HOUSE DOCKET, NO. 57 FILED ON: 1/15/2019

HOUSE . . . . . No. 57

So much of the recommendations of the Commission on Uniform State Laws (House, No. 56) as relates to making amendments to the Uniform Commercial Code covering provisions dealing with negotiable instruments and bank deposits and collections. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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 Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 3-103(a) of chapter 106 of the General Laws is hereby amended by striking the definition out of the definition of "good faith", by inserting the following definitions in alphabetical order and by renumbering all of the definitions in numerical order:--

(2) "Consumer account" means an account established by an individual primarily for personal, family, or household purposes.

(3) "Consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes.

(10) "Principal obligor," with respect to an instrument, means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this Article.

(13) “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.

(15) “Remotely-created consumer item” means an item drawn on a consumer account, which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer.

(16) “Secondary obligor,” with respect to an instrument, means (i) an indorser or an accommodation party, (ii) a drawer having the obligation described in Section 3-414(d), or (iii) any other party to the instrument that has recourse against another party to the instrument pursuant to Section 3-116(b).

SECTION 2. Section 3-103(b) of said chapter 106 is hereby amended by inserting a reference to a definition for “Account” which appears in “Section 4-104”.

SECTION 3. Section 3-106 of said chapter 106 is hereby amended by striking out the word “writing” wherever it appears in that Section and by inserting in each place thereof the following word:-- “record”.

SECTION 4. Section 3-116(b) of said chapter 106 is hereby amended by striking out the words “3-419(e)” in that Section and by inserting in place thereof the following words:-- “3-419(f)”.

SECTION 5. Section 3-116(c) of said chapter 106 is hereby repealed.

SECTION 6. Section 3-119 of said chapter 106 is hereby amended by striking out the word “written” in that Section and by inserting, after the word “litigation”, the following words:-- “in a record”.

SECTION 7. Section 3-305(a) of said chapter 106 is hereby amended by striking out the words “stated in subsection (b)” in that Section and by inserting in place thereof the following words:-- “otherwise provided in this section”.

SECTION 8. Section 3-305 of said chapter 106 is hereby amended by inserting the following new subsections at the end of Section 3-305:--

(e) In a consumer transaction, if law other than this Article requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or defense that the issuer could assert against the original payee and the instrument does not include such a statement:

(1) the instrument has the same effect as if the instrument included such a statement;

(2) the issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement; and

(3) the extent to which the claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

(f) This section is subject to law other than this Article which establishes a different rule for consumer transactions.

SECTION 9. Said chapter 106 is hereby amended by striking out Section 3-309(a), and inserting in place thereof the following Section:--

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

(1) the person seeking to enforce the instrument:

(A) was entitled to enforce the instrument when loss of possession occurred; or

(B) has directly or indirectly acquired ownership of the instrument from a person that was entitled to enforce the instrument when loss of possession occurred;

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

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

SECTION 10. Section 3-312(a)(3) of said chapter 106 is hereby amended by striking out the word “written” in that Section and by inserting, after the word “made”, the following words:-- “in a record”.

SECTION 11. Section 3-416(a) of said chapter 106 is hereby amended by striking out the word “and” after the word “warrantor;” in subsection (4), by striking out the period at the end of subsection (5), by inserting in place thereof the following:-- “; and” and by inserting the following subsection:--

(6) with respect to a remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

SECTION 12. Section 3-416 of said chapter 106 is hereby further amended by inserting the following subsection at the end of Section 3-416:--

(e) A claim for breach of the warranty in subsection (a)(6) is available against a previous transferor of the item only to the extent that under applicable law (including the applicable choice-of-law principle) all previous transferors of the item made the warranty in subsection (a)(6).

SECTION 13. Section 3-417(a) of said chapter 106 is hereby amended by striking out the word “and” after the word “altered;” in subsection (2), by striking out the period at the end of subsection (3), by inserting in place thereof the following:-- “; and” and by inserting the following subsection:--

(4) with respect to any remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

SECTION 14. Section 3-417 of said chapter 106 is hereby further amended by inserting the following subsection at the end of Section 3-417:--

(g) A claim for breach of the warranty in subsection (a)(4) is available against a previous transferor of the item only to the extent that under applicable law (including the applicable choice-of-law principle) all previous transferors of the item made the warranty in subsection (a)(4).

SECTION 15. Section 3-419 of said chapter 106 is hereby amended by striking out subsection (e) and by inserting the following new subsections at the end of Section 3-419:--

(e) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection

rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(f) 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. In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

SECTION 16. Said chapter 106 is hereby amended by striking out Section 3-602, and inserting in place thereof the following Section:--

SECTION 3-602. PAYMENT.

(a) Subject to subsection (e), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument.

(b) Subject to subsection (e), a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee, reasonably identifies the transferred note, and provides an address at which payments subsequently are to be made. Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred.

Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of subsection (c) even if the party obliged to pay the note has received a notification under this subsection.

