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IN THE HOUSE

BY RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 120

IN THE LEGISLATURE OF THE STATE OF ALASKA

SECOND LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act to be known as the Uniform Commercial Code; to codify and amend the state laws relating to commercial transactions; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

ARTICLE I

GENERAL PROVISIONS

Part 1

Short Title, Construction, Application and Subject Matter of the Act

Section 1.101. SHORT TITLE. This Act shall be known and may be cited as Uniform Commercial Code.

Sec. 1.102. PURPOSES; RULES OF CONSTRUCTION; VARIATION BY AGREEMENT.

(1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Act are

(a) to simplify, clarify and modernize the law governing commercial transactions.

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

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this Act may be varied by agreement, except as otherwise provided in this Act and except

1 that the obligations of good faith, diligence, reasonableness and
2 care prescribed by this Act may not be disclaimed by agreement but
3 the parties may by agreement determine the standards by which the
4 performance of such obligations is to be measured if such standards
5 are not manifestly unreasonable.

6 (4) The presence in certain provisions of this Act of
7 the words "unless otherwise agreed" or words of similar import
8 does not imply that the effect of other provisions may not be
9 varied by agreement under subsection (3).

10 (5) In this Act unless the context otherwise requires

11 (a) words in the singular number include the
12 plural, and in the plural include the singular;

13 (b) words of the masculine gender include the
14 feminine and the neuter, and when the sense so indicates
15 words of the neuter gender may refer to any gender.

16 Sec. 1.103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLI-
17 CABLE. Unless displaced by the particular provisions of this Act,
18 the principles of law and equity, including the law merchant and
19 the law relative to capacity to contract, principal and agent,
20 estoppel, fraud, misrepresentation, duress, coercion, mistake, bank-
21 ruptcy, or other validating or invalidating cause shall supplement
22 its provisions.

23 Sec. 1.104. CONSTRUCTION AGAINST IMPLICIT REPEAL. This Act be-
24 ing a general act intended as a unified coverage of its subject mat-
25 ter, no part of it shall be deemed to be impliedly repealed by sub-
26 sequent legislation if such construction can reasonably be avoided.

27 Sec. 1.105. TERRITORIAL APPLICATION OF THE ACT; PARTIES'
28 POWER TO CHOOSE APPLICABLE LAW.

29 (1) Except as provided hereafter in this section, when

1 a transaction bears a reasonable relation to this state and also
2 to another state or nation the parties may agree that the law
3 either of this state or of such other state or nation shall
4 govern their rights and duties. Failing such agreement this Act
5 applies to transactions bearing an appropriate relation to this
6 state.

7 (2) Where one of the following provisions of this Act
8 specifies the applicable law, that provision governs and a
9 contrary agreement is effective only to the extent permitted by
10 the law (including the conflict of laws rules) so specified:

11 Rights of creditors against sold goods. Section
12 2.402.

13 Applicability of the Article on Bank Deposits and
14 Collections. Section 4.102.

15 Bulk transfers subject to the Article on Bulk
16 Transfers. Section 6.102.

17 Applicability of the Article on Investment
18 Securities. Section 8.106.

19 Policy and scope of the Article on Secured Trans-
20 actions. Sections 9.102. and 9.103.

21 Sec. 1.106. REMEDIES TO BE LIBERALLY ADMINISTERED.

22 (1) The remedies provided by this Act shall be
23 liberally administered to the end that the aggrieved party may
24 be put in as good a position as if the other party had fully per-
25 formed but neither consequential or special nor penal damages may
26 be had except as specifically provided in this Act or by other
27 rule of law.

28 (2) Any right or obligation declared by this Act is
29 enforceable by action unless the provision declaring it specifies

1 2.208.) Whether an agreement has legal consequences is deter-
2 mined by the provisions of this Act, if applicable; otherwise
3 by the law of contracts (Section 1.103.) (Compare "Contract".)

4 (4) "Bank" means any person engaged in the business of
5 banking.

6 (5) "Bearer" means the person in possession of an
7 instrument, document of title, or security payable to bearer or
8 indorsed in blank.

9 (6) "Bill of lading" means a document evidencing the
10 receipt of goods for shipment issued by a person engaged in the
11 business of transporting or forwarding goods, and includes an
12 airbill. "Airbill" means a document serving for air transporta-
13 tion as a bill of lading does for marine or rail transportation,
14 and includes an air consignment note or air waybill.

15 (7) "Branch" includes a separately incorporated
16 foreign branch of a bank.

17 (8) "Burden of establishing" a fact means the burden
18 of persuading the triers of fact that the existence of the fact
19 is more probable than its non-existence.

20 (9) "Buyer in ordinary course of business" means a
21 person who in good faith and without knowledge that the sale to
22 him is in violation of the ownership rights or security interest
23 of a third party in the goods buys in ordinary course from a
24 person in the business of selling goods of that kind but does
25 not include a pawnbroker. "Buying" may be for cash or by ex-
26 change of other property or on secured or unsecured credit and
27 includes receiving goods or documents of title under a pre-
28 existing contract for sale but does not include a transfer in
29 bulk or as security for or in total or partial satisfaction of a

1 money debt.

2 (10) "Conspicuous": A term or clause is conspicuous
3 when it is so written that a reasonable person against whom it
4 is to operate ought to have noticed it. A printed heading in
5 capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous.
6 Language in the body of a form is "conspicuous" if it is in
7 larger or other contrasting type or color. But in a telegram any
8 stated term is "conspicuous". Whether a term or clause is
9 "conspicuous" or not is for decision by the court.

10 (11) "Contract" means the total legal obligation which
11 results from the parties' agreement as affected by this Act and
12 any other applicable rules of law. (Compare "Agreement".)

13 (12) "Creditor" includes a general creditor, a secured
14 creditor, a lien creditor and any representative of creditors,
15 including an assignee for the benefit of creditors, a trustee in
16 bankruptcy, a receiver in equity and an executor or administrator
17 of an insolvent debtor's or assignor's estate.

18 (13) "Defendant" includes a person in the position of
19 defendant in a cross-action or counterclaim.

20 (14) "Delivery" with respect to instruments, documents
21 of title, chattel paper or securities means voluntary transfer of
22 possession.

23 (15) "Document of title" includes bill of lading, dock
24 warrant, dock receipt, warehouse receipt or order for the delivery
25 of goods, and also any other document which in the regular course
26 of business or financing is treated as adequately evidencing that
27 the person in possession of it is entitled to receive, hold and
28 dispose of the document and the goods it covers. To be a document
29 of title a document must purport to be issued by or addressed to

1 a bailee and purport to cover goods in the bailee's possession
2 which are either identified or are fungible portions of an
3 identified mass.

4 (16) "Fault" means wrongful act, omission or breach.

5 (17) "Fungible" with respect to goods or securities
6 means goods or securities of which any unit is, by nature or
7 usage of trade, the equivalent of any other like unit. Goods
8 which are not fungible shall be deemed fungible for the purposes
9 of this Act to the extent that under a particular agreement or
10 document unlike units are treated as equivalents.

11 (18) "Genuine" means free of forgery or counterfeiting.

12 (19) "Good faith" means honesty in fact in the conduct
13 or transaction concerned.

14 (20) "Holder" means a person who is in possession of a
15 document of title or an instrument or an investment security
16 drawn, issued or indorsed to him or to his order or to bearer or
17 in blank.

18 (21) To "honor" is to pay or to accept and pay, or
19 where a credit so engages to purchase or discount a draft comply-
20 ing with the terms of the credit.

21 (22) "Insolvency proceedings" includes any assignment
22 for the benefit of creditors or other proceedings intended to
23 liquidate or rehabilitate the estate of the person involved.

24 (23) A person is "insolvent" who either has ceased to
25 pay his debts in the ordinary course of business or cannot pay
26 his debts as they become due or is insolvent within the meaning
27 of the federal bankruptcy law.

28 (24) "Money" means a medium of exchange authorized or
29 adopted by a domestic or foreign government as a part of its

1 currency.

- 2 (25) A person has "notice" of a fact when
3 (a) he has actual knowledge of it; or
4 (b) he has received a notice or notification of
5 it; or
6 (c) from all the facts and circumstances known
7 to him at the time in question he has reason to know that
8 it exists.

9 A person "knows" or has "knowledge" of a fact when he
10 has actual knowledge of it. "Discover" or "learn" or a word or
11 phrase of similar import refers to knowledge rather than to
12 reason to know. The time and circumstances under which a notice
13 or notification may cease to be effective are not determined by
14 this Act.

15 (26) A person "notifies" or "gives" a notice or
16 notification to another by taking such steps as may be reasonably
17 required to inform the other in ordinary course whether or not
18 such other actually comes to know of it. A person "receives" a
19 notice or notification when

- 20 (a) it comes to his attention; or
21 (b) it is duly delivered at the place of business
22 through which the contract was made or at any other place
23 held out by him as the place for receipt of such communica-
24 tions.

25 (27) Notice, knowledge or a notice or notification
26 received by an organization is effective for a particular trans-
27 action from the time when it is brought to the attention of the
28 individual conducting that transaction, and in any event from the
29 time when it would have been brought to his attention if the

1 organization had exercised due diligence.

2 (28) "Organization" includes a corporation, government
3 or governmental subdivision or agency, business trust, estate,
4 trust, partnership or association, two or more persons having a
5 joint or common interest, or any other legal or commercial entity.

6 (29) "Party", as distinct from "third party", means a
7 person who has engaged in a transaction or made an agreement
8 within this Act.

9 (30) "Person" includes an individual or an organization
10 (See Section 1.102.)

11 (31) "Presumption" or "presumed" means that the trier
12 of fact must find the existence of the fact presumed unless and
13 until evidence is introduced which would support a finding of its
14 non-existence.

15 (32) "Purchase" includes taking by sale, discount,
16 negotiation, mortgage, pledge, lien, issue or re-issue, gift or
17 any other voluntary transaction creating an interest in property.

18 (33) "Purchaser" means a person who takes by purchase.

19 (34) "Remedy" means any remedial right to which an
20 aggrieved party is entitled with or without resort to a tribunal.

21 (35) "Representative" includes an agent, an officer of
22 a corporation or association, and a trustee, executor or adminis-
23 trator of an estate, or any other person empowered to act for
24 another.

25 (36) "Rights" includes remedies.

26 (37) "Security interest" means an interest in personal
27 property or fixtures which secures payment or performance of an
28 obligation. The retention or reservation of title by a seller of
29 goods notwithstanding shipment or delivery to the buyer (Section

1 2.401.) is limited in effect to a reservation of a "security
2 interest". The term also includes any interest of a buyer of
3 accounts, chattel paper, or contract rights which is subject to
4 Article 9. The special property interest of a buyer of goods on
5 identification of such goods to a contract for sale under Section
6 2.401 is not a "security interest", but a buyer may also acquire
7 a "security interest" by complying with Article 9. Unless a
8 lease or consignment is intended as security, reservation of
9 title thereunder is not a "security interest" but a consignment
10 is in any event subject to the provisions on consignment sales
11 (Section 2.326.) Whether a lease is intended as security is to
12 be determined by the facts of each case; however, (a) the in-
13 clusion of an option to purchase does not of itself make the
14 lease one intended for security, and (b) an agreement that upon
15 compliance with the terms of the lease the lessee shall become
16 or has the option to become the owner of the property for no
17 additional consideration or for a nominal consideration does
18 make the lease one intended for security.

19 (38) "Send" in connection with any writing or notice
20 means to deposit in the mail or deliver for transmission by any
21 other usual means of communication with postage or cost of trans-
22 mission provided for an properly addressed and in the case of an
23 instrument to an address specified thereon or otherwise agreed,
24 or if there be none to any address reasonable under the circum-
25 stances. The receipt of any writing or notice within the time at
26 which it would have arrived if properly sent has the effect of a
27 proper sending.

28 (39) "Signed" includes any symbol executed or adopted
29 by a party with present intention to authenticate a writing.

1 (40) "Surety" includes guarantor.

2 (41) "Telegram" includes a message transmitted by
3 radio, teletype, cable, any mechanical method of transmission,
4 or the like.

5 (42) "Term" means that portion of an agreement which
6 relates to a particular matter.

7 (43) "Unauthorized" signature or indorsement means
8 one made without actual, implied or apparent authority and
9 includes a forgery.

10 (44) "Value". Except as otherwise provided with
11 respect to negotiable instruments and bank collections (Sections
12 3.303., 4.208. and 4.209.) a person gives "value" for rights if
13 he acquires them

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

19 (b) as security for or in total or partial satis-
20 faction of a pre-existing claim; or

21 (c) by accepting delivery pursuant to a pre-
22 existing contract for purchase; or

23 (d) generally, in return for any consideration
24 sufficient to support a simple contract.

25 (45) "Warehouse receipt" means a receipt issued by a
26 person engaged in the business of storing goods for hire.

27 (46) "Written" or "writing" includes printing, type-
28 writing or any other intentional reduction to tangible form.

29 Sec. 1.202. PRIMA FACIE EVIDENCE BY THIRD PARTY DOCUMENTS.

1 A document in due form purporting to be a bill of lading, policy
2 or certificate of insurance, official weigher's or inspector's
3 certificate, consular invoice, or any other document authorized
4 or required by the contract to be issued by a third party shall
5 be prima facie evidence of its own authenticity and genuineness
6 and of the facts stated in the document by the third party.

7 Sec. 1.203. OBLIGATION OF GOOD FAITH. Every contract or
8 duty within this Act imposes an obligation of good faith in its
9 performance or enforcement.

10 Sec. 1.204. TIME; REASONABLE TIME; "SEASONABLY".

11 (1) Whenever this Act requires any action to be taken
12 within a reasonable time, any time which is not manifestly un-
13 reasonable may be fixed by agreement.

14 (2) What is a reasonable time for taking any action
15 depends on the nature, purpose and circumstances of such action.

16 (3) An action is taken "seasonably" when it is taken
17 at or within the time agreed or if no time is agreed at or within
18 a reasonable time.

19 Sec. 1.205. COURSE OF DEALING AND USAGE OF TRADE.

20 (1) A course of dealing is a sequence of previous
21 conduct between the parties to a particular transaction which is
22 fairly to be regarded as establishing a common basis of under-
23 standing for interpreting their expressions and other conduct.

24 (2) A usage of trade is any practice or method of
25 dealing having such regularity of observance in a place, vocation
26 or trade as to justify an expectation that it will be observed
27 with respect to the transaction in question. The existence and
28 scope of such a usage are to be proved as facts. If it is
29 established that such a usage is embodied in a written trade code

1 or similar writing the interpretation of the writing is for the
2 court.

3 (3) A course of dealing between parties and any usage
4 of trade in the vocation or trade in which they are engaged or of
5 which they are or should be aware give particular meaning to and
6 supplement or qualify terms of an agreement.

7 (4) The express terms of an agreement and an applicable
8 course of dealing or usage of trade shall be construed wherever
9 reasonable as consistent with each other; but when such construc-
10 tion is unreasonable express terms control both course of dealing
11 and usage of trade and course of dealing controls usage of trade.

12 (5) An applicable usage of trade in the place where
13 any part of performance is to occur shall be used in interpreting
14 the agreement as to that part of the performance.

15 (6) Evidence of a relevant usage of trade offered by
16 one party is not admissible unless and until he has given the
17 other party such notice as the court finds sufficient to prevent
18 unfair surprise to the latter.

19 Sec. 1.206. STATUTE OF FRAUDS FOR KINDS OF PERSONAL PROPERTY
20 NOT OTHERWISE COVERED.

21 (1) Except in the cases described in subsection (2)
22 of this section a contract for the sale of personal property is
23 not enforceable by way of action or defense beyond five thousand
24 dollars in amount or value of remedy unless there is some writing
25 which indicates that a contract for sale has been made between
26 the parties at a defined or stated price, reasonably identifies
27 the subject matter, and is signed by the party against whom en-
28 forcement is sought or by his authorized agent.

29 (2) Subsection (1) of this section does not apply to

1 contracts for the sale of goods (Section 2.201) nor of securities
2 (Section 8.319) nor to security agreements (Section 9.203.)

3 Sec. 1.207. PERFORMANCE OR ACCEPTANCE UNDER RESERVATION
4 OF RIGHTS. A party who with explicit reservation of rights
5 performs or promises performance or assents to performance in a
6 manner demanded or offered by the other party does not thereby
7 prejudice the rights reserved. Such words as "without prejudice",
8 "under protest" or the like are sufficient.

9 Sec. 1.208. OPTION TO ACCELERATE AT WILL. A term providing
10 that one party or his successor in interest may accelerate pay-
11 ment or performance or require collateral or additional collateral
12 "at will" or "when he deems himself insecure" or in words of
13 similar import shall be construed to mean that he shall have
14 power to do so only if he in good faith believes that the pros-
15 pect of payment or performance is impaired. The burden of es-
16 tablishing lack of good faith is on the party against whom the
17 power has been exercised.

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1 ARTICLE II

2 SALES

3 Part 1

4 Short Title, General Construction and Subject
5 Matter

6 Sec. 2.101. SHORT TITLE. This Article shall be known and
7 may be cited as Uniform Commercial Code--Sales.

8 Sec. 2.102. SCOPE; CERTAIN SECURITY AND OTHER TRANSACTIONS
9 EXCLUDED FROM THIS ARTICLE. Unless the context otherwise re-
10 quires, this Article applies to transactions in goods; it does
11 not apply to any transaction which although in the form of an
12 unconditional contract to sell or present sale is intended to
13 operate only as a security transaction nor does this Article
14 impair or repeal any statute regulating sales to consumers,
15 farmers or other specified classes of buyers.

16 Sec. 2.103. DEFINITIONS AND INDEX OF DEFINITIONS.

17 (1) In this Article unless the context otherwise re-
18 quires

19 (a) "Buyer" means a person who buys or contracts
20 to buy goods.

21 (b) "Good faith" in the case of a merchant means
22 honesty in fact and the observance of reasonable commercial
23 standards of fair dealing in the trade.

24 (c) "Receipt" of goods means taking physical
25 possession of them.

26 (d) "Seller" means a person who sells or contracts
27 to sell goods.

28 (2) Other definitions applying to this Article or to
29 specified Parts thereof, and the sections in which they appear are:

1 "Acceptance". Section 2.606.
2 "Banker's credit". Section 2.325.
3 "Between merchants". Section 2.104.
4 "Cancellation". Section 2.106.(4)
5 "Commercial unit". Section 2.105.
6 "Confirmed credit". Section 2.325.
7 "Conforming to contract". Section 2.106.
8 "Contract for sale". Section 2.106.
9 "Cover". Section 2.712.
10 "Entrusting". Section 2.403.
11 "Financing agency". Section 2.104.
12 "Future goods". Section 2.105.
13 "Goods". Section 2.105.
14 "Identification". Section 2.501.
15 "Installment contract". Section 2.612.
16 "Letter of Credit". Section 2.325.
17 "Lot". Section 2.105.
18 "Merchant". Section 2.104.
19 "Overseas". Section 2.323.
20 "Person in position of seller". Section 2.707.
21 "Present sale". Section 2.106.
22 "Sale". Section 2.106.
23 "Sale on approval". Section 2.326.
24 "Sale or return". Section 2.326.
25 "Termination". Section 2.106.

26 (3) The following definitions in other Articles apply
27 to this Article:

28 "Check". Section 3.104.
29 "Consignee". Section 7.102.

1 "Consignor". Section 7.102.

2 "Consumer goods". Section 9.109.

3 "Dishonor". Section 3.507.

4 "Draft". Section 3.104.

5 (4) In addition Article I contains general definitions
6 and principles of construction and interpretation applicable
7 throughout this Article.

8 Sec. 2.104. DEFINITIONS. "MERCHANT"; "BETWEEN MERCHANTS";
9 "FINANCING AGENCY".

10 (1) "Merchant" means a person who deals in goods of
11 the kind or otherwise by his occupation holds himself out as
12 having knowledge or skill peculiar to the practices or goods
13 involved in the transaction or to whom such knowledge or skill
14 may be attributed by his employment of an agent or broker or
15 other intermediary who by his occupation holds himself out as
16 having such knowledge or skill.

17 (2) "Financing agency" means a bank, finance company
18 or other person who in the ordinary course of business makes
19 advances against goods or documents of title or who by arrange-
20 ment with either the seller or the buyer intervenes in ordinary
21 course to make or collect payment due or claimed under the con-
22 tract for sale, as by purchasing or paying the seller's draft
23 or making advances against it or by merely taking it for collec-
24 tion whether or not documents of title accompany the draft.

25 "Financing agency" includes also a bank or other person who
26 similarly intervenes between persons who are in the position of
27 seller and buyer in respect to the goods (Section 2.707.)

28 (3) "Between merchants" means in any transaction with
29 respect to which both parties are chargeable with the knowledge

1 or skill of merchants.

2 Sec. 2.105. DEFINITIONS: TRANSFERABILITY; "GOODS";
3 "FUTURE" GOODS; "LOT"; "COMMERCIAL UNIT".

4 (1) "Goods" means all things (including specially
5 manufactured goods) which are movable at the time of identifica-
6 tion to the contract for sale other than the money in which the
7 price is to be paid, investment securities (Article 8) and things
8 in action. "Goods" also includes the unborn young of animals
9 and growing crops and other identified things attached to realty
10 as described in the section on goods to be severed from realty
11 (Section 2.107.)

12 (2) Goods must be both existing and identified before
13 any interest in them can pass. Goods which are not both existing
14 and identified are "future" goods. A purported present sale of
15 future goods or of any interest therein operates as a contract
16 to sell.

17 (3) There may be a sale of a part interest in existing
18 identified goods.

19 (4) An undivided share in an identified bulk of
20 fungible goods is sufficiently identified to be sold although
21 the quantity of the bulk is not determined. Any agreed propor-
22 tion of such a bulk or any quantity thereof agreed upon by number,
23 weight or other measure may to the extent of the seller's interest
24 in the bulk be sold to the buyer who then becomes an owner in
25 common.

26 (5) "Lot" means a parcel or a single article which is
27 the subject matter of a separate sale or delivery, whether or not
28 it is sufficient to perform the contract.

29 (6) "Commercial unit" means such a unit of goods as by

1 commercial usage is a single whole for purposes of sale and
2 division of which materially impairs its character or value on
3 the market or in use. A commercial unit may be a single article
4 (as a machine) or a set of articles (as a suite of furniture or
5 an assortment of sizes) or a quantity (as a bale, gross, or car-
6 load) or any other unit treated in use or in the relevant market
7 as a single whole.

8 Sec. 2.106. DEFINITIONS. "CONTRACT"; "AGREEMENT"; "CON-
9 TRACT FOR SALE"; "SALE"; "PRESENT SALE"; "CONFORMING" TO CONTRACT;
10 "TERMINATION"; "CANCELLATION".

11 (1) In this Article unless the context otherwise re-
12 quires "contract" and "agreement" are limited to those relating
13 to the present or future sale of goods. "Contract for sale"
14 includes both a present sale of goods and a contract to sell
15 goods at a future time. A "sale" consists in the passing of
16 title from the seller to the buyer for a price (Section 2.401.)
17 A "present sale" means a sale which is accomplished by the making
18 of the contract.

19 (2) Goods or conduct including any part of a perfor-
20 mance are "conforming" or conform to the contract when they are
21 in accordance with the obligations under the contract.

22 (3) "Termination" occurs when either party pursuant
23 to a power created by agreement or law puts an end to the con-
24 tract otherwise than for its breach. On "termination" all obli-
25 gations which are still executory on both sides are discharged
26 but any right based on prior breach or performance survives.

27 (4) "Cancellation" occurs when either party puts an
28 end to the contract for breach by the other and its effect is the
29 same as that of "termination" except that the cancelling party

1 also retains any remedy for breach of the whole contract or any
2 unperformed balance.

3 Sec. 2.107. GOODS TO BE SEVERED FROM REALTY: RECORDING.

4 (1) A contract for the sale of timber, minerals or
5 the like or a structure or its materials to be removed from
6 realty is a contract for the sale of goods within this Article if
7 they are to be severed by the seller but until severance a pur-
8 ported present sale thereof which is not effective as a transfer
9 of an interest in land is effective only as a contract to sell.

10 (2) A contract for the sale apart from the land of
11 growing crops or other things attached to realty and capable of
12 severance without material harm thereto but not described in
13 subsection (1) is a contract for the sale of goods within this
14 Article whether the subject matter is to be severed by the buyer
15 or by the seller even though it forms part of the realty at the
16 time of contracting, and the parties can by identification effect
17 a present sale before severance.

18 (3) The provisions of this section are subject to
19 any third party rights provided by the law relating to realty
20 records, and the contract for sale may be executed and recorded
21 as a document transferring an interest in land and shall then
22 constitute notice to third parties of the buyer's rights under
23 the contract for sale.

24 Part 2

25 Form, Formation and Readjustment of Contract

26 Sec. 2.201. FORMAL REQUIREMENTS; STATUTE OF FRAUDS.

27 (1) Except as otherwise provided in this section a
28 contract for the sale of goods for the price of \$500 or more is
29 not enforceable by way of action or defense unless there is some

1 writing sufficient to indicate that a contract for sale has been
2 made between the parties and signed by the party against whom
3 enforcement is sought or by his authorized agent or broker. A
4 writing is not insufficient because it omits or incorrectly states
5 a term agreed upon but the contract is not enforceable under
6 this paragraph beyond the quantity of goods shown in such writing.

7 (2) Between merchants if within a reasonable time a
8 writing in confirmation of the contract and sufficient against
9 the sender is received and the party receiving it has reason to
10 know its contents, it satisfies the requirements of subsection
11 (1) against such party unless written notice of objection to its
12 contents is given within ten days after it is received.

13 (3) A contract which does not satisfy the requirements
14 of subsection (1) but which is valid in other respects is en-
15 forceable

16 (a) if the goods are to be specially manufactured
17 for the buyer and are not suitable for sale to others in the
18 ordinary course of the seller's business and the seller,
19 before notice of repudiation is received and under circum-
20 stances which reasonably indicate that the goods are for
21 the buyer, has made either a substantial beginning of
22 their manufacture or commitments for their procurement; or

23 (b) if the party against whom enforcement is
24 sought admits in his pleading, testimony or otherwise in court
25 that a contract for sale was made, but the contract is not
26 enforceable under this provision beyond the quantity of
27 goods admitted; or

28 (c) with respect to goods for which payment has
29 been made and accepted or which have been received and

1 accepted (Section 2.606.)

2 Sec. 2.202. FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC
3 EVIDENCE. Terms with respect to which the confirmatory memoranda
4 of the parties agree or which are otherwise set forth in a writing
5 intended by the parties as a final expression of their agreement
6 with respect to such terms as are included therein may not be
7 contradicted by evidence of any prior agreement or of a contem-
8 proaneous oral agreement but may be explained or supplemented

9 (a) by course of dealing or usage of trade (Sec-
10 tion 1.205.) or by course of performance (Section 2.208.);
11 and

12 (b) by evidence of consistent additional terms
13 unless the court finds the writing to have been intended
14 also as a complete and exclusive statement of the terms of
15 the agreement.

16 Sec. 2.203. SEALS INOPERATIVE. The affixing of a seal to
17 a writing evidencing a contract for sale or an offer to buy or
18 sell goods does not constitute the writing a sealed instrument
19 and the law with respect to sealed instruments does not apply
20 to such a contract or offer.

21 Sec. 2.204. FORMATION IN GENERAL.

22 (1) A contract for sale of goods may be made in any
23 manner sufficient to show agreement, including conduct by both
24 parties which recognizes the existence of such a contract.

25 (2) An agreement sufficient to constitute a contract
26 for sale may be found even though the moment of its making is
27 undetermined.

28 (3) Even though one or more terms are left open a
29 contract for sale does not fail for indefiniteness if the parties

1 have intended to make a contract and there is a reasonably cer-
2 tain basis for giving an appropriate remedy.

3 Sec. 2.205. FIRM OFFERS. An offer by a merchant to buy
4 or sell goods in a signed writing which by its terms gives assur-
5 ance that it will be held open is not revocable, for lack of
6 consideration, during the time stated or if no time is stated
7 for a reasonable time, but in no event may such period of ir-
8 revocability exceed three months; but any such term of assurance
9 on a form supplied by the offeree must be separately signed by
10 the offeror.

11 Sec. 2.206. OFFER AND ACCEPTANCE IN FORMATION OF CONTRACT.

12 (1) Unless otherwise unambiguously indicated by the
13 language or circumstances

14 (a) an offer to make a contract shall be con-
15 strued as inviting acceptance in any manner and by any
16 medium reasonable in the circumstances;

17 (b) an order or other offer to buy goods for
18 prompt or current shipment shall be construed as inviting
19 acceptance either by a prompt promise to ship or by the
20 prompt or current shipment of conforming or non-conforming
21 goods, but such a shipment of non-conforming goods does not
22 constitute an acceptance if the seller seasonably notifies
23 the buyer that the shipment is offered only as an accommo-
24 dation to the buyer.

25 (2) Where the beginning of a requested performance is
26 a reasonable mode of acceptance an offeror who is not notified of
27 acceptance within a reasonable time may treat the offer as having
28 lapsed before acceptance.

29 Sec. 2.207. ADDITIONAL TERMS IN ACCEPTANCE OR CONFIRMATION.

1 (1) A definite and reasonable expression of acceptance
2 or a written confirmation which is sent within a reasonable time
3 operates as an acceptance even though it states terms additional
4 to or different from those offered or agreed upon, unless accept-
5 ance is expressly made conditional on assent to the additional or
6 different terms.

7 (2) The additional terms are to be construed as pro-
8 posals for addition to the contract. Between merchants such
9 terms become part of the contract unless:

10 (a) the offer expressly limits acceptance to the
11 terms of the offer;

12 (b) they materially alter it; or

13 (c) notification of objection to them has already
14 been given or is given within a reasonable time after notice
15 of them is received.

16 (3) Conduct by both parties which recognizes the
17 existence of a contract is sufficient to establish a contract
18 for sale although the writings of the parties do not otherwise
19 establish a contract. In such case the terms of the particular
20 contract consist of those terms on which the writings of the
21 parties agree, together with any supplementary terms incorporated
22 under any other provisions of this Act.

23 Sec. 2.208. COURSE OF PERFORMANCE OR PRACTICAL CONTRUCTION.

24 (1) Where the contract for sale involves repeated
25 occasions for performance by either party with knowledge of the
26 nature of the performance and opportunity for objection to it by
27 the other, any course of performance accepted or acquiesced in
28 without objection shall be relevant to determine the meaning of
29 the agreement.

1 (2) The express terms of the agreement and any such
2 course of performance, as well as any course of dealing and usage
3 of trade, shall be construed whenever reasonable as consistent
4 with each other; but when such construction is unreasonable,
5 express terms shall control course of performance and course of
6 performance shall control both course of dealing and usage of
7 trade (Section 1.205.)

8 (3) Subject to the provisions of the next section on
9 modification and waiver, such course of performance shall be
10 relevant to show a waiver or modification of any term inconsis-
11 tent with such course of performance.

12 Sec. 2.209. MODIFICATION, RESCISSION AND WAIVER.

13 (1) An agreement modifying a contract within this
14 Article needs no consideration to be binding.

15 (2) A signed agreement which excludes modification or
16 rescission except by a signed writing cannot be otherwise modi-
17 fied or rescinded, but except as between merchants such a re-
18 quirement on a form supplied by the merchant must be separately
19 signed by the other party.

20 (3) The requirements of the statute of frauds section
21 of this Article (Section 2.201.) must be satisfied if the contract
22 as modified is within its provisions.

23 (4) Although an attempt at modification or rescission
24 does not satisfy the requirements of subsection (2) or (3) it can
25 operate as a waiver.

26 (5) A party who has made a waiver affecting an execu-
27 tory portion of the contract may retract the waiver by reasonable
28 notification received by the other party that strict performance
29 will be required of any term waived, unless the retraction would

1 be unjust in view of a material change of position in reliance on
2 the waiver.

3 Sec. 2.210. DELEGATION OF PERFORMANCE; ASSIGNMENT OF RIGHTS.

4 (1) A party may perform his duty through a delegate
5 unless otherwise agreed or unless the other party has a substan-
6 tial interest in having his original promisor perform or control
7 the acts required by the contract. No delegation of performance
8 relieves the party delegating of any duty to perform or any
9 liability for breach.

10 (2) Unless otherwise agreed all rights of either seller
11 or buyer can be assigned except where the assignment would ma-
12 terially change the duty of the other party, or increase materially
13 the burden or risk imposed on him by his contract, or impair ma-
14 terially his chance of obtaining return performance. A right to
15 damages for breach of the whole contract or a right arising out
16 of the assignor's due performance of his entire obligation can be
17 assigned despite agreement otherwise.

18 (3) Unless the circumstances indicate the contrary a
19 prohibition of assignment of "the contract" is to be construed as
20 barring only the delegation to the assignee of the assignor's
21 performance.

22 (4) An assignment of "the contract" or of "all my
23 rights under the contract" or an assignment in similar general
24 terms is an assignment of rights and unless the language or the
25 circumstances (as in an assignment for security) indicate the
26 contrary, it is a delegation of performance of the duties of the
27 assignor and its acceptance by the assignee constitutes a promise
28 by him to perform those duties. This promise is enforceable by
29 either the assignor or the other party to the original contract.

1 (5) The other party may treat any assignment which
2 delegates performance as creating reasonable grounds for in-
3 security and may without prejudice to his rights against the
4 assignor demand assurances from the assignee (Section 2.609.)

5 Part 3

6 General Obligation and Construction of Contract

7 Sec. 2.301. GENERAL OBLIGATIONS OF PARTIES. The obligation
8 of the seller is to transfer and deliver and that of the buyer
9 is to accept and pay in accordance with the contract.

10 Sec. 2.302. UNCONSCIONABLE CONTRACT OR CLAUSE.

11 (1) If the court as a matter of law finds the contract
12 or any clause of the contract to have been unconscionable at the
13 time it was made the court may refuse to enforce the contract, or
14 it may enforce the remainder of the contract without the uncon-
15 scionable clause, or it may so limit the application of any un-
16 conscionable clause as to avoid any unconscionable result.

17 (2) When it is claimed or appears to the court that
18 the contract or any clause thereof may be unconscionable the
19 parties shall be afforded a reasonable opportunity to present
20 evidence as to its commercial setting, purpose and effect to aid
21 the court in making the determination.

22 Sec. 2.303. ALLOCATION OR DIVISION OF RISKS. Where this
23 Article allocates a risk or a burden as between the parties
24 "unless otherwise agreed", the agreement may not only shift the
25 allocation but may also divide the risk or burden.

26 Sec. 2.304. PRICE PAYABLE IN MONEY, GOODS, REALTY, OR
27 OTHERWISE.

28 (1) The price can be made payable in money or other-
29 wise. If it is payable in whole or in part in goods each party

1 is a seller of the goods which he is to transfer.

2 (2) Even though all or part of the price is payable in
3 an interest in realty the transfer of the goods and the seller's
4 obligations with reference to them are subject to this Article,
5 but not the transfer of the interest in realty or the transferor's
6 obligations in connection therewith.

7 Sec. 2.305. OPEN PRICE TERM.

8 (1) The parties if they so intend can conclude a
9 contract for sale even though the price is not settled. In such
10 a case the price is a reasonable price at the time for delivery if

11 (a) nothing is said as to price; or

12 (b) the price is left to be agreed by the parties
13 and they fail to agree; or

14 (c) the price is to be fixed in terms of some
15 agreed market or other standard as set or recorded by a
16 third person or agency and it is not so set or recorded.

17 (2) A price to be fixed by the seller or by the buyer
18 means a price for him to fix in good faith.

19 (3) When a price left to be fixed otherwise than by
20 agreement of the parties fails to be fixed through fault of one
21 party the other may at his option treat the contract as cancelled
22 or himself fix a reasonable price.

23 (4) Where, however, the parties intend not to be
24 bound unless the price be fixed or agreed and it is not fixed or
25 agreed there is no contract. In such a case the buyer must re-
26 turn any goods already received or if unable so to do must pay
27 their reasonable value at the time of delivery and the seller
28 must return any portion of the price paid on account.

29 Sec. 2.306. OUTPUT, REQUIREMENTS AND EXCLUSIVE DEALINGS.

1 (1) A term which measures the quantity by the output
2 of the seller or the requirements of the buyer means such actual
3 output or requirements as may occur in good faith, except that no
4 quantity unreasonably disproportionate to any stated estimate
5 or in the absence of a stated estimate to any normal or otherwise
6 comparable prior output or requirements may be tendered or de-
7 manded.

8 (2) A lawful agreement by either the seller or the
9 buyer for exclusive dealing in the kind of goods concerned imposes
10 unless otherwise agreed an obligation by the seller to use best
11 efforts to supply the goods and by the buyer to use best efforts
12 to promote their sale.

13 Sec. 2.307. DELIVERY IN SINGLE LOT OR SEVERAL LOTS. Unless
14 otherwise agreed all goods called for by a contract for sale must
15 be tendered in a single delivery and payment is due only on such
16 tender but where the circumstances give either party the right
17 to make or demand delivery in lots the price if it can be appor-
18 tioned may be demanded for each lot.

19 Sec. 2.308. ABSENCE OF SPECIFIED PLACE FOR DELIVERY. Unless
20 otherwise agreed

21 (a) the place for delivery of goods is the seller's
22 place of business or if he has none his residence; but

23 (b) in a contract for sale of identified goods
24 which to the knowledge of the parties at the time of con-
25 tracting are in some other place, that place is the place
26 for their delivery; and

27 (c) documents of title may be delivered through
28 customary banking channels.

29 Sec. 2.309. ABSENCE OF SPECIFIC TIME PROVISIONS; NOTICE OF

1 TERMINATION.

2 (1) The time for shipment or delivery or any other
3 action under a contract if not provided in this Article or
4 agreed upon shall be a reasonable time.

5 (2) Where the contract provides for successive per-
6 formances but is indefinite in duration it is valid for a reason-
7 able time but unless otherwise agreed may be terminated at any
8 time by either party.

9 (3) Termination of a contract by one party except on
10 the happening of an agreed event requires that reasonable notifi-
11 cation be received by the other party and an agreement dispensing
12 with notification is invalid if its operation would be unconscion-
13 able.

14 Sec. 2.310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT;
15 AUTHORITY TO SHIP UNDER RESERVATION. Unless otherwise agreed

16 (a) payment is due at the time and place at
17 which the buyer is to receive the goods even though the
18 place of shipment is the place of delivery; and

19 (b) if the seller is authorized to send the goods
20 he may ship them under reservation, and may tender the
21 documents of title, but the buyer may inspect the goods
22 after their arrival before payment is due unless such in-
23 spection is inconsistent with the terms of the contract
24 (Section 2.513.); and

25 (c) if delivery is authorized and made by way of
26 documents of title otherwise than by subsection (b) then
27 payment is due at the time and place at which the buyer is
28 to receive the documents regardless of where the goods are
29 to be received; and

1 (d) where the seller is required or authorized to
2 ship the goods on credit the credit period runs from the
3 time of shipment but post-dating the invoice or delaying its
4 dispatch will correspondingly delay the starting of the
5 credit period.

6 Sec. 2.311. OPTIONS AND COOPERATION RESPECTING PERFORMANCE.

7 (1) An agreement for sale which is otherwise sufficiently
8 definite (subsection (3) of Section 2.204.) to be a contract is
9 not made invalid by the fact that it leaves particulars of per-
10 formance to be specified by one of the parties. Any such specifi-
11 cation must be made in good faith and within limits set by com-
12 mercial reasonableness.

13 (2) Unless otherwise agreed specifications relating to
14 assortment of the goods are at the buyer's option and except as
15 otherwise provided in subsections (1) (c) and (3) of Section 2.319.
16 specifications or arrangements relating to shipment are at the
17 seller's option.

18 (3) Where such specification would materially affect
19 the other party's performance but is not seasonably made or where
20 one party's cooperation is necessary to the agreed performance
21 of the other but is not seasonably forthcoming, the other party
22 in addition to all other remedies

23 (a) is excused for any resulting delay in his own
24 performance; and

25 (b) may also either proceed to perform in any
26 reasonable manner or after the time for a material part of
27 his own performance treat the failure to specify or to co-
28 operate as a breach by failure to deliver or accept the
29 goods.

