

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

**THIRD SPECIAL SESSION**

October 1, 1992 to October 6, 1992

**FOURTH SPECIAL SESSION**

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

**FIRST REGULAR SESSION**

December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR

FIRST REGULAR SESSION

NON-EMERGENCY LAWS IS

OCTOBER 13, 1993

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Company  
Augusta, Maine  
1993

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND SIXTEENTH LEGISLATURE**

**1993**

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D. Eight persons appointed by the Governor, at least 4 of whom must be chosen from a list of nominations provided by a statewide coalition for the homeless to represent homeless and formerly homeless people and low-income tenants.

**Sec. 2. Further appropriations prohibited.** Additional General Fund money may not be appropriated for the purpose of carrying out this Act.

See title page for effective date.

## CHAPTER 293

S.P. 129 - L.D. 381

### An Act to Enact a New Article on Negotiable Instruments in and to Make Necessary Conforming Amendments to the Uniform Commercial Code

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

#### PART A

**Sec. A-1.** 11 MRSA Art. 3, as amended, is repealed.

**Sec. A-2.** 11 MRSA Art. 3-A is enacted to read:

#### ARTICLE 3-A

#### NEGOTIABLE INSTRUMENTS

#### PART 1

#### GENERAL PROVISIONS AND DEFINITIONS

##### **§3-1101. Short title**

This Article is known and may be cited as "Uniform Commercial Code -- Negotiable Instruments."

##### **§3-1102. Subject matter**

(1) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4-A, or to securities governed by Article 8.

(2) If there is conflict between this Article and Article 4 or 9, Article 4 or 9 governs.

(3) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

##### **§3-1103. Definitions**

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

(a) "Acceptor" means a drawee who has accepted a draft.

(b) "Drawee" means a person ordered in a draft to make payment.

(c) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(d) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(e) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(f) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

(h) "Party" means a party to an instrument.

(i) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(j) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 1-201, subsection (8)).

(k) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(2) Other definitions applying to this Article and the sections in which they appear are:

|                                     |                       |
|-------------------------------------|-----------------------|
| <u>"Acceptance"</u>                 | <u>Section 3-1409</u> |
| <u>"Accommodated party"</u>         | <u>Section 3-1419</u> |
| <u>"Accommodation party"</u>        | <u>Section 3-1419</u> |
| <u>"Alteration"</u>                 | <u>Section 3-1407</u> |
| <u>"Anomalous indorsement"</u>      | <u>Section 3-1205</u> |
| <u>"Blank indorsement"</u>          | <u>Section 3-1205</u> |
| <u>"Cashier's check"</u>            | <u>Section 3-1104</u> |
| <u>"Certificate of deposit"</u>     | <u>Section 3-1104</u> |
| <u>"Certified check"</u>            | <u>Section 3-1409</u> |
| <u>"Check"</u>                      | <u>Section 3-1104</u> |
| <u>"Consideration"</u>              | <u>Section 3-1303</u> |
| <u>"Draft"</u>                      | <u>Section 3-1104</u> |
| <u>"Holder in due course"</u>       | <u>Section 3-1302</u> |
| <u>"Incomplete instrument"</u>      | <u>Section 3-1115</u> |
| <u>"Indorsement"</u>                | <u>Section 3-1204</u> |
| <u>"Indorser"</u>                   | <u>Section 3-1204</u> |
| <u>"Instrument"</u>                 | <u>Section 3-1104</u> |
| <u>"Issue"</u>                      | <u>Section 3-1105</u> |
| <u>"Issuer"</u>                     | <u>Section 3-1105</u> |
| <u>"Negotiable instrument"</u>      | <u>Section 3-1104</u> |
| <u>"Negotiation"</u>                | <u>Section 3-1201</u> |
| <u>"Note"</u>                       | <u>Section 3-1104</u> |
| <u>"Payable at a definite time"</u> | <u>Section 3-1108</u> |
| <u>"Payable on demand"</u>          | <u>Section 3-1108</u> |
| <u>"Payable to bearer"</u>          | <u>Section 3-1109</u> |
| <u>"Payable to order"</u>           | <u>Section 3-1109</u> |
| <u>"Payment"</u>                    | <u>Section 3-1602</u> |
| <u>"Person entitled to enforce"</u> | <u>Section 3-1301</u> |
| <u>"Presentment"</u>                | <u>Section 3-1501</u> |
| <u>"Reacquisition"</u>              | <u>Section 3-1207</u> |
| <u>"Special indorsement"</u>        | <u>Section 3-1205</u> |
| <u>"Teller's check"</u>             | <u>Section 3-1104</u> |
| <u>"Transfer of instrument"</u>     | <u>Section 3-1203</u> |
| <u>"Traveler's check"</u>           | <u>Section 3-1104</u> |
| <u>"Value"</u>                      | <u>Section 3-1303</u> |

(3) The following definitions in other Articles apply to this Article:

|                            |                      |
|----------------------------|----------------------|
| <u>"Bank"</u>              | <u>Section 4-105</u> |
| <u>"Banking day"</u>       | <u>Section 4-104</u> |
| <u>"Clearing house"</u>    | <u>Section 4-104</u> |
| <u>"Collecting bank"</u>   | <u>Section 4-105</u> |
| <u>"Depository bank"</u>   | <u>Section 4-105</u> |
| <u>"Documentary draft"</u> | <u>Section 4-104</u> |
| <u>"Intermediary bank"</u> | <u>Section 4-105</u> |
| <u>"Item"</u>              | <u>Section 4-104</u> |
| <u>"Payor bank"</u>        | <u>Section 4-105</u> |
| <u>"Suspends payments"</u> | <u>Section 4-104</u> |

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

### §3-1104. Negotiable instrument

(1) Except as provided in subsections (3) and (4), "negotiable instrument" means an unconditional prom-

ise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(a) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(b) Is payable on demand or at a definite time; and

(c) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain:

(i) An undertaking or power to give, maintain or protect collateral to secure payment;

(ii) An authorization or power to the holder to confess judgment or realize on or dispose of collateral; or

(iii) A waiver of the benefit of any law intended for the advantage or protection of an obligor.

(2) "Instrument" means a negotiable instrument.

(3) An order that meets all of the requirements of subsection (1), paragraphs (b) and (c) and otherwise falls within the definition of "check" in subsection (6) is a negotiable instrument and a check.

(4) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(6) "Check" means:

(a) A draft, other than a documentary draft, payable on demand and drawn on a bank; or

(b) A cashier's check or teller's check.

An instrument may be a check even though it is described on its face by another term, such as "money order."

(7) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(8) "Teller's check" means a draft drawn by a bank:

- (a) On another bank; or
- (b) Payable at or through a bank.

(9) "Traveler's check" means an instrument that:

- (a) Is payable on demand;
- (b) Is drawn on or payable at or through a bank;
- (c) Is designated by the term "traveler's check" or by a substantially similar term; and
- (d) Requires as a condition to payment a countersignature by a person whose specimen signature appears on the instrument.

(10) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

### **§3-1105. Issue of instrument**

(1) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(2) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure to fulfill the condition or special purpose is a defense.

(3) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

### **§3-1106. Unconditional promise or order**

(1) Except as provided in this section, for the purposes of section 3-1104, subsection (1), a promise or order is unconditional unless it states:

- (a) An express condition to payment;
- (b) That the promise or order is subject to or governed by another writing; or
- (c) That rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(2) A promise or order is not made conditional:

(a) By a reference to another writing for a statement of rights with respect to collateral, prepayment or acceleration; or

(b) Because payment is limited to resort to a particular fund or source.

(3) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of section 3-1104, subsection (1). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(4) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 3-1104, subsection (1); but if the promise or order is an instrument, there can not be a holder in due course of the instrument.

### **§3-1107. Instrument payable in foreign money**

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

### **§3-1108. Payable on demand or at definite time**

(1) A promise or order is "payable on demand" if it:

(a) States that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder; or

(b) Does not state any time of payment.

(2) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of:

(a) Prepayment;

(b) Acceleration;

(c) Extension at the option of the holder; or

(d) Extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(3) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

### **§3-1109. Payable to bearer or to order**

(1) A promise or order is payable to bearer if it:

(a) States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(b) Does not state a payee; or

(c) States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(2) A promise or order that is not payable to bearer is payable to order if it is payable:

(a) To the order of an identified person; or

(b) To an identified person or order.

