

HOUSE No. 1172

The Commonwealth of Massachusetts

PRESENTED BY:

Alice Hanlon Peisch

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act Updating the Massachusetts Uniform Commercial Code.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>2/16/2021</i>

HOUSE No. 1172

By Ms. Peisch of Wellesley, a petition (accompanied by bill, House, No. 1172) of Alice Hanlon Peisch relative 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-Second General Court
(2021-2022)**

An Act Updating the Massachusetts Uniform Commercial Code.

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

1 SECTION 1. Subsection (a) of section 3-103 of chapter 106 of the General Laws is
2 hereby amended by striking out the definition of “good faith”; inserting the following definitions
3 in alphabetical order; and renumbering all of the definitions in numerical order:-

4 (2) “Consumer account” means an account established by an individual primarily for
5 personal, family, or household purposes.

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

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

11 (13) “Record” means information that is inscribed on a tangible medium or that is stored
12 in an electronic or other medium and is retrievable in perceivable form.

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

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

20 SECTION 2. Subsection (b) of section 3-103 of said chapter 106 is hereby amended by
21 inserting, after the words “‘Accommodation party’. Section 3-149.”, the following words:-- “
22 ‘Account’. Section 4-104.”.

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

26 SECTION 4. Subsection (b) of section 3-116 of said chapter 106 is hereby amended by
27 striking out the words “3-419(e)” and inserting in place thereof the following words:-- “3-
28 419(f)”.

29 SECTION 5. Section 3-116 of said chapter 106 is hereby amended by striking subsection
30 (c).

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

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

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

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

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

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

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

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

50 SECTION 9. Section 3-309 of said chapter 106 is hereby amended by striking out
51 subsection (a) and inserting in place thereof the following subsection:--

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

53 (1) the person seeking to enforce the instrument:

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

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

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

58 and

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

63 SECTION 10. Paragraph (3) of subsection (a) of section 3-312 of said chapter 106 is
64 hereby amended by striking out, after the words “means a”, the word “written”; and further by
65 inserting, after the word “made”, the following words:-- “in a record”.

66 SECTION 11. Subsection (a) of section 3-416 of said chapter 106 is hereby amended by
67 striking out, in paragraph (4), after the word “warrantor”, the word “and” ; and further by
68 striking out the period at the end of paragraph (5) and inserting in place thereof the following:--
69 “; and”; and further by inserting the following paragraph:--

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

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

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

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

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

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

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

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

92 (e) If the signature of a party to an instrument is accompanied by words indicating that
93 the party guarantees payment or the signer signs the instrument as an accommodation party in
94 some other manner that does not unambiguously indicate an intention to guarantee collection
95 rather than payment, the signer is obliged to pay the amount due on the instrument to a person
96 entitled to enforce the instrument in the same circumstances as the accommodated party would
97 be obliged, without prior resort to the accommodated party by the person entitled to enforce the
98 instrument.

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

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

107 Section 3-602: Payment.

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

110 (b) Subject to subsection (e), a note is paid to the extent payment is made by or on behalf
111 of a party obliged to pay the note to a person that formerly was entitled to enforce the note only
112 if at the time of the payment the party obliged to pay has not received adequate notification that
113 the note has been transferred and that payment is to be made to the transferee. A notification is

114 adequate only if it is signed by the transferor or the transferee, reasonably identifies the
115 transferred note, and provides an address at which payments subsequently are to be made. Upon
116 request, a transferee shall seasonably furnish reasonable proof that the note has been transferred.
117 Unless the transferee complies with the request, a payment to the person that formerly was
118 entitled to enforce the note is effective for purposes of subsection (c) even if the party obliged to
119 pay the note has received a notification under this subsection.

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

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

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

130 (1) a claim to the instrument under Section 3-306 is enforceable against the party
131 receiving payment and (i) payment is made with knowledge by the payor that payment is
132 prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case
133 of an instrument other than a cashier's check, teller's check, or certified check, the party making
134 payment accepted, from the person having a claim to the instrument, indemnity against loss
135 resulting from refusal to pay the person entitled to enforce the instrument; or

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

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

141 SECTION 17. Subsection (a) of section 3-604 of said chapter 106 is hereby amended by
142 striking out, at the end of the subsection, the word "writing" and inserting in place thereof the
143 following word:-- "record".

