

SENATE BILL No. 547

September 25, 2013, Introduced by Senator BOOHER and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1962 PA 174, entitled
"Uniform commercial code,"
by amending sections 3103, 3106, 3116, 3119, 3305, 3309, 3312,
3416, 3417, 3419, 3602, 3604, and 3605 (MCL 440.3103, 440.3106,
440.3116, 440.3119, 440.3305, 440.3309, 440.3312, 440.3416,
440.3417, 440.3419, 440.3602, 440.3604, and 440.3605), section
3103 as amended by 2012 PA 86 and sections 3106, 3116, 3119,
3305, 3416, 3417, 3419, 3602, 3604, and 3605 as amended and
sections 3309 and 3312 as added by 1993 PA 130.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3103. (1) As used in this article:

2 (a) "Acceptor" means a drawee who has accepted a draft.

3 **(B) "CONSUMER ACCOUNT" MEANS AN ACCOUNT ESTABLISHED BY AN**
4 **INDIVIDUAL PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.**

5 **(C) "CONSUMER TRANSACTION" MEANS A TRANSACTION IN WHICH AN**

1 INDIVIDUAL INCURS AN OBLIGATION PRIMARILY FOR PERSONAL, FAMILY,
2 OR HOUSEHOLD PURPOSES.

3 (D) ~~(b)~~—"Drawee" means a person ordered in a draft to make
4 payment.

5 (E) ~~(e)~~—"Drawer" means a person who signs or is identified
6 in a draft as a person ordering payment.

7 (F) ~~(d)~~—"Maker" means a person who signs or is identified in
8 a note as a person undertaking to pay.

9 (G) ~~(e)~~—"Order" means a written instruction to pay money
10 signed by the person giving the instruction. The instruction may
11 be addressed to any person, including the person giving the
12 instruction, or to 1 or more persons jointly or in the alternative
13 but not in succession. An authorization to pay is not an order
14 unless the person authorized to pay is also instructed to pay.

15 (H) ~~(f)~~—"Ordinary care" in the case of a person engaged in
16 business means observance of reasonable commercial standards,
17 prevailing in the area in which the person is located, with
18 respect to the business in which the person is engaged. In the
19 case of a bank that takes an instrument for processing for
20 collection or payment by automated means, reasonable commercial
21 standards do not require the bank to examine the instrument if
22 the failure to examine does not violate the bank's prescribed
23 procedures and the bank's procedures do not vary unreasonably
24 from general banking usage not disapproved by this article or
25 article 4.

26 (I) ~~(g)~~—"Party" means a party to an instrument.

27 (J) "PRINCIPAL OBLIGOR", WITH RESPECT TO AN INSTRUMENT,

1 MEANS THE ACCOMMODATED PARTY OR ANY OTHER PARTY TO THE INSTRUMENT
2 AGAINST WHOM A SECONDARY OBLIGOR HAS RECOURSE UNDER THIS ARTICLE.

3 (K) ~~(h)~~—"Promise" means a written undertaking to pay money
4 signed by the person undertaking to pay. An acknowledgment of an
5 obligation by the obligor is not a promise unless the obligor
6 also undertakes to pay the obligation.

7 (L) ~~(i)~~—"Prove" with respect to a fact means to meet the
8 burden of establishing the fact under section 1201(2)(h).

9 (M) ~~(j)~~—"Remitter" means a person who purchases an
10 instrument from its issuer if the instrument is payable to an
11 identified person other than the purchaser.

12 (N) "REMOTELY CREATED CONSUMER ITEM" MEANS AN ITEM DRAWN ON
13 A CONSUMER ACCOUNT, WHICH IS NOT CREATED BY THE PAYOR BANK AND
14 DOES NOT BEAR A HANDWRITTEN SIGNATURE PURPORTING TO BE THE
15 SIGNATURE OF THE DRAWER.

16 (O) "SECONDARY OBLIGOR", WITH RESPECT TO AN INSTRUMENT,
17 MEANS ANY OF THE FOLLOWING:

18 (i) AN INDORSER OR AN ACCOMMODATION PARTY.

19 (ii) A DRAWER THAT HAS THE OBLIGATION DESCRIBED IN SECTION
20 3414(4).

21 (iii) ANY OTHER PARTY TO THE INSTRUMENT THAT HAS RECOURSE
22 AGAINST ANOTHER PARTY TO THE INSTRUMENT UNDER SECTION 3116(2).

23 (2) Other definitions applying to this article and the
24 sections in which they appear are as follows:

25 "Acceptance" section 3409.

26 "Accommodated party" section 3419.

1	"Accommodation party"	section 3419.
2	"ACCOUNT"	SECTION 4104.
3	"Alteration"	section 3407.
4	"Anomalous endorsement"	section 3205.
5	"Blank endorsement"	section 3205.
6	"Cashier's check"	section 3104.
7	"Certificate of deposit"	section 3104.
8	"Certified check"	section 3409.
9	"Check"	section 3104.
10	"Consideration"	section 3303.
11	"Draft"	section 3104.
12	"Endorsement"	section 3204.
13	"Endorser"	section 3204.
14	"Holder in due course"	section 3304.
15	"Incomplete instrument"	section 3115.
16	"Instrument"	section 3104.
17	"Issue"	section 3105.
18	"Issuer"	section 3105.
19	"Negotiable instrument"	section 3104.
20	"Negotiation"	section 3201.
21	"Note"	section 3104.
22	"Payable at a definite time"	section 3108.
23	"Payable on demand"	section 3108.
24	"Payable to bearer"	section 3109.
25	"Payable to order"	section 3109.
26	"Payment"	section 3602.
27	"Person entitled to enforce"	section 3301.
28	"Presentment"	section 3501.
29	"Reacquisition"	section 3207.
30	"Special endorsement"	section 3205.
31	"Teller's check"	section 3104.