A promise or order that is payable to order is payable to the identified person.

(3) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to Section 3-1205, subsection (1). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to Section 3-1205, subsection (2).

### **§3-1110. Identification of person to whom instrument is payable**

(1) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(2) If the signature of the issuer of an instrument is made by automated means, such as a check-writing

machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(3) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(a) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(b) If an instrument is payable to:

(i) A trust, an estate or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative or a successor of either, whether or not the beneficiary or estate is also named;

(ii) A person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative or a successor of the representative;

(iii) A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office or a successor to the incumbent.

(4) If an instrument is payable to 2 or more persons alternatively, it is payable to any of them and may be negotiated, discharged or enforced by any or all of them in possession of the instrument. If an instrument is payable to 2 or more persons not alternatively, it is payable to all of them and may be negotiated, discharged or enforced only by all of them. If an instrument payable to 2 or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

### **§3-1111. Place of payment**

Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an

instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

### **§3-1112. Interest**

(1) Unless otherwise provided in the instrument:

(a) An instrument is not payable with interest; and

(b) Interest on an interest-bearing instrument is payable from the date of the instrument.

(2) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable can not be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

### **§3-1113. Date of instrument**

(1) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in section 4-401, subsection (1-B), an instrument payable on demand is not payable before the date of the instrument.

(2) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

### **§3-1114. Contradictory terms of instrument**

If an instrument contains contradictory terms, type-written terms prevail over printed terms, handwritten terms prevail over both and words prevail over numbers.

### **§3-1115. Incomplete instrument**

(1) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(2) Subject to subsection (3), if an incomplete instrument is an instrument under section 3-1104, it may

be enforced according to its terms if it is not completed or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under section 3-1104, but after completion the requirements of section 3-1104 are met, the instrument may be enforced according to its terms as augmented by completion.

(3) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under section 3-1407.

(4) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

### **§3-1116. Joint and several liability; contribution**

(1) Except as otherwise provided in the instrument, 2 or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(2) Except as provided in section 3-1419, subsection (5) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(3) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (2) of a party having the same joint and several liability to receive contribution from the party discharged.

### **§3-1117. Other agreements affecting instrument**

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented or nullified by an agreement under this section, the agreement is a defense to the obligation.

### **§3-1118. Statute of limitations**

(1) Except as provided in subsection (5), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within 6 years after the due date or dates stated in the note or, if a due date is accelerated, within 6 years after the accelerated due date.



(2) Except as provided in subsection (4) or (5), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within 6 years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(3) Except as provided in subsection (4), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within 3 years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(4) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check or traveler's check must be commenced within 3 years after demand for payment is made to the acceptor or issuer, as the case may be.

(5) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within 6 years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the 6-year period begins when a demand for payment is in effect and the due date has passed.

(6) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced:

(a) Within 6 years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time; or

(b) Within 6 years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(7) Unless governed by other law regarding claims for indemnity or contribution, an action must be commenced within 3 years after the cause of action accrues if that action is:

(a) For conversion of an instrument, for money had and received or like action based on conversion;

(b) For breach of warranty; or

(c) To enforce an obligation, duty or right arising under this Article and not governed by this section.

### **§3-1119. Notice of right to defend action**

In an action for breach of an obligation for which a 3rd person is answerable over pursuant to this Article

or Article 4, the defendant may give the 3rd person written notice of the litigation and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the 2 litigations, the person notified is so bound unless after reasonable receipt of the notice the person notified does come in and defend.

## **PART 2**

### **NEGOTIATION, TRANSFER AND INDORSEMENT**

#### **§3-1201. Negotiation**

(1) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(2) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

#### **§3-1202. Negotiation subject to rescission**

(1) Negotiation is effective even if obtained:

(a) From an infant, a corporation exceeding its powers or a person without capacity;

(b) By fraud, duress or mistake; or

(c) In breach of duty or as part of an illegal transaction.

(2) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

#### **§3-1203. Transfer of instrument; rights acquired by transfer**

(1) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(2) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any

right as a holder in due course, but the transferee can not acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(3) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(4) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee.

### **§3-1204. Indorsement**

(1) "Indorsement" means a signature, other than that of a signer as maker, drawer or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of:

- (a) Negotiating the instrument;
- (b) Restricting payment of the instrument; or
- (c) Incurring indorser's liability on the instrument.

Regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(2) "Indorser" means a person who makes an indorsement.

(3) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(4) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

### **§3-1205. Special indorsement; blank indorsement; anomalous indorsement**

(1) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 3-1110 apply to special indorsements.

(2) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(3) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(4) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

### **§3-1206. Restrictive indorsement**

(1) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(2) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(3) If an instrument bears an indorsement described in section 4-201, subsection (2) or in blank or to a particular bank using the words "for deposit," "for collection" or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply.

(a) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(b) A depository bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by

the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(c) A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(d) Except as otherwise provided in paragraph (c), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(4) Except for an indorsement covered by subsection (3), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee or other fiduciary for the benefit of the indorser or another person, the following rules apply.

(a) Unless there is notice of breach of fiduciary duty as provided in section 3-1307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(b) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(5) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (3) or has notice or knowledge of breach of fiduciary duty as stated in subsection (4).

(6) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

### **§3-1207. Reacquisition**

Reacquisition of an instrument occurs if it is transferred to a former holder by negotiation or otherwise. A

former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged and the discharge is effective against any subsequent holder.

## **PART 3**

### **ENFORCEMENT OF INSTRUMENTS**

#### **§3-1301. Person entitled to enforce instrument**

"Person entitled to enforce" an instrument means:

(1) The holder of the instrument;

(2) A nonholder in possession of the instrument who has the rights of a holder; or

(3) A person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 3-1309 or 3-1418, subsection (4). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

#### **§3-1302. Holder in due course**

(1) Subject to subsection (3) and section 3-1106, subsection (3), "holder in due course" means the holder of an instrument if:

(a) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(b) The holder took the instrument:

(i) For value;

(ii) In good faith;

(iii) Without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series;

(iv) Without notice that the instrument contains an unauthorized signature or has been altered;

(v) Without notice of any claim to the instrument described in section 3-1306; and

(vi) Without notice that any party has a defense or claim in recoupment described in section 3-1305, subsection (1).

(2) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (1), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment or claim to the instrument.

(3) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken:

(a) By legal process or by purchase in an execution, bankruptcy or creditor's sale or similar proceeding;

(b) By purchase as part of a bulk transaction not in ordinary course of business of the transferor; or

(c) As the successor in interest to an estate or other organization.

(4) If, under section 3-1303, subsection (1), paragraph (a), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(5) The person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured if:

(a) The person entitled to enforce an instrument has only a security interest in the instrument; and

(b) The person obliged to pay the instrument has a defense, claim in recoupment or claim to the instrument that may be asserted against the person who granted the security interest.

(6) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(7) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

### **§3-1303. Value and consideration**

if:

(1) An instrument is issued or transferred for value

(a) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(b) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(c) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(d) The instrument is issued or transferred in exchange for a negotiable instrument; or

(e) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a 3rd party by the person taking the instrument.

(2) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (1), the instrument is also issued for consideration.

### **§3-1304. Overdue instrument**

(1) An instrument payable on demand becomes overdue at the earliest of the following times:

(a) On the day after the day demand for payment is duly made;

(b) If the instrument is a check, 90 days after its date; or

(c) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date that is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(2) With respect to an instrument payable at a definite time the following rules apply:

(a) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(b) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(c) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(3) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

### **§3-1305. Defenses and claims in recoupment**

(1) Except as stated in subsection (2), the right to enforce the obligation of a party to pay an instrument is subject to the following:

(a) A defense of the obligor based on:

(i) Infancy of the obligor to the extent it is a defense to a simple contract;

(ii) Duress, lack of legal capacity or illegality of the transaction that, under other law, nullifies the obligation of the obligor;

(iii) Fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; or

(iv) Discharge of the obligor in insolvency proceedings;

(b) A defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(c) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(2) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (1), paragraph (a), but is not subject to defenses of the obligor stated in subsection (1), paragraph (b) or claims in recoupment stated in subsection (1), paragraph (c) against a person other than the holder.

