

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 3, 2008 to June 13, 2009**

**THE GENERAL EFFECTIVE DATE FOR**  
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**SEPTEMBER 12, 2009**

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

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**Augusta, Maine**  
**2009**

**CHAPTER 325  
S.P. 506 - L.D. 1403  
An Act To Implement the  
Uniform Law Conference  
Suggested Updates to  
Article 1 of 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 A-1. 11 MRSA Art. 1**, as amended, is repealed.

**Sec. A-2. 11 MRSA Art. 1-A** is enacted to read:

**ARTICLE 1-A  
GENERAL PROVISIONS  
PART 1  
GENERAL PROVISIONS**

**§1-1101. Short titles**

(1). This Title may be cited as the Uniform Commercial Code.

(2). This Article may be cited as the Uniform Commercial Code - General Provisions.

**§1-1102. Scope of article**

This Article applies to a transaction to the extent that it is governed by another Article of the Uniform Commercial Code.

**§1-1103. Construction of Uniform Commercial Code to promote its purposes and policies; applicability of supplemental principles of law**

(1). The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are:

(a). To simplify, clarify and modernize the law governing commercial transactions;

(b). To permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and

(c). To make uniform the law among the various jurisdictions.

(2). Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy and other validating or invalidating cause supplement its provisions.

**§1-1104. Construction against implied repeal**

The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it may be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

**§1-1105. Severability**

If any provision or clause of the Uniform Commercial Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Uniform Commercial Code that can be given effect without the invalid provision or application, and to this end the provisions of the Uniform Commercial Code are severable.

**§1-1106. Use of singular and plural; gender**

In the Uniform Commercial Code, unless the statutory context otherwise requires:

(1). Words in the singular number include the plural and those in the plural include the singular; and

(2). Words of any gender also refer to any other gender.

**§1-1107. Section captions**

Section captions are part of the Uniform Commercial Code.

**§1-1108. Relation to electronic signatures in Electronic Signatures in Global and National Commerce Act**

This Article modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., except that nothing in this Article modifies, limits or supersedes Section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that Act.

**PART 2**

**GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

**§1-1201. General definitions**

Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other Articles of the Uniform Commercial Code that apply to particular Articles or Parts thereof, have the meanings stated.

Subject to definitions contained in other Articles of the Uniform Commercial Code that apply to particular Articles or Parts thereof, the following terms have the following meanings.

(1). "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in

equity and any other proceeding in which rights are determined.

(2). "Aggrieved party" means a party entitled to pursue a remedy.

(3). "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing or usage of trade as provided in section 1-1303.

(4). "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union and trust company.

(5). "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title or certificated security that is payable to bearer or indorsed in blank.

(6). "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7). "Branch" includes a separately incorporated foreign branch of a bank.

(8). "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9). "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10). "Conspicuous," with reference to a term, means so written, displayed or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a

decision for the court. Conspicuous terms include the following:

(a). A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font or color to the surrounding text of the same or lesser size; and

(b). Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11). "Consumer" means an individual who enters into a transaction primarily for personal, family or household purposes.

(12). "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(13). "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(14). "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim or 3rd-party claim.

(15). "Delivery," with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title or chattel paper, means voluntary transfer of possession.

(16). "Document of title" means a record:

(a). That in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold and dispose of the record and the goods the record covers; and

(b). That purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession that are either identified or are fungible portions of an identified mass.

The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17). "Fault" means a default, breach or wrongful act or omission.

(18). "Fungible goods" means:

(a). Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(b). Goods that by agreement are treated as equivalent.

(19). "Genuine" means free of forgery or counterfeiting.

(20). "Good faith," except as otherwise provided in Article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21). "Holder" means:

(a). The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(b). The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; and

(c). The person in control of a negotiable electronic document of title.

(22). "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23). "Insolvent" means:

(a). Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(b). Being unable to pay debts as they become due; or

(c). Being insolvent within the meaning of federal bankruptcy law.

(24). "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between 2 or more countries.

(25). "Organization" means a person other than an individual.