1 Sec. 2.312. WARRANTY OF TITLE AND AGAINST INFRINGEMENT;
2 BUYER'S OBLIGATION AGAINST INFRINGEMENT.

3 (1) Subject to subsection (2) there is in a contract
4 for sale a warranty by the seller that

5 (a) the title conveyed shall be good, and its
6 transfer rightful; and

7 (b) the goods shall be delivered free from any
8 security interest or other lien or encumbrance of which the
9 buyer at the time of contracting has no knowledge.

10 (2) A warranty under subsection (1) will be excluded
11 or modified only by specific language or by circumstances which
12 give the buyer reason to know that the person selling does not
13 claim title in himself or that he is purporting to sell only
14 such right or title as he or a third person may have.

15 (3) Unless otherwise agreed a seller who is a mer-
16 chant regularly dealing in goods of the kind warrants that the
17 goods shall be delivered free of the rightful claim of any third
18 person by way of infringement or the like but a buyer who fur-
19 nishes specifications to the seller must hold the seller harmless
20 against any such claim which arises out of compliance with the
21 specifications.

22 Sec. 2.313. EXPRESS WARRANTIES BY AFFIRMATION, PROMISE,
23 DESCRIPTION, SAMPLE.

24 (1) Express warranties by the seller are created as
25 follows:

26 (a) Any affirmation of fact or promise made by
27 the seller to the buyer which relates to the goods and be-
28 comes part of the basis of the bargain creates an express
29 warranty that the goods shall conform to the affirmation or

1 promise.

2 (b) Any description of the goods which is made
3 part of the basis of the bargain creates an express warranty
4 that the goods shall conform to the description.

5 (c) Any sample or model which is made part of the
6 basis of the bargain creates an express warranty that the
7 whole of the goods shall conform to the sample or model.

8 (2) It is not necessary to the creation of an express
9 warranty that the seller use formal words such as "warrant" or
10 "guarantee" or that he have a specific intention to make a war-
11 ranty, but an affirmation merely of the value of the goods or a
12 statement purporting to be merely the seller's opinion or com-
13 mendation of the goods does not create a warranty.

14 Sec. 2.314. IMPLIED WARRANTY: MERCHANTABILITY; USAGE OF
15 TRADE.

16 (1) Unless excluded or modified (Section 2.316.), a
17 warranty that the goods shall be merchantable is implied in a
18 contract for their sale if the seller is a merchant with respect
19 to goods of that kind. Under this section the serving for value
20 of food or drink to be consumed either on the premises or else-
21 where is a sale.

22 (2) Goods to be merchantable must be at least such as

23 (a) pass without objection in the trade under the
24 contract description; and

25 (b) in the case of fungible goods, are of fair
26 average quality within the description; and

27 (c) are fit for the ordinary purposes for which
28 such goods are used; and

29 (d) run, within the variations permitted by the

1 agreement, of even kind, quality and quantity within each
2 unit and among all units involved; and

3 (e) are adequately contained, packaged, and
4 labeled as the agreement may require; and

5 (f) conform to the promises or affirmations of
6 fact made on the container or label if any.

7 (3) Unless excluded or modified (Section 2.316.)
8 other implied warranties may arise from course of dealing or
9 usage of trade.

10 Sec. 2.315. IMPLIED WARRANTY: FITNESS FOR PARTICULAR PUR-
11 POSE. Where the seller at the time of contracting has reason to
12 know any particular purpose for which the goods are required and
13 that the buyer is relying on the seller's skill or judgment to
14 select or furnish suitable goods, there is unless excluded or
15 modified under the next section an implied warranty that the
16 goods shall be fit for such purpose.

17 Sec. 2.316. EXCLUSION OR MODIFICATION OF WARRANTIES.

18 (1) Words or conduct relevant to the creation of an
19 express warranty and words or conduct tending to negate or limit
20 warranty shall be construed wherever reasonable as consistent
21 with each other; but subject to the provisions of this Article on
22 parol or extrinsic evidence (Section 2.202.) negation or limita-
23 tion is inoperative to the extent that such construction is un-
24 reasonable.

25 (2) Subject to subsection (3), to exclude or modify
26 the implied warranty of merchantability or any part of it the
27 language must mention merchantability and in case of a writing
28 must be conspicuous, and to exclude or modify any implied war-
29 ranty of fitness the exclusion must be by a writing and conspic-

1 uous. Language to exclude all implied warranties of fitness is
2 sufficient if it states, for example, that "There are no war-
3 ranties which extend beyond the description on the face hereof."

4 (3) Notwithstanding subsection (2)

5 (a) unless the circumstances indicate otherwise,
6 all implied warranties are excluded by expressions like "as
7 is", "with all faults" or other language which in common
8 understanding calls the buyer's attention to the exclusion
9 of warranties and makes plain that there is no implied
10 warranty; and

11 (b) when the buyer before entering into the
12 contract has examined the goods or the sample or model as
13 fully as he desired or has refused to examine the goods
14 there is no implied warranty with regard to defects which
15 an examination ought in the circumstances to have revealed
16 to him; and

17 (c) an implied warranty can also be excluded or
18 modified by course of dealing or course of performance or
19 usage of trade.

20 (4) Remedies for breach of warranty can be limited in
21 accordance with the provisions of this Article on liquidation or
22 limitation of damages and on contractual modification of remedy
23 (Sections 2.718. and 2.719.)

24 Sec. 2.317. CUMULATION AND CONFLICT OF WARRANTIES EXPRESS
25 OR IMPLIED. Warranties whether express or implied shall be constru-
26 ed as consistent with each other and as cumulative, but if such
27 construction is unreasonable the intention of the parties shall
28 determine which warranty is dominant. In ascertaining that in-
29 tention the following rules apply:

1 (a) Exact or technical specifications displace
2 an inconsistent sample or model or general language of des-
3 cription.

4 (b) A sample from an existing bulk displaces
5 inconsistent general language of description.

6 (c) Express warranties displace inconsistent
7 implied warranties other than an implied warranty of fitness
8 for a particular purpose.

9 Sec. 2.318. THIRD PARTY BENEFICIARIES OF WARRANTIES EXPRESS
10 OR IMPLIED. A seller's warranty whether express or implied ex-
11 tends to any natural person who is in the family or household of
12 his buyer or who is a guest in his home if it is reasonable to
13 expect that such person may use, consume or be affected by the
14 goods and who is injured in person by breach of the warranty. A
15 seller may not exclude or limit the operation of this section.

16 Sec. 2.319. F.O.B. AND F.A.S. TERMS.

17 (1) Unless otherwise agreed the term F.O.B. (which
18 means "free on board") at a named place, even though used only
19 in connection with the stated price, is a delivery term under
20 which

21 (a) when the term is F.O.B. the place of ship-
22 ment, the seller must at that place ship the goods in the
23 manner provided in this Article (Section 2.504.) and bear
24 the expense and risk of putting them into the possession of
25 the carrier; or

26 (b) when the term is F.O.B. the place of desti-
27 nation, the seller must at his own expense and risk trans-
28 port the goods to that place and there tender delivery of
29 them in the manner provided in this Article (Section 2.503.);

1 (c) when under either (a) or (b) the term is also
2 F.O.B. vessel, car or other vehicle, the seller must in
3 addition at his own expense and risk load the goods on
4 board. If the term is F.O.B. vessel the buyer must name the
5 vessel and in an appropriate case the seller must comply
6 with the provisions of this Article on the form of bill of
7 lading (Section 2.323.)

8 (2) Unless otherwise agreed the term F.A.S. vessel
9 (which means "free alongside") at a named port, even though used
10 only in connection with the stated price, is a delivery term
11 under which the seller must

12 (a) at his own expense and risk deliver the goods
13 alongside the vessel in the manner usual in that port or on
14 a dock designated and provided by the buyer; and

15 (b) obtain and tender a receipt for the goods in
16 exchange for which the carrier is under a duty to issue a
17 bill of lading.

18 (3) Unless otherwise agreed in any case falling within
19 subsection (1) (a) or (c) or subsection (2) the buyer must season-
20 ably give any needed instructions for making delivery, including
21 when the term is F.A.S. or F.O.B. the loading berth of the vessel
22 and in an appropriate case its name and sailing date. The seller
23 may treat the failure of needed instructions as a failure of
24 cooperation under this Article (Section 2.311.) He may also at
25 his option move the goods in any reasonable manner preparatory to
26 delivery or shipment.

27 (4) Under the term F.O.B. vessel or F.A.S. unless
28 otherwise agreed the buyer must make payment against tender of the
29 required documents and the seller may not tender nor the buyer

1 demand delivery of the goods in substitution for the documents.

2 Sec. 2.320. C.I.F. AND C. & F. TERMS.

3 (1) The term C.I.F. means that the price includes in
4 a lump sum the cost of the goods and the insurance and freight
5 to the named destination. The term C. & F. or C.F. means that
6 the price so includes cost and freight to the named destination.

7 (2) Unless otherwise agreed and even though used only
8 in connection with the stated price and destination, the term
9 C.I.F. destination or its equivalent requires the seller at his
10 own expense and risk to

11 (a) put the goods into the possession of a
12 carrier at the port for shipment and obtain a negotiable
13 bill or bills of lading covering the entire transportation
14 to the named destination; and

15 (b) load the goods and obtain a receipt from
16 the carrier (which may be contained in the bill of lading)
17 showing that the freight has been paid or provided for; and

18 (c) obtain a policy or certificate of insurance,
19 including any war risk insurance, of a kind and on terms
20 then current at the port of shipment in the usual amount,
21 in the currency of the contract, shown to cover the same
22 goods covered by the bill of lading and providing for pay-
23 ment of loss to the order of the buyer or for the account of
24 whom it may concern; but the seller may add to the price
25 the amount of the premium for any such war risk insurance;
26 and

27 (d) prepare an invoice of the goods and procure
28 any other documents required to effect shipment or to comply
29 with the contract; and

1 (e) forward and tender with commercial prompt-
2 ness all the documents in due form and with any indorsement
3 necessary to perfect the buyer's rights.

4 (3) Unless otherwise agreed the term C. & F. or its
5 equivalent has the same effect and imposes upon the seller the
6 same obligations and risks as a C.I.F. term except the obligation
7 as to insurance.

8 (4) Under the term C.I.F. or C. & F. unless otherwise
9 agreed the buyer must make payment against tender of the required
10 documents and the seller may not tender nor the buyer demand
11 delivery of the goods in substitution for the documents.

12 Sec. 2.321. C.I.F. OR C. & F.: "NET LANDED WEIGHTS"; "PAY-
13 MENT ON ARRIVAL"; WARRANTY OF CONDITION ON ARRIVAL. Under a
14 contract containing a term C.I.F. or C. & F.

15 (1) Where the price is based on or is to be adjusted
16 according to "net landed weights", "delivered weights", "out
17 turn" quantity or quality or the like, unless otherwise agreed
18 the seller must reasonably estimate the price. The payment due
19 on tender of the documents called for by the contract is the
20 amount so estimated, but after final adjustment of the price a
21 settlement must be made with commercial promptness.

22 (2) An agreement described in subsection (1) or any
23 warranty of quality or condition of the goods on arrival places
24 upon the seller the risk of ordinary deterioration, shrinkage
25 and the like in transportation but has no effect on the place or
26 time of identification to the contract for sale or delivery or
27 on the passing of the risk of loss.

28 (3) Unless otherwise agreed where the contract pro-
29 vides for payment on or after arrival of the goods the seller

1 must before payment allow such preliminary inspection as is
2 feasible; but if the goods are lost delivery of the documents
3 and payment are due when the goods should have arrived.

4 Sec. 2.322. DELIVERY "EX-SHIP".

5 (1) Unless otherwise agreed a term for delivery of
6 goods "ex-ship" (which means from the carrying vessel) or in
7 equivalent language is not restricted to a particular ship and
8 requires delivery from a ship which has reached a place at the
9 named port of destination where goods of the kind are usually
10 discharged.

11 (2) Under such a term unless otherwise agreed

12 (a) the seller must discharge all liens arising
13 out of the carriage and furnish the buyer with a direction
14 which puts the carrier under a duty to deliver the goods;
15 and

16 (b) the risk of loss does not pass to the buyer
17 until the goods leave the ship's tackle or are otherwise
18 properly unloaded.

19 Sec. 2.323. FORM OF BILL OF LADING REQUIRED IN OVERSEAS
20 SHIPMENT; "OVERSEAS".

21 (1) Where the contract contemplates overseas shipment
22 and contains a term C.I.F. or C. & F. or F.O.B. vessel, the
23 seller unless otherwise agreed must obtain a negotiable bill of
24 lading stating that the goods have been loaded on board or, in
25 the case of a term C.I.F. or C. & F., received for shipment.

26 (2) Where in a case within subsection (1) a bill of
27 lading has been issued in a set of parts, unless otherwise agreed
28 if the documents are not to be sent from abroad the buyer may
29 demand tender of the full set; otherwise only one part of the bill

1 of lading need be tendered. Even if the agreement expressly re-
2 quires a full set

3 (a) due tender of a single part is acceptable
4 within the provisions of this Article on cure of improper
5 delivery subsection (1) of Section 2.508.); and

6 (b) even though the full set is demanded, if the
7 documents are sent from abroad the person tendering an in-
8 complete set may nevertheless require payment upon furnish-
9 ing an indemnity which the buyer in good faith deems ade-
10 quate.

11 (3) A shipment by water or by air or a contract con-
12 templating such shipment is "overseas" insofar as by usage of
13 trade or agreement it is subject to the commercial, financing or
14 shipping practices characteristic of international deep water
15 commerce.

16 Sec. 2.324. "NO ARRIVAL, NO SALE" TERM. Under a term "no
17 arrival, no sale" or terms of like meaning, unless otherwise
18 agreed,

19 (a) the seller must properly ship conforming
20 goods and if they arrive by any means he must tender them on
21 arrival but he assumes no obligation that the goods will
22 arrive unless he has caused the non-arrival; and

23 (b) where without fault of the seller the goods are
24 in part lost or have so deteriorated as no longer to conform
25 to the contract or arrive after the contract time, the buyer
26 may proceed as if there had been casualty to identified
27 goods (Section 2.613.)

28 Sec. 2.325. "LETTER OF CREDIT" TERM; "CONFIRMED CREDIT".

29 (1) Failure of the buyer seasonably to furnish an

1 agreed letter of credit is a breach of the contract for sale.

2 (2) The delivery to seller of a proper letter of
3 credit suspends the buyer's obligation to pay. If the letter of
4 credit is dishonored, the seller may on reasonable notification
5 to the buyer require payment directly from him.

6 (3) Unless otherwise agreed the term "letter of credit"
7 or "banker's credit" in a contract for sale means an irrevocable
8 credit issued by a financing agency of good repute and, where
9 the shipment is overseas, of good international repute. The
10 term "confirmed credit" means that the credit must also carry
11 the direct obligation of such an agency which does business in
12 the seller's financial market.

13 Sec. 2.326. SALE ON APPROVAL AND SALE OR RETURN; CONSIGN-
14 MENT SALES AND RIGHTS OF CREDITORS.

15 (1) Unless otherwise agreed, if delivered goods may
16 be returned by the buyer even though they conform to the contract,
17 the transaction is

18 (a) a "sale on approval" if the goods are de-
19 livered primarily for use, and

20 (b) a "sale or return" if the goods are delivered
21 primarily for resale.

22 (2) Except as provided in subsection (3), goods held
23 on approval are not subject to the claims of the buyer's creditors
24 until acceptance; goods held on sale or return are subject to
25 such claims while in the buyer's possession.

26 (3) Where goods are delivered to a person for sale
27 and such person maintains a place of business at which he deals
28 in goods of the kind involved, under a name other than the name
29 of the person making delivery, then with respect to claims of

1 creditors of the person conducting the business the goods are
2 deemed to be on sale or return. The provisions of this sub-
3 section are applicable even though an agreement purports to
4 reserve title to the person making delivery until payment or
5 resale or uses such words as "on consignment" or "on memorandum".
6 However, this subsection is not applicable if the person making
7 delivery

8 (a) complies with an applicable law providing
9 for a consignor's interest or the like to be evidenced by
10 a sign, or

11 (b) establishes that the person conducting the
12 business is generally known by his creditors to be sub-
13 stantially engaged in selling the goods of others, or

14 (c) complies with the filing provisions of the
15 Article on Secured Transactions (Article IX).

16 (4) Any "or return" term of a contract for sale is
17 to be treated as a separate contract for sale within the statute
18 of frauds section of this Article (Section 2.201.) and as contra-
19 dicting the sale aspect of the contract within the provisions of
20 this Article on parol or extrinsic evidence (Section 2.202.)

21 Sec. 2.327. SPECIAL INCIDENTS OF SALE ON APPROVAL AND SALE
22 OR RETURN.

23 (1) Under a sale on approval unless otherwise agreed

24 (a) although the goods are identified to the
25 contract the risk of loss and the title do not pass to the
26 buyer until acceptance; and

27 (b) use of the goods consistent with the purpose
28 of trial is not acceptance but failure seasonably to notify
29 the seller of election to return the goods is acceptance,

1 and if the goods conform to the contract acceptance of any
2 part is acceptance of the whole; and

3 (c) after due notification of election to return,
4 the return is at the seller's risk and expense but a merchant
5 buyer must follow any reasonable instructions.

6 (2) Under a sale or return unless otherwise agreed

7 (a) the option to return extends to the whole or
8 any commercial unit of the goods while in substantially
9 their original condition, but must be exercised seasonably;
10 and

11 (b) the return is at the buyer's risk and expense.

12 Sec. 2.328. SALE BY AUCTION.

13 (1) In a sale by auction if goods are put up in lots
14 each lot is the subject of a separate sale.

15 (2) A sale by auction is complete when the auctioneer
16 so announces by the fall of the hammer or in other customary
17 manner. Where a bid is made while the hammer is falling in accep-
18 tance of a prior bid the auctioneer may in his discretion reopen
19 the bidding or declare the goods sold under the bid on which the
20 hammer was falling.

21 (3) Such a sale is with reserve unless the goods are
22 in explicit terms put up without reserve. In an auction with
23 reserve the auctioneer may withdraw the goods at any time until
24 he announces completion of the sale. In an auction without re-
25 serve, after the auctioneer calls for bids on an article or lot,
26 that article or lot cannot be withdrawn unless no bid is made
27 within a reasonable time. In either case a bidder may retract
28 his bid until the auctioneer's announcement of completion of the
29 sale, but a bidder's retraction does not revive any previous bid.

1 (4) If the auctioneer knowingly receives a bid on the
2 seller's behalf or the seller makes or procures such a bid, and
3 notice has not been given that liberty for such bidding is re-
4 served, the buyer may at his option avoid the sale or take the
5 goods at the price of the last good faith bid prior to the com-
6 pletion of the sale. This subsection shall not apply to any bid
7 at a forced sale.

8 Part 4

9 Title, Creditors and Good Faith Purchasers

10 Sec. 2.401. PASSING OF TITLE; RESERVATION FOR SECURITY;
11 LIMITED APPLICATION OF THIS SECTION. Each provision of this
12 Article with regard to the rights, obligations and remedies of
13 the seller, the buyer, purchasers or other third parties applies
14 irrespective of title to the goods except where the provision
15 refers to such title. Insofar as situations are not covered by
16 the other provisions of this Article and matters concerning title
17 become material the following rules apply:

18 (1) Title to goods cannot pass under a contract for
19 sale prior to their identification to the contract (Section 2.501.),
20 and unless otherwise explicitly agreed the buyer acquires by their
21 identification a special property as limited by this Act. Any
22 retention or reservation by the seller of the title (property) in
23 goods shipped or delivered to the buyer is limited in effect to a
24 reservation of a security interest. Subject to these provisions
25 and to the provisions of the Article on Secured Transactions
26 (Article IX), title to goods passes from the seller to the buyer
27 in any manner and on any conditions explicitly agreed on by the
28 parties.

29 (2) Unless otherwise explicitly agreed title passes to

1 the buyer at the time and place at which the seller completes his
2 performance with reference to the physical delivery of the goods,
3 despite any reservation of a security interest and even though a
4 document of title is to be delivered at a different time or place;
5 and in particular and despite any reservation of a security in-
6 terest by the bill of lading

7 (a) if the contract requires or authorizes the
8 seller to send the goods to the buyer but does not require
9 him to deliver them at destination, title passes to the
10 buyer at the time and place of shipment; but

11 (b) if the contract requires delivery at des-
12 tination, title passes on tender there.

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

15 (a) if the seller is to deliver a document of
16 title, title passes at the time when and the place where
17 he delivers such documents; or

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

21 (4) A rejection or other refusal by the buyer to re-
22 ceive or retain the goods, whether or not justified, or a justi-
23 fied revocation of acceptance revests title to the goods in the
24 seller. Such reversion occurs by operation of law and is not a
25 "sale".

26 Sec. 2.402. RIGHTS OF SELLER'S CREDITORS AGAINST SOLD GOODS.

27 (1) Except as provided in subsections (2) and (3),
28 rights of unsecured creditors of the seller with respect to goods
29 which have been identified to a contract for sale are subject to

1 the buyer's rights to recover the goods under this Article (Sec-
2 tions 2.502. and 2.716.)

3 (2) A creditor of the seller may treat a sale or an
4 identification of goods to a contract for sale as void if as
5 against him a retention of possession by the seller is fraudulent
6 under any rule of law of the state where the goods are situated,
7 except that retention of possession in good faith and current
8 course of trade by a merchant-seller for a commercially reason-
9 able time after a sale or identification is not fraudulent.

10 (3) Nothing in this Article shall be deemed to impair
11 the rights of creditors of the seller

12 (a) under the provisions of the Article on
13 Secured Transactions (Article IX); or

14 (b) where identification to the contract or
15 delivery is made not in current course of trade but in
16 satisfaction of or as security for a pre-existing claim
17 for money, security or the like and is made under circum-
18 stances which under any rule of law of the state where the
19 goods are situated would apart from this Article constitute
20 the transaction a fraudulent transfer or voidable preference.
21 Sec. 2.403. POWER TO TRANSFER; GOOD FAITH PURCHASE OF
22 GOODS; "ENTRUSTING".

23 (1) A purchaser of goods acquires all title which his
24 transferor had or had power to transfer except that a purchaser
25 of a limited interest acquires rights only to the extent of the
26 interest purchased. A person with voidable title has power to
27 transfer a good title to a good faith purchaser for value. When
28 goods have been delivered under a transaction of purchase the
29 purchaser has such power even though

1 (a) the transferor was deceived as to the identity
2 of the purchaser, or

3 (b) the delivery was in exchange for a check
4 which is later dishonored, or

5 (c) it was agreed that the transaction was to be
6 a "cash sale", or

7 (d) the delivery was procured through fraud
8 punishable as larcenous under the criminal law.

9 (2) Any entrusting of possession of goods to a mer-
10 chant who deals in goods of that kind gives him power to transfer
11 all rights of the entruster to a buyer in ordinary course of
12 business.

13 (3) "Entrusting" includes any delivery and any
14 acquiescence in retention of possession regardless of any condi-
15 tion expressed between the parties to the delivery or acquies-
16 cence and regardless of whether the procurement of the entrusting
17 or the possessor's disposition of the goods have been such as to
18 be larcenous under the criminal law.

19 (4) The rights of other purchasers of goods and of
20 lien creditors are governed by the Articles on Secured Transactions
21 (Article IX), Bulk Transfers (Article VI) and Documents of Title
22 (Article VII).

23 Part 5

24 Performance

25 Sec. 2.501. INSURABLE INTEREST IN GOODS; MANNER OF IDENTI-
26 FICATION OF GOODS.

27 (1) The buyer obtains a special property and an in-
28 surable interest in goods by identification of existing goods as
29 goods to which the contract refers even though the goods so

1 identified are non-conforming and he has an option to return or
2 reject them. Such identification can be made at any time and in
3 any manner explicitly agreed to by the parties. In the absence
4 of explicit agreement identification occurs

5 (a) when the contract is made if it is for the
6 sale of goods already existing and identified;

7 (b) if the contract is for the sale of future
8 goods other than those described in paragraph (c), when
9 goods are shipped, marked or otherwise designated by the
10 seller as goods to which the contract refers;

11 (c) when the crops are planted or otherwise be-
12 come growing crops or the young are conceived if the contract
13 is for the sale of unborn young to be born within twelve
14 months after contracting or for the sale of crops to be
15 harvested within twelve months or the next normal harvest
16 season after contracting whichever is longer.

17 (2) The seller retains an insurable interest in goods
18 so long as title to or any security interest in the goods remains
19 in him and where the identification is by the seller alone he may
20 until default or insolvency or notification to the buyer that the
21 identification is final substitute other goods for those identi-
22 fied.

23 (3) Nothing in this section impairs any insurable in-
24 terest recognized under any other statute or rule of law.

25 Sec. 2.502. BUYER'S RIGHT TO GOODS ON SELLER'S INSOLVENCY.

26 (1) Subject to subsection (2) and even though the goods
27 have not been shipped a buyer who has paid a part or all of the
28 price of goods in which he has a special property under the pro-
29 visions of the immediately preceding section may on making and

1 keeping good a tender of any unpaid portion of their price re-
2 cover them from the seller if the seller becomes insolvent within
3 ten days after receipt of the first installment on their price.

4 (2) If the identification creating his special prop-
5 erty has been made by the buyer he acquires the right to recover
6 the goods only if they conform to the contract for sale.

7 Sec. 2.503. MANNER OF SELLER'S TENDER OF DELIVERY.

8 (1) Tender of delivery requires that the seller put
9 and hold conforming goods at the buyer's disposition and give the
10 buyer any notification reasonably necessary to enable him to take
11 delivery. The manner, time and place for tender are determined
12 by the agreement and this Article, and in particular

13 (a) tender must be at a reasonable hour, and if
14 it is of goods they must be kept available for the period
15 reasonably necessary to enable the buyer to take possession;
16 but

17 (b) unless otherwise agreed the buyer must fur-
18 nish facilities reasonably suited to the receipt of the
19 goods.

20 (2) Where the case is within the next section res-
21 pecting shipment tender requires that the seller comply with its
22 provisions.

23 (3) Where the seller is required to deliver at a
24 particular destination tender requires that he comply with sub-
25 section (1) and also in any appropriate case tender documents as
26 described in subsections (4) and (5) of this section.

27 (4) Where goods are in the possession of a bailee and
28 are to be delivered without being moved

29 (a) tender requires that the seller either tender

1 a negotiable document of title covering such goods or procure
2 acknowledgement by the bailee of the buyer's right to
3 possession of the goods; but

4 (b) tender to the buyer of a non-negotiable docu-
5 ment of title or of a written direction to the bailee to
6 deliver is sufficient tender unless the buyer seasonably
7 objects, and receipt by the bailee of notification of the
8 buyer's rights fixes those rights as against the bailee and
9 all third persons; but risk of loss of the goods and of any
10 failure by the bailee to honor the non-negotiable document
11 of title or to obey the direction remains on the seller until
12 the buyer has had a reasonable time to present the document
13 or direction, and a refusal by the bailee to honor the
14 document or to obey the direction defeats the tender.

15 (5) Where the contract requires the seller to deliver
16 documents

17 (a) he must tender all such documents in correct
18 form, except as provided in this Article with respect to
19 bills of lading in a set (subsection (2) of Section 2.323.);
20 and

21 (b) tender through customary banking channels is
22 sufficient and dishonor of a draft accompanying the docu-
23 ments constitutes non-acceptance or rejection.

24 Sec. 2.504. SHIPMENT BY SELLER. Where the seller is re-
25 quired or authorized to send the goods to the buyer and the con-
26 tract does not require him to deliver them at a particular
27 destination, then unless otherwise agreed he must

28 (a) put the goods in the possession of such a
29 carrier and make such a contract for their transportation

1 as may be reasonable having regard to the nature of the
2 goods and other circumstances of the case; and

3 (b) obtain and promptly deliver or tender in due
4 form any document necessary to enable the buyer to obtain
5 possession of the goods or otherwise required by the agree-
6 ment or by usage of trade; and

7 (c) promptly notify the buyer of the shipment.

8 Failure to notify the buyer under paragraph (c) or to make a
9 proper contract under paragraph (a) is a ground for rejection
10 only if material delay or loss ensues.

11 Sec. 2.505. SELLER'S SHIPMENT UNDER RESERVATION.

12 (1) Where the seller has identified goods to the con-
13 tract by or before shipment:

14 (a) his procurement of a negotiable bill of
15 lading to his own order or otherwise reserves in him a
16 security interest in the goods. His procurement of the bill
17 to the order of a financing agency or of the buyer indicates
18 in addition only the seller's expectation of transferring
19 that interest to the person named.

20 (b) a non-negotiable bill of lading to himself
21 or his nominee reserves possession of the goods as security
22 but except in a case of conditional delivery (subsection (2)
23 of Section 2.507.) a non-negotiable bill of lading naming
24 the buyer as consignee reserves no security interest even
25 though the seller retains possession of the bill of lading.

26 (2) When shipment by the seller with reservation of a
27 security interest is in violation of the contract for sale it
28 constitutes an improper contract for transportation within the
29 preceding section but impairs neither the rights given to the

1 buyer by shipment and identification of the goods to the contract
2 nor the seller's powers as a holder of a negotiable document.

3 Sec. 2.506. RIGHTS OF FINANCING AGENCY.

4 (1) A financing agency by paying or purchasing for
5 value a draft which relates to a shipment of goods acquires to
6 the extent of the payment or purchase and in addition to its own
7 rights under the draft and any document of title securing it
8 any rights of the shipper in the goods including the right to stop
9 delivery and the shipper's right to have the draft honored by
10 the buyer.

11 (2) The right to reimbursement of a financing agency
12 which has in good faith honored or purchased the draft under com-
13 mitment to or authority from the buyer is not impaired by subse-
14 quent discovery of defects with reference to any relevant docu-
15 ment which was apparently regular on its face.

16 Sec. 2.507. EFFECT OF SELLER'S TENDER; DELIVERY ON CONDITION.

17 (1) Tender of delivery is a condition to the buyer's
18 duty to accept the goods and, unless otherwise agreed, to his
19 duty to pay for them. Tender entitles the seller to acceptance of
20 the goods and to payment according to the contract.

21 (2) Where payment is due and demanded on the delivery
22 to the buyer of goods or documents of title, his right as against
23 the seller to retain or dispose of them is conditional upon his
24 making the payment due.

25 Sec. 2.508. CURE BY SELLER OF IMPROPER TENDER OR DELIVERY;
26 REPLACEMENT.

27 (1) Where any tender or delivery by the seller is
28 rejected because non-conforming and the time for performance has
29 not yet expired, the seller may seasonably notify the buyer of his

1 intention to cure and may then within the contract time make a
2 conforming delivery.

3 (2) Where the buyer rejects a non-conforming tender
4 which the seller had reasonable grounds to believe would be accept-
5 able with or without money allowance the seller may if he season-
6 ably notified the buyer have a further reasonable time to substi-
7 tute a conforming tender.

8 Sec. 2.509. RISK OF LOSS IN THE ABSENCE OF BREACH.

9 (1) Where the contract requires or authorizes the
10 seller to ship the goods by carrier

11 (a) if it does not require him to deliver them at
12 a particular destination, the risk of loss passes to the
13 buyer when the goods are duly delivered to the carrier even
14 though the shipment is under reservation (Section 2.505.);
15 but

16 (b) if it does require him to deliver them at a
17 particular destination and the goods are there duly tendered
18 while in the possession of the carrier, the risk of loss
19 passes to the buyer when the goods are there duly so tendered
20 as to enable the buyer to take delivery.

21 (2) Where the goods are held by a bailee to be de-
22 livered without being moved, the risk of loss passes to the buyer

23 (a) on his receipt of a negotiable document of
24 title covering the goods; or

25 (b) on acknowledgement by the bailee of the
26 buyer's right to possession of the goods; or

27 (c) after his receipt of a non-negotiable docu-
28 ment of title or other written direction to deliver, as pro-
29 vided in subsection (4)(b) of Section 2.503.

1 (3) In any case not within subsection (1) or (2), the
2 risk of loss passes to the buyer on his receipt of the goods if
3 the seller is a merchant; otherwise the risk passes to the buyer
4 on tender of delivery.

5 (4) The provisions of this section are subject to
6 contrary agreement of the parties and to the provisions of this
7 Article on sale on approval (Section 2.327.) and on effect of
8 breach on risk of loss (Section 2.510.)

9 Sec. 2.510. EFFECT OF BREACH ON RISK OF LOSS

10 (1) Where a tender or delivery of goods so fails to
11 conform to the contract as to give a right of rejection the risk
12 of their loss remains on the seller until cure or acceptance.

13 (2) Where the buyer rightfully revokes acceptance he
14 may to the extent of any deficiency in his effective insurance
15 coverage treat the risk of loss as having rested on the seller
16 from the beginning.

17 (3) Where the buyer as to conforming goods already
18 identified to the contract for sale repudiates or is otherwise in
19 breach before risk of their loss has passed to him, the seller
20 may to the extent of any deficiency in his effective insurance
21 coverage treat the risk of loss as resting on the buyer for a
22 commercially reasonable time.

23 Sec. 2.511. TENDER OF PAYMENT BY BUYER; PAYMENT BY CHECK.

24 (1) Unless otherwise agreed tender of payment is a
25 condition to the seller's duty to tender and complete any de-
26 livery.

27 (2) Tender of payment is sufficient when made by any
28 means or in any manner current in the ordinary course of business
29 unless the seller demands payment in legal tender and gives any

1 extension of time reasonably necessary to procure it.

2 (3) Subject to the provisions of this Act on the
3 effect of an instrument on an obligation (Section 3.802.), pay-
4 ment by check is conditional and is defeated as between the
5 parties by dishonor of the check on due presentment.

6 Sec. 2.512. PAYMENT BY BUYER BEFORE INSPECTION.

7 (1) Where the contract requires payment before in-
8 spection non-conformity of the goods does not excuse the buyer
9 from so making payment unless

10 (a) the non-conformity appears without inspection;

11 or

12 (b) despite tender of the required documents the
13 circumstances would justify injunction against honor under
14 the provisions of this Act (Section 5.114.)

15 (2) Payment pursuant to subsection (1) does not
16 constitute an acceptance of goods or impair the buyer's right to
17 inspect or any of his remedies.

18 Sec. 2.513. BUYER'S RIGHT TO INSPECTION OF GOODS.

19 (1) Unless otherwise agreed and subject to subsection
20 (3), where goods are tendered or delivered or identified to the
21 contract for sale, the buyer has a right before payment or
22 acceptance to inspect them at any reasonable place and time and
23 in any reasonable manner. When the seller is required or author-
24 ized to send the goods to the buyer, the inspection may be after
25 their arrival.

26 (2) Expenses of inspection must be borne by the buyer
27 but may be recovered from the seller if the goods do not conform
28 and are rejected.

29 (3) Unless otherwise agreed and subject to the pro-

1 visions of this Article on C.I.F. contracts (subsection (3) of
2 Section 2.321.), the buyer is not entitled to inspect the goods
3 before payment of the price when the contract provides

4 (a) for delivery "C.O.D." or on other like terms;

5 or

6 (b) for payment against documents of title, ex-
7 cept where such payment is due only after the goods are to
8 become available for inspection.

9 (4) A place or method of inspection fixed by the
10 parties is presumed to be exclusive but unless otherwise expressly
11 agreed it does not postpone identification or shift the place for
12 delivery or for passing the risk of loss. If compliance becomes
13 impossible, inspection shall be as provided in this section unless
14 the place or method fixed was clearly intended as an indispensable
15 condition failure of which avoids the contract.

16 Sec. 2.514. WHEN DOCUMENTS DELIVERABLE ON ACCEPTANCE; WHEN
17 ON PAYMENT. Unless otherwise agreed documents against which a
18 draft is drawn are to be delivered to the drawee on acceptance of
19 the draft if it is payable more than three days after presentment;
20 otherwise, only on payment.

21 Sec. 2.515. PRESERVING EVIDENCE OF GOODS IN DISPUTE. In
22 furtherance of the adjustment of any claim or dispute

23 (a) either party on reasonable notification to
24 the other and for the purpose of ascertaining the facts and
25 preserving evidence has the right to inspect, test and
26 sample the goods including such of them as may be in the
27 possession or control of the other; and

28 (b) the parties may agree to a third party in-
29 spection or survey to determine the conformity or condition

1 of the goods and may agree that the findings shall be
2 binding upon them in any subsequent litigation or adjustment.

3 Part 6

4 Breach, Repudiation and Excuse

5 Sec. 2.601. BUYER'S RIGHTS ON IMPROPER DELIVERY. Subject
6 to the provisions of this Article on breach in installment con-
7 tracts (Section 2.612.) and unless otherwise agreed under the
8 sections on contractual limitations of remedy (Sections 2.718.
9 and 2.719.), if the goods or the tender of delivery fail in any
10 respect to conform to the contract, the buyer may

11 (a) reject the whole; or

12 (b) accept the whole; or

13 (c) accept any commercial unit or units and
14 reject the rest.

15 Sec. 2.602. MANNER AND EFFECT OF RIGHTFUL REJECTION.

16 (1) Rejection of goods must be within a reasonable
17 time after their delivery or tender. It is ineffective unless
18 the buyer seasonably notifies the seller.

19 (2) Subject to the provisions of the two following
20 sections on rejected goods (Sections 2.603. and 2.604.),

21 (a) after rejection any exercise of ownership by
22 the buyer with respect to any commercial unit is wrongful as
23 against the seller; and

24 (b) if the buyer has before rejection taken
25 physical possession of goods in which he does not have a
26 security interest under the provisions of this Article (sub-
27 section (3) of Section 2.711.), he is under a duty after
28 rejection to hold them with reasonable care at the seller's
29 disposition for a time sufficient to permit the seller to

1 remove them; but

2 (c) the buyer has no further obligations with
3 regard to goods rightfully rejected.

4 (3) The seller's rights with respect to goods wrong-
5 fully rejected are governed by the provisions of this Article on
6 Seller's remedies in general (Section 2.703.)

7 Sec. 2.603. MERCHANT BUYER'S DUTIES AS TO RIGHTFULLY RE-
8 JECTED GOODS.

9 (1) Subject to any security interest in the buyer
10 (subsection (3) of Section 2.711.), when the seller has no agent
11 or place of business at the market of rejection a merchant buyer
12 is under a duty after rejection of goods in his possession or
13 control to follow any reasonable instructions received from the
14 seller with respect to the goods and in the absence of such in-
15 structions to make reasonable efforts to sell them for the seller's
16 account if they are perishable or threaten to decline in value
17 speedily. Instructions are not reasonable if on demand indemnity
18 for expenses is not forthcoming.

19 (2) When the buyer sells goods under subsection (1),
20 he is entitled to reimbursement from the seller or out of the
21 proceeds for reasonable expenses of caring for and selling them,
22 and if the expenses include no selling commission then to such
23 commission as is usual in the trade or if there is none to a
24 reasonable sum not exceeding ten per cent on the gross proceeds.

25 (3) In complying with this section the buyer is held
26 only to good faith and good faith conduct hereunder is neither
27 acceptance nor conversion nor the basis of an action for damages.

28 Sec. 2.604. BUYER'S OPTIONS AS TO SALVAGE OF RIGHTFULLY
29 REJECTED GOODS. Subject to the provisions of the immediately

1 preceding section on perishables if the seller gives no instruc-
2 tions within a reasonable time after notification of rejection the
3 buyer may store the rejected goods for the seller's account or
4 reship them to him or resell them for the seller's account with
5 reimbursement as provided in the preceding section. Such action
6 is not acceptance or conversion.

7 Sec. 2.605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO
8 PARTICULARIZE.

9 (1) The buyer's failure to state in connection with
10 rejection a particular defect which is ascertainable by reason-
11 able inspection precludes him from relying on the unstated defect
12 to justify rejection or to establish breach

13 (a) where the seller could have cured it if
14 stated seasonably; or

15 (b) between merchants when the seller has after
16 rejection made a request in writing for a full and final
17 written statement of all defects on which the buyer proposes
18 to rely.

