

# MAINE STATE LEGISLATURE

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L.D. 2054  
(Filing No. H- 469)

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
113TH LEGISLATURE  
SECOND REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 1504, L.D. 2054,  
Bill, "AN ACT to Amend the Uniform Commercial Code."

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Amend the bill by inserting after the enacting  
clause the following:

11  
12

'Sec. 1. 11 MRSA §1-201, sub-§§(5), (14) and  
(20) are amended to read:

13  
14  
15  
16

(5) Bearer. "Bearer" means the person in  
possession of an instrument, document of title or  
certificated security payable to bearer or indorsed in  
blank.

17  
18  
19  
20

(14) Delivery. "Delivery" with respect to  
instrument, documents of title, chattel paper or  
certificated securities means voluntary transfer of  
possession.

21  
22  
23  
24  
25

(20) Holder. "Holder" means a person who is in  
possession of a document of title or an instrument  
or an a certificated investment security drawn,  
issued or indorsed to him or to his order or to bearer  
or in blank.

26  
27

Sec. 2. 11 MRSA §5-114, sub-§(2) is amended to  
read:

28

(2) Unless otherwise agreed, when documents

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1 appear on their face to comply with the terms of a  
2 credit but a required document does not in fact  
3 conform to the warranties made on negotiation or  
4 transfer of a document of title (section 7-507) or of  
5 a certificated security (section 8-306) or is forged  
6 or fraudulent or there is fraud in the transaction,

7 (a) The issuer must honor the draft or demand for  
8 payment, if honor is demanded by a negotiating  
9 bank or other holder of the draft or demand which  
10 has taken the draft or demand under the credit and  
11 under circumstances which would make it a holder  
12 in due course (section 3-302) and in an  
13 appropriate case would make it a person to whom a  
14 document of title has been duly negotiated  
15 (section 7-502) or a bona fide purchaser of a  
16 certificated security (section 8-302); and

17 (b) In all other cases as against its customer,  
18 an issuer acting in good faith may honor the draft  
19 or demand for payment despite notification from  
20 the customer of fraud, forgery or other defect not  
21 apparent on the face of the documents but a court  
22 of appropriate jurisdiction may enjoin such honor.'

23 Further amend the bill by inserting at the  
24 beginning of the first line after the enacting clause  
25 (page 1, line 5 in L.D.) the following: 'Sec. 3'

26 Further amend the bill in that part designated  
27 "§8-320." in subsection (1) in paragraph (b) in the  
28 last line (page 36, line 13 in L.D.) by striking out  
29 the following: "them; or" and inserting in its place  
30 the following: 'them.'

31 Further amend the bill in that part designated  
32 "§8-401" in subsection (2) in the 3rd line (page 39,  
33 line 1 in L.D.) by striking out the underlined word  
34 "also"

35 Further amend the bill by inserting at the end  
36 before the statement of fact the following:

37 'Sec. 4. 11 MRSA §9-103, sub-(3), ¶(a), as  
38 reenacted by PL 1977, c. 696, §119, is amended to read:

39 (a) This subsection applies to accounts, other

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1 than an account described in subsection (5) on  
2 minerals, and general intangibles, other than  
3 uncertificated securities, and to goods which are  
4 mobile and which are of a type normally used in  
5 more than one jurisdiction, such as motor  
6 vehicles, trailers, mobile homes, rolling stock,  
7 airplanes, shipping containers, road building and  
8 construction machinery and commercial harvesting  
9 machinery and the like, if the goods are equipment  
10 or are inventory leased or held for lease by the  
11 debtor to others, and are not covered by a  
12 certificate of title described in subsection (2).

13 Sec. 5. 11 MRSA §9-103, sub-§(6) is enacted to  
14 read:

15 (6) Uncertificated securities.

16 (a) Except as provided in paragraph (b), the law,  
17 including the choice of law rules, of the  
18 jurisdiction of organization of the issuer governs  
19 perfection or nonperfection of a security interest  
20 in uncertificated securities.

