

MAINE STATE LEGISLATURE

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(After Deadline)
EMERGENCY
SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2038

H. P. 1956

House of Representatives, January 6, 1978.

The Committee on Business Legislation suggested. Approved for introduction by a Majority of the Legislative Council pursuant to Joint Rule 25.

EDWIN H. PERT, Clerk

Presented by Ms. Clark of Freeport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

**AN ACT To Provide Transition Provisions Covering the Recent Amendments to Article 9 of
the Uniform Commercial Code.**

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

Whereas, the 108th Legislature enacted public law, 1977, chapter 526, "An Act Realting to Secured Transactions under the Uniform Commercial Code;" and

Whereas, public law, 1977, chapter 526, has an effective date of January 1, 1978; and

Whereas, through inadvertence, public law, 1977, chapter 526 does not include any provision concerning transition between the prior version of the Uniform Commercial Code and the amendments to the code enacted by public law, 1977, chapter 526; and

Whereas, the absence of any transition provisions in public law, 1977, chapter 526 creates great uncertainty as to the applicable law in many secured transactions and great difficulty in determining the relative rights and obligations of debtors and secured parties; 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:

11 MRSA, Art. 10 is enacted to read:

ARTICLE 10

TRANSITION PROVISIONS

§ 10-101. Definitions; retroactivity

(1) For the purposes of this Article, the phrase "old code" means the Uniform Commercial Code as enacted by public law, 1963, chapter 362 and as amended by the following:

Public law, 1965, chapter 306;
Public law, 1967, chapter 213;
Public law, 1969, chapter 155;
Public law, 1969, chapter 225;
Public law, 1969, chapter 302;
Public law, 1969, chapter 327;
Public law, 1969, chapter 389;
Public law, 1969, chapter 421;
Public law, 1969, chapter 517;
Public law, 1971, chapter 11;
Public law, 1971, chapter 474;
Public law, 1971, chapter 544;
Public law, 1973, chapter 8;
Public law, 1973, chapter 441;
Public law, 1973, chapter 442;
Public law, 1973, chapter 443;
Public law, 1973, chapter 444;
Public law, 1973, chapter 625;
Public law, 1973, chapter 762;
Public law, 1975, chapter 269;
Public law, 1975, chapter 320;
Public law, 1975, chapter 770; and
Public law, 1977, chapter 90.

For the purposes of this Article, the phrase "public law, 1977, chapter 526" means chapter 526 of the public laws of 1977, "An Act Relating to Secured Transactions under the Uniform Commercial Code," effective January 1, 1978. The phrase "new code" means the old code as amended by public law, 1977, chapter 526.

(2) This Article is retroactive to January 1, 1978.

§ 10-102. Preservation of old transition provision

Chapter 362, section 41 of the public laws of 1963 shall continue to apply to the new code and for this purpose the old code and the new code shall be considered one continuous statute.

§ 10-103. Transition to the new code; general rule

Transactions validly entered into after December 31, 1964, and before January 1, 1978, and which are subject to the provisions of the old code and which would be subject to the new code and this Article, as amended if they had been entered into after the effective date of public law, 1977, chapter 526 and the rights, duties and interests flowing from such transactions remain valid after January 1, 1978, and may be terminated, completed, consummated or enforced as required or permitted by the new code. Security interestes

arising out of those transactions, which are perfected when public law, 1977, chapter 526 becomes effective, shall remain perfected until they lapse as provided in the new code and may be continued as permitted by the new code, except as stated in section 10-105.

§ 10-104. Transition provision on change of requirement of filing

A security interest for the perfection of which filing or the taking of possession was required under the old code and which attached prior to the effective date of public law, 1977, chapter 526, but was not perfected shall be deemed perfected on the effective date of public law, 1977, chapter 526, if the new code permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made.

§ 10-105. Transition provision on change of place of filing

(1) A financing statement or continuation statement filed prior to January 1, 1978, which shall not have lapsed prior to January 1, 1978, shall remain effective for the period provided in the old code, but not less than 5 years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to the effective date of public law, 1977, chapter 526, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under the new code.

(3) The effectiveness of any financing statement or continuation statement filed prior to January 1, 1978, may be continued by a continuation statement as permitted by the new code, except that if the new code requires a filing in an office where there was no previous financing statement, a new financing statement conforming to section 10-106 shall be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if the new code had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to those goods under section 9-402, subsection (4-B) of the new code on the effective date of public law, 1977, chapter 526.

§ 10-106. Required refilings

(1) If a security interest is perfected or has priority when public law, 1977, chapter 526 takes effect as to all persons or as to certain persons without any filing or recording and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under the new code, the perfection and priority rights of the security interest continue until 3 years after the effective date of public law, 1977, chapter 526. The perfection shall then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when public law, 1977, chapter 526 takes effect under a law other than the Uniform Commercial Code which requires no further filing, refiling or recording to continue its perfection, perfection continues until and shall lapse 3 years after public law, 1977, chapter 526 takes effect, unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing, or unless under section 9-302, subsection (3) the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling or recording under a law

repealed by public law, 1977, chapter 526 which required further filing, refiling or recording unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within 6 months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It shall identify the security agreement, statement or notice, however denominated in any statute or other law repealed or modified by public law, 1977, chapter 526 or this Article, state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the Uniform Commercial Code or under any statute or law repealed or modified by public law, 1977, chapter 526 or this Article is still effective. Sections 9-103-A and 9-401-A determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of section 9-403, subsection (3) for continuation statements apply to such a financing statement.

§ 10-107. Transition provisions as to priorities.

Except as otherwise provided in this Article, the old code shall apply to any questions of priority if the positions of the parties were fixed prior to the effective date of public law, 1977, chapter 526. In other cases, questions of priority shall be determined by the new code.

§ 10-108. Presumption that rule of law continues unchanged

Unless a change in law has clearly been made, the new code shall be deemed declaratory of the meaning of the old code.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved and shall be retroactive to January 1, 1978.

STATEMENT OF FACT

The purpose of this bill is to specify transition provisions which inadvertently were not submitted to the Legislature with the other amendments to the Uniform Commercial Code enacted as public law, 1977, chapter 526. Those amendments substantially altered many sections of Article 9 on secured transactions. Unless transition provisions are enacted as soon as possible, there will be great uncertainty regarding the applicable law in many secured transactions and it will be exceedingly difficult in many cases to determine the relative rights and obligations of debtors and secured parties.