19 (2) Payment against documents made without reservation
20 of rights precludes recovery of the payment for defects apparent
21 on the face of the documents.

22 Sec. 2.606. WHAT CONSTITUTES ACCEPTANCE OF GOODS.

23 (1) Acceptance of goods occurs when the buyer

24 (a) after a reasonable opportunity to inspect
25 the goods signifies to the seller that the goods are con-
26 forming or that he will take or retain them in spite of
27 their non-conformity; or

28 (b) fails to make an effective rejection (sub-
29 section (1) of Section 2.602.), but such acceptance does

1 not occur until the buyer has had a reasonable opportunity
2 to inspect them; or

3 (c) does any act inconsistent with the seller's
4 ownership; but if such act is wrongful as against the seller
5 it is an acceptance only if ratified by him.

6 (2) Acceptance of a part of any commercial unit is
7 acceptance of that entire unit.

8 Sec. 2.607. EFFECT OF ACCEPTANCE; NOTICE OF BREACH; BURDEN
9 OF ESTABLISHING BREACH AFTER ACCEPTANCE; NOTICE OF CLAIM OR
10 LITIGATION TO PERSON ANSWERABLE OVER.

11 (1) The buyer must pay at the contract rate for any
12 goods accepted.

13 (2) Acceptance of goods by the buyer precludes re-
14 jection of the goods accepted and if made with knowledge of a
15 non-conformity cannot be revoked because of it unless the accep-
16 tance was on the reasonable assumption that the non-conformity
17 would be seasonably cured but acceptance does not of itself im-
18 pair any other remedy provided by this Article for non-conformity.

19 (3) Where a tender has been accepted

20 (a) the buyer must within a reasonable time after
21 he discovers or should have discovered any breach notify the
22 seller of breach or be barred from any remedy; and

23 (b) if the claim is one for infringement or the
24 like (subsection (3) of Section 2.312.) and the buyer is
25 sued as a result of such a breach he must so notify the
26 seller within a reasonable time after he receives notice of
27 the litigation or be barred from any remedy over for lia-
28 bility established by the litigation.

29 (4) The burden is on the buyer to establish any breach

1 with respect to the goods accepted.

2 (5) Where the buyer is sued for breach of a warranty or
3 other obligation for which his seller is answerable over

4 (a) he may give his seller written notice of the
5 litigation. If the notice states that the seller may come
6 in and defend and that if the seller does not do so he will
7 be bound in any action against him by his buyer by any de-
8 termination of fact common to the two litigations, then un-
9 less the seller after reasonable receipt of the notice does
10 come in and defend he is so bound.

11 (b) if the claim is one for infringement or the
12 like (subsection (3) of Section 2.312.) the original seller
13 may demand in writing that his buyer turn over to him con-
14 trol of the litigation including settlement or else be
15 barred from any remedy over and if he also agrees to bear
16 all expense and to satisfy any adverse judgment, then unless
17 the buyer after reasonable receipt of the demand does turn
18 over control the buyer is so barred.

19 (6) The provisions of subsections (3), (4) and (5)
20 apply to any obligation of a buyer to hold the seller harmless
21 against infringement or the like (subsection (3) of Section 2.312.)

22 Sec. 2.608. REVOCATION OF ACCEPTANCE IN WHOLE OR IN PART.

23 (1) The buyer may revoke his acceptance of a lot or
24 commercial unit whose non-conformity substantially impairs its
25 value to him if he has accepted it

26 (a) on the reasonable assumption that its non-
27 conformity would be cured and it has not been seasonably
28 cured; or

29 (b) without discovery of such non-conformity if

1 his acceptance was reasonably induced either by the difficulty
2 of discovery before acceptance or by the seller's assurances.

3 (2) Revocation of acceptance must occur within a rea-
4 sonable time after the buyer discovers or should have discovered
5 the ground for it and before any substantial change in condition
6 of the goods which is not caused by their own defects. It is
7 not effective until the buyer notifies the seller of it.

8 (3) A buyer who so revokes has the same rights and
9 duties with regard to the goods involved as if he had rejected
10 them.

11 Sec. 2.609. RIGHT TO ADEQUATE ASSURANCE OF PERFORMANCE.

12 (1) A contract for sale imposes an obligation on each
13 party that the other's expectation of receiving due performance
14 will not be impaired. When reasonable grounds for insecurity
15 arise with respect to the performance of either party the other
16 may in writing demand adequate assurance of due performance and
17 until he receives such assurance may if commercially reasonable
18 suspend any performance for which he has not already received
19 the agreed return.

20 (2) Between merchants the reasonableness of grounds
21 for insecurity and the adequacy of any assurance offered shall be
22 determined according to commercial standards.

23 (3) Acceptance of any improper delivery or payment
24 does not prejudice the aggrieved party's right to demand adequate
25 assurance of future performance.

26 (4) After receipt of a justified demand failure to
27 provide within a reasonable time not exceeding thirty days such
28 assurance of due performance as is adequate under the circumstances
29 of the particular case is a repudiation of the contract.

1 Sec. 2.610. ANTICIPATORY REPUDIATION. When either party
2 repudiates the contract with respect to a performance not yet
3 due the loss of which will substantially impair the value of the
4 contract to the other, the aggrieved party may

5 (a) for a commercially reasonable time await
6 performance by the repudiating party; or

7 (b) resort to any remedy for breach (Section 2.703.
8 or Section 2.711.), even though he has notified the re-
9 pudiating party that he would await the latter's performance
10 and has urged retraction; and

11 (c) in either case suspend his own performance or
12 proceed in accordance with the provisions of this Article on
13 the seller's right to identify goods to the contract not-
14 withstanding breach or to salvage unfinished goods (Section
15 2.704.)

16 Sec. 2.611. RETRACTION OF ANTICIPATORY REPUDIATION.

17 (1) Until the repudiating party's next performance is
18 due he can retract his repudiation unless the aggrieved party has
19 since the repudiation cancelled or materially changed his posi-
20 tion or otherwise indicated that he considers the repudiation
21 final.

22 (2) Retraction may be by any method which clearly in-
23 dicates to the aggrieved party that the repudiating party intends
24 to perform, but must include any assurance justifiably demanded
25 under the provisions of this Article (Section 2.609.)

26 (3) Retraction reinstates the repudiating party's
27 rights under the contract with due excuse and allowance to the
28 aggrieved party for any delay occasioned by the repudiation.

29 Sec. 2.612. "INSTALLMENT CONTRACT"; BREACH.

1 (1) An "installment contract" is one which requires
2 or authorizes the delivery of goods in separate lots to be
3 separately accepted, even though the contract contains a clause
4 "each delivery is a separate contract" or its equivalent.

5 (2) The buyer may reject any installment which is non-
6 conforming if the non-conformity substantially impairs the value
7 of that installment and cannot be cured or if the non-conformity is
8 a defect in the required documents; but if the non-conformity does
9 not fall within subsection (3) and the seller gives adequate
10 assurance of its cure the buyer must accept that installment.

11 (3) Whenever non-conformity or default with respect to
12 one or more installments substantially impairs the value of the
13 whole contract there is a breach of the whole. But the aggrieved
14 party reinstates the contract if he accepts a non-conforming
15 installment without seasonably notifying of cancellation or if he
16 brings an action with respect only to past installments or de-
17 mands performance as to future installments.

18 Sec. 2.613. CASUALTY TO IDENTIFIED GOODS. Where the contract
19 requires for its performance goods identified when the contract
20 is made, and the goods suffer casualty without fault of either
21 party before the risk of loss passes to the buyer, or in a proper
22 case under a "no arrival, no sale" term (Section 2.324.) then

23 (a) if the loss is total the contract is avoided;

24 and

25 (b) if the loss is partial or the goods have so
26 deteriorated as no longer to conform to the contract the
27 buyer may nevertheless demand inspection and at his option
28 either treat the contract as avoided or accept the goods
29 with due allowance from the contract price for the deteriora-

1 tion or the deficiency in quantity but without further
2 right against the seller.

3 Sec. 2.614. SUBSTITUTED PERFORMANCE.

4 (1) Where without fault of either party the agreed
5 berthing, loading or unloading facilities fail or an agreed type
6 of carrier becomes unavailable or the agreed manner of delivery
7 otherwise becomes commercially impracticable but a commercially
8 reasonable substitute is available, such substitute performance
9 must be tendered and accepted.

10 (2) If the agreed means or manner of payment fails be-
11 cause of domestic or foreign governmental regulation, the seller
12 may withhold or stop delivery unless the buyer provides a means
13 or manner of payment which is commercially a substantial equiva-
14 lent. If delivery has already been taken, payment by the means
15 or in the manner provided by the regulation discharges the buy-
16 er's obligation unless the regulation is discriminatory, oppres-
17 sive or predatory.

18 Sec. 2.615. EXCUSE BY FAILURE OF PRESUPPOSED CONDITIONS.

19 Except so far as a seller may have assumed a greater obligation
20 and subject to the preceding section on substituted performance:

21 (a) Delay in delivery or non-delivery in whole or
22 in part by a seller who complies with paragraphs (b) and (c)
23 is not a breach of his duty under a contract for sale if
24 performance as agreed has been made impracticable by the
25 occurrence of a contingency the non-occurrence of which was
26 a basic assumption on which the contract was made or by
27 compliance in good faith with any applicable foreign or
28 domestic governmental regulation or order whether or not it
29 later proves to be invalid.

1 (b) Where the causes mentioned in paragraph (a)
2 affect only a part of the seller's capacity to perform, he
3 must allocate production and deliveries among his customers
4 but may at his option include regular customers not then
5 under contract as well as his own requirements for further
6 manufacture. He may so allocate in any manner which is fair
7 and reasonable.

8 (c) The seller must notify the buyer seasonably
9 that there will be delay or non-delivery and, when allocation
10 is required under paragraph (b), of the estimated quota thus
11 made available for the buyer.

12 Sec. 2.616. PROCEDURE ON NOTICE CLAIMING EXCUSE.

13 (1) Where the buyer receives notification of a material
14 or indefinite delay or an allocation justified under the preceding
15 section he may by written notification to the seller as to any
16 delivery concerned, and where the prospective deficiency substan-
17 tially impairs the value of the whole contract under the provi-
18 sions of this Article relating to breach of installment contracts
19 (Section 2.612.), then also as to the whole,

20 (a) terminate and thereby discharge any unexecuted
21 portion of the contract; or

22 (b) modify the contract by agreeing to take his
23 available quota in substitution.

24 (2) If after receipt of such notification from the
25 seller the buyer fails so to modify the contract within a reason-
26 able time not exceeding thirty days the contract lapses with
27 respect to any deliveries affected.

28 (3) The provisions of this section may not be negated
29 by agreement except in so far as the seller has assumed a greater

1 obligation under the preceding section.

2 Part 7

3 Remedies

4 Sec. 2.701. REMEDIES FOR BREACH OF COLLATERAL CONTRACTS
5 NOT IMPAIRED. Remedies for breach of any obligation or promise
6 collateral or ancillary to a contract for sale are not impaired
7 by the provisions of this Article.

8 Sec. 2.702. SELLER'S REMEDIES ON DISCOVERY OF BUYER'S IN-
9 SOLVENCY.

10 (1) Where the seller discovers the buyer to be in-
11 solvent he may refuse delivery except for cash including payment
12 for all goods theretofore delivered under the contract, and stop
13 delivery under this Article (Section 2.705.)

14 (2) Where the seller discovers that the buyer has re-
15 ceived goods on credit while insolvent he may reclaim the goods
16 upon demand made within ten days after the receipt, but if mis-
17 representation of solvency has been made to the particular seller
18 in writing within three months before delivery the ten day limi-
19 tation does not apply. Except as provided in this subsection
20 the seller may not base a right to reclaim goods on the buyer's
21 fraudulent or innocent misrepresentation of solvency or of in-
22 tent to pay.

23 (3) The seller's right to reclaim under subsection (2)
24 is subject to the rights of a buyer in ordinary course or other
25 good faith purchaser or lien creditor under this Article (Section
26 2.403.) Successful reclamation of goods excludes all other
27 remedies with respect to them.

28 Sec. 2.703. SELLER'S REMEDIES IN GENERAL. Where the buyer
29 wrongfully rejects or revokes acceptance of goods or fails to

1 make a payment due on or before delivery or repudiates with
2 respect to a part or the whole, then with respect to any goods
3 directly affected and, if the breach is of the whole contract
4 (Section 2.612.), then also with respect to the whole undelivered
5 balance, the aggrieved seller may

6 (a) withhold delivery of such goods;

7 (b) stop delivery by any bailee as hereafter
8 provided (Section 2.705.);

9 (c) proceed under the next section respecting
10 goods still unidentified to the contract;

11 (d) resell and recover damages as hereafter
12 provided (Section 2.706.);

13 (e) recover damages for non-acceptance (Section
14 2.708.) or in a proper case the price (Section 2.709.);

15 (f) cancel.

16 Sec. 2.704. SELLER'S RIGHT TO IDENTIFY GOODS TO THE CON-
17 TRACT NOTWITHSTANDING BREACH OR TO SALVAGE UNFINISHED GOODS.

18 (1) An aggrieved seller under the preceding section
19 may

20 (a) identify to the contract conforming goods
21 not already identified if at the time he learned of the
22 breach they are in his possession or control;

23 (b) treat as the subject of resale goods which
24 have demonstrably been intended for the particular contract
25 even though those goods are unfinished.

26 (2) Where the goods are unfinished an aggrieved seller
27 may in the exercise of reasonable commercial judgment for the
28 purposes of avoiding loss and of effective realization either
29 complete the manufacture and wholly identify the goods to the

1 contract or cease manufacture and resell for scrap or salvage
2 value or proceed in any other reasonable manner.

3 Sec. 2.705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR
4 OTHERWISE.

5 (1) The seller may stop delivery of goods in the
6 possession of a carrier or other bailee when he discovers the
7 buyer to be insolvent (Section 2.702.) and may stop delivery of
8 carload, truckload, planeload or larger shipments of express or
9 freight when the buyer repudiates or fails to make a payment due
10 before delivery or if for any other reason the seller has a
11 right to withhold or reclaim the goods.

12 (2) As against such buyer the seller may stop delivery
13 until

14 (a) receipt of the goods by the buyer; or

15 (b) acknowledgment to the buyer by any bailee
16 of the goods except a carrier that the bailee holds the
17 goods for the buyer; or

18 (c) such acknowledgment to the buyer by a carrier
19 by reshipment or as warehouseman; or

20 (d) negotiation to the buyer of any negotiable
21 document of title covering the goods.

22 (3) (a) To stop delivery the seller must so notify
23 as to enable the bailee by reasonable diligence to prevent
24 delivery of the goods.

25 (b) After such notification the bailee must hold
26 and deliver the goods according to the directions of the
27 seller but the seller is liable to the bailee for any en-
28 suing charges or damages.

29 (c) If a negotiable document of title has been

1 issued for goods the bailee is not obliged to obey a notifi-
2 cation to stop until surrender of the document.

3 (d) A carrier who has issued a non-negotiable bill
4 of lading is not obliged to obey a notification to stop re-
5 ceived from a person other than the consignor.

6 Sec. 2.706. SELLER'S RESALE INCLUDING CONTRACT FOR RESALE.

7 (1) Under the conditions stated in Section 2.703. on
8 seller's remedies, the seller may resell the goods concerned or
9 the undelivered balance thereof. Where the resale is made in
10 good faith and in a commercially reasonable manner the seller may
11 recover the difference between the resale price and the contract
12 price together with any incidental damages allowed under the
13 provisions of this Article (Section 2.710.), but less expenses
14 saved in consequence of the buyer's breach.

15 (2) Except as otherwise provided in subsection (3) or
16 unless otherwise agreed resale may be at public or private sale
17 including sale by way of one or more contracts to sell or of
18 identification to an existing contract of the seller. Sale may
19 be as a unit or in parcels and at any time and place and on any
20 terms but every aspect of the sale including the method, manner,
21 time, place and terms must be commercially reasonable. The re-
22 sale must be reasonably identified as referring to the broken con-
23 tract, but it is not necessary that the goods be in existence or
24 that any or all of them have been identified to the contract be-
25 fore the breach.

26 (3) Where the resale is at private sale the seller
27 must give the buyer reasonable notification of his intention to
28 resell.

29 (4) Where the resale is at public sale

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(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2.707.) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section 2.711.)

Sec. 2.707. "PERSON IN THE POSITION OF A SELLER".

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

1 (2) A person in the position of a seller may as pro-
2 vided in this Article withhold or stop delivery (Section 2.705.)
3 and resell (Section 2.706.) and recover incidental damages (Sec-
4 tion 2.710.)

5 Sec. 2.708. SELLER'S DAMAGES FOR NON-ACCEPTANCE OR REPUDIA-
6 TION.

7 (1) Subject to subsection (2) and to the provisions of
8 this Article with respect to proof of market price (Section 2.723.),
9 the measure of damages for non-acceptance or repudiation by the
10 buyer is the difference between the market price at the time and
11 place for tender and the unpaid contract price together with any
12 incidental damages provided in this Article (Section 2.710.), but
13 less expenses saved in consequence of the buyer's breach.

14 (2) If the measure of damages provided in subsection
15 (1) is inadequate to put the seller in as good a position as per-
16 formance would have done then the measure of damages is the profit
17 (including reasonable overhead) which the seller would have made
18 from full performance by the buyer, together with any incidental
19 damages provided in this Article (Section 2.710.), due allowance
20 for costs reasonably incurred and due credit for payments or pro-
21 ceeds of resale.

22 Sec. 2.709. ACTION FOR THE PRICE.

23 (1) When the buyer fails to pay the price as it becomes
24 due the seller may recover, together with any incidental damages
25 under the next section, the price

26 (a) of goods accepted or of conforming goods lost
27 or damaged within a commercially reasonable time after risk
28 of their loss has passed to the buyer; and

29 (b) of goods identified to the contract if the

1 seller is unable after reasonable effort to resell them at
2 a reasonable price or the circumstances reasonably indicate
3 that such effort will be unavailing.

4 (2) Where the seller sues for the price he must hold
5 for the buyer any goods which have been identified to the contract
6 and are still in his control except that if resale becomes possible
7 he may resell them at any time prior to the collection of the
8 judgment. The net proceeds of any such resale must be credited
9 to the buyer and payment of the judgment entitles him to any
10 goods not resold.

11 (3) After the buyer has wrongfully rejected or revoked
12 acceptance of the goods or has failed to make a payment due or
13 has repudiated (Section 2.610.), a seller who is held not entitled
14 to the price under this section shall nevertheless be awarded
15 damages for non-acceptance under the preceding section.

16 Sec. 2.710. SELLER'S INCIDENTAL DAMAGES. Incidental damages
17 to an aggrieved seller include any commercially reasonable charges,
18 expenses or commissions incurred in stopping delivery, in the
19 transportation, care and custody of goods after the buyer's
20 breach, in connection with return or resale of the goods or
21 otherwise resulting from the breach.

22 Sec. 2.711. BUYER'S REMEDIES IN GENERAL; BUYER'S SECURITY
23 INTEREST IN REJECTED GOODS.

24 (1) Where the seller fails to make delivery or re-
25 pudiates or the buyer rightfully rejects or justifiably revokes
26 acceptance then with respect to any goods involved, and with res-
27 pect to the whole if the breach goes to the whole contract (Sec-
28 tion 2.612.), the buyer may cancel and whether or not he has
29 done so may in addition to recovering so much of the price as has

1 been paid

2 (a) "cover" and have damages under the next sec-
3 tion as to all the goods affected whether or not they have
4 been identified to the contract; or

5 (b) recover damages for non-delivery as provided
6 in this Article (Section 2.713.)

7 (2) Where the seller fails to deliver or repudiates
8 the buyer may also

9 (a) if the goods have been identified recover
10 them as provided in this Article (Section 2.502.); or

11 (b) in a proper case obtain specific performance
12 or replevy the goods as provided in this Article (Section
13 2.716.)

14 (3) On rightful rejection or justifiable revocation of
15 acceptance a buyer has a security interest in goods in his
16 possession or control for any payments made on their price and
17 any expenses reasonably incurred in their inspection, receipt,
18 transportation, care and custody and may hold such goods and
19 resell them in like manner as an aggrieved seller (Section 2.706.)

20 Sec. 2.712. "COVER"; BUYER'S PROCUREMENT OF SUBSTITUTE GOODS.

21 (1) After a breach within the preceding section the
22 buyer may "cover" by making in good faith and without unreasonable
23 delay any reasonable purchase of or contract to purchase goods in
24 substitution for those due from the seller.

25 (2) The buyer may recover from the seller as damages
26 the difference between the cost of cover and the contract price
27 together with any incidental or consequential damages as herein-
28 after defined (Section 2.715.), but less expenses saved in conse-
29 quence of the seller's breach.

1 (3) Failure of the buyer to effect cover within this
2 section does not bar him from any other remedy.

3 Sec. 2.713. BUYER'S DAMAGES FOR NON-DELIVERY OR REPUDIATION.

4 (1) Subject to the provisions of this Article with
5 respect to proof of market price (Section 2.723.), the measure
6 of damages for non-delivery or repudiation by the seller is the
7 difference between the market price at the time when the buyer
8 learned of the breach and the contract price together with any
9 incidental and consequential damages provided in this Article
10 (Section 2.715.), but less expenses saved in consequence of the
11 seller's breach.

12 (2) Market price is to be determined as of the place
13 for tender or, in cases of rejection after arrival or revocation
14 of acceptance, as of the place of arrival.

15 ; Sec. 2.714. BUYER'S DAMAGES FOR BREACH IN REGARD TO AC-
16 CEPTED GOODS.

17 (1) Where the buyer has accepted goods and given noti-
18 fication (subsection (3) of Section 2.607.) he may recover as
19 damages for any non-conformity of tender the loss resulting in
20 the ordinary course of events from the seller's breach as deter-
21 mined in any manner which is reasonable.

22 (2) The measure of damages for breach of warranty is
23 the difference at the time and place of acceptance between the
24 value of the goods accepted and the value they would have had if
25 they had been as warranted, unless special circumstances show
26 proximate damages of a different amount.

27 (3) In a proper case any incidental and consequential
28 damages under the next section may also be recovered.

29 Sec. 2.715. BUYER'S INCIDENTAL AND CONSEQUENTIAL DAMAGES.

1 (1) Incidental damages resulting from the seller's
2 breach include expenses reasonably incurred in inspection, receipt,
3 transportation and care and custody of goods rightfully rejected,
4 any commercially reasonable charges, expenses or commissions in
5 connection with effecting cover and any other reasonable expense
6 incident to the delay or other breach.

7 (2) Consequential damages resulting from the seller's
8 breach include

9 (a) any loss resulting from general or particular
10 requirements and needs of which the seller at the time of
11 contracting had reason to know and which could not reason-
12 ably be prevented by cover or otherwise; and

13 (b) injury to person or property proximately
14 resulting from any breach of warranty.

15 Sec. 2.716. BUYER'S RIGHT TO SPECIFIC PERFORMANCE OR RE-
16 PLEVIN.

17 (1) Specific performance may be decreed where the
18 goods are unique or in other proper circumstances.

19 (2) The decree for specific performance may include
20 such terms and conditions as to payment of the price, damages,
21 or other relief as the court may deem just.

22 (3) The buyer has a right of replevin for goods iden-
23 tified to the contract if after reasonable effort he is unable to
24 effect cover for such goods or the circumstances reasonably indi-
25 cate that such effort will be unavailing or if the goods have been
26 shipped under reservation and satisfaction of the security in-
27 terest in them has been made or tendered.

28 Sec. 2.717. DEDUCTION OF DAMAGES FROM THE PRICE. The buyer
29 on notifying the seller of his intention to do so may deduct all

1 or any part of the damages resulting from any breach of the con-
2 tract from any part of the price still due under the same con-
3 tract.

4 Sec. 2.718. LIQUIDATION OR LIMITATION OF DAMAGES; DEPOSITS.

5 (1) Damages for breach by either party may be liqui-
6 dates in the agreement but only at an amount which is reasonable
7 in the light of the anticipated or actual harm caused by the
8 breach, the difficulties of proof of loss, and the inconvenience
9 or non-feasibility of otherwise obtaining an adequate remedy. A
10 term fixing unreasonably large liquidated damages is void as a
11 penalty.

12 (2) Where the seller justifiably withholds delivery
13 of goods because of the buyer's breach, the buyer is entitled to
14 restitution of any amount by which the sum of his payments ex-
15 ceeds

16 (a) the amount to which the seller is entitled
17 by virtue of terms liquidating the seller's damages in ac-
18 cordance with subsection (1), or

19 (b) in the absence of such terms, twenty per
20 cent of the value of the total performance for which the
21 buyer is obligated under the contract or \$500, whichever is
22 smaller.

23 (3) The buyer's right to restitution under subsection
24 (2) is subject to offset to the extent that the seller establishes

25 (a) a right to recover damages under the provi-
26 sions of this Article other than subsection (1), and

27 (b) the amount or value of any benefits received
28 by the buyer directly or indirectly by reason of the con-
29 tract.

1 (4) Where a seller has received payment in goods
2 their reasonable value or the proceeds of their resale shall be
3 treated as payments for the purposes of subsection (2); but if
4 the seller has notice of the buyer's breach before reselling
5 goods received in part performance, his resale is subject to the
6 conditions laid down in this Article on resale by an aggrieved
7 seller (Section 2.706.)

8 Sec. 2.719. CONTRACTUAL MODIFICATION OR LIMITATION OF
9 REMEDY.

10 (1) Subject to the provisions of subsections (2) and
11 (3) of this section and of the preceding section on liquidation
12 and limitation of damages,

13 (a) the agreement may provide for remedies in
14 addition to or in substitution for those provided in this
15 Article and may limit or alter the measure of damages re-
16 coverable under this Article, as by limiting the buyer's
17 remedies to return of the goods and repayment of the price
18 or to repair and replacement of non-conforming goods or
19 parts; and

20 (b) resort to a remedy as provided is optional
21 unless the remedy is expressly agreed to be exclusive, in
22 which case it is the sole remedy.

23 (2) Where circumstances cause an exclusive or limited
24 remedy to fail of its essential purpose, remedy may be had as
25 provided in this Act.

26 (3) Consequential damages may be limited or excluded
27 unless the limitation or exclusion is unconscionable. Limitation
28 of consequential damages for injury to the person in the case of
29 consumer goods is prima facie unconscionable but limitation of

1 damages where the loss is commercial is not.

2 Sec. 2.720. EFFECT OF "CANCELLATION" OR "RESCISSION" ON
3 CLAIMS FOR ANTECEDENT BREACH. Unless the contrary intention
4 clearly appears, expressions of "cancellation" or "rescission"
5 of the contract or the like shall not be construed as a renun-
6 ciation or discharge of any claim in damages for an antecedent
7 breach.

8 Sec. 2.721. REMEDIES FOR FRAUD. Remedies for material
9 misrepresentation or fraud include all remedies available under
10 this Article for non-fraudulent breach. Neither rescission or
11 a claim for rescission of the contract for sale nor rejection
12 or return of the goods shall bar or be deemed inconsistent with
13 a claim for damages or other remedy.

14 Sec. 2.722. WHO CAN SUE THIRD PARTIES FOR INJURY TO GOODS.
15 Where a third party so deals with goods which have been identified
16 to a contract for sale as to cause actionable injury to a party
17 to that contract

18 (a) a right of action against the third party is
19 in either party to the contract for sale who has title to
20 or a security interest or a special property or an insurable
21 interest in the goods; and if the goods have been destroyed
22 or converted a right of action is also in the party who
23 either bore the risk of loss under the contract for sale
24 or has since the injury assumed that risk as against the
25 other;

26 (b) if at the time of the injury the party
27 plaintiff did not bear the risk of loss as against the other
28 party to the contract for sale and there is no arrangement
29 between them for disposition of the recovery, his suit or

1 settlement is, subject to his own interest, as a fiduciary
2 for the other party to the contract;

3 (c) either party may with the consent of the
4 other sue for the benefit of whom it may concern.

5 Sec. 2.723. PROOF OF MARKET PRICE: TIME AND PLACE.

6 (1) If an action based on anticipatory repudiation
7 comes to trial before the time for performance with respect to
8 some or all of the goods, any damages based on market price
9 (Section 2.708. or Section 2.713.) shall be determined according
10 to the price of such goods prevailing at the time when the aggrieved
11 party learned of the repudiation.

12 (2) If evidence of a price prevailing at the times
13 or places described in this Article is not readily available the
14 price prevailing within any reasonable time before or after the
15 time described or at any other place which in commercial judgment
16 or under usage of trade would serve as a reasonable substitute
17 for the one described may be used, making any proper allowance
18 for the cost of transporting the goods to or from such
19 other place.

20 (3) Evidence of a relevant price prevailing at a time
21 or place other than the one described in this Article offered
22 by one party is not admissible unless and until he has given
23 the other party such notice as the court finds sufficient to
24 prevent unfair surprise.

25 Sec. 2.724. ADMISSIBILITY OF MARKET QUOTATIONS. Whenever
26 the prevailing price or value of any goods regularly bought and
27 sold in any established commodity market is in issue, reports
28 in official publications or trade journals or in newspapers or
29 periodicals of general circulation published as the reports of

1 such market shall be admissible in evidence. The circumstances
2 of the preparation of such a report may be shown to affect its
3 weight but not its admissibility.

4 Sec. 2.725. STATUTE OF LIMITATIONS IN CONTRACTS FOR SALE.

5 (1) An action for breach of any contract for sale must
6 be commenced within four years after the cause of action has ac-
7 crued. By the original agreement the parties may reduce the
8 period of limitation to not less than one year but may not ex-
9 tend it.

10 (2) A cause of action accrued when the breach occurs,
11 regardless of the aggrieved party's lack of knowledge of the
12 breach. A breach of warranty occurs when tender of delivery is
13 made, except that where a warranty explicitly extends to future
14 performance of the goods and discovery of the breach must await
15 the time of such performance the cause of action accrues when
16 the breach is or should have been discovered.

17 (3) Where an action commenced within the time limited
18 by subsection (1) is so terminated as to leave available a remedy
19 by another action for the same breach such other action may be
20 commenced after the expiration of the time limited and within
21 six months after the termination of the first action unless the
22 termination resulted from voluntary discontinuance or from dis-
23 missal for failure or neglect to prosecute.

24 (4) This section does not alter the law on tolling of
25 the statute of limitations nor does it apply to causes of action
26 which have accrued before this Act becomes effective.
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ARTICLE III
COMMERCIAL PAPER
Part 1

Short Title, Form and Interpretation

Sec. 3.101. SHORT TITLE. This Article shall be known and may be cited as Uniform Commercial Code--Commercial Paper.

Sec. 3.102. DEFINITIONS AND INDEX OF DEFINITIONS.

(1) In this Article unless the context otherwise requires

(a) "Issue" means the first delivery of an instrument to a holder or a remitter.

(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

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

"Acceptance". Section 3.410.

"Accommodation party". Section 3.415.

"Alteration". Section 3.407.

"Certificate of deposit". Section 3.104.

"Certification". Section 3.411.

"Check". Section 3.104.

"Definite time". Section 3.109.

1 "Dishonor". Section 3.507.
2 "Draft". Section 3.104.
3 "Holder in due course". Section 3.302.
4 "Negotiation". Section 3.202.
5 "Note". Section 3.104.
6 "Notice of dishonor". Section 3.508.
7 "On demand". Section 3.108.
8 "Presentment". Section 3.504.
9 "Protest". Section 3.509.
10 "Restrictive Indorsement". Section 3.205.
11 "Signature". Section 3.401.

12 (3) The following definitions in other Articles apply
13 to this Article:

14 "Account". Section 4.104.
15 "Banking Day". Section 4.104.
16 "Clearing house". Section 4.104.
17 "Collecting bank". Section 4.105.
18 "Customer". Section 4.104.
19 "Depository Bank". Section 4.105.
20 "Documentary Draft". Section 4.104.
21 "Intermediary Bank". Section 4.105.
22 "Item". Section 4.104.
23 "Midnight deadline". Section 4.104.
24 "Payor bank". Section 4.105.

25 (4) In addition Article I contains general definitions
26 and principles of construction and interpretation applicable
27 throughout this Article.

28 Sec. 3.103. LIMITATIONS ON SCOPE OF ARTICLE.

29 (1) This Article does not apply to money, documents

1 of title or investment securities.

2 (2) The provisions of this Article are subject to the
3 provisions of the Article on Bank Deposits and Collections
4 (Article IV) and Secured Transactions (Article IX).

5 Sec. 3.104. FORM OF NEGOTIABLE INSTRUMENTS; "DRAFT"; "CHECK";
6 "CERTIFICATE OF DEPOSIT"; "NOTE".

7 (1) Any writing to be a negotiable instrument within
8 this Article must

9 (a) be signed by the maker or drawer; and

10 (b) contain an unconditional promise or order to
11 pay a sum certain in money and no other promise, order,
12 obligation or power given by the maker or drawer except as
13 authorized by this Article; and

14 (c) be payable on demand or at a definite time;
15 and

16 (d) be payable to order or to bearer.

17 (2) A writing which complies with the requirements
18 of this section is

19 (a) a "draft" ("bill of exchange") if it is an
20 order;

21 (b) a "check" if it is a draft drawn on a bank
22 and payable on demand;

23 (c) a "certificate of deposit" if it is an
24 acknowledgment by a bank of receipt of money with an en-
25 gagement to repay it;

26 (d) a "note" if it is a promise other than a
27 certificate of deposit.

28 (3) As used in other Articles of this Act, and as the
29 context may require, the terms "draft", "check", "certificate of

1 deposit" and "note" may refer to instruments which are not nego-
2 tiable within this Article as well as to instruments which are
3 so negotiable.

4 Sec. 3.105. WHEN PROMISE OR ORDER UNCONDITIONAL.

5 (1) A promise or order otherwise unconditional is not
6 made conditional by the fact that the instrument

7 (a) is subject to implied or constructive con-
8 ditions; or

9 (b) states its consideration, whether performed
10 or promised, or the transaction which gave rise to the
11 instrument, or that the promise or order is made or the
12 instrument matures in accordance with or "as per" such
13 transaction; or

14 (c) refers to or states that it arises out of a
15 separate agreement; or

16 (d) states that it is drawn under a letter of
17 credit; or

18 (e) states that it is secured, whether by mort-
19 gage, reservation of title or otherwise; or

20 (f) indicates a particular account to be debited
21 or any other fund or source from which reimbursement is
22 expected; or

23 (g) is limited to payment out of a particular
24 fund or the proceeds of a particular source, if the instru-
25 ment is issued by a government or governmental agency or
26 unit; or

27 (h) is limited to payment out of the entire assets
28 of a partnership, unincorporated association, trust or es-
29 tate by or on behalf of which the instrument is issued.

1 (2) A promise or order is not unconditional if the
2 instrument

3 (a) states that it is subject to or governed by
4 any other agreement; or

5 (b) states that it is to be paid only out of a
6 particular fund or source except as provided in this section.
7 Sec. 3.106. SUM CERTAIN.

8 (1) The sum payable is a sum certain even though it is
9 to be paid

10 (a) with stated interest or by stated install-
11 ments; or

12 (b) with stated different rates of interest be-
13 fore and after default or a specified date; or

14 (c) with a stated discount or addition if paid
15 before or after the date fixed for payment; or

16 (d) with exchange or less exchange, whether at a
17 fixed rate or at the current rate; or

18 (e) with costs of collection or an attorney's
19 fee or both upon default.

20 (2) Nothing in this section shall validate any term
21 which is otherwise illegal.

22 Sec. 3.107. MONEY.

23 (1) An instrument is payable in money if the medium of
24 exchange in which it is payable is money at the time the instru-
25 ment is made. An instrument payable in "currency" or "current
26 funds" is payable in money.

27 (2) A promise or order to pay a sum stated in a foreign
28 currency is for a sum certain in money and, unless a different
29 medium of payment is specified in the instrument, may be satis-

1 fied by payment of that number of dollars which the stated
2 foreign currency will purchase at the buying sight rate for that
3 currency on the day on which the instrument is payable or, if
4 payable on demand, on the day of demand. If such an instrument
5 specifies a foreign currency as the medium of payment the instru-
6 ment is payable in that currency.

7 Sec. 3.108. PAYABLE ON DEMAND. Instruments payable on
8 demand include those payable at sight or on presentation and
9 those in which no time for payment is stated.

10 Sec. 3.109. DEFINITE TIME.

11 (1) An instrument is payable at a definite time if by
12 its terms it is payable

13 (a) on or before a stated date or at a fixed
14 period after a stated date; or

15 (b) at a fixed period after sight; or

16 (c) at a definite time subject to any acceler-
17 ation; or

18 (d) at a definite time subject to extension at
19 the option of the holder, or to extension to a further
20 definite time at the option of the maker or acceptor or
21 automatically upon or after a specified act or event.

22 (2) An instrument which by its terms is otherwise
23 payable only upon an act or event uncertain as to time of
24 occurrence is not payable at a definite time even though the act
25 or event has occurred.

26 Sec. 3.110. PAYABLE TO ORDER.

27 (1) An instrument is payable to order when by its
28 terms it is payable to the order or assigns of any person therein
29 specified with reasonable certainty, or to him or his order, or

1 when it is conspicuously designated on its face as "exchange" or
2 the like and names a payee. It may be payable to the order of

3 (a) the maker or drawer; or

4 (b) the drawee; or

5 (c) a payee who is not maker, drawer or drawee; or

6 (d) two or more payees together or in the alter-
7 native; or

8 (e) an estate, trust or fund, in which case it
9 is payable to the order of the representative of such es-
10 tate, trust or fund or his successors; or

11 (f) an office, or an officer by his title as such
12 in which case it is payable to the principal but the in-
13 cumbent of the office or his successors may act as if he or
14 they were the holder; or

15 (g) a partnership or unincorporated association,
16 in which case it is payable to the partnership or associa-
17 tion and may be indorsed or transferred by any person thereto
18 authorized.

19 (2) An instrument not payable to order is not made so
20 payable by such words as "payable upon return of this instrument
21 properly indorsed."

22 (3) An instrument made payable both to order and to
23 bearer is payable to order unless the bearer words are hand-
24 written or typewritten.

25 Sec. 3.111. PAYABLE TO BEARER. An instrument is payable to
26 bearer when by its terms it is payable to

27 (a) bearer or the order of bearer; or

28 (b) a specified person or bearer; or

29 (c) "cash" or the order of "cash", or any other

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indication which does not purport to designate a specific payee.

Sec. 3.112. TERMS AND OMISSIONS NOT AFFECTING NEGOTIABILITY.

(1) The negotiability of an instrument is not affected by

(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(b) a statement that collateral has been given for the instrument or in case of default on the instrument the collateral may be sold; or

(c) a promise or power to maintain or protect collateral or to give additional collateral; or

(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) a statement in a draft drawn in a set of parts (Section 3.801.) to the effect that the order is effective only if no other part has been honored.

(2) Nothing in this section shall validate any term which is otherwise illegal.

Sec. 3.113. SEAL. An instrument otherwise negotiable is within this Article even though it is under a seal.

Sec. 3.114. DATE, ANTEDATING, POSTDATING.

1 (1) The negotiability of an instrument is not affected
2 by the fact that it is undated, antedated or postdated.

3 (2) Where an instrument is antedated or postdated the
4 time when it is payable is determined by the stated date if the
5 instrument is payable on demand or at a fixed period after date.

6 (3) Where the instrument or any signature thereon is
7 dated, the date is presumed to be correct.

8 Sec. 3.115. INCOMPLETE INSTRUMENTS.

9 (1) When a paper whose contents at the time of signing
10 show that it is intended to become an instrument is signed while
11 still incomplete in any necessary respect it cannot be enforced
12 until completed, but when it is completed in accordance with
13 authority given it is effective as completed.

