

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

SECOND SPECIAL SESSION

September 25, 1981

AND

THIRD SPECIAL SESSION

December 9, 1981

AND

SECOND REGULAR SESSION

January 6, 1982 to April 13, 1982

AND AT THE

FOURTH SPECIAL SESSION

April 28, 1982 to April 29, 1982

AND AT THE

FIFTH SPECIAL SESSION

May 13, 1982

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co.
Augusta, Maine
1981

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND AND THIRD SPECIAL SESSIONS

and

SECOND REGULAR SESSION

and

FOURTH AND FIFTH SPECIAL SESSIONS

of the

ONE HUNDRED AND TENTH LEGISLATURE

1981

CHAPTER 604

H.P. 1935 - L.D. 1919

AN ACT to Amend the Uniform Commercial Code Regarding Investment Securities.

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

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

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

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

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

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. 11 MRSA §8-321 is enacted to read:

§8-321. Securities subject to repurchase agreement obligations of issuing institutions

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

(a) A "certificated security" is a share, participation or other interest in property of or an enterprise of the issuer, or an obligation of the issuer, which is:

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

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

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

(b) An "uncertificated security" is a share, participation or other interest in property or an enterprise of the issuer or an obligation of the issuer which is:

(i) Not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

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

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

(c) A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. The terms "security" and "securities" are used interchangeably, and include one or more securities or an interest therein, including a security interest therein.

(d) A security "subject to a repurchase agreement obligation" means a security which is transferred, or in which a security interest is granted, pursuant to a repurchase agreement obligation of an issuing institution.

(e) An "issuing institution" is a financial institution, or a financial institution authorized to do business in this State, which issues repurchase agreement obligations.

(f) A "depository" is a financial institution organized under the laws of any state of the United States or organized under the provisions of federal law, which regularly accepts securities in the course of its business as a custodial service for customers, and maintains accounts in the names of such customers reflecting ownership of or interests in such securities.

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

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

(3) All other provisions of this Article are superseded by this section in respect of a security subject to a repurchase agreement obligation of an issuing institution. Notwithstanding any provision of Article 9 or other applicable law, to the extent an issuing institution complies with this section, the provisions of Article 9 are supplemented by, and to the extent inconsistent with this section are superseded by, this section in respect of the perfection of a security interest in a security subject to a repurchase agreement obligation of an issuing institution. Notwithstanding any provision of this section, an issuing institution may also perfect a security interest in a security subject to a repurchase agreement obligation under the provisions of Article 9, whereupon the perfection of such security interest shall be governed by Article 9 to the extent applicable.

(4) A security interest in a security subject to a repurchase agreement obligation issued by an issuing institution may be perfected as provided for the perfection of a security interest in an instrument pursuant to sections 9-304 and 9-305. Perfection by possession of a bailee shall be valid and enforceable as among the secured party, the debtor and 3rd parties, if effected by written notification of the secured party's interest by the issuing institution

to an independent depository, on whose books the interest of such issuing institution in such security is recorded, as bailee for the secured party.

(5) The notification by the issuing institution to the independent depository shall be valid and enforceable in accordance with this section and sections 9-304 and 9-305 if such notification identifies the security subject to a repurchase agreement obligation issued by the issuing institution, which security is maintained by such independent depository, contains the name of each holder of such a repurchase agreement obligation then outstanding and the principal amount thereof, states the aggregate market value of the issuing institution's securities shown on the books of such depository as subject to repurchase agreement obligations of the issuing institution, and states the aggregate principal amount of the issuing institution's repurchase agreement obligations secured by securities subject to such obligations and maintained with such depository.

(6) For the purposes of subsection (4), a depository shall be deemed independent of the issuing institution if the depository does not control, is not controlled by, is not under the control of and is not under common control with the issuing institution. For the purposes of this section, "control" shall have the meaning set forth in Title 9-B, section 1011, subsection 4. The depository shall be deemed the bailee of the holder of the issuing institution's repurchase agreement obligation notwithstanding that, in releasing securities to such issuing institution, such depository may rely conclusively on reports or notifications by the issuing institution indicating that all or a portion of the repurchase agreement obligations of such holders have been paid in full, or that an amount sufficient to pay all or a portion of such repurchase agreement obligations in full has been deposited in an account in the name of a holder or holders of such obligations in the issuing institution, in either case with or without naming each such holder, and such issuing institution may retain the right to substitute securities subject to repurchase agreement obligations, provided that the substituted securities have, on the date of substitution, a market value equal to or greater than the securities released by the depository upon such substitution.

(7) Notwithstanding any provision of this Title or other applicable law, the description or identification of any security subject to a repurchase agreement obligation of an issuing institution in the documents evidencing the repurchase agreement obligation and granting a security interest in such security shall be sufficient for the purposes of Article 9, if such description or identification

states that such securities are all or a portion of the securities shown on the books of an independent depository, or its successor, as subject to repurchase agreement obligations of the issuing institution.

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

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

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

Effective March 23, 1982.

CHAPTER 605

H.P. 2111 - L.D. 2036

AN ACT to Establish "Free Look"
Requirements for Medicare Supplement
Policies.

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

Whereas, Maine's inability to establish a regulatory program governing Medicare supplement insurance which meets the minimum requirements of United States Public Law 96-265 prior to July 1, 1982, will result in the superimposition of a federal regulatory standard in Maine with respect to Medicare supplement insurance; and

Whereas, in the judgment of the Legislature, the interests of the public will be better served and protected by the establishment of a state regulatory program which meets the minimum requirements of United States Public Law 96-265; and

Whereas, additional statutory authority is necessary to bring the state program into compliance with the minimum requirements of United States Public Law 96-265; and