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

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

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

151 Section 3-605: Discharge Of Secondary Obligors.

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

155 (1) Any obligations of the principal obligor to the secondary obligor with respect to any
156 previous payment by the secondary obligor are not affected. Unless the terms of the release

157 preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the
158 release, from any other duties to the secondary obligor under this Article.

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

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

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

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

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

179 (3) To the extent that the secondary obligor is not discharged under paragraph (2), the
180 secondary obligor may perform its obligations to a person entitled to enforce the instrument as if
181 the time for payment had not been extended or, unless the terms of the extension provide that the
182 person entitled to enforce the instrument retains the right to enforce the instrument against the
183 secondary obligor as if the time for payment had not been extended, treat the time for
184 performance of its obligations as having been extended correspondingly.

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

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

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

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

198 (d) If the obligation of a principal obligor is secured by an interest in collateral, another
199 party to the instrument is a secondary obligor with respect to that obligation, and a person
200 entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of

201 the secondary obligor is discharged to the extent of the impairment. The value of an interest in
202 collateral is impaired to the extent the value of the interest is reduced to an amount less than the
203 amount of the recourse of the secondary obligor or the reduction in value of the interest causes
204 an increase in the amount by which the amount of the recourse exceeds the value of the interest.
205 For purposes of this subsection, impairing the value of an interest in collateral includes failure to
206 obtain or maintain perfection or recordation of the interest in collateral; release of collateral
207 without substitution of collateral of equal value or equivalent reduction of the underlying
208 obligation; failure to perform a duty to preserve the value of collateral owed, under Article 9 or
209 other law, to a debtor or other person secondarily liable; and failure to comply with applicable
210 law in disposing of or otherwise enforcing the interest in collateral.

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

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

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

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

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

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

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

238 SECTION 20. Subsection (b) of section 4-104 of said chapter 106 is hereby amended by
239 striking out the words:-- “‘Bank’. Section 4-105.”.

240 SECTION 20. Subsection (c) of section 4-104 of said chapter 106 is hereby amended by
241 striking out the words:-- “‘Good Faith’. Section 3-103.”.

242 SECTION 21. Subsection (c) of section 4-104(c) of said chapter 106 is hereby further
243 amended by inserting, after the words “‘Prove’. Section 3-103.”, the words:--

244 “Record”. Section 3-103.

245 “Remotely-created consumer item”. Section 3-103.

246 SECTION 22. Subsection (a) of section 4-207 of said chapter 106 is hereby amended by
247 striking out, in paragraph (4), after the word “warrantor”, the word “and” after the word
248 “warrantor;”; and further by striking out the period at the end of paragraph (5) and inserting in
249 place thereof the following:-- “; and”; and further by inserting the following paragraph:--

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

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

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

258 SECTION 24. Subsection (a) of section 4-208 of said chapter 106 is hereby amended by
259 striking out, in paragraph (2), after the word “altered”, the word “and”; and further by striking
260 out the period at the end of paragraph (3) and inserting in place thereof the following:-- “; and”;
261 further and by inserting the following paragraph:--

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

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

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

270 SECTION 26. Subsection (a) of section 4-212 of said chapter 106 is hereby amended by
271 striking out, after the words “accept or pay a”, the word “written” and inserting in place thereof
272 the following words:-- “record providing”.

273 SECTION 27. Subsection (a) of section 4-301 of said chapter 106 is hereby amended by
274 striking out, in paragraph (1), the word “or”; and further by striking out paragraph (2) and
275 inserting in place thereof the following paragraphs:--

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

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

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

284 SECTION 29. Section 9-406 of said chapter 106 is hereby amended by inserting at the
285 end thereof the following subsection:--

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

289 SECTION 30. Section 9-408 of said chapter 106 is hereby amended by inserting at the
290 end thereof the following subsection: --

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