(26). "Party," as distinguished from "3rd party," means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

(27). "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality,

public corporation or any other legal or commercial entity.

(28). "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29). "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(30). "Purchaser" means a person that takes by purchase.

(31). "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32). "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33). "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association and a trustee, executor or administrator of an estate.

(34). "Right" includes remedy.

(35). "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible or a promissory note in a transaction that is subject to Article 9-A. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2-401, but a buyer may also acquire a "security interest" by complying with Article 9-A. Except as otherwise provided in section 2-505, the right of a seller or lessor of goods under Article 2 or 2-A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9-A. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to section 1-1203.

(36). "Send" in connection with a writing, record or notice means:

(a). To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(b). In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37). "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38). "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(39). "Surety" includes a guarantor or other secondary obligor.

(40). "Term" means a portion of an agreement that relates to a particular matter.

(41). "Unauthorized signature" means a signature made without actual, implied or apparent authority. The term includes a forgery.

(42). "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(43). "Writing" includes printing, typewriting or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

#### **§1-1202. Notice; knowledge**

(1). Subject to subsection (6), a person has "notice" of a fact if the person:

- (a). Has actual knowledge of it;
- (b). Has received a notice or notification of it; or
- (c). From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(2). "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(3). "Discover," "learn" or words of similar import refer to knowledge rather than to reason to know.

(4). A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(5). Subject to subsection (6), a person "receives" a notice or notification when:

- (a). It comes to that person's attention; or

(b). It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(6). Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

#### **§1-1203. Lease distinguished from security interest**

(1). Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(2). A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

- (a). The original term of the lease is equal to or greater than the remaining economic life of the goods;
- (b). The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
- (c). The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
- (d). The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(3). A transaction in the form of a lease does not create a security interest merely because:

- (a). The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
- (b). The lessee assumes risk of loss of the goods;

(c). The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording or registration fees, or service or maintenance costs;

(d). The lessee has an option to renew the lease or to become the owner of the goods;

(e). The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(f). The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(4). Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(a). When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(b). When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(5). The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

#### **§1-1204. Value**

Except as otherwise provided in Articles 3-A, 4 and 5-A, a person gives value for rights if the person acquires them:

(1). In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2). As security for, or in total or partial satisfaction of, a preexisting claim;

(3). By accepting delivery under a preexisting contract for purchase; or

(4). In return for any consideration sufficient to support a simple contract.

#### **§1-1205. Reasonable time; seasonableness**

(1). Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose and circumstances of the action.

(2). An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

#### **§1-1206. Presumptions**

Whenever the Uniform Commercial Code creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

### **PART 3**

#### **TERRITORIAL APPLICABILITY AND GENERAL RULES**

#### **§1-1301. Territorial applicability; parties' power to choose applicable law**

(1). Except as otherwise provided in this section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of such other state or nation shall govern their rights and duties.

(2). In the absence of an agreement effective under subsection (1) and except as provided in subsection (3) the Uniform Commercial Code applies to transactions bearing an appropriate relation to this State.

(3). If one of the following provisions of the Uniform Commercial Code specifies the applicable law that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(a). Section 2-402;

(b). Sections 2-1105 and 2-1106;

(c). Section 4-102;

(d). Section 4-1507;

(e). Section 5-1116;

(f). Section 8-1110; and

(g). Sections 9-1301 to 9-1307.

#### **§1-1302. Variation by agreement**

(1). Except as otherwise provided in subsection (2) or elsewhere in the Uniform Commercial Code, the effect of provisions of the Uniform Commercial Code may be varied by agreement.

(2). The obligations of good faith, diligence, reasonableness and care prescribed by the Uniform

Commercial Code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(3). The presence in certain provisions of the Uniform Commercial Code of the phrase “unless otherwise agreed,” or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

**§1-1303. Course of performance, course of dealing and usage of trade**

(1). A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

(a). The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(b). The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(2). A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(3). A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(4). A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(5). Except as otherwise provided in subsection (6), the express terms of an agreement and any applicable course of performance, course of dealing or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(a). Express terms prevail over course of performance, course of dealing and usage of trade;

(b). Course of performance prevails over course of dealing and usage of trade; and

(c). Course of dealing prevails over usage of trade.