14 (2) If the completion is unauthorized the rules as to
15 material alteration apply (Section 3.407.), even though the
16 paper was not delivered by the maker or drawer; but the burden
17 of establishing that any completion is unauthorized is on the
18 party so asserting.

19 Sec. 3.116. INSTRUMENTS PAYABLE TO TWO OR MORE PERSONS.

20 An instrument payable to the order of two or more persons

21 (a) if in the alternative is payable to any one
22 of them and may be negotiated, discharged or enforced by any
23 of them who has possession of it;

24 (b) if not in the alternative is payable to all
25 of them and may be negotiated, discharged or enforced only by
26 all of them.

27 Sec. 3.117. INSTRUMENTS PAYABLE WITH WORDS OF DESCRIPTION.

28 An instrument made payable to a named person with the addition of
29 words describing him

1 (a) as agent or officer of a specified person is
2 payable to his principal but the agent or officer may act
3 as if he were the holder;

4 (b) as any other fiduciary for a specified person
5 or purpose is payable to the payee and may be negotiated,
6 discharged or enforced by him;

7 (c) in any other manner is payable to the payee
8 unconditionally and the additional words are without effect
9 on subsequent parties.

10 Sec. 3.118. AMBIGUOUS TERMS AND RULES OF CONSTRUCTION. The
11 following rules apply to every instrument:

12 (a) Where there is doubt whether the instrument
13 is a draft or a note the holder may treat it as either. A
14 draft drawn on the drawer is effective as a note.

15 (b) Handwritten terms control typewritten and
16 printed terms, and typewritten control printed.

17 (c) Words control figures except that if the
18 words are ambiguous figures control.

19 (d) Unless otherwise specified a provision for
20 interest means interest at the judgment rate at the place of
21 payment from the date of the instrument, or if it is undated
22 from the date of issue.

23 (e) Unless the instrument otherwise specifies two
24 or more persons who sign as maker, acceptor or drawer or
25 indorser and as a part of the same transaction are jointly
26 and severally liable even though the instrument contains
27 such words as "I promise to pay."

28 (f) Unless otherwise specified consent to ex-
29 tension authorizes a single extension for not longer than

1 the original period. A consent to extension, expressed in
2 the instrument, is binding on secondary parties and accommo-
3 dation makers. A holder may not exercise his option to ex-
4 tend an instrument over the objection of a maker or acceptor
5 or other party who in accordance with Section 3.604. tenders
6 full payment when the instrument is due.

7 Sec. 3.119. OTHER WRITINGS AFFECTING INSTRUMENT.

8 (1) As between the obligor and his immediate obligee
9 or any transferee the terms of an instrument may be modified or
10 affected by any other written agreement executed as a part of
11 the same transaction, except that a holder in due course is not
12 affected by any limitation of his rights arising out of the
13 separate written agreement if he had no notice of the limitation
14 when he took the instrument.

15 (2) A separate agreement does not affect the nego-
16 tiability of an instrument.

17 Sec. 3.120. INSTRUMENTS "PAYABLE THROUGH" BANK. An instru-
18 ment which states that it is "payable through" a bank or the like
19 designates that bank as a collecting bank to make presentment
20 but does not of itself authorize the bank to pay the instrument.

21 Sec. 3.121. INSTRUMENTS PAYABLE AT BANK. A note or accep-
22 tance which states that it is payable at a bank is the equivalent
23 of a draft drawn on the bank payable when it falls due out of
24 any funds of the maker or acceptor in current account or other-
25 wise available for such payment.

26 Sec. 3.122. ACCRUAL OF CAUSE OF ACTION.

27 (1) A cause of action against a maker or an acceptor
28 accrues

29 (a) in the case of a time instrument on the day

1 after maturity;

2 (b) in the case of a demand instrument upon its
3 date or, if no date is stated, on the date of issue.

4 (2) A cause of action against the obligor of a demand
5 or time certificate of deposit accrues upon demand, but demand on
6 a time certificate may not be made until on or after the date of
7 maturity.

8 (3) A cause of action against a drawer of a draft
9 or an indorser of any instrument accrues upon demand following
10 dishonor of the instrument. Notice of dishonor is a demand.

11 (4) Unless an instrument provides otherwise, interest
12 runs at the rate provided by law for a judgment

13 (a) in the case of a maker of a demand note, from
14 the date of demand;

15 (b) in all other cases from the date of accrual
16 of the cause of action.

17 Part 2

18 Transfer and Negotiation

19 Sec. 3.201. TRANSFER: RIGHT TO INDORSEMENT.

20 (1) Transfer of an instrument vests in the transferee
21 such rights as the transferor has therein, except that a trans-
22 feree who has himself been a party to any fraud or illegality
23 affecting the instrument or who as a prior holder had notice of
24 a defense or claim against it cannot improve his position by
25 taking from a later holder in due course.

26 (2) A transfer of a security interest in an instrument
27 vests the foregoing rights in the transferee to the extent of the
28 interest transferred.

29 (3) Unless otherwise agreed any transfer for value of

1 an instrument not then payable to bearer gives the transferee
2 the specifically enforceable right to have the unqualified in-
3 dorsement of the transferor. Negotiation takes effect only when
4 the indorsement is made and until that time there is no presump-
5 tion that the transferee is the owner.

6 Sec. 3.202. NEGOTIATION.

7 (1) Negotiation is the transfer of an instrument in
8 such form that the transferee becomes a holder. If the instru-
9 ment is payable to order it is negotiated by delivery with any
10 necessary indorsement; if payable to bearer it is negotiated by
11 delivery.

12 (2) An indorsement must be written by or on behalf
13 of the holder and on the instrument or on a paper so firmly af-
14 fixed thereto as to become a part thereof.

15 (3) An indorsement is effective for negotiation only
16 when it conveys the entire instrument or any unpaid residue. If
17 it purports to be of less it operates only as a partial assign-
18 ment.

19 (4) Words of assignment, condition, waiver, guaranty,
20 limitation or disclaimer of liability and the like accompanying
21 an indorsement do not affect its character as an indorsement.

22 Sec. 3.203. WRONG OR MISSPELLED NAME. Where an instrument
23 is made payable to a person under a misspelled name or one other
24 than his own he may indorse in that name or his own or both; but
25 signature in both names may be required by a person paying or
26 giving value for the instrument.

27 Sec. 3.204. SPECIAL INDORSEMENT; BLANK INDORSEMENT.

28 (1) A special indorsement specifies the person to
29 whom or to whose order it makes the instrument payable. Any

1 instrument specially indorsed becomes payable to the order of the
2 special indorsee and may be further negotiated only by his in-
3 dorsement.

4 (2) An indorsement in blank specifies no particular
5 indorsee and may consist of a mere signature. An instrument
6 payable to order and indorsed in blank becomes payable to bearer
7 and may be negotiated by delivery alone until specially indorsed.

8 (3) The holder may convert a blank indorsement into
9 a special indorsement by writing over the signature of the in-
10 dorser in blank any contract consistent with the character of
11 the indorsement.

12 Sec. 3.205. RESTRICTIVE INDORSEMENTS. An indorsement is
13 restrictive which either

14 (a) is conditional; or

15 (b) purports to prohibit further transfer of the
16 instrument; or

17 (c) includes the words "for collection", "for
18 deposit", "pay any bank", or like terms signifying a purpose
19 of deposit or collection; or

20 (d) otherwise states that it is for the benefit
21 or use of the indorser or of another person.

22 Sec. 3.206. EFFECT OF RESTRICTIVE INDORSEMENT.

23 (1) No restrictive indorsement prevents further trans-
24 fer or negotiation of the instrument.

25 (2) An intermediary bank, or a payor bank which is not
26 the depositary bank, is neither given notice nor otherwise af-
27 fected by a restrictive indorsement of any person except the bank's
28 immediate transferor or the person presenting for payment.

29 (3) Except for an intermediary bank, any transferee

1 under an indorsement which is conditional or includes the words
2 "for collection", "for deposit", "pay any bank", or like terms
3 (subparagraphs (a) and (c) of Section 3.205.) must pay or apply
4 any value given by him for or on the security of the instrument
5 consistently with the indorsement and to the extent that he does
6 so he becomes a holder for value. In addition such transferee is
7 a holder in due course if he otherwise complies with the require-
8 ments of Section 3.302. on what constitutes a holder in due
9 course.

10 (4) The first taker under an indorsement for the bene-
11 fit of the indorser or another person (subparagraph (d) of Section
12 3.205.) must pay or apply any value given by him for or on the
13 security of the instrument consistently with the indorsement and
14 to the extent that he does so he becomes a holder for value. In
15 addition such taker is a holder in due course if he otherwise com-
16 plies with the requirements of Section 3.302. on what constitutes
17 a holder in due course. A later holder for value is neither
18 given notice nor otherwise affected by such restrictive indorse-
19 ment unless he has knowledge that a fiduciary or other person
20 has negotiated the instrument in any transaction for his own
21 benefit or otherwise in breach of duty (subsection (2) of Section
22 3.304.)

23 Sec. 3.207. NEGOTIATION EFFECTIVE ALTHOUGH IT MAY BE
24 RESCINDED.

25 (1) Negotiation is effective to transfer the instrument
26 although the negotiation is

27 (a) made by an infant, a corporation exceeding
28 its powers, or any other person without capacity; or

29 (b) obtained by fraud, duress or mistake of any

1 kind; or

2 (c) part of an illegal transaction; or

3 (d) made in breach of duty.

4 (2) Except as against a subsequent holder in due
5 course such negotiation is in an appropriate case subject to
6 rescission, the declaration of a constructive trust or any other
7 remedy permitted by law.

8 Sec. 3.208. REACQUISITION. Where an instrument is re-
9 turned to or reacquired by a prior party he may cancel any in-
10 dorsement which is not necessary to his title and reissue or
11 further negotiate the instrument, but any intervening party is
12 discharged as against the reacquiring party and subsequent
13 holders not in due course and if his indorsement has been can-
14 celled is discharged as against subsequent holders in due course
15 as well.

16 Part 3

17 Rights of a Holder

18 Sec. 3.301. RIGHTS OF A HOLDER. The holder of an instru-
19 ment whether or not he is the owner may transfer or negotiate it
20 and, except as otherwise provided in Section 3.603. on payment
21 or satisfaction, discharge it or enforce payment in his own name.

22 Sec. 3.302. HOLDER IN DUE COURSE.

23 (1) A holder in due course is a holder who takes the
24 instrument

25 (a) for value; and

26 (b) in good faith; and

27 (c) without notice that it is overdue or has been
28 dishonored or of any defense against or claim to it on the
29 part of any person.

1 (2) A payee may be a holder in due course.

2 (3) A holder does not become a holder in due course of
3 an instrument:

4 (a) by purchase of it at judicial sale or by
5 taking it under legal process; or

6 (b) by acquiring it in taking over an estate; or

7 (c) by purchasing it as part of a bulk transaction
8 not in regular course of business of the transferor.

9 (4) A purchaser of a limited interest can be a holder
10 in due course only to the extent of the interest purchased.

11 Sec. 3.303. TAKING FOR VALUE. A holder takes the instrument
12 for value

13 (a) to the extent that the agreed consideration
14 has been performed or that he acquires a security interest
15 in or a lien on the instrument otherwise than by legal pro-
16 cess; or

17 (b) when he takes the instrument in payment of or
18 as security for an antecedent claim against any person
19 whether or not the claim is due; or

20 (c) when he gives a negotiable instrument for it
21 or makes an irrevocable commitment to a third person.

22 Sec. 3.304. NOTICE TO PURCHASER.

23 (1) The purchaser has notice of a claim or defense if

24 (a) the instrument is so incomplete, bears such
25 visible evidence of forgery or alteration, or is otherwise
26 so irregular as to call into question its validity, terms or
27 ownership or to create an ambiguity as to the party to pay;
28 or

29 (b) the purchaser has notice that the obligation

1 of any party is voidable in whole or in part, or that all
2 parties have been discharged.

3 (2) The purchaser has notice of a claim against the
4 instrument when he has knowledge that a fiduciary has negotiated
5 the instrument in payment of or as security for his own debt or
6 in any transaction for his own benefit or otherwise in breach of
7 duty.

8 (3) The purchaser has notice that an instrument is
9 overdue if he has reason to know

10 (a) that any part of the principal amount is
11 overdue or that there is an uncured default in payment of
12 another instrument of the same series; or

13 (b) that acceleration of the instrument has been
14 made; or

15 (c) that he is taking a demand instrument after
16 demand has been made or more than a reasonable length of
17 time after its issue. A reasonable time for a check drawn
18 and payable within the states and territories of the United
19 States and the District of Columbia is presumed to be thirty
20 days.

21 (4) Knowledge of the following facts does not of itself
22 give the purchaser notice of a defense or claim

23 (a) that the instrument is antedated or postdated;

24 (b) that it was issued or negotiated in return for
25 an executory promise or accompanied by a separate agreement,
26 unless the purchaser has notice that a defense or claim has
27 arisen from the terms thereof;

28 (c) that any party has signed for accommodation;

29 (d) that an incomplete instrument has been com-

1 pleted, unless the purchaser has notice of any improper
2 completion;

3 (e) that any person negotiating the instrument is
4 or was a fiduciary;

5 (f) that there has been default in payment of
6 interest on the instrument or in payment of any other
7 instrument, except one of the same series.

8 (5) The filing or recording of a document does not
9 of itself constitute notice within the provisions of this Article
10 to a person who would otherwise be a holder in due course.

11 (6) To be effective notice must be received at such
12 time and in such manner as to give a reasonable opportunity to
13 act on it.

14 Sec. 3.305. RIGHTS OF A HOLDER IN DUE COURSE. To the ex-
15 tent that a holder is a holder in due course he takes the in-
16 strument free from

17 (1) all claims to it on the part of any person; and

18 (2) all defenses of any party to the instrument with
19 whom the holder has not dealt except

20 (a) infancy, to the extent that it is a defense
21 to a simple contract; and

22 (b) such other incapacity, or duress, or illegality
23 of the transaction, as renders the obligation of the party a
24 nullity; and

25 (c) such misrepresentation as has induced the
26 party to sign the instrument with neither knowledge nor
27 reasonable opportunity to obtain knowledge of its character
28 or its essential terms; and

29 (d) discharge in insolvency proceedings; and

1 (e) any other discharge of which the holder has
2 notice when he takes the instrument.

3 Sec. 3.306. RIGHTS OF ONE NOT HOLDER IN DUE COURSE. Unless
4 he has the rights of a holder in due course any person takes the
5 instrument subject to

6 (a) all valid claims to it on the part of any per-
7 son; and

8 (b) all defenses of any party which would be
9 available in an action on a simple contract; and

10 (c) the defenses of want or failure of consider-
11 ation, non-performance of any condition precedent, non-
12 delivery, or delivery for a special purpose (Section 3.408.);
13 and

14 (d) the defense that he or a person through whom
15 he holds the instrument acquired it by theft, or that pay-
16 ment or satisfaction to such holder would be inconsistent
17 with the terms of a restrictive indorsement. The claim of
18 any third person to the instrument is not otherwise avail-
19 able as a defense to any party liable thereon unless the
20 third person himself defends the action for such party.

21 Sec. 3.307. BURDEN OF ESTABLISHING SIGNATURES, DEFENSES
22 AND DUE COURSE.

23 (1) Unless specifically denied in the pleadings each
24 signature on an instrument is admitted. When the effectiveness
25 of a signature is put in issue

26 (a) the burden of establishing it is on the party
27 claiming under the signature; but

28 (b) the signature is presumed to be genuine or
29 authorized except where the action is to enforce the obli-

1 gation of a purported signer who has died or become in-
2 competent before proof is required.

3 (2) When signatures are admitted or established,
4 production of the instrument entitles a holder to recover on it
5 unless the defendant establishes a defense.

6 (3) After it is shown that a defense exists a person
7 claiming the rights of a holder in due course has the burden of
8 establishing that he or some person under whom he claims is in
9 all respects a holder in due course.

10 Part 4

11 Liability of Parties

12 Sec. 3.401. SIGNATURE.

13 (1) No person is liable on an instrument unless his
14 signature appears thereon.

15 (2) A signature is made by use of any name, including
16 any trade or assumed name, upon an instrument, or by any word or
17 mark used in lieu of a written signature.

18 Sec. 3.402. SIGNATURE IN AMBIGUOUS CAPACITY. Unless the
19 instrument clearly indicates that a signature is made in some
20 other capacity it is an indorsement.

21 Sec. 3.403. SIGNATURE BY AUTHORIZED REPRESENTATIVE.

22 (1) A signature may be made by an agent or other rep-
23 resentative, and his authority to make it may be established as in
24 other cases of representation. No particular form of appointment
25 is necessary to establish such authority.

26 (2) An authorized representative who signs his own
27 name to an instrument

28 (a) is personally obligated if the instrument
29 neither names the person represented nor shows that the

1 representative signed in a representative capacity;

2 (b) except as otherwise established between the
3 immediate parties, is personally obligated if the instrument
4 names the person represented but does not show that the
5 representative signed in a representative capacity, or if
6 the instrument does not name the person represented but does
7 show that the representative signed in a representative
8 capacity.

9 (3) Except as otherwise established the name of an
10 organization preceded or followed by the name and office of an
11 authorized individual is a signature made in a representative
12 capacity.

13 Sec. 3.404. UNAUTHORIZED SIGNATURES.

14 (1) Any unauthorized signature is wholly inoperative
15 as that of the person whose name is signed unless he ratifies it
16 or is precluded from denying it; but it operates as the signature
17 of the unauthorized signer in favor of any person who in good
18 faith pays the instrument or takes it for value.

19 (2) Any unauthorized signature may be ratified for all
20 purposes of this Article. Such ratification does not of itself
21 affect any rights of the person ratifying against the actual
22 signer.

23 Sec. 3.405. IMPOSTORS; SIGNATURE IN NAME OF PAYEE.

24 (1) An indorsement by any person in the name of a
25 named payee is effective if

26 (a) an impostor by use of the mails or otherwise
27 has induced the maker or drawer to issue the instrument to
28 him or his confederate in the name of the payee; or

29 (b) a person signing as or on behalf of a maker

1 or drawer intends the payee to have no interest in the in-
2 strument; or

3 (c) an agent or employee of the maker or drawer
4 has supplied him with the name of the payee intending the
5 latter to have no such interest.

6 (2) Nothing in this section shall affect the criminal
7 or civil liability of the person so indorsing.

8 Sec. 3.406. NEGLIGENCE CONTRIBUTING TO ALTERATION OR UN-
9 AUTHORIZED SIGNATURE. Any person who by his negligence sub-
10 stantially contributes to a material alteration of the instrument
11 or to the making of an unauthorized signature is precluded from
12 asserting the alteration or lack of authority against a holder in
13 due course or against a drawee or other payor who pays the in-
14 strument in good faith and in accordance with the reasonable
15 commercial standards of the drawee's or payor's business.

16 Sec. 3.407. ALTERATION.

17 (1) Any alteration of an instrument is material which
18 changes the contract of any party thereto in any respect, in-
19 cluding any such change in

20 (a) the number or relations of the parties; or

21 (b) an incomplete instrument, by completing it
22 otherwise than as authorized; or

23 (c) the writing as signed, by adding to it or by
24 removing any part of it.

25 (2) As against any person other than a subsequent
26 holder in due course

27 (a) alteration by the holder which is both fraud-
28 ulent and material discharges any party whose contract is
29 thereby changed unless that party assents or is precluded

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from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

Sec. 3.408. CONSIDERATION. Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (Section 3.305.), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this Act under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

Sec. 3.409. DRAFT NOT AN ASSIGNMENT.

(1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

Sec. 3.410. DEFINITION AND OPERATION OF ACCEPTANCE.

(1) Acceptance is the drawee's signed engagement to

1 honor the draft as presented. It must be written on the draft,
2 and may consist of his signature alone. It becomes operative
3 when completed by delivery or notification.

4 (2) A draft may be accepted although it has not been
5 signed by the drawer or is otherwise incomplete or is overdue or
6 has been dishonored.

7 (3) Where the draft is payable at a fixed period
8 after sight and the acceptor fails to date his acceptance the
9 holder may complete it by supplying a date in good faith.

10 Sec. 3.411. CERTIFICATION OF A CHECK.

11 (1) Certification of a check is acceptance. Where a
12 holder procures certification the drawer and all prior indorsers
13 are discharged.

14 (2) Unless otherwise agreed a bank has no obligation
15 to certify a check.

16 (3) A bank may certify a check before returning it
17 for lack of proper indorsement. If it does so the drawer is
18 discharged.

19 Sec. 3.412. ACCEPTANCE VARYING DRAFT.

20 (1) Where the drawee's proffered acceptance in any
21 manner varies the draft as presented the holder may refuse the
22 acceptance and treat the draft as dishonored in which case the
23 drawee is entitled to have his acceptance cancelled.

24 (2) The terms of the draft are not varied by an accep-
25 tance to pay at any particular bank or place in the continental
26 United States, unless the acceptance states that the draft is to
27 be paid only at such bank or place.

28 (3) Where the holder assents to an acceptance varying
29 the terms of the draft each drawer and indorser who does not

1 affirmatively assent is discharged.

2 Sec. 3.413. CONTRACT OF MAKER, DRAWER AND ACCEPTOR.

3 (1) The maker or acceptor engages that he will pay the
4 instrument according to its tenor at the time of his engagement
5 or as completed pursuant to Section 3.115. on incomplete instru-
6 ments.

7 (2) The drawer engages that upon dishonor of the draft
8 and any necessary notice of dishonor or protest he will pay the
9 amount of the draft to the holder or to any indorser who takes
10 it up. The drawer may disclaim this liability by drawing without
11 recourse.

12 (3) By making, drawing or accepting the party admits
13 as against all subsequent parties including the drawee the exis-
14 tence of the payee and his then capacity to indorse.

15 Sec. 3.414. CONTRACT OF INDORSER; ORDER OF LIABILITY.

16 (1) Unless the indorsement otherwise specifies (as by
17 such words as "without recourse") every indorser engages that
18 upon dishonor and any necessary notice of dishonor and protest he
19 will pay the instrument according to its tenor at the time of his
20 indorsement to the holder or to any subsequent indorser who takes
21 it up, even though the indorser who takes it up was not obligated
22 to do so.

23 (2) Unless they otherwise agree indorsers are liable
24 to one another in the order in which they indorse, which is pre-
25 sumed to be the order in which their signatures appear on the
26 instrument.

27 Sec. 3.415. CONTRACT OF ACCOMMODATION PARTY.

28 (1) An accommodation party is one who signs the in-
29 strument in any capacity for the purpose of lending his name to

1 another party to it.

2 (2) When the instrument has been taken for value be-
3 fore it is due the accommodation party is liable in the capacity
4 in which he has signed even though the taker knows of the accom-
5 modation.

6 (3) As against a holder in due course and without
7 notice of the accommodation oral proof of the accommodation is
8 not admissible to give the accommodation party the benefit of
9 discharges dependent on his character as such. In other cases
10 the accommodation character may be shown by oral proof.

11 (4) An indorsement which shows that it is not in the
12 chain of title is notice of its accommodation character.

13 (5) An accommodation party is not liable to the party
14 accommodated, and if he pays the instrument has a right of re-
15 course on the instrument against such party.

16 Sec. 3.416. CONTRACT OF GUARANTOR.

17 (1) "Payment guaranteed" or equivalent words added to
18 a signature mean that the signer engages that if the instrument
19 is not paid when due he will pay it according to its tenor without
20 resort by the holder to any other party.

21 (2) "Collection guaranteed" or equivalent words added
22 to a signature mean that the signer engages that if the instru-
23 ment is not paid when due he will pay it according to its tenor,
24 but only after the holder has reduced his claim against the maker
25 or acceptor to judgment and execution has been returned unsatis-
26 fied, or after the maker or acceptor has become insolvent or it
27 is otherwise apparent that it is useless to proceed against him.

28 (3) Words of guaranty which do not otherwise specify
29 guarantee payment.

1 (4) No words of guaranty added to the signature of a
2 sole maker or acceptor affect his liability on the instrument.
3 Such words added to the signature of one of two or more makers or
4 acceptors create a presumption that the signature is for the ac-
5 commodation of the others.

6 (5) When words of guaranty are used presentment,
7 notice of dishonor and protest are not necessary to charge the
8 user.

9 (6) Any guaranty written on the instrument is en-
10 forcible notwithstanding any statute of frauds.

11 Sec. 3.417. WARRANTIES ON PRESENTMENT AND TRANSFER.

12 (1) Any person who obtains payment or acceptance and
13 any prior transferor warrants to a person who in good faith pays
14 or accepts that

15 (a) he has a good title to the instrument or is
16 authorized to obtain payment or acceptance on behalf of one
17 who has a good title; and

18 (b) he has no knowledge that the signature of the
19 maker or drawer is unauthorized, except that this warranty
20 is not given by a holder in due course acting in good faith

21 (i) to a maker with respect to the maker's
22 own signature; or

23 (ii) to a drawer with respect to the drawer's
24 own signature, whether or not the drawer is also the
25 drawee; or

26 (iii) to an acceptor of a draft if the holder
27 in due course took the draft after the acceptance or
28 obtained the acceptance without knowledge that the
29 drawer's signature was unauthorized; and

1 (c) the instrument has not been materially
2 altered, except that this warranty is not given by a holder
3 in due course acting in good faith

4 (i) to the maker of a note; or

5 (ii) to the drawer of a draft whether or not
6 the drawer is also the drawee; or

7 (iii) to the acceptor of a draft with respect
8 to an alteration made prior to the acceptance if the
9 holder in due course took the draft after the accep-
10 tance, even though the acceptance provided "payable
11 as originally drawn" or equivalent terms; or

12 (iv) to the acceptor of a draft with respect
13 to an alteration made after the acceptance.

14 (2) Any person who transfers an instrument and re-
15 ceives consideration warrants to his transferee and if the trans-
16 fer is by indorsement to any subsequent holder who takes the in-
17 strument in good faith that

18 (a) he has a good title to the instrument or is
19 authorized to obtain payment or acceptance on behalf of one
20 who has a good title and the transfer is otherwise rightful;
21 and

22 (b) all signatures are genuine or authorized; and

23 (c) the instrument has not been materially altered;

24 and

25 (d) no defense of any party is good against him;

26 and

27 (e) he has no knowledge of any insolvency pro-
28 ceeding instituted with respect to the maker or acceptor or
29 the drawer of an unaccepted instrument.

1 (3) By transferring "without recourse" the transferor
2 limits the obligation stated in subsection (2) (d) to a warranty
3 that he has no knowledge of such a defense.

4 (4) A selling agent or broker who does not disclose
5 the fact that he is acting only as such gives the warranties
6 provided in this section, but if he makes such disclosure war-
7 rants only his good faith and authority.

8 Sec. 3.418. FINALITY OF PAYMENT OR ACCEPTANCE. Except for
9 recovery of bank payments as provided in the Article on Bank
10 Deposits and Collections (Article 4) and except for liability for
11 breach of warranty on presentment under the preceding section,
12 payment or acceptance of any instrument is final in favor of a
13 holder in due course, or a person who has in good faith changed
14 his position in reliance on the payment.

15 Sec. 3.419. CONVERSION OF INSTRUMENT; INNOCENT REPRESENTA-
16 TIVE.

17 (1) An instrument is converted when

18 (a) a drawee to whom it is delivered for accep-
19 tance refuses to return it on demand; or

20 (b) any person to whom it is delivered for pay-
21 ment refuses on demand either to pay or to return it; or

22 (c) it is paid on a forged indorsement.

23 (2) In an action against a drawee under subsection (1)
24 the measure of the drawee's liability is the face amount of the
25 instrument. In any other action under subsection (1) the measure
26 of liability is presumed to be the face amount of the instrument.

27 (3) Subject to the provisions of this Act concerning
28 restrictive indorsements a representative, including a depository
29 or collecting bank, who has in good faith and in accordance with

1 the reasonable commercial standards applicable to the business
2 of such representative dealt with an instrument or its proceeds
3 on behalf of one who was not the true owner is not liable in
4 conversion or otherwise to the true owner beyond the amount of
5 any proceeds remaining in his hands.

6 (4) An intermediary bank or payor bank which is not a
7 depository bank is not liable in conversion solely by reason of
8 the fact that proceeds of an item indorsed restrictively (Sections
9 3.205. and 3.206.) are not paid or applied consistently with the
10 restrictive indorsement of an indorser other than its immediate
11 transferor.

12 Part 5

13 Presentment, Notice of Dishonor and Protest

14 Sec. 3.501. WHEN PRESENTMENT, NOTICE OF DISHONOR, AND PRO-
15 TEST NECESSARY OR PERMISSIBLE.

16 (1) Unless excused (Section 3.511.) presentment is
17 necessary to charge secondary parties as follows:

18 (a) presentment for acceptance is necessary to
19 charge the drawer and indorsers of a draft where the draft
20 so provides, or is payable elsewhere than at the residence
21 or place of business of the drawee, or its date of payment
22 depends upon such presentment. The holder may at his option
23 present for acceptance any other draft payable at a stated
24 date;

25 (b) presentment for payment is necessary to
26 charge any indorser;

27 (c) in the case of any drawer, the acceptor of a
28 draft payable at a bank or the maker of a note payable at a
29 bank, presentment for payment is necessary, but failure to

1 make presentment discharges such drawer, acceptor or maker
2 only as stated in Section 3.502. (1) (b).

3 (2) Unless excused (Section 3.511.)

4 (a) notice of any dishonor is necessary to charge
5 any indorser:

6 (b) in the case of any drawer, the acceptor of a
7 draft payable at a bank or the maker of a note payable at a
8 bank, notice of any dishonor is necessary, but failure to
9 give such notice discharges such drawer, acceptor or maker
10 only as stated in Section 3.502. (1) (b).

11 (3) Unless excused (Section 3.511.) protest of any
12 dishonor is necessary to charge the drawer and indorsers of any
13 draft which on its face appears to be drawn or payable outside of
14 the states and territories of the United States and the District
15 of Columbia. The holder may at his option make protest of any
16 dishonor of any other instrument and in the case of a foreign
17 draft may on insolvency of the acceptor before maturity make
18 protest for better security.

19 (4) Notwithstanding any provision of this section,
20 neither presentment nor notice of dishonor nor protest is neces-
21 sary to charge an indorser who has indorsed an instrument after
22 maturity.

23 Sec. 3.502. UNEXCUSED DELAY; DISCHARGE.

24 (1) Where without excuse any necessary presentment or
25 notice of dishonor is delayed beyond the time when it is due

26 (a) any indorser is discharged; and

27 (b) any drawer or the acceptor of a draft payable
28 at a bank or the maker of a note payable at a bank who be-
29 cause the drawee or payor bank becomes insolvent during the

1 delay is deprived of funds maintained with the drawee or
2 payor bank to cover the instrument may discharge his lia-
3 bility by written assignment to the holder of his rights
4 against the drawee or payor bank in respect of such funds,
5 but such drawer, acceptor or maker is not otherwise discharged.

6 (2) Where without excuse a necessary protest is de-
7 layed beyond the time when it is due any drawer or indorser is
8 discharged.

9 Sec. 3.503. TIME OF PRESENTMENT.

10 (1) Unless a different time is expressed in the instru-
11 ment the time for any presentment is determined as follows:

12 (a) where an instrument is payable at or a fixed
13 period after a stated date any presentment for acceptance
14 must be made on or before the date it is payable;

15 (b) where an instrument is payable after sight
16 it must either be presented for acceptance or negotiated
17 within a reasonable time after date or issue whichever is
18 later;

19 (c) where an instrument shows the date on which
20 it is payable presentment for payment is due on that date;

21 (d) where an instrument is accelerated present-
22 ment for payment is due within a reasonable time after the
23 acceleration;

24 (e) with respect to the liability of any second-
25 ary party presentment for acceptance or payment of any other
26 instrument is due within a reasonable time after such party
27 becomes liable thereon.

28 (2) A reasonable time for presentment is determined by
29 the nature of the instrument, any usage of banking or trade and

1 the facts of the particular case. In the case of an uncertified
2 check which is drawn and payable within the United States and
3 which is not a draft drawn by a bank the following are presumed
4 to be reasonable periods within which to present for payment or
5 to initiate bank collection:

6 (a) with respect to the liability of the drawer,
7 thirty days after date or issue whichever is later; and

8 (b) with respect to the liability of an endorser,
9 seven days after his indorsement.

10 (3) Where any presentment is due on a day which is not
11 a full business day for either the person making presentment or
12 the party to pay or accept, presentment is due on the next fol-
13 lowing day which is a full business day for both parties.

14 (4) Presentment to be sufficient must be made at a
15 reasonable hour, and if at a bank during its banking day.

16 Sec. 3.504. HOW PRESENTMENT MADE.

17 (1) Presentment is a demand for acceptance or payment
18 made upon the maker, acceptor, drawee or other payor by or on
19 behalf of the holder.

20 (2) Presentment may be made

21 (a) by mail, in which event the time of present-
22 ment is determined by the time of receipt of the mail; or

23 (b) through a clearing house; or

24 (c) at the place of acceptance or payment speci-
25 fied in the instrument or if there be none at the place of
26 business or residence of the party to accept or pay. If
27 neither the party to accept or pay nor anyone authorized to
28 act for him is present or accessible at such place present-
29 ment is excused.

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(3) It may be made

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the continental United States must be presented at such bank.

(5) In the cases described in Section 4.210. presentment may be made in the manner and with the result stated in that section.

Sec. 3.505. RIGHTS OF PARTY TO WHOM PRESENTMENT IS MADE.

(1) The party to whom presentment is made may without dishonor require

(a) exhibition of the instrument; and

(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

Sec. 3.506. TIME ALLOWED FOR ACCEPTANCE OR PAYMENT.

(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The

1 holder may also in a good faith effort to obtain acceptance and
2 without either dishonor of the instrument or discharge of second-
3 ary parties allow postponement of acceptance for an additional
4 business day.

5 (2) Except as a longer time is allowed in the case of
6 documentary drafts drawn under a letter of credit, and unless an
7 earlier time is agreed to by the party to pay, payment of an
8 instrument may be deferred without dishonor pending reasonable
9 examination to determine whether it is properly payable, but
10 payment must be made in any event before the close of business
11 on the day of presentment.

12 Sec. 3.507. DISHONOR; HOLDER'S RIGHT OF RECOURSE; TERM
13 ALLOWING RE-PRESENTMENT.

14 (1) An instrument is dishonored when

15 (a) a necessary or optional presentment is duly
16 made and due acceptance or payment is refused or cannot be
17 obtained within the prescribed time or in case of bank col-
18 lections the instrument is seasonably returned by the mid-
19 night deadline (Section 4.301.); or

20 (b) presentment is excused and the instrument is
21 not duly accepted or paid.

22 (2) Subject to any necessary notice of dishonor and
23 protest, the holder has upon dishonor an immediate right of re-
24 course against the drawers and indorsers.

25 (3) Return of an instrument for lack of proper in-
26 dorsement is not dishonor.

27 (4) A term in a draft or an indorsement thereof
28 allowing a stated time for re-presentment in the event of any
29 dishonor of the draft by nonacceptance if a time draft or by non-

1 payment if a sight draft gives the holder as against any secondary
2 party bound by the term an option to waive the dishonor without
3 affecting the liability of the secondary party and he may present
4 again up to the end of the stated time.

5 Sec. 3.508. NOTICE OF DISHONOR.

6 (1) Notice of dishonor may be given to any person who
7 may be liable on the instrument by or on behalf of the holder or
8 any party who has himself received notice, or any other party who
9 can be compelled to pay the instrument. In addition an agent or
10 bank in whose hands the instrument is dishonored may give notice
11 to his principal or customer or to another agent or bank from
12 which the instrument was received.

13 (2) Any necessary notice must be given by a bank be-
14 fore its midnight deadline and by any other person before mid-
15 night of the third business day after dishonor or receipt of
16 notice of dishonor.

17 (3) Notice may be given in any reasonable manner. It
18 may be oral or written and in any terms which identify the instru-
19 ment and state that it has been dishonored. A misdescription
20 which does not mislead the party notified does not vitiate the
21 notice. Sending the instrument bearing a stamp, ticket or writing
22 stating that acceptance or payment has been refused or sending a
23 notice of debit with respect to the instrument is sufficient.

24 (4) Written notice is given when sent although it is
25 not received.

26 (5) Notice to one partner is notice to each although
27 the firm has been dissolved.

28 (6) When any party is in insolvency proceedings in-
29 stituted after the issue of the instrument notice may be given

1 either to the party or to the representative of his estate.

2 (7) When any party is dead or incompetent notice may
3 be sent to his last known address or given to his personal rep-
4 resentative.

5 (8) Notice operates for the benefit of all parties
6 who have rights on the instrument against the party notified.

7 Sec. 3.509. PROTEST; NOTING FOR PROTEST.

8 (1) A protest is a certificate of dishonor made under
9 the hand and seal of a United States consul or vice consul or a
10 notary public or other person authorized to certify dishonor by
11 the law of the place where dishonor occurs. It may be made upon
12 information satisfactory to such person.

13 (2) The protest must identify the instrument and
14 certify either that due presentment has been made or the reason
15 why it is excused and that the instrument has been dishonored by
16 nonacceptance or nonpayment.

17 (3) The protest may also certify that notice of dis-
18 honor has been given to all parties or to specified parties.

19 (4) Subject to subsection (5) any necessary protest
20 is due by the time that notice of dishonor is due.

21 (5) If, before protest is due, an instrument has been
22 noted for protest by the officer to make protest, the protest may
23 be made at any time thereafter as of the date of the noting.

24 Sec. 3.510. EVIDENCE OF DISHONOR AND NOTICE OF DISHONOR.

25 The following are admissible as evidence and create a presumption
26 of dishonor and of any notice of dishonor therein shown:

27 (a) a document regular in form as provided in the
28 preceding section which purports to be a protest;

29 (b) the purported stamp or writing of the drawee,

1 payor bank or presenting bank on the instrument or accom-
2 panying it stating that acceptance or payment has been re-
3 fused for reasons consistent with dishonor;

4 (c) any book or record of the drawee, payor bank,
5 or any collecting bank kept in the usual course of business
6 which shows dishonor, even though there is no evidence of
7 who made the entry.

8 Sec. 3.511. WAIVED OR EXCUSED PRESENTMENT, PROTEST OR
9 NOTICE OF DISHONOR OR DELAY THEREIN.

10 (1) Delay in presentment, protest or notice of dishonor
11 is excused when the party is without notice that it is due or
12 when the delay is caused by circumstances beyond his control and
13 he exercises reasonable diligence after the cause of the delay
14 ceases to operate.

15 (2) Presentment or notice or protest as the case may be
16 is entirely excused when

17 (a) the party to be charged has waived it express-
18 ly or by implication either before or after it is due; or

19 (b) such party has himself dishonored the instru-
20 ment or has countermanded payment or otherwise has no reason
21 to expect or right to require that the instrument be accepted
22 or paid; or

23 (c) by reasonable diligence the presentment or
24 protest cannot be made or the notice given.

25 (3) Presentment is also entirely excused when

26 (a) the maker, acceptor or drawee of any instru-
27 ment except a documentary draft is dead or in insolvency
28 proceedings instituted after the issue of the instrument; or

29 (b) acceptance or payment is refused but not for

1 want of proper presentment.

2 (4) Where a draft has been dishonored by nonacceptance
3 a later presentment for payment and any notice of dishonor and
4 protest for nonpayment are excused unless in the meantime the
5 instrument has been accepted.

6 (5) A waiver of protest is also a waiver of present-
7 ment and of notice of dishonor even though protest is not re-
8 quired.

9 (6) Where a waiver of presentment or notice or pro-
10 test is embodied in the instrument itself it is binding upon all
11 parties; but where it is written above the signature of an in-
12 dorser it binds him only.