(3) Except as stated in subsection (4), in an action to enforce the obligation of a party to pay the instru-

ment, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment or claim to the instrument (section 3-1306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(4) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (1) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy and lack of legal capacity.

### **§3-1306. Claims to an instrument**

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

### **§3-1307. Notice of breach of fiduciary duty**

(1) In this section:

(a) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument; and

(b) "Represented person" means the principal, beneficiary, partnership, corporation or other person to whom the duty stated in paragraph (a) is owed.

(2) If an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary and the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply.

(a) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(b) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is:

(i) Taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(ii) Taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(iii) Deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(c) If an instrument is issued by the represented person or the fiduciary as such and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(d) If an instrument is issued by the represented person or the fiduciary as such to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is:

(i) Taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(ii) Taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(iii) Deposited to an account other than an account of the fiduciary as such or an account of the represented person.

### **§3-1308. Proof of signatures and status as holder in due course**

(1) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under section 3-1402, subsection (1).

(2) If the validity of signatures is admitted or proved and there is compliance with subsection (1), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 3-1301, unless the defendant proves

a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

### **§3-1309. Enforcement of lost, destroyed or stolen instrument**

(1) A person not in possession of an instrument is entitled to enforce the instrument if:

(a) The person was in possession of the instrument and entitled to enforce it when loss of possession occurred;

(b) The loss of possession was not the result of a transfer by the person or a lawful seizure; and

(c) The person can not reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts can not be determined or it is in the wrongful possession of an unknown person or a person that can not be found or is not amenable to service of process.

(2) A person seeking enforcement of an instrument under subsection (1) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 3-1308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

### **§3-1310. Effect of instrument on obligation for which taken**

(1) Unless otherwise agreed, if a certified check, cashier's check or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(2) Unless otherwise agreed and except as provided in subsection (1), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken and the following rules apply.

(a) In the case of an uncertified check, suspension of the obligation continues until dishonor of the

check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(b) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(c) Except as provided in paragraph (d), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a 3rd person that is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(d) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(3) If an instrument other than one described in subsection (1) or (2) is taken for an obligation, the effect is:

(a) That effect stated in subsection (1) if the instrument is one on which a bank is liable as maker or acceptor; or

(b) That effect stated in subsection (2) in any other case.

### **§3-1311. Accord and satisfaction by use of instrument**

(1) Subsections (2) to (4) apply if a person against whom a claim is asserted proves that:

(a) The person in good faith tendered an instrument to the claimant as full satisfaction of the claim;

(b) The amount of the claim was unliquidated or subject to a bona fide dispute; and

(c) The claimant obtained payment of the instrument.

(2) Unless subsection (3) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written

communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(3) Subject to subsection (4), a claim is not discharged under subsection (2) if either of the following applies:

(a) The claimant, if an organization, proves that:

(i) Within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office or place; and

(ii) The instrument or accompanying communication was not received by that designated person, office or place; or

(b) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (a), subparagraph (i).

(4) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

### **§3-1312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check**

(1) In this section, the following terms have the following meanings.

(a) "Check" means a cashier's check, teller's check or certified check.

(b) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check or certified check that was lost, destroyed or stolen.

(c) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that:

(i) The declarer lost possession of a check;

(ii) The declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check;

(iii) The loss of possession was not the result of a transfer by the declarer or a lawful seizure; and

(iv) The declarer can not reasonably obtain possession of the check because the check was destroyed, its whereabouts can not be determined or it is in the wrongful possession of an unknown person or a person that can not be found or is not amenable to service of process.

(d) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(2) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if:

(a) The claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check;

(b) The communication contains or is accompanied by a declaration of loss of the claimant with respect to the check;

(c) The communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid; and

(d) The claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration.

(3) If a claim is asserted in compliance with subsection (2), the following rules apply.

(a) The claim becomes enforceable at the later of:

(i) The time the claim is asserted; or

(ii) The 90th day following the date of the check, in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance, in the case of a certified check.

(b) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may per-

mit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(c) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(d) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to section 4-302, subsection (1), paragraph (a), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(4) If the obligated bank pays the amount of a check to a claimant under subsection (3), paragraph (d) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to:

(a) Refund the payment to the obligated bank if the check is paid; or

(b) Pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(5) If a claimant has the right to assert a claim under subsection (2) and is also a person entitled to enforce a cashier's check, teller's check or certified check that is lost, destroyed or stolen, the claimant may assert rights with respect to the check either under this section or section 3-1309.

## **PART 4**

### **LIABILITY OF PARTIES**

#### **§3-1401. Signature**

(1) A person is not liable on an instrument unless:

(a) The person signed the instrument; or

(b) The person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3-1402.

(2) A signature may be made:

(a) Manually or by means of a device or machine; and

(b) By the use of any name, including a trade or assumed name, or by a word, mark, or symbol ex-



ecuted or adopted by a person with present intention to authenticate a writing.

### **§3-1402. Signature by representative**

(1) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the authorized signature of the represented person and the represented person is liable on the instrument, whether or not identified in the instrument.

(2) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply.

(a) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(b) Subject to subsection (3), the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument if:

(i) The form of the signature does not show unambiguously that the signature is made in a representative capacity; or

(ii) The represented person is not identified in the instrument.

With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(3) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

### **§3-1403. Unauthorized signature**

(1) Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it

for value. An unauthorized signature may be ratified for all purposes of this Article.

(2) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(3) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article that makes the unauthorized signature effective for the purposes of this Article.

### **§3-1404. Impostors; fictitious payees**

(1) If an impostor by use of the mails or otherwise induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who in good faith pays the instrument or takes it for value or for collection.

(2) If a person whose intent determines to whom an instrument is payable (section 3-1110(1) or (2)) does not intend the person identified as payee to have any interest in the instrument or the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement.

(a) Any person in possession of the instrument is its holder.

(b) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(3) Under subsection (1) or (2), an indorsement is made in the name of a payee if:

(a) It is made in a name substantially similar to that of the payee; or

(b) The instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.

(4) With respect to an instrument to which subsection (1) or (2) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary

care to the extent the failure to exercise ordinary care contributed to the loss.

**§3-1405. Employer's responsibility for fraudulent indorsement by employee**

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

(a) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(b) "Fraudulent indorsement" means:

(i) In the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer; or

(ii) In the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(c) "Responsibility" with respect to instruments means authority:

(i) To sign or indorse instruments on behalf of the employer;

(ii) To process instruments received by the employer for bookkeeping purposes, for deposit to an account or for other disposition;

(iii) To prepare or process instruments for issue in the name of the employer;

(iv) To supply information determining the names or addresses of payees of instruments to be issued in the name of the employer;

(v) To control the disposition of instruments to be issued in the name of the employer; or

(vi) To act otherwise with respect to instruments in a responsible capacity.

"Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(2) For the purpose of determining the rights and liabilities of a person who in good faith pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person

acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(3) Under subsection (2), an indorsement is made in the name of the person to whom an instrument is payable if:

(a) The instrument is made in a name substantially similar to the name of that person; or

(b) The instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person.

**§3-1406. Negligence contributing to forged signature or alteration of instrument**

(1) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(2) Under subsection (1), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(3) Under subsection (1), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (2), the burden of proving failure to exercise ordinary care is on the person precluded.

**§3-1407. Alteration**

(1) "Alteration" means:

(a) An unauthorized change in an instrument that purports to modify in any respect the obligation of a party; or

(b) An unauthorized addition of words or numbers or other change to an incomplete instrument related to the obligation of a party.

(2) Except as provided in subsection (3), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(3) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument:

- (a) According to its original terms; or
- (b) In the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

### **§3-1408. Drawee not liable on unaccepted draft**

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

### **§3-1409. Acceptance of draft; certified check**

(1) "Acceptance" means the drawee's signed agreement to pay a draft as presented. Acceptance must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(2) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue or has been dishonored.

(3) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(4) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (1) or by a writing on the check that indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

### **§3-1410. Acceptance varying draft**

(1) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(2) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(3) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

### **§3-1411. Refusal to pay cashier's checks, teller's checks and certified checks**

(1) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(2) The person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages and if the obligated bank wrongfully:

- (a) Refuses to pay a cashier's check or certified check;
- (b) Stops payment of a teller's check; or
- (c) Refuses to pay a dishonored teller's check.