1	"Transfer of instrument"	section 3203.
2	"Traveler's check"	section 3104.
3	"Value"	section 3303.

4 (3) The following definitions in other articles apply to
5 this article:

6	"Bank"	section 4105.
7	"Banking day"	section 4104.
8	"Clearing-house"	section 4104.
9	"Collecting bank"	section 4105.
10	"Depository bank"	section 4105.
11	"Documentary draft"	section 4104.
12	"Intermediary bank"	section 4105.
13	"Item"	section 4104.
14	"Payor bank"	section 4105.
15	"Suspends payments"	section 4104.

16 (4) In addition, article 1 contains general definitions and
17 principles of construction and interpretation applicable
18 throughout this article.

19 Sec. 3106. (1) Except as provided in this section, for the
20 purposes of section 3104(1), a promise or order is unconditional
21 unless it states **1 OF THE FOLLOWING:**

22 (a) An express condition to payment.

23 (b) That the promise or order is subject to or governed by
24 another ~~writing~~. **RECORD.**

25 (c) That rights or obligations with respect to the promise
26 or order are stated in another ~~writing~~. **RECORD.** A reference to

1 another ~~writing~~-RECORD does not of itself make the promise or
2 order conditional.

3 (2) A promise or order is not made conditional **BY OR BECAUSE**
4 **OF EITHER OF THE FOLLOWING:**

5 (a) By a reference to another ~~writing~~-RECORD for a statement
6 of rights with respect to collateral, prepayment, or
7 acceleration.

8 (b) Because payment is limited to resort to a particular
9 fund or source.

10 (3) If a promise or order requires, as a condition to
11 payment, a countersignature by a person whose specimen signature
12 appears on the promise or order, the condition does not make the
13 promise or order conditional for the purposes of section 3104(1).
14 If the person whose specimen signature appears on an instrument
15 fails to countersign the instrument, the failure to countersign
16 is a defense to the obligation of the issuer, but the failure
17 does not prevent a transferee of the instrument from becoming a
18 holder of the instrument.

19 (4) If a promise or order at the time it is issued or first
20 comes into possession of a holder contains a statement, required
21 by applicable statutory or administrative law, to the effect that
22 the rights of a holder or transferee are subject to claims or
23 defenses that the issuer could assert against the original payee,
24 the promise or order is not thereby made conditional for the
25 purposes of section 3104(1); but if the promise or order is an
26 instrument, there cannot be a holder in due course of the
27 instrument.

1 Sec. 3116. (1) Except as otherwise provided in the
2 instrument, 2 or more persons who have the same liability on an
3 instrument as makers, drawers, acceptors, endorsers who endorse
4 as joint payees, or anomalous endorsers are jointly and severally
5 liable in the capacity in which they sign.

6 (2) Except as provided in section ~~3419(5)~~**3419(6)** or by
7 agreement of the affected parties, a party having joint and
8 several liability who pay the instrument is entitled to receive
9 from any party having the same joint and several liability
10 contribution in accordance with applicable law.

11 ~~—— (3) Discharge of 1 party having joint and several liability~~
12 ~~by a person entitled to enforce the instrument does not affect~~
13 ~~the right under subsection (2) of a party having the same joint~~
14 ~~and several liability to receive contribution from the party~~
15 ~~discharged.~~

16 Sec. 3119. In an action for breach of an obligation for
17 which a third person is answerable over pursuant to this article
18 or article 4, the defendant may give the third person ~~written~~
19 notice of the litigation **IN A RECORD**, and the person notified may
20 then give similar notice to any other person who is answerable
21 over. If the notice states (i) that the person notified may come
22 in and defend and (ii) that failure to do so will bind the person
23 notified in an action later brought by the person giving the
24 notice as to any determination of fact common to the 2
25 litigations, the person notified is so bound unless after
26 seasonable receipt of the notice the person notified does come in
27 and defend.

1 Sec. 3305. (1) Except as ~~stated in subsection (2), OTHERWISE~~
2 **PROVIDED IN THIS SECTION**, the right to enforce the obligation of
3 a party to pay an instrument is subject to the following:

4 (a) A defense of the obligor based on (i) infancy of the
5 obligor to the extent it is a defense to a simple contract, (ii)
6 duress, lack of legal capacity, or illegality of the transaction
7 which, under other law, nullifies the obligation of the obligor,
8 (iii) fraud that induced the obligor to sign the instrument with
9 neither knowledge nor reasonable opportunity to learn of its
10 character or its essential terms, or (iv) discharge of the obligor
11 in insolvency proceedings.

12 (b) A defense of the obligor stated in another section of
13 this article or a defense of the obligor that would be available
14 if the person entitled to enforce the instrument were enforcing a
15 right to payment under a simple contract.

16 (c) A claim in recoupment of the obligor against the
17 original payee of the instrument if the claim arose from the
18 transaction that gave rise to the instrument, but the claim of
19 the obligor may be asserted against a transferee of the
20 instrument only to reduce the amount owing on the instrument at
21 the time the action is brought.

22 (2) The right of a holder in due course to enforce the
23 obligation of a party to pay the instrument is subject to
24 defenses of the obligor stated in subsection (1)(a), but is not
25 subject to defenses of the obligor stated in subsection (1)(b) or
26 claims in recoupment stated in subsection (1)(c) against a person
27 other than the holder.

(3) Except as stated in subsection (4), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument in section 3306 of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(4) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (1) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

(5) 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, ALL OF THE FOLLOWING APPLY:

(A) THE INSTRUMENT HAS THE SAME EFFECT AS IF THE INSTRUMENT INCLUDED SUCH A STATEMENT.