13 Part 6

14 Discharge

15 Sec. 3.601. DISCHARGE OF PARTIES.

16 (1) The extent of the discharge of any party from
17 liability on an instrument is governed by the sections on

18 (a) payment or satisfaction (Section 3.603.); or

19 (b) tender of payment (Section 3.604.);

20 (c) cancellation or renunciation (Section 3.605.);

21 or

22 (d) impairment of right of recourse or of col-
23 lateral (Section 3.606.); or

24 (e) reacquisition of the instrument by a prior
25 party (Section 3.208.); or

26 (f) fraudulent and material alteration (Section
27 3.407.); or

28 (g) certification of a check (Section 3.411.); or

29 (h) acceptance varying a draft (Section 3.412.); or

1 (1) unexcused delay in presentment or notice of
2 dishonor or protest (Section 3.502.).

3 (2) Any party is also discharged from his liability
4 on an instrument to another party by any other act or agreement
5 with such party which would discharge his simple contract for
6 the payment of money.

7 (3) The liability of all parties is discharged when
8 any party who has himself no right of action or recourse on the
9 instrument

10 (a) reacquires the instrument in his own right; or

11 (b) is discharged under any provision of this
12 Article, except as otherwise provided with respect to dis-
13 charge for impairment of recourse or of collateral (Section
14 3.606.)

15 Sec. 3.602. EFFECT OF DISCHARGE AGAINST HOLDER IN DUE
16 COURSE. No discharge of any party provided by this Article is
17 effective against a subsequent holder in due course unless he has
18 notice thereof when he takes the instrument.

19 Sec. 3.603. PAYMENT OR SATISFACTION.

20 (1) The liability of any party is discharged to the
21 extent of his payment or satisfaction to the holder even though
22 it is made with knowledge of a claim of another person to the
23 instrument unless prior to such payment or satisfaction the per-
24 son making the claim either supplies indemnity deemed adequate by
25 the party seeking the discharge or enjoins payment or satisfaction
26 by order of a court of competent jurisdiction in an action in
27 which the adverse claimant and the holder are parties. This
28 subsection does not, however, result in the discharge of the
29 liability

1 (a) of a party who in bad faith pays or satisfies
2 a holder who acquired the instrument by theft or who (unless
3 having the rights of a holder in due course) holds through
4 one who so acquired it; or

5 (b) of a party (other than an intermediary bank
6 or a payor bank which is not a depository bank) who pays or
7 satisfies the holder of an instrument which has been
8 restrictively indorsed in a manner not consistent with the
9 terms of such restrictive indorsement.

10 (2) Payment or satisfaction may be made with the con-
11 sent of the holder by any person including a stranger to the
12 instrument. Surrender of the instrument to such a person gives
13 him the rights of a transferee (Section 3.201.)

14 Sec. 3.604. TENDER OF PAYMENT.

15 (1) Any party making tender of full payment to a
16 holder when or after it is due is discharged to the extent of all
17 subsequent liability for interest, costs and attorney's fees.

18 (2) The holder's refusal of such tender wholly dis-
19 charges any party who has a right of recourse against the party
20 making the tender.

21 (3) Where the maker or acceptor of an instrument pay-
22 able otherwise than on demand is able and ready to pay at every
23 place of payment specified in the instrument when it is due, it
24 is equivalent to tender.

25 Sec. 3.605. CANCELLATION AND RENUNCIATION.

26 (1) The holder of an instrument may even without con-
27 sideration discharge any party

28 (a) in any manner apparent on the face of the
29 instrument or the indorsement, as by intentionally can-

1 celling the instrument or the party's signature by des-
2 truction or mutilation, or by striking out the party's
3 signature; or

4 (b) by renouncing his rights by a writing signed
5 and delivered or by surrender of the instrument to the
6 party to be discharged.

7 (2) Neither cancellation nor renunciation without
8 surrender of the instrument affects the title thereto.

9 Sec. 3.606. IMPAIRMENT OF RECOURSE OR OF COLLATERAL.

10 (1) The holder discharges any party to the instrument
11 to the extent that without such party's consent the holder

12 (a) without express reservation of rights releases
13 or agrees not to sue any person against whom the party has
14 to the knowledge of the holder a right of recourse or agrees
15 to suspend the right to enforce against such person the
16 instrument or collateral or otherwise discharges such per-
17 son, except that failure or delay in effecting any required
18 presentment, protest or notice of dishonor with respect to
19 any such person does not discharge any party as to whom
20 presentment, protest or notice of dishonor is effective or
21 unnecessary; or

22 (b) unjustifiably impairs any collateral for the
23 instrument given by or on behalf of the party or any person
24 against whom he has a right of recourse.

25 (2) By express reservation of rights against a party
26 with a right of recourse the holder preserves

27 (a) all his rights against such party as of the
28 time when the instrument was originally due; and

29 (b) the right of the party to pay the instrument

1 as of that time; and
2 (c) all rights of such party to recourse against
3 others.

4 Part 7

5 Advice of International Sight Draft

6 Sec. 3.701. LETTER OF ADVICE OF INTERNATIONAL SIGHT DRAFT.

7 (1) A "letter of advice" is a drawer's communication
8 to the drawee that a described draft has been drawn.

9 (2) Unless otherwise agreed when a bank receives from
10 another bank a letter of advice of an international sight draft
11 the drawee bank may immediately debit the drawer's account and
12 stop the running of interest pro tanto. Such a debit and any
13 resulting credit to any account covering outstanding drafts
14 leaves in the drawer full power to stop payment or otherwise
15 dispose of the amount and creates no trust or interest in favor
16 of the holder.

17 (3) Unless otherwise agreed and except where a draft
18 is drawn under a credit issued by the drawee, the drawee of an
19 international sight draft owes the drawer no duty to pay an
20 unadvised draft but if it does so and the draft is genuine, may
21 appropriately debit the drawer's account.

22 Part 8

23 Miscellaneous

24 Sec. 3.801. DRAFTS IN A SET.

25 (1) Where a draft is drawn in a set of parts, each of
26 which is numbered and expressed to be an order only if no other
27 part has been honored, the whole of the parts constitutes one
28 draft but a taker of any part may become a holder in due course
29 of the draft.

1 (2) Any person who negotiates, indorses or accepts a
2 single part of a draft drawn in a set thereby becomes liable to
3 any holder in due course of that part as if it were the whole
4 set, but as between different holders in due course to whom
5 different parts have been negotiated the holder whose title first
6 accrues has all rights to the draft and its proceeds.

7 (3) As against the drawee the first presented part of
8 a draft drawn in a set is the part entitled to payment, or if a
9 time draft to acceptance and payment. Acceptance of any subse-
10 quently presented part renders the drawee liable thereon under
11 subsection (2). With respect both to a holder and to the drawer
12 payment of a subsequently presented part of a draft payable at
13 sight has the same effect as payment of a check notwithstanding
14 an effective stop order (Section 4.407.)

15 (4) Except as otherwise provided in this section,
16 where any part of a draft in a set is discharged by payment or
17 otherwise the whole draft is discharged.

18 Sec. 3.802. EFFECT OF INSTRUMENT ON OBLIGATION FOR WHICH IT
19 IS GIVEN.

20 (1) Unless otherwise agreed where an instrument is
21 taken for an underlying obligation

22 (a) the obligation is pro tanto discharged if a
23 bank is drawer, maker or acceptor of the instrument and
24 there is no recourse on the instrument against the underlying
25 obligor; and

26 (b) in any other case the obligation is suspended
27 pro tanto until the instrument is due or if it is payable on
28 demand until its presentment. If the instrument is dis-
29 honored action may be maintained on either the instrument or

1 the obligation; discharge of the underlying obligor on the
2 instrument also discharges him on the obligation.

3 (2) The taking in good faith of a check which is not
4 postdated does not of itself so extend the time on the original
5 obligation as to discharge a surety.

6 Sec. 3.803. NOTICE TO THIRD PARTY. Where a defendant is
7 sued for breach of an obligation for which a third person is
8 answerable over under this Article he may give the third person
9 written notice of the litigation, and the person notified may
10 then give similar notice to any other person who is answerable
11 over to him under this Article. If the notice states that the
12 person notified may come in and defend and that if the person
13 notified does not do so he will in any action against him by the
14 person giving the notice be bound by any determination of fact
15 common to the two litigations, then unless after reasonable re-
16 ceipt of the notice the person notified does come in and defend
17 he is so bound.

18 Sec. 3.804. LOST, DESTROYED OR STOLEN INSTRUMENTS. The
19 owner of an instrument which is lost, whether by destruction,
20 theft or otherwise, may maintain an action in his own name and
21 recover from any party liable thereon upon due proof of his
22 ownership, the facts which prevent his production of the instru-
23 ment and its terms. The court may require security indemnifying
24 the defendant against loss by reason of further claims on the
25 instrument.

26 Sec. 3.805. INSTRUMENTS NOT PAYABLE TO ORDER OR TO BEARER.
27 This Article applies to any instrument whose terms do not preclude
28 transfer and which is otherwise negotiable within this Article
29 but which is not payable to order or to bearer, except that there

1 can be no holder in due course of such an instrument.

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1 ARTICLE IV

2 BANK DEPOSITS AND COLLECTIONS

3 Part 1

4 General Provisions and Definitions

5 Sec. 4.101. SHORT TITLE. This Article shall be known and
6 may be cited as Uniform Commerical Code--Bank Deposits and
7 Collections.

8 Sec. 4.102. APPLICABILITY.

9 (1) To the extent that items within this Article are
10 also within the scope of Articles 3 and 8, they are subject to
11 the provisions of those Articles. In the event of conflict the
12 provisions of this Article govern those of Article 3 but the
13 provisions of Article 8 govern those of this Article.

14 (2) The liability of a bank for action or non-action
15 with respect to any item handled by it for purposes of present-
16 ment, payment or collection is governed by the law of the place
17 where the bank is located. In the case of action or non-action
18 by or at a branch or separate office of a bank, its liability
19 is governed by the law of the place where the branch or separate
20 office is located.

21 Sec. 4.103. VARIATION BY AGREEMENT; MEASURE OF DAMAGES;
22 CERTAIN ACTION CONSTITUTING ORDINARY CARE.

23 (1) The effect of the provisions of this Article may
24 be varied by agreement except that no agreement can disclaim a
25 bank's responsibility for its own lack of good faith or failure
26 to exercise ordinary care or can limit the measure of damages
27 for such lack or failure; but the parties may by agreement
28 determine the standards by which such responsibility is to be
29 measured if such standards are not manifestly unreasonable.

1 (2) Federal Reserve regulations and operating letters,
2 clearing house rules, and the like, have the effect of agreements
3 under subsection (1), whether or not specifically assented to by
4 all parties interested in items handled.

5 (3) Action or non-action approved by this Article or
6 pursuant to Federal Reserve regulations or operating letters
7 constitutes the exercise of ordinary care and, in the absence of
8 special instructions, action or non-action consistent with
9 clearing house rules and the like or with a general banking usage
10 not disapproved by this Article, prima facie constitutes the
11 exercise of ordinary care.

12 (4) The specification or approval of certain procedures
13 by this Article does not constitute disapproval of other pro-
14 cedures which may be reasonable under the circumstances.

15 (5) The measure of damages for failure to exercise
16 ordinary care in handling an item is the amount of the item
17 reduced by an amount which could not have been realized by the
18 use of ordinary care, and where there is bad faith it includes
19 other damages, if any, suffered by the party as a proximate
20 consequence.

21 Sec. 4.104. DEFINITIONS AND INDEX OF DEFINITIONS.

22 (1) In this Article unless the context otherwise re-
23 quires

24 (a) "Account" means any account with a bank and
25 includes a checking, time, interest or savings account;

26 (b) "Afternoon" means the period of a day be-
27 tween noon and midnight;

28 (c) "Banking day" means that part of any day on
29 which a bank is open to the public for carrying on substan-

1 tially all of its banking functions;

2 (d) "Clearing house" means any association of
3 banks or other payors regularly clearing items;

4 (e) "Customer" means any person having an account
5 with a bank or for whom a bank has agreed to collect items
6 and includes a bank carrying an account with another bank;

7 (f) "Documentary draft" means any negotiable or
8 non-negotiable draft with accompanying documents, securities
9 or other papers to be delivered against honor of the draft;

10 (g) "Item" means any instrument for the payment of
11 money even though it is not negotiable but does not include
12 money;

13 (h) "Midnight deadline" with respect to a bank
14 is midnight on its next banking day following the banking
15 day on which it receives the relevant item or notice or from
16 which the time for taking action commences to run, whichever
17 is later;

18 (i) "Properly payable" includes the availability
19 of funds for payment at the time of decision to pay or dis-
20 honor;

21 (j) "Settle" means to pay in cash, by clearing
22 house settlement, in a charge or credit or by remittance, or
23 otherwise as instructed. A settlement may be either pro-
24 visional or final;

25 (k) "Suspends payments" with respect to a bank
26 means that it has been closed by order of the supervisory
27 authorities, that a public officer has been appointed to
28 take it over or that it ceases or refuses to make payments
29 in the ordinary course of business.

1 (2) Other definitions applying to this Article and the
2 sections in which they appear are:

3 "Collecting bank". Section 4.105.

4 "Depository bank". Section 4.105.

5 "Intermediary bank". Section 4.105.

6 "Payor bank". Section 4.105.

7 "Presenting bank". Section 4.105.

8 "Remitting bank". Section 4.105.

9 (3) The following definitions in other Articles apply
10 to this Article:

11 "Acceptance". Section 3.410.

12 "Certificate of deposit". Section 3.104.

13 "Certification". Section 3.411.

14 "Check". Section 3.104.

15 "Draft". Section 3.104.

16 "Holder in due course". Section 3.302.

17 "Notice of dishonor". Section 3.508.

18 "Presentment". Section 3.504.

19 "Protest". Section 3.509.

20 "Secondary party". Section 3.102.

21 (4) In addition Article I contains general definitions
22 and principles of construction and interpretation applicable
23 throughout this Article.

24 Sec. 4.105. "DEPOSITARY BANK"; "INTERMEDIARY BANK"; "COLLECT-
25 ING BANK"; "PAYOR BANK"; "PRESENTING BANK"; "REMITTING BANK". In
26 this Article unless the context otherwise requires:

27 (a) "Depository bank" means the first bank to
28 which an item is transferred for collection even though it
29 is also the payor bank;

1 (b) "Payor bank" means a bank by which an item
2 is payable as drawn or accepted;

3 (c) "Intermediary bank" means any bank to which
4 an item is transferred in course of collection except the
5 depository or payor bank;

6 (d) "Collecting bank" means any bank handling
7 the item for collection except the payor bank;

8 (e) "Presenting bank" means any bank presenting
9 an item except a payor bank;

10 (f) "Remitting bank" means any payor or inter-
11 mediary bank remitting for an item.

12 Sec. 4.106. SEPARATE OFFICE OF A BANK. A branch or sep-
13 arate office of a bank is a separate bank for the purpose of
14 computing the time within which and determining the place at or
15 to which action may be taken or notices or orders shall be given
16 under this Article.

17 Sec. 4.107. TIME OF RECEIPT OF ITEMS.

18 (1) For the purpose of allowing time to process items,
19 prove balances and make the necessary entries on its books to
20 determine its position for the day, a bank may fix an afternoon
21 hour of two P.M. or later as a cut-off hour for the handling of
22 money and items and the making of entries on its books.

23 (2) Any item or deposit of money received on any day
24 after a cut-off hour so fixed or after the close of the banking
25 day may be treated as being received at the opening of the next
26 banking day.

27 Sec. 4.108. DELAYS.

28 (1) Unless otherwise instructed, a collecting bank
29 in a good faith effort to secure payment may, in the case of

1 specific items and with or without the approval of any person
2 involved, waive, modify or extend time limits imposed or permitted
3 by this Act for a period not in excess of an additional banking
4 day without discharge of secondary parties and without liability
5 to its transferor or any prior party.

6 (2) Delay by a collecting bank or payor bank beyond
7 time limits prescribed or permitted by this Act or by instructions
8 is excused if caused by interruption of communication facilities,
9 suspension of payments by another bank, war, emergency conditions
10 or other circumstances beyond the control of the bank provided
11 it exercises such diligence as the circumstances require.

12 Part 2

13 Collection of Items: Depository and
14 Collecting Banks

15 Sec. 4.201. PRESUMPTION AND DURATION OF AGENCY STATUS OF
16 COLLECTING BANKS AND PROVISIONAL STATUS OF CREDITS; APPLICABILITY
17 OF ARTICLE; ITEM INDORSED "PAY ANY BANK".

18 (1) Unless a contrary intent clearly appears and prior
19 to the time that a settlement given by a collecting bank for an
20 item is or becomes final (subsection (3) of Section 4.211. and
21 Sections 4.212. and 4.213.) the bank is an agent or sub-agent of
22 the owner of the item and any settlement given for the item is
23 provisional. This provision applies regardless of the form of
24 indorsement or lack of indorsement and even though credit given
25 for the item is subject to immediate withdrawal as of right or
26 is in fact withdrawn; but the continuance of ownership of an
27 item by its owner and any rights of the owner to proceeds of the
28 item are subject to rights of a collecting bank such as those
29 resulting from outstanding advances on the item and valid rights

1 of setoff. When an item is handled by banks for purposes of
2 presentment, payment and collection, the relevant provisions of
3 this Article apply even though action of parties clearly estab-
4 lishes that a particular bank has purchased the item and is the
5 owner of it.

6 (2) After an item has been indorsed with the words "pay
7 any bank" or the like, only a bank may acquire the rights of a
8 holder

9 (a) until the item has been returned to the cus-
10 tomer initiating collection; or

11 (b) until the item has been specially indorsed by
12 a bank to a person who is not a bank.

13 Sec. 4.202. RESPONSIBILITY FOR COLLECTION; WHEN ACTION
14 SEASONABLE.

15 (1) A collecting bank must use ordinary care in

16 (a) presenting an item or sending it for pre-
17 sentment; and

18 (b) sending notice of dishonor or non-payment or
19 returning an item other than a documentary draft to the
20 bank's transferor or directly to the depository bank under
21 subsection (2) of Section 4.212. after learning that the
22 item has not been paid or accepted, as the case may be; and

23 (c) settling for an item when the bank receives
24 final settlement; and

25 (d) making or providing for any necessary protest;
26 and

27 (e) notifying its transferor of any loss or delay
28 in transit within a reasonable time after discovery thereof.

29 (2) A collecting bank taking proper action before its

1 midnight deadline following receipt of an item notice or payment
2 acts seasonably; taking proper action within a reasonably longer
3 time may be seasonable but the bank has the burden of so estab-
4 lishing.

5 (3) Subject to subsection (1) (a), a bank is not liable
6 for the insolvency, neglect, misconduct, mistake or default of
7 another bank or person or for loss or destruction of an item in
8 transit or in the possession of others.

9 Sec. 4.203. EFFECT OF INSTRUCTIONS. Subject to the pro-
10 visions of Article III concerning conversion of instruments
11 (Section 3.419.) and the provisions of both Article III and this
12 Article concerning restrictive indorsements only a collecting
13 bank's transferor can give instructions which affect the bank or
14 constitute notice to it and a collecting bank is not liable to
15 prior parties for any action taken pursuant to such instructions
16 or in accordance with any agreement with its transferor.

17 Sec. 4.204. METHODS OF SENDING AND PRESENTING; SENDING
18 DIRECT TO PAYOR BANK.

19 (1) A collecting bank must send items by reasonably
20 prompt method taking into consideration any relevant instructions,
21 the nature of the item, the number of such items on hand, and the
22 cost of collection involved and the method generally used by it or
23 others to present such items.

24 (2) A collecting bank may send

25 (a) any item direct to the payor bank;

26 (b) any item to any non-bank payor if authorized
27 by its transferor; and

28 (c) any item other than documentary drafts to any
29 non-bank payor, if authorized by Federal Reserve regulation

1 or operating letter, clearing house rule or the like.

2 Sec. 4.205. SUPPLYING MISSING INDORSEMENT; NO NOTICE FROM
3 PRIOR INDORSEMENT.

4 (1) A depository bank which has taken an item for
5 collection may supply any indorsement of the customer which is
6 necessary to title unless the item contains the words "payee's
7 indorsement required" or the like. In the absence of such a
8 requirement a statement placed on the item by the depository bank
9 to the effect that the item was deposited by a customer or
10 credited to his account is effective as the customer's indorse-
11 ment.

12 (2) An intermediary bank, or payor bank which is not
13 a depository bank, is neither given notice nor otherwise affected
14 by a restrictive indorsement of any person except the bank's
15 immediate transferor.

16 Sec. 4.206. TRANSFER BETWEEN BANKS. Any agreed method
17 which identifies the transferor bank is sufficient for the
18 item's further transfer to another bank.

19 Sec. 4.207. WARRANTIES OF CUSTOMER AND COLLECTING BANK ON
20 TRANSFER OR PRESENTMENT OF ITEMS; TIME FOR CLAIMS.

21 (1) Each customer or collecting bank who obtains pay-
22 ment or acceptance of an item and each prior customer and col-
23 lecting bank warrants to the payor bank or other payor who in
24 good faith pays or accepts the item that

25 (a) he has a good title to the item or is
26 authorized to obtain payment or acceptance on behalf of one
27 who has a good title; and

28 (b) he has no knowledge that the signature of the
29 maker or drawer is unauthorized, except that this warranty

1 is not given by any customer or collecting bank that is a
2 holder in due course and acts in good faith

3 (i) to a maker with respect to the maker's
4 own signature; or

5 (ii) to a drawer with respect to the drawer's
6 own signature, whether or not the drawer is also the
7 drawee; or

8 (iii) to an acceptor of an item if the holder
9 in due course took the item after the acceptance or ob-
10 tained the acceptance without knowledge that the
11 drawer's signature was unauthorized; and

12 (c) the item has not been materially altered, ex-
13 cept that this warranty is not given by any customer or col-
14 lecting bank that is a holder in due course and acts in good
15 faith

16 (i) to the maker of a note; or

17 (ii) to the drawer of a draft whether or not
18 the drawer is also the drawee; or

19 (iii) to the acceptor of an item with res-
20 spect to an alteration made prior to the acceptance if
21 the holder in due course took the item after the ac-
22 ceptance, even though the acceptance provided "payable
23 as originally drawn" or equivalent terms; or

24 (iv) to the acceptor of an item with respect
25 to an alteration made after the acceptance.

26 (2) Each customer and collecting bank who transfers an
27 item and receives a settlement or other consideration for it
28 warrants to his transferee and to any subsequent collecting bank
29 who takes the item in good faith that

1 (a) he has a good title to the item or is author-
2 ized to obtain payment or acceptance on behalf of one who
3 has a good title and the transfer is otherwise rightful; and
4 (b) all signatures are genuine or authorized; and
5 (c) the item has not been materially altered; and
6 (d) no defense of any party is good against him;
7 and

8 (e) he has no knowledge of any insolvency pro-
9 ceeding instituted with respect to the maker or acceptor or
10 the drawer of an unaccepted item.

11 In addition each customer and collecting bank so transferring an
12 item and receiving a settlement or other consideration engages
13 that upon dishonor and any necessary notice of dishonor and pro-
14 test he will take up the item.

15 (3) The warranties and the engagement to honor set
16 forth in the two preceding subsections arise notwithstanding the
17 absence of indorsement or words of guaranty or warranty in the
18 transfer or presentment and a collecting bank remains liable for
19 their breach despite remittance to its transferor. Damages for
20 breach of such warranties or engagement to honor shall not exceed
21 the consideration received by the customer or collecting bank
22 responsible plus finance charges and expenses related to the
23 item, if any.

24 (4) Unless a claim for breach of warranty under this
25 section is made within a reasonable time after the person claim-
26 ing learns of the breach, the person liable is discharged to the
27 extent of any loss caused by the delay in making claim.

28 Sec. 4.208. SECURITY INTEREST OF COLLECTING BANK IN ITEMS,
29 ACCOMPANYING DOCUMENTS AND PROCEEDS.

1 (1) A bank has a security interest in an item and any
2 accompanying documents or the proceeds of either

3 (a) in case of an item deposited in an account to
4 the extent to which credit given for the item has been
5 withdrawn or applied;

6 (b) in case of an item for which it has given
7 credit available for withdrawal as of right, to the extent
8 of the credit given whether or not the credit is drawn upon
9 and whether or not there is a right of charge-back; or

10 (c) if it makes an advance on or against the item.

11 (2) When credit which has been given for several items
12 received at one time or pursuant to a single agreement is with-
13 drawn or applied in part the security interest remains upon all
14 the items, any accompanying documents or the proceeds of either.
15 For the purpose of this section, credits first given are first
16 withdrawn.

17 (3) Receipt by a collecting bank of a final settlement
18 for an item is a realization on its security interest in the
19 item, accompanying documents and proceeds. To the extent and so
20 long as the bank does not receive final settlement for the item
21 or give up possession of the item or accompanying documents for
22 purposes other than collection, the security interest continues
23 and is subject to the provisions of Article IX except that

24 (a) no security agreement is necessary to make
25 the security interest enforceable (subsection (1) (b) of
26 Section 9.203.); and

27 (b) no filing is required to perfect the security
28 interest; and

29 (c) the security interest has priority over con-

1 conflicting perfected security interests in the item, accom-
2 panying documents or proceeds.

3 Sec. 4.209. WHEN BANK GIVES VALUE FOR PURPOSES OF HOLDER
4 IN DUE COURSE. For purposes of determining its status as a
5 holder in due course, the bank has given value to the extent that
6 it has a security interest in an item provided that the bank
7 otherwise complies with the requirements of Section 3.302. on
8 what constitutes a holder in due course.

9 Sec. 4.210. PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY,
10 THROUGH OR AT A BANK; LIABILITY OF SECONDARY PARTIES.

11 (1) Unless otherwise instructed, a collecting bank
12 may present an item not payable by, through or at a bank by
13 sending to the party to accept or pay a written notice that the
14 bank holds the item for acceptance or payment. The notice must
15 be sent in time to be received on or before the day when present-
16 ment is due and the bank must meet any requirement of the party
17 to accept or pay under Section 3.505. by the close of the bank's
18 next banking day after it knows of the requirement.

19 (2) Where presentment is made by notice and neither
20 honor nor request for compliance with a requirement under Section
21 3.505. is received by the close of business on the day after
22 maturity or in the case of demand items by the close of business
23 on the third banking day after notice was sent, the presenting
24 bank may treat the item as dishonored and charge any secondary
25 party by sending him notice of the facts.

26 Sec. 4.211. MEDIA OF REMITTANCE; PROVISIONAL AND FINAL
27 SETTLEMENT IN REMITTANCE CASES.

28 (1) A collecting bank may take in settlement of an
29 item

1 (a) a check of the remitting bank or of another
2 bank on any bank except the remitting bank; or

3 (b) a cashier's check or similar primary obli-
4 gation of a remitting bank which is a member of or clears
5 through a member of the same clearing house or group as the
6 collecting bank; or

7 (c) appropriate authority to charge an account
8 of the remitting bank or of another bank with the collecting
9 bank; or

10 (d) if the item is drawn upon or payable by a
11 person other than a bank, a cashier's check, certified check
12 or other bank check or obligation.

13 (2) If before its midnight deadline the collecting
14 bank properly dishonors a remittance check or authorization to
15 charge on itself or presents or forwards for collection a re-
16 mittance instrument of or on another bank which is of a kind
17 approved by subsection (1) or has not been authorized by it, the
18 collecting bank is not liable to prior parties in the event of
19 the dishonor of such check, instrument or authorization.

20 (3) A settlement for an item by means of a remittance
21 instrument or authorization to charge is or becomes a final
22 settlement as to both the person making and the person receiving
23 the settlement

24 (a) if the remittance instrument or authorization
25 to charge is of a kind approved by subsection (1) or has not
26 been authorized by the person receiving the settlement and
27 in either case the person receiving the settlement acts
28 seasonably before its midnight deadline in presenting, for-
29 warding for collection or paying the instrument or author-

1 ization,--at the time the remittance instrument or author-
2 ization is finally paid by the payor by which it is payable;

3 (b) if the person receiving the settlement has
4 authorized remittance by a non-bank check or obligation or
5 by a cashier's check or similar primary obligation of or a
6 check upon the payor or other remitting bank which is not of
7 a kind approved by subsection (1) (b),--at the time of the
8 receipt of such remittance check or obligation; or

9 (c) if in a case not covered by sub-paragraphs
10 (a) or (b) the person receiving the settlement fails to
11 seasonably present, forward for collection, pay or return
12 a remittance instrument or authorization to it to charge
13 before its midnight deadline,--at such midnight deadline.

14 Sec. 4.212. RIGHT OF CHARGE-BACK OR REFUND.

15 (1) If a collecting bank has made provisional settle-
16 ment with its customer for an item and itself fails by reason of
17 dishonor, suspension of payments by a bank or otherwise to re-
18 ceive a settlement for the item which is or becomes final, the
19 bank may revoke the settlement given by it, charge back the
20 amount of any credit given for the item to its customer's account
21 or obtain refund from its customer whether or not it is able to
22 return the items if by its midnight deadline or within a longer
23 reasonable time after it learns the facts it returns the item or
24 sends notification of the facts. These rights to revoke, charge-
25 back and obtain refund terminate if and when a settlement for the
26 item received by the bank is or becomes final (subsection (3) of
27 Section 4.211 and subsections (2) and (3) of Section 4.213.)

28 (2) Within the time and manner prescribed by this
29 section and Section 4.301., an intermediary or payor bank, as the

1 case may be, may return an unpaid item directly to the depository
2 bank and may send for collection a draft on the depository bank
3 and obtain reimbursement. In such case, if the depository bank
4 has received provisional settlement for the item, it must reim-
5 burse the bank drawing the draft and any provisional credits for
6 the item between banks shall become and remain final.

7 (3) A depository bank which is also the payor may
8 charge-back the amount of an item to its customer's account or
9 obtain refund in accordance with the section governing return of
10 an item received by a payor bank for credit on its books (Section
11 4.301.)

12 (4) The right to charge-back is not affected by
13 (a) prior use of the credit given for the item; or
14 (b) failure by any bank to exercise ordinary care
15 with respect to the item but any bank so failing remains
16 liable.

17 (5) A failure to charge-back or claim refund does not
18 affect other rights of the bank against the customer or any other
19 party.

20 (6) If credit is given in dollars as the equivalent of
21 the value of an item payable in a foreign currency the dollar
22 amount of any charge-back or refund shall be calculated on the
23 basis of the buying sight rate for the foreign currency pre-
24 vailing on the day when the person entitled to the charge-back
25 or refund learns that it will not receive payment in ordinary
26 course.

27 Sec. 4.213. FINAL PAYMENT OF ITEM BY PAYOR BANK; WHEN PRO-
28 VISIONAL DEBITS AND CREDITS BECOME FINAL; WHEN CERTAIN CREDITS
29 BECOME AVAILABLE FOR WITHDRAWAL.

1 (1) An item is finally paid by a payor bank when the
2 bank has done any of the following, whichever happens first:

3 (a) paid the item in cash; or

4 (b) settled for the item without reserving a
5 right to revoke the settlement and without having such
6 right under statute, clearing house rule or agreement; or

7 (c) completed the process of posting the item
8 to the indicated account of the drawer, maker or other per-
9 son to be charged therewith; or

10 (d) made a provisional settlement for the item
11 and failed to revoke the settlement in the time and manner
12 permitted by statute, clearing house rule or agreement.

13 Upon a final payment under subparagraphs (b), (c) or (d) the
14 payor bank shall be accountable for the amount of the item.

15 (2) If provisional settlement for an item between the
16 presenting and payor banks is made through a clearing house or by
17 debits or credits in an account between them, then to the extent
18 that provisional debits or credits for the item are entered in
19 accounts between the presenting and payor banks or between the
20 presenting and successive prior collecting banks seriatim, they
21 become final upon final payment of the item by the payor bank.

22 (3) If a collecting bank receives a settlement for an
23 item which is or becomes final (subsection (3) of Section 4.211.,
24 subsection (2) of Section 4.213.) the bank is accountable to its
25 customer for the amount of the item and any provisional credit
26 given for the item in an account with its customer becomes final.

27 (4) Subject to any right of the bank to apply the
28 credit to an obligation of the customer, credit given by a bank
29 for an item in an account with its customer becomes available for

1 withdrawal as of right

2 (a) in any case where the bank has received a pro-
3 visional settlement for the item,--when such settlement be-
4 comes final and the bank has had a reasonable time to learn
5 that the settlement is final;

6 (b) in any case where the bank is both a depository
7 bank and a payor bank and the item is finally paid,--at the
8 opening of the bank's second banking day following receipt
9 of the item.

10 (5) A deposit of money in a bank is final when made
11 but, subject to any right of the bank to apply the deposit to an
12 obligation of the customer, the deposit becomes available for
13 withdrawal as of right at the opening of the bank's next banking
14 day following receipt of the deposit.

15 Sec. 4.214. INSOLVENCY AND PREFERENCE.

16 (1) Any item in or coming into the possession of a
17 payor or collecting bank which suspends payment and which item
18 is not finally paid shall be returned by the receiver, trustee
19 or agent in charge of the closed bank to the presenting bank or
20 the closed bank's customer.

21 (2) If a payor bank finally pays an item and suspends
22 payments without making a settlement for the item with its cus-
23 tomer or the presenting bank which settlement is or becomes final,
24 the owner of the item has a preferred claim against the payor
25 bank.

26 (3) If a payor bank gives or a collecting bank gives
27 or receives a provisional settlement for an item and thereafter
28 suspends payments, the suspension does not prevent or interfere
29 with the settlement becoming final if such finality occurs auto-

1 matically upon the lapse of certain time or the happening of
2 certain events (subsection (3) of Section 4.211., subsections (1)
3 (d), (2) and (3) of Section 4.213.)

4 (4) If a collecting bank receives from subsequent
5 parties settlement for an item which settlement is or becomes
6 final and suspends payments without making a settlement for the
7 item with its customer which is or becomes final, the owner of
8 the item has a preferred claim against such collecting bank.

9 Part 3

10 Collection of Items: Payor Banks

11 Sec. 4.301. DEFERRED POSTING; RECOVERY OF PAYMENT BY RETURN
12 OF ITEMS; TIME OF DISHONOR.

13 (1) Where an authorized settlement for a demand item
14 (other than a documentary draft) received by a payor bank other-
15 wise than for immediate payment over the counter has been made
16 before midnight of the banking day of receipt the payor bank may
17 revoke the settlement and recover any payment if before it has
18 made final payment (subsection (1) of Section 4.213.) and before
19 its midnight deadline it

20 (a) returns the item; or

21 (b) sends written notice of dishonor or nonpay-
22 ment if the item is held for protest or is otherwise un-
23 available for return.

24 (2) If a demand item is received by a payor bank for
25 credit on its books it may return such item or send notice of
26 dishonor and may revoke any credit given or recover the amount
27 thereof withdrawn by its customer, if it acts within the time
28 limit and in the manner specified in the preceding subsection.

29 (3) Unless previous notice of dishonor has been sent an

1 item is dishonored at the time when for purposes of dishonor it
2 is returned or notice sent in accordance with this section.

3 (4) An item is returned:

4 (a) as to an item received through a clearing
5 house, when it is delivered to the presenting or last col-
6 lecting bank or to the clearing house or is sent or de-
7 livered in accordance with its rules; or

8 (b) in all other cases, when it is sent or de-
9 livered to the bank's customer or transferor or pursuant
10 to his instructions.

11 Sec. 4.302. PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF
12 ITEM. In the absence of a valid defense such as breach of a
13 presentment warranty (subsection (1) of Section 4.207.), settle-
14 ment effected or the like, if an item is presented on and re-
15 ceived by a payor bank the bank is accountable for the amount of

16 (a) a demand item other than a documentary draft
17 whether properly payable or not if the bank, in any case
18 where it is not also the depository bank, retains the item
19 beyond midnight of the banking day of receipt without
20 settling for it or, regardless of whether it is also the
21 depository bank, does not pay or return the item or send
22 notice of dishonor until after its midnight deadline; or

23 (b) any other properly payable item unless within
24 the time allowed for acceptance or payment of that item the
25 bank either accepts or pays the item or returns it and ac-
26 companying documents.

27 Sec. 4.303. WHEN ITEMS SUBJECT TO NOTICE, STOP-ORDER, LEGAL
28 PROCESS OR SETOFF; ORDER IN WHICH ITEMS MAY BE CHARGED OR CERTIFIED.

29 (1) Any knowledge, notice or stop-order received by,

1 legal process served upon or setoff exercised by a payor bank,
2 whether or not effective under other rules of law to terminate,
3 suspend or modify the bank's right or duty to pay an item or to
4 charge its customer's account for the item, comes too late to so
5 terminate, suspend or modify such right or duty if the knowledge,
6 notice, stop-order or legal process is received or served and a
7 reasonable time for the bank to act thereon expires or the setoff
8 is exercised after the bank has done any of the following:

9 (a) accepted or certified the item;

10 (b) paid the item in cash;

11 (c) settled for the item without reserving a
12 right to revoke the settlement and without having such
13 right under statute, clearing house rule or agreement;

14 (d) completed the process of posting the item to
15 the indicated account of the drawer, maker or other person
16 to be charged therewith or otherwise has evidenced by exam-
17 ination of such indicated account and by action its decision
18 to pay the item; or

19 (e) become accountable for the amount of the item
20 under subsection (1) (d) of Section 4.213. and Section 4.302.
21 dealing with the payor bank's responsibility for late return
22 of items.

23 (2) Subject to the provisions of subsection (1) items
24 may be accepted, paid, certified or charged to the indicated
25 account of its customer in any order convenient to the bank.

26 Part 4

27 Relationship Between Payor Bank and Its

28 Customer

29 Sec. 4.401. WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT.

1 (1) As against its customer, a bank may charge against
2 his account any item which is otherwise properly payable from
3 that account even though the charge creates an overdraft.

4 (2) A bank which in good faith makes payment to a
5 holder may charge the indicated account of its customer according
6 to

7 (a) the original tenor of his altered item; or

8 (b) the tenor of his completed item, even though
9 the bank knows the item has been completed unless the bank
10 has notice that the completion was improper.

11 Sec. 4.402. BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL DIS-
12 HONOR. A payor bank is liable to its customer for damages proxi-
13 mately caused by the wrongful dishonor of an item. When the dis-
14 honor occurs through mistake liability is limited to actual dam-
15 ages proved. If so proximately caused and proved damages may
16 include damages for an arrest or prosecution of the customer or
17 other consequential damages. Whether any consequential damages
18 are proximately caused by the wrongful dishonor is a question of
19 fact to be determined in each case.

20 Sec. 4.403. CUSTOMER'S RIGHT TO STOP PAYMENT; BURDEN OF
21 PROOF OF LOSS.

22 (1) A customer may by order to his bank stop payment of
23 any item payable for his account but the order must be received
24 at such time and in such manner as to afford the bank a reason-
25 able opportunity to act on it prior to any action by the bank
26 with respect to the item described in Section 4.303.

27 (2) An oral order is binding upon the bank only for
28 fourteen calendar days unless confirmed in writing within that
29 period. A written order is effective for only six months unless

1 renewed in writing.

2 (3) The burden of establishing the fact and amount of
3 loss resulting from the payment of an item contrary to a binding
4 stop payment order is on the customer.

5 Sec. 4.404. BANK NOT OBLIGATED TO PAY CHECK MORE THAN SIX
6 MONTHS OLD. A bank is under no obligation to a customer having
7 a checking account to pay a check, other than a certified check,
8 which is presented more than six months after its date, but it
9 may charge its customer's account for a payment made thereafter
10 in good faith.

11 Sec. 4.405. DEATH OR INCOMPETENCE OF CUSTOMER.

12 (1) A payor or collecting bank's authority to accept,
13 pay or collect an item or to account for proceeds of its col-
14 lection if otherwise effective is not rendered ineffective by
15 incompetence of a customer of either bank existing at the time
16 the item is issued or its collection is undertaken if the bank
17 does not know of an adjudication of incompetence. Neither death
18 nor incompetence of a customer revokes such authority to accept,
19 pay, collect or account until the bank knows of the fact of death
20 or of an adjudication of incompetence and has reasonable oppor-
21 tunity to act on it.

22 (2) Even with knowledge a bank may for ten days after
23 the date of death pay or certify checks drawn on or prior to that
24 date unless ordered to stop payment by a person claiming an in-
25 terest in the account.

