

MAINE STATE LEGISLATURE

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L.D. 1919

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-639)
110TH LEGISLATURE
SECOND REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 1935, L.D.1919, Bill,
"AN ACT to Amend the Uniform Commercial Code Regarding
Investment Securities."

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Amend the bill by striking out everything after the
title and inserting in its place the following:

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

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Whereas, Maine financial institutions provide important
services to the people of Maine, including offering services
known as retail repurchase agreements covering investment
securities; and

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Whereas, there is ambiguity regarding the steps finan-
cial institutions must take to perfect security interests,
for the benefit of their customers, in investment securities
subject to repurchase agreements; and

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Whereas, this ambiguity has caused uncertainty as to
whether security interests in favor of customers of finan-
cial institutions are perfected, and has caused some finan-
cial institutions to cease to offer repurchase agreements in
which their customers' security interests in investment
securities are perfected; and

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Whereas, these factors leave in doubt the rights of
consumers who hold repurchase agreements issued by Maine
financial institutions, threaten to deprive the people of
Maine of banking opportunities and alternatives, and cause
uncertainty in the banking industry; and

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

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2 Be it enacted by the People of the State of Maine as fol-
3 lows:

4 Sec. 1. 11 MRSA §8-321 is enacted to read:

5 §8-321. Securities subject to repurchase agreement obli-
6 gations of issuing institutions

7 (1) In this section, unless the context otherwise
8 indicates, the following terms have the following meanings.

9 (a) A "certificated security" is a share, participa-
10 tion or other interest in property of or an enterprise
11 of the issuer, or an obligation of the issuer, which
12 is:

13 (i) Represented by an instrument issued in bearer
14 or registered form;

15 (ii) Of a type commonly dealt in on securities
16 exchanges or exchanges or markets or commonly
17 recognized in any area in which it is issued or
18 dealt in as a medium for investment; and

19 (iii) Either one of a class or series or by its
20 terms divisible into a class or series of shares,
21 participations, interests or obligations.

22 (b) An "uncertificated security" is a share, parti-
23 cipation or other interest in property or an enterprise
24 of the issuer or an obligation of the issuer which is:

25 (i) Not represented by an instrument and the
26 transfer of which is registered upon books main-
27 tained for that purpose by or on behalf of the
28 issuer;

29 (ii) Of a type commonly dealt in on securities
30 exchanges or markets; and

31 (iii) Either one of a class or series or by its
32 terms divisible into a class or series of shares,
33 participations, interests or obligations.

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2 (c) A "security" is either a certificated or an
3 uncertificated security. If a security is certifi-
4 cated, the terms "security" and "certificated security"
5 may mean either the intangible interest, the instrument
6 representing that interest, or both, as the context re-
7 quires. The terms "security" and "securities" are used
8 interchangeably, and include one or more securities or
9 an interest therein, including a security interest
10 therein.

11 (d) A security "subject to a repurchase agreement
12 obligation" means a security which is transferred, or
13 in which a security interest is granted, pursuant to a
14 repurchase agreement obligation of an issuing institu-
15 tion.

16 (e) An "issuing institution" is a financial institu-
17 tion, or a financial institution authorized to do busi-
18 ness in this State, which issues repurchase agreement
19 obligations.

20 (f) A "depository" is a financial institution organ-
21 ized under the laws of any state of the United States
22 or organized under the provisions of federal law, which
23 regularly accepts securities in the course of its busi-
24 ness as a custodial service for customers, and main-
25 tains accounts in the names of such customers reflect-
26 ing ownership of or interests in such securities.

27 (g) The terms "secured party" and "holder of a repur-
28 chase agreement obligation" are used interchangeably in
29 this section, and mean the person to whom a security is
30 transferred, or a security interest in a security is
31 granted, pursuant to a repurchase agreement obligation
32 of an issuing institution.

33 (2) This section, and the provisions of Article 9 to
34 the extent not inconsistent with this section, shall govern
35 the perfection and the effect of perfection or nonperfection
36 of security interests in securities subject to repurchase
37 agreement obligations of issuing institutions, notwithstand-
38 ing section 9-103.

