

HOUSE No. 89

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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

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

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

3 SECTION 2. Chapter 106 of the General Laws is hereby amended by striking out article
4 1, as so appearing, and by substituting in place thereof the following article 1:--

5 ARTICLE 1 – GENERAL PROVISIONS

6 PART 1

7 GENERAL PROVISIONS

8 SECTION 1 101. SHORT TITLES.

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

10 (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being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.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.

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

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

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

89 (A) a heading in capitals equal to or greater in size than the surrounding text, or in
90 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

112 bailee's possession which are either identified or are fungible portions of an identified mass. The
113 term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt,
114 and order for delivery of goods. An electronic document of title means a document of title
115 evidenced by a record consisting of information stored in an electronic medium. A tangible
116 document of title means a document of title evidenced by a record consisting of information that
117 is inscribed on a tangible medium.

118 (17) "Fault" means a default, breach, or wrongful act or omission.

119 (18) "Fungible goods" means:

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

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

123 (19) "Genuine" means free of forgery or counterfeiting.

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

126 (21) "Holder" means:

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

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

131 (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;

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

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

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

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

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

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

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

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

245 (5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater
246 than the reasonably predictable fair market rent for the use of the goods for the term of the
247 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

368 prejudice the rights reserved. Such words as “without prejudice,” “under protest,” or the like are
369 sufficient.

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

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

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

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

386 SECTION 4. Subsection 2-103(3) of said chapter 106 is hereby amended by inserting,
387 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):--

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

411 (a) if the seller is to deliver a tangible document of title, title passes at the time when and
412 the place where he delivers such documents and if the seller is to deliver an electronic document
413 of title, title passes when the seller delivers the document; or

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

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

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

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

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

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

428 SECTION 17. Section 2-506 of said chapter 106 is hereby amended by inserting, at the
429 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).”

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

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

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

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

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

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

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

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

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

469 SECTION 36. Subsection 2A-528(1) of said chapter 106 is hereby amended by striking
470 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. 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 43. Subsection 5-103(c) of said chapter 106 is hereby amended by striking out “1-203(3)” and by substituting in place thereof “1-302”.

SECTION 44. 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

510 receive any goods, the goods were misdescribed, or in any other respect the agent or employee
511 violated the issuer's instructions.

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

515 (10) [Reserved]

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

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

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

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

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

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

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

528 (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

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

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

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

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

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

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

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

585 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.

606 PART 2 WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

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

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

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

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

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

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

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

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

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

621 (4) a statement whether the goods received will be delivered to the bearer, to a named
622 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.

707 SECTION 7-209. LIEN OF WAREHOUSE.

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

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

725 (c) A warehouse's lien for charges and expenses under subsection (a) or a security
726 interest under subsection (b) is also effective against any person that so entrusted the bailor with
727 possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value
728 would have been valid. However, the lien or security interest is not effective against a person

729 that before issuance of a document of title had a legal interest or a perfected security interest in
730 the goods and that did not:

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

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

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

735 (C) power of disposition under Sections 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-
736 321(c) or other statute or rule of law; or

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

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

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

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

745 (a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced
746 by public or private sale of the goods, in bulk or in packages, at any time or place and on any
747 terms that are commercially reasonable, after notifying all persons known to claim an interest in
748 the goods. The notification must include a statement of the amount due, the nature of the

749 proposed sale, and the time and place of any public sale. The fact that a better price could have
750 been obtained by a sale at a different time or in a method different from that selected by the
751 warehouse is not of itself sufficient to establish that the sale was not made in a commercially
752 reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse
753 sells the goods in the usual manner in any recognized market therefore, sells at the price current
754 in that market at the time of the sale, or otherwise sells in conformity with commercially
755 reasonable practices among dealers in the type of goods sold. A sale of more goods than
756 apparently necessary to be offered to ensure satisfaction of the obligation is not commercially
757 reasonable, except in cases covered by the preceding sentence.

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

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

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

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

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

768 (5) After the expiration of the time given in the notification, an advertisement of the sale
769 must be published once a week for two weeks consecutively in a newspaper of general

770 circulation where the sale is to be held. The advertisement must include a description of the
771 goods, the name of the person on whose account the goods are being held, and the time and place
772 of the sale. The sale must take place at least 15 days after the first publication. If there is no
773 newspaper of general circulation where the sale is to be held, the advertisement must be posted at
774 least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the
775 proposed sale.