1 (B) THE ISSUER MAY ASSERT AGAINST THE HOLDER OR TRANSFEREE
2 ALL CLAIMS AND DEFENSES THAT WOULD HAVE BEEN AVAILABLE IF THE
3 INSTRUMENT INCLUDED SUCH A STATEMENT.

4 (C) THE EXTENT TO WHICH CLAIMS MAY BE ASSERTED AGAINST THE
5 HOLDER OR TRANSFEREE IS DETERMINED AS IF THE INSTRUMENT INCLUDED
6 SUCH A STATEMENT.

7 (6) THIS SECTION IS SUBJECT TO LAW OTHER THAN THIS ARTICLE
8 THAT ESTABLISHES A DIFFERENT RULE FOR CONSUMER TRANSACTIONS.

9 Sec. 3309. (1) A person not in possession of an instrument
10 is entitled to enforce the instrument if **ALL OF THE FOLLOWING ARE**
11 **MET:**

12 (A) THE PERSON MEETS EITHER OF THE FOLLOWING:

13 (i) ~~the person was in possession of the instrument and WAS~~
14 entitled to enforce ~~it~~ **THE INSTRUMENT** when loss of possession
15 occurred.

16 (ii) HAS DIRECTLY OR INDIRECTLY ACQUIRED OWNERSHIP OF THE
17 INSTRUMENT FROM A PERSON THAT WAS ENTITLED TO ENFORCE THE
18 INSTRUMENT WHEN LOSS OF POSSESSION OCCURRED.

19 (B) ~~, (ii) the~~ **THE** loss of possession was not the result of a
20 transfer by the person or a lawful seizure. ~~, and~~

21 (C) ~~(iii) the~~ **THE** person cannot reasonably obtain possession
22 of the instrument because the instrument was destroyed, its
23 whereabouts cannot be determined, or it is in the wrongful
24 possession of an unknown person or a person that cannot be found
25 or is not amenable to service of process.

26 (2) A person seeking enforcement of an instrument under
27 subsection (1) must prove the terms of the instrument and the

1 person's right to enforce the instrument. If that proof is made,
2 section 3308 applies to the case as if the person seeking
3 enforcement had produced the instrument. The court may not enter
4 judgment in favor of the person seeking enforcement unless it
5 finds that the person required to pay the instrument is
6 adequately protected against loss that might occur by reason of a
7 claim by another person to enforce the instrument. Adequate
8 protection may be provided by any reasonable means.

9 Sec. 3312. (1) As used in this section:

10 (a) "Check" means a cashier's check, teller's check, or
11 certified check.

12 (b) "Claimant" means a person who claims the right to
13 receive the amount of a cashier's check, teller's check, or
14 certified check that was lost, destroyed, or stolen.

15 (c) "Declaration of loss" means a ~~written~~ statement, made **IN**
16 **A RECORD** under penalty of perjury, to the effect that all of the
17 following apply:

18 (i) The declarer lost possession of a check.

19 (ii) The declarer is the drawer or payee of the check in the
20 case of a certified check, or the remitter or payee of the check
21 in the case of a cashier's check or teller's check.

22 (iii) The loss of possession was not the result of a transfer
23 by the declarer or a lawful seizure.

24 (iv) The declarer cannot reasonably obtain possession of the
25 check because the check was destroyed, its whereabouts cannot be
26 determined, or it is in the wrongful possession of an unknown
27 person or a person that cannot be found or is not amenable to

1 service of process.

2 (d) "Obligated bank" means the issuer of a cashier's check
3 or teller's check or the acceptor of a certified check.

4 (2) A claimant may assert a claim to the amount of a check
5 by a communication to the obligated bank describing the check
6 with reasonable certainty and requesting payment of the amount of
7 the check if all of the following apply:

8 (a) The claimant is the drawer or payee of a certified check
9 or the remitter or payee of a cashier's check or teller's check.

10 (b) The communication contains or is accompanied by a
11 declaration of loss of the claimant with respect to the check.

12 (c) The communication is received at a time and in a manner
13 affording the bank a reasonable time to act on it before the
14 check is paid.

15 (d) The claimant provides reasonable identification if
16 requested by the obligated bank.

17 (3) Delivery of a declaration of loss is a warranty of the
18 truth of the statements made in the declaration.

19 (4) If a claim is asserted in compliance with subsection
20 (2), the following rules apply:

21 (a) The claim becomes enforceable at the later of the
22 following:

23 (i) The time the claim is asserted.

24 (ii) The 90th day following the date of the check in the case
25 of a cashier's check or teller's check, or the 90th day following
26 the date of the acceptance in the case of a certified check.

27 (b) Until the claim becomes enforceable, it has no legal

1 effect and the obligated bank may pay the check or, in the case
2 of a teller's check, may permit the drawee to pay the check.
3 Payment to a person entitled to enforce the check discharges all
4 liability of the obligated bank with respect to the check.

5 (c) If the claim becomes enforceable before the check is
6 presented for payment, the obligated bank is not obliged to pay
7 the check.

8 (d) When the claim becomes enforceable, the obligated bank
9 becomes obliged to pay the amount of the check to the claimant if
10 payment of the check has not been made to a person entitled to
11 enforce the check. Subject to section 4302(1)(a), payment to the
12 claimant discharges all liability of the obligated bank with
13 respect to the check.

14 (5) If the obligated bank pays the amount of a check to a
15 claimant under subsection (4)(d) and the check is presented for
16 payment by a person having rights of a holder in due course, the
17 claimant is obliged to do both of the following:

18 (a) Refund the payment to the obligated bank if the check is
19 paid.

20 (b) Pay the amount of the check to the person having rights
21 of a holder in due course if the check is dishonored.

