

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND REGULAR SESSION-2004

Legislative Document

No. 1786

H.P. 1308

House of Representatives, December 22, 2003

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

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 17, 2003. Referred to the Committee on Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative O'NEIL of Saco.
Cosponsored by Senator MAYO of Sagadahoc and
Senator: LaFOUNTAIN of York.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 11 MRSA §3-1103, sub-§(1), ¶¶(a-1) and (a-2)** are enacted
to read:

6 (a-1) "Consumer account" means an account established by an
individual primarily for personal, family or household
8 purposes.

10 (a-2) "Consumer transaction" means a transaction in which
an individual incurs an obligation primarily for personal,
12 family or household purposes.

14 **Sec. 2. 11 MRSA §3-1103, sub-§(1), ¶(l)** is enacted to read:

16 (l) "Remotely created consumer item" means an item drawn on
a consumer account that is not created by the payor bank and
18 does not bear a handwritten signature purporting to be the
signature of the drawer.

20 **Sec. 3. 11 MRSA §3-1416, sub-§(1), ¶¶(d) and (e)** as enacted by PL
22 1993, c. 293, Pt. A, §2, are amended to read:

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

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

32 **Sec. 4. 11 MRSA §3-1416, sub-§(1), ¶(f)** is enacted to read:

34 (f) With respect to a remotely created consumer item, the
person on whose account the item is drawn authorized the
36 issuance of the item in the amount for which the item is
drawn.

38 **Uniform Comments**

40 8. Subsection (a)(6) [Maine subsection (1)(f)] is based on
42 a number of nonuniform amendments designed to address concerns
about certain kinds of check fraud. The provision implements a
44 limited rejection of Price v. Neal, 97 Eng. Rep. 871 (K.B. 1762),
so that in certain circumstances (those involving remotely
46 created consumer checks) the payor bank can use a warranty claim
to absolve itself of responsibility for honoring an unauthorized
48 item. The provision rests on the premise that monitoring by
depository banks can control this type of fraud more effectively
50 than any practices readily available to payor banks. The

2 provision expressly includes both the case in which the consumer
3 does not authorize the item at all and also the case in which the
4 consumer authorizes the item but in an amount different from the
5 amount in which the item is drawn. Similar provisions appear in
6 Section 3-417, 4-207, and 4-208 [Maine sections 3-1417, 4-207-A,
7 and 4-207-B].

8 The provision supplements applicable federal law, which
9 requires telemarketers who submit instruments for payment to
10 obtain the customer's "express verifiable authorization," which
11 may be either in writing or tape recorded and must be made
12 available upon request to the customer's bank. Federal Trade
13 Commission's Telemarketing Sales Rule, 16 C.F.R. §310.3(a)(3),
14 implementing the Telemarketing and Consumer Fraud and Abuse
15 Prevention Act, 15 U.S.C. §§6101-6108. Some states also have
16 consumer-protection laws governing authorization of instruments
17 in telemarketing transactions. See, e.g., 9 Vt. Stat. Ann. §2464.

18 **Sec. 5. 11 MRSA §3-1417, sub-§(1), ¶¶(b) and (c),** as enacted by PL
19 1993, c. 293, Pt. A, §2 are amended to read:

22 (b) The draft has not been altered; and

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

26 **Sec. 6. 11 MRSA §3-1417, sub-§(1), ¶(d)** is enacted to read:

28 (d) With respect to any remotely created consumer item, the
29 person on whose account the item is drawn authorized the
30 issuance of the item in the amount for which the item is
31 drawn.

34 Uniform Comments

36 9. For discussion of subsection (a)(4) [Maine subsection
37 (1) (d)], see Comment 8 to Section 3-416 [Maine section 3-1416].

38 **Sec. 7. 11 MRSA §4-104, sub-§(3),** as amended by PL 1993, c.
39 293, Pt. B, §9, is further amended to read:

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

44 "Acceptance."	Section 3-1409.
45 "Alteration."	Section 3-1407.
46 "Cashier's check."	Section 3-1104.
47 "Certificate of deposit."	Section 3-1104.
48 "Certified Check."	Section 3-1409.
49 "Check."	Section 3-1104.

2	"Draft."	Section 3-1104.
	"Good faith."	Section 3-1103.
	"Holder in due course."	Section 3-1102.
4	"Instrument."	Section 3-1104.
	"Notice of dishonor."	Section 3-1503.
6	"Order."	Section 3-1103.
	"Ordinary care."	Section 3-1103.
8	"Person entitled to enforce."	Section 3-1301.
	"Presentment."	Section 3-1501.
10	"Promise."	Section 3-1103.
	"Prove."	Section 3-1103.
12	<u>"Remotely created consumer item."</u>	<u>Section 3-1103.</u>
	"Teller's check."	Section 3-1104.
14	"Unauthorized signature."	Section 3-1403.

16 **Sec. 8. 11 MRSA §4-207-A, sub-§(1), ¶¶(d) and (e),** as enacted by
 17 PL 1993, c. 293, Pt. B, §25, are amended to read:

18 (d) The item is not subject to a defense or claim in
 19 recoupment (section 3-1305, subsection (1)) of any party
 20 that can be asserted against the warrantor; and

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

24 **Sec. 9. 11 MRSA §4-207-A, sub-§(1), ¶(f)** is enacted to read:

25 (f) With respect to any remotely created consumer item, the
 26 person on whose account the item is drawn authorized the
 27 issuance of the item in the amount for which the item is
 28 drawn.

29 **Uniform Comments**

30 [Change existing comment to comment 1.]

31 2. For an explanation of subsection (a)(6) [Maine
 32 subsection (1) (f)], see comment 8 to Section 3-416 [Maine
 33 section 3-1416].

34 **Sec. 10. 11 MRSA §4-207-B, sub-§(1), ¶¶(b) and (c),** as enacted by
 35 PL 1993, c. 293, Pt. B, §26, are amended to read:

36 (b) The draft has not been altered; and

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