(c) Subject to subsection (e), to the extent of a payment under subsections (a) and (b), the obligation of the party obliged to pay the instrument is discharged even if payment is made with knowledge of a claim to the instrument under Section 3-306 by another person.

(d) Subject to subsection (e), a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including a party that has rights as a holder in due course, is deemed to have notice of any payment that is made under subsection (b) after the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(e) The obligation of a party to pay an instrument is not discharged under subsections (a) through (d) if:

(1) a claim to the instrument under Section 3-306 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

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

(f) In this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

SECTION 17. Section 3-604(a) of said chapter 106 is hereby amended by striking out the word “writing” in that Section and by inserting in place thereof the following word:-- “record”.

SECTION 18. Section 3-604 of said chapter 106 is hereby amended by inserting the following new subsection at the end of Section 3-604:--

(c) As used in this section, “signed” with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

SECTION 19. Said chapter 106 is hereby amended by striking out Section 3-605, and inserting in place thereof the following Section:--

SECTION 3-605. DISCHARGE OF SECONDARY OBLIGORS.

(a) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under this Article.

(2) Unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

(3) If the secondary obligor is not discharged under paragraph (2), the secondary obligor is discharged to the extent of the value of the consideration for the release and to the extent that the release would otherwise cause loss to the secondary obligor.

(b) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this Article.

(2) The secondary obligor is discharged to the extent that the extension would otherwise cause loss to the secondary obligor.

(3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if

the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this Article.

(2) The secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause loss to the secondary obligor.

(3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred or treat its obligation on the instrument as having been modified correspondingly.

(d) If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the

amount of the recourse of the secondary obligor or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral; release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation; failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or other person secondarily liable; and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(e) A secondary obligor is not discharged under subsections (a)(3), (b), (c), or (d) unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under Section 3-419(c) that the instrument was signed for accommodation.

(f) A secondary obligor is not discharged under this section if the secondary obligor consents to the occurrence or nonoccurrence of the event or conduct that is the basis of the discharge or the instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(g) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide that:

(1) the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and

(2) the recourse of the secondary obligor continues as if the release or extension had not been granted.

(h) Except as otherwise provided in subsection (i), a secondary obligor asserting discharge under this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

SECTION 20. Section 4-104(b) of said chapter 106 is hereby amended by striking out the reference to a definition for “bank” and to the definition for “good faith”.

SECTION 21. Section 4-104(c) of said chapter 106 is hereby amended by inserting a reference to a definition for “record” which appears in “Section 3-103”, and by inserting a reference to a definition for “remotely-created consumer item” which appears in “Section 3-103”.

SECTION 22. Section 4-207(a) of said chapter 106 is hereby amended by striking out the word “and” after the word “warrantor;” in subsection (4), by striking out the period at the end of

subsection (5), by inserting in place thereof the following:-- “; and” and by inserting the following subsection:--

(6) with respect to any remotely-created consumer item, the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

SECTION 23. Section 4-207 of said chapter 106 is hereby further amended by inserting the following subsection at the end of Section 4-207:--

(f) A claim for breach of the warranty in subsection (a)(6) is available against a previous transferor of the item only to the extent that under applicable law (including the applicable choice-of-law principle) all previous transferors of the item made the warranty in subsection (a)(6).

SECTION 24. Section 4-208(a) of said chapter 106 is hereby amended by striking out the word “and” after the word “altered;” in subsection (2), by striking out the period at the end of subsection (3), by inserting in place thereof the following:-- “; and” and by inserting the following subsection:--

(4) with respect to any remotely-created consumer item, the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

SECTION 25. Section 4-208 of said chapter 106 is hereby further amended by inserting the following subsection at the end of Section 4-208:--

(g) A claim for breach of the warranty in subsection (a)(4) is available against a previous transferor of the item only to the extent that under applicable law (including the applicable

choice-of-law principle) all previous transferors of the item made the warranty in subsection (a)(4).

SECTION 26. Section 4-212(a) of said chapter 106 is hereby amended by striking out the word “written” in that Section and by inserting in place thereof the following words:-- “record providing”.

SECTION 27. Section 4-301(a) of said chapter 106 is hereby amended by striking out the word “or” in subsection (1), by striking out subsection (2) and by inserting the following new subsections at the end of Section 4-301(a):--

(2) returns an image of the item, if the party to which the return is made has entered into an agreement to accept the an image as a return of the item; and the image is returned in accordance with that agreement; or

(3) sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.

SECTION 28. Section 4-403(b) of said chapter 106 is hereby amended by striking out the word “writing” wherever it appears in that Section and by inserting in each place thereof the following word:-- “a record”.

SECTION 29. Section 9-406 of said chapter 106 is hereby amended by inserting at the end of subsection (j) the following new subsection: --

(k) Inapplicability to interests in certain entities. Subsections (d), (f), and (j) do not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.

SECTION 30. Section 9-408 of said chapter 106 is hereby amended by inserting at the end of subsection (f) the following new section: --

(g) Inapplicability to interests in certain entities. This section does not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.