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

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

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

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

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

789 (h) If a lien is on goods stored by a merchant in the course of its business, the lien may be
790 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

833 other than transportation, this liability for breach by the other person or the performing carrier
834 may be varied by agreement of the parties.

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

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

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

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

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

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

854 (1) the holder of a negotiable bill;

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

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

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

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

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

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

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

872 (c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different
873 parts are negotiated to different persons, the title of the holder to which the first due negotiation
874 is made prevails as to both the document of title and the goods even if any later holder may have

875 received the goods from the carrier in good faith and discharged the carrier's obligation by
876 surrendering its part.

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

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

882 SECTION 7-305. DESTINATION BILLS.

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

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

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

892 SECTION 7-307. LIEN OF CARRIER.

893 (a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof
894 in its possession for charges after the date of the carrier's receipt of the goods for storage or
895 transportation, including demurrage and terminal charges, and for expenses necessary for

896 preservation of the goods incident to their transportation or reasonably incurred in their sale
897 pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's
898 lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a
899 reasonable charge.

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

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

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

909 (a) A carrier's lien on goods may be enforced by public or private sale of the goods, in
910 bulk or in packages, at any time or place and on any terms that are commercially reasonable,
911 after notifying all persons known to claim an interest in the goods. The notification must include
912 a statement of the amount due, the nature of the proposed sale, and the time and place of any
913 public sale. The fact that a better price could have been obtained by a sale at a different time or
914 in a method different from that selected by the carrier is not of itself sufficient to establish that
915 the sale was not made in a commercially reasonable manner. The carrier sells goods in a
916 commercially reasonable manner if the carrier sells the goods in the usual manner in any
917 recognized market therefor, sells at the price current in that market at the time of the sale, or

918 otherwise sells in conformity with commercially reasonable practices among dealers in the type
919 of goods sold. A sale of more goods than apparently necessary to be offered to ensure
920 satisfaction of the obligation is not commercially reasonable, except in cases covered by the
921 preceding sentence.

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

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

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

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

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

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

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

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

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

946 (b) Damages may be limited by a term in the bill of lading or in a transportation
947 agreement that the carrier's liability may not exceed a value stated in the bill or transportation
948 agreement if the carrier's rates are dependent upon value and the consignor is afforded an
949 opportunity to declare a higher value and the consignor is advised of the opportunity. However,
950 such a limitation is not effective with respect to the carrier's liability for conversion to its own
951 use.

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

955 PART 4 WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL
956 OBLIGATIONS

957 SECTION 7-401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR
958 CONDUCT OF ISSUER The obligations imposed by this article on an issuer apply to a
959 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;

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

983 (4) the exercise by a seller of its right to stop delivery pursuant to Section 2-705 or by a
984 lessor of its right to stop delivery pursuant to Section 2A-526;

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

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

987 (7) any other lawful excuse.

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

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

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

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

998 SECTION 7-404. NO LIABILITY FOR GOOD-FAITH DELIVERY PURSUANT TO
999 DOCUMENT OF TITLE. A bailee that in good faith has received goods and delivered or

1000 otherwise disposed of the goods according to the terms of a document of title or pursuant to this
1001 article is not liable for the goods even if:

1002 (1) the person from which the bailee received the goods did not have authority to procure
1003 the document or to dispose of the goods; or

1004 (2) the person to which the bailee delivered the goods did not have authority to receive
1005 the goods.

1006 PART 5 WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND
1007 TRANSFER

1008 SECTION 7-501. FORM OF NEGOTIATION AND REQUIREMENTS OF DUE
1009 NEGOTIATION.

1010 (a) The following rules apply to a negotiable tangible document of title:

1011 (1) If the document's original terms run to the order of a named person, the document is
1012 negotiated by the named person's indorsement and delivery. After the named person's
1013 indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

1014 (2) If the document's original terms run to bearer, it is negotiated by delivery alone.

1015 (3) If the document's original terms run to the order of a named person and it is
1016 delivered to the named person, the effect is the same as if the document had been negotiated.

1017 (4) Negotiation of the document after it has been indorsed to a named person requires
1018 indorsement by the named person and delivery.

1019 (5) A document is duly negotiated if it is negotiated in the manner stated in this
1020 subsection to a holder that purchases it in good faith, without notice of any defense against or
1021 claim to it on the part of any person, and for value, unless it is established that the negotiation is
1022 not in the regular course of business or financing or involves receiving the document in
1023 settlement or payment of a monetary obligation.

