

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

(EMERGENCY)

ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1107

H. P. 816

House of Representatives, February 10, 1965

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

JEROME G. PLANTE, Clerk

Presented by Mr. Brennan of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FIVE

**AN ACT to Correct Errors and Inconsistencies in Uniform Commercial Code
and to Amend Certain Statutes to Conform Thereto.**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment of the Legislature unless enacted as emergencies; and

Whereas, the Uniform Commercial Code is a basic comprehensive law to govern commercial transactions; and

Whereas, certain errors and inconsistencies have appeared both in the code and in other public laws; and

Whereas, the following legislation is vitally necessary to correct these errors and inconsistencies and thereby eliminate confusion in commercial transactions; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. R. S., T. 9, § 42, amended. The first sentence of section 42 of Title 9 of the Revised Statutes is amended to read as follows:

'Except as provided in Title 11, section 4-405, notice ~~Notice~~ to any bank or trust company doing business in this State of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause

said bank to recognize said adverse claimant, unless said adverse claimant shall either procure a restraining order, injunction or other appropriate process against said bank from a court of competent jurisdiction in a ~~cause therein instituted by him wherein civil action to which~~ the person to whose credit the deposit stands is made a party ~~and served with summons~~, or shall execute to said bank, in form and with sureties acceptable to it, a bond indemnifying said bank from any and all liability, loss, damage, costs and expenses for and on account of the payment of such adverse claim or the dishonor of ~~the check checks~~ or other ~~order orders~~ of the person to whose credit the deposit stands on the books of said bank.'

Sec. 2. R. S., T. 9, § 3402, sub-§ 5, amended. Subsection 5 of section 3402 of Title 9 of the Revised Statutes is amended to read as follows:

'5. Motor vehicle. "Motor vehicle" means any device propelled or drawn by any power other than muscular power upon or by which any person or property may be transported or drawn upon a highway, excepting **any such devices which are not consumer goods as defined in Title 11, section 9-109 (1), and also excepting agricultural machinery and house trailers and any such devices which do not constitute consumer goods, as defined in Title 11, section 9-109 (1).**'

Sec. 3. R. S., T. 10, § 4012, additional. Title 10 of the Revised Statutes is amended by adding a new section 4012 to read as follows:

§ 4012. Priority

A security interest perfected in accordance with Title 11 has priority over any lien created or referred to by this Title unless the person claiming the lien has possession of the goods subject to the lien.'

Sec. 4. R. S., T. 11, § 1-201, sub-§ (21), amended. Subsection (21) of section 1-201 of Title 11 of the Revised Statutes is amended to read as follows:

'(21) Honor. To "honor" is to pay or to accept and pay, or where a ~~creditor~~ **credit** so engages to purchase or discount a draft complying with the terms of the credit.'

Sec. 5. R. S., T. 11, § 2-320, sub-§ (3), amended. Subsection (3) of section 2-320 of Title 11 of the Revised Statutes is amended to read as follows:

'(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C. I. F. term except the ~~obligations~~ **obligation as to insurance.'**

Sec. 6. R. S., T. 11, § 2-402, sub-§ (3), ¶ (b), amended. Paragraph (b) of subsection (3) of section 2-402 of Title 11 of the Revised Statutes is amended to read as follows:

'(b) Where identification to the contract or delivery is made **not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent conveyance or voidable preference.'**

Sec. 7. R. S., T. 11, § 2-510, sub-§ (1), amended. Subsection (1) of section 2-510 of Title 11 of the Revised Statutes is amended to read as follows:

‘(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection, the risk of their loss remains on the seller until cure or acceptance.’

Sec. 8. R. S., T. 11, § 2-717, amended. Section 2-717 of Title 11 of the Revised Statutes is amended to read as follows:

‘§ 2-717. Deduction of damages from price

The buyer on notifying the seller of his intention ~~so to do to do so~~ may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.’

Sec. 9. R. S., T. 11, § 3-510, sub-§ (1), amended. Subsection (1) of section 3-510 of Title 11 of the Revised Statutes is amended to read as follows:

‘(1) A document regular in form as provided in the **preceding** section which purports to be a protest;’

Sec. 10. R. S., T. 11, § 3-801, sub-§ (1), amended. Subsection (1) of section 3-801 of Title 11 of the Revised Statutes is amended to read as follows:

‘(1). Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other ~~party part~~ has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.’

Sec. 11. R. S., T. 11, § 3-803, amended. Section 3-803 of Title 11 of the Revised Statutes is amended to read as follows:

‘§ 3-803. Notice to third party

Where a defendant ~~receives notice that he is being sued~~ is sued for breach of an obligation for which a third person is answerable over under this Article, he may give the third person written notice of the ~~obligation~~ **litigation**, and the person notified may then give similar notice to any other person who is answerable over to him under this Article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the 2 litigations, then unless after seasonable receipt of the notice the person notified does come in and defend, he is so bound.’