26 Sec. 4.406. CUSTOMER'S DUTY TO DISCOVER AND REPORT UN-
27 AUTHORIZED SIGNATURE OR ALTERATION.

28 (1) When a bank sends to its customer a statement of
29 account accompanied by items paid in good faith in support of the

1 debit entries or holds the statement and items pursuant to a
2 request or instructions of its customer or otherwise in a reason-
3 able manner makes the statement and items available to the cus-
4 tomer, the customer must exercise reasonable care and promptness
5 to examine the statement and items to discover his unauthorized
6 signature or any alteration on an item and must notify the bank
7 promptly after discovery thereof.

8 (2) If the bank establishes that the customer failed
9 with respect to an item to comply with the duties imposed on the
10 customer by subsection (1) the customer is precluded from as-
11 serting against the bank

12 (a) his unauthorized signature or any alteration
13 on the item if the bank also establishes that it suffered a
14 loss by reason of such failure; and

15 (b) an unauthorized signature or alteration by the
16 same wrongdoer on any other item paid in good faith by the
17 bank after the first item and statement was available to
18 the customer for a reasonable period not exceeding fourteen
19 calendar days and before the bank receives notification from
20 the customer of any such unauthorized signature or alter-
21 ation.

22 (3) The preclusion under subsection (2) does not apply
23 if the customer establishes lack of ordinary care on the part of
24 the bank in paying the item(s).

25 (4) Without regard to care or lack of care of either
26 the customer or the bank a customer who does not within one year
27 from the time the statement and items are made available to the
28 customer (subsection (1)) discover and report his unauthorized
29 signature or any alteration on the face or back of the item or

1 does not within three years from that time discover and report
2 any unauthorized indorsement is precluded from asserting against
3 the bank such unauthorized signature or indorsement or such
4 alteration.

5 (5) If under this section a payor bank has a valid
6 defense against a claim of a customer upon or resulting from pay-
7 ment of an item and waives or fails upon request to assert the
8 defense the bank may not assert against any collecting bank or
9 other prior party presenting or transferring the item a claim
10 based upon the unauthorized signature or alteration giving rise
11 to the customer's claim.

12 Sec. 4.407. PAYOR BANK'S RIGHT TO SUBROGATION ON IMPROPER
13 PAYMENT. If a payor bank has paid an item over the stop payment
14 order of the drawer or maker or otherwise under circumstances
15 giving a basis for objection by the drawer or maker, to prevent
16 unjust enrichment and only to the extent necessary to prevent
17 loss to the bank by reason of its payment of the item, the payor
18 bank shall be subrogated to the rights

19 (a) of any holder in due course on the item
20 against the drawer or maker; and

21 (b) of the payee or any other holder of the item
22 against the drawer or maker either on the item or under the
23 transaction out of which the item arose; and

24 (c) of the drawer or maker against the payee or
25 any other holder of the item with respect to the transaction
26 out of which the item arose.

27 Part 5

28 Collection of Documentary Drafts

29 Sec. 4.501. HANDLING OF DOCUMENTARY DRAFTS; DUTY TO SEND

1 FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR. A bank which
2 takes a documentary draft for collection must present or send the
3 draft and accompanying documents for presentment and upon learn-
4 ing that the draft has not been paid or accepted in due course
5 must seasonably notify its customer of such fact even though it
6 may have discounted or bought the draft or extended credit avail-
7 able for withdrawal as of right.

8 Sec. 4.502. PRESENTMENT OF "ON ARRIVAL" DRAFTS. When a
9 draft or the relevant instructions require presentment "on
10 arrival", "when goods arrive" or the like, the collecting bank
11 need not present until in its judgment a reasonable time for
12 arrival of the goods has expired. Refusal to pay or accept be-
13 cause the goods have not arrived is not dishonor; the bank must
14 notify its transferor of such refusal but need not present the
15 draft again until it is instructed to do so or learns of the
16 arrival of the goods.

17 Sec. 4.503. RESPONSIBILITY OF PRESENTING BANK FOR DOCU-
18 MENTS AND GOODS; REPORT OF REASONS FOR DISHONOR; REFEREE IN CASE
19 OF NEED. Unless otherwise instructed and except as provided in
20 Article V a bank presenting a documentary draft

21 (a) must deliver the documents to the drawee on
22 acceptance of the draft if it is payable more than three
23 days after presentment; otherwise, only on payment; and

24 (b) upon dishonor, either in the case of present-
25 ment for acceptance or presentment for payment, may seek
26 and follow instructions from any referee in case of need
27 designated in the draft or if the presenting bank does not
28 choose to utilize his services it must use diligence and
29 good faith to ascertain the reason for dishonor, must notify

1 its transferor of the dishonor and of the results of its
2 effort to ascertain the reasons therefor and must request
3 instructions.

4 But the presenting bank is under no obligation with respect to
5 goods represented by the documents except to follow any reason-
6 able instructions seasonably received; it has a right to re-
7 imbursement for any expense incurred in following instructions
8 and to prepayment of or indemnity for such expenses.

9 Sec. 4.504. PRIVILEGE OF PRESENTING BANK TO DEAL WITH
10 GOODS; SECURITY INTEREST FOR EXPENSES.

11 (1) A presenting bank which, following the dishonor of
12 a documentary draft, has seasonably requested instructions but
13 does not receive them within a reasonable time may store, sell,
14 or otherwise deal with the goods in any reasonable manner.

15 (2) For its reasonable expenses incurred by action
16 under subsection (1) the presenting bank has a lien upon the
17 goods or their proceeds, which may be foreclosed in the same
18 manner as an unpaid seller's lien.

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ARTICLE V

LETTERS OF CREDIT

Sec. 5.101. SHORT TITLE. This Article shall be known and may be cited as Uniform Commercial Code--Letters of Credit.

Sec. 5.102. SCOPE.

(1) This Article applies

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this Article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This Article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this act or may hereafter develop. The fact that this Article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this Article.

Sec. 5.103. DEFINITIONS.

1 (1) In this Article unless the context otherwise re-
2 quires

3 (a) "Credit" or "letter of credit" means an en-
4 gagement by a bank or other person made at the request of a
5 customer and of a kind within the scope of this Article
6 (Section 5.102.) that the issuer will honor drafts or other
7 demands for payment upon compliance with the conditions
8 specified in the credit. A credit may be either revocable
9 or irrevocable. The engagement may be either an agreement
10 to honor or a statement that the bank or other person is
11 authorized to honor.

12 (b) A "documentary draft" or a "documentary de-
13 mand for payment" is one honor of which is conditioned upon
14 the presentation of a document or documents. "Document"
15 means any paper including document of title, security, in-
16 voice, certificate, notice of default and the like.

17 (c) An "issuer" is a bank or other person issuing
18 a credit.

19 (d) A "beneficiary" of a credit is a person who is
20 entitled under its terms to draw or demand payment.

21 (e) An "advising bank" is a bank which gives
22 notification of the issuance of a credit by another bank.

23 (f) A "confirming bank" is a bank which engages
24 either that it will itself honor a credit already issued by
25 another bank or that such a credit will be honored by the
26 issuer or a third bank.

27 (g) A "customer" is a buyer or other person who
28 causes an issuer to issue a credit. The term also includes a
29 bank which procures issuance or confirmation on behalf of

1 that bank's customer.

2 (2) Other definitions applying to this Article and
3 the sections in which they appear are:

4 "Notation of Credit". Section 5.108.

5 "Presenter". Section 5.112(3).

6 (3) Definitions in other Articles applying to this
7 Article and the sections in which they appear are:

8 "Accept" or "Acceptance". Section 3.410.

9 "Contract for sale". Section 2.106.

10 "Draft". Section 3.104.

11 "Holder in due course". Section 3.302.

12 "Midnight deadline". Section 4.104.

13 "Security". Section 8.102.

14 (4) In addition, Article I contains general definitions
15 and principles of construction and interpretation applicable
16 throughout this Article.

17 Sec. 5.104. FORMAL REQUIREMENTS; SIGNING.

18 (1) Except as otherwise required in subsection (1)(c)
19 of Section 5.102. on scope, no particular form of phrasing is
20 required for a credit. A credit must be in writing and signed
21 by the issuer and a confirmation must be in writing and signed
22 by the confirming bank. A modification of the terms of a credit
23 or confirmation must be signed by the issuer or confirming bank.

24 (2) A telegram may be a sufficient signed writing if
25 it identifies its sender by an authorized authentication. The
26 authentication may be in code and the authorized naming of the
27 issuer in an advice of credit is a sufficient signing.

28 Sec. 5.105. CONSIDERATION. No consideration is necessary
29 to establish a credit or to enlarge or otherwise modify its terms.

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Sec. 5.106. TIME AND EFFECT OF ESTABLISHMENT OF CREDIT.

(1) Unless otherwise agreed a credit is established

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

Sec. 5.107. ADVICE OF CREDIT; CONFIRMATION; ERROR IN STATEMENT OF TERMS.

(1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made

1 under the credit but it does assume obligation for the accuracy
2 of its own statement.

3 (2) A confirming bank by confirming a credit becomes
4 directly obligated on the credit to the extent of its confirmation
5 as though it were its issuer and acquires the rights of an issuer.

6 (3) Even though an advising bank incorrectly advises
7 the terms of a credit it has been authorized to advise the credit
8 is established as against the issuer to the extent of its original
9 terms.

10 (4) Unless otherwise specified the customer bears as
11 against the issuer all risks of transmission and reasonable
12 translation or interpretation of any message relating to a
13 credit.

14 Sec. 5.108. "NOTATION CREDIT"; EXHAUSTION OF CREDIT.

15 (1) A credit which specifies that any person pur-
16 chasing or paying drafts drawn or demands for payment made under
17 it must note the amount of the draft or demand on the letter or
18 advice of credit is a "notation of credit".

19 (2) Under a notation credit

20 (a) a person paying the beneficiary or purchasing
21 a draft or demand for payment from him acquires a right to
22 honor only if the appropriate notation is made and by trans-
23 ferring or forwarding for honor the documents under the
24 credit such a person warrants to the issuer that the nota-
25 tion has been made; and

26 (b) unless the credit or a signed statement that
27 an appropriate notation has been made accompanies the draft
28 or demand for payment the issuer may delay honor until evi-
29 dence of notation has been procured which is satisfactory

1 to it but its obligation and that of its customer continue
2 for a reasonable time not exceeding thirty days to obtain
3 such evidence.

4 (3) If the credit is not a notation credit

5 (a) the issuer may honor complying drafts or
6 demands for payment presented to it in the order in which
7 they are presented and is discharged pro tanto by honor of
8 any such draft or demand;

9 (b) as between competing good faith purchasers
10 of complying drafts or demands the person first purchasing
11 has priority over a subsequent purchaser even though the
12 later purchased draft or demand has been first honored.

13 Sec. 5.109. ISSUER'S OBLIGATION TO ITS CUSTOMER.

14 (1) An issuer's obligation to its customer includes
15 good faith and observance of any general banking usage but un-
16 less otherwise agreed does not include liability or responsibility

17 (a) for performance of the underlying contract
18 for sale or other transaction between the customer and the
19 beneficiary; or

20 (b) for any act or omission of any person other
21 than itself or its own branch or for loss or destruction of
22 a draft, demand or document in transit or in the possession
23 of others; or

24 (c) based on knowledge or lack of knowledge of
25 any usage of any particular trade.

26 (2) An issuer must examine documents with care so as to
27 ascertain that on their face they appear to comply with the terms
28 of the credit but unless otherwise agreed assumes no liability
29 or responsibility for the genuineness, falsification or effect

1 of any document which appears on such examination to be regular
2 on its face.

3 (3) A non-bank issuer is not bound by any banking usage
4 of which it has no knowledge.

5 Sec. 5.110. AVAILABILITY OF CREDIT IN PORTIONS; PRESENTER'S
6 RESERVATION OF LIEN OR CLAIM.

7 (1) Unless otherwise specified a credit may be used
8 in portions in the discretion of the beneficiary.

9 (2) Unless otherwise specified a person by presenting
10 a documentary draft or demand for payment under a credit relin-
11 quishes upon its honor all claims to the documents and a person
12 by transferring such draft or demand or causing such presentment
13 authorizes such relinquishment. An explicit reservation of claim
14 makes the draft or demand non-complying.

15 Sec. 5.111. WARRANTIES ON TRANSFER AND PRESENTMENT.

16 (1) Unless otherwise agreed the beneficiary by trans-
17 ferring or presenting a documentary draft or demand for payment
18 warrants to all interested parties that the necessary conditions
19 of the credit have been complied with. This is in addition to
20 any warranties arising under Articles III, IV, VII and VIII.

21 (2) Unless otherwise agreed a negotiating, advising,
22 confirming, collecting or issuing bank presenting or transferring
23 a draft or demand for payment under a credit warrants only the
24 matters warranted by a collecting bank under Article IV and any
25 such bank transferring a document warrants only the matters war-
26 ranted by an intermediary under Articles VII and VIII.

27 Sec. 5.112. TIME ALLOWED FOR HONOR OR REJECTION; WITH-
28 HOLDING HONOR OR REJECTION BY CONSENT; "PRESENTER".

29 (1) A bank to which a documentary draft or demand for

1 payment is presented under a credit may without dishonor of the
2 draft, demand or credit

3 (a) defer honor until the close of the third
4 banking day following receipt of the documents; and

5 (b) further defer honor if the presenter has
6 expressly or impliedly consented thereto.

7 Failure to honor within the time here specified constitutes dis-
8 honor of the draft or demand and of the credit except as other-
9 wise provided in subsection (4) of Section 5.114. on conditional
10 payment.

11 (2) Upon dishonor the bank may unless otherwise in-
12 structed fulfill its duty to return the draft or demand and the
13 documents by holding them at the disposal of the presenter and
14 sending him an advice to that effect.

15 (3) "Presenter" means any person presenting a draft or
16 demand for payment for honor under a credit even though that per-
17 son is a confirming bank or other correspondent which is acting
18 under an issuer's authorization.

19 Sec. 5.113. INDEMNITIES.

20 (1) A bank seeking to obtain (whether for itself or
21 another) honor, negotiation or reimbursement under a credit may
22 give an indemnity to induce such honor, negotiation or reimburse-
23 ment.

24 (2) An indemnity agreement inducing honor, negotiation
25 or reimbursement

26 (a) unless otherwise explicitly agreed applies
27 to defects in the documents but not in the goods; and

28 (b) unless a longer time is explicitly agreed
29 expires at the end of ten business days following receipt

1 of the documents by the ultimate customer unless notice of
2 objection is sent before such expiration date. The ultimate
3 customer may send notice of objection to the person from
4 whom he received the documents and any bank receiving such
5 notice is under a duty to send notice to its transferor
6 before its midnight deadline.

7 Sec. 5.114. ISSUER'S DUTY AND PRIVILEGE TO HONOR; RIGHT TO
8 REIMBURSEMENT.

9 (1) An issuer must honor a draft or demand for pay-
10 ment which complies with the terms of the relevant credit re-
11 gardless of whether the goods or documents conform to the under-
12 lying contract for sale or other contract between the customer
13 and the beneficiary. The issuer is not excused from honor of
14 such a draft or demand by reason of an additional general term
15 that all documents must be satisfactory to the issuer, but an
16 issuer may require that specified documents must be satisfactory
17 to it.

18 (2) Unless otherwise agreed when documents appear on
19 their face to comply with the terms of a credit but a required
20 document does not in fact conform to the warranties made on
21 negotiation or transfer of a document of title (Section 7.507.)
22 or of a security (Section 8.306.) or is forged or fraudulent or
23 there is fraud in the transaction

24 (a) the issuer must honor the draft or demand for
25 payment if honor is demanded by a negotiating bank or
26 other holder of the draft or demand which has taken the
27 draft or demand under the credit and under circumstances
28 which would make it a holder in due course (Section 3.302.)
29 and in an appropriate case would make it a person to whom a

1 document of title has been duly negotiated (Section 7.502.)
2 or a bona fide purchaser of a security (Section 8.302.); and

3 (b) in all other cases as against its customer,
4 an issuer acting in good faith may honor the draft or demand
5 for payment despite notification from the customer of fraud,
6 forgery or other defect not apparent on the face of the
7 documents but a court of appropriate jurisdiction may enjoin
8 such honor.

9 (3) Unless otherwise agreed an issuer which has duly
10 honored a draft or demand for payment is entitled to immediate
11 reimbursement of any payment made under the credit and to be put
12 in effectively available funds not later than the day before
13 maturity of any acceptance made under the credit.

14 (4) When a credit provides for payment by the issuer on
15 receipt of notice that the required documents are in the posses-
16 sion of a correspondent or other agent of the issuer

17 (a) any payment made on receipt of such notice is
18 conditional; and

19 (b) the issuer may reject documents which do not
20 comply with the credit if it does so within three banking
21 days following its receipt of the documents; and

22 (c) in the event of such rejection, the issuer
23 is entitled by charge back or otherwise to return of the
24 payment made.

25 (5) In the case covered by subsection (4) failure to
26 reject documents within the time specified in sub-paragraph (b)
27 constitutes acceptance of the documents and makes the payment
28 final in favor of the beneficiary.

29 Sec. 5.115. REMEDY FOR IMPROPER DISHONOR OR ANTICIPATORY

1 REPUDIATION.

2 (1) When an issuer wrongfully dishonors a draft or
3 demand for payment presented under a credit the person entitled
4 to honor has with respect to any documents the rights of a person
5 in the position of a seller (Section 2.707.) and may recover
6 from the issuer the face amount of the draft or demand together
7 with incidental damages under Section 2.710. on seller's inci-
8 dental damages and interest but less any amount realized by re-
9 sale or other use or disposition of the subject matter of the
10 transaction. In the event no resale or other utilization is made
11 the documents, goods or other subject matter involved in the
12 transaction must be turned over to the issuer on payment of
13 judgment.

14 (2) When an issuer wrongfully cancels or otherwise
15 repudiates a credit before presentment of a draft or demand for
16 payment drawn under it the beneficiary has the rights of a seller
17 after anticipatory repudiation by the buyer under Section 2.610.
18 if he learns of the repudiation in time reasonably to avoid pro-
19 curement of the required documents. Otherwise the beneficiary
20 has an immediate right of action for wrongful dishonor.

21 Sec. 5.116. TRANSFER AND ASSIGNMENT.

22 (1) The right to draw under a credit can be trans-
23 ferred or assigned only when the credit is expressly designated
24 as transferable or assignable.

25 (2) Even though the credit specifically states that it
26 is non-transferable or nonassignable the beneficiary may before
27 performance of the conditions of the credit assign his right to
28 proceeds. Such an assignment is an assignment of a contract
29 right under Article IX on Secured Transactions and is governed by

1 that Article except that

2 (a) the assignment is ineffective until the letter
3 of credit or advice of credit is delivered to the assignee
4 which delivery constitutes perfection of the security in-
5 terest under Article IX; and

6 (b) the issuer may honor drafts or demands for
7 payment drawn under the credit until it receives a notifi-
8 cation of the assignment signed by the beneficiary which
9 reasonably identifies the credit involved in the assignment
10 and contains a request to pay the assignee; and

11 (c) after what reasonably appears to be such a
12 notification has been received the issuer may without dis-
13 honor refuse to accept or pay even to a person otherwise
14 entitled to honor until the letter of credit or advice of
15 credit is exhibited to the issuer.

16 (3) Except where the beneficiary has effectively as-
17 signed his right to draw or his right to proceeds, nothing in
18 this section limits his right to transfer or negotiate drafts or
19 demands drawn under the credit.

20 Sec. 5.117. INSOLVENCY OF BANK HOLDING FUNDS FOR DOCUMEN-
21 TARY CREDIT.

22 (1) Where an issuer or an advising or confirming bank
23 or a bank which has for a customer procured issuance of a credit
24 by another bank becomes insolvent before final payment under the
25 credit and the credit is one to which this Article is made appli-
26 cable by paragraphs (a) or (b) of Section 5.102(1). on scope,
27 the receipt or allocation of funds or collateral to secure or
28 meet obligations under the credit shall have the following re-
29 sults:

1 (a) to the extent of any funds or collateral
2 turned over after or before the insolvency as indemnity
3 against or specifically for the purpose of payment of drafts
4 or demands for payment drawn under the designated credit, the
5 drafts or demands are entitled to payment in preference over
6 depositors or other general creditors of the issuer or bank;
7 and

8 (b) on expiration of the credit or surrender of
9 the beneficiary's rights under it unused any person who has
10 given such funds or collateral is similarly entitled to
11 return thereof; and

12 (c) a charge to a general or current account with
13 a bank if specifically consented to for the purpose of in-
14 demnity against or payment of drafts or demands for payment
15 drawn under the designated credit falls under the same rules
16 as if the funds had been drawn out in cash and then turned
17 over with specific instructions.

18 (2) After honor or reimbursement under this section the
19 customer or other person for whose account the insolvent bank has
20 acted is entitled to receive the documents involved.
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1 ARTICLE VI

2 BULK TRANSFERS

3 Sec. 6.101. SHORT TITLE. This Article shall be known and
4 may be cited as Uniform Commercial Code--Bulk Transfers.

5 Sec. 6.102. "BULK TRANSFER"; TRANSFERS OF EQUIPMENT; ENTER-
6 PRISES SUBJECT TO THIS ARTICLE; BULK TRANSFERS SUBJECT TO THIS
7 ARTICLE.

8 (1) A "bulk transfer" is any transfer in bulk and not
9 in the ordinary course of the transferor's business of a major
10 part of the materials, supplies, merchandise or other inventory
11 (Section 9.109.) of an enterprise subject to this Article.

12 (2) A transfer of a substantial part of the equipment
13 (Section 9.109.) of such an enterprise is a bulk transfer if it
14 is made in connection with a bulk transfer of inventory, but not
15 otherwise.

16 (3) The enterprises subject to this Article are all
17 those whose principal business is the sale of merchandise from
18 stock, including those who manufacture what they sell.

19 (4) Except as limited by the following section all
20 bulk transfers of goods located within this state are subject to
21 this Article.

22 Sec. 6.103. TRANSFERS EXCEPTED FROM THIS ARTICLE. The fol-
23 lowing transfers are not subject to this Article:

24 (1) Those made to give security for the performance of
25 an obligation;

26 (2) General assignments for the benefit of all the
27 creditors of the transferor, and subsequent transfers by the as-
28 signee thereunder;

29 (3) Transfers in settlement or realization of a lien or

1 other security interests;

2 (4) Sales by executors, administrators, receivers,
3 trustees in bankruptcy, or any public officer under judicial
4 process;

5 (5) Sales made in the course of judicial or adminis-
6 trative proceedings for the dissolution or reorganization of a
7 corporation and of which notice is sent to the creditors of the
8 corporation pursuant to order of the court or administrative
9 agency;

10 (6) Transfers to a person maintaining a known place of
11 business in this state who becomes bound to pay the debts of the
12 transferor in full and gives public notice of that fact, and who
13 is solvent after becoming so bound;

14 (7) A transfer to a new business enterprise organized
15 to take over and continue the business, if public notice of the
16 transaction is given and the new enterprise assumes the debts of
17 the transferor and he receives nothing from the transaction ex-
18 cept an interest in the new enterprise junior to the claims of
19 creditors;

20 (8) Transfers of property which is exempt from execu-
21 tion.

22 Sec. 6.104. SCHEDULE OF PROPERTY, LIST OF CREDITORS.

23 (1) Except as provided with respect to auction sales
24 (Section 6.108.), a bulk transfer subject to this Article is
25 ineffective against any creditor of the transferor unless:

26 (a) The transferee requires the transferor to fur-
27 nish a list of his existing creditors prepared as stated in
28 this section; and

29 (b) The parties prepare a schedule of the property

1 transferred sufficient to identify it; and

2 (c) The transferee preserves the list and schedule
3 for six months next following the transfer and permits in-
4 spection of either or both and copying therefrom at all
5 reasonable hours by any creditor of the transferor, or files
6 the list and schedule in the recording district in which the
7 transfer occurs. Such list and schedule shall be filed and
8 indexed in the same file and same manner as are conditioned
9 sales contracts.

10 (2) The list of creditors must be signed and sworn to
11 or affirmed by the transferor or his agent. It must contain the
12 names and business addresses of all creditors of the transferor,
13 with the amounts when known, and also the names of all persons
14 who are known to the transferor to assert claims against him even
15 though such claims are disputed.

16 (3) Responsibility for the completeness and accuracy
17 of the list of creditors rests on the transferor, and the trans-
18 fer is not rendered ineffective by errors or omissions therein
19 unless the transferee is shown to have had knowledge.

20 Sec. 6.105. NOTICE TO CREDITORS. In addition to the re-
21 quirements of the preceding section, any bulk transfer subject to
22 this Article except one made by auction sale (Section 6.108) is
23 ineffective against any creditor of the transferor unless at
24 least ten days before he takes possession of the goods or pays
25 for them, whichever happens first, the transferee gives notice
26 of the transfer in the manner and to the persons hereafter pro-
27 vided (Section 6.107.)

28 Sec. 6.106. APPLICATION OF THE PROCEEDS. In addition to
29 the requirements of the two preceding sections:

1 (1) Upon every bulk transfer subject to this Article
2 for which new consideration becomes payable except those made by
3 sale at auction it is the duty of the transferee to assure that
4 such consideration is applied so far as necessary to pay those
5 debts of the transferor which are either shown on the list fur-
6 nished by the transferor (Section 6.104.) or filed in writing in
7 the place stated in the notice (Section 6.107.) within thirty
8 days after the mailing of such notice. This duty of the transfer-
9 ee runs to all the holders of such debts, and may be enforced by
10 any of them for the benefit of all.

11 (2) If any of said debts are in dispute the necessary
12 sum may be withheld from distribution until the dispute is
13 settled or adjudicated.

14 (3) If the consideration payable is not enough to pay
15 all of the said debts in full distribution shall be made pro rata.

16 Sec. 6.107. THE NOTICE.

17 (1) The notice to creditors (Section 6.105.) shall
18 state:

19 (a) that a bulk transfer is about to be made; and

20 (b) the names and business addresses of the trans-
21 feror and transferee, and all other business names and ad-
22 dresses used by the transferor within three years last past
23 so far as known to the transferee; and

24 (c) whether or not all the debts of the transferor
25 are to be paid in full as they fall due as a result of the
26 transaction, and if so, the address to which creditors should
27 send their bills.

28 (2) If the debts of the transferor are not to be paid
29 in full as they fall due or if the transferee is in doubt on that

1 point then the notice shall state further:

2 (a) the location and general description of the
3 property to be transferred and the estimated total of the
4 transferor's debts;

5 (b) the address where the schedule of property
6 and list of creditors (Section 6.104.) may be inspected;

7 (c) whether the transfer is to pay existing debts
8 and if so the amount of such debts and to whom owing;

9 (d) whether the transfer is for new consideration
10 and if so the amount of such consideration and the time and
11 place of payment; and

12 (e) if for new consideration the time and place
13 where creditors of the transferor are to file their claims.

14 (3) The notice in any case shall be delivered person-
15 ally or sent by registered mail to all the persons shown on the
16 list of creditors furnished by the transferor (Section 6.104.) and
17 to all other persons who are known to the transferee to hold or
18 assert claims against the transferor.

19 Sec. 6.108. AUCTION SALES; "AUCTIONEER".

20 (1) A bulk transfer is subject to this Article even
21 though it is by sale at auction, but only in the manner and with
22 the results stated in this section.

23 (2) The transferor shall furnish a list of his credi-
24 tors and assist in the preparation of a schedule of the property
25 to be sold, both prepared as before stated (Section 6.104.)

26 (3) The person or persons other than the transferor
27 who direct, control or are responsible for the auction are col-
28 lectively called the "auctioneer". The auctioneer shall:

29 (a) receive and retain the list of creditors and

1 prepare and retain the schedule of property for the period
2 stated in this Article (Section 6.104.);

3 (b) give notice of the auction personally or by
4 registered mail at least ten days before it occurs to all
5 persons shown on the list of creditors and to all other
6 persons who are known to him to hold or assert claims against
7 the transferor; and

8 (c) assure that the net proceeds of the auction
9 are applied as provided in this Article (Section 6.106.)

10 (4) Failure of the auctioneer to perform any of these
11 duties does not affect the validity of the sale or the title of
12 the purchasers, but if the auctioneer knows that the auction
13 constitutes a bulk transfer such failure renders the auctioneer
14 liable to the creditors of the transferor as a class for the sums
15 owing to them from the transferor up to but not exceeding the net
16 proceeds of the auction. If the auctioneer consists of several
17 persons their liability is joint and several.

18 Sec. 6.109. WHAT CREDITORS PROTECTED; CREDIT FOR PAYMENT TO
19 PARTICULAR CREDITORS.

20 (1) The creditors of the transferor mentioned in this
21 Article are those holding claims based on transactions or events
22 occurring before the bulk transfer, but creditors who become such
23 after notice to creditors is given (Sections 6.105. and 6.107.)
24 are not entitled to notice.

25 (2) Against the aggregate obligation imposed by the
26 provisions of this Article concerning the application of the pro-
27 ceeds (Section 6.106. and subsection (3)(c) of 6.108.) the trans-
28 feree or auctioneer is entitled to credit for sums paid to parti-
29 cular creditors of the transferor, not exceeding the sums be-

1 lieved in good faith at the time of the payment to be properly
2 payable to such creditors.

3 Sec. 6.110. SUBSEQUENT TRANSFERS. When the title of a
4 transferee to property is subject to a defect by reason of his
5 non-compliance with the requirements of this Article, then:

6 (1) a purchaser of any of such property from such
7 transferee who pays no value or who takes with notice of such
8 non-compliance takes subject to such defect, but

9 (2) a purchaser for value in good faith and without
10 such notice takes free of such defect.

11 Sec. 6.111. LIMITATION OF ACTIONS AND LEVIES. No action
12 under this Article shall be brought nor levy made more than six
13 months after the date on which the transferee took possession of
14 the goods unless the transfer has been concealed. If the trans-
15 fer has been concealed, actions may be brought or levies made
16 within six months after its discovery.

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ARTICLE VII
WAREHOUSE RECEIPTS, BILLS OF LADING
AND OTHER DOCUMENTS OF TITLE

Part 1
General

Sec. 7.101. SHORT TITLE. This Article shall be known and may be cited as Uniform Commercial Code--Documents of Title.

Sec. 7.102. DEFINITIONS AND INDEX OF DEFINITIONS.

(1) In this Article, unless the context otherwise requires:

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

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in Article I (Section 1.201.)

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

(g) "Issuer" means a bailee who issued a document except that in relation to an unaccepted delivery order it

1 means the person who orders the possessor of goods to deliver.
2 Issuer includes any person for whom an agent or employee
3 purports to act in issuing a document if the agent or em-
4 ployee has real or apparent authority to issue documents,
5 notwithstanding that the issuer received no goods or that
6 the goods were misdescribed or that in any other respect
7 the agent or employee violated his instructions.

8 (h) "Warehouseman" is a person engaged in the
9 business of storing goods for hire.

10 (2) Other definitions applying to this Article or to
11 specified Parts thereof, and the sections in which they appear
12 are:

13 "Duly negotiate". Section 7.501.

14 "Person entitled under the document". Section 7.
15 403(4).

16 (3) Definitions in other Articles applying to this
17 Article and the sections in which they appear are:

18 "Contract for sale". Section 2.106.

19 "Overseas". Section 2.323.

20 "Receipt" of goods. Section 2.103.

21 (4) In addition Article I contains general definitions
22 and principles of construction and interpretation applicable
23 throughout this Article.

24 Sec. 7.103. RELATION OF ARTICLE TO TREATY, STATUTE, TARIFF,
25 CLASSIFICATION OR REGULATION. To the extent that any treaty or
26 statute of the United States, regulatory statute of this State or
27 tariff, classification or regulation filed or issued pursuant
28 thereto is applicable, the provisions of this Article are subject
29 thereto.

1 Sec. 7.104. NEGOTIABLE AND NON-NEGOTIABLE WAREHOUSE RE-
2 CEIPT, BILL OF LADING OR OTHER DOCUMENT OF TITLE.

3 (1) A warehouse receipt, bill of lading or other
4 document of title is negotiable

5 (a) if by its terms the goods are to be delivered
6 to bearer or to the order of a named person; or

7 (b) where recognized in overseas trade, if it
8 runs to a named person or assigns.

9 (2) Any other document is non-negotiable. A bill of
10 lading in which it is stated that the goods are consigned to a
11 named person is not made negotiable by a provision that the goods
12 are to be delivered only against a written order signed by the
13 same or another named person.

14 Sec. 7.105. CONSTRUCTION AGAINST NEGATIVE IMPLICATION. The
15 omission from either Part 2 or Part 3 or this Article of a pro-
16 vision corresponding to a provision made in the other Part does
17 not imply that a corresponding rule of law is not applicable.

18 Part 2

19 Warehouse Receipts: Special Provisions

20 Sec. 7.201. WHO MAY ISSUE A WAREHOUSE RECEIPT; STORAGE
21 UNDER GOVERNMENT BOND.

22 (1) A warehouse receipt may be issued by any ware-
23 houseman.

24 (2) Where goods including distilled spirits and agri-
25 cultural commodities are stored under a statute requiring a bond
26 against withdrawal or a license for the issuance of receipts in
27 the nature of warehouse receipts, a receipt issued for the goods
28 has like effect as a warehouse receipt even though issued by a
29 person who is the owner of the goods and is not a warehouseman.

1 Sec. 7.202. FORM OF WAREHOUSE RECEIPT; ESSENTIAL TERMS;
2 OPTIONAL TERMS.

3 (1) A warehouse receipt need not be in any particular
4 form.

5 (2) Unless a warehouse receipt embodies within its
6 written or printed terms each of the following, the warehouseman
7 is liable for damages caused by the omission to a person injured
8 thereby:

9 (a) the location of the warehouse where the goods
10 are stored;

11 (b) the date of issue of the receipt;

12 (c) the consecutive number of the receipt;

13 (d) a statement whether the goods received will
14 be delivered to the bearer, to a specified person, or to a
15 specified person or his order;

16 (e) the rate of storage and handling charges,
17 except that where goods are stored under a field warehousing
18 arrangement a statement of that fact is sufficient on a
19 non-negotiable receipt;

20 (f) a description of the goods or of the packages
21 containing them;

22 (g) the signature of the warehouseman, which may
23 be made by his authorized agent;

24 (h) if the receipt is issued for goods of which
25 the warehouseman is owner, either solely or jointly or in
26 common with others, the fact of such ownership; and

27 (i) a statement of the amount of advances made
28 and of liabilities incurred for which the warehouseman claims
29 a lien or security interest (Section 7.209.) If the precise

1 amount of such advances made or of such liabilities in-
2 curred is, at the time of the issue of the receipt, unknown
3 to the warehouseman or to his agent who issues it, a state-
4 ment of the fact that advances have been made or liabilities
5 incurred and the purpose thereof is sufficient.

6 (3) A warehouseman may insert in his receipt any other
7 terms which are not contrary to the provisions of this Act and do
8 not impair his obligation of delivery (Section 7.403.) or his
9 duty of care (Section 7.204.) Any contrary provisions shall be
10 ineffective.

11 Sec. 7.203. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION.

12 A party to or purchaser for value in good faith of a document of
13 title other than a bill of lading relying in either case upon the
14 description therein of the goods may recover from the issuer
15 damages caused by the non-receipt or misdescription of the goods,
16 except to the extent that the document conspicuously indicates
17 that the issuer does not know whether any part or all of the goods
18 in fact were received or conform to the description, as where the
19 description is in terms of marks or labels or kind, quantity or
20 condition, or the receipt or description is qualified by "con-
21 tents, condition and quality unknown", "said to contain" or the
22 like, if such indication be true, or the party or purchaser
23 otherwise has notice.

24 Sec. 7.204. DUTY OF CARE; CONTRACTUAL LIMITATION OF WARE-
25 HOUSEMAN'S LIABILITY.

26 (1) A warehouseman is liable for damages for loss of
27 or injury to the goods caused by his failure to exercise such
28 care in regard to them as a reasonably careful man would exer-
29 cise under like circumstances but unless otherwise agreed he is

1 not liable for damages which could not have been avoided by the
2 exercise of such care.

3 (2) Damages may be limited by a term in the warehouse
4 receipt or storage agreement limiting the amount of liability in
5 case of loss or damage, and setting forth a specific liability
6 per article or item, or value per unit of weight, beyond which
7 the warehouseman shall not be liable; provided, however, that
8 such liability may on written request of the bailor at the time
9 of signing such storage agreement or within a reasonable time
10 after receipt of the warehouse receipt be increased on part or
11 all of the goods thereunder, in which event increased rates may
12 be charged based on such increased valuation, but that no such
13 increase shall be permitted contrary to a lawful limitation of
14 liability contained in the warehouseman's tariff, if any. No
15 such limitation is effective with respect to the warehouseman's
16 liability for conversion to his own use.

17 (3) Reasonable provisions as to the time and manner of
18 presenting claims and instituting actions based on the bailment
19 may be included in the warehouse receipt or tariff.

20 Sec. 7.205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CER-
21 TAIN CASES. A buyer in the ordinary course of business of fungible
22 goods sold and delivered by a warehouseman who is also in the
23 business of buying and selling such goods takes free of any claim
24 under a warehouse receipt even though it has been duly negotiated.

25 Sec. 7.206. TERMINATION OF STORAGE AT WAREHOUSEMAN'S OPTION.

26 (1) A warehouseman may on notifying the person on
27 whose account the goods are held and any other person known to
28 claim an interest in the goods require payment of any charges
29 and removal of the goods from the warehouse at the termination of

1 the period of storage fixed by the document, or, if no period is
2 fixed, within a stated period not less than thirty days after the
3 notification. If the goods are not removed before the date
4 specified in the notification, the warehouseman may sell them
5 in accordance with the provisions of the section on enforcement
6 of a warehouseman's lien (Section 7.210.)

7 (2) If a warehouseman in good faith believes that the
8 goods are about to deteriorate or decline in value to less than
9 the amount of his lien within the time prescribed in subsection
10 (1) for notification, advertisement and sale, the warehouseman
11 may specify in the notification any reasonable shorter time for
12 removal of the goods and in case the goods are not removed, may
13 sell them at public sale held not less than one week after a
14 single advertisement or posting.

15 (3) If as a result of a quality or condition of the
16 goods of which the warehouseman had no notice at the time of
17 deposit the goods are a hazard to other property or to the ware-
18 house or to persons, the warehouseman may sell the goods at
19 public or private sale without advertisement on reasonable noti-
20 fication to all persons known to claim an interest in the goods.
21 If the warehouseman after a reasonable effort is unable to sell
22 the goods he may dispose of them in any lawful manner and shall
23 incur no liability by reason of such disposition.

24 (4) The warehouseman must deliver the goods to any
25 person entitled to them under this Article upon due demand made
26 at any time prior to sale or other disposition under this section.

27 (5) The warehouseman may satisfy his lien from the
28 proceeds of any sale or disposition under this section but must
29 hold the balance for delivery on the demand of any person to whom

1 he would have been bound to deliver the goods.

2 Sec. 7.207. GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS.

3 (1) Unless the warehouse receipt otherwise provides,
4 a warehouseman must keep separate the goods covered by each re-
5 ceipt so as to permit at all times identification and delivery of
6 those goods except that different lots of fungible goods may be
7 commingled.

8 (2) Fungible goods so commingled are owned in common
9 by the persons entitled thereto and the warehouseman is severally
10 liable to each owner for that owner's share. Where because of
11 overissue a mass of fungible goods is insufficient to meet all
12 the receipts which the warehouseman has issued against it, the
13 persons entitled include all holders to whom overissued receipts
14 have been duly negotiated.

15 Sec. 7.208. ALTERED WAREHOUSE RECEIPTS. Where a blank in
16 a negotiable warehouse receipt has been filled in without author-
17 ity, a purchaser for value and without notice of the want of
18 authority may treat the insertion as authorized. Any other un-
19 authorized alteration leaves any receipt enforceable against the
20 issuer according to its original tenor.

