

HOUSE No. 3731

By Mr. Loscocco of Holliston, petition of Paul J.P. Loscocco relative to amending and making technical changes to the Uniform Commercial Code covering general provisions, documents of title and secured transactions. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT MAKING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE COVERING GENERAL PROVISIONS, DOCUMENTS OF TITLE AND SECURED TRANSACTIONS AND INCLUDING TECHNICAL CHANGES.

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 28 of chapter 10 of the General Laws is
2 hereby amended by striking out “9-405” and by substituting in
3 place thereof “9-406.”

1 SECTION 2. Chapter 106 of the General Laws is hereby
2 amended by striking out article 1, as so appearing, and by substi-
3 tuting in place thereof the following article 1:—

4 ARTICLE 1 – GENERAL PROVISIONS

5 PART 1

6 GENERAL PROVISIONS

7 SECTION 1-101. SHORT TITLES.

8 (a) This chapter may be cited as the Uniform Commercial
9 Code.

10 (b) This article may be cited as Uniform Commercial Code –
11 General Provisions.

12 **SECTION 1-102. SCOPE OF ARTICLE.** This article
13 applies to a transaction to the extent that it is governed by another
14 article of this chapter.

15 **SECTION 1-103. CONSTRUCTION OF THIS CHAPTER**
16 **TO PROMOTE ITS PURPOSES AND POLICIES; APPLIC-**
17 **ABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.**

18 (a) This chapter must be liberally construed and applied to pro-
19 mote its underlying purposes and policies, which are:

20 (1) to simplify, clarify, and modernize the law governing com-
21 mercial transactions;

22 (2) to permit the continued expansion of commercial practices
23 through custom, usage, and agreement of the parties; and

24 (3) to make uniform the law among the various jurisdictions.

25 (b) Unless displaced by the particular provisions of this
26 chapter, the principles of law and equity, including the law mer-
27 chant and the law relative to capacity to contract, principal and
28 agent, estoppel, fraud, misrepresentation, duress, coercion, mis-
29 take, bankruptcy, and other validating or invalidating cause sup-
30 plement its provisions.

31 **SECTION 1-104. CONSTRUCTION AGAINST IMPLIED**
32 **REPEAL.** This chapter being a general act intended as a unified
33 coverage of its subject matter, no part of it shall be deemed to be
34 impliedly repealed by subsequent legislation if such construction
35 can reasonably be avoided.

36 **SECTION 1-105. SEVERABILITY.** If any provision or
37 clause of this chapter or its application to any person or circum-
38 stance is held invalid, the invalidity does not affect other provi-
39 sions or applications of this chapter which can be given effect
40 without the invalid provision or application, and to this end the
41 provisions of this chapter are severable.

42 **SECTION 1-106. USE OF SINGULAR AND PLURAL;**
43 **GENDER.** In this chapter, unless the statutory context otherwise
44 requires:

45 (1) words in the singular number include the plural, and those
46 in the plural include the singular; and

47 (2) words of any gender also refer to any other gender.

48 **SECTION 1-107. SECTION CAPTIONS.** Section captions
49 are part of this chapter. The subsection headings in Article 9 are
50 not part of this chapter.

51 **SECTION 1-108. RELATION TO ELECTRONIC SIGNA-**
52 **TURES IN GLOBAL AND NATIONAL COMMERCE ACT.**
53 This chapter modifies, limits, and supersedes the federal Elec-
54 tronic Signatures in Global and National Commerce Act, (15
55 U.S.C. Section 7001, et seq.) but does not modify, limit, or super-
56 sede Section 101(c) of that act (15. U.S.C. Section 7001(c)) or
57 authorize electronic delivery of any of the notices described in
58 Section 103(b) of that act (15 U.S.C. Section 7003(b)).

59

PART 2

60

**GENERAL DEFINITIONS AND
61 PRINCIPLES OF INTERPRETATION**

62

SECTION 1-201. GENERAL DEFINITIONS.

63 (a) Unless the context otherwise requires, words or phrases
64 defined in this section, or in the additional definitions contained in
65 other articles of this chapter that apply to particular articles or
66 parts thereof, have the meanings stated.

67 (b) Subject to definitions contained in other articles of this
68 chapter that apply to particular articles or parts thereof:

69 (1) “Action”, in the sense of a judicial proceeding, includes
70 recoupment, counterclaim, set-off, suit in equity, and any other
71 proceeding in which rights are determined.

72 (2) “Aggrieved party” means a party entitled to pursue a
73 remedy.

74 (3) “Agreement”, as distinguished from “contract”, means the
75 bargain of the parties in fact, as found in their language or inferred
76 from other circumstances, including course of performance,
77 course of dealing, or usage of trade as provided in Section 1-303.

78 (4) “Bank” means a person engaged in the business of banking
79 and includes a savings bank, savings and loan association, credit
80 union, and trust company.

81 (5) “Bearer” means a person in control of a negotiable elec-
82 tronic document of title or a person in possession of a negotiable
83 instrument, a negotiable tangible document of title, or certificated
84 security that is payable to bearer or indorsed in blank.

85 (6) “Bill of lading” means a document of title evidencing the
86 receipt of goods for shipment issued by a person engaged in the

87 business of directly or indirectly transporting or forwarding
88 goods. The term does not include a warehouse receipt.

89 (7) “Branch” includes a separately incorporated foreign branch
90 of a bank.

91 (8) “Burden of establishing” a fact means the burden of per-
92 suading the trier of fact that the existence of the fact is more prob-
93 able than its non-existence.

94 (9) “Buyer in ordinary course of business” means a person that
95 buys goods in good faith, without knowledge that the sale violates
96 the rights of another person in the goods, and in the ordinary
97 course from a person, other than a pawnbroker, in the business of
98 selling goods of that kind. A person buys goods in the ordinary
99 course if the sale to the person comports with the usual or cus-
100 tomary practices in the kind of business in which the seller is
101 engaged or with the seller’s own usual or customary practices. A
102 person that sells oil, gas, or other minerals at the wellhead or
103 minehead is a person in the business of selling goods of that kind.
104 A buyer in ordinary course of business may buy for cash, by
105 exchange of other property, or on secured or unsecured credit, and
106 may acquire goods or documents of title under a pre-existing con-
107 tract for sale. Only a buyer that takes possession of the goods or
108 has a right to recover the goods from the seller under Article 2
109 may be a buyer in ordinary course of business. “Buyer in ordi-
110 nary course of business” does not include a person that acquires
111 goods in a transfer in bulk or as security for or in total or partial
112 satisfaction of a money debt.

113 (10) “Conspicuous”, with reference to a term, means so
114 written, displayed, or presented that a reasonable person against
115 which it is to operate ought to have noticed it. Whether a term is
116 “conspicuous” or not is a decision for the court. Conspicuous
117 terms include the following:

118 (A) a heading in capitals equal to or greater in size than the sur-
119 rounding text, or in contrasting type, font, or color to the sur-
120 rounding text of the same or lesser size; and

121 (B) language in the body of a record or display in larger type
122 than the surrounding text, or in contrasting type, font, or color to
123 the surrounding text of the same size, or set off from surrounding
124 text of the same size by symbols or other marks that call attention
125 to the language.

126 (11) “Consumer” means an individual who enters into a trans-
127 action primarily for personal, family, or household purposes.

128 (12) “Contract”, as distinguished from “agreement”, means the
129 total legal obligation that results from the parties’ agreement as
130 determined by this chapter as supplemented by any other applic-
131 able laws.

132 (13) “Creditor” includes a general creditor, a secured creditor,
133 a lien creditor, and any representative of creditors, including an
134 assignee for the benefit of creditors, a trustee in bankruptcy, a
135 receiver in equity, and an executor or administrator of an insolvent
136 debtor’s or assignor’s estate.

137 (14) “Defendant” includes a person in the position of defen-
138 dant in a counterclaim, cross-claim, or third-party claim.

139 (15) “Delivery”, with respect to an electronic document of title
140 means voluntary transfer of control and with respect to an instru-
141 ment, a tangible document of title, or chattel paper, means volun-
142 tary transfer of possession.

143 (16) “Document of title” means a record (i) that in the regular
144 course of business or financing is treated as adequately evidencing
145 that the person in possession or control of the record is entitled to
146 receive, control, hold, and dispose of the record and the goods the
147 record covers and (ii) that purports to be issued by or addressed to
148 a bailee and to cover goods in the bailee’s possession which are
149 either identified or are fungible portions of an identified mass.
150 The term includes a bill of lading, transport document, dock war-
151 rant, dock receipt, warehouse receipt, and order for delivery of
152 goods. An electronic document of title means a document of title
153 evidenced by a record consisting of information stored in an elec-
154 tronic medium. A tangible document of title means a document of
155 title evidenced by a record consisting of information that is
156 inscribed on a tangible medium.

157 (17) “Fault” means a default, breach, or wrongful act or omis-
158 sion.

159 (18) “Fungible goods” means:

160 (A) goods of which any unit, by nature or usage of trade, is the
161 equivalent of any other like unit; or

162 (B) goods that by agreement are treated as equivalent.

163 (19) “Genuine” means free of forgery or counterfeiting.

164 (20) “Good faith,” except as otherwise provided in Article 5,
165 means honesty in fact and the observance of reasonable commer-
166 cial standards of fair dealing.

167 (21) “Holder” means:

168 (A) the person in possession of a negotiable instrument that is
169 payable either to bearer or to an identified person that is the
170 person in possession;

171 (B) the person in possession of a negotiable tangible document
172 of title if the goods are deliverable either to bearer or to the order
173 of the person in possession; or

174 (C) the person in control of a negotiable electronic document of
175 title.

176 (22) “Insolvency proceeding” includes an assignment for the
177 benefit of creditors or other proceeding intended to liquidate or
178 rehabilitate the estate of the person involved.

179 (23) “Insolvent” means:

180 (A) having generally ceased to pay debts in the ordinary course
181 of business other than as a result of bona fide dispute;

182 (B) being unable to pay debts as they become due; or

183 (C) being insolvent within the meaning of federal bankruptcy
184 law.

185 (24) “Money” means a medium of exchange currently autho-
186 rized or adopted by a domestic or foreign government. The term
187 includes a monetary unit of account established by an intergovern-
188 mental organization or by agreement between two or more coun-
189 tries.

190 (25) “Organization” means a person other than an individual.

191 (26) “Party”, as distinguished from “third party”, means a
192 person that has engaged in a transaction or made an agreement
193 subject to this chapter.

194 (27) “Person” means an individual, corporation, business trust,
195 estate, trust, partnership, limited liability company, association,
196 joint venture, government, governmental subdivision, agency, or
197 instrumentality, public corporation, or any other legal or commer-
198 cial entity.

199 (28) “Present value” means the amount as of a date certain of
200 one or more sums payable in the future, discounted to the date
201 certain by use of either an interest rate specified by the parties if
202 that rate is not manifestly unreasonable at the time the transaction

203 is entered into or, if an interest rate is not so specified, a commer-
204 cially reasonable rate that takes into account the facts and circum-
205 stances at the time the transaction is entered into.

206 (29) “Purchase” means taking by sale, lease, discount, negotia-
207 tion, mortgage, pledge, lien, security interest, issue or reissue,
208 gift, or any other voluntary transaction creating an interest in
209 property.

210 (30) “Purchaser” means a person that takes by purchase.

211 (31) “Record” means information that is inscribed on a tan-
212 gible medium or that is stored in an electronic or other medium
213 and is retrievable in perceivable form.

214 (32) “Remedy” means any remedial right to which an
215 aggrieved party is entitled with or without resort to a tribunal.

216 (33) “Representative” means a person empowered to act for
217 another, including an agent, an officer of a corporation or associa-
218 tion, and a trustee, executor, or administrator of an estate.

219 (34) “Right” includes remedy.

