

HOUSE No. ___

The Commonwealth of Massachusetts

COMMISSION ON UNIFORM STATE LAWS

c/o Stephen Y. Chow, Commissioner

125 Summer Street, 8th Floor

Boston, Massachusetts 02114

November 5, 2012

The Honorable Steven T. James

Clerk of the House of Representatives

State House, Room 145

Boston, Massachusetts 02133

Dear Clerk James:

In accordance with the provisions of Section 33 of Chapter 30 of the General Laws and under the authority granted to it by the provisions of Section 27 of Chapter 6 of the General Laws, the Board of Commissioners on Uniform State Laws herewith respectfully submits the following legislative recommendation for filing and action in the 2013-2014 legislative session.

1. AN ACT MAKING UNIFORM THE LAW REGARDING TRADE SECRETS.

This legislation would adopt the Uniform Trade Secrets Act (UTSA) promulgated by the Uniform Law Commission (the ULC) in 1979 (and revised in 1985) with some modifications recommended by the Boston Bar Association and presented in the previous legislative sessions. The legislation would codify the common law, with proper clarification, on rights and remedies arising from the misappropriation of trade secrets, which may have significant commercial value for a business or other enterprise. Forty-seven States and the District of Columbia have enacted the UTSA.

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

The first set of sections in the proposed legislation revises in three broad ways various provisions of the Uniform Commercial Code (UCC) as appearing in Chapter 106 of the General Laws. First, the proposed legislation revises Article 1 of the UCC, which provides definitions and general provisions; among other things, it limits the application of Article 1 to other articles of the UCC and extends to all parties under those articles except Article 5 (letters of credit) the “good faith” required of merchants under Article 2.

The Article 1 revisions were promulgated by the ULC in 2001. Second, the proposed legislation revises Article 7 of the UCC, which deals with documents of title, such as bills of lading and warehouse receipts. The most important changes relate to allowing for the possibility of documents of title to be in electronic form. The Article 7 revisions were promulgated by the ULC in 2003. Third, the proposed legislation makes certain technical amendments to Article 9 of the UCC. The most substantive changes would provide rules for security interests in electronic documents of title in order to coordinate Article 9 with the Article 7 amendments set forth in the bill.

The second set of sections in the proposed legislation amends Article 9 of the UCC, under amendments promulgated by the ULC in 2010, to, among other things, provide greater guidance as to the name of an individual debtor to be provided on a financing statement, further improve the filing system for filing financing statements, provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity, and make a number of technical changes that respond to issues arising in the marketplace. The second set of sections provides for a uniform effective date for those sections of July 1, 2013, and contain a set of transition rules.

The bill also makes conforming amendments to Articles 2, 2A, 4A, 5 and 8. The legislation relating to Article 1 has already been enacted in 42 States and U.S. Virgin Islands, and the legislation relating to Article 7 has already been enacted in 43 States. The 2010 amendments to Article 9 have already been enacted in 29 States.

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

The proposed legislation makes certain amendments to Articles 3 and 4 of the UCC promulgated by the ULC in 2002. Article 3 deals with negotiable instruments, such as checks and negotiable promissory notes. Article 4 deals with bank deposits and collections. The proposed legislation would clarify existing rules for lost negotiable instruments and how a maker of a negotiable note obtains a discharge on payments when the note has been sold. It also removes various barriers to electronic commerce, protects consumers who have claims or defenses on negotiable promissory notes issued for the purchase of consumer goods, conforms the state law rules on telephonically generated checks to newly issued federal regulations, and updates the provisions of Article 3 dealing with guaranties on negotiable instruments. Ten States have enacted the amendments.

4. AN ACT ADOPTING THE UNIFORM ASSIGNMENT OF RENTS ACT.

This legislation would adopt the Uniform Assignment of Rents Act (UARA) promulgated by the ULC in 2005. The legislation provides basic rules that establish the "security interest" of a creditor in the rent (income) from rental property, the rights of tenants to notice and the effect of notice, and the priority of the security interest against other creditors. The bill removes a number of uncertainties under current law, thereby facilitating the extension of credit secured by interests in real estate rents. Three States have enacted the UARA.

5. AN ACT RELATIVE TO THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT.

This legislation would update and add to Chapter 209B, of the General Laws, which was based on the 1968 Uniform Child Custody Jurisdiction Act, with the 1996 Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), which among other things provides for a rebuttable presumption of

continuing exclusive jurisdiction in the home State. Massachusetts is the last of the fifty States that has not enacted the UCCJEA (also enacted in the District of Columbia and the U.S. Virgin Islands), leaving it in the odd position that children subject to child custody orders from other States would presumptively remain subject to the jurisdiction of the order-issuing court after removal from the State, but those subject to Massachusetts orders would not.

6. AN ACT REVISING THE UNIFORM ARBITRATION ACT FOR COMMERCIAL DISPUTES.

This legislation would adopt the Revised Uniform Arbitration Act (UAA) promulgated by the ULC in 2000 as a replacement for the Uniform Arbitration Act that it previously promulgated in 1955. Massachusetts adopted the prior act in 1960, which appears as Chapter 251 of the General Laws as the Uniform Arbitration Act for Commercial Disputes. The proposed legislation would modernize the existing statute, particularly in light of the Federal Arbitration Act and the rise in use of the arbitration approach. Specialized matters such as arbitration of labor disputes would remain outside the scope of this legislation. Sixteen States and the District of Columbia have adopted the revised UAA.

7. AN ACT MAKING UNIFORM CERTAIN ASPECTS OF MEDIATION.

This legislation would adopt the Uniform Mediation Act (UMA) promulgated by the ULC in 2001. The legislation focuses on communications (notices) and privileges in the mediation process to promote confidence in, and the integrity of, that form of alternative dispute resolution. The bill adopts optional text that specifically requires a mediator to be impartial unless agreed otherwise. The UMA would promote mediation across State lines and has been enacted by ten States and the District of Columbia.

8. AN ACT TO ESTABLISH UNIFORM COLLABORATIVE LAW.

This legislation would standardize the most important features of collaborative law, a form of alternative dispute resolution that is becoming more popular in the states. Collaborative law is now used mainly in family law disputes, but its practice has spread to other areas of the law, including the settlement of contract and insurance disputes. The Act encourages the development and growth of collaborative law as an option for parties that wish to use it. The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. Since its promulgation in 2009, four States and the District of Columbia have enacted the Uniform Collaborative Law Act.

9. AN ACT REVISING THE LAW RECOGNIZING FOREIGN-COURT MONEY JUDGMENTS.

This legislation would update Chapter 253, Section 23A, of the General Laws, which was based on the 1962 version of the Uniform Foreign Money-Judgments Recognition Act, with the 2005 Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA), which adds provision on burden of proof, procedure, and a statute of limitations. The UFCMJRA has been enacted by 18 States and the District of Columbia.

10. AN ACT RELATIVE TO THE UNIFORM UNSWORN FOREIGN DECLARATIONS ACT.

This legislation, prompted by the difficulty of obtaining consular certifications in the security regime post-9/11, would extend to state proceedings the same flexibility that federal courts have employed for since 1976 under 28 U.S.C. § 1746, allowing an unsworn declaration executed outside the U.S. to be recognized and valid as the equivalent of a sworn affidavit if it substantially includes the language

declaring truth under penalty of perjury. The 2008 Uniform Unsworn Foreign Declarations Act has been enacted in 16 States and the District of Columbia.

11. AN ACT RELATIVE TO THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT.

This legislation would add to the General Laws the Uniform Real Property Electronic Recording Act (URPERA) promulgated by the ULC in 2004 to extend to real property recording the benefits of the Uniform Electronic Transactions Act (UETA) promulgated by the ULC in 1999, which was enacted by the General Court in 2003 as Chapter 110G of the General Laws. URPERA does three fairly simple things to facilitate electronic recording of real property. First, it establishes that any requirement for originality, for a paper document or for a writing manually signed before it may be recorded, is satisfied by an electronic document and signature. This is essentially an express extension of the principles of UETA to the specific requirements for recording documents relating to real estate transactions in any state. Second, it establishes what standards a recording office must follow and what it must do to make electronic recording effective. For example, the office must comply with standards set by the board established in a state to set them. It must set up a system for searching and retrieving electronic documents. There are a minimum group of requirements established in URPERA. Third, URPERA establishes the board that sets statewide standards and requires it to set uniform standards that must be implemented in every recording office. URPERA has been enacted by 26 States, the District of Columbia and the U.S. Virgin Islands. This bill adds URPERA as a new chapter 36A following chapter 36 addressed to the registers of deeds, which the General Court may address to the recorders of the Land Court under chapter 185 by adopting bracketed language in the bill.

12. AN ACT RELATIVE TO THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT.

This legislation would enact the Uniform Electronic Legal Material Act (UELMA) promulgated in 2011 by the ULC in response to an increasing number of states publishing statutes and other legal materials in electronic format only in order to conserve financial resources. UELMA does not require publication in electronic format and does not prescribe particular technologies. However, where the relevant official publisher of legal material chooses to publish an official version of the material electronically, that material must be authenticated by providing a method to determine that it is unaltered; preserved, either in electronic or print form; and accessible, for use by the public on a permanent basis. The bill proposes certain materials and official publishers that may be amended upon further study. In the year since its promulgation, two States have already enacted UELMA.

Respectfully,



STEPHEN Y. CHOW,
Uniform Law Commissioner.

HOUSE No.

The Commonwealth of Massachusetts

In the Year Two Thousand and Thirteen

<h3>AN ACT MAKING UNIFORM THE LAW REGARDING TRADE SECRETS.</h3>

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

SECTION 1. Sections 42 and 42A of chapter 93 of the General Laws are hereby repealed.

SECTION 2. The General Laws are hereby amended by inserting after chapter 93J the following chapter:--

CHAPTER 93K

UNIFORM TRADE SECRETS ACT

Section 1. This chapter shall be known and may be cited as the Uniform Trade Secrets Act.

Section 2. As used in this chapter the following words, shall unless the context clearly requires otherwise, have the following meanings:

- (1) "Improper means", includes, without limitation, theft, bribery, misrepresentation, or breach or inducement of a breach of a confidential relationship or other duty to limit acquisition, disclosure or use of information;
- (2) "Misappropriation",

(i) acquisition of a trade secret of another by a person who knows or who has reason to know that the trade secret was acquired by improper means; or

(ii) disclosure or use of a trade secret of another without that person's express or implied consent by a person who

(A) used improper means to acquire knowledge of the trade secret or

(B) at the time of his disclosure or use, knew or had reason to know that his knowledge of the trade secret was

[I] derived from or through a person who had utilized improper means to acquire it;

[II] acquired under circumstances giving rise to a duty to limit its acquisition, disclosure or use; or

[III] derived from or through a person who owed a duty to the person seeking relief to limit its acquisition, disclosure or use; or

(C) before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person", a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret", specified or specifiable information, whether or not fixed in tangible form or embodied in any tangible thing, including but not limited to a formula, pattern, compilation, program, device, method, technique, process, business strategy, or scientific, technical, financial or customer data that

[i] at the time of alleged misappropriation, derived economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, others who might obtain economic value from its acquisition, disclosure or use; and

[ii] at all times has been the subject of efforts that are reasonable under the circumstances to give notice that it should not be and to ensure that it is not acquired, disclosed or used without the consent of the person asserting ownership thereof or such person's predecessor in interest.

Section 3. (a) Actual or threatened misappropriation may be enjoined upon equity principles, including a showing that specific information qualifying as a trade secret has been or is threatened to be misappropriated. No injunction shall issue with respect to a trade secret unless the trade secret is specified with sufficient particularity so as to enable, reasonably under the circumstances, the respondent to prepare a reasonable defense. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Section 4. (a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation of specific information qualifying as a trade secret. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by the imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(b) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).

Section 5. The court may award reasonable attorney's fees to the prevailing party if: (i) a claim of misappropriation is made or defended in bad faith, (ii) a motion to enter or to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists. In considering such an award, the court may take into account the claimant's specification of trade secrets and the proof that such alleged trade secrets were misappropriated.

Section 6. (a) In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

(b) In an action under this chapter, averments of trade secrets and misappropriation thereof shall be stated with particularity.

Section 7. An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

Section 8. (a) Except as provided in subsection (b), this chapter shall supersede any conflicting laws of the Commonwealth providing civil remedies for the misappropriation of a trade secret.

(b) This chapter does not affect:

(1) contractual remedies, provided that, to the extent such remedies are based on or justified by confidentiality of information, such confidentiality shall be determined according to the definition of trade secret in this chapter;

(2) remedies based on submissions to governmental units;

(3) other civil remedies to the extent that they are not based upon misappropriation of a trade secret; or

(4) criminal remedies, whether or not based upon misappropriation of a trade secret.

Section 9. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among States enacting it.

SECTION 3. This Act takes effect on July first, two thousand and fourteen, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the Act also does not apply to the continuing misappropriation that occurs after the effective date.

HOUSE No. __

The Commonwealth of Massachusetts

In the Year Two Thousand and Thirteen

**AN ACT MAKING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE
COVERING GENERAL PROVISIONS, DOCUMENTS OF TITLE AND SECURED
TRANSACTIONS**

Whereas, the deferred operation of this Act beyond July 1, 2013, would tend to defeat its purpose, which is to make certain statutory corrections effective on July 1, 2013, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

FIRST SET OF AMENDMENTS

(UCC ARTICLES 1 AND 7 REVISIONS AND TECHNICAL AMENDMENTS TO UCC

ARTICLE 9)

SECTION 1. Section 28 of chapter 10 of the General Laws is hereby amended by striking out “9-405” and by substituting in place thereof “9-406.”

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

ARTICLE 1 – GENERAL PROVISIONS

PART 1

GENERAL PROVISIONS

SECTION 1-101. SHORT TITLES.

- (a) This chapter may be cited as the Uniform Commercial Code.
- (b) This article may be cited as Uniform Commercial Code – General Provisions.

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

SECTION 1-103. CONSTRUCTION OF THIS CHAPTER TO PROMOTE ITS PURPOSES AND POLICIES; APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW

(a) This chapter must be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) to simplify, clarify, and modernize the law governing commercial transactions;
- (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
- (3) to make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel,

fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

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

SECTION 1-105. SEVERABILITY. If any provision or clause of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

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

- (1) words in the singular number include the plural, and those in the plural include the singular; and
- (2) words of any gender also refer to any other gender.

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

SECTION 1-108. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15. U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

PART 2

**GENERAL DEFINITIONS AND
PRINCIPLES OF INTERPRETATION**

SECTION 1-201. GENERAL DEFINITIONS.

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

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

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

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

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

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

(5) “Bearer” means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, a negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) “Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

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

(8) “Burden of establishing” a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. “Buyer in ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

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

(11) “Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes

(12) “Contract”, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by this chapter as supplemented by any other applicable laws.

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

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

(15) “Delivery”, with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

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

(17) “Fault” means a default, breach, or wrongful act or omission.

