

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST SPECIAL SESSION**  
**August 21, 2003 to August 22, 2003**

**The General Effective Date For**  
**First Special Session**  
**Non-Emergency Laws Is**  
**November 22, 2003**

**SECOND REGULAR SESSION**  
**January 7, 2004 to January 30, 2004**

**The General Effective Date For**  
**Second Regular Session**  
**Non-Emergency Laws Is**  
**April 30, 2004**

**SECOND SPECIAL SESSION**  
**February 3, 2004 to April 30, 2004**

**The General Effective Date For**  
**Second Special Session**  
**Non-Emergency Laws Is**  
**July 30, 2004**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2004**

existing balance and encumbrances from the Toxin Monitoring Fund at any time to the Mahogany Quahog Monitoring Fund in order to fund any of the activities outlined in the Maine Revised Statutes, Title 12, section 6731-A, subsection 5.

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

Effective April 6, 2004.

## CHAPTER 594

### H.P. 1308 - L.D. 1786

#### An Act Making Amendments to the Uniform Commercial Code Covering Provisions Dealing with Negotiable Instruments and Bank Deposits and Collections

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

**Sec. 1. 11 MRSA §3-1103, sub-§(2)**, as enacted by PL 1993, c. 293, Pt. A, §2, is amended to read:

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

"Acceptance"	Section 3-1409
"Accommodated party"	Section 3-1419
"Accommodation party"	Section 3-1419
"Alteration"	Section 3-1407
"Anomalous indorsement"	Section 3-1205
"Blank indorsement"	Section 3-1205
"Cashier's check"	Section 3-1104
"Certificate of deposit"	Section 3-1104
"Certified check"	Section 3-1409
"Check"	Section 3-1104
"Consideration"	Section 3-1303
"Demand draft"	Section 3-1104
"Draft"	Section 3-1104
"Holder in due course"	Section 3-1302
"Incomplete instrument"	Section 3-1115
"Indorsement"	Section 3-1204
"Indorser"	Section 3-1204
"Instrument"	Section 3-1104
"Issue"	Section 3-1105
"Issuer"	Section 3-1105
"Negotiable instrument"	Section 3-1104
"Negotiation"	Section 3-1201
"Note"	Section 3-1104
"Payable at a definite time"	Section 3-1108
"Payable on demand"	Section 3-1108
"Payable to bearer"	Section 3-1109
"Payable to order"	Section 3-1109
"Payment"	Section 3-1602

"Person entitled to enforce"	Section 3-1301
"Presentment"	Section 3-1501
"Reacquisition"	Section 3-1207
"Special indorsement"	Section 3-1205
"Teller's check"	Section 3-1104
"Transfer of instrument"	Section 3-1203
"Traveler's check"	Section 3-1104
"Value"	Section 3-1303

**Sec. 2. 11 MRSA §3-1104, sub-§(6)**, as enacted by PL 1993, c. 293, Pt. A, §2, is amended to read:

(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; or
- (c) A demand draft.

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

**Sec. 3. 11 MRSA §3-1104, sub-§(11)** is enacted to read:

(11) "Demand draft" means a writing not signed by a customer that is created by a 3rd party under the purported authority of the customer for the purpose of charging the customer's account with a bank. A demand draft must contain the customer's account number and may contain any or all of the following:

- (a) The customer's printed or typewritten name;
- (b) A notation that the customer authorized the draft; and
- (c) The statement "No Signature Required" or words to that effect.

"Demand draft" does not include a check purportedly drawn by and bearing the signature of a fiduciary, as defined in section 3-1307, subsection 1, paragraph (a).

**Sec. 4. 11 MRSA §3-1416, sub-§(1), ¶¶(d) and (e)**, as enacted by PL 1993, c. 293, Pt. A, §2, are amended to read:

- (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; and

**Sec. 5. 11 MRSA §3-1416, sub-§(1), ¶(f)** is enacted to read:

(f) If the instrument is a demand draft, creation of the instrument according to the terms on its face was authorized by the person identified as the drawer.

**Sec. 6. 11 MRSA §3-1416, sub-§(5)** is enacted to read:

(5) If the warranty in subsection (1), paragraph (f) is not given by a transferor under applicable conflict of laws rules, then the warranty is not given to that transferor when that transferor is a transferee.

**Sec. 7. 11 MRSA §3-1417, sub-§(1)**, as enacted by PL 1993, c. 293, Pt. A, §2, is amended to read:

(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; ~~and~~

(d) If the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as the drawer.

**Sec. 8. 11 MRSA §3-1417, sub-§§(7) and (8)** are enacted to read:

(7) A demand draft is a check, as provided in section 3-1104, subsection (6).

(8) If the warranty in subsection (1), paragraph (d) is not given by a transferor under applicable conflict of laws rules, then the warranty is not given to that transferor when that transferor is a transferee.