220 (35) “Security interest” means an interest in personal property
221 or fixtures which secures payment or performance of an obliga-
222 tion. “Security interest” includes any interest of a consignor and a
223 buyer of accounts, chattel paper, a payment intangible, or a
224 promissory note in a transaction that is subject to Article 9.
225 “Security interest” does not include the special property interest of
226 a buyer of goods on identification of those goods to a contract for
227 sale under Section 2-401, but a buyer may also acquire a “security
228 interest” by complying with Article 9. Except as otherwise pro-
229 vided in Section 2-505, the right of a seller or lessor of goods
230 under Article 2 or 2A to retain or acquire possession of the goods
231 is not a “security interest”, but a seller or lessor may also acquire
232 a “security interest” by complying with Article 9. The retention
233 or reservation of title by a seller of goods notwithstanding ship-
234 ment or delivery to the buyer under Section 2-401 is limited in
235 effect to a reservation of a “security interest.” Whether a transac-
236 tion in the form of a lease creates a “security interest” is deter-
237 mined pursuant to Section 1-203.

238 (36) “Send” in connection with a writing, record, or notice
239 means:

240 (A) to deposit in the mail or deliver for transmission by any
241 other usual means of communication with postage or cost of trans-

242 mission provided for and properly addressed and, in the case of an
243 instrument, to an address specified thereon or otherwise agreed, or
244 if there be none to any address reasonable under the circum-
245 stances; or

246 (B) in any other way to cause to be received any record or
247 notice within the time it would have arrived if properly sent.

248 (37) “Signed” includes using any symbol executed or adopted
249 with present intention to adopt or accept a writing.

250 (38) “State” means a State of the United States, the District of
251 Columbia, Puerto Rico, the United States Virgin Islands, or any
252 territory or insular possession subject to the jurisdiction of the
253 United States.

254 (39) “Surety” includes a guarantor or other secondary obligor.

255 (40) “Term” means a portion of an agreement that relates to a
256 particular matter.

257 (41) “Unauthorized signature” means a signature made without
258 actual, implied, or apparent authority. The term includes a
259 forgery.

260 (42) “Warehouse receipt” means a document of title issued by
261 a person engaged in the business of storing goods for hire.

262 (43) “Writing” includes printing, typewriting, or any other
263 intentional reduction to tangible form. “Written” has a corre-
264 sponding meaning.

265 **SECTION 1-202. NOTICE; KNOWLEDGE.**

266 (a) Subject to subsection (f), a person has “notice” of a fact if
267 the person:

268 (1) has actual knowledge of it;

269 (2) has received a notice or notification of it; or

270 (3) from all the facts and circumstances known to the person at
271 the time in question, has reason to know that it exists.

272 (b) “Knowledge” means actual knowledge. “Knows” has a
273 corresponding meaning.

274 (c) “Discover”, “learn”, or words of similar import refer to
275 knowledge rather than to reason to know.

276 (d) A person “notifies” or “gives” a notice or notification to
277 another person by taking such steps as may be reasonably required
278 to inform the other person in ordinary course, whether or not the
279 other person actually comes to know of it.

280 (e) Subject to subsection (f), a person “receives” a notice or
281 notification when:

282 (1) it comes to that person’s attention; or

283 (2) it is duly delivered in a form reasonable under the circum-
284 stances at the place of business through which the contract was
285 made or at another location held out by that person as the place
286 for receipt of such communications.

287 (f) Notice, knowledge, or a notice or notification received by
288 an organization is effective for a particular transaction from the
289 time it is brought to the attention of the individual conducting that
290 transaction and, in any event, from the time it would have been
291 brought to the individual’s attention if the organization had exer-
292 cised due diligence. An organization exercises due diligence if it
293 maintains reasonable routines for communicating significant
294 information to the person conducting the transaction and there is
295 reasonable compliance with the routines. Due diligence does not
296 require an individual acting for the organization to communicate
297 information unless the communication is part of the individual’s
298 regular duties or the individual has reason to know of the transac-
299 tion and that the transaction would be materially affected by the
300 information.

301 **SECTION 1-203. LEASE DISTINGUISHED FROM**
302 **SECURITY INTEREST.**

303 (a) Whether a transaction in the form of a lease creates a lease
304 or security interest is determined by the facts of each case.

305 (b) A transaction in the form of a lease creates a security
306 interest if the consideration that the lessee is to pay the lessor for
307 the right to possession and use of the goods is an obligation for
308 the term of the lease and is not subject to termination by the
309 lessee, and:

310 (1) the original term of the lease is equal to or greater than the
311 remaining economic life of the goods;

312 (2) the lessee is bound to renew the lease for the remaining eco-
313 nomic life of the goods or is bound to become the owner of the
314 goods;

315 (3) the lessee has an option to renew the lease for the remaining
316 economic life of the goods for no additional consideration or for
317 nominal additional consideration upon compliance with the lease
318 agreement; or

319 (4) the lessee has an option to become the owner of the goods
320 for no additional consideration or for nominal additional consider-
321 ation upon compliance with the lease agreement.

322 (c) A transaction in the form of a lease does not create a secu-
323 rity interest merely because:

324 (1) the present value of the consideration the lessee is obligated
325 to pay the lessor for the right to possession and use of the goods is
326 substantially equal to or is greater than the fair market value of the
327 goods at the time the lease is entered into;

328 (2) the lessee assumes risk of loss of the goods;

329 (3) the lessee agrees to pay, with respect to the goods, taxes,
330 insurance, filing, recording, or registration fees, or service or
331 maintenance costs;

332 (4) the lessee has an option to renew the lease or to become the
333 owner of the goods;

334 (5) the lessee has an option to renew the lease for a fixed rent
335 that is equal to or greater than the reasonably predictable fair
336 market rent for the use of the goods for the term of the renewal at
337 the time the option is to be performed; or

338 (6) the lessee has an option to become the owner of the goods
339 for a fixed price that is equal to or greater than the reasonably pre-
340 dictable fair market value of the goods at the time the option is to
341 be performed.

342 (d) Additional consideration is nominal if it is less than the
343 lessee's reasonably predictable cost of performing under the lease
344 agreement if the option is not exercised. Additional consideration
345 is not nominal if:

346 (1) when the option to renew the lease is granted to the lessee,
347 the rent is stated to be the fair market rent for the use of the goods
348 for the term of the renewal determined at the time the option is to
349 be performed; or

350 (2) when the option to become the owner of the goods is
351 granted to the lessee, the price is stated to be the fair market value
352 of the goods determined at the time the option is to be performed.

353 (e) The "remaining economic life of the goods" and "reason-
354 ably predictable" fair market rent, fair market value, or cost of
355 performing under the lease agreement must be determined with
356 reference to the facts and circumstances at the time the transaction
357 is entered into.

358 **SECTION 1-204. VALUE.** Except as otherwise provided in
359 Articles 3, 4, and 5, a person gives value for rights if the person
360 acquires them:

361 (1) in return for a binding commitment to extend credit or for
362 the extension of immediately available credit, whether or not
363 drawn upon and whether or not a charge-back is provided for in
364 the event of difficulties in collection;

365 (2) as security for, or in total or partial satisfaction of, a pre-
366 existing claim;

367 (3) by accepting delivery under a pre-existing contract for pur-
368 chase; or

369 (4) in return for any consideration sufficient to support a simple
370 contract.

371 **SECTION 1-205. REASONABLE TIME; SEASONABLE-**
372 **NESS.**

373 (a) Whether a time for taking an action required by this chapter
374 is reasonable depends on the nature, purpose, and circumstances
375 of the action.

376 (b) An action is taken seasonably if it is taken at or within the
377 time agreed or, if no time is agreed, at or within a reasonable time.

378 **SECTION 1-206. PRESUMPTIONS.** Whenever this chapter
379 creates a “presumption” with respect to a fact, or provides that a
380 fact is “presumed,” the trier of fact must find the existence of the
381 fact unless and until evidence is introduced that supports a finding
382 of its nonexistence.

383

PART 3

384

TERRITORIAL APPLICABILITY AND 385 GENERAL RULES

386 **SECTION 1-301. TERRITORIAL APPLICABILITY;**
387 **PARTIES’ POWER TO CHOOSE APPLICABLE LAW.**

388 (a) Except as provided hereafter in this section, when a trans-
389 action bears a reasonable relation to this state and also to another
390 state or nation the parties may agree that the law either of this
391 state or of such other state or nation shall govern their rights and
392 duties. Failing such agreement this Act applies to transactions
393 bearing an appropriate relation to this state.

394 (b) To the extent that this chapter governs a transaction, if one
395 of the following provisions of this chapter specifies the applicable
396 law, that provision governs and a contrary agreement is effective
397 only to the extent permitted by the law so specified:

- 398 (1) Section 2-402;
- 399 (2) Sections 2A-105 and 2A-106;
- 400 (3) Section 4-102;
- 401 (4) Section 4A-507;
- 402 (5) Section 5-116;
- 403 (6) Section 8-110;
- 404 (7) Sections 9-301 through 9-307.

405 **SECTION 1-302. VARIATION BY AGREEMENT.**

406 (a) Except as otherwise provided in subsection (b) or else-
407 where in this chapter, the effect of provisions of this chapter may
408 be varied by agreement.

409 (b) The obligations of good faith, diligence, reasonableness,
410 and care prescribed by this chapter may not be disclaimed by
411 agreement. The parties, by agreement, may determine the stan-
412 dards by which the performance of those obligations is to be mea-
413 sured if those standards are not manifestly unreasonable.
414 Whenever this chapter requires an action to be taken within a rea-
415 sonable time, a time that is not manifestly unreasonable may be
416 fixed by agreement.

417 (c) The presence in certain provisions of this chapter of the
418 phrase “unless otherwise agreed”, or words of similar import,
419 does not imply that the effect of other provisions may not be
420 varied by agreement under this section.

421 **SECTION 1-303. COURSE OF PERFORMANCE,**
422 **COURSE OF DEALING, AND USAGE OF TRADE.**

423 (a) A “course of performance” is a sequence of conduct
424 between the parties to a particular transaction that exists if:

- 425 (1) the agreement of the parties with respect to the transaction
426 involves repeated occasions for performance by a party; and
- 427 (2) the other party, with knowledge of the nature of the perfor-
428 mance and opportunity for objection to it, accepts the performance
429 or acquiesces in it without objection.

430 (b) A “course of dealing” is a sequence of conduct concerning
431 previous transactions between the parties to a particular transac-

432 tion that is fairly to be regarded as establishing a common basis of
433 understanding for interpreting their expressions and other conduct.

434 (c) A “usage of trade” is any practice or method of dealing
435 having such regularity of observance in a place, vocation, or trade
436 as to justify an expectation that it will be observed with respect to
437 the transaction in question. The existence and scope of such a
438 usage must be proved as facts. If it is established that such a
439 usage is embodied in a trade code or similar record, the interpreta-
440 tion of the record is a question of law.

441 (d) A course of performance or course of dealing between the
442 parties or usage of trade in the vocation or trade in which they are
443 engaged or of which they are or should be aware is relevant in
444 ascertaining the meaning of the parties’ agreement, may give par-
445 ticular meaning to specific terms of the agreement, and may sup-
446 plement or qualify the terms of the agreement. A usage of trade
447 applicable in the place in which part of the performance under the
448 agreement is to occur may be so utilized as to that part of the per-
449 formance.

450 (e) Except as otherwise provided in subsection (f), the express
451 terms of an agreement and any applicable course of performance,
452 course of dealing, or usage of trade must be construed whenever
453 reasonable as consistent with each other. If such a construction is
454 unreasonable:

455 (1) express terms prevail over course of performance, course of
456 dealing, and usage of trade;

457 (2) course of performance prevails over course of dealing and
458 usage of trade; and

459 (3) course of dealing prevails over usage of trade.