(3) Expenses or consequential damages under subsection (2) are not recoverable if the refusal of the obligated bank to pay occurs because:

- (a) The bank suspends payments;
- (b) The obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument;
- (c) The obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument; or
- (d) Payment is prohibited by law.

### **§3-1412. Obligation of issuer of note or cashier's check**

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument:

(1) According to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder; or

(2) If the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 3-1115 and 3-1407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under section 3-1415.

### **§3-1413. Obligation of acceptor**

(1) The acceptor of a draft is obliged to pay the draft:

(a) According to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms;

(b) If the acceptance varies the terms of the draft, according to the terms of the draft as varied; or

(c) If the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in sections 3-1115 and 3-1407.

The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under section 3-1414 or 3-1415.

(2) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If the certification or acceptance does not state an amount, the amount of the instrument is subsequently raised and the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

### **§3-1414. Obligation of drawer**

(1) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(2) When an unaccepted draft is dishonored, the drawer is obliged to pay the draft:

(a) According to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder; or

(b) If the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 3-1115 and 3-1407.

The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under section 3-1415.

(3) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(4) When a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under section 3-1415, subsections (1) and (3).

(5) If a draft states that it is drawn without recourse or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (2) to pay the draft when the draft is not a check. A disclaimer of the liability stated in subsection (2) is not effective if the draft is a check.

(6) The drawer, to the extent deprived of funds, may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds if:

(a) A check is not presented for payment or given to a depository bank for collection within 30 days after its date;

(b) The drawee suspends payments after expiration of the 30-day period without paying the check; and

(c) Because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check.

### **§3-1415. Obligation of indorser**

(1) Subject to subsections (2), (3), (4) and (5) and to section 3-1419, subsection (4), when an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument:

(a) According to the terms of the instrument at the time it was indorsed; or

(b) If the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in sections 3-1115 and 3-1407.

The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(2) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (1) to pay the instrument.

(3) If notice of dishonor of an instrument is required by section 3-1503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (1) is discharged.

(4) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (1) is discharged.

(5) If an indorser of a check is liable under subsection (1) and the check is not presented for payment, or given to a depository bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (1) is discharged.

### **§3-1416. Transfer warranties**

(1) A person who transfers an instrument for consideration shall warrant to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(a) The warrantor is a person entitled to enforce the instrument;

(b) All signatures on the instrument are authentic and authorized;

(c) The instrument has not been altered;

(d) The instrument is not subject to a defense or claim in recoupment of any party that may be asserted against the warrantor; and

(e) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(2) A person to whom the warranties under subsection (1) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(3) The warranties stated in subsection (1) may not be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (2) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(4) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

### **§3-1417. Presentment warranties**

(1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment and a previous transferor of the draft, at the time of transfer, shall warrant to the drawee making payment or accepting the draft in good faith that:

(a) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) The draft has not been altered; and

(c) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3-1404 or 3-1405 or the drawer is precluded under section 3-1406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) If a dishonored draft is presented for payment to the drawer or an indorser, or any other instrument is presented for payment to a party obliged to pay the instrument and payment is received, the following rules apply.

(a) The person obtaining payment and a prior transferor of the instrument shall warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(b) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) can not be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (2) or (4) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

### **§3-1418. Payment or acceptance by mistake**

(1) Except as provided in subsection (3), the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that payment of the draft had not been stopped pursuant to section 4-403 or the signature of the drawer of the draft was authorized.

Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(2) Except as provided in subsection (3), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (1), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution:

(a) Recover the payment from the person to whom or for whose benefit payment was made; or

(b) In the case of acceptance, revoke the acceptance.

(3) The remedies provided by subsection (1) or (2) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by section 3-1417 or 4-407.

(4) Notwithstanding section 4-213, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (1) or (2), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

### **§3-1419. Instruments signed for accommodation**

(1) If an instrument is issued for value given for the benefit of a party to the instrument, in this section referred to as the "accommodated party," and another party to the instrument, in this section referred to as the "accommodation party," signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party for accommodation.

(2) An accommodation party may sign the instrument as maker, drawer, acceptor or indorser and, subject to subsection (4), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(3) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 3-1605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(4) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:

(a) Execution of judgment against the other party has been returned unsatisfied;

(b) The other party is insolvent or in an insolvency proceeding;

(c) The other party can not be served with process; or

(d) It is otherwise apparent that payment can not be obtained from the other party.

(5) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse

against, and is not entitled to contribution from, an accommodation party.

### **§3-1420. Conversion of instrument**

(1) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by the issuer or acceptor of the instrument or a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a copayee.

(2) In an action under subsection (1), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(3) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

## **PART 5**

### **DISHONOR**

#### **§3-1501. Presentment**

(1) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument:

(a) To pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank; or

(b) To accept a draft made to the drawee.

(2) The following rules are subject to Article 4, agreement of the parties and clearinghouse rules and the like:

(a) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of 2 or more makers, acceptors, drawees or other payors.

(b) Upon demand of the person to whom presentment is made, the person making presentment must:

(i) Exhibit the instrument;

(ii) Give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so; and

(iii) Sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(c) Without dishonoring the instrument, the party to whom presentment is made may:

(i) Return the instrument for lack of a necessary indorsement; or

(ii) Refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(d) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

#### **§3-1502. Dishonor**

(1) Dishonor of a note is governed by the following rules.

(a) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(b) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(c) If the note is not payable on demand and paragraph (b) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(2) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules.

(a) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under section 4-301 or 4-302, or becomes accountable for the amount of the check under section 4-302.

(b) If a draft is payable on demand and paragraph (a) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(c) When a draft is payable on a date stated in the draft, the draft is dishonored if:

(i) Presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later; or

(ii) Presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(d) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(3) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (2), paragraphs (b), (c) and (d), except that payment or acceptance may be delayed without dishonor until no later than the close of the 3rd business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

(4) Dishonor of an accepted draft is governed by the following rules.

(a) When the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(b) When the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(5) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under section 3-1504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(6) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance, the draft is treated as never having been dishonored.

### **§3-1503. Notice of dishonor**

(1) The obligation of an indorser stated in section 3-1415, subsection (1) and the obligation of a drawer stated in section 3-1414, subsection (4) may not be enforced unless:

(a) The indorser or drawer is given notice of dishonor of the instrument complying with this section; or

(b) Notice of dishonor is excused under section 3-1504, subsection (2).

(2) Notice of dishonor may be given by any person and by any commercially reasonable means, including an oral, written or electronic communication, and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(3) Subject to section 3-1504, subsection (3), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given:

(a) By the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument; or

(b) By any other person within 30 days following the day on which the person receives notice of dishonor.

With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

### **§3-1504. Excused presentment and notice of dishonor**

(1) Presentment for payment or acceptance of an instrument is excused if:

(a) The person entitled to present the instrument can not with reasonable diligence make presentment;

(b) The maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings;



(c) By the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer;

(d) The drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted; or

(e) The drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(2) Notice of dishonor is excused if:

(a) By the terms of the instrument, notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument; or

(b) The party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(3) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

### **§3-1505. Evidence of dishonor**

(1) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(a) A document regular in form as provided in subsection (2) which purports to be a protest;

(b) A purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; or

(c) A book or record of the drawee, payor bank or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(2) A protest is a certificate of dishonor made by a United States consul or vice-consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

## **PART 6**

### **DISCHARGE AND PAYMENT**

#### **§3-1601. Discharge and effect of discharge**

(1) The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party that would discharge an obligation to pay money under a simple contract.

(2) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

#### **§3-1602. Payment**

(1) Subject to subsection (2), an instrument is paid to the extent payment is made:

(a) By or on behalf of a party obliged to pay the instrument; and

(b) To a person entitled to enforce the instrument.

To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 3-306 by another person.

(2) The obligation of a party to pay the instrument is not discharged under subsection (1) if:

(a) A claim to the instrument under section 3-1306 is enforceable against the party receiving payment and:

(i) Payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction; or

(ii) In the case of an instrument other than a cashier's check, teller's check or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(b) The person making payment knows that the instrument is a stolen instrument and pays a person that the person making payment knows is in wrongful possession of the instrument.