22 (6) If a claimant has the right to assert a claim under
23 subsection (2) and is also a person entitled to enforce a
24 cashier's check, teller's check, or certified check which is
25 lost, destroyed, or stolen, the claimant may assert rights with
26 respect to the check either under this section or section 3309.

27 Sec. 3416. (1) A person who transfers an instrument for

1 consideration warrants to the transferee and, if the transfer is
2 by endorsement, to any subsequent transferee all of the
3 following:

4 (a) That the warrantor is a person entitled to enforce the
5 instrument.

6 (b) That all signatures on the instrument are authentic and
7 authorized.

8 (c) That the instrument has not been altered.

9 (d) That the instrument is not subject to a defense or claim
10 in recoupment of any party which can be asserted against the
11 warrantor.

12 (e) That the warrantor has no knowledge of any insolvency
13 proceeding commenced with respect to the maker or acceptor or, in
14 the case of an unaccepted draft, the drawer.

15 **(F) WITH RESPECT TO A REMOTELY CREATED CONSUMER ITEM, THAT**
16 **THE PERSON ON WHOSE ACCOUNT THE ITEM IS DRAWN AUTHORIZED THE**
17 **ISSUANCE OF THE ITEM IN THE AMOUNT FOR WHICH THE ITEM IS DRAWN.**

18 (2) A person to whom the warranties under subsection (1) are
19 made and who took the instrument in good faith may recover from
20 the warrantor as damages for breach of warranty an amount equal
21 to the loss suffered as a result of the breach, but not more than
22 the amount of the instrument plus expenses and loss of interest
23 incurred as a result of the breach.

24 (3) The warranties stated in subsection (1) cannot be
25 disclaimed with respect to checks. Unless notice of a claim for
26 breach of warranty is given to the warrantor within 30 days after
27 the claimant has reason to know of the breach and the identity of

1 the warrantor, the liability of the warrantor under subsection
2 (2) is discharged to the extent of any loss caused by the delay
3 in giving notice of the claim.

4 (4) A cause of action for breach of warranty under this
5 section accrues when the claimant has reason to know of the
6 breach.

7 Sec. 3417. (1) If an unaccepted draft is presented to the
8 drawee for payment or acceptance and the drawee pays or accepts
9 the draft, (i) the person obtaining payment or acceptance, at the
10 time of presentment, and (ii) a previous transferor of the draft,
11 at the time of transfer, warrant to the drawee making payment or
12 accepting the draft in good faith all of the following:

13 (a) That the warrantor is, or was, at the time the warrantor
14 transferred the draft, a person entitled to enforce the draft or
15 authorized to obtain payment or acceptance of the draft on behalf
16 of a person entitled to enforce the draft.

17 (b) That the draft has not been altered.

18 (c) That the warrantor has no knowledge that the signature
19 of the drawer of the draft is unauthorized.

20 **(D) WITH RESPECT TO ANY REMOTELY CREATED CONSUMER ITEM, THAT**
21 **THE PERSON ON WHOSE ACCOUNT THE ITEM IS DRAWN AUTHORIZED THE**
22 **ISSUANCE OF THE ITEM IN THE AMOUNT FOR WHICH THE ITEM IS DRAWN.**

23 (2) A drawee making payment may recover from any warrantor
24 damages for breach of warranty equal to the amount paid by the
25 drawee less the amount the drawee received or is entitled to
26 receive from the drawer because of the payment. In addition, the
27 drawee is entitled to compensation for expenses and loss of

1 interest resulting from the breach. The right of the drawee to
2 recover damages under this subsection is not affected by any
3 failure of the drawee to exercise ordinary care in making
4 payment. If the drawee accepts the draft, breach of warranty is a
5 defense to the obligation of the acceptor. If the acceptor makes
6 payment with respect to the draft, the acceptor is entitled to
7 recover from any warrantor for breach of warranty the amounts
8 stated in this subsection.

9 (3) If a drawee asserts a claim for breach of warranty under
10 subsection (1) based on an unauthorized endorsement of the draft
11 or an alteration of the draft, the warrantor may defend by
12 proving that the endorsement is effective under section 3404 or
13 3405 or the drawer is precluded under section 3406 or 4406 from
14 asserting against the drawee the unauthorized endorsement or
15 alteration.

16 (4) If (i) a dishonored draft is presented for payment to the
17 drawer or an endorser or (ii) any other instrument is presented
18 for payment to a party obliged to pay the instrument, and (iii)
19 payment is received, the following rules apply:

20 (a) The person obtaining payment and a prior transferor of
21 the instrument warrant to the person making payment in good faith
22 that the warrantor is, or was, at the time the warrantor
23 transferred the instrument, a person entitled to enforce the
24 instrument or authorized to obtain payment on behalf of a person
25 entitled to enforce the instrument.

26 (b) The person making payment may recover from any warrantor
27 for breach of warranty an amount equal to the amount paid plus

1 expenses and loss of interest resulting from the breach.

2 (5) The warranties stated in subsections (1) and (4) cannot
3 be disclaimed with respect to checks. Unless notice of a claim
4 for breach of warranty is given to the warrantor within 30 days
5 after the claimant has reason to know of the breach and the
6 identity of the warrantor, the liability of the warrantor under
7 subsection (2) or (4) is discharged to the extent of any loss
8 caused by the delay in giving notice of the claim.

9 (6) A cause of action for breach of warranty under this
10 section accrues when the claimant has reason to know of the
11 breach.

12 Sec. 3419. (1) If an instrument is issued for value given
13 for the benefit of a party to the instrument ("accommodated
14 party") and another party to the instrument ("accommodation
15 party") signs the instrument for the purpose of incurring
16 liability on the instrument without being a direct beneficiary of
17 the value given for the instrument, the instrument is signed by
18 the accommodation party "for accommodation".

