

Act No. 101
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Senator Boohar

ENROLLED SENATE BILL No. 547

AN ACT to amend 1962 PA 174, entitled "An act to enact the uniform commercial code, relating to certain commercial transactions in or regarding personal property and contracts and other documents concerning them, including sales, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, other documents of title, investment securities, leases, and secured transactions, including certain sales of accounts, chattel paper and contract rights; to provide for public notice to third parties in certain circumstances; to regulate procedure, evidence and damages in certain court actions involving such transactions, contracts or documents; to make uniform the law with respect thereto; to make an appropriation; to provide penalties; and to repeal certain acts and parts of acts," 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:

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

- (a) "Acceptor" means a drawee who has accepted a draft.
- (b) "Consumer account" means an account established by an individual primarily for personal, family, or household purposes.
- (c) "Consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes.
- (d) "Drawee" means a person ordered in a draft to make payment.
- (e) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.
- (f) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.
- (g) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to 1 or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
- (h) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable

commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or article 4.

(i) "Party" means a party to an instrument.

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

(k) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(l) "Prove" with respect to a fact means to meet the burden of establishing the fact under section 1201(2)(h).

(m) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

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

(o) "Secondary obligor", with respect to an instrument, means any of the following:

(i) An indorser or an accommodation party.

(ii) A drawer that has the obligation described in section 3414(4).

(iii) Any other party to the instrument that has recourse against another party to the instrument under section 3116(2).

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

"Acceptance"	section 3409.
"Accommodated party"	section 3419.
"Accommodation party"	section 3419.
"Account"	section 4104.
"Alteration"	section 3407.
"Anomalous endorsement"	section 3205.
"Blank endorsement"	section 3205.
"Cashier's check"	section 3104.
"Certificate of deposit"	section 3104.
"Certified check"	section 3409.
"Check"	section 3104.
"Consideration"	section 3303.
"Draft"	section 3104.
"Endorsement"	section 3204.
"Endorser"	section 3204.
"Holder in due course"	section 3304.
"Incomplete instrument"	section 3115.
"Instrument"	section 3104.
"Issue"	section 3105.
"Issuer"	section 3105.
"Negotiable instrument"	section 3104.
"Negotiation"	section 3201.
"Note"	section 3104.
"Payable at a definite time"	section 3108.
"Payable on demand"	section 3108.
"Payable to bearer"	section 3109.
"Payable to order"	section 3109.
"Payment"	section 3602.
"Person entitled to enforce"	section 3301.
"Presentment"	section 3501.
"Reacquisition"	section 3207.
"Special endorsement"	section 3205.
"Teller's check"	section 3104.
"Transfer of instrument"	section 3203.
"Traveler's check"	section 3104.
"Value"	section 3303.

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

"Banking day"	section 4104.
"Clearing-house"	section 4104.
"Collecting bank"	section 4105.

“Depository bank”	section 4105.
“Documentary draft”	section 4104.
“Intermediary bank”	section 4105.
“Item”	section 4104.
“Payor bank”	section 4105.
“Suspends payments”	section 4104.

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

Sec. 3106. (1) Except as provided in this section, for the purposes of section 3104(1), a promise or order is unconditional unless it states 1 of the following:

- (a) An express condition to payment.
- (b) That the promise or order is subject to or governed by another record.
- (c) That rights or obligations with respect to the promise or order are stated in another record. A reference to another record does not of itself make the promise or order conditional.
- (2) A promise or order is not made conditional by or because of either of the following:
 - (a) By a reference to another record for a statement of rights with respect to collateral, prepayment, or acceleration.
 - (b) Because payment is limited to resort to a particular fund or source.
- (3) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of section 3104(1). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.
- (4) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 3104(1); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

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

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

Sec. 3119. In an action for breach of an obligation for which a third person is answerable over pursuant to this article or article 4, the defendant may give the third person notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the 2 litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

Sec. 3305. (1) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

- (a) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings.
- (b) A defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract.
- (c) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument, but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.
- (2) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (1)(a), but is not subject to defenses of the obligor stated in subsection (1)(b) or claims in recoupment stated in subsection (1)(c) against a person 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.