(6). Subject to section 2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(7). Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

**§1-1304. Obligation of good faith**

Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

**§1-1305. Remedies to be liberally administered**

(1). The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

(2). Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited effect.

**§1-1306. Waiver or renunciation of claim or right after breach**

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

**§1-1307. Prima facie evidence by 3rd-party documents**

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher’s or inspector’s certificate, consular invoice or any other document authorized or required by the contract to be issued by a 3rd party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the 3rd party.

**§1-1308. Performance or acceptance under reservation of rights**

(1). A party that 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 re-



served. Such words as “without prejudice,” “under protest” or the like are sufficient.

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

**§1-1309. Option to accelerate at will**

A term providing that one party or that party’s successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or when the party “deems itself insecure,” or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

**§1-1310. Subordinated obligations**

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

**Sec. A-3. Legislative intent.** This Act is the Maine enactment of the Uniform Commercial Code, Article 1 as revised by the National Conference of Commissioners on Uniform State Laws. The text of the uniform act has been changed to conform to Maine statutory conventions and the Article is enacted as Article 1-A. 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 1 of the uniform act.

**Sec. A-4. Effective date.** This Part takes effect February 15, 2010.

**PART B**

**Sec. B-1. 10 MRSA §1286**, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

**§1286. Usage of trade**

The terms “utility” and “industrial,” when used to refer to equipment, machinery, attachments, yard and garden equipment or repair parts, have the meanings commonly used and understood among dealers and suppliers of farm equipment as usage of trade in accordance with Title 11, section ~~1-205~~ 1-1303, subsection ~~2~~ (3).

**Sec. B-2. 10 MRSA §9403, sub-§2, ¶B**, as enacted by PL 1999, c. 762, §2, is amended to read:

B. The Uniform Commercial Code other than Title 11, ~~sections 1-107 and 1-206~~ section 1-1306 and Articles 2 and ~~2A~~ 2-A.

**Sec. B-3. 10 MRSA §9416, sub-§4**, as enacted by PL 1999, c. 762, §2, is amended to read:

**4. Holders.** Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Title 11, section ~~1-204~~ 1-1201, subsection ~~(20)~~ (21), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under Title 11, section 3-1302, subsection (1); Title 11, section 7-501; or Title 11, section 9-308 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

**Sec. B-4. 11 MRSA §2-103, sub-§(1), ¶(b)** is repealed.

**Sec. B-5. 11 MRSA §2-202, sub-§(1)** is amended to read:

**(1).** By course of performance, course of dealing or usage of trade (section ~~1-205~~ 1-1303) ~~or by course of performance (section 2-208)~~; and

**Sec. B-6. 11 MRSA §2-208** is repealed.

**Sec. B-7. 11 MRSA §2-1103, sub-§(3)**, as amended by PL 1999, c. 699, Pt. B, §11 and affected by §28, is further amended to read:

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

“Account.” Section 9-1102, subsection (2).

“Between merchants.” Section 2-104, subsection (3).

“Buyer.” Section 2-103, subsection (1), paragraph (a).

“Chattel paper.” Section 9-1102, subsection (11).

“Consumer goods.” Section 9-1102, subsection (23).

“Document.” Section 9-1102, subsection (30).

“Entrusting.” Section 2-403, subsection (3).

“General intangible” Section 9-1102, subsection (42).

~~“Good faith.” Section 2-103, subsection (1), paragraph (b).~~

“Instrument.” Section 9-1102, subsection (47).

“Merchant.” Section 2-104, subsection (1).

“Mortgage.” Section 9-1102, subsection (55).

“Pursuant to commitment.” Section 9-1102, subsection (60).

"Receipt." Section 2-103, subsection (1), paragraph (c).

"Sale." Section 2-106, subsection (1).

"Sale on approval." Section 2-326.

"Sale or return." Section 2-326.

"Seller." Section 2-103, subsection (1), paragraph (d).