460 (f) Subject to Section 2-209, a course of performance is rele-
461 vant to show a waiver or modification of any term inconsistent
462 with the course of performance.

463 (g) Evidence of a relevant usage of trade offered by one party
464 is not admissible unless that party has given the other party notice
465 that the court finds sufficient to prevent unfair surprise to the
466 other party.

467 **SECTION 1-304. OBLIGATION OF GOOD FAITH.** Every
468 contract or duty within this chapter imposes an obligation of good
469 faith in its performance and enforcement.

470 **SECTION 1-305. REMEDIES TO BE LIBERALLY**
471 **ADMINISTERED.**

472 (a) The remedies provided by this chapter must be liberally
473 administered to the end that the aggrieved party may be put in as
474 good a position as if the other party had fully performed but nei-
475 ther consequential or special damages nor penal damages may be
476 had except as specifically provided in this chapter or by other rule
477 of law.

478 (b) Any right or obligation declared by this chapter is enforce-
479 able by action unless the provision declaring it specifies a dif-
480 ferent and limited effect.

481 **SECTION 1-306. WAIVER OR RENUNCIATION OF**
482 **CLAIM OR RIGHT AFTER BREACH.** A claim or right
483 arising out of an alleged breach may be discharged in whole or in
484 part without consideration by agreement of the aggrieved party in
485 an authenticated record.

486 **SECTION 1-307. PRIMA FACIE EVIDENCE BY THIRD-**
487 **PARTY DOCUMENTS.** A document in due form purporting to
488 be a bill of lading, policy or certificate of insurance, official
489 weigher's or inspector's certificate, consular invoice, or any other
490 document authorized or required by the contract to be issued by a
491 third party is prima facie evidence of its own authenticity and gen-
492 uineness and of the facts stated in the document by the third party.

493 **SECTION 1-308. PERFORMANCE OR ACCEPTANCE**
494 **UNDER RESERVATION OF RIGHTS.**

495 (a) A party that with explicit reservation of rights performs or
496 promises performance or assents to performance in a manner
497 demanded or offered by the other party does not thereby prejudice
498 the rights reserved. Such words as "without prejudice," "under
499 protest," or the like are sufficient.

500 (b) Subsection (a) does not apply to an accord and satisfaction.

501 **SECTION 1-309. OPTION TO ACCELERATE AT WILL.**
502 A term providing that one party or that party's successor in
503 interest may accelerate payment or performance or require collat-
504 eral or additional collateral "at will" or when the party "deems
505 itself insecure," or words of similar import, means that the party
506 has power to do so only if that party in good faith believes that the
507 prospect of payment or performance is impaired. The burden of
508 establishing lack of good faith is on the party against which the
509 power has been exercised.

510 **SECTION 1-310. SUBORDINATED OBLIGATIONS.** An
511 obligation may be issued as subordinated to performance of
512 another obligation of the person obligated, or a creditor may sub-
513 ordinate its right to performance of an obligation by agreement
514 with either the person obligated or another creditor of the person
515 obligated. Subordination does not create a security interest as
516 against either the common debtor or a subordinated creditor.

1 **SECTION 3.** Subsection 2-103(1)(b) of said chapter 106 is
2 hereby amended by striking out the words “Good faith” in the
3 case of a merchant means honesty in fact and the observance of
4 reasonable commercial standards of fair dealing in the trade.” and
5 by substituting in place thereof the following word:—
6 “[Reserved]”.

1 **SECTION 4.** Subsection 2-103(3) of said chapter 106 is hereby
2 amended by inserting, after the words “‘Consumer Goods’.
3 Section 9-102”, the words “‘Control’. Section 7-106.”

1 **SECTION 5.** Subsection 2-104(2) of said chapter 106 is hereby
2 amended by inserting in the first sentence of said Subsection, after
3 the words “whether or not documents of title accompany”, the
4 words “or are associated with”.

1 **SECTION 6.** Section 202 of said chapter 106 is hereby
2 amended by striking out Subsection 2-202(a) and by substituting
3 in place thereof the following Subsection 2-202(a):—
4 (a) by course of performance, course of dealing, or usage of
5 trade (Section 1-303); and

1 **SECTION 7.** Section 2-208 of said chapter 106 is hereby
2 repealed.

1 **SECTION 8.** Subsection 2-210(2) of said chapter 106 is hereby
2 amended by striking out “9-405” and by substituting “9-406.”

1 **SECTION 9.** Section 2-310 of said chapter 106 is hereby
2 amended by striking out Subsection 2-310(c) and substituting in
3 place thereof the following Subsection 2-310(c):—

4 (c) if delivery is authorized and made by way of documents of
5 title otherwise than by subsection (b) then payment is due regard-
6 less of where the goods are to be received (i) at the time and place
7 at which the buyer is to receive delivery of the tangible documents
8 or (ii) at the time the buyer is to receive delivery of the electronic
9 documents and at the seller's place of business or if none, the sell-
10 er's residence; and

1 SECTION 10. Subsection 2-323(2) of said chapter 106 is
2 hereby amended by inserting in the first sentence of said Subsec-
3 tion after the words "in a case within subsection (1) a ", the word
4 "tangible".

1 SECTION 11. Section 2-401 of said chapter 106 is hereby
2 amended by striking out Subsection 2-401(3) and substituting in
3 place thereof the following Subsection 2-401(3):—

4 (3) Unless otherwise explicitly agreed where delivery is to be
5 made without moving the goods,

6 (a) if the seller is to deliver a tangible document of title, title
7 passes at the time when and the place where he delivers such doc-
8 uments and if the seller is to deliver an electronic document of
9 title, title passes when the seller delivers the document; or

10 (b) if the goods are at the time of contracting already identified
11 and no documents of title are to be delivered, title passes at the
12 time and place of contracting.

1 SECTION 12. Subsection 2-503(4)(b) of said chapter 106 is
2 hereby amended by striking out the words "written direction to"
3 and by substituting in place thereof the words "record directing".

1 SECTION 13. Subsection 2-503(4)(b) of said chapter 106 is
2 hereby further amended by inserting, after the words "buyer sea-
3 sonably objects, and", the words "except as otherwise provided in
4 Article 9".

1 SECTION 14. Subsection 2-503(5)(b) of said chapter 106 is
2 hereby amended by inserting, after the words "dishonor of a draft
3 accompanying", the words "or associated with".

1 SECTION 15. Subsection 2-505(1)(b) of said chapter 106 is
2 hereby amended by inserting, after the words “even though the
3 seller retains possession”, the words “or control”.

1 SECTION 16. Subsection 2-505(2) of said chapter 106 is
2 hereby amended by inserting, at the end of said Subsection after
3 the words “negotiable document”, the words “of title”.

1 SECTION 17. Section 2-506 of said chapter 106 is hereby
2 amended by inserting, at the end of said Section after the words
3 “which was apparently regular”, the words “on its face”.

1 SECTION 18. Subsection 2-509(2)(a) of said chapter 106 is
2 hereby amended by inserting ,after the words “on his receipt of”,
3 the words “possession or control of”.

1 SECTION 19. Subsection 2-509(2)(c) of said chapter 106 is
2 hereby amended by inserting, after the words “on his receipt of”,
3 the words “possession or control of”.

1 SECTION 20. Subsection 2-509(2)(c) of said chapter 106 is
2 hereby amended further by striking the words “written direction to
3 deliver” and by substituting in place thereof the words “direction
4 to deliver in a record”.

1 SECTION 21. Subsection 2-605(2) of said chapter 106 is
2 hereby amended by striking the words “on the face of” and by
3 substituting in place thereof the word “in”.

1 SECTION 22. Subsection 2-705(2)(c) of said chapter 106 is
2 hereby amended by striking the word “ warehouseman” and by
3 substituting in place thereof the words “a warehouse”.

1 SECTION 23. Subsection 2-705(3)(c) of said chapter 106 is
2 hereby amended by inserting, after the words “stop until sur-
3 render”, the words “of possession or control”.

1 SECTION 24. Subsection 2A-103(1)(a) of said chapter 106 is
2 hereby amended by striking in the last sentence the word

3 “receiving” and by substituting in place thereof the word
4 “acquiring”.

1 SECTION 25. Subsection 2A-103(1)(o) of said chapter 106 is
2 hereby amended by striking in the last sentence the word
3 “receiving” and by substituting in place thereof the word
4 “acquiring”.

1 SECTION 26. Subsection 2A-103(3) of said chapter 106 is
2 hereby amended by striking out the words ““Good faith”.
3 Section 2-103(1)(b).”

1 SECTION 27. Section 2A-207 of said chapter 106 is hereby
2 repealed.

1 SECTION 28. Subsection 2A-303(2) of said chapter 106 is
2 hereby amended by striking out “9-406” and by substituting in
3 place thereof “9-407.”

1 SECTION 29. Subsection 2A-303(4) of said chapter 106 is
2 hereby amended by striking out “9-406” and by substituting in
3 place thereof “9-407.”

1 SECTION 30. Subsection 2A-501(4) of said chapter 106 is
2 hereby amended by striking out “1-106(1)” and by substituting in
3 place thereof “1-305(a)”.

1 SECTION 31. Subsection 2A-514(2) of said chapter 106 is
2 hereby amended by striking the words “on the face of” and by
3 substituting in place thereof the word “in”.

1 SECTION 32. Subsection 2A-518(2) of said chapter 106 is
2 hereby amended by striking out “1-102(3)” and by inserting in
3 place thereof “1-302”.

1 SECTION 33. Subsection 2A-519(1) of said chapter 106 is
2 hereby amended by striking out “1-102(3)” and by inserting in
3 place thereof “1-302”.

1 SECTION 34. Subsection 2A-526(2)(c) of said chapter 106 is
2 hereby amended by striking out the word “warehouseman” and by
3 substituting in place thereof the words “a warehouse”.

1 SECTION 35. Subsection 2A-527(2) of said chapter 106 is
2 hereby amended by striking out “1-102(3)” and by inserting in
3 place thereof “1-302”.

1 SECTION 36. Subsection 2A-528(1) of said chapter 106 is
2 hereby amended by striking out “1-102(3)” and by inserting in
3 place thereof “1-302”.

1 SECTION 37. The definition of “Prove” in Subsection 3-
2 103(a) of said chapter 106 is hereby amended by striking out
3 “1-201(8)” and by inserting in place thereof “1-201(b)(8)”.

1 SECTION 38. Section 4-104 of said chapter 106 is hereby
2 amended by inserting, after the words “‘Check’. Section 3-104”,
3 the words “‘Control’. Section 7-106.”

1 SECTION 39. Subsection 4-210(c) of said chapter 106 is
2 hereby amended by inserting, after the words “give up possession
3 of the item or”, the words “possession or control of the”.

1 SECTION 40. The definition of “Prove” in said Section
2 4A-105(a) is hereby amended by striking out “1-201(8)” and by
3 substituting in place thereof “1-201(b)(8)”.

1 SECTION 41. Subsection 4A-106(a) of said chapter 106 is
2 hereby amended by striking out “1-201(27)” and by substituting in
3 place thereof “1-202”.

1 SECTION 42. Subsection 4A-204(b) of said chapter 106 is
2 hereby amended by striking out “1-204(1)” and by substituting in
3 place thereof “1-302(b)”.

1 SECTION 43. Subsection 5-103(c) of said chapter 106 is
2 hereby amended by striking out “1-203(3)” and by substituting in
3 place thereof “1-302”.

1 SECTION 44. Chapter 106 of the General Laws is hereby fur-
2 ther amended by striking out article 7, as so appearing, and by
3 substituting in place thereof the following article 7:—

4 **ARTICLE 7—DOCUMENTS OF TITLE**

5 **PART 1**

6 **GENERAL**

7 **SECTION 7-101. SHORT TITLE.** This article may be cited
8 as Uniform Commercial Code-Documents of Title.