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

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

(6) This section is subject to law other than this article that establishes a different rule for consumer transactions.

Sec. 3309. (1) A person not in possession of an instrument is entitled to enforce the instrument if all of the following are met:

(a) The person meets either of the following:

(i) Was entitled to enforce the instrument when loss of possession occurred.

(ii) Has directly or indirectly acquired ownership of the instrument from a person that was entitled to enforce the instrument when loss of possession occurred.

(b) The loss of possession was not the result of a transfer by the person or a lawful seizure.

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

(2) A person seeking enforcement of an instrument under subsection (1) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 3308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

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

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

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

(c) "Declaration of loss" means a statement, made in a record under penalty of perjury, to the effect that all of the following apply:

(i) The declarer lost possession of a check.

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

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

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

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

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

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

- (b) The communication contains or is accompanied by a declaration of loss of the claimant with respect to the check.
- (c) The communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid.
- (d) The claimant provides reasonable identification if requested by the obligated bank.
- (3) Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration.
- (4) If a claim is asserted in compliance with subsection (2), the following rules apply:
 - (a) The claim becomes enforceable at the later of the following:
 - (i) The time the claim is asserted.
 - (ii) The 90th day following the date of the check in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance in the case of a certified check.
 - (b) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.
 - (c) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.
 - (d) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to section 4302(1)(a), payment to the claimant discharges all liability of the obligated bank with respect to the check.
 - (5) If the obligated bank pays the amount of a check to a claimant under subsection (4)(d) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to do both of the following:
 - (a) Refund the payment to the obligated bank if the check is paid.
 - (b) Pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.
 - (6) If a claimant has the right to assert a claim under subsection (2) and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or section 3309.

Sec. 3416. (1) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee all of the following:

- (a) That the warrantor is a person entitled to enforce the instrument.
- (b) That all signatures on the instrument are authentic and authorized.
- (c) That the instrument has not been altered.
- (d) That the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor.
- (e) That the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.
- (f) With respect to a remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.
- (2) A person to whom the warranties under subsection (1) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.
- (3) The warranties stated in subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (2) is discharged to the extent of any loss caused by the delay in giving notice of the claim.
- (4) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

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

- (a) That the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft.
- (b) That the draft has not been altered.

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

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

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

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

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

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

(b) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

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

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

Sec. 3419. (1) If an instrument is issued for value given for the benefit of a party to the instrument (“accommodated party”) and another party to the instrument (“accommodation party”) signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party “for accommodation”.

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

(3) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous endorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 3605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

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

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

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

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

(2) Subject to subsection (5), a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee; reasonably identifies the transferred note; and provides an address at which payments subsequently are to be made. Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of subsection (3) even if the party obliged to pay the note has received a notification under this subsection.

(3) Subject to subsection (5), to the extent of a payment under subsections (1) and (2), the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 3306 by another person.

(4) Subject to subsection (5), a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any party that has acquired those rights and that has rights as a holder in due course, is deemed to have notice of any payment that is made under subsection (2) after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(5) The obligation of a party to pay the instrument is not discharged under subsections (1) to (4) if either of the following applies:

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

(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 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) 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 other duties to the secondary obligor under this article.

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

(c) If the secondary obligor is not discharged under subdivision (b), the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.

(2) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which 1 or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(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 extension preserve the secondary obligor's recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this article.

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

(c) To the extent that the secondary obligor is not discharged under subdivision (b), the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

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

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

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

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

(4) If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor, or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation, failure to perform a duty to preserve the value of collateral owed, under article 9 or other law, to a debtor or other person secondarily liable, and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(5) A secondary obligor is not discharged under subsection (1)(c), (2), (3), or (4) unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under section 3419(3) that the instrument was signed for accommodation.

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

(7) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide both of the following:

(a) That the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor.

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

(8) Except as otherwise provided in subsection (9), a secondary obligor asserting discharge under this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(9) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are

not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved

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Governor