**Sec. B-8. 11 MRSA §2-1207**, as enacted by PL 1991, c. 805, §4, is repealed.

**Sec. B-9. 11 MRSA §2-1501, sub-§(4)**, as enacted by PL 1991, c. 805, §4, is amended to read:

(4). Except as otherwise provided in section ~~1-106~~ 1-1305, subsection (1), this Article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

**Sec. B-10. 11 MRSA §2-1518, sub-§(2)**, as enacted by PL 1991, c. 805, §4, is amended to read:

(2). Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2-1504) or otherwise determined pursuant to agreement of the parties (section ~~1-102, subsection (3)~~ 1-1302 and section 2-1503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

(a). The present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and

(b). Any incidental or consequential damages minus expenses saved in consequence of the lessor's default.

**Sec. B-11. 11 MRSA §2-1519, sub-§(1)**, as enacted by PL 1991, c. 805, §4, is amended to read:

(1). Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2-1504), or otherwise determined pursuant to agreement of the parties (section ~~1-102, subsection (3)~~ 1-1302 and section 2-1503) if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 2-1518, subsection (2) or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then

market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages minus expenses saved in consequence of the lessor's default.

**Sec. B-12. 11 MRSA §2-1527, sub-§(2)**, as enacted by PL 1991, c. 805, §4, is amended to read:

(2). Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2-1504) or otherwise determined pursuant to agreement of the parties (section ~~1-102, subsection (3)~~ 1-1302 and section 2-1503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

(a). Accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;

(b). The present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term comparable to the then remaining term of the original lease agreement; and

(c). Any incidental damages allowed under section 2-1530 minus expenses saved in consequence of the lessee's default.

**Sec. B-13. 11 MRSA §2-1528**, as enacted by PL 1991, c. 805, §4, is amended to read:

**§2-1528. Lessor's damages for nonacceptance, failure to pay, repudiation or other default**

(1). Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2-1504) or otherwise determined pursuant to agreement of the parties, (section ~~1-102, subsection (3)~~ 1-1302 and section 2-1503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 2-1527, subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 2-1523, subsection (1) or section 2-1523, subsection (3), paragraph (a), or, if agreed, for other default of the lessee:

(a). Accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;

(b). The present value as of the date determined under this subsection of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term; and

(c). Any incidental damages allowed under section 2-1530 minus expenses saved in consequence of the lessee's default.

(2). If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee together with any incidental damages allowed under section 2-1530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

**Sec. B-14. 11 MRSA §3-1103, sub-§(1), ¶(d)**, as enacted by PL 1993, c. 293, Pt. A, §2, is repealed.

**Sec. B-15. 11 MRSA §3-1103, sub-§(1), ¶(j)**, as enacted by PL 1993, c. 293, Pt. A, §2, is amended to read:

(j). "Prove" with respect to a fact means to meet the burden of establishing the fact (section ~~4-204~~ 1-1201, subsection (8)).

**Sec. B-16. 11 MRSA §4-104, sub-§(3)**, as amended by PL 2003, c. 594, §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.
<del>"Good faith."</del>	<del>Section 3-1103.</del>
"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. B-17. 11 MRSA §4-1105, sub-§(1), ¶(e)**, as enacted by PL 1991, c. 812, §2, is amended to read:

(e). "Funds transfer system" means a wire transfer network, automated clearing house or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed; and

**Sec. B-18. 11 MRSA §4-1105, sub-§(1), ¶(f)**, as enacted by PL 1991, c. 812, §2, is repealed.

**Sec. B-19. 11 MRSA §4-1105, sub-§(1), ¶(g)**, as enacted by PL 1991, c. 812, §2, is amended to read:

(g). "Prove" with respect to a fact means to meet the burden of establishing the fact (section ~~4-204~~ 1-1201, subsection (8)).

**Sec. B-20. 11 MRSA §4-1106, sub-§(1)**, as enacted by PL 1991, c. 812, §2, is amended to read:

(1). The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section ~~4-201, subsection 27~~ 1-1202. A receiving bank may fix a cut-off time or times on a funds transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations or amendments, or to different categories of payment orders, cancellations or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds transfer business day or after the appropriate cut-off time on a funds transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds transfer business day.