1024 (b) The following rules apply to a negotiable electronic document of title:

1025 (1) If the document's original terms run to the order of a named person or to bearer, the
1026 document is negotiated by delivery of the document to another person. Indorsement by the
1027 named person is not required to negotiate the document.

1028 (2) If the document's original terms run to the order of a named person and the named
1029 person has control of the document, the effect is the same as if the document had been
1030 negotiated.

1031 (3) A document is duly negotiated if it is negotiated in the manner stated in this
1032 subsection to a holder that purchases it in good faith, without notice of any defense against or
1033 claim to it on the part of any person, and for value, unless it is established that the negotiation is
1034 not in the regular course of business or financing or involves taking delivery of the document in
1035 settlement or payment of a monetary obligation.

1036 (c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds
1037 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;

1057 (2) any person has been deprived of possession of a negotiable tangible document or
1058 control of a negotiable electronic document by misrepresentation, fraud, accident, mistake,
1059 duress, loss, theft, or conversion; or

1060 (3) a previous sale or other transfer of the goods or document has been made to a third
1061 person.

1062 SECTION 7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN
1063 CASES.

1064 (a) A document of title confers no right in goods against a person that before issuance of
1065 the document had a legal interest or a perfected security interest in the goods and that did not:

1066 (1) deliver or entrust the goods or any document of title covering the goods to the bailor
1067 or the bailor's nominee with:

1068 (A) actual or apparent authority to ship, store, or sell;

1069 (B) power to obtain delivery under Section 7-403; or

1070 (C) power of disposition under Section 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-
1071 321(c) or other statute or rule of law; or

1072 (2) acquiesce in the procurement by the bailor or its nominee of any document.

1073 (b) Title to goods based upon an unaccepted delivery order is subject to the rights of any
1074 person to which a negotiable warehouse receipt or bill of lading covering the goods has been
1075 duly negotiated. That title may be defeated under Section 7-504 to the same extent as the rights
1076 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

1098 course of business or a lessee in ordinary course of business and, in any event, defeats the
1099 consignee's rights against the bailee.

1100 (d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped
1101 by a seller under Section 2-705 or a lessor under Section 2A-526, subject to the requirements of
1102 due notification in those sections. A bailee that honors the seller's or lessor's instructions is
1103 entitled to be indemnified by the seller or lessor against any resulting loss or expense.

1104 SECTION 7-505. INDORSER NOT GUARANTOR FOR OTHER PARTIES. The
1105 indorsement of a tangible document of title issued by a bailee does not make the indorser liable
1106 for any default by the bailee or previous indorsers.

1107 SECTION 7-506. DELIVERY WITHOUT INDORSEMENT: RIGHT TO COMPEL
1108 INDORSEMENT. The transferee of a negotiable tangible document of title has a specifically
1109 enforceable right to have its transferor supply any necessary indorsement, but the transfer
1110 becomes a negotiation only as of the time the indorsement is supplied.

1111 SECTION 7-507. WARRANTIES ON NEGOTIATION OR DELIVERY OF
1112 DOCUMENT OF TITLE. If a person negotiates or delivers a document of title for value,
1113 otherwise than as a mere intermediary under Section 7-508, unless otherwise agreed, the
1114 transferor, in addition to any warranty made in selling or leasing the goods, warrants to its
1115 immediate purchaser only that:

1116 (1) the document is genuine;

1117 (2) the transferor does not have knowledge of any fact that would impair the document's
1118 validity or worth; and

1119 (3) the negotiation or delivery is rightful and fully effective with respect to the title to the
1120 document and the goods it represents.

1121 SECTION 7-508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS
1122 OF TITLE. A collecting bank or other intermediary known to be entrusted with documents of
1123 title on behalf of another or with collection of a draft or other claim against delivery of
1124 documents warrants by the delivery of the documents only its own good faith and authority even
1125 if the collecting bank or other intermediary has purchased or made advances against the claim or
1126 draft to be collected.

1127 SECTION 7-509. ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT.
1128 Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract
1129 for lease, or the conditions of a letter of credit is determined by Article 2, 2A, or 5.