#### **§3-1603. Tender of payment**

(1) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(2) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(3) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

#### **§3-1604. Discharge by cancellation or renunciation**

(1) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument:

(a) By an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation or cancellation of the instrument, cancellation or striking out of the party's signature or the addition of words to the instrument indicating discharge; or

(b) By agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(2) Cancellation or striking out of an indorsement pursuant to subsection (1) does not affect the status and rights of a party derived from the indorsement.

#### **§3-1605. Discharge of indorsers and accommodation parties**

(1) In this section, the term "indorser" includes a drawer having the obligation described in section 3-1414, subsection (4).

(2) Discharge, under section 3-1604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(3) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of

the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(4) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(5) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent:

(a) That the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge; or

(b) That the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(6) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent that the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (5), the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(7) Under subsection (5) or (6), impairing value of an interest in collateral includes:

(a) Failure to obtain or maintain perfection or recordation of the interest in collateral;

(b) Release of collateral without substitution of collateral of equal value;

(c) Failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or surety or other person secondarily liable; or

(d) Failure to comply with applicable law in disposing of collateral.

(8) An accommodation party is not discharged under subsection (3), (4) or (5) unless the person entitled to enforce the instrument knows of the accommodation or has notice under section 3-1419, subsection (3) that the instrument was signed for accommodation.

(9) A party is not discharged under this section if:

(a) The party asserting discharge consents to the event or conduct that is the basis of the discharge; or

(b) The instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

**Sec. A-3. Legislative intent.** This Act is the Maine enactment of the Uniform Commercial Code, Article 3 as revised by the National Conference of Commissioners on Uniform State Laws. The text of that uniform act has been changed to conform to Maine statutory conventions and the article is enacted as Article 3-A. Unless otherwise noted in a Maine comment, the changes are technical in nature and it is the intent of the Legislature that this Act be interpreted as substantively the same as the revised Article 3 of the uniform act.

## PART B

**Sec. B-1. 11 MRSA §1-201, sub-§(20),** as amended by PL 1987, c. 625, §1, is repealed and the following enacted in its place:

(20) Holder. "Holder" with respect to a negotiable instrument means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

**Sec. B-2. 11 MRSA §1-201, sub-§(24)** is amended to read:

(24) Money. "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency and includes a monetary unit of account established by an intergovernmental organization or by agreement between 2 or more nations.

**Sec. B-3. 11 MRSA §1-201, sub-§(43)** is amended to read:

(43) Unauthorized. "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

**Sec. B-4. 11 MRSA §1-207** is repealed and the following enacted in its place:

### §1-207. Performance or acceptance under reservation of rights

(1) A party who, with explicit reservation of rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

(2) Subsection (1) does not apply to an accord and satisfaction.

**Sec. B-5. 11 MRSA §2-511, sub-§(3)** is amended to read:

(3) Subject to the provisions of this Title on the effect of an instrument on an obligation (section ~~3-802~~ 3-1310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

**Sec. B-6. 11 MRSA §4-101** is amended to read:

### **§4-101. Short title**

This Article ~~shall be known and~~ may be cited as "Uniform Commercial Code — Bank Deposits and Collections."

**Sec. B-7. 11 MRSA §4-102,** is amended to read:

### **§4-102. Applicability**

(1) To the extent that items within this Article are also within the scope of Articles ~~3-3-A~~ 3-3-A and 8, they are subject to the provisions of those Articles. ~~In the event of~~ If there is conflict the provisions of, this Article govern those of governs Article ~~3-3-A~~ 3-3-A, but the provisions of Article 8 govern those of governs this Article.

(2) The liability of a bank for action or nonaction with respect to any an item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

**Sec. B-8. 11 MRSA §4-103** is amended to read:

**§4-103. Variation by agreement; measure of damages; action constituting ordinary care**

(1) The effect of the provisions of this Article may be varied by agreement, ~~except that no agreement can but the parties to the agreement can not~~ disclaim a bank's responsibility for its ~~own~~ lack of good faith or failure to exercise ordinary care or ~~can~~ limit the measure of damages for ~~such the~~ lack or failure; ~~but~~. However, the parties may determine by agreement ~~determine~~ the standards by which ~~such the~~ bank's responsibility is to be measured, if ~~such those~~ standards are not manifestly unreasonable.

(2) Federal ~~reserve~~ Reserve regulations and operating ~~letters, clearing house~~ clearinghouse rules; and the like; have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this Article or pursuant to federal reserve regulations or operating ~~letters constitutes~~ clearinghouse is the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with ~~clearing house~~ clearinghouse rules and the like or with a general banking usage not disapproved by this ~~article~~ Article, is prima facie ~~constitutes~~ the exercise of ordinary care.

(4) The specification or approval of certain procedures by this ~~article does not constitute~~ Article is not disapproval of other procedures ~~which~~ that may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount ~~which~~ that could not have been realized by the ~~use~~ exercise of ordinary care; ~~and where~~. If there is also bad faith it includes any other damages, if ~~any~~ suffered by the party suffered as a proximate consequence.

**Sec. B-9. 11 MRSA §4-104** is amended to read:

**§4-104. Definitions and index of definitions**

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

(a) Account. "Account" means any deposit or credit account with a bank ~~and includes, including a checking, time, interest or savings account demand, time, savings, passbook, share draft or like~~ account, other than an account evidenced by a certificate of deposit.

(b) Afternoon. "Afternoon" means the period of a day between noon and midnight.

(c) Banking day. "Banking day" means ~~that the~~ part of any a day on which a bank is open to the public for carrying on substantially all of its banking functions.

(d) ~~Clearing house~~ Clearinghouse. "Clearing house" "Clearinghouse" means any an association of banks or other payors regularly clearing items.

(e) Customer. "Customer" means any a person having an account with a bank or for whom a bank has agreed to collect items ~~and includes, including a bank carrying that maintains~~ an account with at another bank.

(f) Documentary draft. "Documentary draft" means ~~any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft a draft to be presented for acceptance or payment if specified documents, certificated securities as defined in section 8-102, instructions for uncertificated securities as defined in section 8-308, or other certificates, statements or the like are to be received by the drawee or other payor before acceptance or payment of the draft.~~

(f-1) Draft. "Draft" means a draft as defined in section 3-1104 or an item, other than an instrument, that is an order.

(f-2) Drawee. "Drawee" means a person ordered in a draft to make payment.

(g) Item. "Item" means ~~any instrument for the payment of money even though it is not negotiable but does not include money an instrument, promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4-A or a credit or debit card slip.~~

(h) Midnight deadline. "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

(i) Properly payable. "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor.

(j) Settle. "Settle" means to pay in cash, by clearing-house clearinghouse settlement, in a charge or credit or by remittance, or otherwise as instructed agreed. A settlement may be either provisional or final.

(k) Suspends payments. "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this Article and the sections in which they appear are:

|   |                       |
|---|-----------------------|
| <u>"Agreement for electronic presentation."</u> | <u>Section 4-110.</u> |
| <u>"Bank."</u>                                  | <u>Section 4-105.</u> |
| <u>"Collecting bank."</u>                       | <u>Section 4-105.</u> |
| <u>"Depository bank."</u>                       | <u>Section 4-105.</u> |
| <u>"Intermediary bank."</u>                     | <u>Section 4-105.</u> |
| <u>"Payor bank."</u>                            | <u>Section 4-105.</u> |
| <u>"Presenting bank."</u>                       | <u>Section 4-105.</u> |
| <u>"Presentment notice."</u>                    | <u>Section 4-110.</u> |
| <u>"Remitting bank."</u>                        | <u>Section 4-105.</u> |

