

MAINE STATE LEGISLATURE

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ONE - HUNDRETH LEGISLATURE

Legislative Document

No. 1578

Proposed Senate Amendment "A" to S. P. 456, L. D. 1462. Reported from the Committee on Judiciary and referred to the 101st Legislature. Sent down for concurrence and 1000 copies ordered printed.

In Senate, May 2, 1961
CHESTER T. WINSLOW, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-ONE

Proposed Committee Amendment "A" to S. P. 456, L. D. 1462, Bill "An Act Establishing the Uniform Commercial Code."

Amend said bill by striking out sub-section (33) of section 1-201, of Article 1 and inserting in place thereof the following:

(33) "Purchaser" means a person or his nominee who takes by purchase.

Further amend said bill by striking out sub-paragraph (a) of sub-section (4) of section 3-122 of Article III and inserting the following in place thereof:

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

Further amend said bill by striking out sub-section (6) of section 3-511 of Article III and inserting in place thereof the following:

(6) Where a waiver of presentment, notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

Further amend said bill by striking out sub-paragraph (d) of sub-section (1) of section 3-601 of Article III and inserting the following in place thereof:

(d) impairment of right of recourse or of collateral (section 3-606); or

Further amend said bill by striking out sub-paragraph (b) of sub-section 3 of section 3-601 of Article III and inserting the following in place thereof:

(b) is discharged under any provision of this Article, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (section 3-606).

Further amend said bill by striking out sub-section (2) of section 8-304 of Article VIII and inserting the following in place thereof:

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

Further amend said bill by striking out section 8-318 of Article VIII and inserting the following in place thereof:

Section 8-318. No conversion by Good Faith Delivery.

An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them.

Further amend said bill by striking out the first paragraph of section 8-311 of Article VII and inserting in place thereof the following:

Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness.

Further amend said bill by striking out section 8-402 of Article VII and inserting the following in place thereof:

Section 8-402. Assurance that Indorsements are Effective.

(1) The issuer may require the following assurance that each necessary indorsement (section 8-308) is genuine and effective.

- (a) in all cases, a guarantee of the signature (subsection (1) of section (8-312) of the person indorsing;
- (b) where the indorsement is by an agent, appropriate assurance of authority to sign;
- (c) where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;
- (d) where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
- (e) where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A “guarantee of the signature” in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

(3) “Appropriate evidence of appointment or incumbency” in subsection (1) means

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(b) in any other case a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in paragraph (b) of subsection 3 both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, by-laws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer.

Further amend said bill by striking out section 8-403 of Article VII and inserting in place thereof the following:

Section 8-403. Limited Duty of Inquiry.

(1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if

(a) a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of section 8-402.

(2) The issuer may discharge any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either

- (a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or
 - (b) an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.
- (3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of section 8-402 or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular
- (a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;
 - (b) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and
 - (c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

Further amend said bill by striking out the first two lines of subsection (2) of section 9-105 of Article IX and inserting in place thereof the following:

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

Further amend said bill by striking out section 9-207 of Article IX and inserting in place thereof the following:

Section 9-207. Rights and Duties When Collateral Is in Secured Party's Possession.

- (1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.
- (2) Unless otherwise agreed, when collateral is in the secured party's possession

- (a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;
- (b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;
- (c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;
- (d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;
- (e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

Further amend said bill by striking out subsection (2) of section 9-301 of Article IX and inserting in place thereof the following:

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

Further amend said bill by striking out section 9-310 of Article IX and inserting the following in place thereof:

Section 9-310. Priority of Certain Liens Arising by Operation of Law. When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

Further amend said bill by striking out subparagraph (b) of subsection (3) of section 9-312 of Article IX and inserting in place thereof the following:

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory has received notifica-

tion of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

Further amend said bill by striking out subsection (4) of section 9-312 of Article IX and inserting in place thereof the following:

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

Further amend said bill by striking out the first paragraph of subsection (5) of section 9-312 of Article IX and inserting in place thereof the following:

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

Further amend said bill by striking out the last sentence in subsection (3) of section 9-403 of Article IX and by adding at the end of subsection (4) of section 9-403 of Article IX the following sentence:

The index may be made up of the statements themselves, copies thereof, separate cards, or otherwise.

Further amend said bill by striking out paragraph (2) of section 9-404 of Article IX and inserting in place thereof the following:

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "Terminated", and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto.

Further amend said bill by striking out section 9-405 of Article IX and inserting in place thereof the following:

Section 9-405. Assignment of Security Interest; Duties of Filing Officer; Fees.

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in subsection (4) of section 9-403. The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be three dollars.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be three dollars.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

Further amend said bill by striking out the second paragraph of section 9-407 of Article IX and inserting in place thereof the following:

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party named therein. The fee for such a certificate shall be three dollars. Upon request the filing officer shall furnish a copy of any filed financing statement, continuation statement, termination statement, statement of assignment or statement of release for a fee of one dollar and, if such statement consists of more than three pages, an additional fee of fifty cents for the fourth and each succeeding page.

Further amend said bill by adding thereto a new section to follow section 9-406 and to be numbered 9-408 and to read as follows:

Section 9-408. Destruction of Old Records.

Unless a filing officer has notice of an action pending relative thereto, he may remove from the files and destroy

(a) a lapsed financing statement, a lapsed continuation statement, a statement of assignment or release relating to either, and any index of any of them, one year or more after lapse; and

(b) a termination statement and the index on which it is noted, one year or more after the filing of the termination statement.

Further amend said bill by striking out section 9-501 of Article IX and inserting in place thereof the following:

Section 9-501. Default; Procedure When Security Agreement Covers Both Real and Personal Property.