9 **SECTION 7-102. DEFINITIONS AND INDEX OF DEFINI-**
10 **ITIONS.**

11 (a) In this article, unless the context otherwise requires:

12 (1) “Bailee” means a person that by a warehouse receipt, bill of
13 lading, or other document of title acknowledges possession of
14 goods and contracts to deliver them.

15 (2) “Carrier” means a person that issues a bill of lading.

16 (3) “Consignee” means a person named in a bill of lading to
17 which or to whose order the bill promises delivery.

18 (4) “Consignor” means a person named in a bill of lading as the
19 person from which the goods have been received for shipment.

20 (5) “Delivery order” means a record that contains an order to
21 deliver goods directed to a warehouse, carrier, or other person that
22 in the ordinary course of business issues warehouse receipts or
23 bills of lading.

24 (6) [Reserved]

25 (7) “Goods” means all things that are treated as movable for the
26 purposes of a contract for storage or transportation.

27 (8) “Issuer” means a bailee that issues a document of title or, in
28 the case of an unaccepted delivery order, the person that orders
29 the possessor of goods to deliver. The term includes a person for
30 which an agent or employee purports to act in issuing a document
31 if the agent or employee has real or apparent authority to issue
32 documents, even if the issuer did not receive any goods, the goods
33 were misdescribed, or in any other respect the agent or employee
34 violated the issuer’s instructions.

35 (9) “Person entitled under the document” means the holder, in
36 the case of a negotiable document of title, or the person to which
37 delivery of the goods is to be made by the terms of, or pursuant to
38 instructions in a record under, a nonnegotiable document of title.

39 (10) [Reserved]

40 (11) “Sign” means, with present intent to authenticate or adopt
41 a record:

42 (A) to execute or adopt a tangible symbol; or

43 (B) to attach to or logically associate with the record an elec-
44 tronic sound, symbol, or process.

45 (12) “Shipper” means a person that enters into a contract of
46 transportation with a carrier.

47 (13) “Warehouse” means a person engaged in the business of
48 storing goods for hire.

49 (b) Definitions in other articles applying to this article and the
50 sections in which they appear are:

51 (1) “Contract for sale”. Section 2-106.

52 (2) “Lessee in the ordinary course of business”. Section 2A-
53 103.

54 (3) “Receipt” of goods. Section 2-103.

55 (c) In addition, Article 1 contains general definitions and prin-
56 ciples of construction and interpretation applicable throughout this
57 article.

58 **SECTION 7-103. RELATION OF ARTICLE TO TREATY**
59 **OR STATUTE.**

60 (a) This article is subject to any treaty or statute of the United
61 States or regulatory statute of this state to the extent the treaty,
62 statute, or regulatory statute is applicable.

63 (b) This article does not modify or repeal any law prescribing
64 the form or content of a document of title or the services or facili-
65 ties to be afforded by a bailee, or otherwise regulating a bailee’s
66 business in respects not specifically treated in this article. How-
67 ever, violation of such a law does not affect the status of a docu-
68 ment of title that otherwise is within the definition of a document
69 of title.

70 (c) This article modifies, limits, and supersedes the federal
71 Electronic Signatures in Global and National Commerce Act (15
72 U.S.C. Section 7001, et. seq.) but does not modify, limit, or super-
73 sede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or

74 authorize electronic delivery of any of the notices described in
75 Section 103(b) of that act (15 U.S.C. Section 7003(b)).

76 (d) To the extent there is a conflict between the Uniform Elec-
77 tronic Transactions Act (chapter 110G, sections 1 through 18) and
78 this article, this article governs.

79 **SECTION 7-104. NEGOTIABLE AND NONNEGO-**
80 **TIABLE DOCUMENT OF TITLE.**

81 (a) Except as otherwise provided in subsection (c), a document
82 of title is negotiable if by its terms the goods are to be delivered to
83 bearer or to the order of a named person.

84 (b) A document of title other than one described in subsection
85 (a) is nonnegotiable. A bill of lading that states that the goods are
86 consigned to a named person is not made negotiable by a provi-
87 sion that the goods are to be delivered only against an order in a
88 record signed by the same or another named person.

89 (c) A document of title is nonnegotiable if, at the time it is
90 issued, the document has a conspicuous legend, however
91 expressed, that it is nonnegotiable.

92 **SECTION 7-105. REISSUANCE IN ALTERNATIVE**
93 **MEDIUM.**

94 (a) Upon request of a person entitled under an electronic docu-
95 ment of title, the issuer of the electronic document may issue a
96 tangible document of title as a substitute for the electronic docu-
97 ment if:

98 (1) the person entitled under the electronic document surrenders
99 control of the document to the issuer; and

100 (2) the tangible document when issued contains a statement that
101 it is issued in substitution for the electronic document.

102 (b) Upon issuance of a tangible document of title in substitution
103 for an electronic document of title in accordance with subsection
104 (a):

105 (1) the electronic document ceases to have any effect or
106 validity; and

107 (2) the person that procured issuance of the tangible document
108 warrants to all subsequent persons entitled under the tangible doc-
109 ument that the warrantor was a person entitled under the elec-
110 tronic document when the warrantor surrendered control of the
111 electronic document to the issuer.

112 (c) Upon request of a person entitled under a tangible document
113 of title, the issuer of the tangible document may issue an elec-
114 tronic document of title as a substitute for the tangible document
115 if:

116 (1) the person entitled under the tangible document surrenders
117 possession of the document to the issuer; and

118 (2) the electronic document when issued contains a statement
119 that it is issued in substitution for the tangible document.

120 (d) Upon issuance of an electronic document of title in substitu-
121 tion for a tangible document of title in accordance with subsection
122 (c):

123 (1) the tangible document ceases to have any effect or validity;
124 and

125 (2) the person that procured issuance of the electronic docu-
126 ment warrants to all subsequent persons entitled under the elec-
127 tronic document that the warrantor was a person entitled under the
128 tangible document when the warrantor surrendered possession of
129 the tangible document to the issuer.

130 **SECTION 7-106. CONTROL OF ELECTRONIC DOCU-**
131 **MENT OF TITLE.**

132 (a) A person has control of an electronic document of title if a
133 system employed for evidencing the transfer of interests in the
134 electronic document reliably establishes that person as the person
135 to which the electronic document was issued or transferred.

136 (b) A system satisfies subsection (a), and a person is deemed to
137 have control of an electronic document of title, if the document is
138 created, stored, and assigned in such a manner that:

139 (1) a single authoritative copy of the document exists which is
140 unique, identifiable, and, except as otherwise provided in para-
141 graphs (4), (5), and (6), unalterable;

142 (2) the authoritative copy identifies the person asserting control
143 as:

144 (A) the person to which the document was issued; or

145 (B) if the authoritative copy indicates that the document has
146 been transferred, the person to which the document was most
147 recently transferred;

148 (3) the authoritative copy is communicated to and maintained
149 by the person asserting control or its designated custodian;

150 (4) copies or amendments that add or change an identified
151 assignee of the authoritative copy can be made only with the con-
152 sent of the person asserting control;

153 (5) each copy of the authoritative copy and any copy of a copy
154 is readily identifiable as a copy that is not the authoritative copy;
155 and

156 (6) any amendment of the authoritative copy is readily identifi-
157 able as authorized or unauthorized.

158

PART 2

159

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

160 **SECTION 7-201. PERSON THAT MAY ISSUE A WARE-**
161 **HOUSE RECEIPT; STORAGE UNDER BOND.**

162 (a) A warehouse receipt may be issued by any warehouse.

163 (b) If goods, including distilled spirits and agricultural com-
164 modities, are stored under a statute requiring a bond against with-
165 drawal or a license for the issuance of receipts in the nature of
166 warehouse receipts, a receipt issued for the goods is deemed to be
167 a warehouse receipt even if issued by a person that is the owner
168 of the goods and is not a warehouse.

169 **SECTION 7-202. FORM OF WAREHOUSE RECEIPT;**
170 **EFFECT OF OMISSION.**

171 (a) A warehouse receipt need not be in any particular form.

172 (b) Unless a warehouse receipt provides for each of the
173 following, the warehouse is liable for damages caused to a person
174 injured by its omission:

175 (1) a statement of the location of the warehouse facility where
176 the goods are stored;

177 (2) the date of issue of the receipt;

178 (3) the unique identification code of the receipt;

179 (4) a statement whether the goods received will be delivered to
180 the bearer, to a named person, or to a named person or its order;

181 (5) the rate of storage and handling charges, unless goods are
182 stored under a field warehousing arrangement, in which case a
183 statement of that fact is sufficient on a nonnegotiable receipt;

184 (6) a description of the goods or the packages containing them;

185 (7) the signature of the warehouse or its agent;

186 (8) if the receipt is issued for goods that the warehouse owns,
187 either solely, jointly, or in common with others, a statement of the
188 fact of that ownership; and

189 (9) a statement of the amount of advances made and of liabili-
190 ties incurred for which the warehouse claims a lien or security
191 interest, unless the precise amount of advances made or liabilities
192 incurred, at the time of the issue of the receipt, is unknown to the
193 warehouse or to its agent that issued the receipt, in which case a
194 statement of the fact that advances have been made or liabilities
195 incurred and the purpose of the advances or liabilities is sufficient.

196 (c) A warehouse may insert in its receipt any terms that are not
197 contrary to this chapter and do not impair its obligation of
198 delivery under Section 7-403 or its duty of care under Section 7-
199 204. Any contrary provision is ineffective.

200 **SECTION 7-203. LIABILITY FOR NONRECEIPT OR**
201 **MISDESCRIPTION.** A party to or purchaser for value in good
202 faith of a document of title, other than a bill of lading, that relies
203 upon the description of the goods in the document may recover
204 from the issuer damages caused by the nonreceipt or misdescrip-
205 tion of the goods, except to the extent that:

206 (1) the document conspicuously indicates that the issuer does
207 not know whether all or part of the goods in fact were received or
208 conform to the description, such as a case in which the description
209 is in terms of marks or labels or kind, quantity, or condition, or the
210 receipt or description is qualified by “contents, condition, and
211 quality unknown”, “said to contain”, or words of similar import, if
212 the indication is true; or

213 (2) the party or purchaser otherwise has notice of the nonreceipt
214 or misdescription.

215 **SECTION 7-204. DUTY OF CARE; CONTRACTUAL**
216 **LIMITATION OF WAREHOUSE’S LIABILITY.**

217 (a) A warehouse is liable for damages for loss of or injury to
218 the goods caused by its failure to exercise care with regard to the
219 goods that a reasonably careful person would exercise under sim-
220 ilar circumstances. Unless otherwise agreed, the warehouse is not
221 liable for damages that could not have been avoided by the exer-
222 cise of that care.

223 (b) Damages may be limited by a term in the warehouse receipt
224 or storage agreement limiting the amount of liability in case of

225 loss or damage beyond which the warehouse is not liable. Such a
226 limitation is not effective with respect to the warehouse's liability
227 for conversion to its own use. On request of the bailor in a record
228 at the time of signing the storage agreement or within a reasonable
229 time after receipt of the warehouse receipt, the warehouse's lia-
230 bility may be increased on part or all of the goods covered by the
231 storage agreement or the warehouse receipt. In this event,
232 increased rates may be charged based on an increased valuation of
233 the goods.

234 (c) Reasonable provisions as to the time and manner of pre-
235 senting claims and commencing actions based on the bailment
236 may be included in the warehouse receipt or storage agreement.

237 **SECTION 7-205. TITLE UNDER WAREHOUSE**
238 **RECEIPT DEFEATED IN CERTAIN CASES.** A buyer in ordi-
239 nary course of business of fungible goods sold and delivered by a
240 warehouse that is also in the business of buying and selling such
241 goods takes the goods free of any claim under a warehouse receipt
242 even if the receipt is negotiable and has been duly negotiated.