(18) “Fungible goods” means:

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

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

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

(20) “Good faith,” except as otherwise provided in Article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) “Holder” means:

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

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

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

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

(23) “Insolvent” means:

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

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

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

(24) “Money” means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

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

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

(27) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

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

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

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

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

(34) “Right” includes remedy.

(35) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2-401, but a buyer may also acquire a “security interest” by complying with Article 9. Except as otherwise provided in Section 2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Section 2-401 is limited in effect to a reservation of a “security interest.” Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to Section 1-203.

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

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

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

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

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

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

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

(41) “Unauthorized signature” means a signature made without actual, implied, or apparent authority.

The term includes a forgery.

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

(43) “Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

SECTION 1-202. NOTICE; KNOWLEDGE.

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

(1) has actual knowledge of it;

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

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

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

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

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

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

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

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

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

SECTION 1-203. LEASE DISTINGUISHED FROM SECURITY INTEREST.

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

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

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

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

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

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

(c) A transaction in the form of a lease does not create a security interest merely because:

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

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

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

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

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

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

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

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

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

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

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

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

(2) as security for, or in total or partial satisfaction of, a preexisting claim;

(3) by accepting delivery under a preexisting contract for purchase; or

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

SECTION 1-205. REASONABLE TIME; SEASONABLENESS.

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

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

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

PART 3

TERRITORIAL APPLICABILITY AND GENERAL RULES

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

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

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

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

SECTION 1-302. VARIATION BY AGREEMENT.

(a) Except as otherwise provided in subsection (b) or elsewhere in this chapter, the effect of provisions of this chapter may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by this chapter may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this chapter requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

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

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

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

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

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

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

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

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

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

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

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

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

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

SECTION 1-305. REMEDIES TO BE LIBERALLY ADMINISTERED.

(a) The remedies provided by this chapter must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this chapter or by other rule of law.

(b) Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

SECTION 1-306. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH. A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record. For purposes of this section, a party may “authenticate” a record by (i) signing a record that is a writing or (ii) attaching to or logically associating with a record that is not a writing an electronic sound, symbol or process with the present intent to adopt or accept the record. See Sections 1-201(b)(37) and 9-102(a)(7).

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

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

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

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

SECTION 1-309. OPTION TO ACCELERATE AT WILL. A term providing that one party or that party’s successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or when the party “deems itself insecure,” or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

SECTION 1-310. SUBORDINATED OBLIGATIONS. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

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

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

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

SECTION 6. Section 202 of said chapter 106 is hereby amended by striking out Subsection 2-202(a) and by substituting in place thereof the following Subsection 2-202(a):--

(a) by course of performance, course of dealing, or usage of trade (Section 1-303); and

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

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

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

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller’s place of business or if none, the seller’s residence; and

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

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

- (3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,
- (a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or
 - (b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 24. Subsection 2A-103(1)(a) of said chapter 106 is hereby amended by striking in the last sentence the word “receiving” and by substituting in place thereof the word “acquiring”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 42. Section 4A-108 of said chapter 106 is hereby amended by striking out Section 4A-108 and by substituting in place thereof the following Section 4A-108:--

SECTION 4A-108: Relationship to Electronic Fund Transfer Act.

(a) Except as provided in subsection (b), this Article shall not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. 1693 et seq.).

(b) This Article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693o-1) as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693a) as amended from time to time.

(c) In a funds transfer to which this Article applies, in the event of an inconsistency between an applicable provision of this Article and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

SECTION 43. Subsection 4A-204(b) of said chapter 106 is hereby amended by striking out “1-204(1)” and by substituting in place thereof “1-302(b)”.

SECTION 44. Subsection 5-103(c) of said chapter 106 is hereby amended by striking out “1-102(3)” and by substituting in place thereof “1-302”.

SECTION 45. Chapter 106 of the General Laws is hereby further amended by striking out article 7, as so appearing, and by substituting in place thereof the following article 7:--

ARTICLE 7—DOCUMENTS OF TITLE

PART 1

GENERAL

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

SECTION 7-102. DEFINITIONS AND INDEX OF DEFINITIONS.

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

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

(2) "Carrier" means a person that issues a bill of lading.

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

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

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

(6) [Reserved]

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

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

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

(10) [Reserved]

(11) "Sign" means, with present intent to authenticate or adopt a record:

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

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

For purposes of this subsection, a person may "authenticate" a record by (i) signing a record that is a writing or (ii) attaching to or logically associating with a record that is not a writing an electronic sound, symbol or process with the present intent to adopt or accept the record. See Sections 1-201(b)(37) and 9-102(a)(7).

(12) "Shipper" means a person that enters into a contract of transportation with a carrier.

(13) "Warehouse" means a person engaged in the business of storing goods for hire.

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

(1) "Contract for sale". Section 2-106.

(2) "Lessee in the ordinary course of business". Section 2A-103.

(3) "Receipt" of goods. Section 2-103.

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

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

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

(b) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronic Transactions Act (chapter 110G, sections 1 through 18) and this article, this article governs.

SECTION 7-104. NEGOTIABLE AND NONNEGOTIABLE DOCUMENT OF TITLE.

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

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

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

SECTION 7-105. REISSUANCE IN ALTERNATIVE MEDIUM.

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

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

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

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

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

(2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

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

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

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

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

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

SECTION 7-106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE.

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

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

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

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

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

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

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

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

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

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

SECTION 7-201. PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT; STORAGE UNDER BOND.

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

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

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

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

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

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

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

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

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

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

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

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

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

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

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

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

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

SECTION 7-204. DUTY OF CARE; CONTRACTUAL LIMITATION OF WAREHOUSE'S LIABILITY.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

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

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

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

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

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

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

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

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

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

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

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

SECTION 7-208. ALTERED WAREHOUSE RECEIPTS. If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

SECTION 7-209. LIEN OF WAREHOUSE.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

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

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

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

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

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

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

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

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

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

SECTION 7-210. ENFORCEMENT OF WAREHOUSE'S LIEN.

(a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefore, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

SECTION 7-301. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION; "SAID TO CONTAIN"; "SHIPPER'S WEIGHT, LOAD, AND COUNT"; IMPROPER HANDLING.

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

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

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

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

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

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

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

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

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

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

(c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

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

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

SECTION 7-303. DIVERSION; RECONSIGNMENT; CHANGE OF INSTRUCTIONS.

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

(1) the holder of a negotiable bill;

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

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

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

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

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

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

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

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

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

(e) The bailee shall deliver in accordance with Part 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

SECTION 7-305. DESTINATION BILLS.

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

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

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

SECTION 7-307. LIEN OF CARRIER.

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

(b) A lien for charges and expenses under subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

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

SECTION 7-308. ENFORCEMENT OF CARRIER'S LIEN.

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

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

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

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

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

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

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

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

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

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

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and

the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

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

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

SECTION 7-401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT OF ISSUER The obligations imposed by this article on an issuer apply to a document of title even if:

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

(2) the issuer violated laws regulating the conduct of its business;

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

or

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

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

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

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

- (1) delivery of the goods to a person whose receipt was rightful as against the claimant;
- (2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;
- (3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;
- (4) the exercise by a seller of its right to stop delivery pursuant to Section 2-705 or by a lessor of its right to stop delivery pursuant to Section 2A-526;
- (5) a diversion, reconsignment, or other disposition pursuant to Section 7-303;
- (6) release, satisfaction, or any other personal defense against the claimant; or
- (7) any other lawful excuse.

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

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

(1) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

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

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

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

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

SECTION 7-501. FORM OF NEGOTIATION AND REQUIREMENTS OF DUE NEGOTIATION.

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

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

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

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

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

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

(b) The following rules apply to a negotiable electronic document of title:

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

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

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

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

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

SECTION 7-502. RIGHTS ACQUIRED BY DUE NEGOTIATION.

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

(1) title to the document;

(2) title to the goods;

(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

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

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

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

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

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

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

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

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

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

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

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

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

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

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the

carrier in accordance with Part 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

**SECTION 7-504. RIGHTS ACQUIRED IN ABSENCE OF DUE NEGOTIATION;
EFFECT OF DIVERSION; STOPPAGE OF DELIVERY.**

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

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

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

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

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

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

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

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

SECTION 7-506. DELIVERY WITHOUT INDORSEMENT: RIGHT TO COMPEL INDORSEMENT. The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

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

- (1) the document is genuine;
- (2) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- (3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

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

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

PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING:

MISCELLANEOUS PROVISIONS

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

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

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

SECTION 7-602. JUDICIAL PROCESS AGAINST GOODS COVERED BY NEGOTIABLE DOCUMENT OF TITLE. Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to

process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

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

SECTION 46. Subsection 8-102(a)(10) of said chapter 106 is hereby amended by striking out the words ““Good faith,” for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.” and by substituting in place thereof word:-- “[Reserved]”.

SECTION 47. Section 8-103 of said chapter 106 is hereby amended by adding at the end of said Section the following new Subsection 8-103(g):--

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

SECTION 48. Subsection 9-102(a)(5) of chapter 106 of the General Laws is hereby amended by striking out the words “, other than a security interest, ”.

SECTION 49. Subsection 9-102(a)(30) of said chapter 106 is hereby amended by striking out “7-201(2)” and by inserting in place thereof “7-201(b)”.

SECTION 50. Subsection 9-102(a)(43) of said chapter 106 is hereby amended by striking out the words ““Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.” and by inserting in place thereof word “[Reserved]”.

SECTION 51. Subsection 9-102(a)(46) of said chapter 106 is hereby amended by inserting, after the word “provided”, the words “or to be provided”.

SECTION 52. Subsection 9-102(b) of said chapter 106 is hereby amended by inserting, after the words “‘Contract for sale’. Section 2-106”, the words “‘Control’ (with respect to a document of title). Section 7-106.”

SECTION 53. Subsection 9-109(d)(10)(B) of said chapter 106 is hereby amended by striking out “9-403” and by substituting in place thereof “9-404.”

SECTION 54. Subsection 9-203(b)(3)(D) of said chapter 106 is hereby amended by striking out the words “or letter-of credit rights,” and by substituting in place thereof the words “letter-of credit rights, or electronic documents,”.

SECTION 55. Subsection 9-203(b)(3)(D) of said chapter 106 is hereby further amended by striking out the words “or 9-107,” and by substituting in place thereof the words “9-107, or 7-106”.

SECTION 56. Subsection 9-207(c) of said chapter 106 is hereby amended by striking out the words “or 9-107,” and by substituting in place thereof the words “9-107, or 7-106”.

SECTION 57. Section 9-208 of said chapter 106 is hereby amended by striking out the word “and” at the end of Subsection 9-208(b)(4), by striking out the period and substituting in place thereof the word “;

and” at the end of Subsection 9-208(b)(5) and by adding at the end of said Section the following the following new Subsection 9-208(b)(6):--

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

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

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

SECTION 58. Subsection 9-209(b) of said chapter 106 is hereby amended by striking out “9-405(a)” and by substituting in place thereof “9-406(a).”

SECTION 59. Subsection 9-301(3) of said chapter 106 is hereby amended by inserting, after the words “provided in paragraph (4), while”, the word “tangible”.

SECTION 60. Subsection 9-304(b)(1) of said chapter 106 is hereby amended by striking out the words “the debtor” and by substituting in place thereof the words “its customer”.

SECTION 61. Section 9-309 of said chapter 106 is hereby amended by striking out the word “and” after the word “thereunder;” in Subsection 9-309(12), by striking out the period at the end of Subsection 9-309(13), by substituting in place thereof the word “; and” and by adding at the end of said Section 9-309 the following new Subsection 9-309(14):--

(14) a sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

SECTION 62. Subsection 9-310(b)(5) of said chapter 106 is hereby amended by inserting, after the words “perfected without filing,”, the word “control,”.

SECTION 63. Subsection 9-310(b)(8) of said chapter 106 is hereby amended by inserting, after the words “electronic chattel paper,”, the words “electronic documents,”.

SECTION 64. Subsection 9-312(e) of said chapter 106 is hereby amended by inserting, after the words “taking of possession,”, the words “or control”.

SECTION 65. Subsection 9-313(a) of said chapter 106 is hereby amended by inserting in the first sentence of said Subsection, after the words “may perfect a security in”, the word “tangible”.

SECTION 66. Subsection 9-314(a) of said chapter 106 is hereby amended by striking out the words “or electronic chattel paper,” and by substituting in place thereof the words “electronic chattel paper, or electronic documents,”.

SECTION 67. Subsection 9-314(a) of said chapter 106 is hereby further amended by striking out the words “or 9-107,” and by substituting in place thereof the words “9-107, or 7-106”.

SECTION 68. Subsection 9-314(b) of said chapter 106 is hereby amended by striking out the words “or letter-of-credit rights” and by substituting in place thereof the words “letter-of-credit rights, or electronic documents”.

SECTION 69. Subsection 9-314(b) of said chapter 106 is hereby further amended by striking out the words “or 9-107,” and by substituting in place thereof the words “9-107, or 7-106”.

SECTION 70. Subsection 9-317(b) of said chapter 106 is hereby amended by inserting, after the words “tangible chattel paper,” the word “tangible”.

SECTION 71. Subsection 9-317(d) of said chapter 106 is hereby amended by inserting, after the words “electronic chattel paper,” the words “electronic documents,”.

SECTION 72. Subsection 9-338(2) of said chapter 106 is hereby amended by striking the words “in the case of chattel paper, documents” and by substituting in place thereof the words “in the case of tangible chattel paper, tangible documents”.

SECTION 73. Part 3 of article 9 of said chapter 106 is hereby further amended by inserting, immediately after Section 9-341, the following new Section 9-342: --

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

SECTION 74. Subsection 9-401(a) of said chapter 106 is hereby amended by striking out the words “9-405, 9-406, 9-407 and 9-408” and by substituting in place thereof the words “9-406, 9-407, 9-408 and 9-409.”

SECTION 75. Part 4 of article 9 of said chapter 106 is hereby amended by redesignating Sections 9-402, 9-403, 9-404, 9-405, 9-406, 9-407 and 9-408 as Sections 9-403, 9-404, 9-405, 9-406, 9-407, 9-408 and 9-409 respectively and by inserting, immediately after Section 9-401, the following new Section 9-402:--

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

SECTION 76. Subsection 9-404(b)(2), so redesignated as Subsection 9-405(b)(2), of said chapter 106, is hereby amended by striking out "9-405(a)" and by substituting in place thereof "9-406(a)."

SECTION 77. Subsection 9-405(d), so redesignated as Subsection 9-406(d), of said chapter 106 is hereby amended by striking out "9-406" and by substituting "9-407."

SECTION 78. Subsection 9-405(f), so redesignated as Subsection 9-406(f), of said chapter 106 is hereby amended by striking out "9-406" and by substituting "9-407."

SECTION 79. Subsection 9-601(b) of said chapter 106 is hereby amended by striking out the words "or 9-107," and by substituting in place thereof the words "9-107, or 7-106".