21 Sec. 7.209. LIEN OF WAREHOUSEMAN.

22 (1) A warehouseman has a lien against the bailor on
23 the goods covered by a warehouse receipt or on the proceeds
24 thereof in his possession for charges for storage or transport-
25 ation (including demurrage and terminal charges), insurance,
26 labor, or charges present or future in relation to the goods,
27 and for expenses necessary for preservation of the goods or rea-
28 sonably incurred in their sale pursuant to law. If the person
29 on whose account the goods are held is liable for like charges

1 or expenses in relation to other goods whenever deposited and it
2 is stated in the receipt that a lien is claimed for charges and
3 expenses in relation to other goods, the warehouseman also has a
4 lien against him for such charges and expenses whether or not
5 the other goods have been delivered by the warehouseman. But
6 against a person to whom a negotiable warehouse receipt is duly
7 negotiated a warehouseman's lien is limited to charges in an
8 amount or at a rate specified on the receipt or if no charges
9 are so specified then to a reasonable charge for storage of the
10 goods covered by the receipt subsequent to the date of the re-
11 ceipt.

12 (2) The warehouseman may also reserve a security in-
13 terest against the bailor for a maximum amount specified on the
14 receipt for charges other than those specified in subsection (1),
15 such as for money advanced and interest. Such a security inter-
16 est is governed by the Article on Secured Transactions (Article
17 IX).

18 (3) A warehouseman's lien for charges and expenses
19 under subsection (1) or a security interest under subsection (2)
20 is also effective against any person who so entrusted the bailor
21 with possession of the goods that a pledge of them by him to a
22 good faith purchaser for value would have been valid but is not
23 effective against a person as to whom the document confers no
24 right in the goods covered by it under Section 7.503.

25 (4) A warehouseman loses his lien on any goods which
26 he voluntarily delivers or which he unjustifiably refuses to
27 deliver.

28 Sec. 7.210. ENFORCEMENT OF WAREHOUSEMAN'S LIEN.

29 (1) Except as provided in subsection (2), a warehouse-

1 man's lien may be enforced by public or private sale of the goods
2 in bloc or in parcels, at any time or place and on any terms
3 which are commercially reasonable, after notifying all persons
4 known to claim an interest in the goods. Such notification must
5 include a statement of the amount due, the nature of the pro-
6 posed sale and the time and place of any public sale. The fact
7 that a better price could have been obtained by a sale at a
8 different time or in a different method from that selected by
9 the warehouseman is not of itself sufficient to establish that
10 the sale was not made in a commercially reasonable manner. If
11 the warehouseman either sells the goods in the usual manner in
12 any recognized market therefor, or if he sells at the price
13 current in such market at the time of his sale, or if he has
14 otherwise sold in conformity with commercially reasonable prac-
15 tices among dealers in the type of goods sold, he has sold in a
16 commercially reasonable manner. A sale of more goods than
17 apparently necessary to be offered to insure satisfaction of the
18 obligation is not commercially reasonable except in cases covered
19 by the preceding sentence.

20 (2) A warehouseman's lien on goods other than goods
21 stored by a merchant in the course of his business may be en-
22 forced only as follows:

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

25 (b) The notification must be delivered in person
26 or sent by registered letter to the last known address of
27 any person to be notified.

28 (c) The notification must include an itemized
29 statement of the claim, a description of the goods subject

1 to the lien, a demand for payment within a specified time
2 not less than ten days after receipt of the notification,
3 and a conspicuous statement that unless the claim is paid
4 within that time the goods will be advertised for sale and
5 sold by auction at a specified time and place.

6 (d) The sale must conform to the terms of the
7 notification.

8 (e) The sale must be held at the nearest suitable
9 place to that where the goods are held or stored.

10 (f) After the expiration of the time given in
11 the notification, an advertisement of the sale must be
12 published once a week for two weeks consecutively in a
13 newspaper of general circulation where the sale is to be
14 held. The advertisement must include a description of the
15 goods, the name of the person on whose account they are
16 being held, and the time and place of the sale. The sale
17 must take place at least fifteen days after the first publi-
18 cation. If there is no newspaper of general circulation
19 where the sale is to be held, the advertisement must be
20 posted at least ten days before the sale in not less than
21 six conspicuous places in the neighborhood of the proposed
22 sale.

23 (3) Before any sale pursuant to this section any per-
24 son claiming a right in the goods may pay the amount necessary to
25 satisfy the lien and the reasonable expenses incurred under this
26 section. In that event the goods must not be sold, but must be
27 retained by the warehouseman subject to the terms of the receipt
28 and this Article.

29 (4) The warehouseman may buy at any public sale pur-

1 suant to this section.

2 (5) A purchaser in good faith of goods sold to enforce
3 a warehouseman's lien takes the goods free of any rights of per-
4 sons against whom the lien was valid, despite noncompliance by
5 the warehouseman with the requirements of this section.

6 (6) The warehouseman may satisfy his lien from the
7 proceeds of any sale pursuant to this section but must hold the
8 balance, if any, for delivery on demand to any person to whom he
9 would have been bound to deliver the goods.

10 (7) The rights provided by this section shall be in
11 addition to all other rights allowed by law to a creditor against
12 his debtor.

13 (8) Where a lien is on goods stored by a merchant in
14 the course of his business the lien may be enforced in accordance
15 with either subsection (1) or (2).

16 (9) The warehouseman is liable for damages caused by
17 failure to comply with the requirements for sale under this sec-
18 tion and in case of willful violation is liable for conversion.

19 Part 3

20 Bills of Lading: Special Provisions

21 Sec. 7.301. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION;
22 "SAID TO CONTAIN"; "SHIPPER'S LOAD AND COUNT"; IMPROPER HANDLING.

23 (1) A consignee of a non-negotiable bill who has given
24 value in good faith or a holder to whom a negotiable bill has
25 been duly negotiated relying in either case upon the description
26 therein of the goods, or upon the date therein shown, may recover
27 from the issuer damages caused by the misdating of the bill or
28 the non-receipt or misdescription of the goods, except to the ex-
29 tent that the document indicates that the issuer does not know

1 whether any part or all of the goods in fact were received or
2 conform to the description, as where the description is in terms
3 of marks or labels or kind, quantity, or condition or the receipt
4 or description is qualified by "contents or condition of contents
5 of packages unknown", "said to contain", "shipper's weight, load
6 and count" or the like, if such indication be true.

7 (2) When goods are loaded by an issuer who is a com-
8 mon carrier, the issuer must count the packages of goods if
9 package freight and ascertain the kind and quantity if bulk
10 freight. In such cases "shipper's weight, load and count" or
11 other words indicating that the description was made by the ship-
12 per are ineffective except as to freight concealed by packages.

13 (3) When bulk freight is loaded by a shipper who makes
14 available to the issuer adequate facilities for weighing such
15 freight, an issuer who is a common carrier must ascertain the
16 kind and quantity within a reasonable time after receiving the
17 written request of the shipper to do so. In such cases "shipper's
18 weight" or other words of like purport are ineffective.

19 (4) The issuer may by inserting in the bill the words
20 "shipper's weight, load and count" or other words of like purport
21 indicate that the goods were loaded by the shipper; and if such
22 statement be true the issuer shall not be liable for damages
23 caused by the improper loading. But their omission does not
24 imply liability for such damages.

25 (5) The shipper shall be deemed to have guaranteed to
26 the issuer the accuracy at the time of shipment of the descrip-
27 tion, marks, labels, number, kind, quantity, condition and weight,
28 as furnished by him; and the shipper shall indemnify the issuer
29 against damage caused by inaccuracies in such particulars. The

1 right of the issuer to such indemnity shall in no way limit his
2 responsibility and liability under the contract of carriage to
3 any person other than the shipper.

4 Sec. 7.302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS.

5 (1) The issuer of a through bill of lading or other
6 document embodying an undertaking to be performed in part by per-
7 sons acting as its agents or by connecting carriers is liable to
8 anyone entitled to recover on the document for any breach by
9 such other persons or by a connecting carrier of its obligation
10 under the document but to the extent that the bill covers an
11 undertaking to be performed overseas or in territory not contig-
12 uous to the continental United States or an undertaking including
13 matters other than transportation this liability may be varied
14 by agreement of the parties.

15 (2) Where goods covered by a through bill of lading or
16 other document embodying an undertaking to be performed in part
17 by persons other than the issuer are received by any such person,
18 he is subject with respect to his own performance while the goods
19 are in his possession to the obligation of the issuer. His obli-
20 gation is discharged by delivery of the goods to another such
21 person pursuant to the document, and does not include liability
22 for breach by any other such persons or by the issuer.

23 (3) The issuer of such through bill of lading or other
24 document shall be entitled to recover from the connecting carrier
25 or such other person in possession of the goods when the breach
26 of the obligation under the document occurred, the amount it may
27 be required to pay to anyone entitled to recover on the document
28 therefor, as may be evidenced by any receipt, judgment, or trans-
29 cript thereof, and the amount of any expense reasonably incurred

1 by it in defending any action brought by anyone entitled to re-
2 cover on the document therefor.

3 Sec. 7.303. DIVERSION; RECONSIGNMENT; CHANGE OF INSTRUC-
4 TIONS.

5 (1) Unless the bill of lading otherwise provides, the
6 carrier may deliver the goods to a person or destination other
7 than that stated in the bill or may otherwise dispose of the
8 goods on instructions from

9 (a) the holder of a negotiable bill; or

10 (b) the consignor on a non-negotiable bill not-
11 withstanding contrary instructions from the consignee; or

12 (c) the consignee on a non-negotiable bill in
13 the absence of contrary instructions from the consignor, if
14 the goods have arrived at the billed destination or if the
15 consignee is in possession of the bill; or

16 (d) the consignee on a non-negotiable bill if he
17 is entitled as against the consignor to dispose of them.

18 (2) Unless such instructions are noted on a negotiable
19 bill of lading, a person to whom the bill is duly negotiated can
20 hold the bailee according to the original terms.

21 Sec. 7.304. BILLS OF LADING IN A SET.

22 (1) Except where customary in overseas transportation,
23 a bill of lading must not be issued in a set of parts. The
24 issuer is liable for damages caused by violation of this sub-
25 section.

26 (2) Where a bill of lading is lawfully drawn in a set
27 of parts, each of which is numbered and expressed to be valid
28 only if the goods have not been delivered against any other part,
29 the whole of the parts constitute one bill.

1 (3) Where a bill of lading is lawfully issued in a set
2 of parts and different parts are negotiated to different persons,
3 the title of the holder to whom the first due negotiation is
4 made prevails as to both the document and the goods even though
5 any later holder may have received the goods from the carrier in
6 good faith and discharged the carrier's obligation by surrender
7 of his part.

8 (4) Any person who negotiated or transfers a single
9 part of a bill of lading drawn in a set is liable to holders of
10 that part as if it were the whole set.

11 (5) The bailee is obliged to deliver in accordance
12 with Part 4 of this Article against the first presented part of
13 a bill of lading lawfully drawn in a set. Such delivery dis-
14 charges the bailee's obligation on the whole bill.

15 Sec. 7.305. DESTINATION BILLS.

16 (1) Instead of issuing a bill of lading to the con-
17 signor at the place of shipment a carrier may at the request of
18 the consignor procure the bill to be issued at destination or at
19 any other place designated in the request.

20 (2) Upon request of anyone entitled as against the
21 carrier to control the goods while in transit and on surrender
22 of any outstanding bill of lading or other receipt covering such
23 goods, the issuer may procure a substitute bill to be issued at
24 any place designated in the request.

25 Sec. 7.306. ALTERED BILLS OF LADING. An unauthorized
26 alteration or filling in of a blank in a bill of lading leaves
27 the bill enforceable according to its original tenor.

28 Sec. 7.307. LIEN OF CARRIER.

29 (1) A carrier has a lien on the goods covered by a bill

1 of lading for charges subsequent to the date of its receipt of
2 the goods for storage or transportation (including demurrage and
3 terminal charges) and for expenses necessary for preservation of
4 the goods incident to their transportation or reasonably incurred
5 in their sale pursuant to law. But against a purchaser for value
6 of a negotiable bill of lading a carrier's lien is limited to
7 charges stated in the bill or the applicable tariffs, or if no
8 charges are stated then to a reasonable charge.

9 (2) A lien for charges and expenses under subsection
10 (1) on goods which the carrier was required by law to receive for
11 transportation is effective against the consignor or any person
12 entitled to the goods unless the carrier had notice that the
13 consignor lacked authority to subject the goods to such charges
14 and expenses. Any other lien under subsection (1) is effective
15 against the consignor and any person who permitted the bailor
16 to have control or possession of the goods unless the carrier
17 had notice that the bailor lacked such authority.

18 (3) A carrier loses his lien on any goods which he
19 voluntarily delivers or which he unjustifiably refuses to deliver.

20 Sec. 7.308. ENFORCEMENT OF CARRIER'S LIEN.

21 (1) A carrier's lien may be enforced by public or
22 private sale of the goods, in bloc or in parcels, at any time or
23 place and on any terms which are commercially reasonable, after
24 notifying all persons known to claim an interest in the goods.
25 Such notification must include a statement of the amount due, the
26 nature of the proposed sale and the time and place of any public
27 sale. The fact that a better price could have been obtained by
28 a sale at a different time or in a different method from that
29 selected by the carrier is not of itself sufficient to establish

1 that the sale was not made in a commercially reasonable manner.
2 If the carrier either sells the goods in the usual manner in any
3 recognized market therefor or if he sells at the price current in
4 such market at the time of his sale or if he has otherwise sold
5 in conformity with commercially reasonable practices among deal-
6 ers in the type of goods sold he has sold in a commercially rea-
7 sonable manner. A sale of more goods than apparently necessary
8 to be offered to ensure satisfaction of the obligation is not
9 commercially reasonable except in cases covered by the preceding
10 sentence.

11 (2) Before any sale pursuant to this section any per-
12 son claiming a right in the goods may pay the amount necessary to
13 satisfy the lien and the reasonable expenses incurred under this
14 section. In that event the goods must not be sold, but must be
15 retained by the carrier subject to the terms of the bill and
16 this Article.

17 (3) The carrier may buy at any public sale pursuant
18 to this section.

19 (4) A purchaser in good faith of goods sold to en-
20 force a carrier's lien takes the goods free of any rights of
21 persons against whom the lien was valid, despite noncompliance
22 by the carrier with the requirements of this section.

23 (5) The carrier may satisfy his lien from the pro-
24 ceeds of any sale pursuant to this section but must hold the
25 balance, if any, for delivery on demand to any person to whom he
26 would have been bound to deliver the goods.

27 (6) The rights provided by this section shall be in
28 addition to all other rights allowed by law to a creditor against
29 his debtor.

1 (7) A carrier's lien may be enforced in accordance
2 with either subsection (1) or the procedure set forth in sub-
3 section (2) of Section 7.210.

4 (8) The carrier is liable for damages caused by
5 failure to comply with the requirements for sale under this
6 section and in case of willful violation is liable for conversion.

7 Sec. 7.309. DUTY OF CARE; CONTRACTUAL LIMITATION OF CAR-
8 RIER'S LIABILITY.

9 (1) A carrier who issues a bill of lading whether
10 negotiable or non-negotiable must exercise the degree of care in
11 relation to the goods which a reasonably careful man would exer-
12 cise under like circumstances. This subsection does not repeal
13 or change any law or rule of law which imposes liability upon a
14 common carrier for damages not caused by its negligence.

15 (2) Damages may be limited by a provision that the
16 carrier's liability shall not exceed a value stated in the docu-
17 ment if the carrier's rates are dependent upon value and the con-
18 signor by the carrier's tariff is afforded an opportunity to
19 declare a higher value or a value as lawfully provided in the
20 tariff, or where no tariff is filed he is otherwise advised of
21 such opportunity; but no such limitation is effective with res-
22 spect to the carrier's liability for conversion to its own use.

23 (3) Reasonable provisions as to the time and manner
24 of presenting claims and instituting actions based on the ship-
25 ment may be included in a bill of lading or tariff.

26 Part 4

27 Warehouse Receipts and Bills of Lading:

28 General Obligations

29 Sec. 7.401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR

1 CONDUCT OF ISSUER. The obligations imposed by this Article on
2 an issuer apply to a document of title regardless of the fact
3 that

4 (a) the document may not comply with the require-
5 ments of this Article or of any other law or regulation re-
6 garding its issue, form or content; or

7 (b) the issuer may have violated laws regulating
8 the conduct of his business; or

9 (c) the goods covered by the document were owned
10 by the bailee at the time the document was issued; or

11 (d) the person issuing the document does not
12 come within the definition of warehouseman if it purports
13 to be a warehouse receipt.

14 Sec. 7.402. DUPLICATE RECEIPT OR BILL; OVERISSUE. Neither
15 a duplicate nor any other document of title purporting to cover
16 goods already represented by an outstanding document of the same
17 issuer confers any right in the goods, except as provided in the
18 case of bills in a set, overissue of documents for fungible
19 goods and substitutes for lost, stolen or destroyed documents.
20 But the issuer is liable for damages caused by his overissue or
21 failure to identify a duplicate document as such by conspicuous
22 notation on its face.

23 Sec. 7.403. OBLIGATION OF WAREHOUSEMAN OR CARRIER TO DE-
24 LIVER; EXCUSE.

25 (1) The bailee must deliver the goods to a person
26 entitled under the document who complies with subsections (2)
27 and (3), unless and to the extent that the bailee establishes
28 any of the following:

29 (a) delivery of the goods to a person whose re-

1 receipt was rightful as against the claimant;

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

4 (c) previous sale or other disposition of the
5 goods in lawful enforcement of a lien or on warehouseman's
6 lawful termination of storage;

7 (d) the exercise by a seller of his right to stop
8 delivery pursuant to the provisions of the Article on Sales
9 (Section 2.705.);

10 (e) a diversion, reconsignment or other disposi-
11 tion pursuant to the provisions of this Article (Section
12 7.303.) or tariff regulating such right;

13 (f) release, satisfaction or any other fact af-
14 fording a personal defense against the claimant;

15 (g) any other lawful excuse.

16 (2) A person claiming goods covered by a document of
17 title must satisfy the bailee's lien where the bailee so requests
18 or where the bailee is prohibited by law from delivering the
19 goods until the charges are paid.

20 (3) Unless the person claiming is one against whom the
21 document confers no right under Section 7.503(1), he must surren-
22 der for cancellation or notation of partial deliveries any out-
23 standing negotiable document covering the goods, and the bailee
24 must cancel the document or conspicuously note the partial de-
25 livery thereon or be liable to any person to whom the document is
26 duly negotiated.

27 (4) "Person entitled under the document" means holder
28 in the case of a negotiable document, or the person to whom de-
29 livery is to be made by the terms of or pursuant to written in-

1 instructions under a non-negotiable document.

2 Sec. 7.404. NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT
3 TO RECEIPT OR BILL. A bailee who in good faith including obser-
4 vance of reasonable commercial standards has received goods and
5 delivered or otherwise disposed of them according to the terms of
6 the document of title or pursuant to this Article is not liable
7 therefor. This rule applies even though the person from whom he
8 received the goods had no authority to procure the document or to
9 dispose of the goods and even though the person to whom he de-
10 livered the goods had no authority to receive them.

11 Part 5

12 Warehouse Receipts and Bills of Lading:

13 Negotiation and Transfer

14 Sec. 7.501. FORM OF NEGOTIATION AND REQUIREMENTS OF "DUE
15 NEGOTIATION".

16 (1) a negotiable document of title running to the
17 order of a named person is negotiated by his indorsement and de-
18 livery. After his indorsement in blank or to bearer any person
19 can negotiate it by delivery alone.

20 (2) (a) A negotiable document of title is also nego-
21 tiated by delivery alone when by its original terms it runs
22 to bearer;

23 (b) when a document running to the order of a
24 named person is delivered to him the effect is the same as
25 if the document had been negotiated.

26 (3) Negotiation of a negotiable document of title
27 after it has been indorsed to a specified person requires in-
28 dorsement by the special indorsee as well as delivery.

29 (4) A negotiable document of title is "duly nego-

1 tiated" when it is negotiated in the manner stated in this sec-
2 tion to a holder who purchases it in good faith without notice
3 of any defense against or claim to it on the part of any person
4 and for value, unless it is established that the negotiation is
5 not in the regular course of business or financing or involves
6 receiving the document in settlement or payment of a money obli-
7 gation.

8 (5) Indorsement of a non-negotiable document neither
9 makes it negotiable nor adds to the transferee's rights.

10 (6) The naming in a negotiable bill of a person to be
11 notified of the arrival of the goods does not limit the negotia-
12 bility of the bill nor constitute notice to a purchaser thereof
13 of any interest of such person in the goods.

14 Sec. 7.502. RIGHTS ACQUIRED BY DUE NEGOTIATION.

15 (1) Subject to the following section and to the pro-
16 visions of Section 7.205. on fungible goods, a holder to whom a
17 negotiable document of title has been duly negotiated acquires
18 thereby:

19 (a) title to the document;

20 (b) title to the goods;

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

24 (d) the direct obligation of the issuer to hold
25 or deliver the goods according to the terms of the document
26 free of any defense or claim by him except those arising
27 under the terms of the document or under this Article. In
28 the case of a delivery order the bailee's obligation accrues
29 only upon acceptance and the obligation acquired by the

1 holder is that the issuer and any indorser will procure the
2 acceptance of the bailee.

3 (2) Subject to the following section, title and rights
4 so acquired are not defeated by any stoppage of the goods repre-
5 sented by the document or by surrender of such goods by the
6 bailee, and are not impaired even though the negotiation or any
7 prior negotiation constituted a breach of duty or even though
8 any person has been deprived of possession of the document by
9 misrepresentation, fraud, accident, mistake, duress, loss, theft
10 or conversion, or even though a previous sale or other transfer
11 of the goods or document has been made to a third person.

12 Sec. 7.503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN
13 CASES.

14 (1) A document of title confers no right in goods
15 against a person who before issuance of the document had a legal
16 interest or a perfected security interest in them and who neither

17 (a) delivered or entrusted them or any document
18 of title covering them to the bailor or his nominee with
19 actual or apparent authority to ship, store or sell or with
20 power to obtain delivery under this Article (Section 7.403.)
21 or with power of disposition under this Act (Sections 2.403.
22 and 9.307.) or other statute or rule of law; nor

23 (b) acquiesced in the procurement by the bailor
24 or his nominee of any document of title.

25 (2) Title to goods based upon an unaccepted delivery
26 order is subject to the rights of anyone to whom a negotiable
27 warehouse receipt or bill of lading covering the goods has been
28 duly negotiated. Such a title may be defeated under the next
29 section to the same extent as the rights of the issuer or a trans-

1 feree from the issuer.

2 (3) Title to goods based upon a bill of lading issued
3 to a freight forwarder is subject to the rights of anyone to
4 whom a bill issued by the freight forwarder is duly negotiated;
5 but delivery by the carrier in accordance with Part 4 of this
6 Article pursuant to its own bill of lading discharges the car-
7 rier's obligation to deliver.

8 Sec. 7.504. RIGHTS ACQUIRED IN THE ABSENCE OF DUE NEGO-
9 TIATION; EFFECT OF DIVERSION; SELLER'S STOPPAGE OF DELIVERY.

10 (1) A transferee of a document, whether negotiable or
11 non-negotiable, to whom the document has been delivered but not
12 duly negotiated, acquires the title and rights which his trans-
13 feror had or had actual authority to convey.

14 (2) In the case of a non-negotiable document, until
15 but not after the bailee receives notification of the transfer,
16 the rights of the transferee may be defeated

17 (a) by those creditors of the transferor who could
18 treat the sale as void under Section 2.402.; or

19 (b) by a buyer from the transferor in ordinary
20 course of business if the bailee has delivered the goods to
21 the buyer or received notification of his rights; or

22 (c) as against the bailee by good faith dealings
23 of the bailee with the transferor.

24 (3) A diversion or other change of shipping instruc-
25 tions by the consignor in a non-negotiable bill of lading which
26 causes the bailee not to deliver to the consignee defeats the
27 consignee's title to the goods if they have been delivered to a
28 buyer in ordinary course of business and in any event defeats the
29 consignee's rights against the bailee.

1 (4) Delivery pursuant to a non-negotiable document may
2 be stopped by a seller under Section 2.705., and subject to the
3 requirement of due notification there provided. A bailee honor-
4 ing the seller's instructions is entitled to be indemnified by
5 the seller against any resulting loss or expense.

6 Sec. 7.505. INDORSER NOT A GUARANTOR FOR OTHER PARTIES.
7 The indorsement of a document of title issued by a bailee does
8 not make the indorser liable for any default by the bailee or by
9 previous indorsers.

10 Sec. 7.506. DELIVERY WITHOUT INDORSEMENT: RIGHT TO COMPEL
11 INDORSEMENT. The transferee of a negotiable document of title has
12 a specifically enforceable right to have his transferor supply any
13 necessary indorsement but the transfer becomes a negotiation only
14 as of the time the indorsement is supplied.

15 Sec. 7.507. WARRANTIES ON NEGOTIATION OR TRANSFER OF RECEIPT
16 OR BILL. Where a person negotiated or transfers a document of
17 title for value otherwise than as a mere intermediary under the
18 next following section, then unless otherwise agreed he warrants
19 to his immediate purchaser only in addition to any warranty made
20 in selling the goods

21 (a) that the document is genuine; and

22 (b) that he has no knowledge of any fact which
23 would impair its validity or worth; and

24 (c) that his negotiation or transfer is rightful
25 and fully effective with respect to the title to the docu-
26 ment and the goods it represents.

27 Sec. 7.508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS.

28 A collecting bank or other intermediary known to be entrusted
29 with documents on behalf of another or with collection of a draft

1 double the value of the goods at the time of posting to indemnify
2 any person injured by the delivery who files a notice of claim
3 within one year after the delivery.

4 Sec. 7.602. ATTACHMENT OF GOODS COVERED BY A NEGOTIABLE
5 DOCUMENT. Except where the document was originally issued upon
6 delivery of the goods by a person who had no power to dispose of
7 them, no lien attaches by virtue of any judicial process to goods
8 in the possession of a bailee for which a negotiable document of
9 title is outstanding unless the document be first surrendered to
10 the bailee or its negotiation enjoined, and the bailee shall not
11 be compelled to deliver the goods pursuant to process until the
12 document is surrendered to him or impounded by the court. One
13 who purchases the document for value without notice of the process
14 or injunction takes free of the lien imposed by judicial process.

15 Sec. 7.603. CONFLICTING CLAIMS; INTERPLEADER. If more than
16 one person claims title or possession of the goods, the bailee
17 is excused from delivery until he has had a reasonable time to
18 ascertain the validity of the adverse claims or to bring an action
19 to compel all claimants to interplead and may compel such inter-
20 pleader, either in defending an action for non-delivery of the
21 goods, or by original action, whichever is appropriate.

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ARTICLE VIII
INVESTMENT SECURITIES

Part 1

Short Title and General Matters

Sec. 8.101. SHORT TITLE. This Article shall be known and may be cited as Uniform Commercial Code--Investment Securities.

Sec. 8.102. DEFINITIONS AND INDEX OF DEFINITIONS.

(1) In this Article unless the context otherwise requires

(a) A "security" is an instrument which
(i) is issued in bearer or registered form;

and

(ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(b) A writing which is a security is governed by this Article and not by Uniform Commercial Code--Commercial Paper even though it also meets the requirements of that Article. This Article does not apply to money.

(c) A security is in "registered form" when it specifies a person entitled to the security or the rights it evidences and when its transfer may be registered upon books

1 maintained for that purpose by or on behalf of an issuer or
2 the security so states.

3 (d) A security is in "bearer form" when it runs
4 to bearer according to its terms and not by reason of any
5 indorsement.

6 (2) "Proper form" means regular on its face with re-
7 gard to all formal matters.

8 (3) A "subsequent purchaser" is a person who takes
9 other than by original issue.

10 (4) Other definitions applying to this Article or to
11 specified Parts thereof and the sections in which they appear are:

12 "Adverse claim". Section 8.301.

13 "Bona fide purchaser". Section 8.302.

14 "Broker". Section 8.303.

15 "Guarantee of the signature". Section 8.402.

16 "Intermediary Bank". Section 4.105.

17 "Issuer". Section 8.201.

18 "Overissue". Section 8.104.

19 (5) In addition Article I contains general definitions
20 and principles of construction and interpretation applicable
21 throughout this Article.

22 Sec. 8.103. ISSUER'S LIEN. A lien upon a security in favor
23 of an issuer thereof is valid against a purchaser only if the
24 right of the issuer to such lien is noted conspicuously on the
25 security.

26 Sec. 8.104. EFFECT OF OVERISSUE; "OVERISSUE."

27 (1) The provisions of this Article which validate a
28 security or compe. its issue or reissue do not apply to the extent
29 that validation, issue or reissue would result in overissue; but

1 (a) if an identical security which does not con-
2 stitute an overissue is reasonably available for purchase,
3 the person entitled to issue or validation may compel the
4 issuer to purchase and deliver such a security to him against
5 surrender of the security, if any, which he holds; or

6 (b) if a security is not so available for pur-
7 chase, the person entitled to issue or validation may re-
8 cover from the issuer the price he or the last purchaser
9 for value paid for it with interest from the date of his
10 demand.

11 (2) "Overissue" means the issue of securities in ex-
12 cess of the amount which the issuer has corporate power to issue.
13 Sec. 8.105. SECURITIES NEGOTIABLE; PRESUMPTIONS.

14 (1) Securities governed by this Article are negotiable
15 instruments.

16 (2) In any action on a security

17 (a) unless specifically denied in the pleadings,
18 each signature on the security or in a necessary indorsement
19 is admitted;

20 (b) when the effectiveness of a signature is put
21 in issue the burden of establishing it is on the party
22 claiming under the signature but the signature is presumed
23 to be genuine or authorized;

24 (c) when signatures are admitted or established
25 production of the instrument entitles a holder to recover on
26 it unless the defendant establishes a defense or a defect
27 going to the validity of the security; and

28 (d) after it is shown that a defense or defect
29 exists the plaintiff has the burden of establishing that he

1 or some person under whom he claims is a person against whom
2 the defense or defect is ineffective (Section 8.202.)

3 Sec. 8.106. APPLICABILITY. The validity of a security and
4 the rights and duties of the issuer with respect to registration
5 of transfer are governed by the law (including the conflict of
6 laws rules) of the jurisdiction of organization of the issuer.

7 Part 2

8 Issue--Issuer

9 Sec. 8.201. "ISSUER."

10 (1) With respect to obligations on or defenses to a
11 security "issuer" includes a person who

12 (a) places or authorizes the placing of his name
13 on a security (otherwise than as authenticating trustee,
14 registrar, transfer agent or the like) to evidence that it
15 represents a share, participation or other interest in his
16 property or in an enterprise or to evidence his duty to
17 perform an obligation evidenced by the security; or

18 (b) directly or indirectly creates fractional
19 interests in his rights or property which fractional in-
20 terests are evidenced by securities; or

21 (c) becomes responsible for or in place of any
22 other person described as an issuer in this section.

23 (2) With respect to obligations on or defenses to a
24 security a guarantor is an issuer to the extent of his guaranty
25 whether or not his obligation is noted on the security.

26 (3) With respect to registration of transfer (Part 4
27 of this Article) "issuer" means a person on whose behalf transfer
28 books are maintained.

29 Sec. 8.202. ISSUER'S RESPONSIBILITY AND DEFENSES; NOTICE OF

1 DEFECT OR DEFENSE.

2 (1) Even against a purchaser for value and without
3 notice, the terms of a security include those stated on the secur-
4 ity and those made part of the security by reference to another
5 instrument, indenture or document or to a constitution, statute,
6 ordinance, rule, regulation, order or the like to the extent that
7 the terms so referred to do not conflict with the stated terms.
8 Such a reference does not of itself charge a purchaser for value
9 with notice of a defect going to the validity of the security
10 even though the security expressly states that a person accepting
11 it admits such notice.

12 (2) (a) A security other than one issued by a govern-
13 ment or governmental agency or unit even though issued with
14 a defect going to its validity is valid in the hands of a
15 purchaser for value and without notice of the particular
16 defect unless the defect involves a violation of constitu-
17 tional provisions in which case the security is valid in the
18 hands of a subsequent purchaser for value and without notice
19 of the defect.

20 (b) The rule of subparagraph (a) applies to an
21 issuer which is a government or governmental agency or unit
22 only if either there has been substantial compliance with the
23 legal requirements governing the issue or the issuer has re-
24 ceived a substantial consideration for the issue as a whole
25 or for the particular security and a stated purpose of the
26 issue is one for which the issuer has power to borrow money
27 or issue the security.

28 (3) Except as otherwise provided in the case of certain
29 unauthorized signatures on issue (Section 8.205.), lack of genuine-

1 ness of a security is a complete defense even against a pur-
2 chaser for value and without notice.

3 (4) All other defenses of the issuer including non-
4 delivery and conditional delivery of the security are ineffective
5 against a purchaser for value who has taken without notice of the
6 particular defense.

7 (5) Nothing in this section shall be construed to af-
8 fect the right of a party to a "when, as and if issued" or a
9 "when distributed" contract to cancel the contract in the event
10 of a material change in the character of the security which is
11 the subject of the contract or in the plan or arrangement pur-
12 suant to which such security is to be issued or distributed.

13 Sec. 8.203. STALENESS AS NOTICE OF DEFECTS OR DEFENSES.

14 (1) After an act or event which creates a right to
15 immediate performance of the principal obligation evidenced by
16 the security or which sets a date on or after which the security
17 is to be presented or surrendered for redemption or exchange, a
18 purchaser is charged with notice of any defect in its issue or
19 defense of the issuer

20 (a) if the act or event is one requiring the pay-
21 ment of money or the delivery of securities or both on pre-
22 sentation or surrender of the security and such funds or
23 securities are available on the date set for payment or ex-
24 change and he takes the security more than one year after
25 that date; and

26 (b) if the act or event is not covered by para-
27 graph (a) and he takes the security more than two years after
28 the date set for surrender or presentation or the date on
29 which such performance became due.

1 (2) A call which has been revoked is not within sub-
2 section (1).

3 Sec. 8.204. EFFECT OF ISSUER'S RESTRICTIONS ON TRANSFER.

4 Unless noted conspicuously on the security a restriction on trans-
5 fer imposed by the issuer even though otherwise lawful is ineffec-
6 tive except against a person with actual knowledge of it.

7 Sec. 8.205. EFFECT OF UNAUTHORIZED SIGNATURE ON ISSUE. An
8 unauthorized signature placed on a security prior to or in the
9 course of issue is ineffective except that the signature is ef-
10 fective in favor of a purchaser for value and without notice of
11 the lack of authority if the signing has been done by

12 (a) an authenticating trustee, registrar, transfer
13 agent or other person entrusted by the issuer with the sign-
14 ing of the security or of similar securities or their imme-
15 diate preparation for signing; or

16 (b) an employee of the issuer or of any of the
17 foregoing entrusted with responsible handling of the security.

18 Sec. 8.206. COMPLETION OR ALTERATION OF INSTRUMENT.

19 (1) Where a security contains the signatures necessary
20 to its issue or transfer but is incomplete in any other respect

21 (a) any person may complete it by filling in the
22 blanks as authorized; and

23 (b) even though the blanks are incorrectly filled
24 in, the security as completed is enforceable by a purchaser
25 who took it for value and without notice of such incorrect-
26 ness.

27 (2) A complete security which has been improperly
28 altered even though fraudulently remains enforceable but only ac-
29 cording to its original terms.

1 Sec. 8.207. RIGHTS OF ISSUER WITH RESPECT TO REGISTERED
2 OWNERS.

3 (1) Prior to due presentment for registration of trans-
4 fer of a security in registered form the issuer or indenture
5 trustee may treat the registered owner as the person exclusively
6 entitled to vote, to receive notifications and otherwise to exer-
7 cise all the rights and powers of an owner.

8 (2) Nothing in this Article shall be construed to af-
9 fect the liability of the registered owner of a security for
10 calls, assessments or the like.

11 Sec. 8.208. EFFECT OF SIGNATURE OF AUTHENTICATING TRUSTEE,
12 REGISTRAR OR TRANSFER AGENT.

13 (1) A person placing his signature upon a security as
14 authenticating trustee, registrar, transfer agent or the like
15 warrants to a purchaser for value without notice of the particu-
16 lar defect that

17 (a) the security is genuine and in proper form;

18 and

19 (b) his own participation in the issue of the
20 security is within his capacity and within the scope of the
21 authorization received by him from the issuer; and

22 (c) he has reasonable grounds to believe that the
23 security is within the amount the issuer is authorized to
24 issue.

25 (2) Unless otherwise agreed, a person by so placing
26 his signature does not assume responsibility for the validity of
27 the security in other respects.

28 Part 3

29 Purchase

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1 Sec. 8.301. RIGHTS ACQUIRED BY PURCHASER; "ADVERSE CLAIM";
2 TITLE ACQUIRED BY BONA FIDE PURCHASER.

3 (1) Upon delivery of a security the purchaser acquires
4 the rights in the security which his transferor had or had actual
5 authority to convey except that a purchaser who has himself been
6 a party to any fraud or illegality affecting the security or who
7 as a prior holder had notice of an adverse claim cannot improve
8 his position by taking from a later bona fide purchaser. "Ad-
9 verse claim" includes a claim that a transfer was or would be
10 wrongful or that a particular person is the owner of or has an
11 interest in the security.

12 (2) A bona fide purchaser in addition to acquiring the
13 rights of a purchaser also acquires the security free of any ad-
14 verse claim.

15 (3) A purchaser of a limited interest acquires rights
16 only to the extent of the interest purchased.

17 Sec. 8.302. "BONA FIDE PURCHASER." A "bona fide purchaser"
18 is a purchaser for value in good faith and without notice of any
19 adverse claim who takes delivery of a security in bearer form or
20 of one in registered form issued to him or indorsed to him or in
21 blank.

22 Sec. 8.303. "BROKER." "Broker" means a person engaged for
23 all or part of his time in the business of buying and selling
24 securities, who in the transaction concerned acts for, or buys a
25 security from or sells a security to a customer. Nothing in this
26 Article determines the capacity in which a person acts for pur-
27 poses of any other statute or rule to which such person is sub-
28 ject.

29 Sec. 8.304. NOTICE TO PURCHASER OF ADVERSE CLAIMS.

1 (1) A purchaser (including a broker for the seller or
2 buyer but excluding an intermediary bank) of a security is charged
3 with notice of adverse claims if

4 (a) the security whether in bearer or registered
5 form has been indorsed "for collection" or "for surrender"
6 or for some other purpose not involving transfer; or

7 (b) the security is in bearer form and has on it
8 an unambiguous statement that it is the property of a person
9 other than the transferor. The mere writing of a name on a
10 security is not such a statement.

11 (2) The fact that the purchaser (including a broker
12 for the seller or buyer) has notice that the security is held for
13 a third person or is registered in the name of or indorsed by a
14 fiduciary does not create a duty of inquiry into the rightfulness
15 of the transfer or constitute notice of adverse claims. If, how-
16 ever, the purchaser(excluding an intermediary bank) has knowledge
17 that the proceeds are being used or that the transaction is for
18 the individual benefit of the fiduciary or otherwise in breach of
19 duty, the purchaser is charged with notice of adverse claims.

20 Sec. 8.305. STALENESS AS NOTICE OF ADVERSE CLAIMS. An act
21 or event which creates a right to immediate performance of the
22 principal obligation evidenced by the security or which sets a
23 date on or after which the security is to be presented or sur-
24 rendered for redemption or exchange does not of itself constitute
25 any notice of adverse claims except in the case of a purchase.

26 (a) after one year from any date set for such
27 presentment or surrender for redemption or exchange; or

28 (b) after six months from any date set for pay-
29 ment of money against presentation or surrender of the

1 security if funds are available for payment on that date.