243 **SECTION 7-206. TERMINATION OF STORAGE AT**
244 **WAREHOUSE'S OPTION.**

245 (a) A warehouse, by giving notice to the person on whose
246 account the goods are held and any other person known to claim
247 an interest in the goods, may require payment of any charges and
248 removal of the goods from the warehouse at the termination of the
249 period of storage fixed by the document of title or, if a period is
250 not fixed, within a stated period not less than 30 days after the
251 warehouse gives notice. If the goods are not removed before the
252 date specified in the notice, the warehouse may sell them pursuant
253 to Section 7-210.

254 (b) If a warehouse in good faith believes that goods are about to
255 deteriorate or decline in value to less than the amount of its lien
256 within the time provided in subsection (a) and Section 7-210, the
257 warehouse may specify in the notice given under subsection (a)
258 any reasonable shorter time for removal of the goods and, if the
259 goods are not removed, may sell them at public sale held not less
260 than one week after a single advertisement or posting.

261 (c) If, as a result of a quality or condition of the goods of which
262 the warehouse did not have notice at the time of deposit, the
263 goods are a hazard to other property, the warehouse facilities, or

264 other persons, the warehouse may sell the goods at public or pri-
265 vate sale without advertisement or posting on reasonable notifica-
266 tion to all persons known to claim an interest in the goods. If the
267 warehouse, after a reasonable effort, is unable to sell the goods, it
268 may dispose of them in any lawful manner and does not incur lia-
269 bility by reason of that disposition.

270 (d) A warehouse shall deliver the goods to any person entitled
271 to them under this article upon due demand made at any time
272 before sale or other disposition under this section.

273 (e) A warehouse may satisfy its lien from the proceeds of any
274 sale or disposition under this section but shall hold the balance for
275 delivery on the demand of any person to which the warehouse
276 would have been bound to deliver the goods.

277 **SECTION 7-207. GOODS MUST BE KEPT SEPARATE;**
278 **FUNGIBLE GOODS.**

279 (a) Unless the warehouse receipt provides otherwise, a ware-
280 house shall keep separate the goods covered by each receipt so as
281 to permit at all times identification and delivery of those goods.
282 However, different lots of fungible goods may be commingled.

283 (b) If different lots of fungible goods are commingled, the
284 goods are owned in common by the persons entitled thereto and
285 the warehouse is severally liable to each owner for that owner's
286 share. If, because of overissue, a mass of fungible goods is insuf-
287 ficient to meet all the receipts the warehouse has issued against it,
288 the persons entitled include all holders to which overissued
289 receipts have been duly negotiated.

290 **SECTION 7-208. ALTERED WAREHOUSE RECEIPTS.**

291 If a blank in a negotiable tangible warehouse receipt has been
292 filled in without authority, a good-faith purchaser for value and
293 without notice of the lack of authority may treat the insertion as
294 authorized. Any other unauthorized alteration leaves any tangible
295 or electronic warehouse receipt enforceable against the issuer
296 according to its original tenor.

297 **SECTION 7-209. LIEN OF WAREHOUSE.**

298 (a) A warehouse has a lien against the bailor on the goods cov-
299 ered by a warehouse receipt or storage agreement or on the pro-
300 ceeds thereof in its possession for charges for storage or
301 transportation, including demurrage and terminal charges, insur-
302 ance, labor, or other charges, present or future, in relation to the

303 goods, and for expenses necessary for preservation of the goods or
304 reasonably incurred in their sale pursuant to law. If the person on
305 whose account the goods are held is liable for similar charges or
306 expenses in relation to other goods whenever deposited and it is
307 stated in the warehouse receipt or storage agreement that a lien is
308 claimed for charges and expenses in relation to other goods, the
309 warehouse also has a lien against the goods covered by the ware-
310 house receipt or storage agreement or on the proceeds thereof in
311 its possession for those charges and expenses, whether or not the
312 other goods have been delivered by the warehouse. However, as
313 against a person to which a negotiable warehouse receipt is duly
314 negotiated, a warehouse's lien is limited to charges in an amount
315 or at a rate specified in the warehouse receipt or, if no charges are
316 so specified, to a reasonable charge for storage of the specific
317 goods covered by the receipt subsequent to the date of the receipt.

318 (b) A warehouse may also reserve a security interest against the
319 bailor for the maximum amount specified on the receipt for
320 charges other than those specified in subsection (a), such as for
321 money advanced and interest. The security interest is governed
322 by Article 9.

323 (c) A warehouse's lien for charges and expenses under subsec-
324 tion (a) or a security interest under subsection (b) is also effective
325 against any person that so entrusted the bailor with possession of
326 the goods that a pledge of them by the bailor to a good-faith pur-
327 chaser for value would have been valid. However, the lien or
328 security interest is not effective against a person that before
329 issuance of a document of title had a legal interest or a perfected
330 security interest in the goods and that did not:

331 (1) deliver or entrust the goods or any document of title cov-
332 ering the goods to the bailor or the bailor's nominee with:

333 (A) actual or apparent authority to ship, store, or sell;

334 (B) power to obtain delivery under Section 7-403; or

335 (C) power of disposition under Sections 2-403, 2A-304(2), 2A-
336 305(2), 9-320, or 9-321(c) or other statute or rule of law; or

337 (2) acquiesce in the procurement by the bailor or its nominee of
338 any document.

339 (d) A warehouse's lien on household goods for charges and
340 expenses in relation to the goods under subsection (a) is also
341 effective against all persons if the depositor was the legal pos-

342 sessor of the goods at the time of deposit. In this subsection,
343 “household goods” means furniture, furnishings, or personal
344 effects used by the depositor in a dwelling.

345 (e) A warehouse loses its lien on any goods that it voluntarily
346 delivers or unjustifiably refuses to deliver.

347 **SECTION 7-210. ENFORCEMENT OF WAREHOUSE’S**
348 **LIEN.**

349 (a) Except as otherwise provided in subsection (b), a ware-
350 house’s lien may be enforced by public or private sale of the
351 goods, in bulk or in packages, at any time or place and on any
352 terms that are commercially reasonable, after notifying all persons
353 known to claim an interest in the goods. The notification must
354 include a statement of the amount due, the nature of the proposed
355 sale, and the time and place of any public sale. The fact that a
356 better price could have been obtained by a sale at a different time
357 or in a method different from that selected by the warehouse is not
358 of itself sufficient to establish that the sale was not made in a
359 commercially reasonable manner. The warehouse sells in a com-
360 mercially reasonable manner if the warehouse sells the goods in
361 the usual manner in any recognized market therefor, sells at the
362 price current in that market at the time of the sale, or otherwise
363 sells in conformity with commercially reasonable practices among
364 dealers in the type of goods sold. A sale of more goods than
365 apparently necessary to be offered to ensure satisfaction of the
366 obligation is not commercially reasonable, except in cases cov-
367 ered by the preceding sentence.

368 (b) A warehouse may enforce its lien on goods, other than
369 goods stored by a merchant in the course of its business, only if
370 the following requirements are satisfied:

371 (1) All persons known to claim an interest in the goods must be
372 notified.

373 (2) The notification must include an itemized statement of the
374 claim, a description of the goods subject to the lien, a demand for
375 payment within a specified time not less than 10 days after receipt
376 of the notification, and a conspicuous statement that unless the
377 claim is paid within that time the goods will be advertised for sale
378 and sold by auction at a specified time and place.

379 (3) The sale must conform to the terms of the notification.

380 (4) The sale must be held at the nearest suitable place to where
381 the goods are held or stored.

382 (5) After the expiration of the time given in the notification, an
383 advertisement of the sale must be published once a week for two
384 weeks consecutively in a newspaper of general circulation where
385 the sale is to be held. The advertisement must include a descrip-
386 tion of the goods, the name of the person on whose account the
387 goods are being held, and the time and place of the sale. The sale
388 must take place at least 15 days after the first publication. If there
389 is no newspaper of general circulation where the sale is to be held,
390 the advertisement must be posted at least 10 days before the sale
391 in not fewer than six conspicuous places in the neighborhood of
392 the proposed sale.

393 (c) Before any sale pursuant to this section, any person
394 claiming a right in the goods may pay the amount necessary to
395 satisfy the lien and the reasonable expenses incurred in complying
396 with this section. In that event, the goods may not be sold but
397 must be retained by the warehouse subject to the terms of the
398 receipt and this article.

399 (d) A warehouse may buy at any public sale held pursuant to
400 this section.

401 (e) A purchaser in good faith of goods sold to enforce a ware-
402 house's lien takes the goods free of any rights of persons against
403 which the lien was valid, despite the warehouse's noncompliance
404 with this section.

405 (f) A warehouse may satisfy its lien from the proceeds of any
406 sale pursuant to this section but shall hold the balance, if any, for
407 delivery on demand to any person to which the warehouse would
408 have been bound to deliver the goods.

409 (g) The rights provided by this section are in addition to all
410 other rights allowed by law to a creditor against a debtor.

411 (h) If a lien is on goods stored by a merchant in the course of its
412 business, the lien may be enforced in accordance with subsection
413 (a) or (b).

414 (i) A warehouse is liable for damages caused by failure to
415 comply with the requirements for sale under this section and, in
416 case of willful violation, is liable for conversion.

417

PART 3

418

BILLS OF LADING: SPECIAL PROVISIONS**419 SECTION 7-301. LIABILITY FOR NONRECEIPT OR**
420 MISDESCRIPTION; “SAID TO CONTAIN”; “SHIPPER’S
421 WEIGHT, LOAD, AND COUNT”; IMPROPER HANDLING.

422 (a) A consignee of a nonnegotiable bill of lading which has
423 given value in good faith, or a holder to which a negotiable bill
424 has been duly negotiated, relying upon the description of the
425 goods in the bill or upon the date shown in the bill, may recover
426 from the issuer damages caused by the misdating of the bill or the
427 nonreceipt or misdescription of the goods, except to the extent
428 that the bill indicates that the issuer does not know whether any
429 part or all of the goods in fact were received or conform to the
430 description, such as in a case in which the description is in terms
431 of marks or labels or kind, quantity, or condition or the receipt or
432 description is qualified by “contents or condition of contents of
433 packages unknown”, “said to contain”, “shipper’s weight, load,
434 and count,” or words of similar import, if that indication is true.

435 (b) If goods are loaded by the issuer of a bill of lading;

436 (1) the issuer shall count the packages of goods if shipped in
437 packages and ascertain the kind and quantity if shipped in bulk;
438 and

439 (2) words such as “shipper’s weight, load, and count,” or words
440 of similar import indicating that the description was made by the
441 shipper are ineffective except as to goods concealed in packages.

442 (c) If bulk goods are loaded by a shipper that makes available
443 to the issuer of a bill of lading adequate facilities for weighing
444 those goods, the issuer shall ascertain the kind and quantity within
445 a reasonable time after receiving the shipper’s request in a record
446 to do so. In that case, “shipper’s weight” or words of similar
447 import are ineffective.

448 (d) The issuer of a bill of lading, by including in the bill the
449 words “shipper’s weight, load, and count,” or words of similar
450 import, may indicate that the goods were loaded by the shipper,
451 and, if that statement is true, the issuer is not liable for damages
452 caused by the improper loading. However, omission of such
453 words does not imply liability for damages caused by improper
454 loading.

455 (e) A shipper guarantees to an issuer the accuracy at the time of
456 shipment of the description, marks, labels, number, kind, quantity,
457 condition, and weight, as furnished by the shipper, and the shipper
458 shall indemnify the issuer against damage caused by inaccuracies
459 in those particulars. This right of indemnity does not limit the
460 issuer's responsibility or liability under the contract of carriage to
461 any person other than the shipper.