SECTION 80. Subsection 9-702(b) of said chapter 106 is hereby amended by striking out the word "9-708" and by inserting in place thereof the following word:-- "9-709".

SECTION 81. Subsection 9-706(b)(1) of said chapter 106 is hereby amended by striking out "9-402" and by substituting "9-403."

SECTION 82. Section 47 of chapter 152 of the General Laws is hereby amended by striking out “9-405 and 9-407” and by substituting “9-406 and 9-408.”

SECTION 83. The following transitional provisions apply to the foregoing sections of this Act:

(a) The foregoing sections of this Act apply to a document of title that is issued or a bailment that arises on or after the effective date of the foregoing sections of this Act. The foregoing sections of this Act do not apply to a document of title that is issued or a bailment that arises before the effective date of the foregoing sections of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of the foregoing sections of this Act.

(b) The foregoing sections of this Act do not apply to a right of action that has accrued before the effective date of the foregoing sections of this Act.

(c) A document of title issued or a bailment that arises before the effective date of the foregoing sections of this Act and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by the foregoing sections of this Act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

(d) Section 61 of this Act applies to a sale of an account described in Subsection 9-309(14) of Article 9 of chapter 106 of the General Laws, as amended by Section 61, even if the sale was entered into before the foregoing sections of this Act take effect. However, if the relative priorities of conflicting claims to the account were established before the foregoing sections of this Act take effect, Article 9 of said chapter 106 as in effect immediately prior to the date on which the foregoing sections of this Act take effect determines priority.

(e) The amendments to said chapter 106 contained in Sections 1, 8, 28, 29, 48, 51, 53, 58, 60, 73, 74, 75, 76, 77, 78, 80, 81 and 82 of this Act are intended to correct technical errors and, to the extent substantive, are intended to be declarative of existing law.

SECOND SET OF AMENDMENTS
(2010 AMENDMENTS TO UCC ARTICLE 9)

SECTION 84. Chapter 106 of the General Laws is hereby amended by striking out Subsection 9-102(a)(7)(B) of said chapter 106 and by substituting in place thereof the following Subsection 9-102(a)(7)(B):--

(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

SECTION 85. Subsection 9-102(a)(10) of said chapter 106 is hereby amended by adding the following sentence to the end of said Subsection:--

The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

SECTION 86. Subsection 9-102(a)(50) of said chapter 106 is hereby amended by inserting, after the words "under whose law the organization is", the words "formed or".

SECTION 87. Subsection 9-102(a) of said chapter 106 is hereby amended by redesignating Subsections 9-102(a)(68), 9-102(a)(69), 9-102(a)(70), 9-102(a)(71), 9-102(a)(72), 9-102(a)(73), 9-102(a)(74), 9-102(a)(75), 9-102(a)(76), 9-102(a)(77), 9-102(a)(78), 9-102(a)(79), and 9-102(a)(80) as 9-102(a)(69), 9-102(a)(70), 9-102(a)(71), 9-102(a)(72), 9-102(a)(73), 9-102(a)(74), 9-102(a)(75), 9-102(a)(76), 9-102(a)(77), 9-102(a)(78), 9-102(a)(79), 9-102(a)(80), and 9-102(a)(81) respectively and by inserting immediately after Subsection 9-102(a)(67), the following new Subsection 9-102(a)(68):--

(68) “Public organic record” means a record that is available to the public for inspection and is:

(A) a record consisting of the record initially filed with or issued by a State or the United States to form or organize an organization and any record filed with or issued by the State or the United States which amends or restates the initial record;

(B) an organic record of a business trust consisting of the record initially filed with a State and any record filed with the State which amends or restates the initial record, if a statute of the State governing business trusts requires that the record be filed with the State; or

(C) a record consisting of legislation enacted by the legislature of a State or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the State or the United States which amends or restates the name of the organization.

SECTION 88. Subsection 9-102(a)(70), so redesignated as Subsection 9-102(a)(71), of said chapter 106, is hereby amended by inserting, after the words “means an organization”, the words “formed or”.

SECTION 89. Subsection 9-102(a)(70), so redesignated as Subsection 9-102(a)(71), of said chapter 106, is hereby further amended by striking out the words “and as to which the State or the United States must maintain a public record showing the organization to have been organized” and by substituting in place thereof the words “by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or the United States. The term includes a business trust that is formed or organized under the law of a single State if a statute of the State governing business trusts requires that the business trust’s organic record be filed with the State”.

SECTION 90. Section 9-105 of said chapter 106 is hereby amended by striking out Section 9-105 and by substituting in place thereof the following Section 9-105:--

SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER

(a) **General rule: control of electronic chattel paper.** A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) **Specific facts giving control.** A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the secured party as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

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

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

SECTION 91. Subsection 9-307(f)(2) of said chapter 106 is hereby amended by inserting, after the words “designate its State of location”, the words “, including by designating its main office, home office, or other comparable office”.

SECTION 92. Subsection 9-311(a)(3) of said chapter 106 is hereby amended by striking out, before the words “statute of another jurisdiction”, the words “certificate of title”.

SECTION 93. Subsection 9-311(a)(3) of said chapter 106 is hereby further amended by striking out, after the words “to be indicated on”, the words “the certificate”, and by substituting in place thereof the words “a certificate of title”.

SECTION 94. Section 9-316 of said chapter 106 is hereby amended by striking out the words “Continued Perfection of Security Interest Following” in the caption of said Section and by substituting in place thereof the words “Effect of”.

SECTION 95. Section 9-316 of said chapter 106 is hereby further amended by adding at the end of said Section the following new Subsections 9-316(h) and 9-316(i):--

(h) **Effect on filed financing statement of change in governing law.** The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) **Effect of change in governing law on financing statement filed against original debtor.** If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated

in Section 9-301(1) or 9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

SECTION 96. Subsection 9-317(b) of said chapter 106 is hereby amended by striking out the words “security certificate” and by substituting in place thereof the words “certificated security”.

SECTION 97. Subsection 9-317(d) of said chapter 106 is hereby amended by striking out the words “accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than” and by substituting in place thereof the words “collateral other than tangible chattel paper, tangible documents, goods, instruments, or”.

SECTION 98. Section 9-326 of said chapter 106 is hereby amended by striking out Subsection 9-326(a) and by substituting in place thereof the following Subsection 9-326(a):--

(a) **Subordination of security interest created by new debtor.** Subject to subsection (b), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of Section 9-316(i)(1) or 9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

SECTION 99. Subsection 9-326(b) of said chapter 106 is hereby amended by striking out the words in the first sentence “that are effective solely under Section 9-508” and by substituting in place thereof the words “described in subsection (a)”.

SECTION 100. Subsection 9-405(e), redesignated in Section 75 as Subsection 9-406(e), of said chapter 106 is hereby amended by inserting, after the words “or promissory note”, the words “, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620”.

SECTION 101. Subsection 9-407(b), redesignated in Section 75 as Subsection 9-408(b), of said chapter 106 is hereby amended by inserting, after the words “only if the security interest arises out of a sale of the payment intangible or promissory note”, the words “, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620”.

SECTION 102. Section 9-502 of said chapter 106 is hereby amended by striking out Subsection 9-502(c)(3) and by substituting in place thereof the following Subsection 9-502(c)(3):--

(3) the record satisfies the requirements for a financing statement in this section, but:

(A) the record need not indicate that it is to be filed in the real property records;

and

(B) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom Section 9-503(a)(4) applies; and

SECTION 103. Section 9-503 of said chapter 106 is hereby amended by striking out Subsection 9-503(a) and by substituting in place thereof the following Subsection 9-503(a):--

(a) **Sufficiency of debtor's name.** A financing statement sufficiently provides the name of the debtor:

(1) except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name;

(2) subject to subsection (f), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) if the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor:

(i) if the organic record of the trust specifies a name for the trust, the name specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) in a separate part of the financing statement:

(i) if the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or

(ii) if the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) subject to subsection (g), if the debtor is an individual to whom this State has issued a driver's license or Massachusetts identification card that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver's license or Massachusetts identification card;

(5) if the debtor is an individual to whom paragraph (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) in other cases:

(A) if the debtor has a name, only if the financing statement provides the organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

SECTION 104. Section 9-503 of said chapter 106 is hereby amended further by striking out, in Subsection 9-503(b)(2), the reference to "subsection (a)(4)(B)", and by substituting in place thereof "subsection (a)(6)(B)".

SECTION 105. Section 9-503 of said chapter 106 is hereby amended further by adding at the end of said Section the following new Subsections 9-503(f), 9-503(g), and 9-503(h):--

(f) **Name of decedent.** The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the “name of the decedent” under subsection (a)(2).

(g) **Multiple driver’s licenses.** If this State has issued to an individual more than one driver’s license or Massachusetts identification card of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.

(h) **Definition.** In this section, the “name of the settlor or testator” means:

(1) if the settlor is a registered organization, the name that is stated to be the settlor’s name on the public organic record most recently filed with or issued or enacted by the settlor’s jurisdiction of organization which purports to state, amend, or restate the settlor’s name; or

(2) in other cases, the name of the settlor or testator indicated in the trust’s organic record.

SECTION 106. Section 9-507 of said chapter 106 is hereby amended by striking out Subsection 9-507(c) and by substituting in place thereof the following Subsection 9-507(c):--

(c) **Change in debtor’s name.** If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under Section 9-503(a) so that the financing statement becomes seriously misleading under Section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the financing statement became seriously misleading.

SECTION 107. Subsection 9-515(f) of said chapter 106 is hereby amended by inserting, before the words “financing statement so indicates”, the word “initial”.

SECTION 108. Subsection 9-516(b)(3)(B) of said chapter 106 is hereby amended by striking out the word “correction” and by substituting in place thereof the word “information”.

SECTION 109. Subsection 9-516(b)(3)(C) of said chapter 106 is hereby amended by striking out the words “last name” and by substituting in place thereof the word “surname”.

SECTION 110. Subsection 9-516(b)(5) of said chapter 106 is hereby amended by striking out Subsection 9-516(b)(5) and by substituting in place thereof the following Subsection 9-516(b)(5):--

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor; or

(B) indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

SECTION 111. Section 9-518 of said chapter 106 is hereby amended by striking out said Section 9-518 and by substituting in place thereof the following Section 9-518:--

SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD.

(a) **Statement with respect to record indexed under person’s name.** A person may file in the filing office an information statement with respect to a record indexed there under the person’s name if the person believes that the record is inaccurate or was wrongfully filed.

(b) **Contents of statement under subsection (a).** An information statement under subsection

(a) must:

(1) identify the record to which it relates by:

(A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the information statement relates to a record filed or recorded in a filing office described in Section 9-501(a)(1),

(i) the book and page number of the initial financing statement, in the case of unregistered land governed by chapter 36, or if a book and page number has not yet been assigned to the initial financing statement, the instrument number of the initial financing statement and the date on which the initial financing statement was originally filed, and the document number of the initial financing statement, in the case of registered land governed by chapter 185; and

(ii) the information specified in Section 9-502(b);

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) **Statement by secured party of record.** A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under Section 9-509(d).

(d) **Contents of statement under subsection (c).** An information statement under subsection (c) must:

(1) identify the record to which it relates by:

(A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the information statement relates to a record filed or recorded in a filing office described in Section 9-501(a)(1),

(i) the book and page number of the initial financing statement, in the case of unregistered land governed by chapter 36, or if a book and page number has not yet been assigned to the initial financing statement, the instrument number of the initial financing statement and the date on which the initial financing statement was originally filed, and the document number of the initial financing statement, in the case of registered land governed by chapter 185; and

(ii) the information specified in Section 9-502(b);

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the person that filed the record was not entitled to do so under Section 9-509(d).

(e) **Record not affected by information statement.** The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

SECTION 112. Section 9-521 of said chapter 106 is hereby amended by striking out said Section 9-521 and by substituting in place thereof the following Section 9-521:--

SECTION 9-521. UNIFORM FORM OF WRITTEN FINANCING STATEMENT AND AMENDMENT.

(a) **Initial financing statement form.** A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in Section 9-516(b):



UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME				
OR				
1b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

3. SECURED PARTY'S NAME (or NAME OF ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME				
OR				
3b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and Instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here

9a. ORGANIZATION'S NAME
OR
9b. INDIVIDUAL'S SURNAME
FIRST PERSONAL NAME
ADDITIONAL NAME(S)/INITIAL(S)
SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME				
OR				
10b. INDIVIDUAL'S SURNAME				
INDIVIDUAL'S FIRST PERSONAL NAME				
INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)				
SUFFIX				
10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11. ADDITIONAL SECURED PARTY'S NAME or ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME				
OR				
11b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:
 covers timber to be cut covers as-extracted collateral is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

HOUSE__NO.

(b) **Amendment form.** A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in Section 9-516(b):



UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER	1b. <input type="checkbox"/> This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13
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2. **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. **ASSIGNMENT** (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9 For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. **PARTY INFORMATION CHANGE:**
 Check one of these two boxes: Debtor or Secured Party of record **AND** Check one of these three boxes to:
 CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c ADD name: Complete item 7a or 7b, and item 7c DELETE name: Give record name to be deleted in item 6a or 6b

6. **CURRENT RECORD INFORMATION:** Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME			
OR	6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

7. **CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME			
OR	7b. INDIVIDUAL'S SURNAME	INDIVIDUAL'S FIRST PERSONAL NAME	INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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8. **COLLATERAL CHANGE:** Also check one of these four boxes: ADD collateral DELETE collateral RESTATE covered collateral ASSIGN collateral
 Indicate collateral:

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:** Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment) If this is an Amendment authorized by a DEBTOR, check here and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME			
OR	9b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

10. **OPTIONAL FILER REFERENCE DATA:**

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form	
12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form	
12a. ORGANIZATION'S NAME	
OR	
12b. INDIVIDUAL'S SURNAME	
FIRST PERSONAL NAME	
ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see instructions if name does not fit

13a. ORGANIZATION'S NAME			
OR			
13b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):

<p>15. This FINANCING STATEMENT AMENDMENT:</p> <p><input type="checkbox"/> covers timber to be cut <input type="checkbox"/> covers as-extracted collateral <input type="checkbox"/> is filed as a fixture filing</p> <p>16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):</p>	<p>17. Description of real estate:</p>

18. MISCELLANEOUS:

SECTION 113. Subsection 9-607(b)(2)(A) of said chapter 106 is hereby amended by inserting, after the words “a default has occurred”, the words “with respect to the obligation secured by the mortgage”.

SECTION 114. Subsection 2A-103(3) of said chapter 106 is hereby amended by striking out “9-102(a)(68)” and by substituting in place thereof “9-102(a)(69)”.