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and except as limited by

subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in section 9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of section 9-505) and with respect to redemption of collateral (section 9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:—

(a) Subsection (2) of section 9-502 and subsection (2) of section 9-504 in so far as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of section 9-504 and subsection (1) of section 9-505 which deal with disposition of collateral;

(c) subsection (2) of section 9-505 which deals with acceptance of collateral as discharge of obligation;

(d) section 9-506 which deals with redemption of collateral; and

(e) subsection (1) of section 9-507 which deals with the secured party's liability for failure to comply with this Part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this Part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

Further amend said bill by striking out the first sentence of the paragraph numbered (2) of Section 9-203 and inserting the following in place thereof:

A transaction, although subject to this Article, is also subject to the applicable provisions of sections 210 to 227 and 249 to 260 of chapter 59, and to sections

131 to 136 of chapter 100 and in the case of conflict between the provisions of this Article and any such statute the provisions of such statute control.

Further amend said bill by striking out section 5 thereof and substituting in place thereof the following :

'Sec. 5. R. S., c. 53, §§ 51 - 72-K, repealed. Sections 51 to 72 of chapter 53 of the Revised Statutes and sections 72-A to 72-K of chapter 53 of the Revised Statutes, as enacted by section 1 of chapter 244 of the public laws of 1959, are repealed.'

Further amend said bill by striking out section 8 thereof and substituting in place thereof the following :

Sec. 8. R. S., c. 59, § 190, amended. Section 190 of chapter 59 of the Revised Statutes is amended to read as follows :

'Sec. 190. Limitation of actions to recover money paid on forged signatures. No action to recover money by any depositor shall be maintained against any bank, savings bank or trust company, if the depositor denies the authority of the signature or the authority of an indorsement on any order drawn on any savings bank, or savings deposit or certificates of deposit in any bank or trust company, or on any receipt for payment by such bank, savings bank or trust company, unless such action is begun and service made thereof within 3 years from the date of such payment when the depositor reports the unauthorized signature or the unauthorized indorsement to the bank. **In case of any conflict between the provisions of this section and section 4-406 of chapter 190, the provisions of section 4-406 shall control.'**

Further amend said bill by adding thereto a new section 10-A to read as follows :

Sec. 10-A. R. S., c. 59, § 49, amended. The third paragraph of section 249 of chapter 59 is hereby amended to read as follows :

“Documentary fees” means the fees for filing, recording or investigating, perfecting and releasing or satisfying a **security interest** created by a retail installment contract, and shall not exceed \$4 in the case of consumer goods as defined in section 9-109 of chapter 190.’

Further amend said bill by striking out section 14 thereof and inserting the following in place thereof :

Sec. 14. R. S., c. 59, § 254, sub-§ VI, amended. The 2nd sentence of sub-section VI of section 254 of chapter 59 of the Revised Statutes, as enacted by section 1 of chapter 386 of the public laws of 1957, is amended to read as follows :

The instrument for recording purposes shall be the financing statement, as provided by chapter 190, section 9-402.

Further amend said bill by adding thereto a new section to be designated as section 14-A.

Section 14-A. R. S., c. 59, § 255, sub-§ 4 repealed. Subsection 4 of section 255 of chapter 59 of the Revised Statutes is hereby repealed and the following enacted in place thereof:

‘IV. Nothing in this section shall be deemed to regulate the terms and conditions of any purchase, acquisition or agreement to purchase or acquire or any sales contract by any sales finance company from any seller.’

Further amend said bill by adding thereto a new section 15-A to read as follows:

Sec. 15-A. R. S., c. 90-A, § 48, amended. The first paragraph of section 48 of chapter 90-A of the Revised Statutes is hereby amended to read as follows:

‘Sec. 48. Clerk’s fee schedule. Except as provided in chapter 190, the clerk shall charge for his services according to the following fee schedule:

Further amend said bill by striking out section 19 thereof and substituting in place thereof the following:

Sec. 19. R. S., c. 119, §§ 4 and 6, repealed. Sections 4 and 6 of chapter 119 of the Revised Statutes are hereby repealed.

Further amend said bill by striking out section 20 thereof and substituting in place thereof the following:

Sec. 20. R. S., c. 119, § 8, amended. Section 8 of chapter 119 of the Revised Statutes is amended to read as follows:

‘Sec. 8. Corporation, associations, copartnerships and individuals included. Sellers and purchasers under ~~the preceding sections section 6 and 7~~ shall include corporations, associations, copartnerships and individuals ~~but the provisions of section 6 shall not apply to sales by executors, administrators, receivers, assignees under voluntary assignments for the benefit of creditors, trustees in bankruptcy, or by any public officer under judicial process or to mortgages made in good faith for the purpose of security only, but nothing contained herein shall in any way relieve any of the aforementioned from payment of the tax as set forth in section 7.’~~

Further amend said bill by striking out section 23 thereof and substituting in place thereof the following:

Sec. 23. R. S., c. 178, §§ 1-11 and 86 and 87, repealed. Section 1 to 11 and 86 and 87 of chapter 178 of the Revised Statutes are repealed.

Further amend said bill by adding thereto a new section 23-A to read as follows:

Sec. 23-A. Section 76 of chapter 178 of the Revised Statutes is hereby repealed and the following enacted in place thereof:

‘Sec. 76. Enforcement by sale. Whoever has a lien on personal property in his possession which is not covered by Article IX of chapter 190 may enforce it by a sale thereof in the manner provided for in the contract creating such lien, if in writing, or as hereinafter provided for in sections 77 to 83 of chapter 178.’

Further amend said bill by adding thereto a new section 30-A to read as follows :

Sec. 30-A. General Repealer. Except as provided in the following section, all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.