21 (b) If the conflict of law rules or other laws or  
22 regulations of the jurisdiction identified  
23 pursuant to paragraph (a) provide that the law of  
24 this State shall govern the perfection and effect  
25 of perfection or nonperfection of a security  
26 interest in uncertificated securities, including  
27 without limitation uncertificated securities  
28 issued by the federal government or any agency or  
29 instrumentality thereof, then the law of this  
30 State shall govern the perfection and effect of  
31 perfection or nonperfection of such security  
32 interest.

33 Sec. 6. 11 MRSA §9-104, sub-§(13), as enacted by  
34 PL 1981, c. 604, §2, is repealed.

35 Sec. 7. 11 MRSA §9-105, sub-§(1), ¶(i), as  
36 enacted by PL 1977, c. 696, §124, is amended to read:

37 (i) Instrument. "Instrument" means a negotiable  
38 instrument, defined in section 3-104, or a  
39 certificated security, defined in section 8-102,  
40 or any other writing which evidences a right to

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1 the payment of money and is not itself a security  
2 agreement or lease and is of a type which is in  
3 ordinary course of business transferred by  
4 delivery with any necessary indorsement or  
5 assignment;

6 Sec. 8. 11 MRSA §9-203, sub-§(1), as repealed  
7 and replaced by PL 1977, c. 696, §127, is amended to  
8 read:

9 (1) Subject to the provisions of section 4-208 on  
10 the security interest of a collecting bank, section  
11 8-321 on security interests in securities and section  
12 9-113 on a security interest arising under the Article  
13 on sales, a security interest is not enforceable  
14 against the debtor or third parties with respect to  
15 the collateral and does not attach unless

16 (a) The collateral is in the possession of the  
17 secured party pursuant to agreement or the debtor  
18 has signed a security agreement which contains a  
19 description of the collateral and in addition,  
20 when the security interest covers crops growing or  
21 to be grown or timber to be cut, a description of  
22 the land concerned; and

23 (b) Value has been given; and

24 (c) The debtor has rights in the collateral.

25 Sec. 9. 11 MRSA §9-302, sub-§(1), ¶(f), as  
26 repealed and replaced by PL 1977, c. 696, §130, is  
27 amended to read:

28 (f) A security interest of a collecting bank,  
29 section 4-208, or in securities (section 8-321) or  
30 arising under the Article on sales, see section  
31 9-113, or covered in subsection (3).

32 Sec. 10. 11 MRSA §9-304, sub-§(1), as amended by  
33 PL 1977, c. 526, §42, is further amended to read:

34 (1) A security interest in chattel paper or  
35 negotiable documents may be perfected by filing. A  
36 security interest in money or instruments (other than  
37 certificated securities or instruments which  
38 constitute part of chattel paper) can be perfected

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1 only by the secured party's taking possession, except  
2 as provided in subsections (4) and (5) and section  
3 9-306, subsections (2) and (3) on proceeds.

4 Sec. 11. 11 MRSA §9-304, sub-(4) is amended to  
5 read:

6 (4) A security interest in instruments, other  
7 than certificated securities, or negotiable documents  
8 is perfected without filing or the taking of  
9 possession for a period of 21 days from the time it  
10 attaches to the extent that it arises for new value  
11 given under a written security agreement.

12 Sec. 12. 11 MRSA §9-304, sub-§(5), as amended by  
13 PL 1977, c. 526, §43, is further amended to read:

14 (5) A security interest remains perfected for a  
15 period of 21 days without filing where a secured party  
16 having a perfected security interest in an instrument,  
17 other than a certificated security, a negotiable  
18 document or goods in possession of a bailee other than  
19 one who has issued a negotiable document therefor

20 (a) Makes available to the debtor the goods or  
21 documents representing the goods for the purpose  
22 of ultimate sale or exchange or for the purpose of  
23 loading, unloading, storing, shipping,  
24 transshipping, manufacturing, processing or  
25 otherwise dealing with them in a manner  
26 preliminary to their sale or exchange but priority  
27 between conflicting security interests in the  
28 goods is subject to section 9-312, subsection (3);  
29 or

30 (b) Delivers the instrument to the debtor for the  
31 purpose of ultimate sale or exchange or of  
32 presentation, collection, renewal or registration  
33 of transfer.