**Sec. B-21. 11 MRSA §4-1204, sub-§(2)**, as enacted by PL 1991, c. 812, §2, is amended to read:

(2). Reasonable time under subsection (1) may be fixed by agreement as stated in section ~~4-204 1-1302~~, subsection ~~(4)~~ (2), but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement.

**Sec. B-22. 11 MRSA §5-1103, sub-§(3)**, as enacted by PL 1997, c. 429, Pt. A, §2 and affected by §4, is amended to read:

(3). With the exception of this subsection, subsections (1) and (4), section 5-1102, subsection (1),

paragraphs (i) and (j), section 5-1106, subsection (4), and section 5-1114, subsection (4), and except to the extent prohibited in section ~~4-102, subsection (3)~~ 1-1302 and section 5-1117, subsection (4), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

**Sec. B-23. 11 MRSA §7-102, sub-§(1), ¶(e)**, is amended to read:

(e). "Document" means document of title as defined in the general definitions in Article 1 (section ~~4-204~~ 1-1201).

**Sec. B-24. 11 MRSA §8-1102, sub-§(1), ¶(j)**, as enacted by PL 1997, c. 429, Pt. B, §2, is repealed.

**Sec. B-25. 11 MRSA §9-1102, sub-§(43)**, as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is repealed.

**Sec. B-26. 17-A MRSA §902, sub-§1, ¶A**, as enacted by PL 1975, c. 499, §1, is amended to read:

A. ~~He~~ The person destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest, as defined in Title 11, section ~~4-204~~ 1-1201, subsection ~~(37)~~ (35), with the intent to hinder enforcement of that interest; or

**Sec. B-27. Effective date.** This Part takes effect February 15, 2010.

Effective February 15, 2010.

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## CHAPTER 326

### S.P. 490 - L.D. 1355

#### **An Act To Make Permanent the Allowance of Certain Commercial Vehicles between the United States-Canada Border and Certain Points in Maine**

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

**Whereas**, rural communities in the State are particularly dependent upon its forest products industries for employment opportunities and, given the current economic climate, the State's lumber and pulp and paper mills are struggling to continue their operations and to keep people employed; and

**Whereas**, it is important to avoid compromising the State's transportation infrastructure; and

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

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

**Sec. 1. 29-A MRSA §2354-B, sub-§5**, as enacted by PL 2005, c. 421, §1 and affected by §2, is amended to read:

**5. Repeal.** This section is repealed December 31, ~~2010~~ 2009.

**Sec. 2. 29-A MRSA §2354-C** is enacted to read:

**§2354-C. Allow certain commercial vehicles at Canadian weight limits to travel from the United States-Canada border to certain points in the State**

**1. Canadian gross vehicle weight limits.** Notwithstanding section 2354, the Commissioner of Transportation, in consultation with the Department of Public Safety and the Department of the Secretary of State, is authorized to allow certain commercial vehicles at Canadian gross vehicle weight limits to travel from the United States-Canada border at Calais to Baileyville, from the United States-Canada border at Madawaska to a paper mill at Madawaska and from the United States-Canada border at Van Buren to a rail yard in Van Buren. Vehicles are allowed to travel from the United States-Canada border under the following conditions.

A. The only allowable routes of travel are from the United States-Canada border in Calais north on U.S. Route 1 to Access Road in Baileyville, east on Access Road to Domtar Woodland Mill or its successor on Main Street and north on Main Street to the Louisiana-Pacific Oriented Strand Board mill or its successor in Baileyville; from the United States-Canada border in Madawaska then directly north or south into the Fraser Papers facility or its successor in Madawaska or up Bridge Street to Mill Street in Madawaska in order to reverse direction; and from the United States-Canada border in Van Buren on Bridge Street, east into the rail yard in Van Buren, located approximately 2/10 of one mile from the border.

B. Allowable truck configuration is limited to:

(1) A 3-axle truck tractor with a 3-axle semi-trailer at a gross vehicle weight of 108,900 pounds; and