19 (2) An accommodation party may sign the instrument as maker,
20 drawer, acceptor, or endorser and, subject to subsection (4), is
21 obliged to pay the instrument in the capacity in which the
22 accommodation party signs. The obligation of an accommodation
23 party may be enforced notwithstanding any statute of frauds and
24 whether or not the accommodation party receives consideration for
25 the accommodation.

26 (3) A person signing an instrument is presumed to be an
27 accommodation party and there is notice that the instrument is

1 signed for accommodation if the signature is an anomalous
2 endorsement or is accompanied by words indicating that the signer
3 is acting as surety or guarantor with respect to the obligation
4 of another party to the instrument. Except as provided in section
5 3605, the obligation of an accommodation party to pay the
6 instrument is not affected by the fact that the person enforcing
7 the obligation had notice when the instrument was taken by that
8 person that the accommodation party signed the instrument for
9 accommodation.

10 (4) If the signature of a party to an instrument is
11 accompanied by words indicating unambiguously that the party is
12 guaranteeing collection rather than payment of the obligation of
13 another party to the instrument, the signer is obliged to pay the
14 amount due on the instrument to a person entitled to enforce the
15 instrument only if (i) execution of judgment against the other
16 party has been returned unsatisfied, (ii) the other party is
17 insolvent or in an insolvency proceeding, (iii) the other party
18 cannot be served with process, or (iv) it is otherwise apparent
19 that payment cannot be obtained from the other party.

20 (5) IF THE SIGNATURE OF A PARTY TO AN INSTRUMENT IS
21 ACCOMPANIED BY WORDS INDICATING THAT THE PARTY GUARANTEES PAYMENT
22 OR THE SIGNER SIGNS THE INSTRUMENT AS AN ACCOMMODATION PARTY IN
23 SOME OTHER MANNER THAT DOES NOT UNAMBIGUOUSLY INDICATE AN
24 INTENTION TO GUARANTEE COLLECTION RATHER THAN PAYMENT, THE SIGNER
25 IS OBLIGED TO PAY THE AMOUNT DUE ON THE INSTRUMENT TO A PERSON
26 ENTITLED TO ENFORCE THE INSTRUMENT IN THE SAME CIRCUMSTANCES AS
27 THE ACCOMMODATED PARTY WOULD BE OBLIGED, WITHOUT PRIOR RESORT TO

1 THE ACCOMMODATED PARTY BY THE PERSON ENTITLED TO ENFORCE THE
2 INSTRUMENT.

3 (6) ~~(5)~~—An accommodation party who pays the instrument is
4 entitled to reimbursement from the accommodated party and is
5 entitled to enforce the instrument against the accommodated
6 party. IN PROPER CIRCUMSTANCES, AN ACCOMMODATION PARTY MAY OBTAIN
7 RELIEF THAT REQUIRES THE ACCOMMODATED PARTY TO PERFORM ITS
8 OBLIGATIONS ON THE INSTRUMENT. An accommodated party ~~who~~ THAT
9 pays the instrument has no right of recourse against, and is not
10 entitled to contribution from, an accommodation party.

11 Sec. 3602. (1) Subject to subsection ~~(2)~~, (5), an instrument
12 is paid to the extent payment is made ~~(i)~~ by or on behalf of a
13 party obliged to pay the instrument, and ~~(ii)~~ to a person entitled
14 to enforce the instrument.

15 (2) SUBJECT TO SUBSECTION (5), A NOTE IS PAID TO THE EXTENT
16 PAYMENT IS MADE BY OR ON BEHALF OF A PARTY OBLIGED TO PAY THE
17 NOTE TO A PERSON THAT FORMERLY WAS ENTITLED TO ENFORCE THE NOTE
18 ONLY IF AT THE TIME OF THE PAYMENT THE PARTY OBLIGED TO PAY HAS
19 NOT RECEIVED ADEQUATE NOTIFICATION THAT THE NOTE HAS BEEN
20 TRANSFERRED AND THAT PAYMENT IS TO BE MADE TO THE TRANSFEREE. A
21 NOTIFICATION IS ADEQUATE ONLY IF IT IS SIGNED BY THE TRANSFEROR
22 OR THE TRANSFEREE; REASONABLY IDENTIFIES THE TRANSFERRED NOTE;
23 AND PROVIDES AN ADDRESS AT WHICH PAYMENTS SUBSEQUENTLY ARE TO BE
24 MADE. UPON REQUEST, A TRANSFEREE SHALL SEASONABLY FURNISH
25 REASONABLE PROOF THAT THE NOTE HAS BEEN TRANSFERRED. UNLESS THE
26 TRANSFEREE COMPLIES WITH THE REQUEST, A PAYMENT TO THE PERSON
27 THAT FORMERLY WAS ENTITLED TO ENFORCE THE NOTE IS EFFECTIVE FOR

1 PURPOSES OF SUBSECTION (3) EVEN IF THE PARTY OBLIGED TO PAY THE
2 NOTE HAS RECEIVED A NOTIFICATION UNDER THIS SUBSECTION.

3 (3) ~~TO~~ SUBJECT TO SUBSECTION (5), TO the extent of the
4 ~~payment,~~ A PAYMENT UNDER SUBSECTIONS (1) AND (2), the obligation
5 of the party obliged to pay the instrument is discharged even
6 though payment is made with knowledge of a claim to the
7 instrument under section 3306 by another person.