(3) The following definitions in other Articles apply to this Article:

|                                      |                              |
|--------------------------------------|------------------------------|
| <u>"Acceptance."</u>                 | <u>Section 3-410 3-1409.</u> |
| <u>"Alteration."</u>                 | <u>Section 3-1407.</u>       |
| <u>"Cashier's check."</u>            | <u>Section 3-1104.</u>       |
| <u>"Certificate of deposit."</u>     | <u>Section 3-104 3-1104.</u> |
| <u>"Certification."</u>              | <u>Section 3-411.</u>        |
| <u>"Certified Check."</u>            | <u>Section 3-1409.</u>       |
| <u>"Check."</u>                      | <u>Section 3-104 3-1104.</u> |
| <u>"Draft."</u>                      | <u>Section 3-104 3-1104.</u> |
| <u>"Good faith."</u>                 | <u>Section 3-1103.</u>       |
| <u>"Holder in due course."</u>       | <u>Section 3-302 3-1102.</u> |
| <u>"Instrument."</u>                 | <u>Section 3-1104.</u>       |
| <u>"Notice of dishonor."</u>         | <u>Section 3-508 3-1503.</u> |
| <u>"Order."</u>                      | <u>Section 3-1103.</u>       |
| <u>"Ordinary care."</u>              | <u>Section 3-1103.</u>       |
| <u>"Person entitled to enforce."</u> | <u>Section 3-1301.</u>       |
| <u>"Presentment."</u>                | <u>Section 3-504 3-1501.</u> |
| <u>"Promise."</u>                    | <u>Section 3-1103.</u>       |
| <u>"Protest."</u>                    | <u>Section 3-509.</u>        |
| <u>"Prove."</u>                      | <u>Section 3-1103.</u>       |
| <u>"Secondary party."</u>            | <u>Section 3-102.</u>        |
| <u>"Teller's check."</u>             | <u>Section 3-1104.</u>       |
| <u>"Unauthorized signature."</u>     | <u>Section 3-1403.</u>       |

(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. B-10. 11 MRSA §4-105** is amended to read:

**§4-105. "Depository bank"; "bank"; "payor bank"; "intermediary bank"; "collecting bank"; "presenting bank"**

In this Article, unless the context otherwise requires indicates, the following terms have the following meanings.

(1) Depository bank. "Depository bank" means the first bank to which take an item is transferred for collection even though it is also the payor bank, unless the item is presented for immediate payment over the counter.

(1-A) Bank. "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union or trust company.

(2) Payor bank. "Payor bank" means a bank by which an item is payable as drawn or accepted that is the drawee of a draft.

(3) Intermediary bank. "Intermediary bank" means any a bank to which an item is transferred in course of collection, except the depository or payor bank.

(4) Collecting bank. "Collecting bank" means any a bank handling the an item for collection, except the payor bank.

(5) Presenting bank. "Presenting bank" means any a bank presenting an item except a payor bank.

(6) Remitting bank. "Remitting bank" means any payor or intermediary bank remitting for an item.

**Sec. B-11. 11 MRSA §4-105-A** is enacted to read:

**§4-105-A. Payable through or payable at bank; collecting bank**

(1) If an item states that it is "payable through" a bank identified in the item:

(a) The item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item; and

(b) The item may be presented for payment only by or through the bank.

(2) If an item states that it is "payable at" a bank identified in the item, the item is equivalent to a draft drawn on that bank.

(3) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

**Sec. B-12. 11 MRSA §4-106** is amended to read:

**§4-106. Separate office of a bank**

A branch or separate office of a bank ~~maintaining its own deposit ledgers~~ is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders ~~shall~~ must be given under this Article and under Article ~~3~~ 3-A.

**Sec. B-13. 11 MRSA §4-107**, as amended by PL 1979, c. 541, Pt. A, §106, is further amended to read:

**§4-107. Time of receipt of items**

(1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

(2) ~~Any~~ An item or deposit of money received on any day after a ~~cut-off~~ cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

**Sec. B-14. 11 MRSA §4-108** is amended to read:

**§4-108. Delays**

(1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment ~~may, in the case of a specific items~~ item drawn on a payor other than a bank and with or without the approval of any person involved, may waive, modify or extend time limits imposed or permitted by this Title for a period not ~~in excess of an exceeding 2 additional banking day days~~ without discharge of secondary parties and without drawers or indorsers or liability to its transferor or any a prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Title; or by instructions is excused; ~~if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank, provided it exercises such diligence as the circumstances require;~~

(a) The delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions,

failure of equipment or other circumstances beyond the control of the bank; and

(b) The bank exercises such diligence as the circumstances require.

**Sec. B-15. 11 MRSA §4-109** is repealed.

**Sec. B-16. 11 MRSA §4-110** is enacted to read:

**§4-110. Electronic presentment**

(1) "Agreement for electronic presentment" means an agreement, clearinghouse rule or Federal Reserve regulation or operating circular that provides that presentment of an item may be made by transmission of an image of an item or information describing that item, that is, a "presentment notice," rather than by delivery of the item itself. The "agreement for electronic presentment" may provide procedures governing retention, presentment, payment, dishonor and other matters concerning items subject to the agreement.

(2) Presentment of an item pursuant to an "agreement for electronic presentment" is made when the presentment notice is received.

(3) If presentment is made by presentment notice, a reference to "item" or "check" in this Article means the presentment notice unless the context otherwise indicates.

**Sec. B-17. 11 MRSA §4-111** is enacted to read:

**§4-111. Statute of limitations**

An action to enforce an obligation, duty or right arising under this Article must be commenced within 3 years after the cause of action accrues.

**Sec. B-18. 11 MRSA §4-201**, as amended by PL 1979, c. 541, Pt. A, §107, is further amended to read:

**§4-201. Status of collecting bank as agent and provisional status of credits; applicability of Article; item indorsed "pay any bank"**

(1) Unless a contrary intent clearly appears and ~~prior to before~~ the time that a settlement given by a collecting bank for an item is or becomes final (~~section 4-211, subsection (3) and sections 4-212 and 4-213~~), the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting

from outstanding advances on the item and ~~valid~~ rights of ~~recoupment~~ or setoff. ~~When~~ If an item is handled by banks for purposes of presentment, payment ~~and~~, collection or return, the relevant provisions of this Article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

- (a) ~~Until the item has been returned~~ Returned to the customer initiating collection; or
- (b) ~~Until the item has been specially~~ Specially indorsed by a bank to a person who is not a bank.

**Sec. B-19. 11 MRSA §4-202** is amended to read:

**§4-202. Responsibility for collection or return; when action timely**

(1) A collecting bank must ~~use~~ exercise ordinary care in:

- (a) Presenting an item or sending it for presentment; ~~and~~
- (b) Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor ~~or directly to the depository bank under section 4-212, subsection (2) after learning that the item has not been paid or accepted, as the case may be; and~~
- (c) Settling for an item when the bank receives final settlement; and
- ~~(d) Making or providing for any necessary protest; and~~
- (e) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank ~~taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing~~ exercises ordinary care under subsection (1) by taking proper action before its midnight deadline following receipt of an item, notice or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(3) Subject to subsection (1), paragraph (a), a bank is not liable for the insolvency, neglect, misconduct, mis-

take or default of another bank or person or for loss or destruction of an item in the possession of others or in transit or in the possession of others.

**Sec. B-20. 11 MRSA §4-203** is amended to read:

**§4-203. Effect of instructions**

Subject to ~~the provisions of Article 3 concerning conversion of instruments (section 3-419 3-1420) and the provisions of both Article 3 and this Article concerning restrictive indorsements (section 3-1206) only a collecting bank's transferor can give instructions which that affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to ~~such~~ the instructions or in accordance with any agreement with its transferor.~~

**Sec. B-21. 11 MRSA §4-204** is amended to read:

**§4-204. Methods of sending and presenting; sending directly to payor bank**

(1) A collecting bank ~~must~~ shall send items by a reasonably prompt method, taking into consideration ~~any~~ relevant instructions, the nature of the item, the number of ~~such~~ those items on hand, ~~and~~ the cost of collection involved and the method generally used by it or others to present ~~such~~ those items.

(2) A collecting bank may send:

- (a) ~~Any An~~ An item ~~direct~~ directly to the payor bank;
- (b) ~~Any An~~ An item to ~~any a~~ a nonbank payor if authorized by its transferor; and
- (c) ~~Any An~~ An item other than documentary drafts to ~~any a non-bank~~ nonbank payor, if authorized by ~~federal reserve~~ Federal Reserve regulation or operating ~~letter circular, clearing-house~~ clearing-house rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

**Sec. B-22. 11 MRSA §4-205** is repealed and the following enacted in its place:

**§4-205. Depository bank holder of unindorsed item**

If a customer delivers an item to a depository bank for collection:

(1) The depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the

item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of section 3-1302, it is a holder in due course; and

(2) The depository bank warrants to collecting banks, the payor bank or other payor and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

**Sec. B-23. 11 MRSA §4-206** is amended to read:

**§4-206. Transfer between banks**

Any agreed method which that identifies the transferor bank is sufficient for the item's further transfer to another bank.