SECTION 115. The amendments of said chapter 106 contained in Sections 84 through 114 and this Section 115 shall take effect on July 1, 2013. Said chapter 106 is hereby further amended by adding, following Part 7 of Article 9, the following new Part 8 containing the transition provisions for Sections 84 through 114:

PART 8

TRANSITION PROVISIONS FOR 2010 AMENDMENTS

SECTION 9-801. EFFECTIVE DATE. This Amendatory Act takes effect on July 1, 2013. References in this Part to this “Amendatory Act” are to those sections of the legislative enactment by which this Part is added to Article 9 of chapter 106 effective on July 1, 2013 .

SECTION 9-802. SAVINGS CLAUSE.

(a) **Pre-effective-date transactions or liens.** Except as otherwise provided in this part, this Amendatory Act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this Amendatory Act takes effect.

(b) **Pre-effective-date proceedings.** This Amendatory Act does not affect an action, case, or proceeding commenced before this Amendatory Act takes effect.

SECTION 9-803. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.

(a) **Continuing perfection: perfection requirements satisfied.** A security interest that is a perfected security interest immediately before this Amendatory Act takes effect is a perfected security interest under Article 9 of this chapter as amended by this Amendatory Act if, when this Amendatory Act

takes effect, the applicable requirements for attachment and perfection under Article 9 of this chapter as amended by this Amendatory Act are satisfied without further action.

(b) **Continuing perfection: perfection requirements not satisfied.** Except as otherwise provided in Section 9-805, if, immediately before this Amendatory Act takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under Article 9 of this chapter as amended by this Amendatory Act are not satisfied when this Amendatory Act takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under Article 9 of this chapter as amended by this Amendatory Act are satisfied within one year after this Amendatory Act takes effect.

SECTION 9-804. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. A security interest that is an unperfected security interest immediately before this Amendatory Act takes effect becomes a perfected security interest:

(1) without further action, when this Amendatory Act takes effect if the applicable requirements for perfection under Article 9 of this chapter as amended by this Amendatory Act are satisfied before or at that time; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

SECTION 9-805. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.

(a) **Pre-effective-date filing effective.** The filing of a financing statement before this Amendatory Act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Article 9 of this chapter as amended by this Amendatory Act.

(b) **When pre-effective-date filing becomes ineffective.** This Amendatory Act does not render ineffective an effective financing statement that, before this Amendatory Act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection

as provided in Article 9 of this chapter as it existed before this Amendatory Act took effect. However, except as otherwise provided in subsections (c) and (d) and Section 9-806, the financing statement ceases to be effective:

(1) if the financing statement is filed in this State, at the time the financing statement would have ceased to be effective had this Amendatory Act not taken effect; or

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) **Continuation statement.** The filing of a continuation statement after this Amendatory Act takes effect does not continue the effectiveness of a financing statement filed before this Amendatory Act takes effect. However, upon the timely filing of a continuation statement after this Amendatory Act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Article 9 of this chapter as amended by this Amendatory Act, the effectiveness of a financing statement filed in the same office in that jurisdiction before this Amendatory Act takes effect continues for the period provided by the law of that jurisdiction.

(d) **Application of subsection (b)(2)(B) to transmitting utility financing statement.** Subsection (b)(2)(B) applies to a financing statement that, before this Amendatory Act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Article 9 of this chapter as it existed before this Amendatory Act took effect, only to the extent that Article 9 of this chapter as amended by this Amendatory Act provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) **Application of Part 5.** A financing statement that includes a financing statement filed before this Amendatory Act takes effect and a continuation statement filed after this Amendatory Act takes effect is effective only to the extent that it satisfies the requirements of Part 5 of Article 9 of this chapter

as amended by this Amendatory Act for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of Section 9-503(a)(2) as amended by this Amendatory Act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of Section 9-503(a)(3) as amended by this Amendatory Act.

SECTION 9-806. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT

(a) **Initial financing statement in lieu of continuation statement.** The filing of an initial financing statement in the office specified in Section 9-501 continues the effectiveness of a financing statement filed before this Amendatory Act takes effect if:

- (1) the filing of an initial financing statement in that office would be effective to perfect a security interest under Article 9 of this chapter as amended by this Amendatory Act;
- (2) the pre-effective-date financing statement was filed in an office in another State; and
- (3) the initial financing statement satisfies subsection (c).

(b) **Period of continued effectiveness.** The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

- (1) if the initial financing statement is filed before this Amendatory Act takes effect, for the period provided in Section 9-515 of Article 9 of this chapter before this Amendatory Act took effect with respect to an initial financing statement; and
- (2) if the initial financing statement is filed after this Amendatory Act takes effect, for the period provided in Section 9-515 of Article 9 of this chapter as amended by this Amendatory Act with respect to an initial financing statement.

(c) **Requirements for initial financing statement under subsection (a).** To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of Part 5 of Article 9 of this chapter as amended by this Amendatory Act for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-effective-date financing statement remains effective.

SECTION 9-807. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.

(a) **“Pre-effective-date financing statement”**. In this section, “pre-effective-date financing statement” means a financing statement filed before this Amendatory Act takes effect.

(b) **Applicable law.** After this Amendatory Act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Article 9 of this chapter as amended by this Amendatory Act. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending: general rule.** Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this Amendatory Act takes effect only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in Section 9-501;

(2) an amendment is filed in the office specified in Section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 9-806(c); or

(3) an initial financing statement that provides the information as amended and satisfies Section 9-806(c) is filed in the office specified in Section 9-501.

(d) **Method of amending: continuation.** If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 9-805(c) and (e) or 9-806.

(e) **Method of amending: additional termination rule.** Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this Amending Act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Article 9 as amended by this Amending Act as the office in which to file a financing statement.

SECTION 9-808. PERSON ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. A person may file an initial financing statement or a continuation statement under this part if:

- (1) the secured party of record authorizes the filing; and
- (2) the filing is necessary under this part:

(A) to continue the effectiveness of a financing statement filed before this Amending Act takes effect; or

(B) to perfect or continue the perfection of a security interest.

SECTION 9-809. PRIORITY. This Amending Act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this Amending Act takes effect, Article 9 of this chapter as it existed before Amending Act took effect determines priority.

HOUSE No.

The Commonwealth of Massachusetts

In the Year Two Thousand and Thirteen

<p>AN ACT MAKING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE COVERING PROVISIONS DEALING WITH NEGOTIABLE INSTRUMENTS AND BANK DEPOSITS AND COLLECTIONS</p>

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

SECTION 1. Section 3-103(a) of chapter 106 of the General Laws is hereby amended by inserting the following definitions in alphabetical order and by renumbering all of the definitions in numerical order:--

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

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

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

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

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

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

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

SECTION 2. Section 3-103(b) of said chapter 106 is hereby amended by inserting a reference to a definition for “Account” which appears in “Section 4-104”.

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

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

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

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

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

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

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

- (1) the instrument has the same effect as if the instrument included such a statement;
- (2) the issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement; and
- (3) the extent to which the claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

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

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

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

- (1) the person seeking to enforce the instrument:
 - (A) was entitled to enforce the instrument when loss of possession occurred; or
 - (B) has directly or indirectly acquired ownership of the instrument from a person that was entitled to enforce the instrument when loss of possession occurred;
- (2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and
- (3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3-602. PAYMENT.

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

(b) Subject to subsection (e), a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time

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

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

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

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

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

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

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

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

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

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

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

SECTION 3-605. DISCHARGE OF SECONDARY OBLIGORS.

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

- (1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under this Article.

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

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

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

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

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

(3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not

been extended, treat the time for performance of its obligations as having been extended correspondingly.

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

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

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

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

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

Article 9 or other law, to a debtor or other person secondarily liable; and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

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

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

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

- (1) the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and
- (2) the recourse of the secondary obligor continues as if the release or extension had not been granted.

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

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the

burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

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

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

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

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

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

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

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

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

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

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

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

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

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

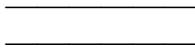
(3) sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.

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

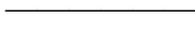
HOUSE No.



The Commonwealth of Massachusetts



In the Year Two Thousand and Thirteen



AN ACT ADOPTING THE UNIFORM ASSIGNMENT OF RENTS ACT

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

SECTION 1. Section 4 of chapter 183 of the General Laws is hereby amended by deleting such section and by substituting therefor the following:-

A conveyance of an estate in fee simple, fee tail or for life, or a lease for more than seven years from the making thereof, or an assignment of rents from an estate or lease, shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it, or an office copy as provided in section thirteen of chapter thirty-six, or, with respect to such a lease or an assignment of rents, a notice of lease, as hereinafter defined, or a document creating an assignment of rents in accordance with chapter one hundred eighty-three D, is recorded in the registry of deeds for the county or district in which the land to which it relates lies. A “notice of lease”, as

used in this section, shall mean an instrument in writing executed by all persons who are parties to the lease of which notice is given and shall contain the following information with reference to such lease:—the date of execution thereof and a description, in the form contained in such lease, of the premises demised, and the term of such lease, with the date of commencement of such term and all rights of extension or renewal.

SECTION 2. Section 26 of chapter 183 of the General Laws is hereby amended by deleting such section and by substituting therefor the following:-

Until default in the performance or observance of the condition of a mortgage of real estate, the mortgagor or his heirs and assigns may hold and enjoy the mortgaged premises, unless otherwise stated in the mortgage, and may receive the rents and profits thereof except as provided in chapter one hundred eighty-three D.

SECTION 3. The General Laws are hereby further amended by adding the following new chapter 183D:-

CHAPTER 183D. UNIFORM ASSIGNMENT OF RENTS ACT

SECTION 1. SHORT TITLE. This chapter may be cited as the Uniform Assignment of Rents Act.

SECTION 2. DEFINITIONS. In this chapter:

- (1) “Assignee” means a person entitled to enforce an assignment of rents.
- (2) “Assignment of rents” means a transfer of an interest in rents in connection with an obligation secured by real property located in this state and from which the rents arise.

(3) “Assignor” means a person that makes an assignment of rents or the successor owner of the real property from which the rents arise.

(4) “Cash proceeds” means proceeds that are money, checks, deposit accounts, or the like.

(5) “Day” means calendar day.

(6) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank, savings bank, savings and loan association, credit union, or trust company.

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

(8) “Notification” means a document containing information that this chapter requires a person to provide to another, signed by the person required to provide the information.

(9) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) “Proceeds” means personal property that is received or collected on account of a tenant’s obligation to pay rents.

(11) “Purchase” means to take by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(12) “Rents” means:

(A) sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(B) sums payable to an assignor under a policy of rental interruption insurance covering real property;

(C) claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(D) sums payable to terminate an agreement to possess or occupy real property of another person;

(E) sums payable to an assignor for payment or reimbursement of expenses incurred in owning, operating and maintaining, or constructing or installing improvements on, real property; or

(F) any other sums payable under an agreement relating to the real property of another person that constitute rents under law of this state other than this chapter.

(13) “Secured obligation” means an obligation the performance of which is secured by an assignment of rents.

(14) “Security instrument” means a document, however denominated, that creates or provides for a security interest in real property, whether or not it also creates or provides for a security interest in personal property.

(15) “Security interest” means an interest in property that arises by agreement and secures performance of an obligation.

(16) “Sign” means, with present intent to authenticate or adopt a document:

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

(B) to attach to or logically associate with the document an electronic sound, symbol, or process.

(17) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(18) “Submit for recording” means to submit a document complying with applicable legal standards, with required fees and taxes, to the appropriate governmental office under chapter 183 of the General Laws.

(19) “Tenant” means a person that has an obligation to pay sums for the right to possess or occupy, or for possessing or occupying, the real property of another person.

SECTION 3. MANNER OF GIVING NOTIFICATION.

(a) Except as otherwise provided in subsections (c) and (d), a person gives a notification or a copy of a notification under this chapter:

(1) by depositing it with the United States Postal Service or with a commercially reasonable delivery service, properly addressed to the intended recipient’s address as specified in subsection (b), with first-class postage or cost of delivery provided for; or

(2) if the recipient agreed to receive notification by facsimile transmission, electronic mail, or other electronic transmission, by sending it to the recipient in the agreed manner at the address specified in the agreement.

(b) The following rules determine the proper address for giving a notification under subsection (a):

(1) A person giving a notification to an assignee shall use the address for notices to the assignee provided in the document creating the assignment of rents, but, if the assignee has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address.

(2) A person giving a notification to an assignor shall use the address for notices to the assignor provided in the document creating the assignment of rents, but, if the assignor has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address.

(3) If a tenant's agreement with an assignor provides an address for notices to the tenant and the person giving notification has received a copy of the agreement or knows the address for notices specified in the agreement, the person giving the notification shall use that address in giving a notification to the tenant. Otherwise, the person shall use the address of the premises covered by the agreement.

(c) If a person giving a notification pursuant to this chapter and the recipient have agreed to the method for giving a notification, any notification must be given by that method.

(d) If a notification is received by the recipient, it is effective even if it was not given in accordance with subsection (a) or (c).

SECTION 4. SECURITY INSTRUMENT CREATES ASSIGNMENT OF RENTS; ASSIGNMENT OF RENTS CREATES SECURITY INTEREST.

(a) An enforceable security instrument creates an assignment of rents arising from the real property described in the security instrument, unless the security instrument provides otherwise.

(b) An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the document creating the assignment, regardless of whether the document is in the form of an absolute assignment, an

absolute assignment conditioned upon default, an assignment as additional security, or any other form. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property.

SECTION 5. RECORDATION; PERFECTION OF SECURITY INTEREST IN RENTS; PRIORITY OF CONFLICTING INTERESTS IN RENTS.

(a) A document creating an assignment of rents may be submitted for recording in the registry of deeds for the county or district in which the land to which the assignment relates in the same manner as any other document evidencing a conveyance of an interest in real property.

(b) Upon recording, the security interest in rents created by an assignment of rents is fully perfected, even if a provision of the document creating the assignment or law of this state other than this chapter would preclude or defer enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property, or the appointment of a receiver.

(c) Except as otherwise provided in subsection (d), a perfected security interest in rents takes priority over the rights of a person that, after the security interest is perfected:

(1) acquires a judicial lien against the rents or the real property from which the rents arise; or

(2) purchases an interest in the rents or the real property from which the rents arise.

(d) A perfected security interest in rents has priority over the rights of a person described in subsection (c) with respect to future advances to the same extent as the assignee's security interest in the real property has priority over the rights of that person with respect to future advances.

SECTION 6. ENFORCEMENT OF SECURITY INTEREST IN RENTS.

(a) An assignee may enforce an assignment of rents using one or more of the methods specified in Sections 7, 8, and 9 or any other method sufficient to enforce the assignment under law of this state other than this chapter.

(b) From the date of enforcement, the assignee or, in the case of enforcement by appointment of a receiver under Section 7, the receiver, is entitled to collect all rents that:

- (1) have accrued but remain unpaid on that date; and
- (2) accrue on or after that date, as those rents accrue.

SECTION 7. ENFORCEMENT BY APPOINTMENT OF RECEIVER.