8 (4) SUBJECT TO SUBSECTION (5), A TRANSFEREE, OR ANY PARTY
9 THAT HAS ACQUIRED RIGHTS IN THE INSTRUMENT DIRECTLY OR INDIRECTLY
10 FROM A TRANSFEREE, INCLUDING ANY PARTY THAT HAS ACQUIRED THOSE
11 RIGHTS AND THAT HAS RIGHTS AS A HOLDER IN DUE COURSE, IS DEEMED
12 TO HAVE NOTICE OF ANY PAYMENT THAT IS MADE UNDER SUBSECTION (2)
13 AFTER THE DATE THAT THE NOTE IS TRANSFERRED TO THE TRANSFEREE BUT
14 BEFORE THE PARTY OBLIGED TO PAY THE NOTE RECEIVES ADEQUATE
15 NOTIFICATION OF THE TRANSFER.

16 (5) ~~(2)~~ The obligation of a party to pay the instrument is
17 not discharged under ~~subsection~~ SUBSECTIONS (1) TO (4) if either
18 of the following applies:

19 (a) A claim to the instrument under section 3306 is
20 enforceable against the party receiving payment and (i) payment is
21 made with knowledge by the payor that payment is prohibited by
22 injunction or similar process of a court of competent
23 jurisdiction, or (ii) in the case of an instrument other than a
24 cashier's check, teller's check, or certified check, the party
25 making payment accepted, from the person having a claim to the
26 instrument, indemnity against loss resulting from refusal to pay
27 the person entitled to enforce the instrument.

(b) 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.

(6) 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.

Sec. 3604. (1) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed ~~writing~~.-RECORD.

(2) Cancellation or striking out of an endorsement pursuant to subsection (1) does not affect the status and rights of a party derived from the endorsement.

(3) 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.

Sec. 3605. ~~(1) In this section, the term "endorser" includes a drawer having the obligation described in section 3414(4).~~

~~1 ——— (2) Discharge, under section 3604, of the obligation of a
2 party to pay an instrument does not discharge the obligation of
3 an endorser or accommodation party having a right of recourse
4 against the discharged party.~~

~~5 ——— (3) If a person entitled to enforce an instrument agrees,
6 with or without consideration, to an extension of the due date of
7 the obligation of a party to pay the instrument, the extension
8 discharges an endorser or accommodation party having a right of
9 recourse against the party whose obligation is extended to the
10 extent the endorser or accommodation party proves that the
11 extension caused loss to the endorser or accommodation party with
12 respect to the right of recourse.~~

~~13 ——— (4) If a person entitled to enforce an instrument agrees,
14 with or without consideration, to a material modification of the
15 obligation of a party other than an extension of the due date,
16 the modification discharges the obligation of an endorser or
17 accommodation party having a right of recourse against the person
18 whose obligation is modified to the extent the modification
19 causes loss to the endorser or accommodation party with respect
20 to the right of recourse. The loss suffered by the endorser or
21 accommodation party as a result of the modification is equal to
22 the amount of the right of recourse unless the person enforcing
23 the instrument proves that no loss was caused by the modification
24 or that the loss caused by the modification was an amount less
25 than the amount of the right of recourse.~~

~~26 ——— (5) If the obligation of a party to pay an instrument is
27 secured by an interest in collateral and a person entitled to~~

1 ~~enforce the instrument impairs the value of the interest in~~
2 ~~collateral, the obligation of an endorser or accommodation party~~
3 ~~having a right of recourse against the obligor is discharged to~~
4 ~~the extent of the impairment. The value of an interest in~~
5 ~~collateral is impaired to the extent (i) the value of the interest~~
6 ~~is reduced to an amount less than the amount of the right of~~
7 ~~recourse of the party asserting discharge, or (ii) the reduction~~
8 ~~in value of the interest causes an increase in the amount by~~
9 ~~which the amount of the right of recourse exceeds the value of~~
10 ~~the interest. The burden of proving impairment is on the party~~
11 ~~asserting discharge.~~

12 ~~—— (6) If the obligation of a party is secured by an interest~~
13 ~~in collateral not provided by an accommodation party and a person~~
14 ~~entitled to enforce the instrument impairs the value of the~~
15 ~~interest in collateral, the obligation of any party who is~~
16 ~~jointly and severally liable with respect to the secured~~
17 ~~obligation is discharged to the extent the impairment causes the~~
18 ~~party asserting discharge to pay more than that party would have~~
19 ~~been obliged to pay, taking into account rights of contribution,~~
20 ~~if impairment had not occurred. If the party asserting discharge~~
21 ~~is an accommodation party not entitled to discharge under~~
22 ~~subsection (5), the party is deemed to have a right to~~
23 ~~contribution based on joint and several liability rather than a~~
24 ~~right to reimbursement. The burden of proving impairment is on~~
25 ~~the party asserting discharge.~~

26 ~~—— (7) Under subsection (5) or (6), impairing value of an~~
27 ~~interest in collateral includes (i) failure to obtain or maintain~~

~~perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.~~

~~—— (8) An accommodation party is not discharged under subsection (3), (4), or (5) unless the person entitled to enforce the instrument knows of the accommodation or has notice under section 3419(3) that the instrument was signed for accommodation.~~

~~—— (9) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.~~

(1) 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:

(A) 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

1 OTHER DUTIES TO THE SECONDARY OBLIGOR UNDER THIS ARTICLE.

2 (B) UNLESS THE TERMS OF THE RELEASE PROVIDE THAT THE PERSON
3 ENTITLED TO ENFORCE THE INSTRUMENT RETAINS THE RIGHT TO ENFORCE
4 THE INSTRUMENT AGAINST THE SECONDARY OBLIGOR, THE SECONDARY
5 OBLIGOR IS DISCHARGED TO THE SAME EXTENT AS THE PRINCIPAL OBLIGOR
6 FROM ANY UNPERFORMED PORTION OF ITS OBLIGATION ON THE INSTRUMENT.
7 IF THE INSTRUMENT IS A CHECK AND THE OBLIGATION OF THE SECONDARY
8 OBLIGOR IS BASED ON AN INDORSEMENT OF THE CHECK, THE SECONDARY
9 OBLIGOR IS DISCHARGED WITHOUT REGARD TO THE LANGUAGE OR
10 CIRCUMSTANCES OF THE DISCHARGE OR OTHER RELEASE.