Sec. 12. R. S., T. 11, § 4-503, sub-§ (2), amended. The first paragraph of subsection (2) of section 4-503 of Title 11 of the Revised Statutes is amended to read as follows:

‘Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instruction from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services, it must use diligence and good faith to ascertain the reason for dis-

honor, must ~~inform~~ **notify** its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.'

Sec. 13. R. S., T. 11, § 5-107, sub-§ (2), amended. Subsection 2 of section 5-107 of Title 11 of the Revised Statutes is amended to read as follows:

'(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer **and acquires the rights of an issuer.**'

Sec. 14. R. S., T. 11, § 5-108, sub-§ (2), ¶ (b), amended. Paragraph (b) of subsection (2) of section 5-108 of Title 11 of the Revised Statutes is amended to read as follows:

'(b) Unless the ~~letter of~~ credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding 30 days to obtain such evidence.'

Sec. 15. R. S., T. 11, § 7-306, amended. Section 7-306 of Title 11 of the Revised Statutes is amended to read as follows:

§ 7-306. Altered bill of lading

An unauthorized alteration ~~of~~ or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.'

Sec. 16. R. S., T. 11, § 8-208, sub-§ (1), ¶ (a), amended. Paragraph (a) of subsection (1) of section 8-208 of Title 11 of the Revised Statutes is amended to read as follows:

'(a) The security is genuine ~~and in proper form;~~ and'

Sec. 17. R. S., T. 11, § 8-313, sub-§ (1), ¶ (d), amended. Paragraph (d) of subsection (1) of section 8-313 of Title 11 of the Revised Statutes is amended to read as follows:

'(d) With respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; **or**'

Sec. 18. R. S., T. 11, § 8-403, sub-§ (2), amended. Subsection (2) of section 8-403 of Title 11 of the Revised Statutes is amended to read as follows:

'(2) The issuer may discharge **any duty of inquiry by** 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 30 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 is-

suer 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.'

Sec. 19. R. S., T. 11, § 8-404, sub-§ (1), ¶ (b), amended. Paragraph (b) of subsection (1) of section 8-404 of Title 11 of the Revised Statutes is amended to read as follows:

'(b) The issuer had no duty to inquire into adverse claims or ~~has~~ discharged any such duty (section 8-403).'

Sec. 20. R. S., T. 11, § 9-207, sub-§ (2), ¶ (e), amended. Paragraph (e) of subsection (2) of section 9-207 of Title 11 of the Revised Statutes is amended to read as follows:

'(e) The secured party may repledge the collateral upon terms which do not impair the debtor's ~~sight right~~ right to redeem it.'

Sec. 21. R. S., T. 11, § 9-306, sub-§ (3), amended. Subsection (3) of section 9-306 of Title 11 of the Revised Statutes is amended to read as follows:

'(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor, unless

(a) A filed financing statement covering the original collateral also covers proceeds; or

(b) The security interest in the proceeds is perfected before the expiration of the 10-day period.'

Sec. 22. R. S., T. 11, § 9-307, sub-§ (2), amended. Subsection (2) of section 9-307 of Title 11 of the Revised Statutes is amended to read as follows:

'(2) ~~In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of \$500 (other than fixtures, see section 9-313), a buyer takes free of a security interest even though perfected, if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods farm equipment.'~~

Sec. 23. R. S., T. 11, § 9-309, amended. Section 9-309 of Title 11 of the Revised Statutes is amended to read as follows:

§ 9-309. Protection of purchasers of instruments and documents

Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (section 3-302) or a holder to whom a negotiable document of title has been **duly** negotiated (section 7-501) or a bona fide purchaser of a security (section 8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers.'

Sec. 24. R. S., T. 11, § 9-313, sub-§ (4), repealed and replaced.

'(4) The security interests described in subsections (2) and (3) do not take priority over

- (a) A subsequent purchaser for value of any interest in the real estate; or**
- (b) A creditor with a lien on the real estate subsequently obtained by judicial proceedings; or**
- (c) A creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances;**

if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.'

Sec. 25. R. S., T. 14, § 751, amended. Section 751 of Title 14 of the Revised Statutes is amended to read as follows:

'§ 751. Twenty years

~~Personal~~ **Except as provided in Title 11, section 2-725, personal** actions on contracts or liabilities under seal, promissory notes signed in the presence of an attesting witness, or on the bills, notes or other evidences of debt issued by a bank shall be commenced within 20 years after the cause of action accrues.'

Sec. 26. R. S., T. 14, § 4155, repealed. Section 4155 of Title 14 of the Revised Statutes is repealed.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.