462 **SECTION 7-302. THROUGH BILLS OF LADING AND**
463 **SIMILAR DOCUMENTS OF TITLE.**

464 (a) The issuer of a through bill of lading, or other document of
465 title embodying an undertaking to be performed in part by a
466 person acting as its agent or by a performing carrier, is liable to
467 any person entitled to recover on the bill or other document for
468 any breach by the other person or the performing carrier of its
469 obligation under the bill or other document. However, to the
470 extent that the bill or other document covers an undertaking to be
471 performed overseas or in territory not contiguous to the conti-
472 nental United States or an undertaking including matters other
473 than transportation, this liability for breach by the other person or
474 the performing carrier may be varied by agreement of the parties.

475 (b) If goods covered by a through bill of lading or other docu-
476 ment of title embodying an undertaking to be performed in part by
477 a person other than the issuer are received by that person, the
478 person is subject, with respect to its own performance while the
479 goods are in its possession, to the obligation of the issuer. The
480 person's obligation is discharged by delivery of the goods to
481 another person pursuant to the bill or other document and does not
482 include liability for breach by any other person or by the issuer.

483 (c) The issuer of a through bill of lading or other document of
484 title described in subsection (a) is entitled to recover from the per-
485 forming carrier, or other person in possession of the goods when
486 the breach of the obligation under the bill or other document
487 occurred:

488 (1) the amount it may be required to pay to any person entitled
489 to recover on the bill or other document for the breach, as may be
490 evidenced by any receipt, judgment, or transcript of judgment;
491 and

492 (2) the amount of any expense reasonably incurred by the issuer
493 in defending any action commenced by any person entitled to
494 recover on the bill or other document for the breach.

495 **SECTION 7-303. DIVERSION; RECONSIGNMENT;**
496 **CHANGE OF INSTRUCTIONS.**

497 (a) Unless the bill of lading otherwise provides, a carrier may
498 deliver the goods to a person or destination other than that stated
499 in the bill or may otherwise dispose of the goods, without liability
500 for misdelivery, on instructions from:

501 (1) the holder of a negotiable bill;

502 (2) the consignor on a nonnegotiable bill, even if the consignee
503 has given contrary instructions;

504 (3) the consignee on a nonnegotiable bill in the absence of con-
505 trary instructions from the consignor, if the goods have arrived at
506 the billed destination or if the consignee is in possession of the
507 tangible bill or in control of the electronic bill; or

508 (4) the consignee on a nonnegotiable bill, if the consignee is
509 entitled as against the consignor to dispose of the goods.

510 (b) Unless instructions described in subsection (a) are included
511 in a negotiable bill of lading, a person to which the bill is duly
512 negotiated may hold the bailee according to the original terms.

513 **SECTION 7-304. TANGIBLE BILLS OF LADING IN A**
514 **SET.**

515 (a) Except as customary in international transportation, a tan-
516 gible bill of lading may not be issued in a set of parts. The issuer
517 is liable for damages caused by violation of this subsection.

518 (b) If a tangible bill of lading is lawfully issued in a set of parts,
519 each of which contains an identification code and is expressed to
520 be valid only if the goods have not been delivered against any
521 other part, the whole of the parts constitutes one bill.

522 (c) If a tangible negotiable bill of lading is lawfully issued in a
523 set of parts and different parts are negotiated to different persons,
524 the title of the holder to which the first due negotiation is made
525 prevails as to both the document of title and the goods even if any
526 later holder may have received the goods from the carrier in good
527 faith and discharged the carrier's obligation by surrendering its
528 part.

529 (d) A person that negotiates or transfers a single part of a tan-
530 gible bill of lading issued in a set is liable to holders of that part as
531 if it were the whole set.

532 (e) The bailee shall deliver in accordance with Part 4 against
533 the first presented part of a tangible bill of lading lawfully issued

534 in a set. Delivery in this manner discharges the bailee's obligation
535 on the whole bill.

536 **SECTION 7-305. DESTINATION BILLS.**

537 (a) Instead of issuing a bill of lading to the consignor at the
538 place of shipment, a carrier, at the request of the consignor, may
539 procure the bill to be issued at destination or at any other place
540 designated in the request.

541 (b) Upon request of any person entitled as against a carrier to
542 control the goods while in transit and on surrender of possession
543 or control of any outstanding bill of lading or other receipt cov-
544 ering the goods, the issuer, subject to Section 7-105, may procure
545 a substitute bill to be issued at any place designated in the request.

546 **SECTION 7-306. ALTERED BILLS OF LADING.** An
547 unauthorized alteration or filling in of a blank in a bill of lading
548 leaves the bill enforceable according to its original tenor.

549 **SECTION 7-307. LIEN OF CARRIER.**

550 (a) A carrier has a lien on the goods covered by a bill of lading
551 or on the proceeds thereof in its possession for charges after the
552 date of the carrier's receipt of the goods for storage or transporta-
553 tion, including demurrage and terminal charges, and for expenses
554 necessary for preservation of the goods incident to their trans-
555 portation or reasonably incurred in their sale pursuant to law.
556 However, against a purchaser for value of a negotiable bill of
557 lading, a carrier's lien is limited to charges stated in the bill or the
558 applicable tariffs or, if no charges are stated, a reasonable charge.

559 (b) A lien for charges and expenses under subsection (a) on
560 goods that the carrier was required by law to receive for trans-
561 portation is effective against the consignor or any person entitled
562 to the goods unless the carrier had notice that the consignor lacked
563 authority to subject the goods to those charges and expenses. Any
564 other lien under subsection (a) is effective against the consignor
565 and any person that permitted the bailor to have control or posses-
566 sion of the goods unless the carrier had notice that the bailor
567 lacked authority.

568 (c) A carrier loses its lien on any goods that it voluntarily
569 delivers or unjustifiably refuses to deliver.

570 **SECTION 7-308. ENFORCEMENT OF CARRIER'S**
571 **LIEN.**

572 (a) A carrier's lien on goods may be enforced by public or pri-
573 vate sale of the goods, in bulk or in packages, at any time or place

574 and on any terms that are commercially reasonable, after notifying
575 all persons known to claim an interest in the goods. The notifica-
576 tion must include a statement of the amount due, the nature of the
577 proposed sale, and the time and place of any public sale. The fact
578 that a better price could have been obtained by a sale at a different
579 time or in a method different from that selected by the carrier is
580 not of itself sufficient to establish that the sale was not made in a
581 commercially reasonable manner. The carrier sells goods in a
582 commercially reasonable manner if the carrier sells the goods in
583 the usual manner in any recognized market therefor, sells at the
584 price current in that market at the time of the sale, or otherwise
585 sells in conformity with commercially reasonable practices among
586 dealers in the type of goods sold. A sale of more goods than
587 apparently necessary to be offered to ensure satisfaction of the
588 obligation is not commercially reasonable, except in cases cov-
589 ered by the preceding sentence.

590 (b) Before any sale pursuant to this section, any person
591 claiming a right in the goods may pay the amount necessary to
592 satisfy the lien and the reasonable expenses incurred in complying
593 with this section. In that event, the goods may not be sold but
594 must be retained by the carrier, subject to the terms of the bill of
595 lading and this article.

596 (c) A carrier may buy at any public sale pursuant to this
597 section.

598 (d) A purchaser in good faith of goods sold to enforce a carri-
599 er's lien takes the goods free of any rights of persons against
600 which the lien was valid, despite the carrier's noncompliance with
601 this section.

602 (e) A carrier may satisfy its lien from the proceeds of any sale
603 pursuant to this section but shall hold the balance, if any, for
604 delivery on demand to any person to which the carrier would have
605 been bound to deliver the goods.

606 (f) The rights provided by this section are in addition to all
607 other rights allowed by law to a creditor against a debtor.

608 (g) A carrier's lien may be enforced pursuant to either subsec-
609 tion (a) or the procedure set forth in Section 7-210(b).

610 (h) A carrier is liable for damages caused by failure to comply
611 with the requirements for sale under this section and, in case of
612 willful violation, is liable for conversion.

613 **SECTION 7-309. DUTY OF CARE; CONTRACTUAL**
614 **LIMITATION OF CARRIER'S LIABILITY.**

615 (a) A carrier that issues a bill of lading, whether negotiable or
616 nonnegotiable, shall exercise the degree of care in relation to the
617 goods which a reasonably careful person would exercise under
618 similar circumstances. This subsection does not affect any statute,
619 regulation, or rule of law that imposes liability upon a common
620 carrier for damages not caused by its negligence.

621 (b) Damages may be limited by a term in the bill of lading or in
622 a transportation agreement that the carrier's liability may not
623 exceed a value stated in the bill or transportation agreement if the
624 carrier's rates are dependent upon value and the consignor is
625 afforded an opportunity to declare a higher value and the con-
626 signor is advised of the opportunity. However, such a limitation is
627 not effective with respect to the carrier's liability for conversion
628 to its own use.

629 (c) Reasonable provisions as to the time and manner of pre-
630 senting claims and commencing actions based on the shipment
631 may be included in a bill of lading or a transportation agreement.

632

PART 4

633 **WAREHOUSE RECEIPTS AND BILLS OF LADING:**
634 **GENERAL OBLIGATIONS**

635 **SECTION 7-401. IRREGULARITIES IN ISSUE OF**
636 **RECEIPT OR BILL OR CONDUCT OF ISSUER.** The obliga-
637 tions imposed by this article on an issuer apply to a document of
638 title even if:

639 (1) the document does not comply with the requirements of this
640 article or of any other statute, rule, or regulation regarding its
641 issuance, form, or content;

642 (2) the issuer violated laws regulating the conduct of its busi-
643 ness;

644 (3) the goods covered by the document were owned by the
645 bailee when the document was issued; or

646 (4) the person issuing the document is not a warehouse but the
647 document purports to be a warehouse receipt.

648 **SECTION 7-402. DUPLICATE DOCUMENT OF TITLE;**
649 **OVERISSUE.** A duplicate or any other document of title pur-
650 porting to cover goods already represented by an outstanding doc-
651 ument of the same issuer does not confer any right in the goods,
652 except as provided in the case of tangible bills of lading in a set of
653 parts, overissue of documents for fungible goods, substitutes for
654 lost, stolen, or destroyed documents, or substitute documents
655 issued pursuant to Section 7-105. The issuer is liable for damages
656 caused by its overissue or failure to identify a duplicate document
657 by a conspicuous notation.

658 **SECTION 7-403. OBLIGATION OF BAILEE TO**
659 **DELIVER; EXCUSE.**

660 (a) A bailee shall deliver the goods to a person entitled under a
661 document of title if the person complies with subsections (b) and
662 (c), unless and to the extent that the bailee establishes any of the
663 following:

664 (1) delivery of the goods to a person whose receipt was rightful
665 as against the claimant;

666 (2) damage to or delay, loss, or destruction of the goods for
667 which the bailee is not liable;

668 (3) previous sale or other disposition of the goods in lawful
669 enforcement of a lien or on a warehouse's lawful termination of
670 storage;

671 (4) the exercise by a seller of its right to stop delivery pursuant
672 to Section 2-705 or by a lessor of its right to stop delivery pur-
673 suant to Section 2A-526;

674 (5) a diversion, reconsignment, or other disposition pursuant to
675 Section 7-303;

676 (6) release, satisfaction, or any other personal defense against
677 the claimant; or

678 (7) any other lawful excuse.

679 (b) A person claiming goods covered by a document of title
680 shall satisfy the bailee's lien if the bailee so requests or if the
681 bailee is prohibited by law from delivering the goods until the
682 charges are paid.