11 (C) IF THE SECONDARY OBLIGOR IS NOT DISCHARGED UNDER
12 SUBDIVISION (B), THE SECONDARY OBLIGOR IS DISCHARGED TO THE
13 EXTENT OF THE VALUE OF THE CONSIDERATION FOR THE RELEASE, AND TO
14 THE EXTENT THAT THE RELEASE WOULD OTHERWISE CAUSE THE SECONDARY
15 OBLIGOR A LOSS.

16 (2) IF A PERSON ENTITLED TO ENFORCE AN INSTRUMENT GRANTS A
17 PRINCIPAL OBLIGOR AN EXTENSION OF THE TIME AT WHICH 1 OR MORE
18 PAYMENTS ARE DUE ON THE INSTRUMENT AND ANOTHER PARTY TO THE
19 INSTRUMENT IS A SECONDARY OBLIGOR WITH RESPECT TO THE OBLIGATION
20 OF THAT PRINCIPAL OBLIGOR, THE FOLLOWING RULES APPLY:

21 (A) ANY OBLIGATIONS OF THE PRINCIPAL OBLIGOR TO THE
22 SECONDARY OBLIGOR WITH RESPECT TO ANY PREVIOUS PAYMENT BY THE
23 SECONDARY OBLIGOR ARE NOT AFFECTED. UNLESS THE TERMS OF THE
24 EXTENSION PRESERVE THE SECONDARY OBLIGOR'S RECOURSE, THE
25 EXTENSION CORRESPONDINGLY EXTENDS THE TIME FOR PERFORMANCE OF ANY
26 OTHER DUTIES OWED TO THE SECONDARY OBLIGOR BY THE PRINCIPAL
27 OBLIGOR UNDER THIS ARTICLE.

1 (B) THE SECONDARY OBLIGOR IS DISCHARGED TO THE EXTENT THAT
2 THE EXTENSION WOULD OTHERWISE CAUSE THE SECONDARY OBLIGOR A LOSS.

3 (C) TO THE EXTENT THAT THE SECONDARY OBLIGOR IS NOT
4 DISCHARGED UNDER SUBDIVISION (B), THE SECONDARY OBLIGOR MAY
5 PERFORM ITS OBLIGATIONS TO A PERSON ENTITLED TO ENFORCE THE
6 INSTRUMENT AS IF THE TIME FOR PAYMENT HAD NOT BEEN EXTENDED OR,
7 UNLESS THE TERMS OF THE EXTENSION PROVIDE THAT THE PERSON
8 ENTITLED TO ENFORCE THE INSTRUMENT RETAINS THE RIGHT TO ENFORCE
9 THE INSTRUMENT AGAINST THE SECONDARY OBLIGOR AS IF THE TIME FOR
10 PAYMENT HAD NOT BEEN EXTENDED, TREAT THE TIME FOR PERFORMANCE OF
11 ITS OBLIGATIONS AS HAVING BEEN EXTENDED CORRESPONDINGLY.

12 (3) IF A PERSON ENTITLED TO ENFORCE AN INSTRUMENT AGREES,
13 WITH OR WITHOUT CONSIDERATION, TO A MODIFICATION OF THE
14 OBLIGATION OF A PRINCIPAL OBLIGOR OTHER THAN A COMPLETE OR
15 PARTIAL RELEASE OR AN EXTENSION OF THE DUE DATE AND ANOTHER PARTY
16 TO THE INSTRUMENT IS A SECONDARY OBLIGOR WITH RESPECT TO THE
17 OBLIGATION OF THAT PRINCIPAL OBLIGOR, THE FOLLOWING RULES APPLY:

18 (A) ANY OBLIGATIONS OF THE PRINCIPAL OBLIGOR TO THE
19 SECONDARY OBLIGOR WITH RESPECT TO ANY PREVIOUS PAYMENT BY THE
20 SECONDARY OBLIGOR ARE NOT AFFECTED. THE MODIFICATION
21 CORRESPONDINGLY MODIFIES ANY OTHER DUTIES OWED TO THE SECONDARY
22 OBLIGOR BY THE PRINCIPAL OBLIGOR UNDER THIS ARTICLE.

23 (B) THE SECONDARY OBLIGOR IS DISCHARGED FROM ANY UNPERFORMED
24 PORTION OF ITS OBLIGATION TO THE EXTENT THAT THE MODIFICATION
25 WOULD OTHERWISE CAUSE THE SECONDARY OBLIGOR A LOSS.

26 (C) TO THE EXTENT THAT THE SECONDARY OBLIGOR IS NOT
27 DISCHARGED UNDER SUBDIVISION (B), THE SECONDARY OBLIGOR MAY

1 SATISFY ITS OBLIGATION ON THE INSTRUMENT AS IF THE MODIFICATION
2 HAD NOT OCCURRED, OR TREAT ITS OBLIGATION ON THE INSTRUMENT AS
3 HAVING BEEN MODIFIED CORRESPONDINGLY.