**Sec. B-24. 11 MRSA §4-207** is repealed.

**Sec. B-25. 11 MRSA §4-207-A** is enacted to read:

**§4-207-A. Transfer warranties**

(1) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(a) The warrantor is a person entitled to enforce the item;

(b) All signatures on the item are authentic and authorized;

(c) The item has not been altered;

(d) The item is not subject to a defense or claim in recoupment (section 3-1305, subsection (1)) of any party that can be asserted against the warrantor; and

(e) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(2) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item:

(a) According to the terms of the item at the time it was transferred; or

(b) If the transfer was of an incomplete item, according to its terms when completed as stated in sections 3-1115 and 3-1407.

The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor can not disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(3) A person to whom the warranties under subsection (1) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(4) The warranties stated in subsection (1) can not be disclaimed with respect to checks. Unless notice of a claim for breach of warrant is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(5) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

**Sec. B-26. 11 MRSA §4-207-B** is enacted to read:

**§4-207-B. Presentment warranties**

(1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(a) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) The draft has not been altered; and

(c) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover



damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft:

(a) Breach of warranty is a defense to the obligation of the acceptor; and

(b) If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3-1404 or 3-1405 or the drawer is precluded under section 3-1406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) If a dishonored draft is presented for payment to the drawer or an indorser or any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) can not be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

**Sec. B-27. 11 MRSA §4-207-C** is enacted to read:

**§4-207-C. Encoding and retention warranties**

(1) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.

(2) A person who undertakes to retain an item pursuant to an agreement for electronic presentment war-

rants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(3) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

**Sec. B-28. 11 MRSA §4-208** is amended to read:

**§4-208. Security interest of collecting bank in items, accompanying documents and proceeds**

(1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either;

(a) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(b) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) If it makes an advance on or against the item.

(2) ~~When~~ If credit ~~which has been given~~ for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. ~~To the extent and so~~ So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to the provisions of Article 9, ~~except that but~~:

(a) No security agreement is necessary to make the security interest enforceable (section 9-203, subsection (1), paragraph (b)); and

(b) No filing is required to perfect the security interest; and

(c) The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

**Sec. B-29. 11 MRSA §4-209** is amended to read:

**§4-209. When bank gives value for purposes of holder in due course**

For purposes of determining its status as a holder in due course, ~~the~~ a bank has given value to the extent that it has a security interest in an item, ~~provided that~~ if the bank otherwise complies with the requirements of section ~~3-302~~ 3-1302 on what constitutes a holder in due course.

**Sec. B-30. 11 MRSA §4-210**, as amended by PL 1979, c. 541, Pt. A, §108, is further amended to read:

**§4-210. Presentment by notice of item not payable by, through or at a bank; liability of drawer or indorser**

(1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section ~~3-505~~ 3-1501 by the close of the bank's next banking day after it knows of the requirement.

(2) ~~Where~~ If presentment is made by notice and ~~neither honor nor payment, acceptance or request for compliance with a requirement under section 3-505 3-1501 is not received by the close of business on the day after maturity or in the case of demand items by the close of business on the 3rd banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party drawer or indorser by sending him it notice of the facts.~~

**Sec. B-31. 11 MRSA §4-211** is repealed.

**Sec. B-32. 11 MRSA §4-211-A** is enacted to read:

**§4-211-A. Medium and time of settlement by bank**

(1) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearinghouse rules and the like or agreement. In the absence of such prescription:

(a) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(b) The time of settlement is:

(i) With respect to tender of settlement by cash, a cashier's check or teller's check, when the cash or check is sent or delivered;

(ii) With respect to tender of settlement by credit in an account in a Federal Reserve bank, when the credit is made;

(iii) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) With respect to tender of settlement by a funds transfer, when payment is made pursuant to section 4-1406, subsection (1) to the person receiving settlement.

(2) If the tender of settlement is not by a medium authorized by subsection (1) or the time of settlement is not fixed by subsection (1), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(3) If settlement for an item is made by cashier's check or teller's check and, before its midnight deadline, the person receiving settlement:

(a) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(b) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(4) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

**Sec. B-33. 11 MRSA §4-212** is amended to read:

**§4-212. Right of charge-back or refund; liability of collecting bank; return of item**

(1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the item, if

by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, ~~charge back~~ charge back and obtain refund terminate if, and when a settlement for the item received by the bank is or becomes final (~~section 4-211, subsection (3), and section 4-213, subsections (2) and (3)).~~

~~(2) Within the time and manner prescribed by this section and section 4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depository bank and may send for collection a draft on the depository bank and obtain reimbursement. In such case, if the depository bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.~~

(2-A) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(3) A depository bank ~~which that~~ is also the payor may ~~charge-back~~ charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 4-301).

(4) The right to ~~charge-back~~ charge back is not affected by:

(a) ~~Prior~~ Previous use of ~~the a~~ credit given for the item; or

(b) Failure by any bank to exercise ordinary care with respect to the item, but ~~any a~~ bank so failing remains liable.

(5) A failure to ~~charge-back~~ charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency money, the dollar amount of any charge-back or refund ~~shall~~ must be calculated on the basis of the buying sight bank-offered spot rate for the foreign currency money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

**Sec. B-34. 11 MRSA §4-213**, as amended by PL 1979, c. 541, Pt. A, §§109 and 110, is further amended to read:

**§4-213. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal**

(1) An item is finally paid by a payor bank when the bank has first done any of the following, ~~whichever happens first~~:

(a) Paid the item in cash; or

(b) Settled for the item without ~~reserving~~ having a right to revoke the settlement ~~and without having such right~~ under statute, clearinghouse rule or agreement; or

~~(c) Completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or~~

(d) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule or agreement.

~~Upon a final payment under paragraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.~~

(1-A) If provisional settlement for an item does not become final, the item is not finally paid.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits and credits in an account between them, then to the extent that provisional debits or credits for the ~~time~~ item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (~~section 4-211, subsection (3), section 4-213, subsection (2)),~~ the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to applicable law stating a time for availability of funds and any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in ~~an account with its customer a~~ customer's account becomes available for withdrawal as of right:

(a) ~~In any case where~~ If the bank has received a provisional settlement for the item, when ~~such the~~ the settlement becomes final and the bank has had a reasonable time to ~~learn that the settlement is fi-~~

~~not receive return of the item and the item has not been received within that time; or~~

(b) ~~In any case where~~ If the bank is both a the depository bank and a the payor bank and the item is finally paid, at the opening of the bank's ~~second~~ 2nd banking day following receipt of the item.

(5) ~~A deposit of money in a bank is final when made but, subject~~ Subject to applicable law stating a time for availability of funds and any right of the a bank to apply the a deposit to an obligation of the customer depositor, ~~the a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day following after~~ receipt of the deposit.

**Sec. B-35. 11 MRSA §4-214** is amended to read:

**§4-214. Insolvency and preference**

(1) ~~Any~~ If an item is in or coming comes into the possession of a payor or collecting bank which ~~that~~ suspends payment and which the item is ~~has not been~~ finally paid ~~shall~~, the item must be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the ~~settlement~~ settlement's becoming final if ~~such the~~ finality occurs automatically upon the lapse of certain time or the happening of certain events (~~section 4-211, subsection (3), section 4-213, subsection (1), paragraph (d), subsections (2) and (3)).~~)

(4) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against ~~such the~~ collecting bank.

**Sec. B-36. 11 MRSA §4-301** is amended to read:

**§4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank**

(1) ~~Where an authorized settlement~~ If a payor bank settles for a demand item (other than a documentary draft) received by a payor bank presented otherwise

than for immediate payment over the counter ~~has been made~~ before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover ~~any payment the settlement~~, if, before it has made final payment (~~section 4-213, subsection (1))~~ and before its midnight deadline, it:

(a) Returns the item; or

(b) Sends written notice of dishonor or nonpayment, if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books, it may return ~~such the~~ item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (1).