(a) An assignee is entitled to the appointment of a receiver for the real property subject to the assignment of rents if:

- (1) the assignor is in default and:
 - (A) the assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default;
 - (B) it appears likely that the real property may not be sufficient to satisfy the secured obligation;
 - (C) the assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect; or
 - (D) a subordinate assignee of rents obtains the appointment of a receiver for the real property; or
- (2) other circumstances exist that would justify the appointment of a receiver under law of this state other than this chapter.

(b) An assignee may file a petition for the appointment of a receiver in connection with an action:

- (1) to foreclose the security instrument;
- (2) for specific performance of the assignment;
- (3) seeking a remedy on account of waste or threatened waste of the real property subject to the assignment; or
- (4) otherwise to enforce the secured obligation or the assignee's remedies arising from the assignment.

(c) An assignee that files a petition under subsection (b) shall also give a copy of the petition in the manner specified in Section 3 to any other person that, 10 days before the date the petition is filed, held a recorded assignment of rents arising from the real property.

(d) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the court enters an order appointing a receiver for the real property subject to the assignment.

(e) From the date of its appointment, a receiver is entitled to collect rents as provided in Section 6(b). The receiver also has the authority provided in the order of appointment and law of this state other than this chapter.

(f) The following rules govern priority among receivers:

(1) If more than one assignee qualifies under this section for the appointment of a receiver, a receivership requested by an assignee entitled to priority in rents under this chapter has priority over a receivership requested by a subordinate assignee, even if a court has previously appointed a receiver for the subordinate assignee.

(2) If a subordinate assignee obtains the appointment of a receiver, the receiver may collect the rents and apply the proceeds in the manner specified in the order appointing the receiver until a receiver is appointed under a senior assignment of rents.

SECTION 8. ENFORCEMENT BY NOTIFICATION TO ASSIGNOR.

(a) Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give the assignor a notification demanding that the assignor pay over the proceeds of any rents that the assignee is entitled to collect under Section 6. The assignee shall also give a copy of the notification to any other person that, 10 days before the notification date, held a recorded assignment of rents arising from the real property.

(b) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the assignor receives a notification under subsection (a).

(c) An assignee's failure to give a notification under subsection (a) to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor, but the other person is entitled to any relief permitted under law of this state other than this chapter.

(d) An assignee that holds a security interest in rents solely by virtue of Section 4(a) may not enforce the security interest under this section while the assignor occupies the real property as the assignor's primary residence.

SECTION 9. ENFORCEMENT BY NOTIFICATION TO TENANT.

(a) Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give to a tenant of the real property a notification demanding that the tenant pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue. The assignee shall give a copy of the notification to the assignor and to any other person that, 10 days before the notification date, held a recorded assignment of rents arising from the real property. The notification must be signed by assignee and:

(1) identify the tenant, assignor, assignee, premises covered by the agreement between the tenant and the assignor, and assignment of rents being enforced;

(2) provide the recording data for the document creating the assignment or other reasonable proof that the assignment was made;

(3) state that the assignee has the right to collect rents in accordance with the assignment;

(4) direct the tenant to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue;

(5) describe the manner in which subsections (c) and (d) affect the tenant's payment obligations;

(6) provide the name and telephone number of a contact person and an address to which the tenant can direct payment of rents and any inquiry for additional information about the assignment or the assignee's right to enforce the assignment; and

(7) contain a statement that the tenant may consult a lawyer if the tenant has questions about its rights and obligations.

(b) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the tenant receives a notification substantially complying with subsection (a).

(c) Subject to subsection (d) and any other claim or defense that a tenant has under law of this state other than this chapter, following receipt of a notification substantially complying with subsection (a):

(1) a tenant is obligated to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue, unless the tenant has previously received a notification

from another assignee of rents given by that assignee in accordance with this section and the other assignee has not canceled that notification;

(2) unless the tenant occupies the premises as the tenant's primary residence, a tenant that pays rents to the assignor is not discharged from the obligation to pay rents to the assignee;

(3) a tenant's payment to the assignee of rents then due satisfies the tenant's obligation under the tenant's agreement with the assignor to the extent of the payment made; and

(4) a tenant's obligation to pay rents to the assignee continues until the tenant receives a court order directing the tenant to pay the rent in a different manner or a signed document from the assignee canceling its notification, whichever occurs first.

(d) A tenant that has received a notification under subsection (a) is not in default for nonpayment of rents accruing within 30 days after the date the notification is received before the earlier of:

(1) 10 days after the date the next regularly scheduled rental payment would be due; or

(2) 30 days after the date the tenant receives the notification.

(e) Upon receiving a notification from another creditor that is entitled to priority under Section 5(c) that the other creditor has enforced and is continuing to enforce its interest in rents, an assignee that has given a notification to a tenant under subsection (a) shall immediately give another notification to the tenant canceling the earlier notification.

(f) An assignee's failure to give a notification under subsection (a) to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor and those tenants receiving the notification. However, the person entitled to the notification is entitled to any relief permitted by law of this state other than this chapter.

(g) An assignee that holds a security interest in rents solely by virtue of Section 4(a) may not enforce the security interest under this section while the assignor occupies the real property as the assignor's primary residence.

SECTION 10. NOTIFICATION TO TENANT: FORM. No particular phrasing is required for the notification specified in Section 9. However, the following form of notification, when properly completed, is sufficient to satisfy the requirements of Section 9:

NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD

Tenant: _____
Name of Tenant

Property Occupied by Tenant (the "Premises"): _____
Address

Landlord: _____
Name of landlord

Assignee: _____
Name of assignee

Address of Assignee and Telephone Number of Contact Person:

Address of assignee

Telephone number of person to contact

1. The Assignee named above has become the person entitled to collect your rents on the Premises listed above under _____
(the "Assignment of Rents") dated _____, and recorded at _____
in the _____.
Name of document
Date Recording data
Appropriate governmental office under the recording act of this state

You may obtain additional information about the Assignment of Rents and the Assignee's right to enforce it at the address listed above.

2. The Landlord is in default under the Assignment of Rents. Under the Assignment of Rents, the Assignee is entitled to collect rents from the Premises.

3. This notification affects your rights and obligations under the

agreement under which you occupy the Premises (your “Agreement”). In order to provide you with an opportunity to consult with a lawyer, if your next scheduled rental payment is due within 30 days after you receive this notification, neither the Assignee nor the Landlord can hold you in default under your Agreement for nonpayment of that rental payment until 10 days after the due date of that payment or 30 days following the date you receive this notification, whichever occurs first. You may consult a lawyer at your expense concerning your rights and obligations under your Agreement and the effect of this notification.

4. You must pay to the Assignee at the address listed above all rents under your Agreement which are due and payable on the date you receive this notification and all rents accruing under your Agreement after you receive this notification. If you pay rents to the Assignee after receiving this notification, the payment will satisfy your rental obligation to the extent of that payment.

5. Unless you occupy the Premises as your primary residence, if you pay any rents to the Landlord after receiving this notification, your payment to the Landlord will not discharge your rental obligation, and the Assignee may hold you liable for that rental obligation notwithstanding your payment to the Landlord.

6. If you have previously received a notification from another person that also holds an assignment of the rents due under your Agreement, you should continue paying your rents to the person that sent that notification until that person cancels that notification. Once that notification is canceled, you must begin paying rents to the Assignee in accordance with this notification.

7. Your obligation to pay rents to the Assignee will continue until you

receive either:

- (a) a written order from a court directing you to pay the rent in a manner specified in that order; or
- (b) written instructions from the Assignee canceling this notification.

Name of assignee

By: Officer/authorized agent of assignee

SECTION 11. EFFECT OF ENFORCEMENT. The enforcement of an assignment of rents by one or more of the methods identified in Sections 7, 8, and 9, the application of proceeds by the assignee under Section 12 after enforcement, the payment of expenses under Section 13, or an action under Section 14(d) does not:

- (1) make the assignee a mortgagee in possession of the real property;
- (2) make the assignee an agent of the assignor;
- (3) constitute an election of remedies that precludes a later action to enforce the secured obligation;
- (4) make the secured obligation unenforceable; or
- (5) limit any right available to the assignee with respect to the secured obligation.

SECTION 12. APPLICATION OF PROCEEDS. Unless otherwise agreed, an assignee that collects rents under this chapter or collects upon a judgment in an action under Section 14(d) shall apply the sums collected in the following order to:

- (1) the assignee's reasonable expenses of enforcing its assignment of rents, including, to the extent provided for by agreement and not prohibited by law of this state other than this chapter, reasonable attorney's fees and costs incurred by the assignee;
- (2) reimbursement of any expenses incurred by the assignee to protect or maintain the real property subject to the assignment;
- (3) payment of the secured obligation;

- (4) payment of any obligation secured by a subordinate security interest or other lien on the rents if, before distribution of the proceeds, the assignor and assignee receive a notification from the holder of the interest or lien demanding payment of the proceeds; and
- (5) the assignor.

SECTION 13. APPLICATION OF PROCEEDS TO EXPENSES OF PROTECTING REAL PROPERTY; CLAIMS AND DEFENSES OF TENANT.

(a) Unless otherwise agreed by the assignee, and subject to subsection (c), an assignee that collects rents following enforcement under Section 8 or 9 need not apply them to the payment of expenses of protecting or maintaining the real property subject to the assignment.

(b) Unless a tenant has made an enforceable agreement not to assert claims or defenses, the right of the assignee to collect rents from the tenant is subject to the terms of the agreement between the assignor and tenant and any claim or defense arising from the assignor's nonperformance of that agreement.

(c) This chapter does not limit the standing or right of a tenant to request a court to appoint a receiver for the real property subject to the assignment or to seek other relief on the ground that the assignee's nonpayment of expenses of protecting or maintaining the real property has caused or threatened harm to the tenant's interest in the property. Whether the tenant is entitled to the appointment of a receiver or other relief is governed by law of this state other than this chapter.

SECTION 14. TURNOVER OF RENTS; COMMINGLING AND IDENTIFIABILITY OF RENTS; LIABILITY OF ASSIGNOR.

(a) In this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(b) If an assignor collects rents that the assignee is entitled to collect under this chapter:

- (1) the assignor shall turn over the proceeds to the assignee, less any amount representing payment of expenses authorized by the assignee; and

- (2) the assignee continues to have a security interest in the proceeds so long as they are identifiable.

(c) For purposes of this chapter, cash proceeds are identifiable if they are maintained in a segregated account or, if commingled with other funds, to the extent the assignee can identify them by a method of tracing, including application of equitable principles, that is permitted under law of this state other than this chapter with respect to commingled funds.

(d) In addition to any other remedy available to the assignee under law of this state other than this chapter, if an assignor fails to turn over proceeds to the assignee as required by subsection (b), the assignee may recover from the assignor in a civil action:

(1) the proceeds, or an amount equal to the proceeds, that the assignor was obligated to turn over under subsection (b); and

(2) reasonable attorney's fees and costs incurred by the assignee to the extent provided for by agreement and not prohibited by law of this state other than this chapter.

(e) The assignee may maintain an action under subsection (d) without bringing an action to foreclose any security interest that it may have in the real property. Any sums recovered in the action must be applied in the manner specified in Section 12.

(f) Unless otherwise agreed, if an assignee entitled to priority under Section 5(c) enforces its interest in rents after another creditor holding a subordinate security interest in rents has enforced its interest under Section 8 or 9, the creditor holding the subordinate security interest in rents is not obligated to turn over any proceeds that it collects in good faith before the creditor receives notification that the senior assignee has enforced its interest in rents. The creditor shall turn over to the senior assignee any proceeds that it collects after it receives the notification.

SECTION 15. PERFECTION AND PRIORITY OF ASSIGNEE'S SECURITY INTEREST IN PROCEEDS.

(a) In this section:

(1) "Article 9" means Article 9 of the Uniform Commercial Code as adopted in chapter 106 of the General Laws or, to the extent applicable to any particular issue, Article 9 as adopted by the state whose laws govern that issue under the choice-of-laws rules contained in Article 9 as adopted by this state.

(2) "Conflicting interest" means an interest in proceeds, held by a person other than an assignee, that is:

- (A) a security interest arising under Article 9; or
- (B) any other interest if Article 9 resolves the priority conflict

between that person and a secured party with a conflicting security interest in the proceeds.

(b) An assignee's security interest in identifiable cash proceeds is perfected if its security interest in rents is perfected. An assignee's security interest in identifiable noncash proceeds is perfected only if the assignee perfects that interest in accordance with Article 9.

(c) Except as otherwise provided in subsection (d), priority between an assignee's security interest in identifiable proceeds and a conflicting interest is governed by the priority rules in Article 9.

(d) An assignee's perfected security interest in identifiable cash proceeds is subordinate to a conflicting interest that is perfected by control under Article 9 but has priority over a conflicting interest that is perfected other than by control.

SECTION 16. PRIORITY SUBJECT TO SUBORDINATION. This chapter does not preclude subordination by agreement as to rents or proceeds.

SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

SECTION 19. APPLICATION TO EXISTING RELATIONSHIPS.

(a) Except as otherwise provided in this section, this chapter governs the enforcement of an assignment of rents and the perfection and priority of a security interest in rents, even if the document creating the assignment was signed and delivered before the effective date of this chapter.

(b) This chapter does not affect an action or proceeding commenced before the effective date of this chapter.

(c) Section 4(a) of this chapter does not apply to any security instrument signed and delivered before the effective date of this chapter.

(d) This chapter does not affect:

(1) the enforceability of an assignee's security interest in rents or proceeds if, immediately before the effective date of this chapter, that security interest was enforceable;

(2) the perfection of an assignee's security interest in rents or proceeds if, immediately before the effective date of this chapter, that security interest was perfected; or

(3) the priority of an assignee's security interest in rents or proceeds with respect to the interest of another person if, immediately before the effective date of this chapter, the interest of the other person was enforceable and perfected, and that priority was established.

HOUSE No.

The Commonwealth of Massachusetts

In the Year Two Thousand and Thirteen

**AN ACT RELATIVE TO THE UNIFORM CHILD-CUSTODY
JURISDICTION AND ENFORCEMENT ACT.**

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

SECTION 1. Chapter 209A of the General Laws is hereby amended by striking the existing text and substituting the following:—

Chapter 209A

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This Act may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act.

SECTION 102. DEFINITIONS. In this Act:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual who has not attained 18 years of age.

(3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under article 3.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a State to establish, enforce, or modify a child-custody determination.

(7) "Home State" means the State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the State in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(8) "Initial determination" means the first child-custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child-custody determination for which enforcement is sought under this Act.

(10) "Issuing State" means the State in which a child-custody determination is made.

(11) "Modification" means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" includes government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this Commonwealth.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe, or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a State.

(17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW. This Act does not govern:

- (1) An adoption proceeding; or
- (2) A proceeding pertaining to the authorization of emergency medical care for a child.

SECTION 104. APPLICATION TO INDIAN TRIBES.