1130 PART 6 WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS
1131 PROVISIONS

1132 SECTION 7-601. LOST, STOLEN, OR DESTROYED DOCUMENTS OF TITLE.

1133 (a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the
1134 goods or issuance of a substitute document and the bailee may without liability to any person
1135 comply with the order. If the document was negotiable, a court may not order delivery of the
1136 goods or issuance of a substitute document without the claimant's posting security unless it finds
1137 that any person that may suffer loss as a result of nonsurrender of possession or control of the
1138 document is adequately protected against the loss. If the document was nonnegotiable, the court
1139 may require security. The court may also order payment of the bailee's reasonable costs and
1140 attorney's fees in any action under this subsection.

1141 (b) A bailee that, without a court order, delivers goods to a person claiming under a
1142 missing negotiable document of title is liable to any person injured thereby. If the delivery is
1143 not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if
1144 the claimant posts security with the bailee in an amount at least double the value of the goods at
1145 the time of posting to indemnify any person injured by the delivery which files a notice of claim
1146 within one year after the delivery.

1147 SECTION 7-602. JUDICIAL PROCESS AGAINST GOODS COVERED BY
1148 NEGOTIABLE DOCUMENT OF TITLE. Unless a document of title was originally issued upon
1149 delivery of the goods by a person that did not have power to dispose of them, a lien does not
1150 attach by virtue of any judicial process to goods in the possession of a bailee for which a
1151 negotiable document of title is outstanding unless possession or control of the document is first
1152 surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be
1153 compelled to deliver the goods pursuant to process until possession or control of the document is
1154 surrendered to the bailee or to the court. A purchaser of the document for value without notice
1155 of the process or injunction takes free of the lien imposed by judicial process.

1156 SECTION 7-603. CONFLICTING CLAIMS; INTERPLEADER. If more than one
1157 person claims title to or possession of the goods, the bailee is excused from delivery until the
1158 bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an
1159 action for interpleader. The bailee may assert an interpleader either in defending an action for
1160 nondelivery of the goods or by original action.

1161 SECTION 45. Subsection 8-102(a)(10) of said chapter 106 is hereby amended by striking
1162 out the words ""Good faith," for purposes of the obligation of good faith in the performance or

1163 enforcement of contracts or duties within this Article, means honesty in fact and the observance
1164 of reasonable commercial standards of fair dealing.” and by substituting in place thereof word:--
1165 “[Reserved]”.

1166 SECTION 46. Section 8-103 of said chapter 106 is hereby amended by adding at the end
1167 of said Section the following new Subsection 8-103(g):--

1168 (g) A document of title, as defined in Section 1-201(16), is not a financial asset unless
1169 Section 8-102(a)(9)(iii) applies.

1170 SECTION 47. Subsection 9-102(a)(5) of chapter 106 of the General Laws is hereby
1171 amended by striking out the words “, other than a security interest, ”.

1172 SECTION 48. Subsection 9-102(a)(30) of said chapter 106 is hereby amended by striking
1173 out “7-201(2)” and by inserting in place thereof “7-201(b)”.

1174 SECTION 49. Subsection 9-102(a)(43) of said chapter 106 is hereby amended by striking
1175 out the words ““Good faith” means honesty in fact and the observance of reasonable commercial
1176 standards of fair dealing.” and by inserting in place thereof word “[Reserved]”.

1177 SECTION 50. Subsection 9-102(a)(46) of said chapter 106 is hereby amended by
1178 inserting, after the word “provided”, the words “or to be provided”.

1179 SECTION 51. Subsection 9-102(b) of said chapter 106 is hereby amended by inserting,
1180 after the words “‘Contract for sale’. Section 2-106”, the words “‘Control’ (with respect to a
1181 document of title). Section 7-106.”

1182 SECTION 52. Subsection 9-109(d)(10)(B) of said chapter 106 is hereby amended by
1183 striking out “9-403” and by substituting in place thereof “9-404.”

1184 SECTION 53. Subsection 9-203(b)(3)(D) of said chapter 106 is hereby amended by
1185 striking out the words “or letter-of credit rights,” and by substituting in place thereof the words
1186 “letter-of credit rights, or electronic documents,”.

1187 SECTION 54. Subsection 9-203(b)(3)(D) of said chapter 106 is hereby further amended
1188 by striking out the words “or 9-107,” and by substituting in place thereof the words “9-107, or 7-
1189 106”.