**Sec. 9. 11 MRSA §4-104, sub-§(3)**, as amended by PL 1993, c. 293, Pt. B, §9, is further amended to read:

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

"Acceptance."	Section 3-1409.
"Alteration."	Section 3-1407.
"Cashier's check."	Section 3-1104.
"Certificate of deposit."	Section 3-1104.
"Certified Check."	Section 3-1409.
"Check."	Section 3-1104.
"Demand draft."	Section 3-1104.
"Draft."	Section 3-1104.
"Good faith."	Section 3-1103.
"Holder in due course."	Section 3-1102.
"Instrument."	Section 3-1104.
"Notice of dishonor."	Section 3-1503.
"Order."	Section 3-1103.
"Ordinary care."	Section 3-1103.
"Person entitled to enforce."	Section 3-1301.
"Presentment."	Section 3-1501.
"Promise."	Section 3-1103.
"Prove."	Section 3-1103.
"Teller's check."	Section 3-1104.
"Unauthorized signature."	Section 3-1403.

**Sec. 10. 11 MRSA §4-207-A, sub-§(1), ¶¶(d) and (e)**, as enacted by PL 1993, c. 293, Pt. B, §25, are amended to read:

(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; ~~and~~

**Sec. 11. 11 MRSA §4-207-A, sub-§(1), ¶(f)** is enacted to read:

(f) If the item is a demand draft, creation of the item according to the terms on its face was authorized by the person identified as the drawer.

**Sec. 12. 11 MRSA §4-207-A, sub-§(6)** is enacted to read:

(6) If the warranty in subsection (1), paragraph (f) is not given by a transferor or collecting bank under applicable conflict of laws rules, then the warranty is not given to that transferor when that transferor is a transferee nor to any prior collecting bank of that transferee.

**Sec. 13. 11 MRSA §4-207-B, sub-§(1)**, as enacted by PL 1993, c. 293, Pt. B, §26, is amended to read:

(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; ~~and~~

(d) If the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as the drawer.

**Sec. 14. 11 MRSA §4-207-B, sub-§§(7) and (8)** are enacted to read:

(7) A demand draft is a check, as provided in section 3-1104, subsection (6).

(8) If the warranty in subsection (1), paragraph (d) is not given by a transferor under applicable conflict of laws rules, then the warranty is not given to the transferor when that transferor is a transferee.

See title page for effective date.

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## CHAPTER 595

### H.P. 1323 - L.D. 1801

#### An Act To Control Adult Entertainment Establishments

**Sec. 1. 30-A MRSA §4314, sub-§3, ¶E**, as amended by PL 2001, c. 406, §3, is amended to read:

E. The ordinance or portion of the ordinance conflicts with a newly adopted comprehensive plan or plan amendment adopted under this subchapter, in which case the ordinance or portion of the ordinance remains in effect for a period of up to 24 months immediately following adoption of the comprehensive plan or plan amendment; ~~or~~

**Sec. 2. 30-A MRSA §4314, sub-§3, ¶F**, as amended by PL 2001, c. 578, §10, is further amended to read:

F. The municipality or multimunicipal region applied for and was denied financial assistance for its first planning assistance or implementation assistance grant under this subchapter due to lack of state funds on or before January 1, 2003. If the office subsequently offers the municipality or

multimunicipal region its first planning assistance or implementation assistance grant, the municipality or multimunicipal region has up to one year to contract with the office to prepare a comprehensive plan or implementation program, in which case the municipality's or multimunicipal region's ordinances will be subject to paragraph D; ~~or~~

**Sec. 3. 30-A MRSA §4314, sub-§3, ¶G** is enacted to read:

G. The ordinance or portion of an ordinance is an adult entertainment establishment ordinance, as defined in section 4352, subsection 2, that has been adopted by a municipality that has not adopted a comprehensive plan.

**Sec. 4. 30-A MRSA §4352, sub-§2**, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

**2. Relation to comprehensive plan.** A zoning ordinance, other than an adult entertainment establishment ordinance, must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body. As used in this section, "adult entertainment establishment ordinance" means an ordinance that regulates the operation of adult amusement stores, adult video stores, adult bookstores, adult novelty stores, adult motion picture theaters, on-site video screening establishments, adult arcades, adult entertainment nightclubs or bars, adult spas, establishments featuring strippers or erotic dancers, escort agencies or other sexually oriented businesses.

**Sec. 5. 30-A MRSA §4352, sub-§6**, as amended by PL 1993, c. 721, Pt. A, §11 and affected by Pt. H, §1, is further amended to read:

**6. Effect on State.** A zoning ordinance, other than an adult entertainment establishment ordinance, that is not consistent with a comprehensive plan that is consistent with the provisions of section 4326 is advisory with respect to the State. Except as provided in this section, a state agency shall comply with a zoning ordinance consistent with a comprehensive plan that is consistent with the provisions of section 4326 in seeking to develop any building, parking facility or other publicly owned structure. The Governor or the Governor's designee may, after public notice and opportunity for public comment, including written notice to the municipal officers, waive any use restrictions in those ordinances upon finding that:

A. The proposed use is not allowed anywhere in the municipality;

B. There are no reasonable alternative sites for or configurations of the project within the mu-