4 (4) IF THE OBLIGATION OF A PRINCIPAL OBLIGOR IS SECURED BY
5 AN INTEREST IN COLLATERAL, ANOTHER PARTY TO THE INSTRUMENT IS A
6 SECONDARY OBLIGOR WITH RESPECT TO THAT OBLIGATION, AND A PERSON
7 ENTITLED TO ENFORCE THE INSTRUMENT IMPAIRS THE VALUE OF THE
8 INTEREST IN COLLATERAL, THE OBLIGATION OF THE SECONDARY OBLIGOR
9 IS DISCHARGED TO THE EXTENT OF THE IMPAIRMENT. THE VALUE OF AN
10 INTEREST IN COLLATERAL IS IMPAIRED TO THE EXTENT THE VALUE OF THE
11 INTEREST IS REDUCED TO AN AMOUNT LESS THAN THE AMOUNT OF THE
12 RECOURSE OF THE SECONDARY OBLIGOR, OR THE REDUCTION IN VALUE OF
13 THE INTEREST CAUSES AN INCREASE IN THE AMOUNT BY WHICH THE AMOUNT
14 OF THE RECOURSE EXCEEDS THE VALUE OF THE INTEREST. FOR PURPOSES
15 OF THIS SUBSECTION, IMPAIRING THE VALUE OF AN INTEREST IN
16 COLLATERAL INCLUDES FAILURE TO OBTAIN OR MAINTAIN PERFECTION OR
17 RECORDATION OF THE INTEREST IN COLLATERAL, RELEASE OF COLLATERAL
18 WITHOUT SUBSTITUTION OF COLLATERAL OF EQUAL VALUE OR EQUIVALENT
19 REDUCTION OF THE UNDERLYING OBLIGATION, FAILURE TO PERFORM A DUTY
20 TO PRESERVE THE VALUE OF COLLATERAL OWED, UNDER ARTICLE 9 OR
21 OTHER LAW, TO A DEBTOR OR OTHER PERSON SECONDARILY LIABLE, AND
22 FAILURE TO COMPLY WITH APPLICABLE LAW IN DISPOSING OF OR
23 OTHERWISE ENFORCING THE INTEREST IN COLLATERAL.

24 (5) A SECONDARY OBLIGOR IS NOT DISCHARGED UNDER SUBSECTION
25 (1)(C), (2), (3), OR (4) UNLESS THE PERSON ENTITLED TO ENFORCE
26 THE INSTRUMENT KNOWS THAT THE PERSON IS A SECONDARY OBLIGOR OR
27 HAS NOTICE UNDER SECTION 3419(3) THAT THE INSTRUMENT WAS SIGNED

1 FOR ACCOMMODATION.

2 (6) A SECONDARY OBLIGOR IS NOT DISCHARGED UNDER THIS SECTION
3 IF THE SECONDARY OBLIGOR CONSENTS TO THE EVENT OR CONDUCT THAT IS
4 THE BASIS OF THE DISCHARGE, OR THE INSTRUMENT OR A SEPARATE
5 AGREEMENT OF THE PARTY PROVIDES FOR WAIVER OF DISCHARGE UNDER
6 THIS SECTION SPECIFICALLY OR BY GENERAL LANGUAGE INDICATING THAT
7 PARTIES WAIVE DEFENSES BASED ON SURETYSHIP OR IMPAIRMENT OF
8 COLLATERAL. UNLESS THE CIRCUMSTANCES INDICATE OTHERWISE, CONSENT
9 BY THE PRINCIPAL OBLIGOR TO AN ACT THAT WOULD LEAD TO A DISCHARGE
10 UNDER THIS SECTION CONSTITUTES CONSENT TO THAT ACT BY THE
11 SECONDARY OBLIGOR IF THE SECONDARY OBLIGOR CONTROLS THE PRINCIPAL
12 OBLIGOR OR DEALS WITH THE PERSON ENTITLED TO ENFORCE THE
13 INSTRUMENT ON BEHALF OF THE PRINCIPAL OBLIGOR.

14 (7) A RELEASE OR EXTENSION PRESERVES A SECONDARY OBLIGOR'S
15 RECOURSE IF THE TERMS OF THE RELEASE OR EXTENSION PROVIDE BOTH OF
16 THE FOLLOWING:

17 (A) THAT THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT
18 RETAINS THE RIGHT TO ENFORCE THE INSTRUMENT AGAINST THE SECONDARY
19 OBLIGOR.

20 (B) THAT THE RECOURSE OF THE SECONDARY OBLIGOR CONTINUES AS
21 IF THE RELEASE OR EXTENSION HAD NOT BEEN GRANTED.

22 (8) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (9), A
23 SECONDARY OBLIGOR ASSERTING DISCHARGE UNDER THIS SECTION HAS THE
24 BURDEN OF PERSUASION BOTH WITH RESPECT TO THE OCCURRENCE OF THE
25 ACTS ALLEGED TO HARM THE SECONDARY OBLIGOR AND LOSS OR PREJUDICE
26 CAUSED BY THOSE ACTS.

27 (9) IF THE SECONDARY OBLIGOR DEMONSTRATES PREJUDICE CAUSED

1 BY AN IMPAIRMENT OF ITS RECOURSE, AND THE CIRCUMSTANCES OF THE
2 CASE INDICATE THAT THE AMOUNT OF LOSS IS NOT REASONABLY
3 SUSCEPTIBLE OF CALCULATION OR REQUIRES PROOF OF FACTS THAT ARE
4 NOT ASCERTAINABLE, IT IS PRESUMED THAT THE ACT IMPAIRING RECOURSE
5 CAUSED A LOSS OR IMPAIRMENT EQUAL TO THE LIABILITY OF THE
6 SECONDARY OBLIGOR ON THE INSTRUMENT. IN THAT EVENT, THE BURDEN OF
7 PERSUASION AS TO ANY LESSER AMOUNT OF THE LOSS IS ON THE PERSON
8 ENTITLED TO ENFORCE THE INSTRUMENT.