawn on Z's account with Bank A and signs the check "X, attorney-in-fact for Z." Y deposits the check into Bank B, who presents the check to



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Bank A. Bank A pays the check and deducts the funds from Z's account. Z claims the check was not authorized, that X is not Z's attorney-in-fact and that Z received no benefit from the payment. In this case, the check is not a demand draft, because the signature of X is on the instrument as a fiduciary.

**FISCAL NOTE REQUIRED**  
**(See attached)**

**COMMITTEE AMENDMENT**

Approved: 03/01/04 *MAC*

**121st Maine Legislature  
Office of Fiscal and Program Review**



**LD 1786**

**An Act Making Amendments to the Uniform Commercial Code Covering  
Provisions Dealing with Negotiable Instruments and Bank Deposits and  
Collections**

**LR 2358(02)**

**Fiscal Note for Bill as Amended by Committee Amendment " "**

**Committee: Judiciary**

**Fiscal Note Required: Yes**

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**Fiscal Note**

Minor cost increase - General Fund