683 (c) Unless a person claiming the goods is a person against
684 which the document of title does not confer a right under
685 Section 7-503(a):

686 (1) the person claiming under a document shall surrender pos-
687 session or control of any outstanding negotiable document cov-

688 ering the goods for cancellation or indication of partial deliveries;
689 and

690 (2) the bailee shall cancel the document or conspicuously indi-
691 cate in the document the partial delivery or the bailee is liable to
692 any person to which the document is duly negotiated.

693 **SECTION 7-404. NO LIABILITY FOR GOOD-FAITH**
694 **DELIVERY PURSUANT TO DOCUMENT OF TITLE.** A
695 bailee that in good faith has received goods and delivered or oth-
696 erwise disposed of the goods according to the terms of a document
697 of title or pursuant to this article is not liable for the goods even
698 if:

699 (1) the person from which the bailee received the goods did not
700 have authority to procure the document or to dispose of the goods;
701 or

702 (2) the person to which the bailee delivered the goods did not
703 have authority to receive the goods.

704 **PART 5**

705 **WAREHOUSE RECEIPTS AND BILLS OF LADING:** 706 **NEGOTIATION AND TRANSFER**

707 **SECTION 7-501. FORM OF NEGOTIATION AND** 708 **REQUIREMENTS OF DUE NEGOTIATION.**

709 (a) The following rules apply to a negotiable tangible document
710 of title:

711 (1) If the document's original terms run to the order of a named
712 person, the document is negotiated by the named person's indorse-
713 ment and delivery. After the named person's indorsement in blank
714 or to bearer, any person may negotiate the document by delivery
715 alone.

716 (2) If the document's original terms run to bearer, it is negoti-
717 ated by delivery alone.

718 (3) If the document's original terms run to the order of a named
719 person and it is delivered to the named person, the effect is the
720 same as if the document had been negotiated.

721 (4) Negotiation of the document after it has been indorsed to a
722 named person requires indorsement by the named person and
723 delivery.

724 (5) A document is duly negotiated if it is negotiated in the
725 manner stated in this subsection to a holder that purchases it in
726 good faith, without notice of any defense against or claim to it on
727 the part of any person, and for value, unless it is established that
728 the negotiation is not in the regular course of business or
729 financing or involves receiving the document in settlement or pay-
730 ment of a monetary obligation.

731 (b) The following rules apply to a negotiable electronic docu-
732 ment of title:

733 (1) If the document's original terms run to the order of a named
734 person or to bearer, the document is negotiated by delivery of the
735 document to another person. Indorsement by the named person is
736 not required to negotiate the document.

737 (2) If the document's original terms run to the order of a named
738 person and the named person has control of the document, the
739 effect is the same as if the document had been negotiated.

740 (3) A document is duly negotiated if it is negotiated in the
741 manner stated in this subsection to a holder that purchases it in
742 good faith, without notice of any defense against or claim to it on
743 the part of any person, and for value, unless it is established that
744 the negotiation is not in the regular course of business or
745 financing or involves taking delivery of the document in settle-
746 ment or payment of a monetary obligation.

747 (c) Indorsement of a nonnegotiable document of title neither
748 makes it negotiable nor adds to the transferee's rights.

749 (d) The naming in a negotiable bill of lading of a person to be
750 notified of the arrival of the goods does not limit the negotiability
751 of the bill or constitute notice to a purchaser of the bill of any
752 interest of that person in the goods.

753 **SECTION 7-502. RIGHTS ACQUIRED BY DUE NEGOTIATION.**
754

755 (a) Subject to Sections 7-205 and 7-503, a holder to which a
756 negotiable document of title has been duly negotiated acquires
757 thereby:

758 (1) title to the document;

759 (2) title to the goods;

760 (3) all rights accruing under the law of agency or estoppel,
761 including rights to goods delivered to the bailee after the docu-
762 ment was issued; and

763 (4) the direct obligation of the issuer to hold or deliver the
764 goods according to the terms of the document free of any defense
765 or claim by the issuer except those arising under the terms of the
766 document or under this article, but in the case of a delivery order,
767 the bailee's obligation accrues only upon the bailee's acceptance
768 of the delivery order and the obligation acquired by the holder is
769 that the issuer and any indorser will procure the acceptance of the
770 bailee.

771 (b) Subject to Section 7-503, title and rights acquired by due
772 negotiation are not defeated by any stoppage of the goods repre-
773 sented by the document of title or by surrender of the goods by the
774 bailee and are not impaired even if:

775 (1) the due negotiation or any prior due negotiation constituted
776 a breach of duty;

777 (2) any person has been deprived of possession of a negotiable
778 tangible document or control of a negotiable electronic document
779 by misrepresentation, fraud, accident, mistake, duress, loss, theft,
780 or conversion; or

781 (3) a previous sale or other transfer of the goods or document
782 has been made to a third person.

783 **SECTION 7-503. DOCUMENT OF TITLE TO GOODS**
784 **DEFEATED IN CERTAIN CASES.**

785 (a) A document of title confers no right in goods against a
786 person that before issuance of the document had a legal interest or
787 a perfected security interest in the goods and that did not:

788 (1) deliver or entrust the goods or any document of title cov-
789 ering the goods to the bailor or the bailor's nominee with:

790 (A) actual or apparent authority to ship, store, or sell;

791 (B) power to obtain delivery under Section 7-403; or

792 (C) power of disposition under Section 2-403, 2A-304(2), 2A-
793 305(2), 9-320, or 9-321(c) or other statute or rule of law; or

794 (2) acquiesce in the procurement by the bailor or its nominee of
795 any document.

796 (b) Title to goods based upon an unaccepted delivery order is
797 subject to the rights of any person to which a negotiable ware-
798 house receipt or bill of lading covering the goods has been duly
799 negotiated. That title may be defeated under Section 7-504 to the
800 same extent as the rights of the issuer or a transferee from the
801 issuer.

802 (c) Title to goods based upon a bill of lading issued to a freight
803 forwarder is subject to the rights of any person to which a bill
804 issued by the freight forwarder is duly negotiated. However,
805 delivery by the carrier in accordance with Part 4 pursuant to its
806 own bill of lading discharges the carrier's obligation to deliver.

807 **SECTION 7-504. RIGHTS ACQUIRED IN ABSENCE OF**
808 **DUE NEGOTIATION; EFFECT OF DIVERSION; STOP-**
809 **PAGE OF DELIVERY.**

810 (a) A transferee of a document of title, whether negotiable or
811 nonnegotiable, to which the document has been delivered but not
812 duly negotiated, acquires the title and rights that its transferor had
813 or had actual authority to convey.

814 (b) In the case of a transfer of a nonnegotiable document of
815 title, until but not after the bailee receives notice of the transfer,
816 the rights of the transferee may be defeated:

817 (1) by those creditors of the transferor which could treat the
818 transfer as void under Section 2-402 or 2A-308;

819 (2) by a buyer from the transferor in ordinary course of busi-
820 ness if the bailee has delivered the goods to the buyer or received
821 notification of the buyer's rights;

822 (3) by a lessee from the transferor in ordinary course of busi-
823 ness if the bailee has delivered the goods to the lessee or received
824 notification of the lessee's rights; or

825 (4) as against the bailee, by good-faith dealings of the bailee
826 with the transferor.

827 (c) A diversion or other change of shipping instructions by the
828 consignor in a nonnegotiable bill of lading which causes the bailee
829 not to deliver the goods to the consignee defeats the consignee's
830 title to the goods if the goods have been delivered to a buyer in
831 ordinary course of business or a lessee in ordinary course of busi-
832 ness and, in any event, defeats the consignee's rights against the
833 bailee.

834 (d) Delivery of the goods pursuant to a nonnegotiable document
835 of title may be stopped by a seller under Section 2-705 or a lessor
836 under Section 2A-526, subject to the requirements of due notifica-
837 tion in those sections. A bailee that honors the seller's or lessor's
838 instructions is entitled to be indemnified by the seller or lessor
839 against any resulting loss or expense.

840 **SECTION 7-505. INDORSER NOT GUARANTOR FOR**
841 **OTHER PARTIES.** The indorsement of a tangible document of
842 title issued by a bailee does not make the indorser liable for any
843 default by the bailee or previous indorsers.

844 **SECTION 7-506. DELIVERY WITHOUT INDORSE-**
845 **MENT: RIGHT TO COMPEL INDORSEMENT.** The trans-
846 feree of a negotiable tangible document of title has a specifically
847 enforceable right to have its transferor supply any necessary
848 indorsement, but the transfer becomes a negotiation only as of the
849 time the indorsement is supplied.

850 **SECTION 7-507. WARRANTIES ON NEGOTIATION OR**
851 **DELIVERY OF DOCUMENT OF TITLE.** If a person negoti-
852 ates or delivers a document of title for value, otherwise than as a
853 mere intermediary under Section 7-508, unless otherwise agreed,
854 the transferor, in addition to any warranty made in selling or
855 leasing the goods, warrants to its immediate purchaser only that:

856 (1) the document is genuine;

857 (2) the transferor does not have knowledge of any fact that
858 would impair the document's validity or worth; and

859 (3) the negotiation or delivery is rightful and fully effective
860 with respect to the title to the document and the goods it repre-
861 sents.

862 **SECTION 7-508. WARRANTIES OF COLLECTING**
863 **BANK AS TO DOCUMENTS OF TITLE.** A collecting bank or
864 other intermediary known to be entrusted with documents of title
865 on behalf of another or with collection of a draft or other claim
866 against delivery of documents warrants by the delivery of the doc-
867 uments only its own good faith and authority even if the collecting
868 bank or other intermediary has purchased or made advances
869 against the claim or draft to be collected.

870 **SECTION 7-509. ADEQUATE COMPLIANCE WITH**
871 **COMMERCIAL CONTRACT.** Whether a document of title is
872 adequate to fulfill the obligations of a contract for sale, a contract
873 for lease, or the conditions of a letter of credit is determined by
874 Article 2, 2A, or 5.

875

PART 6

876

WAREHOUSE RECEIPTS AND BILLS OF LADING:

877

MISCELLANEOUS PROVISIONS

878

SECTION 7-601. LOST, STOLEN, OR DESTROYED DOCUMENTS OF TITLE.

879

880 (a) If a document of title is lost, stolen, or destroyed, a court
881 may order delivery of the goods or issuance of a substitute docu-
882 ment and the bailee may without liability to any person comply
883 with the order. If the document was negotiable, a court may not
884 order delivery of the goods or issuance of a substitute document
885 without the claimant's posting security unless it finds that any
886 person that may suffer loss as a result of nonsurrender of posses-
887 sion or control of the document is adequately protected against the
888 loss. If the document was nonnegotiable, the court may require
889 security. The court may also order payment of the bailee's reason-
890 able costs and attorney's fees in any action under this subsection.

891

892 (b) A bailee that, without a court order, delivers goods to a
893 person claiming under a missing negotiable document of title is
894 liable to any person injured thereby. If the delivery is not in good
895 faith, the bailee is liable for conversion. Delivery in good faith is
896 not conversion if the claimant posts security with the bailee in an
897 amount at least double the value of the goods at the time of
898 posting to indemnify any person injured by the delivery which
899 files a notice of claim within one year after the delivery.

900

SECTION 7-602. JUDICIAL PROCESS AGAINST GOODS COVERED BY NEGOTIABLE DOCUMENT OF

901

902 **TITLE.** Unless a document of title was originally issued upon
903 delivery of the goods by a person that did not have power to dis-
904 pose of them, a lien does not attach by virtue of any judicial
905 process to goods in the possession of a bailee for which a nego-
906 tiable document of title is outstanding unless possession or control
907 of the document is first surrendered to the bailee or the docu-
908 ment's negotiation is enjoined. The bailee may not be compelled
909 to deliver the goods pursuant to process until possession or con-
910 trol of the document is surrendered to the bailee or to the court.
910 A purchaser of the document for value without notice of the

911 process or injunction takes free of the lien imposed by judicial
912 process.