- (a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. section 1901 et seq., is not subject to this Act to the extent it is governed by the Indian Child Welfare Act.
- (b) A court of this Commonwealth shall treat a tribe as a State of the United States for purposes of articles 1 and 2.
- (c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this Act must be recognized and enforced under the provisions of article 3.

SECTION 105. INTERNATIONAL APPLICATION OF ACT.

- (a) A court of this Commonwealth shall treat a foreign country as a State of the United States for purposes of applying articles 1 and 2.
- (b) A child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this Act must be recognized and enforced under article 3 of this Act.
- (c) The court need not apply the provisions of this Act when the child custody law of the other country violates fundamental principles of human rights.

SECTION 106. BINDING FORCE OF CHILD-CUSTODY DETERMINATION. A child-custody determination made by a court of this Commonwealth that had jurisdiction under this Act binds all persons who have been served in accordance with the laws of this Commonwealth or notified in accordance with section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. The determination is conclusive as to them as to all decided issues of law and fact except to the extent the determination is modified.

SECTION 107. PRIORITY. If a question of existence or exercise of jurisdiction under this Act is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

SECTION 108. NOTICE TO PERSONS OUTSIDE COMMONWEALTH.

(a) Notice required for the exercise of jurisdiction when a person is outside this Commonwealth may be given in a manner prescribed by the law of this Commonwealth for the service of process or by the law of the State in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice, but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this Commonwealth or by the law of the State in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

SECTION 109. APPEARANCE AND LIMITED IMMUNITY.

(a) A party to a child-custody proceeding who is not subject to personal jurisdiction in this Commonwealth and is a responding party under article 2, a party in a proceeding to modify a child-custody determination under article 2, or a petitioner in a proceeding to enforce or register a child-custody determination under article 3 may appear and participate in the proceeding without submitting to personal jurisdiction over the party for another proceeding or purpose.

(b) A party is not subject to personal jurisdiction in this Commonwealth solely by being physically present for the purpose of participating in a proceeding under this Act. If a party is subject to personal jurisdiction in this Commonwealth on a basis other than physical presence, the party may be served with process in this Commonwealth. If a party present in this Commonwealth is subject to the jurisdiction of another State, service of process allowable under the laws of that State may be accomplished in this Commonwealth.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this Act committed by an individual while present in this Commonwealth.

SECTION 110. COMMUNICATION BETWEEN COURTS.

(a) A court of this Commonwealth may communicate with a court in another State concerning a proceeding arising under this Act.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, the parties shall be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) A communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of that communication.

(d) Except as provided in subsection (c), a record must be made of the communication. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that which is stored in an electronic or other medium and is retrievable in perceivable form. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.

(a) In addition to other procedures available to a party, a party to a child- custody proceeding may offer testimony of witnesses who are located in another State, including testimony of the parties and the child, by deposition or other means allowable in this Commonwealth for testimony taken in another State. The court on its own motion may order that the testimony of a person be taken in another State and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this Commonwealth may permit an individual residing in another State to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that State. A court of this Commonwealth shall cooperate with courts of other States in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another State to a court of this Commonwealth by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.

(a) A court of this Commonwealth may request the appropriate court of another State to:

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence under procedures of that State;

(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) forward to the court of this Commonwealth a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another State, a court of this Commonwealth may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this Commonwealth.

(d) A court of this Commonwealth shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until

the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another State, the court shall forward a certified copy of these records.

ARTICLE 2

JURISDICTION

SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.

(a) Except as otherwise provided in section 204, a court of this Commonwealth has jurisdiction to make an initial child-custody determination only if:

(1) this Commonwealth is the home State of the child on the date of the commencement of the proceeding, or was the home State of the child within six months before the commencement of the proceeding and the child is absent from this Commonwealth but a parent or person acting as a parent continues to live in this Commonwealth;

(2) a court of another State does not have jurisdiction under paragraph (1), or a court of the home State of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum under section 207 or 208, and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent have a significant connection with this Commonwealth other than mere physical presence; and

(B) substantial evidence is available in this Commonwealth concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under section 207 or 208; or

(4) no State would have jurisdiction under paragraph (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child- custody determination by a court of this Commonwealth.

(c) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child-custody determination.

SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.

(a) Except as otherwise provided in section 204, a court of this Commonwealth that has made a child-custody determination consistent with section 201 or 203 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this Commonwealth determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this Commonwealth and that substantial evidence is no longer available in this Commonwealth concerning the child's care, protection, training, and personal relationships; or

(2) a court of this Commonwealth or a court of another State determines that neither the child, nor a parent, nor any person acting as a parent presently resides in this Commonwealth; or

(3) the court finds that a parent or person acting as a parent who resides in this Commonwealth has engaged in a serious incident or pattern of abuse as defined by chapter 208, section 28A against the other parent or person acting as a parent, or against a child who is the subject of the proceeding. If the court so finds, it shall be presumed that this Commonwealth does not have continuing, exclusive jurisdiction over the determination unless the victim or the victim's custodial parent or guardian consents to continuing, exclusive jurisdiction; or

(4) the parties mutually agree in writing that this Commonwealth shall no longer have continuing, exclusive jurisdiction and said agreement has been approved by the court.

(b) A court of this Commonwealth that has exclusive, continuing jurisdiction under this section may decline to exercise its jurisdiction if the court determines that it is an inconvenient forum under section 207.

(c) A court of this Commonwealth that has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 201.

SECTION 203. JURISDICTION TO MODIFY CHILD CUSTODY DETERMINATION.

Except as otherwise provided in section 204, a court of this Commonwealth may not modify a child-custody determination made by a court of another State unless a court of this Commonwealth has jurisdiction to make an initial determination under section 201(a)(1) or (2) and:

(1) the court of the other State determines it no longer has exclusive, continuing jurisdiction under section 202 or that a court of this Commonwealth would be a more convenient forum under section 207;

(2) a court of this Commonwealth or a court of the other State determines that neither the child, nor a parent, nor any person acting as a parent presently resides in the other State; or

(3) the parents or all persons acting as parents have mutually agreed in writing that this Commonwealth shall have the authority to modify a determination and such agreement has been approved by the court.

SECTION 204. TEMPORARY EMERGENCY JURISDICTION.

(a) A court of this Commonwealth has temporary emergency jurisdiction if the child is present in this Commonwealth and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this Act, and if no child-custody proceeding has been commenced in a court of a State having jurisdiction under sections 201 through 203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a State having jurisdiction under sections 201 through 203. If a child-custody proceeding has not been or is not commenced in a court of a State having jurisdiction under sections 201 through 203, a child-custody determination made under this section becomes a final determination, if:

(1) it so provides; and

(2) this Commonwealth becomes the home State of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this Act, or a child-custody proceeding has been commenced in a court of a State having jurisdiction under sections 201 through 203, any order issued by a court of this Commonwealth under this section must specify in the order a period of time which the court considers adequate to allow the person seeking an order to obtain an order from the State having jurisdiction under sections 201 through 203. The order issued in this Commonwealth remains in effect until an order is obtained from the other State within the period specified or the period expires.

(d) A court of this Commonwealth that has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced, or

a child-custody determination has been made, by a court of a State having jurisdiction under sections 201 through 203, shall immediately communicate with the other court. A court of this Commonwealth that is exercising jurisdiction pursuant to sections 201 through 203, upon being informed that a child-custody proceeding has been commenced, or a child-custody determination has been made by a court of another State under a statute similar to this section shall immediately communicate with the court of that State. The purpose of the communication is to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.

(a) Before a child-custody determination is made under this Act, notice and an opportunity to be heard in accordance with the standards of section 108 must be given to all persons entitled to notice under the law of this Commonwealth as in child-custody proceedings between residents of this Commonwealth, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This Act does not govern the enforceability of a child-custody determination made without notice and an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this Act are governed by the law of this Commonwealth as in child-custody proceedings between residents of this Commonwealth.

SECTION 206. SIMULTANEOUS PROCEEDINGS.

(a) Except as otherwise provided in section 204, a court of this Commonwealth may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child had been previously commenced in a court of another State having jurisdiction substantially in conformity with this Act, unless the proceeding has been terminated or is stayed by the court of the other State because a court of this Commonwealth is a more convenient forum under section 207.

(b) Except as otherwise provided in section 204, a court of this Commonwealth, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 209. If the court determines that a child-custody proceeding was previously commenced in a court in another State having jurisdiction substantially in accordance with this Act, the court of this Commonwealth shall stay its proceeding and communicate with the court of the other State. If the court of the State having jurisdiction substantially in accordance with this Act does not determine that the court of this Commonwealth is a more appropriate forum, the court of this Commonwealth shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this Commonwealth shall determine whether a proceeding to enforce the determination has been commenced in another State. If a proceeding to enforce a child-custody determination has been commenced in another State, the court may:

(1) stay the proceeding for modification pending the entry of an order of a court of the other State enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) enjoin the parties from continuing with the proceeding for enforcement; or

(3) proceed with the modification under conditions it considers appropriate.

SECTION 207. INCONVENIENT FORUM.

(a) A court of this Commonwealth that has jurisdiction under this Act to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum. The issue of inconvenient forum may be raised upon the court's own motion, request of another court, or motion of a party.

(b) Before determining whether it is an inconvenient forum, a court of this Commonwealth shall consider whether it is appropriate that a court of another State exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child;

(2) the length of time the child has resided outside this Commonwealth;

(3) the distance between the court in this Commonwealth and the court in the State that would assume jurisdiction;

(4) the relative financial circumstances of the parties and the effect of such circumstance on the ability to litigate in a foreign jurisdiction;

(5) any agreement of the parties as to which State should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;

(7) the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each State with the facts and issues of the pending litigation.

(c) If a court of this Commonwealth determines that it is an inconvenient forum and that a court of another State is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated State and may impose any other condition the court considers just and proper.

(d) A court of this Commonwealth may decline to exercise its jurisdiction under this Act if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.

(a) Except as otherwise provided in section 204 or by other law of this Commonwealth, if a court of this Commonwealth has jurisdiction under this Act because a person invoking the jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the State otherwise having jurisdiction under sections 201 through 203 determines that this Commonwealth is a more appropriate forum under section 207; or

(3) no other State would have jurisdiction under sections 201 through 203.

(b) If a court of this Commonwealth declines to exercise its jurisdiction pursuant to subsection

(a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the wrongful conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under sections 201 through 203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall charge the party invoking the jurisdiction of the court with necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the award would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State except as otherwise provided by law other than this Act.

SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.

(a) Subject to local law providing for the confidentiality of procedures, addresses, and other identifying information, in a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number of the proceeding, and the date of the child-custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon its own motion or that of a party, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court.

The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this Commonwealth or any other State that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be put at risk by the disclosure of identifying information, that information shall be sealed and not disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

SECTION 210. APPEARANCE OF PARTIES AND CHILD.

(a) A court of this Commonwealth may order a party to a child-custody proceeding who is in this Commonwealth to appear before the court personally with or without the child. The court may order any person who is in this Commonwealth and who has physical custody or control of the child to appear physically with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this Commonwealth, the court may order that a notice given pursuant to section 108 include a statement directing the party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this Commonwealth is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

ARTICLE 3

ENFORCEMENT

SECTION 301. DEFINITIONS. In this article:

(1) "Petitioner" means a person who seeks enforcement of a child-custody determination or enforcement of an order for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of a child-custody determination or enforcement of an order for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.

SECTION 302. SCOPE; TEMPORARY VISITATION.

(a) This article may be invoked to enforce:

(1) a child-custody determination; and

(2) an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A court of this Commonwealth which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing

(1) a visitation schedule made by a court of another State; or

(2) the visitation provisions of a child-custody determination of another State that does not provide for a specific visitation schedule.

(c) If a court of this Commonwealth makes an order under subparagraph (b)(2), it shall specify in the order a period of time which it considers adequate to allow the person seeking the order to obtain an order from the State having jurisdiction under article 2. The order remains in effect until an order is obtained from the other State or the period expires.

SECTION 303. DUTY TO ENFORCE.

(a) A court of this Commonwealth shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction that was in substantial conformity with this Act or the determination was made under factual circumstances meeting the jurisdictional standards of this Act and the determination has not been modified in accordance with this Act.

(b) A court may utilize any remedy available under other law of this Commonwealth to enforce a child-custody determination made by a court of another State. The procedure provided by this article does not affect the availability of other remedies to enforce a child-custody determination.

SECTION 304. REGISTRATION OF CHILD-CUSTODY DETERMINATION.

(a) A child-custody determination issued by a court of another State may be registered in this Commonwealth, with or without a simultaneous request for enforcement, by sending to the appropriate court in this Commonwealth:

(1) a letter or other document requesting registration;

(2) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state:

(1) that a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this Commonwealth;

(2) that a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) that failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under article 2;

(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under article 2; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 108 in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter which could have been asserted at the time of registration.

SECTION 305. ENFORCEMENT OF REGISTERED DETERMINATION.

(a) A court of this Commonwealth may grant any relief normally available under the law of this Commonwealth to enforce a registered child-custody determination made by a court of another State.

(b) A court of this Commonwealth shall recognize and enforce, but may not modify except in accordance with article 2, a registered child-custody determination of another State.

SECTION 306. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement under this article has been or is commenced in this Commonwealth and a court of this Commonwealth determines that a proceeding to modify the determination has been commenced in another State having jurisdiction to modify the determination under article 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

SECTION 307. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION.

(a) A petition under this article must be verified. Certified copies of all orders sought to be enforced and of the order confirming registration, if any, must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this Act or federal law and, if so, identify the court, the case number of the proceeding, and the action taken;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known; and

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought.

(c) If the child-custody determination has been registered and confirmed under section 304, the petition must also state the date and place of registration.

(d) The court shall issue an order directing the respondent to appear with or without the child at a hearing and may enter any orders necessary to ensure the safety of the parties and the child.

(e) The hearing must be held on the next judicial day following service of process unless that date is impossible. In that event, the court must hold the hearing on the first day possible. The court may extend the date of hearing at the request of the petitioner.

(f) The order must state the time and place of the hearing and must advise the respondent that at the hearing the court will order the delivery of the child and the payment of fees, costs, and expenses under section 311, and may set an additional hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child-custody determination has not been registered and confirmed under section 304, and that

(A) the issuing court did not have jurisdiction under article 2;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under article 2 or federal law; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of section 108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under section 304, but has been vacated, stayed or modified by a court of a State having jurisdiction to do so under article 2 or federal law.

SECTION 308. SERVICE OF PETITION AND ORDER. Except as otherwise provided in section 310, the petition and order must be served, by any method authorized by the law of this Commonwealth, upon respondent and any person who has physical custody of the child.

SECTION 309. HEARING AND ORDER.

(a) Unless the court enters a temporary emergency order pursuant to section 204, upon a finding that a petitioner is entitled to the physical custody of the child immediately, the court shall order the child delivered to the petitioner unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under section 304, and that

(A) the issuing court did not have jurisdiction under article 2;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a State having jurisdiction to do so under article 2 or federal law; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of section 108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under section 304, but has been vacated, stayed or modified by a court of a State having jurisdiction to do so under article 2 or federal law.