1190 SECTION 55. Subsection 9-207(c) of said chapter 106 is hereby amended by striking out
1191 the words “or 9-107,” and by substituting in place thereof the words “9-107, or 7-106”.

1192 SECTION 56. Section 9-208 of said chapter 106 is hereby amended by striking out the
1193 word “and” at the end of Subsection 9-208(b)(4), by striking out the period and substituting in
1194 place thereof the word “; and” at the end of Subsection 9-208(b)(5) and by adding at the end of
1195 said Section the following the following new Subsection 9-208(b)(6):--

1196 (6) a secured party having control of an electronic document shall:

1197 (A) give control of the electronic document to the debtor or its designated custodian;

1198 (B) if the debtor designates a custodian that is the designated custodian with which the
1199 authoritative copy of the electronic document is maintained for the secured party, communicate
1200 to the custodian an authenticated record releasing the designated custodian from any further
1201 obligation to comply with instructions originated by the secured party and instructing the
1202 custodian to comply with instructions originated by the debtor; and

1203 (C) take appropriate action to enable the debtor or its designated custodian to make
1204 copies of or revisions to the authoritative copy which add or change an identified assignee of the
1205 authoritative copy without the consent of the secured party.

1206 SECTION 57. Subsection 9-209(b) of said chapter 106 is hereby amended by striking
1207 out “9-405(a)” and by substituting in place thereof “9-406(a).”

1208 SECTION 58. Subsection 9-301(3) of said chapter 106 is hereby amended by inserting,
1209 after the words “provided in paragraph (4), while”, the word “tangible”.

1210 SECTION 59. Subsection 9-304(b)(1) of said chapter 106 is hereby amended by striking
1211 out the words “the debtor” and by substituting in place thereof the words “its customer”.

1212 SECTION 60. Section 9-309 of said chapter 106 is hereby amended by striking out the
1213 word “and” after the word “thereunder;” in Subsection 9-309(12), by striking out the period at
1214 the end of Subsection 9-309(13), by substituting in place thereof the word “; and” and by adding
1215 at the end of said Section 9-309 the following new Subsection 9-309(14):--

1216 (14) a sale by an individual of an account that is a right to payment of winnings in a
1217 lottery or other game of chance.

1218 SECTION 61. Subsection 9-310(b)(5) of said chapter 106 is hereby amended by
1219 inserting, after the words “perfected without filing,” the word “control,”.

1220 SECTION 62. Subsection 9-310(b)(8) of said chapter 106 is hereby amended by
1221 inserting, after the words “electronic chattel paper,” the words “electronic documents,”.

1222 SECTION 63. Subsection 9-312(e) of said chapter 106 is hereby amended by inserting,
1223 after the words “taking of possession,” the words “or control”.

1224 SECTION 64. Subsection 9-313(a) of said chapter 106 is hereby amended by inserting
1225 in the first sentence of said Subsection, after the words “may perfect a security in”, the word
1226 “tangible”.

1227 SECTION 65. Subsection 9-314(a) of said chapter 106 is hereby amended by striking
1228 out the words “or electronic chattel paper,” and by substituting in place thereof the words
1229 “electronic chattel paper, or electronic documents,”.

1230 SECTION 66. Subsection 9-314(a) of said chapter 106 is hereby further amended by
1231 striking out the words “or 9-107,” and by substituting in place thereof the words “9-107, or 7-
1232 106”.

1233 SECTION 67. Subsection 9-314(b) of said chapter 106 is hereby amended by striking
1234 out the words “or letter-of-credit rights,” and by substituting in place thereof the words “letter-
1235 of-credit rights, or electronic documents,”.

1236 SECTION 68. Subsection 9-314(b) of said chapter 106 is hereby further amended by
1237 striking out the words “or 9-107,” and by substituting in place thereof the words “9-107, or 7-
1238 106”.

1239 SECTION 69. Subsection 9-317(b) of said chapter 106 is hereby amended by inserting,
1240 after the words “tangible chattel paper,” the word “tangible”.

1241 SECTION 70. Subsection 9-317(d) of said chapter 106 is hereby amended by inserting,
1242 after the words “electronic chattel paper,” the words “electronic documents,”.

1243 SECTION 71. Subsection 9-338(2) of said chapter 106 is hereby amended by striking
1244 the words “in the case of chattel paper, documents” and by substituting in place thereof the
1245 words “in the case of tangible chattel paper, tangible documents”.