913 **SECTION 7-603. CONFLICTING CLAIMS; INTER-**
914 **PLEADER.** If more than one person claims title to or possession
915 of the goods, the bailee is excused from delivery until the bailee
916 has a reasonable time to ascertain the validity of the adverse
917 claims or to commence an action for interpleader. The bailee may
918 assert an interpleader either in defending an action for nondelivery
919 of the goods or by original action.

1 SECTION 45. Subsection 8-102(a)(10) of said chapter 106 is
2 hereby amended by striking out the words “Good faith,” for pur-
3 poses of the obligation of good faith in the performance or
4 enforcement of contracts or duties within this Article, means hon-
5 esty in fact and the observance of reasonable commercial stan-
6 dards of fair dealing.” and by substituting in place thereof
7 word:— “[Reserved]”.

1 SECTION 46. Section 8-103 of said chapter 106 is hereby
2 amended by adding at the end of said Section the following new
3 Subsection 8-103(g):—

4 (g) A document of title, as defined in Section 1-201(16), is not
5 a financial asset unless Section 8-102(a)(9)(iii) applies.

1 SECTION 47. Subsection 9-102(a)(5) of chapter 106 of the
2 General Laws is hereby amended by striking out the words
3 “, other than a security interest, ”.

1 SECTION 48. Subsection 9-102(a)(30) of said chapter 106 is
2 hereby amended by striking out “7-201(2)” and by inserting in
3 place thereof “7-201(b)”.

1 SECTION 49. Subsection 9-102(a)(43) of said chapter 106 is
2 hereby amended by striking out the words “Good faith” means
3 honesty in fact and the observance of reasonable commercial stan-
4 dards of fair dealing.” and by inserting in place thereof word
5 “[Reserved]”.

1 SECTION 50. Subsection 9-102(a)(46) of said chapter 106 is
2 hereby amended by inserting, after the word “provided”, the
3 words “or to be provided”.

1 SECTION 51. Subsection 9-102(b) of said chapter 106 is
2 hereby amended by inserting, after the words “‘Contract for sale’.
3 Section 2-106”, the words “‘Control’ (with respect to a document
4 of title). Section 7-106.”

1 SECTION 52. Subsection 9-109(d)(10)(B) of said chapter 106
2 is hereby amended by striking out “9-403” and by substituting in
3 place thereof “9-404.”

1 SECTION 53. Subsection 9-203(b)(3)(D) of said chapter 106 is
2 hereby amended by striking out the words “or letter-of credit
3 rights,” and by substituting in place thereof the words “letter-of
4 credit rights, or electronic documents,”.

1 SECTION 54. Subsection 9-203(b)(3)(D) of said chapter 106 is
2 hereby further amended by striking out the words “or 9-107,” and
3 by substituting in place thereof the words “9-107, or 7-106”.

1 SECTION 55. Subsection 9-207(c) of said chapter 106 is
2 hereby amended by striking out the words “or 9-107,” and by sub-
3 stituting in place thereof the words “9-107, or 7-106”.

1 SECTION 56. Section 9-208 of said chapter 106 is hereby
2 amended by striking out the word “and” at the end of Subsection
3 9-208(b)(4), by striking out the period and substituting in place
4 thereof the word “; and” at the end of Subsection 9-208(b)(5) and
5 by adding at the end of said Section the following the following
6 new Subsection 9-208(b)(6):—

7 (6) a secured party having control of an electronic document
8 shall:

9 (A) give control of the electronic document to the debtor or its
10 designated custodian;

11 (B) if the debtor designates a custodian that is the designated
12 custodian with which the authoritative copy of the electronic doc-
13 ument is maintained for the secured party, communicate to the

14 custodian an authenticated record releasing the designated custo-
15 dian from any further obligation to comply with instructions origi-
16 nated by the secured party and instructing the custodian to comply
17 with instructions originated by the debtor; and

18 (C) take appropriate action to enable the debtor or its desig-
19 nated custodian to make copies of or revisions to the authoritative
20 copy which add or change an identified assignee of the authorita-
21 tive copy without the consent of the secured party.

1 SECTION 57. Subsection 9-209(b) of said chapter 106 is
2 hereby amended by striking out “9-405(a)” and by substituting in
3 place thereof “9-406(a).”

1 SECTION 58. Subsection 9-301(3) of said chapter 106 is
2 hereby amended by inserting, after the words “provided in para-
3 graph (4), while”, the word “tangible”.

1 SECTION 59. Subsection 9-304(b)(1) of said chapter 106 is
2 hereby amended by striking out the words “the debtor” and by
3 substituting in place thereof the words “its customer”.

1 SECTION 60. Section 9-309 of said chapter 106 is hereby
2 amended by striking out the word “and” after the word “there-
3 under;” in Subsection 9-309(12), by striking out the period at the
4 end of Subsection 9-309(13), by substituting in place thereof the
5 word “; and” and by adding at the end of said Section 9-309 the
6 following new Subsection 9-309(14):—

7 (14) a sale by an individual of an account that is a right to pay-
8 ment of winnings in a lottery or other game of chance.

1 SECTION 61. Subsection 9-310(b)(5) of said chapter 106 is
2 hereby amended by inserting, after the words “perfected without
3 filing,” the word “control,”.

1 SECTION 62. Subsection 9-310(b)(8) of said chapter 106 is
2 hereby amended by inserting, after the words “electronic chattel
3 paper,” the words “electronic documents,”.

1 SECTION 63. Subsection 9-312(e) of said chapter 106 is
2 hereby amended by inserting, after the words “taking of posses-
3 sion,” the words “or control”.

1 SECTION 64. Subsection 9-313(a) of said chapter 106 is
2 hereby amended by inserting in the first sentence of said Subsec-
3 tion, after the words “may perfect a security in”, the word “tan-
4 gible”.

1 SECTION 65. Subsection 9-314(a) of said chapter 106 is
2 hereby amended by striking out the words “or electronic chattel
3 paper,” and by substituting in place thereof the words “electronic
4 chattel paper, or electronic documents,”.

1 SECTION 66. Subsection 9-314(a) of said chapter 106 is
2 hereby further amended by striking out the words “or 9-107,” and
3 by substituting in place thereof the words “9-107, or 7-106”.

1 SECTION 67. Subsection 9-314(b) of said chapter 106 is
2 hereby amended by striking out the words “or letter-of-credit
3 rights,” and by substituting in place thereof the words “letter-of-
4 credit rights, or electronic documents,”.

1 SECTION 68. Subsection 9-314(b) of said chapter 106 is
2 hereby further amended by striking out the words “or 9-107,” and
3 by substituting in place thereof the words “9-107, or 7-106”.

1 SECTION 69. Subsection 9-317(b) of said chapter 106 is
2 hereby amended by inserting, after the words “tangible chattel
3 paper,” the word “tangible”.

1 SECTION 70. Subsection 9-317(d) of said chapter 106 is
2 hereby amended by inserting, after the words “electronic chattel
3 paper,” the words “electronic documents,”.

1 SECTION 71. Subsection 9-338(2) of said chapter 106 is
2 hereby amended by striking the words “in the case of chattel
3 paper, documents” and by substituting in place thereof the words
4 “in the case of tangible chattel paper, tangible documents”.

1 SECTION 72. Part 3 of article 9 of said chapter 106 is hereby
2 further amended by inserting, immediately after Section 9-341,
3 the following new Section 9-342: --

4 **SECTION 9-342. BANK'S RIGHT TO REFUSE TO**
5 **ENTER INTO OR DISCLOSE EXISTENCE OF CONTROL**
6 **AGREEMENT.** This article does not require a bank to enter into
7 an agreement of the kind described in Section 9-104(a)(2), even if
8 its customer so requests or directs. A bank that has entered into
9 such an agreement is not required to confirm the existence of the
10 agreement to another person unless requested to do so by its cus-
11 tomer.

1 SECTION 73. Subsection 9-401(a) of said chapter 106 is
2 hereby amended by striking out the words "9-405, 9-406, 9-407
3 and 9-408" and by substituting in place thereof the words "9-406,
4 9-407, 9-408 and 9-409."

1 SECTION 74. Part 4 of article 9 of said chapter 106 is hereby
2 amended by redesignating Sections 9-402, 9-403, 9-404, 9-405,
3 9-406, 9-407 and 9-408 as Sections 9-403, 9-404, 9-405, 9-406,
4 9-407, 9-408 and 9-409 respectively and by inserting, immedi-
5 ately after Section 9-401, the following new Section 9-402:—

6 **SECTION 9-402. SECURED PARTY NOT OBLIGATED**
7 **ON CONTRACT OF DEBTOR OR IN TORT.** The existence
8 of a security interest, agricultural lien, or authority given to a
9 debtor to dispose of or use collateral, without more, does not sub-
10 ject a secured party to liability in contract or tort for the debtor's
11 acts or omissions.

1 SECTION 75. Subsection 9-404(b)(2), so redesignated as Sub-
2 section 9-405(b)(2), of said chapter 106, is hereby amended by
3 striking out "9-405(a)" and by substituting in place thereof
4 "9-406(a)."

1 SECTION 76. Subsection 9-405(d), so redesignated as Subsec-
2 tion 9-406(d), of said chapter 106 is hereby amended by striking
3 out "9-406" and by substituting "9-407."

1 SECTION 77. Subsection 9-405(f), so redesignated as Subsec-
2 tion 9-406(f), of said chapter 106 is hereby amended by striking
3 out “9-406” and by substituting “9-407.”

1 SECTION 78. Subsection 9-601(b) of said chapter 106 is
2 hereby amended by striking out the words “or 9-107,” and by sub-
3 stituting in place thereof the words “9-107, or 7-106”.

1 SECTION 79. Subsection 9-702(b) of said chapter 106 is
2 hereby amended by striking out the word “9-708” and by inserting
3 in place thereof the following word:— “9-709”.

1 SECTION 80. Subsection 9-706(b)(1) of said chapter 106 is
2 hereby amended by striking out “9-402” and by substituting
3 “9-403.”

1 SECTION 81. Section 47 of chapter 152 of the General Laws
2 is hereby amended by striking out “9-405 and 9-407” and by sub-
3 stituting “9-406 and 9-408.”

1 SECTION 82. The following transitional provisions apply to
2 this Act:

3 (a) This Act applies to a document of title that is issued or a
4 bailment that arises on or after the effective date of this Act. This
5 Act does not apply to a document of title that is issued or a bail-
6 ment that arises before the effective date of this Act even if the
7 document of title or bailment would be subject to this Act if the
8 document of title had been issued or bailment had arisen on or
9 after the effective date of this Act.

10 (b) This Act does not apply to a right of action that has accrued
11 before the effective date of this Act.

12 (c) A document of title issued or a bailment that arises before
13 the effective date of this Act and the rights, obligations, and inter-
14 ests flowing from that document or bailment are governed by any
15 statute or other rule amended or repealed by this Act as if amend-
16 ment or repeal had not occurred and may be terminated, com-
17 pleted, consummated, or enforced under that statute or other rule.

18 (d) Section 60 of this Act applies to a sale of an account
19 described in Subsection 9-309(14) of Article 9 of chapter 106 of

20 the General Laws, as amended by Section 60, even if the sale was
21 entered into before this Act takes effect. However, if the relative
22 priorities of conflicting claims to the account were established
23 before this Act takes effect, Article 9 of said chapter 106 as in
24 effect immediately prior to the date this Act takes effect deter-
25 mines priority.

26 (e) The amendments to said chapter 106 contained in
27 Sections 1, 8, 28, 29, 47, 50, 52, 57, 59, 72, 73, 74, 75, 76, 77, 79,
28 80 and 81 of this Act are intended to correct technical errors and,
29 to the extent substantive, are intended to be declarative of existing
30 law.