(b) The court shall award the fees, costs, and expenses authorized under section 311 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this article.

SECTION 310. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is likely to suffer serious imminent physical harm or removal from this Commonwealth.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is likely to suffer serious imminent physical harm or be imminently removed from this Commonwealth, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed. The warrant must include the statements required by section 307(b).

(c) A warrant to take physical custody of a child must:

(1) recite the facts upon which a conclusion of serious imminent physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this Commonwealth.

If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by the exigency of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

SECTION 311. COSTS, FEES, AND EXPENSES.

(a) The court shall award the prevailing party, including a State, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses,

attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a State except as otherwise provided by law other than this Act.

SECTION 312. RECOGNITION AND ENFORCEMENT. A court of this Commonwealth shall accord full faith and credit to an order made consistently with this Act which enforces a child-custody determination by a court of another State unless the order has been vacated, stayed, or modified by a court authorized to do so under article 2.

SECTION 313. APPEALS. An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

SECTION 314. ROLE OF PROSECUTOR OR PUBLIC OFFICIAL.

(a) In a case arising under this Act or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under this article or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

- (1) an existing child-custody determination;

(2) a request from a court in a pending child-custody case;

(3) a reasonable belief that a criminal statute has been violated; or

(4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acts on behalf of the court and may not represent any party to a child-custody determination.

SECTION 315. ROLE OF LAW ENFORCEMENT. At the request of a prosecutor or other appropriate public official acting under section 314, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under section 314.

SECTION 316. COSTS AND EXPENSES. If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under section 314 or 315.

ARTICLE 4

MISCELLANEOUS PROVISIONS

SECTION 401. APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 402. SEVERABILITY CLAUSE. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 2. Chapter 208, section 28 of the General Laws is amended by adding at the end thereof:--- “The jurisdiction of any court to modify an existing judgment as to care and custody of a minor child and shall be subject to the provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, chapter 209A.”

SECTION 3. This Act takes effect on July first, two thousand and fourteen. A motion or other request for relief made in a child-custody or enforcement proceeding that was commenced before the effective date of this Act is governed by the law in effect at the time the motion or other request was made.

HOUSE No.

The Commonwealth of Massachusetts

In the Year Two Thousand and Eleven

THE COMMONWEALTH OF MASSACHUSETTS

**AN ACT REVISING THE UNIFORM ARBITRATION ACT
FOR COMMERCIAL DISPUTES.**

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

SECTION 1. Chapter 251 of the General Laws is hereby amended by striking the existing text and substituting the following:—

CHAPTER 251

UNIFORM ARBITRATION ACT

Section 1. In this chapter:

(1) “Arbitration organization” means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) “Arbitrator” means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) “Court” means a court of competent jurisdiction in this Commonwealth.

(4) “Knowledge” means actual knowledge.

(5) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

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

Section 2. (a) Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person’s attention or the notice is delivered at the person’s place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

Section 3. (a) This chapter governs an agreement to arbitrate made on or after the effective date of this chapter.

(b) This chapter governs an agreement to arbitrate made before the effective date of this chapter if all the parties to the agreement or to the arbitration proceeding so agree in a record.

(c) On or after the effective date of this chapter, this chapter governs an agreement to arbitrate whenever made.

Section 4. (a) Except as otherwise provided in subsections (b) and (c), a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) waive or agree to vary the effect of the requirements of section 5(a), 6(a), 8, 17(a), 17(b), 26, or 28;

(2) agree to unreasonably restrict the right under section 9 to notice of the initiation of an arbitration proceeding;

(3) agree to unreasonably restrict the right under section 12 to disclosure of any facts by a neutral arbitrator; or

(4) waive the right under section 16 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or section 3(a) or (c), 7, 14, 18, 20(d) or (e), 22, 23, 24, 25(a) or (b), 29, 30, 31, or 32.

Section 5. (a) Except as otherwise provided in section 28, an application for judicial relief under this chapter must be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this chapter must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

Section 6. (a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

Section 7. (a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) if the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) if the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement, it may not pursuant to subsection (a) or (b) order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in section 27.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

Section 8. (a) Before an arbitrator is appointed and is authorized and able to chapter, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) the arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action and

(2) a party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to chapter timely or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under subsection (a) or (b).

Section 9. (a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under section 15(c) not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

Section 10. (a) Except as otherwise provided in subsection (c), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

Section 11. (a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to chapter and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

Section 12. (a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) a financial or personal interest in the outcome of the arbitration proceeding;

and

(2) an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under section 23(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b), upon timely objection by a party, the court under section 23(a)(2) may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and

substantial relationship with a party is presumed to chapter with evident partiality under section 23(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under section 23(a)(2).

Section 13. If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under section 15(c).

Section 14. (a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this Commonwealth acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by section 12 does not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this Commonwealth acting in a judicial capacity. This subsection does not apply:

(1) to the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) to a hearing on a motion to vacate an award under section 23(a)(1) or (2) if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d), and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney's fees and other reasonable expenses of litigation.

Section 15. (a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) if all interested parties agree; or

(2) upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to chapter during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with section 11 to continue the proceeding and to resolve the controversy.

Section 16. A party to an arbitration proceeding may be represented by a lawyer.

Section 17. (a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(d) If an arbitrator permits discovery under subsection (c), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a non-complying party to the extent a court could if the controversy were the subject of a civil action in this Commonwealth.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this Commonwealth.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this Commonwealth.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this Commonwealth and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another State upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another State must be served in the manner provided by law for service of subpoenas in a civil action in this Commonwealth and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this Commonwealth.

Section 18. If an arbitrator makes a pre-award ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under section 19. A prevailing party may make a motion to the court for an expedited order to confirm the award under section 22, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under section 23 or 24.

Section 19. (a) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

Section 20. (a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) upon a ground stated in section 24(a)(1) or (3);

(2) because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) to clarify the award.

(b) A motion under subsection (a) must be made and notice given to all parties within 20 days after the movant receives notice of the award.

(c) A party to the arbitration proceeding must give notice of any objection to the motion within 10 days after receipt of the notice.

(d) If a motion to the court is pending under section 22, 23, or 24, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) upon a ground stated in sections 4(a)(1) or (3);

(2) because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) to clarify the award.

(e) An award modified or corrected pursuant to this section is subject to sections 19(a), 22, 23, and 24.

Section 21. (a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(c) As to all remedies other than those authorized by subsections (a) and (b), an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section 22 or for vacating an award under section 23.

(d) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a), the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

Section 22. After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court

shall issue a confirming order unless the award is modified or corrected pursuant to section 20 or 24 or is vacated pursuant to section 23.

Section 23. (a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) the award was procured by corruption, fraud, or other undue means;

(2) there was:

(A) evident partiality by an arbitrator appointed as a neutral arbitrator;

(B) corruption by an arbitrator; or

(C) misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) an arbitrator exceeded the arbitrator's powers;

(5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under section 15(c) not later than the beginning of the arbitration hearing; or

(6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section must be filed within 90 days after the movant receives notice of the award pursuant to section 19 or within 90 days after the movant receives notice of a

modified or corrected award pursuant to section 20, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(c) If the court vacates an award on a ground other than that set forth in subsection (a)(5), it may order a rehearing. If the award is vacated on a ground stated in subsection (a)(1) or (2), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subsection (a)(3), (4), or (6), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in section 19(b) for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

Section 24. (a) Upon motion made within 90 days after the movant receives notice of the award pursuant to section 19 or within 90 days after the movant receives notice of a modified or corrected award pursuant to section 20, the court shall modify or correct the award if:

(1) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

Section 25. (a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On application of a prevailing party to a contested judicial proceeding under section 22, 23, or 24, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

Section 26. (a) A court of this Commonwealth having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this Commonwealth confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

Section 27. A motion pursuant to section 5 must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be

made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this Commonwealth, in the court of any county in this Commonwealth. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

Section 28. (a) An appeal may be taken from:

- (1) an order denying a motion to compel arbitration;
- (2) an order granting a motion to stay arbitration;
- (3) an order confirming or denying confirmation of an award;
- (4) an order modifying or correcting an award;
- (5) an order vacating an award without directing a rehearing; or
- (6) a final judgment entered pursuant to this chapter.

(b) An appeal under this section must be taken as from an order or a judgment in a civil action.

Section 29. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

Section 30. The provisions of this chapter governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act.

SECTION 2. This Act takes effect on July first, two thousand and fourteen. This Act does not affect an action or proceeding commenced or right accrued before this Act takes effect. Subject to section 3 of this Act, an arbitration agreement made before the effective date of this chapter is governed by the Uniform Arbitration Act for Commercial Disputes.

HOUSE No.

The Commonwealth of Massachusetts

In the Year Two Thousand and Thirteen

**AN ACT MAKING UNIFORM CERTAIN ASPECTS OF
MEDIATION.**

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

SECTION 1. The General Laws are hereby amended by inserting after chapter 251 the following chapter:--

CHAPTER 251A

UNIFORM MEDIATION ACT

Section 1. This chapter may be cited as the UNIFORM MEDIATION ACT.

Section 2. In this chapter:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(3) “Mediator” means an individual who conducts a mediation.

(4) “Nonparty participant” means a person, other than a party or mediator, that participates in a mediation.

(5) “Mediation party” means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(6) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(7) “Proceeding” means:

(A) a judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or

(B) a legislative hearing or similar process.

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

(9) “Sign” means:

(A) to execute or adopt a tangible symbol with the present intent to authenticate a record; or

(B) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

Section 3. (a) Except as otherwise provided in subsection (b) or (c), this chapter applies to a mediation in which:

(1) the mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;

(2) the mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

(3) the mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.

(b) The chapter does not apply to a mediation:

(1) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;

(2) relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;

(3) conducted by a judge who might make a ruling on the case; or

(4) conducted under the auspices of:

(A) a primary or secondary school if all the parties are students or

(B) a correctional institution for youths if all the parties are residents of that institution.

(C) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under sections 4 through 6 do not apply to the mediation

or part agreed upon. However, sections 4 through 6 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

Section 4. (a) Except as otherwise provided in section 6, a mediation communication is privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 5.

(b) In a proceeding, the following privileges apply:

(1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(2) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

(3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

Section 5. (a) A privilege under section 4 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(1) in the case of the privilege of a mediator, it is expressly waived by the mediator;

and

(2) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under section 4, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 4.

Section 6. (a) There is no privilege under section 4 for a mediation communication that is:

- (1) in an agreement evidenced by a record signed by all parties to the agreement;
- (2) available to the public under chapter 66 or made during a session of a mediation which is open, or is required by law to be open, to the public;
- (3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- (4) intentionally used to plan a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;
- (5) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;
- (6) except as otherwise provided in subsection (c), sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(7) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the case is referred by a court to mediation and a public agency participates.

(b) There is no privilege under section 4 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

(1) a court proceeding involving a felony or misdemeanor; or

(2) except as otherwise provided in subsection (c), a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (a)(6) or (b)(2).

(d) If a mediation communication is not privileged under subsection (a) or (b), only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

Section 7. (a) Except as required in subsection (b), a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(b) A mediator may disclose:

(1) whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(2) a mediation communication as permitted under section 6; or

(3) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) may not be considered by a court, administrative agency, or arbitrator.

Section 8. Unless subject to the requirements of chapters 30A, 34, 39, and 40 regarding open meetings and chapter 66 regarding public records, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this Commonwealth.

Section 9. (a) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(1) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(2) disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(b) If a mediator learns any fact described in subsection (a)(1) after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(c) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(d) A person that violates subsection (a), (b), or (g) is precluded by the violation from asserting a privilege under section 4.

(e) Subsections (a), (b), (c), and (g) do not apply to an individual acting as a judge.

(f) This chapter does not require that a mediator have a special qualification by background or profession.

(g) A mediator must be impartial, unless after disclosure of the facts required in subsections (a) and (b) to be disclosed, the parties agree otherwise.

Section 10. An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.

Section 11. This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but this chapter does not modify, limit, or supersede section 101(c) of that Act or authorize electronic delivery of any of the notices described in section 103(b) of that Act.

Section 12. In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 2. This Act takes effect on July first, two thousand and fourteen. This chapter governs a mediation pursuant to a referral or an agreement to mediate made on or after the effective date of this chapter. On or after one year from the effective date of this chapter, this chapter governs an agreement to mediate whenever made

HOUSE No.

The Commonwealth of Massachusetts

In the Year Two Thousand and Thirteen

**AN ACT ESTABLISHING UNIFORM COLLABORATIVE
LAW**

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

SECTION 1. The General Laws are hereby amended by inserting after chapter 251 the following chapter:--

CHAPTER 251B

UNIFORM COLLABORATIVE LAW ACT

Section 1. This chapter may be cited as the Uniform Collaborative Law Act.

Section 2. In this chapter:

(1) "Collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that:

(A) is made to conduct, participate in, continue, or reconvene a collaborative law process;

and

(B) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(2) “Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.

(3) “Collaborative law process” means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:

(A) sign a collaborative law participation agreement; and

(B) are represented by collaborative lawyers.

(4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law process.

(5) “Collaborative matter” means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is described in a collaborative law participation agreement.

(6) “Law firm” means:

(A) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

(B) lawyers employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(7) “Nonparty participant” means a person, other than a party and the party’s collaborative lawyer, that participates in a collaborative law process.

(8) “Party” means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) “Proceeding” means:

(A) a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery; or

(B) a legislative hearing or similar process.

(11) “Prospective party” means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

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

(13) “Related to a collaborative matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

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

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

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(15) “Tribunal” means:

(A) a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party’s interests in a matter; or

(B) a legislative body conducting a hearing or similar process.

Section 3. This chapter applies to a collaborative law participation agreement that meets the requirements of section 4 signed on or after the effective date of this chapter.

Section 4. (a) A collaborative law participation agreement must:

- (1) be in a record;
- (2) be signed by the parties;
- (3) state the parties' intention to resolve a collaborative matter through a collaborative law process under this chapter;
- (4) describe the nature and scope of the matter;
- (5) identify the collaborative lawyer who represents each party in the process; and
- (6) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.

(b) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this chapter.

Section 5. (a) A collaborative law process begins when the parties sign a collaborative law participation agreement.

(b) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

(c) A collaborative law process is concluded by a:

- (1) resolution of a collaborative matter as evidenced by a signed record;
- (2) resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or
- (3) termination of the process.

(d) A collaborative law process terminates:

(1) when a party gives notice to other parties in a record that the process is ended;

(2) when a party:

(A) begins a proceeding related to a collaborative matter without the agreement of all parties; or

(B) in a pending proceeding related to the matter:

(i) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(ii) requests that the proceeding be put on the tribunal's active calendar; or

(iii) takes similar action requiring notice to be sent to the parties; or

(3) except as otherwise provided by subsection (g), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(e) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.