39 (3) All other provisions of this Article are super-
40 seded by this section in respect of a security subject to a

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2 repurchase agreement obligation of an issuing institution.
3 Notwithstanding any provision of Article 9 or other appli-
4 cable law, to the extent an issuing institution complies
5 with this section, the provisions of Article 9 are supple-
6 mented by, and to the extent inconsistent with this section
7 are superseded by, this section in respect of the perfection
8 of a security interest in a security subject to a repurchase
9 agreement obligation of an issuing institution. Notwith-
10 standing any provision of this section, an issuing institu-
11 tion may also perfect a security interest in a security sub-
12 ject to a repurchase agreement obligation under the provi-
13 sions of Article 9, whereupon the perfection of such secur-
14 ity interest shall be governed by Article 9 to the extent
15 applicable.

16 (4) A security interest in a security subject to a
17 repurchase agreement obligation issued by an issuing insti-
18 tution may be perfected as provided for the perfection of a
19 security interest in an instrument pursuant to sections
20 9-304 and 9-305. Perfection by possession of a bailee shall
21 be valid and enforceable as among the secured party, the
22 debtor and 3rd parties, if effected by written notification
23 of the secured party's interest by the issuing institution
24 to an independent depository, on whose books the interest
25 of such issuing institution in such security is recorded, as
26 bailee for the secured party.

27 (5) The notification by the issuing institution to the
28 independent depository shall be valid and enforceable in ac-
29 cordance with this section and sections 9-304 and 9-305 if
30 such notification identifies the security subject to a
31 repurchase agreement obligation issued by the issuing insti-
32 tution, which security is maintained by such independent
33 depository, contains the name of each holder of such a
34 repurchase agreement obligation then outstanding and the
35 principal amount thereof, states the aggregate market value
36 of the issuing institution's securities shown on the books
37 of such depository as subject to repurchase agreement obli-
38 gations of the issuing institution, and states the aggregate
39 principal amount of the issuing institution's repurchase
40 agreement obligations secured by securities subject to such
41 obligations and maintained with such depository.

42 (6) For the purposes of subsection (4), a depository
43 shall be deemed independent of the issuing institution if

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2 the depository does not control, is not controlled by, is
3 not under the control of and is not under common control
4 with the issuing institution. For the purposes of this
5 section, "control" shall have the meaning set forth in
6 Title 9-B, section 1011, subsection 4. The depository
7 shall be deemed the bailee of the holder of the issuing
8 institution's repurchase agreement obligation notwithstand-
9 ing that, in releasing securities to such issuing institu-
10 tion, such depository may rely conclusively on reports or
11 notifications by the issuing institution indicating that all
12 or a portion of the repurchase agreement obligations of such
13 holders have been paid in full, or that an amount sufficient
14 to pay all or a portion of such repurchase agreement obli-
15 gations in full has been deposited in an account in the name
16 of a holder or holders of such obligations in the issuing
17 institution, in either case with or without naming each such
18 holder, and such issuing institution may retain the right to
19 substitute securities subject to repurchase agreement obli-
20 gations, provided that the substituted securities have, on
21 the date of substitution, a market value equal to or greater
22 than the securities released by the depository upon such
23 substitution.

24 (7) Notwithstanding any provision of this Title or
25 other applicable law, the description or identification of
26 any security subject to a repurchase agreement obligation of
27 an issuing institution in the documents evidencing the
28 repurchase agreement obligation and granting a security
29 interest in such security shall be sufficient for the pur-
30 poses of Article 9, if such description or identification
31 states that such securities are all or a portion of the
32 securities shown on the books of an independent depository,
33 or its successor, as subject to repurchase agreement obli-
34 gations of the issuing institution.

35 Sec. 2. 11 MRSA §9-104, sub-§(13) is enacted to read

36 (13) To a transfer of a security which is subject to a
37 repurchase agreement obligation of an issuing institution,
38 as defined in section 8-321, to the extent the provisions of
39 this Article are contrary to section 8-321.

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

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2 STATEMENT OF FACT

3 The original bill was motivated primarily by a need to
4 clear up ambiguities raised by financial institutions and
5 their counsel in connection with the perfection of security
6 interests in investment securities subject to "repurchase
7 agreement" offered by financial institutions. These usually
8 relate to "uncertificated" United States Government and
9 Agency securities, which are maintained only as book
10 entries, without certificates. Since those ambiguities
11 affect primarily financial institutions and their customers
12 in the discrete area of repurchase agreements, this amend-
13 ment addresses this specific problem by creating a new
14 section of the Uniform Commercial Code. The new section
15 will add clarity to the law by setting forth in a specific
16 section the way in which security interests may be perfected
17 on behalf of customers of financial institutions in invest-
18 ment securities utilized by financial institutions in their
19 repurchase agreement programs. The new section will be
20 nonexclusive and will not detract from or otherwise affect
21 the Uniform Commercial Code.

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