1246 SECTION 72. Part 3 of article 9 of said chapter 106 is hereby further amended by
1247 inserting, immediately after Section 9-341, the following new Section 9-342: --

1248 SECTION 9-342. BANK’S RIGHT TO REFUSE TO ENTER INTO OR DISCLOSE
1249 EXISTENCE OF CONTROL AGREEMENT. This article does not require a bank to enter into
1250 an agreement of the kind described in Section 9-104(a)(2), even if its customer so requests or
1251 directs. A bank that has entered into such an agreement is not required to confirm the existence
1252 of the agreement to another person unless requested to do so by its customer.

1253 SECTION 73. Subsection 9-401(a) of said chapter 106 is hereby amended by striking
1254 out the words “9-405, 9-406, 9-407 and 9-408” and by substituting in place thereof the words “9-
1255 406, 9-407, 9-408 and 9-409.”

1256 SECTION 74. Part 4 of article 9 of said chapter 106 is hereby amended by redesignating
1257 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-
1258 406, 9-407, 9-408 and 9-409 respectively and by inserting, immediately after Section 9-401, the
1259 following new Section 9-402:--

1260 SECTION 9 402. SECURED PARTY NOT OBLIGATED ON CONTRACT OF
1261 DEBTOR OR IN TORT. The existence of a security interest, agricultural lien, or authority given
1262 to a debtor to dispose of or use collateral, without more, does not subject a secured party to
1263 liability in contract or tort for the debtor’s acts or omissions.

1264 SECTION 75. Subsection 9-404(b)(2), so redesignated as Subsection 9-405(b)(2), of
1265 said chapter 106, is hereby amended by striking out “9-405(a)” and by substituting in place
1266 thereof “9-406(a).”

1267 SECTION 76. Subsection 9-405(d), so redesignated as Subsection 9-406(d), of said
1268 chapter 106 is hereby amended by striking out “9-406” and by substituting “9-407.”

1269 SECTION 77. Subsection 9-405(f), so redesignated as Subsection 9-406(f), of said
1270 chapter 106 is hereby amended by striking out “9-406” and by substituting “9-407.”

1271 SECTION 78. Subsection 9-601(b) of said chapter 106 is hereby amended by striking
1272 out the words “or 9-107,” and by substituting in place thereof the words “9-107, or 7-106”.

1273 SECTION 79. Subsection 9-702(b) of said chapter 106 is hereby amended by striking
1274 out the word “9-708” and by inserting in place thereof the following word:-- “9-709”.

1275 SECTION 80. Subsection 9-706(b)(1) of said chapter 106 is hereby amended by striking
1276 out “9-402” and by substituting “9-403.”

1277 SECTION 81. Section 47 of chapter 152 of the General Laws is hereby amended by
1278 striking out “9-405 and 9-407” and by substituting “9-406 and 9-408.”

1279 SECTION 82. The following transitional provisions apply to this Act:

1280 (a) This Act applies to a document of title that is issued or a bailment that arises on or
1281 after the effective date of this Act. This Act does not apply to a document of title that is issued
1282 or a bailment that arises before the effective date of this Act even if the document of title or
1283 bailment would be subject to this Act if the document of title had been issued or bailment had
1284 arisen on or after the effective date of this Act.

1285 (b) This Act does not apply to a right of action that has accrued before the effective date
1286 of this Act.

1287 (c) A document of title issued or a bailment that arises before the effective date of this
1288 Act and the rights, obligations, and interests flowing from that document or bailment are
1289 governed by any statute or other rule amended or repealed by this Act as if amendment or repeal
1290 had not occurred and may be terminated, completed, consummated, or enforced under that
1291 statute or other rule.

1292 (d) Section 60 of this Act applies to a sale of an account described in Subsection 9-
1293 309(14) of Article 9 of chapter 106 of the General Laws, as amended by Section 60, even if the
1294 sale was entered into before this Act takes effect. However, if the relative priorities of
1295 conflicting claims to the account were established before this Act takes effect, Article 9 of said
1296 chapter 106 as in effect immediately prior to the date this Act takes effect determines priority.

1297 (e) The amendments to said chapter 106 contained in Sections 1, 8, 28, 29, 47, 50, 52,
1298 57, 59, 72, 73, 74, 75, 76, 77, 79, 80 and 81 of this Act are intended to correct technical errors
1299 and, to the extent substantive, are intended to be declarative of existing law.