(f) A party may terminate a collaborative law process with or without cause.

(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (e) is sent to the parties:

(1) the unrepresented party engages a successor collaborative lawyer; and

(2) in a signed record:

(A) the parties consent to continue the process by reaffirming the collaborative law participation agreement;

(B) the agreement is amended to identify the successor collaborative lawyer; and

(C) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(h) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(i) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

Section 6. (a) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to subsection (c) and sections 7 and 8, the filing operates as an application for a stay of the proceeding.

(b) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (a) is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(c) A tribunal in which a proceeding is stayed under subsection (a) may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.

(d) A tribunal may not consider a communication made in violation of subsection (c).

(e) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

Section 7. During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or family or household member.

Section 8. A tribunal may approve an agreement resulting from a collaborative law process.

Section 9. (a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) and sections 10 and 11, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).

(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(1) to ask a tribunal to approve an agreement resulting from the collaborative law process; or

(2) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, or family or household member if a successor lawyer is not immediately available to represent that person.

(d) If subsection (c)(2) applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or family or household member only

until the person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

Section 10. (a) The disqualification of section 9(a) applies to a collaborative lawyer representing a party with or without fee.

(b) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under section 9(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if:

(1) the party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;

(2) the collaborative law participation agreement so provides; and

(3) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.

Section 11. (a) The disqualification of section 9(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:

(1) the collaborative law participation agreement so provides; and

(2) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.

Section 12. Except as provided by law other than this [act], during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.

Section 13. This chapter does not affect:

- (1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or
- (2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this Commonwealth.

Section 14. Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

- (1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;
- (2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and
- (3) advise the prospective party that:
 - (A) after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

(B) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

(C) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by section 9(c), 10(b), or 11(b).

Section 15. (a) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(b) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(c) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

(1) the party or the prospective party requests beginning or continuing a process; and

(2) the collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.

Section 16. A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of this Commonwealth other than this chapter.

Section 17. (a) Subject to sections 18 and 19, a collaborative law communication is privileged under subsection (b), is not subject to discovery, and is not admissible in evidence.

(b) In a proceeding, the following privileges apply:

(1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.

(2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

Section 18. (a) A privilege under section 17 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(b) A person that makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding may not assert a privilege under section 17, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

Section 19. (a) There is no privilege under section 17 for a collaborative law communication that is:

(1) available to the public under chapter 4, section 7 and chapter 66, section 10, or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;

(2) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(3) intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or

(4) in an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(b) The privileges under section 17 for a collaborative law communication do not apply to the extent that a communication is:

(1) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or

(2) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the [child protective services agency or adult protective services agency] is a party to or otherwise participates in the process.

(c) There is no privilege under section 17 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

(1) a court proceeding involving a felony or misdemeanor; or

(2) a proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(d) If a collaborative law communication is subject to an exception under subsection (b) or (c), only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c) does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privileges under section 17 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.

Section 20. (a) If an agreement fails to meet the requirements of section 4, or a lawyer fails to comply with section 14 or 15, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:

(1) signed a record indicating an intention to enter into a collaborative law participation agreement; and

(2) reasonably believed they were participating in a collaborative law process.

(b) If a tribunal makes the findings specified in subsection (a), and the interests of justice require, the tribunal may:

(1) enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(2) apply the disqualification provisions of sections 5, 6, 9, 10, and 11; and

(3) apply a privilege under section 17.

Section 21. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

Section 22. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. section 7003(b).

SECTION 2. This Act takes effect on July first, two thousand and fourteen.

HOUSE No.

The Commonwealth of Massachusetts

In the Year Two Thousand and Thirteen

**AN ACT REVISING THE LAW RECOGNIZING FOREIGN
COURT MONEY JUDGMENTS.**

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

SECTION 1. Section 23A of chapter 235 of the General Laws is hereby repealed.

SECTION 2. The General Laws are hereby amended by in chapter 235 in place of section 23A the following sections:--

SECTION 23A. SHORT TITLE. Sections 23A through 23K of this chapter may be cited as the Uniform Foreign-Country Money Judgments Recognition Act.

SECTION 23B. DEFINITIONS. In this Act:

(1) “Foreign country” means a government other than:

(A) the United States;

(B) a state, district, commonwealth, territory, or insular possession of the

United States; or

(C) any other government with regard to which the decision in this Commonwealth as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) "Foreign-country judgment" means a judgment of a court of a foreign country.

SECTION 23C. APPLICABILITY.

(a) Except as otherwise provided in subsection (b), this Act applies to a foreign-country judgment to the extent that the judgment:

(1) grants or denies recovery of a sum of money; and

(2) under the law of the foreign country where rendered, is final,

conclusive, and enforceable.

(b) This Act does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) a judgment for taxes;

(2) a fine or other penalty; or

(3) a judgment for divorce, support, or maintenance, or other judgment

rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this Act applies to the foreign-country judgment.

SECTION 23D. STANDARDS FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.

(a) Except as otherwise provided in subsections (b) and (c), a court of this Commonwealth shall recognize a foreign-country judgment to which this Act applies.

(b) A court of this Commonwealth may not recognize a foreign-country judgment if:

(1) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant;
or

(3) the foreign court did not have jurisdiction over the subject matter.

(c) A court of this Commonwealth need not recognize a foreign-country judgment if:

(1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case

(3) the judgment or the cause of action on which the judgment is based is repugnant to the public policy of this Commonwealth or of the United States;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(7) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(8) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) or (c) exists.

SECTION 23E. PERSONAL JURISDICTION.

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(1) the defendant was served with process personally in the foreign country;

(2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) the defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) the defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

(b) The list of bases for personal jurisdiction in subsection (a) is not exclusive. The courts of this Commonwealth may recognize bases of personal jurisdiction other than those listed in subsection(a) as sufficient to support a foreign-country judgment.

SECTION 23F. PROCEDURE FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

SECTION 23G. EFFECT OF RECOGNITION OF FOREIGN-COUNTRY JUDGMENT. If the court in a proceeding under section 23F finds that the foreign-country judgment is entitled to recognition under this Act then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) conclusive between the parties to the same extent as the judgment of a sister State entitled to full faith and credit in this Commonwealth would be conclusive; and

(2) enforceable in the same manner and to the same extent as a judgment rendered in this Commonwealth.

SECTION 23H. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN-COUNTRY JUDGMENT. If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

SECTION 23I. STATUTE OF LIMITATIONS. An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country.

SECTION 23J. UNIFORMITY OF INTERPRETATION. In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 23K. SAVING CLAUSE. This Act does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this Act.

SECTION 3. This Act takes effect on July first, two thousand and fourteen, and applies to all actions commenced on or after the effective date of this Act in which the issue of recognition of a foreign-country judgment is raised.

HOUSE No.

The Commonwealth of Massachusetts

In the Year Two Thousand and Thirteen

**AN ACT RELATIVE TO THE UNIFORM UNSWORN
FOREIGN DECLARATIONS ACT.**

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

SECTION 1. The General Laws are hereby amended by inserting after section 19 of chapter 233 the following sections 19A through 19H:--

SECTION 19A. SHORT TITLE. Sections 19A through 19H may be cited as the Uniform Unsworn Foreign Declarations Act.

SECTION 19B. DEFINITIONS. In this Act:

(1) “Boundaries of the United States” means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) “Law” includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

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

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

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

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(5) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) “Sworn declaration” means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) “Unsworn declaration” means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

SECTION 19C. APPLICABILITY. This Act applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This Act does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

SECTION 19D. VALIDITY OF UNSWORN DECLARATION. (a) Except as otherwise provided in subsection (b), if a law of this Commonwealth requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this Act has the same effect as a sworn declaration.

(b) This Act does not apply to:

- (1) a deposition;
- (2) an oath of office;
- (3) an oath required to be given before a specified official other than a notary

public;

- (4) a declaration to be recorded pursuant to chapter 183; or
- (5) an oath required by section 2-504 of chapter 190B.

SECTION 19E. REQUIRED MEDIUM. If a law of this Commonwealth requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

SECTION 19F. FORM OF UNSWORN DECLARATION. An unsworn declaration under this Act must be in substantially the following form:

I declare under penalty of perjury under the law of Commonwealth of Massachusetts that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the ____ day of _____, _____, at _____,
(date) (month) (year) (city or other location, and state)

(country)

(printed name)

(signature)

SECTION 19G. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform Act, consideration must be given to the need to promote

uniformity of the law with respect to its subject matter among states that enact it.

SECTION 19H. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND

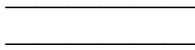
NATIONAL COMMERCE ACT. This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. section 7003(b).

SECTION 2. This Act takes effect on July first, two thousand and fourteen.

HOUSE NO.



The Commonwealth of Massachusetts



In the Year Two Thousand and Thirteen



**AN ACT RELATIVE TO THE UNIFORM REAL
PROPERTY ELECTRONIC RECORDING ACT.**

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

SECTION 1. The General Laws are hereby amended by inserting after chapter 36 the following chapter:--

CHAPTER 36A

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

SECTION 1. SHORT TITLE. This chapter may be cited as the Uniform Real Property Electronic Recording Act.

SECTION 2. DEFINITIONS. In this chapter:

(1) “Document” means information that is:

(A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(B) eligible to be recorded in the land records maintained by the registers of deeds under chapter 36[and the recorder under chapter 185, collectively referred to herein as the “register”].

(2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) “Electronic document” means a document that is received by the recorder in an electronic form.

(4) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. VALIDITY OF ELECTRONIC DOCUMENTS.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this chapter.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

SECTION 4. RECORDING OF DOCUMENTS.

(a) In this section, “paper document” means a document that is received by the register in a form that is not electronic.

(b) A register:

(1) who implements any of the functions listed in this section shall do so in compliance with standards established by the Secretary of the Commonwealth.

(2) may receive, index, store, archive, and transmit electronic documents.

(3) may provide for access to, and for search and retrieval of, documents and information by electronic means.

(4) who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.

(5) may convert paper documents accepted for recording into electronic form.

(6) may convert into electronic form information recorded before the register began to record electronic documents.

(7) may accept electronically any fee that the register is authorized to collect.

(8) may agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

SECTION 5. ADMINISTRATION AND STANDARDS.

(a) The Secretary of the Commonwealth, in consultation with the persons identified in section 17 of chapter 110G, shall adopt standards to implement this Act.

(b) To keep the standards and practices of registers in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this Act and to keep the technology used by registers in this Commonwealth compatible with technology used by recording offices in other jurisdictions that enact substantially this Act, the Secretary of the Commonwealth, so far as is consistent with the purposes, policies, and provisions of this act, in adopting, amending, and repealing standards shall consider:

- (1) standards and practices of other jurisdictions;
- (2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;
- (3) the views of interested persons and governmental officials and entities;
- (4) the needs of counties and districts of varying size, population, and resources; and
- (5) standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

SECTION 6. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 7. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. section 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. section 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that Act (15 U.S.C. section 7003(b)).

SECTION 2. This Act takes effect on July first, two thousand and fourteen.

HOUSE No.

The Commonwealth of Massachusetts

In the Year Two Thousand and Thirteen

**AN ACT RELATIVE TO THE UNIFORM ELECTRONIC
LEGAL MATERIAL ACT.**

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

SECTION 1. The General Laws are hereby amended by inserting after chapter 4:--

CHAPTER 5

UNIFORM ELECTRONIC LEGAL MATERIAL ACT

SECTION 1. SHORT TITLE. This chapter may be cited as the Uniform Electronic Legal Material Act.

SECTION 2. DEFINITIONS. In this chapter:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Legal material" means, whether or not in effect:

(A) the Constitution of the Commonwealth of Massachusetts

(B) the Session Laws;

(C) the General Laws;

(D) a state agency rule or decision that has or had the effect of law;

(E) other material published in the Massachusetts Register or the Code of Massachusetts Regulations; or

(F) the reported decisions and rules of the following state courts: the Supreme Judicial Court, the Appeals Court and the Trial Court.

(3) “Official publisher” means:

(A) for the material recited in subsections (2)(A)-(C), the Secretary of the Commonwealth;

(B) for the material recited in subsection (2)(D) that is not published in the Massachusetts Register or the Code of Massachusetts Regulation, the state agency;

(C) for the material recited in subsection (2)(E), the Secretary of the Commonwealth; or

(E) for the material recited in subsection (2)(F), the Supreme Judicial Court.

(4) “Publish” means to display, present, or release to the public, or cause to be displayed, presented, or released to the public, by the official publisher.

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

(6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. APPLICABILITY. This chapter applies to all legal material in an electronic record that is designated as official under section 4 and first published electronically on or after

the effective date of this Act.

SECTION 4. LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

(a) If an official publisher publishes legal material only in an electronic record, the publisher shall:

- (1) designate the electronic record as official; and
- (2) comply with sections 5, 7, and 8.

(b) An official publisher that publishes legal material in an electronic record and also publishes the material in a record other than an electronic record may designate the electronic record as official if the publisher complies with sections 5, 7, and 8.

SECTION 5. AUTHENTICATION OF OFFICIAL ELECTRONIC RECORD. An official publisher of legal material in an electronic record that is designated as official under section 4 shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.

SECTION 6. EFFECT OF AUTHENTICATION.

(a) Legal material in an electronic record that is authenticated under section 5 is presumed to be an accurate copy of the legal material.

(b) If another State has adopted a law substantially similar to this Act, legal material in an electronic record that is designated as official and authenticated by the official publisher in that State is presumed to be an accurate copy of the legal material.

(c) A party contesting the authentication of legal material in an electronic record authenticated under section 5 has the burden of proving by a preponderance of the evidence that the record is not authentic.

SECTION 7. PRESERVATION AND SECURITY OF LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

(a) An official publisher of legal material in an electronic record that is or was designated as official under section 4 shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(b) If legal material is preserved under subsection (a) in an electronic record, the official publisher shall:

- (1) ensure the integrity of the record;
- (2) provide for backup and disaster recovery of the record; and
- (3) ensure the continuing usability of the material.

SECTION 8. PUBLIC ACCESS TO LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD. An official publisher of legal material in an electronic record that is required to be preserved under section 7 shall ensure that the material is reasonably available for use by the public on a permanent basis.

SECTION 9. STANDARDS. In implementing this Act, an official publisher of legal material in an electronic record shall consult the persons identified in section 17 of chapter 110G and consider:

- (1) standards and practices of other jurisdictions;
- (2) the most recent standards regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;
- (3) the needs of users of legal material in an electronic record;
- (4) the views of governmental officials and entities and other interested persons; and

(5) to the extent practicable, methods and technologies for the authentication of, preservation and security of, and public access to, legal material which are compatible with the methods and technologies used by other official publishers in this state and in other states that have adopted a law substantially similar to this chapter.

SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. section 7003(b).

SECTION 2. This Act takes effect on July first, two thousand and fourteen.