34 Sec. 13. 11 MRSA §9-305, as amended by PL 1977,  
35 c. 526, §44, is further amended to read:

36 §9-305. When possession by secured party perfects  
37 security interest without filing

38 A security interest in letters of credit and

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1 advices of credit (section 5-116, subsection (2),  
2 paragraph (a)), goods, instruments, other than  
3 certificated securities, money, negotiable documents  
4 or chattel paper may be perfected by the secured  
5 party's taking possession of the collateral. If such  
6 collateral other than goods covered by a negotiable  
7 document is held by a bailee, the secured party is  
8 deemed to have possession from the time the bailee  
9 receives notification of the secured party's interest.  
10 A security interest is perfected by possession from  
11 the time possession is taken without relation back and  
12 continues only so long as possession is retained,  
13 unless otherwise specified in this Article. The  
14 security interest may be otherwise perfected as  
15 provided in this Article before or after the period of  
16 possession by the secured party.

17 Sec. 14. 11 MRSA §9-306, sub-§(2), as amended by  
18 PL 1977, c. 526, §46, is further amended to read:

19 (2) Except where this Article or Article 8  
20 otherwise provides, a security interest continues in  
21 collateral notwithstanding sale, exchange or other  
22 disposition thereof, unless the disposition was  
23 authorized by the secured party in the security  
24 agreement or otherwise, and also continues in any  
25 identifiable proceeds including collections received  
26 by the debtor.

27 Sec. 15. 11 MRSA §9-306, sub-§(3), as repealed  
28 and replaced by PL 1977, c. 696, §134, is amended to  
29 read:

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

36 (a) A filed financing statement covers the  
37 original collateral and the proceeds are  
38 collateral in which a security interest may be  
39 perfected by filing in the office or offices where  
40 the financing statement has been filed and, if the  
41 proceeds are acquired with cash proceeds, the  
42 description of collateral in the financing

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1 statement indicates the types of property  
2 constituting the proceeds; or

3 (b) A filed financing statement covers the  
4 original collateral and the proceeds are  
5 identifiable cash proceeds; or

6 (c) The security interest in the proceeds is  
7 perfected before the expiration of the 10-day  
8 period.

9 Except as provided in this section and in Article  
10 8, a security interest in proceeds can be perfected  
11 only by the methods or under the circumstances  
12 permitted in this Article for original collateral of  
13 the same type.

14 Sec. 16. 11 MRSA §9-309, as amended by PL 1965,  
15 c. 306, §28, is further amended to read:

16 §9-309. Protection of purchasers of instruments,  
17 documents and securities

18 Nothing in this Article limits the rights of a  
19 holder in due course of a negotiable instrument  
20 (section 3-302) or a holder to whom a negotiable  
21 document of title has been duly negotiated (section  
22 7-501) or a bona fide purchaser of a security  
23 (section ~~8-301~~ 8-302) and such holders or  
24 purchasers take priority over an earlier security  
25 interest even though perfected. Filing under this  
26 Article does not constitute notice of the security  
27 interest to such holders or purchasers.

28 Sec. 17. 11 MRSA §9-312, sub-§(7), as repealed  
29 and replaced by PL 1977, c. 696, §140, is amended to  
30 read:

31 (7) If future advances are made while a security  
32 interest is perfected by filing ~~or~~, by the taking  
33 of possession, or under section 8-321 on securities,  
34 the security interest has the same priority for the  
35 purposes of subsection (5) with respect to the future  
36 advances as it does with respect to the first advance.  
37 If a commitment is made before or while the security  
38 interest is so perfected, the security interest has  
39 the same priority with respect to advances made



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1 pursuant thereto. In other cases, a perfected security  
2 interest has priority from the date the advance is  
3 made.'

4 STATEMENT OF FACT

5 This amendment is necessary to conform the rest of  
6 the Uniform Commercial Code to the changes to Article  
7 8 in the original bill.

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