(3) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) As to an item ~~received~~ presented through a ~~clearing-house~~ clearinghouse, when it is delivered to the presenting or last collecting bank or to the ~~clearing-house~~ clearinghouse or is sent or delivered in accordance with its clearinghouse rules; or

(b) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

**Sec. B-37. 11 MRSA §4-302** is repealed and the following enacted in its place:

**§4-302. Payor bank's responsibility for late return of item**

(1) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(a) A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) Any other properly payable item, unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(2) The liability of a payor bank to pay an item pursuant to subsection (1) is subject to defenses based

on breach of a presentment warranty (section 4-207-B) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

**Sec. B-38. 11 MRSA §4-303**, as amended by PL 1979, c. 541, Pt. A, §111 is further amended to read:

**§4-303. When items subject to notice, stop-payment order, legal process or setoff; order in which items may be charged or certified**

(1) Any knowledge, notice or ~~stop stop-payment order~~ received by, legal process served upon or setoff exercised by a payor bank, ~~whether or not effective under other rules of law~~ comes too late to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, ~~comes too late to so terminate, suspend or modify such right or duty~~ if the knowledge, notice, ~~stop stop-payment order~~ or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the ~~bank has done any earliest~~ of the following:

(a) ~~Accepted or certified~~ The bank accepts or certifies the item;

(b) ~~Paid~~ The bank pays the item in cash;

(c) ~~Settled~~ The bank settles for the item without reserving having a right to revoke the settlement and without having such right under statute, clearing house clearinghouse rule or agreement;

(d) ~~Completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item;~~ or

(e) ~~Become~~ The bank becomes accountable for the amount of the item under ~~section 4-213, subsection (1), paragraph (d) and under section 4-302~~ dealing with the payor bank's responsibility for late return of items; or

(f) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(2) Subject to ~~the provisions of subsection (1),~~ items may be accepted, paid, certified or charged to the indicated account of its customer in any order ~~convenient to the bank.~~

**Sec. B-39. 11 MRSA §4-401** is amended to read:

**§4-401. When bank may charge customer's account**

(1) ~~As against its customer, a~~ A bank may charge against ~~his the account any of a customer an item which that is otherwise~~ properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(1-A) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(1-B) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in section 4-403, subsection (2) for stop-payment orders and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in section 4-303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under section 4-402.

(2) A bank ~~which~~ that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(a) The original ~~tenor terms~~ terms of ~~his the~~ altered item; or

(b) The ~~tenor terms~~ terms of ~~his the~~ completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

**Sec. B-40. 11 MRSA §4-402** is repealed and the following enacted in its place:

**§4-402. Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account**

(1) Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(2) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(3) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

**Sec. B-41. 11 MRSA §4-403** is amended to read:

**§4-403. Customer's right to stop payment; burden of proof of loss**

(1) A customer may by order to his bank stop payment of any item payable for his account but the order must be or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at such a time and in such a manner as to afford that affords the bank a reasonable opportunity to act on it prior to before any action by the bank with respect to the item described in section 4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(2) An oral A stop-payment order is binding upon the bank only for 14 calendar days unless confirmed in writing within that period effective for 6 months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in writing within that period. A written stop-payment order is effective for only 6 months, unless renewed in writing may be renewed for additional 6-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under section 4-402.

**Sec. B-42. 11 MRSA §4-405** is amended to read:

**§4-405. Death or incompetence of customer**

(1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken, if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such the authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge, a bank may for 10 days after the date of death pay or certify checks drawn on or prior to before that date unless ordered to stop payment by a person claiming an interest in the account.

**Sec. B-43. 11 MRSA §4-406** is amended to read:

**§4-406. Customer's duty to discover and report unauthorized signature or alteration**

(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request for instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(1-A) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount and date of payment.

(1-B) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of 7 years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(1-C) If a bank sends or makes available a statement of account or items pursuant to subsection (1-A), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(2) If the bank ~~establishes~~ proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection ~~(1)~~ (1-C), the customer is precluded from asserting against the bank:

(a) ~~His~~ The customer's unauthorized signature or any alteration on the item, if the bank also ~~establishes~~ proves that it suffered a loss by reason of ~~such the~~ failure; and

(b) ~~An~~ The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank ~~after the first item and statement was available to the customer for a reasonable period not exceeding 14 calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.~~

(3) The preclusion under subsection (2) does not apply, if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(3-A) If subsection (2) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (1-C) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (2) does not apply.

(4) Without regard to care or lack of care of either the customer or the bank, a customer, who does not within one year ~~from the time after the statement and or items are made available to the customer (subsection (1) (1-A))~~ discover and report ~~his~~ the customer's unauthorized signature on or any alteration ~~on the face or back~~

~~of the item or does not within 3 years from that time discover and report any unauthorized indorsement; on the item, is precluded from asserting against the bank such the unauthorized signature or indorsement or such alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 4-207-B with respect to the unauthorized signature or alteration to which the preclusion applies.~~

~~(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense, the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.~~

**Sec. B-44. 11 MRSA §4-407** is amended to read:

**§4-407. Payor bank's right to subrogation on improper payment**

If a payor bank has paid an item over the ~~stop~~ payment order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank ~~shall be~~ is subrogated to the rights:

(1) Of any holder in due course on the item against the drawer or maker; and

(2) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

**Sec. B-45. 11 MRSA §4-501** is amended to read:

**§4-501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor**

A bank ~~which that~~ that takes a documentary draft for collection ~~must shall~~ shall present or send the draft and accompanying documents for presentment; and, upon learning that the draft has not been paid or accepted in due course ~~must, shall~~ shall seasonably notify its customer of ~~such the~~ the fact, even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

**Sec. B-46. 11 MRSA §4-502** is amended to read:

**§4-502. Presentment of "on arrival" drafts**

~~When~~ If a draft or the relevant instructions require presentment "~~on arrival~~"; arrival," "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of ~~such~~ the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

**Sec. B-47. 11 MRSA §4-503**, as amended by PL 1965, c. 306, §13, is further amended to read:

**§4-503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need**

Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

(1) Must deliver the documents to the drawee on acceptance of the draft, if it is payable more than 3 days after presentment; otherwise, only on payment; and

(2) 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~~ the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions.

~~But~~ However the presenting bank is under no obligation with respect to goods represented by the documents, except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to payment of or indemnity for ~~such~~ those expenses.

**Sec. B-48. 11 MRSA §4-504** is amended to read:

**§4-504. Privilege of presenting bank to deal with goods; security interest for expenses**

(1) A presenting bank ~~which~~ that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon

the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

See title page for effective date.

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## CHAPTER 294

H.P. 1031 - L.D. 1383

**An Act to Establish Multidisciplinary Reviews of Child Abuse and Neglect Fatalities and Serious Injuries and to Provide Access to Confidential Information for the Multidisciplinary Reviews**

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

**Sec. 1. 22 MRSA §4004, sub-§1, ¶¶C and D**, as enacted by PL 1979, c. 733, §18, are amended to read:

C. Cooperating and coordinating with other agencies, facilities or persons providing related services to families and children; ~~and~~

D. Establishing and maintaining a Child Protective Services Contingency Fund to provide temporary assistance to families to help them provide proper care for their children; ~~and~~

**Sec. 2. 22 MRSA §4004, sub-§1, ¶E** is enacted to read:

E. Establishing a child death and serious injury review panel for reviewing deaths and serious injuries to children. The panel consists of the following members: the Chief Medical Examiner, a pediatrician, a public health nurse, forensic and community mental health clinicians, law enforcement officers, departmental child welfare staff, district attorneys and criminal or civil assistant attorneys general.

The purpose of the panel is to recommend to state and local agencies methods of improving the child protection system, including modifications of statutes, rules, policies and procedures.

**Sec. 3. 22 MRSA §4008, sub-§2, ¶E**, as amended by PL 1989, c. 118, is further amended to read:

E. A person having the legal responsibility or authorization to educate, care for, evaluate, treat or supervise a child, parent or custodian who is the subject of a record, or a member of a panel appointed by the department to review child deaths and serious injuries. This shall include includes a member of a treatment team or group convened to plan for or treat a child or family ~~which~~ that is the subject of a record. This may also include a mem-