

**HOUSE . . . . . No. 26**

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The Commonwealth of Massachusetts

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The Honorable Steven James  
*Clerk of the House of Representatives*  
State House, Room 145  
Boston, Massachusetts 02133

*January 3, 2011*

Dear Mr. James:

[Recommendation Header Text]

1.) AN ACT MAKING AMENDMENTS TO THE UNIFORM COMMERCIAL  
CODE COVERING PROVISIONS DEALING WITH NEGOTIABLE INSTRUMENTS AND  
BANK DEPOSITS AND COLLECTIONS

[Recommendation Narrative Text]

Sincerely,

[Filer Name]  
*[Filer Title]*

# HOUSE . . . . . No. 26

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So much of the recommendations of the Commission on Uniform State Laws (House, No. 22) as relates to making amendments to the uniform commercial code covering provisions dealing with negotiable instruments and bank deposits and collections (House, No. 26). Financial Services.

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## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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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:*

1           SECTION 1. Section 3-103(a) of chapter 106 of the General Laws is hereby amended by  
2 inserting the following definitions in alphabetical order and by renumbering all of the definitions  
3 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           (6) “Good faith” means honesty in fact and the observance of reasonable commercial  
9 standards of fair dealing.

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

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

15 (16) "Remotely-created item" means an item that is not created by the payor bank and  
16 does not bear a handwritten signature purporting to be the signature of the drawer.

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

21 SECTION 2. Section 3-103(b) of said chapter 106 is hereby amended by inserting a  
22 reference to a definition for "Account" which appears in "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 by inserting in each place thereof the  
25 following word:-- "record".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

106 SECTION 3-602. PAYMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

149 SECTION 3-605. DISCHARGE OF SECONDARY OBLIGORS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

236 SECTION 20. Section 4-104(b) of said chapter 106 is hereby amended by striking out  
237 the reference to a definition for "Bank".

238 SECTION 21. Section 4-104(c) of said chapter 106 is hereby amended by inserting a  
239 reference to a definition for "Record" which appears in "Section 3-103", and by inserting a  
240 reference to a definition for "Remotely-created item" which appears in "Section 3-103".

241 SECTION 22. Section 4-207(a) of said chapter 106 is hereby amended by striking out the  
242 word “and” after the word “warrantor;” in subsection (4), by striking out the period at the end of  
243 subsection (5), by inserting in place thereof the following:-- “; and” and by inserting the  
244 following subsection:--

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

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

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

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

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

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

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

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

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

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

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

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