2 Sec. 8.306. WARRANTIES ON PRESENTMENT AND TRANSFER.

3 (1) A person who presents a security for registration
4 of transfer or for payment or exchange warrants to the issuer that
5 he is entitled to the registration, payment or exchange. But a
6 purchaser for value without notice of adverse claims who receives
7 a new, reissued or re-registered security on registration of
8 transfer warrants only that he has no knowledge of any unauthor-
9 ized signature (Section 8.311.) in a necessary indorsement.

10 (2) A person by transferring a security to a purchaser
11 for value warrants only that

12 (a) his transfer is effective and rightful; and

13 (b) the security is genuine and has not been
14 materially altered; and

15 (c) he knows no fact which might impair the
16 validity of the security.

17 (3) Where a security is delivered by an intermediary
18 known to be entrusted with delivery of the security on behalf of
19 another or with collection of a draft or other claim against such
20 delivery, the intermediary by such delivery warrants only his own
21 good faith and authority even though he has purchased or made ad-
22 vances against the claim to be collected against the delivery. A
23 broker is not an intermediary within the meaning of this subsection.

24 (4) A pledgee or other holder for security who re-
25 delivers the security received, or after payment and on order of
26 the debtor delivers that security to a third person makes only
27 the warranties of an intermediary under subsection (3).

28 (5) A broker gives to his customer and to the issuer
29 and a purchaser the warranties provided in this section and has

1 the rights and privileges of a purchaser under this section. The
2 warranties of and in favor of the broker acting as an agent are
3 in addition to applicable warranties given by and in favor of his
4 customer.

5 Sec. 8.307. EFFECT OF DELIVERY WITHOUT INDORSEMENT; RIGHT
6 TO COMPEL INDORSEMENT. Where a security in registered form has
7 been delivered to a purchaser without a necessary indorsement he
8 may become a bona fide purchaser only as of the time the indorse-
9 ment is supplied, but against the transferor the transfer is
10 complete upon delivery and the purchaser has a specifically en-
11 forceable right to have any necessary indorsement supplied.

12 Sec. 8.308. INDORSEMENT, HOW MADE; SPECIAL INDORSEMENT; IN-
13 DORSER NOT A GUARANTOR; PARTIAL ASSIGNMENT.

14 (1) An indorsement of a security in registered form is
15 made when an appropriate person signs on it or on a separate docu-
16 ment an assignment or transfer of the security or a power to as-
17 sign or transfer it or when the signature of such person is writ-
18 ten without more upon the back of the security.

19 (2) An indorsement may be in blank or special. An in-
20 dorsement in blank includes an indorsement to bearer. A special
21 indorsement specifies the person to whom the security is to be
22 transferred, or who has power to transfer it. A holder may con-
23 vert a blank indorsement into a special indorsement.

24 (3) "An appropriate person" in subsection (1) means

25 (a) the person specified by the security or by
26 special indorsement to be entitled to the security; or

27 (b) where the person so specified is described as
28 a fiduciary but is no longer serving in the described capa-
29 city,--his successor; or

1 (c) where the security or indorsement so specifies
2 more than one person as fiduciaries and one or more are no
3 longer serving in the described capacity,--the remaining
4 fiduciary or fiduciaries, whether or not a successor has
5 been appointed or qualified; or

6 (d) where the person so specified is an individual
7 and is without capacity to act by virtue of death, incompe-
8 tence, infancy or otherwise,--his executor, administrator,
9 guardian or like fiduciary; or

10 (e) where the security or indorsement so specifies
11 more than one person as tenants by the entirety or with
12 right of survivorship and by reason of death all cannot
13 sign,--the survivor or survivors; or

14 (f) a person having power to sign under applicable
15 law or controlling instrument; or

16 (g) to the extent that any of the foregoing per-
17 sons may act through an agent,--his authorized agent.

18 (4) Unless otherwise agreed the indorser by his in-
19 dorsement assumes no obligation that the security will be honored
20 by the issuer.

21 (5) An indorsement purporting to be only of part of a
22 security representing units intended by the issuer to be separate-
23 ly transferable is effective to the extent of the indorsement.

24 (6) Whether the person signing is appropriate is de-
25 termined as of the date of signing and an indorsement by such a
26 person does not become unauthorized for the purposes of this
27 Article by virtue of any subsequent change of circumstances.

28 (7) Failure of a fiduciary to comply with a controlling
29 instrument or with the law of the state having jurisdiction of the

1 fiduciary relationship, including any law requiring the fiduciary
2 to obtain court approval of the transfer, does not render his in-
3 dorsement unauthorized for the purposes of this Article.

4 Sec. 8.309. EFFECT OF INDORSEMENT WITHOUT DELIVERY. An
5 indorsement of a security whether special or in blank does not
6 constitute a transfer until delivery of the security on which it
7 appears or if the indorsement is on a separate document until
8 delivery of both the document and the security.

9 Sec. 8.310. INDORSEMENT OF SECURITY IN BEARER FORM. An
10 indorsement of a security in bearer form may give notice of ad-
11 verse claims (Section 8.304.) but does not otherwise affect any
12 right to registration the holder may possess.

13 Sec. 8.311. EFFECT OF UNAUTHORIZED INDORSEMENT. Unless
14 the owner has ratified an unauthorized indorsement or is other-
15 wise precluded from asserting its effectiveness

16 (a) he may assert its ineffectiveness against the
17 issuer or any purchaser other than a purchaser for value and
18 without notice of adverse claims who has in good faith re-
19 ceived a new, reissued or re-registered security on regis-
20 tration of transfer; and

21 (b) an issuer who registers the transfer of a
22 security upon the unauthorized indorsement is subject to
23 liability for improper registration (Section 8.404.)

24 Sec. 8.312. EFFECT OF GUARANTEEING SIGNATURE OR INDORSEMENT.

25 (1) Any person guaranteeing a signature of an indorser
26 of a security warrants that at the time of signing

27 (a) the signature was genuine; and

28 (b) the signer was an appropriate person to in-
29 dorse (Section 8.308.); and

1 (c) the signer had legal capacity to sign.
2 But the guarantor does not otherwise warrant the rightfulness of
3 the particular transfer.

4 (2) Any person may guarantee an indorsement of a secur-
5 ity and by so doing warrants not only the signature (subsection 1)
6 but also the rightfulness of the particular transfer in all re-
7 spects. But no issuer may require a guarantee of indorsement as
8 a condition to registration of transfer.

9 (3) The foregoing warranties are made to any person
10 taking or dealing with the security in reliance on the guarantee
11 and the guarantor is liable to such person for any loss resulting
12 from breach of the warranties.

13 Sec. 8.313. WHEN DELIVERY TO THE PURCHASER OCCURS; PURCHASER'S
14 BROKER AS HOLDER.

15 (1) Delivery to a purchaser occurs when

16 (a) he or a person designated by him acquires
17 possession of a security; or

18 (b) his broker acquires possession of a security
19 specially indorsed to or issued in the name of the purchaser;
20 or

21 (c) his broker sends him confirmation of the pur-
22 chase and also by book entry or otherwise identifies a spec-
23 ific security in the broker's possession as belonging to the
24 purchaser; or

25 (d) with respect to an identified security to be
26 delivered while still in the possession of a third person
27 when that person acknowledges that he holds for the purchaser.

28 (2) Except as specified in subparagraphs (b) and (c) of
29 subsection (1) the purchaser is not the holder of securities held

1 for him by his broker despite a confirmation of purchase and a
2 book entry and other indication that the security is part of a
3 fungible bulk held for customers and despite the customer's ac-
4 quisition of a proportionate property interest in the fungible
5 bulk.

6 Sec. 8.314. DUTY TO DELIVER, WHEN COMPLETED.

7 (1) Unless otherwise agreed where a sale of a security
8 is made on an exchange or otherwise through brokers

9 (a) the selling customer fulfills his duty to
10 deliver when he places such a security in the possession of
11 the selling broker or of a person designated by the broker
12 or if requested causes an acknowledgment to be made to the
13 selling broker that it is held for him; and

14 (b) the selling broker including a correspondent
15 broker acting for a selling customer fulfills his duty to
16 deliver by placing the security or a like security in the
17 possession of the buying broker or a person designated by
18 him or by effecting clearance of the sale in accordance with
19 the rules of the exchange on which the transaction took place.

20 (2) Except as otherwise provided in this section and
21 unless otherwise agreed, a transferor's duty to deliver a security
22 under a contract of purchase is not fulfilled until he places the
23 security in form to be negotiated by the purchaser in the posses-
24 sion of the purchaser or of a person designated by him or at the
25 purchaser's request causes an acknowledgement to be made to the
26 purchaser that it is held for him. Unless made on an exchange a
27 sale to a broker purchasing for his own account is within this
28 subsection and not within subsection (1).

29 Sec. 8.315. ACTION AGAINST PURCHASER BASED UPON WRONGFUL

1 TRANSFER.

2 (1) Any person against whom the transfer of a security
3 is wrongful for any reason, including his incapacity, may against
4 anyone except a bona fide purchaser reclaim possession of the
5 security or obtain possession of any new security evidencing all
6 or part of the same rights or have damages.

7 (2) If the transfer is wrongful because of an un-
8 authorized indorsement, the owner may also reclaim or obtain
9 possession of the security or new security even from a bona fide
10 purchaser if the ineffectiveness of the purported indorsement can
11 be asserted against him under the provisions of this Article on
12 unauthorized indorsements (Section 8.311.)

13 (3) The right to obtain or reclaim possession of a
14 security may be specifically enforced and its transfer enjoined
15 and the security impounded pending the litigation.

16 Sec. 8.316. PURCHASER'S RIGHT TO REQUISITES FOR REGISTRATION
17 OF TRANSFER ON BOOKS. Unless otherwise agreed the transferor must
18 on due demand supply his purchaser with any proof of his authority
19 to transfer or with any other requisite which may be necessary to
20 obtain registration of the transfer of the security but if the
21 transfer is not for value a transferor need not do so unless the
22 purchaser furnishes the necessary expenses. Failure to comply
23 with a demand made within a reasonable time gives the purchaser
24 the right to reject or rescind the transfer.

25 Sec. 8.317. ATTACHMENT OR LEVY UPON SECURITY.

26 (1) No attachment or levy upon a security or any share
27 or other interest evidenced thereby which is outstanding shall be
28 valid until the security is actually seized by the officer making
29 the attachment or levy but a security which has been surrendered

1 to the issuer may be attached or levied upon at the source.

2 (2) A creditor whose debtor is the owner of a security
3 shall be entitled to such aid from courts of appropriate juris-
4 diction, by injunction or otherwise, in reaching such security or
5 in satisfying the claim by means thereof as is allowed at law or
6 in equity in regard to property which cannot readily be attached
7 or levied upon by ordinary legal process.

8 Sec. 8.318. NO CONVERSION BY GOOD FAITH DELIVERY. An agent
9 or bailee who in good faith (including observance of reasonable
10 commercial standards if he is in the business of buying, selling
11 or otherwise dealing with securities) has received securities and
12 sold, pledged or delivered them according to the instructions of
13 his principal is not liable for conversion or for participation
14 in breach of fiduciary duty although the principal had no right
15 to dispose of them.

16 Sec. 8.319. STATUTE OF FRAUDS. A contract for the sale of
17 securities is not enforceable by way of action or defense unless

18 (a) there is some writing signed by the party
19 against whom enforcement is sought or by his authorized
20 agent or broker sufficient to indicate that a contract has
21 been made for sale of a stated quantity of described secur-
22 ities at a defined or stated price; or

23 (b) delivery of the security has been accepted or
24 payment has been made but the contract is enforceable under
25 this provision only to the extent of such delivery or payment;
26 or

27 (c) within a reasonable time a writing in con-
28 firmation of the sale or purchase and sufficient against the
29 sender under paragraph (a) has been received by the party

1 against whom enforcement is sought and he has failed to send
2 written objection to its contents within ten days after its
3 receipt; or

4 (d) the party against whom enforcement is sought
5 admits in his pleading, testimony or otherwise in court that
6 a contract was made for sale of a stated quantity of des-
7 cribed securities at a defined or stated price.

8 Part 4

9 Registration

10 Sec. 8.401. DUTY OF ISSUER TO REGISTER TRANSFER.

11 (1) Where a security in registered form is presented
12 to the issuer with a request to register transfer, the issuer is
13 under a duty to register the transfer as requested if

14 (a) the security is indorsed by the appropriate
15 person or persons (Section 8.308.); and

16 (b) reasonable assurance is given that those in-
17 dorsements are genuine and effective (Section 8.402.); and

18 (c) the issuer has no duty to inquire into adverse
19 claims or has discharged any such duty (Section 8.403.); and

20 (d) any applicable law relating to the collection
21 of taxes has been complied with; and

22 (e) the transfer is in fact rightful or is to a
23 bona fide purchaser.

24 (2) Where an issuer is under a duty to register a
25 transfer of a security the issuer is also liable to the person
26 presenting it for registration or his principal for loss resulting
27 from any unreasonable delay in registration or from failure or
28 refusal to register the transfer.

29 Sec. 8.402. ASSURANCE THAT INDORSEMENTS ARE EFFECTIVE.

1 (1) The issuer may require the following assurance
2 that each necessary indorsement (Section 8.308.) is genuine and
3 effective

4 (a) in all cases, a guarantee of the signature
5 (subsection (1) of Section 8.312.) of the person indorsing;
6 and

7 (b) where the indorsement is by an agent, appro-
8 priate assurance of authority to sign;

9 (c) where the indorsement is by a fiduciary,
10 appropriate evidence of appointment or incumbency;

11 (d) where there is more than one fiduciary, rea-
12 sonable assurance that all who are required to sign have
13 done so;

14 (e) where the indorsement is by a person not
15 covered by any of the foregoing, assurance appropriate to
16 the case corresponding as nearly as may be to the foregoing.

17 (2) A "guarantee of the signature" in subsection (1)
18 means a guarantee signed by or on behalf of a person reasonably
19 believed by the issuer to be responsible. The issuer may adopt
20 standards with respect to responsibility provided such standards
21 are not manifestly unreasonable.

22 (3) "Appropriate evidence of appointment or incumbency"
23 in subsection (1) means

24 (a) in the case of a fiduciary appointed or quali-
25 fied by a court, a certificate issued by or under the dir-
26 ection or supervision of that court or an officer thereof
27 and dated within sixty days before the date of presentation
28 for transfer; or

29 (b) in any other case, a copy of a document show-

1 ing the appointment or a certificate issued by or on behalf
2 of a person reasonably believed by the issuer to be respon-
3 sible or, in the absence of such a document or certificate,
4 other evidence reasonably deemed by the issuer to be appro-
5 priate. The issuer may adopt standards with respect to such
6 evidence provided such standards are not manifestly unrea-
7 sonable. The issuer is not charged with notice of the con-
8 tents of any document obtained pursuant to this paragraph
9 (b) except to the extent that the contents relate directly
10 to the appointment or incumbency.

11 (4) The issuer may elect to require reasonable assur-
12 ance beyond that specified in this section but if it does so and
13 for a purpose other than that specified in subsection 3(b) both
14 requires and obtains a copy of a will, trust, indenture, articles
15 of co-partnership, by-laws or other controlling instrument it is
16 charged with notice of all matters contained therein affecting
17 the transfer.

18 Sec. 8.403. LIMITED DUTY OF INQUIRY.

19 (1) An issuer to whom a security is presented for
20 registration is under a duty to inquire into adverse claims if

21 (a) a written notification of an adverse claim is
22 received at a time and in a manner which affords the issuer
23 a reasonable opportunity to act on it prior to the issuance
24 of a new, reissued or re-registered security and the notifi-
25 cation identifies the claimant, the registered owner and the
26 issue of which the security is a part and provides an address
27 for communications directed to the claimant; or

28 (b) the issuer is charged with notice of an ad-
29 verse claim from a controlling instrument which it has

1 elected to require under subsection (4) of Section 8.402.

2 (2) The issuer may discharge any duty of inquiry by
3 any reasonable means, including notifying an adverse claimant by
4 registered or certified mail at the address furnished by him or
5 if there be no such address at his residence or regular place of
6 business that the security has been presented for registration of
7 transfer by a named person, and that the transfer will be regis-
8 tered unless within thirty days from the date of mailing the
9 notification, either

10 (a) an appropriate restraining order, injunction
11 or other process issues from a court of competent juris-
12 diction; or

13 (b) an indemnity bond sufficient in the issuer's
14 judgment to protect the issuer and any transfer agent,
15 registrar or other agent of the issuer involved, from any
16 loss which it or they may suffer by complying with the ad-
17 verse claim is filed with the issuer.

18 (3) Unless an issuer is charged with notice of an ad-
19 verse claim from a controlling instrument which it has elected to
20 require under subsection (4) of Section 8.402. or receives notifi-
21 cation of an adverse claim under subsection (1) of this section,
22 where a security presented for registration is indorsed by the
23 appropriate person or persons the issuer is under no duty to in-
24 quire into adverse claims. In particular

25 (a) an issuer registering a security in the name
26 of a person who is a fiduciary or who is described as a
27 fiduciary is not bound to inquire into the existence, extent,
28 or correct description of the fiduciary relationship and
29 thereafter the issuer may assume without inquiry that the

1 newly registered owner continues to be the fiduciary until
2 the issuer receives written notice that the fiduciary is no
3 longer acting as such with respect to the particular secur-
4 ity;

5 (b) an issuer registering transfer on an indorse-
6 ment by a fiduciary is not bound to inquire whether the
7 transfer is made in compliance with a controlling instrument
8 or with the law of the state having jurisdiction of the
9 fiduciary relationship, including any law requiring the
10 fiduciary to obtain court approval of the transfer; and

11 (c) the issuer is not charged with notice of the
12 contents of any court record or file or other recorded or
13 unrecorded document even though the document is in its posses-
14 sion and even though the transfer is made on the indorsement
15 of a fiduciary to the fiduciary himself or to his nominee.

16 Sec. 8.404. LIABILITY AND NON-LIABILITY FOR REGISTRATION.

17 (1) Except as otherwise provided in any law relating
18 to the collection of taxes, the issuer is not liable to the owner
19 or any other person suffering loss as a result of the registration
20 of a transfer of a security if

21 (a) there were on or with the security the neces-
22 sary indorsements (Section 8.308.); and

23 (b) the issuer had no duty to inquire into adverse
24 claims or has discharged any such duty (Section 8.403.)

25 (2) Where an issuer has registered a transfer of a
26 security to a person not entitled to it the issuer on demand must
27 deliver a like security to the true owner unless

28 (a) the registration was pursuant to subsection
29 (1); or

1 (b) the owner is precluded from asserting any
2 claim for registering the transfer under subsection (1) of
3 the following section; or

4 (c) such delivery would result in overissue, in
5 which case the issuer's liability is governed by Section
6 8.104.

7 Sec. 8.405. LOST, DESTROYED AND STOLEN SECURITIES.

8 (1) Where a security has been lost, apparently des-
9 troyed or wrongfully taken and the owner fails to notify the
10 issuer of that fact within a reasonable time after he has notice
11 of it and the issuer registers a transfer of the security before
12 receiving such a notification, the owner is precluded from as-
13 serting against the issuer any claim for registering the transfer
14 under the preceding section or any claim to a new security under
15 this section.

16 (2) Where the owner of a security claims that the
17 security has been lost, destroyed or wrongfully taken, the issuer
18 must issue a new security in place of the original security if
19 the owner

20 (a) so requests before the issuer has notice that
21 the security has been acquired by a bona fide purchaser; and

22 (b) files with the issuer a sufficient indemnity
23 bond; and

24 (c) satisfies any other reasonable requirements
25 imposed by the issuer.

26 (3) If, after the issue of the new security, a bona
27 fide purchaser of the original security presents it for registra-
28 tion of transfer, the issuer must register the transfer unless
29 registration would result in overissue, in which event the issuer's

1 liability is governed by Section 8.104. In addition to any rights
2 on the indemnity bond, the issuer may recover the new security
3 from the person to whom it was issued or any person taking under
4 him except a bona fide purchaser.

5 Sec. 8.406. DUTY OF AUTHENTICATING TRUSTEE, TRANSFER AGENT
6 OR REGISTRAR.

7 (1) Where a person acts as authenticating trustee,
8 transfer agent, registrar, or other agent for an issuer in the
9 registration of transfers of its securities or in the issue of
10 new securities or in the cancellation of surrendered securities

11 (a) he is under a duty to the issuer to exercise
12 good faith and due diligence in performing his functions; and

13 (b) he has with regard to the particular functions
14 he performs the same obligation to the holder or owner of
15 the security and has the same rights and privileges as the
16 issuer has in regard to those functions.

17 (2) Notice to an authenticating trustee, transfer
18 agent, registrar or other such agent is notice to the issuer with
19 respect to the functions performed by the agent.
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ARTICLE IX
SECURED TRANSACTIONS; SALES
OF ACCOUNTS, CONTRACT
RIGHTS AND CHATTEL PAPER

Part 1

Short Title, Applicability and Definitions

Sec. 9.101. SHORT TITLE. This Article shall be known and may be cited as Uniform Commercial Code--Secured Transactions.

Sec. 9.102. POLICY AND SCOPE OF ARTICLE.

(1) Except as otherwise provided in Section 9.103. on multiple state transactions and in Section 9.104. on excluded transactions, this Article applies so far as concerns any personal property and fixtures within the jurisdiction of this State

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in Section 9.310.

(3) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to

1 which this Article does not apply.

2 Sec. 9.103. ACCOUNTS, CONTRACT RIGHTS, GENERAL INTANGIBLES
3 AND EQUIPMENT RELATING TO ANOTHER JURISDICTION; AND INCOMING
4 GOODS ALREADY SUBJECT TO A SECURITY INTEREST.

5 (1) If the office where the assignor of accounts or
6 contract rights keeps his records concerning them is in this
7 state, the validity and perfection of a security interest therein
8 and the possibility and effect of proper filing is governed by
9 this Article; otherwise by the law (including the conflict of
10 laws rules) of the jurisdiction where such office is located.

11 (2) If the chief place of business of a debtor is in
12 this state, this Article governs the validity and perfection of a
13 security interest and the possibility and effect of proper filing
14 with regard to general intangibles or with regard to goods of a
15 type which are normally used in more than one jurisdiction (such
16 as automotive equipment, rolling stock, airplanes, road building
17 equipment, commercial harvesting equipment, construction machinery
18 and the like) if such goods are classified as equipment or classi-
19 fied as inventory by reason of their being leased by the debtor
20 to others. Otherwise, the law (including the conflict of laws
21 rules) of the jurisdiction where such chief place of business is
22 located shall govern. If the chief place of business is located
23 in a jurisdiction which does not provide for perfection of the
24 security interest by filing or recording in that jurisdiction,
25 then the security interest may be perfected by filing in this
26 state.

27 (3) If personal property other than that governed by
28 subsections (1) and (2) is already subject to a security interest
29 when it is brought into this state, the validity of the security

1 interest in this state is to be determined by the law (including
2 the conflict of laws rules) of the jurisdiction where the property
3 was when the security interest attached. However, if the parties
4 to the transaction understood at the time that the security inter-
5 est attached that the property would be kept in this state and it
6 was brought into this state within 30 days after the security in-
7 terest attached for purposes other than transportation through
8 this state, then the validity of the security interest in this
9 state is to be determined by the law of this state. If the
10 security interest was already perfected under the law of the
11 jurisdiction where the property was when the security interest
12 attached and before being brought into this state, the security
13 interest continues perfected in this state for four months and
14 also thereafter if within the four month period it is perfected
15 in this state. The security interest may also be perfected in
16 this state after the expiration of the four month period; in such
17 case perfection dates from the time of perfection in this state.
18 If the security interest was not perfected under the law of the
19 jurisdiction where the property was when the security interest at-
20 tached and before being brought into this state, it may be per-
21 fected in this state; in such case perfection dates from the time
22 of perfection in this state.

23 (4) Notwithstanding subsections (2) and (3), if per-
24 sonal property is covered by a certificate of title issued under a
25 statute of this state or any other jurisdiction which requires in-
26 dication on a certificate of title of any security interest in the
27 property as a condition of perfection, then the perfection is gov-
28 erned by the law of the jurisdiction which issued the certificate.

29 Sec. 9.104. TRANSACTIONS EXCLUDED FROM ARTICLE. This Article

1 does not apply

2 (a) to a security interest subject to any statute
3 of the United States such as the Ship Mortgage Act, 1920, to
4 the extent that such statute governs the rights of parties
5 to and third parties affected by transactions in particular
6 types of property; or

7 (b) to a landlord's lien; or

8 (c) to a lien given by statute or other rule of
9 law for services or materials except as provided in Section
10 9.310. on priority of such liens; or

11 (d) to a transfer of a claim for wages, salary
12 or other compensation of an employee; or

13 (e) to an equipment trust covering railway
14 rolling stock; or

15 (f) to a sale of accounts, contract rights or
16 chattel paper as part of a sale of the business out of which
17 they arose, or an assignment of accounts, contract rights or
18 chattel paper which is for the purpose of collection only,
19 or a transfer of a contract right to an assignee who is also
20 to do the performance under the contract; or

21 (g) to a transfer of an interest or claim in or
22 under any policy of insurance; or

23 (h) to a right represented by a judgment; or

24 (i) to any right of set-off; or

25 (j) except to the extent that provision is made
26 for fixtures in Section 9.313., to the creation or transfer
27 of an interest in or lien on real estate, including a lease
28 or rents thereunder; or

29 (k) to a transfer in whole or in part of any of

1 the following: any claim arising out of tort; any deposit,
2 savings, passbook or like account maintained with a bank,
3 savings and loan association, credit union or like organi-
4 zation.

5 Sec. 9.105. DEFINITIONS AND INDEX OF DEFINITIONS.

6 (1) In this Article unless the context otherwise re-
7 quires:

8 (a) "Account debtor" means the person who is obli-
9 gated on an account, chattel paper, contract right or general
10 intangible;

11 (b) "Chattel paper" means a writing or writings
12 which evidence both a monetary obligation and a security in-
13 terest in or a lease of specific goods. When a transaction
14 is evidenced both by such a security agreement or a lease
15 and by an instrument or a series of instruments, the group
16 of writings taken together constitutes chattel paper;

17 (c) "Collateral" means the property subject to a
18 security interest, and includes accounts, contract rights
19 and chattel paper which have been sold;

20 (d) "Debtor" means the person who owes payment or
21 other performance of the obligation secured, whether or not
22 he owns or has rights in the collateral, and includes the
23 seller of accounts, contract rights or chattel paper. Where
24 the debtor and the owner of the collateral are not the same
25 person, the term "debtor" means the owner of the collateral
26 in any provision of the Article dealing with the collateral,
27 the obligor in any provision dealing with the obligation,
28 and may include both where the context so requires;

29 (e) "Document" means document of title as defined

1 in the general definitions of Article I (Section 1.201.);

2 (f) "Goods" includes all things which are movable
3 at the time the security interest attaches or which are fix-
4 tures (Section 9.313.), but does not include money, docu-
5 ments, instruments, accounts, chattel paper, general in-
6 tangibles, contract rights and other things in action.
7 "Goods" also include the unborn young of animals and growing
8 crops;

9 (g) "Instrument" means a negotiable instrument
10 (defined in Section 3.104.), or a security (defined in Sec-
11 tion 8.102.) or any other writing which evidences a right
12 to the payment of money and is not itself a security agree-
13 ment or lease and is of a type which is in ordinary course
14 of business transferred by delivery with any necessary in-
15 dorsement or assignment;

16 (h) "Security agreement" means an agreement which
17 creates or provides for a security interest;

18 (i) "Secured party" means a lender, seller or other
19 person in whose favor there is a security interest, including
20 a person to whom accounts, contract rights or chattel paper
21 have been sold. When the holders of obligations issued
22 under an indenture of trust, equipment trust agreement or
23 the like are represented by a trustee or other person, the
24 representative is the secured party.

25 (2) Other definitions applying to this Article and the
26 sections in which they appear are:

27 "Account". Section 9.106.

28 "Consumer goods". Section 9.109(1).

29 "Contract right". Section 9.106.

1 "Equipment". Section 9.109(2).
2 "Farm products". Section 9.109(3).
3 "General intangibles". Section 9.106.
4 "Inventory". Section 9.109(4).
5 "Lien creditor". Section 9.301(3).
6 "Proceeds". Section 9.306(1).
7 "Purchase money security interest". Section 9.107.

8 (3) The following definitions in other Articles apply
9 to this Article:

10 "Check". Section 3.104.
11 "Contract for sale". Section 2.106.
12 "Holder in due course". Section 3.302.
13 "Note". Section 3.104.
14 "Sale". Section 2.106.

15 (4) In addition Article I contains general definitions
16 and principles of construction and interpretation applicable
17 throughout this Article.

18 Sec. 9.106. DEFINITIONS: "ACCOUNT"; "CONTRACT RIGHT";
19 "GENERAL INTANGIBLES". "Account" means any right to payment for
20 goods sold or leased or for services rendered which is not evi-
21 denced by an instrument or chattel paper. "Contract right" means
22 any right to payment under a contract not yet earned by performance
23 and not evidenced by an instrument or chattel paper. "General in-
24 tangibles" means any personal property (including things in action)
25 other than goods, accounts, contract rights, chattel paper, docu-
26 ments and instruments.

27 Sec. 9.107. DEFINITIONS: "PURCHASE MONEY SECURITY INTEREST".
28 A security interest is a "purchase money security interest" to
29 the extent that it is

1 (a) taken or retained by the seller of the collat-
2 eral to secure all or part of its price; or

3 (b) taken by a person who by making advances or
4 incurring an obligation gives value to enable the debtor to
5 acquire rights in or the use of collateral if such value is
6 in fact so used.

7 Sec. 9.108. WHEN AFTER-ACQUIRED COLLATERAL NOT SECURITY FOR
8 ANTECEDENT DEBT. Where a secured party makes an advance, incurs
9 an obligation, releases a perfected security interest, or other-
10 wise gives new value which is to be secured in whole or in part
11 by after-acquired property his security interest in the after-
12 acquired collateral shall be deemed to be taken for new value and
13 not as security for an antecedent debt if the debtor acquires his
14 rights in such collateral either in the ordinary course of his
15 business or under a contract of purchase made pursuant to the
16 security agreement within a reasonable time after new value is
17 given.

18 Sec. 9.109. CLASSIFICATION OF GOODS; "CONSUMER GOODS";
19 "EQUIPMENT"; "FARM PRODUCTS"; "INVENTORY". Goods are

20 (1) "consumer goods" if they are used or bought for
21 use primarily for personal, family or household purposes;

22 (2) "equipment" if they are used or bought for use pri-
23 marily in business (including farming or a profession) or by a
24 debtor who is a non-profit organization or a governmental sub-
25 division or agency or if the goods are not included in the defini-
26 tions of inventory, farm products or consumer goods;

27 (3) "farm products" if they are crops or livestock used
28 or produced in farming operations or if they are products of crops
29 or livestock in their unmanufactured states (such as ginned cot-

1 ton, wool-clip, maple syrup, milk and eggs), and if they are in
2 the possession of a debtor engaged in raising, fattening, grazing
3 or other farming operations. If goods are farm products they are
4 neither equipment nor inventory;

5 (4) "inventory" if they are held by a person who holds
6 them for sale or lease or to be furnished under contracts of ser-
7 vice or if he has so furnished them, or if they are raw materials,
8 work in process or materials used or consumed in a business. In-
9 ventory of a person is not to be classified as his equipment.

10 Sec. 9.110. SUFFICIENCY OF DESCRIPTION. For the purposes
11 of this Article any description of personal property or real es-
12 tate is sufficient whether or not it is specific if it reasonably
13 identifies what is described.

14 Sec. 9.111. APPLICABILITY OF BULK TRANSFER LAWS. The crea-
15 tion of a security interest is not a bulk transfer under Article
16 VI (see Section 6.103.)

17 Sec. 9.112. WHERE COLLATERAL IS NOT OWNED BY DEBTOR. Unless
18 otherwise agreed, when a secured party knows that collateral is
19 owned by a person who is not the debtor, the owner of the collat-
20 eral is entitled to receive from the secured party any surplus
21 under Section 9.502(2). or under Section 9.504(1), and is not
22 liable for the debt or for any deficiency after resale, and he
23 has the same right as the debtor

24 (a) to receive statements under Section 9.208.;

25 (b) to receive notice of and to object to a
26 secured party's proposal to retain the collateral in satis-
27 faction of the indebtedness under Section 9.505.;

28 (c) to redeem the collateral under Section 9.506.;

29 (d) to obtain injunctive or other relief under

1 Section 9.507(1).; and
2 (e) to recover losses caused to him under Section
3 9.208(2).

4 Sec. 9.113. SECURITY INTERESTS ARISING UNDER ARTICLE ON
5 SALES. A security interest arising solely under the Article on
6 Sales (Article II) is subject to the provisions of this Article
7 except that to the extent that and so long as the debtor does not
8 have or does not lawfully obtain possession of the goods

9 (a) no security agreement is necessary to make
10 the security interest enforceable; and

11 (b) no filing is required to perfect the security
12 interest; and

13 (c) the rights of the secured party on default
14 by the debtor are governed by the Article on Sales (Article
15 II).

16 Part 2

17 Validity of Security Agreement and Rights
18 of Parties Thereto

19 Sec. 9.201. GENERAL VALIDITY OF SECURITY AGREEMENT. Except
20 as otherwise provided by this Act a security agreement is effec-
21 tive according to its terms between the parties, against pur-
22 chasers of the collateral and against creditors. Nothing in this
23 Article validates any charge or practice illegal under any stat-
24 ute or regulation thereunder governing usury, small loans, retail
25 installment sales, or the like, or extends the application of any
26 such statute or regulation to any transaction not otherwise sub-
27 ject thereto.

28 Sec. 9.202. TITLE TO COLLATERAL IMMATERIAL. Each provision
29 of this Article with regard to rights, obligations and remedies

1 applies whether title to collateral is in the secured party or in
2 the debtor.

3 Sec. 9.203. ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS,
4 FORMAL REQUISITES.

5 (1) Subject to the provisions of Section 4.208. on the
6 security interest of a collecting bank and Section 9.113. on a
7 security interest arising under the Article on Sales, a security
8 interest is not enforceable against the debtor or third parties
9 unless

10 (a) the collateral is in the possession of the
11 secured party; or

12 (b) the debtor has signed a security agreement
13 which contains a description of the collateral and in addi-
14 tion, when the security interest covers crops or oil, gas
15 or minerals to be extracted or timber to be cut, a descrip-
16 tion of the land concerned. In describing collateral, the
17 word "proceeds" is sufficient without further description
18 to cover proceeds of any character.

19 (2) A transaction, although subject to this Article,
20 is also subject to the "Alaska Small Loans Act", Ch. 73 SLA 1955,
21 and in the case of conflict between the provisions of this Article
22 and any such statute, the provisions of such statute control.
23 Failure to comply with any applicable statute has only the effect
24 which is specified therein.

25 Sec. 9.204. WHEN SECURITY INTEREST ATTACHES; AFTER-ACQUIRED
26 PROPERTY; FUTURE ADVANCES.

27 (1) A security interest cannot attach until there is
28 agreement (subsection (3) of Section 1.201.) that it attach and
29 value is given and the debtor has rights in the collateral. It

1 attaches as soon as all of the events in the preceding sentence
2 have taken place unless explicit agreement postpones the time of
3 attaching.

4 (2) For the purposes of this section the debtor has no
5 rights

6 (a) in crops until they are planted or otherwise
7 become growing crops, in the young of livestock until they
8 are conceived;

9 (b) in fish until caught, in oil, gas or minerals
10 until they are extracted, in timber until it is cut;

11 (c) in a contract right until the contract has
12 been made;

13 (d) in an account until it comes into existence.

14 (3) Except as provided in subsection (4) a security
15 agreement may provide that collateral, whenever acquired, shall
16 secure all obligations covered by the security agreement.

17 (4) No security interest attaches under an after-
18 acquired property clause

19 (a) to crops which become such more than one year
20 after the security agreement is executed except that a secu-
21 rity interest in crops which is given in conjunction with a
22 lease or a land purchase or improvement transaction evidenced
23 by a contract, mortgage or deed of trust may if so agreed
24 attach to crops to be grown on the land concerned during the
25 period of such real estate transaction;

26 (b) to consumer goods other than accessions (Sec-
27 tion 9.314.) when given as additional security unless the
28 debtor acquires rights in them within ten days after the se-
29 cured party gives value.

1 (5) Obligations covered by a security agreement may
2 include future advances or other value whether or not the advances
3 or value are given pursuant to commitment.

4 Sec. 9.205. USE OF DISPOSITION OF COLLATERAL WITHOUT AC-
5 COUNTING PERMISSIBLE. A security interest is not invalid or
6 fraudulent against creditors by reason of liberty in the debtor
7 to use, commingle or dispose of all or part of the collateral
8 (including returned or repossessed goods) or to collect or compro-
9 mise accounts, contract rights or chattel paper, or to accept the
10 return of goods or make repossessions, or to use, commingle or
11 dispose of proceeds, or by reason of the failure of the secured
12 party to require the debtor to account for proceeds or replace
13 collateral. This section does not relax the requirements of
14 possession where perfection of a security interest depends upon
15 possession of the collateral by the secured party or by a bailee.

16 Sec. 9.206. AGREEMENT NOT TO ASSERT DEFENSES AGAINST AS-
17 SIGNEE; MODIFICATION OF SALES WARRANTIES WHERE SECURITY AGREEMENT
18 EXISTS.

19 (1) Subject to any statute or decision which establishes
20 a different rule for buyers of consumer goods, an agreement by a
21 buyer that he will not assert against an assignee any claim or
22 defense which he may have against the seller is ; enforceable by
23 an assignee who takes his assignment for value, in good faith and
24 without notice of a claim or defense, except as to defenses of a
25 type which may be asserted against a holder in due course of a
26 negotiable instrument under the Article on Commercial Paper
27 (Article III). A buyer who as part of one transaction signs both
28 a negotiable instrument and a security agreement makes such an
29 agreement.

1 (2) When a seller retains a purchase money security
2 interest in goods the Article on Sales (Article II) governs the
3 sale and any disclaimer, limitation or modification of the seller's
4 warranties.

5 Sec. 9.207. RIGHTS AND DUTIES WHEN COLLATERAL IS IN SECURED
6 PARTY'S POSSESSION.

7 (1) A secured party must use reasonable care in the
8 custody and preservation of collateral in his possession. In the
9 case of an instrument or chattel paper reasonable care includes
10 taking necessary steps to preserve rights against prior parties
11 unless otherwise agreed.

12 (2) Unless otherwise agreed, when collateral is in the
13 secured party's possession

14 (a) reasonable expenses (including the cost of
15 any insurance and payment of taxes or other charges) in-
16 curred in the custody, preservation, use or operation of the
17 collateral are chargeable to the debtor and are secured by
18 the collateral;

19 (b) the risk of accidental loss or damage is on
20 the debtor to the extent of any deficiency in any effective
21 insurance coverage;

22 (c) the secured party may hold as additional
23 security any increase or profits (except money) received from
24 the collateral, but money so received, unless remitted to the
25 debtor, shall be applied in reduction of the secured obli-
26 gation;

27 (d) the secured party must keep the collateral
28 identifiable but fungible collateral may be commingled;

29 (e) the secured party may repledge the collateral

1 upon terms which do not impair the debtor's right to redeem
2 it.

3 (3) A secured party is liable for any loss caused by
4 his failure to meet any obligation imposed by the preceding sub-
5 sections but does not lose his security interest.

6 (4) A secured party may use or operate the collateral
7 for the purpose of preserving the collateral or its value or pur-
8 suant to the order of a court of appropriate jurisdiction or, ex-
9 cept in the case of consumer goods, in the manner and to the ex-
10 tent provided in the security agreement.

11 Sec. 9.208. REQUEST FOR STATEMENT OF ACCOUNT OR LIST OF
12 COLLATERAL.

13 (1) A debtor may sign a statement indicating what he
14 believes to be the aggregate amount of unpaid indebtedness as of
15 a specified date and may send it to the secured party with a re-
16 quest that the statement be approved or corrected and returned to
17 the debtor. When the security agreement or any other record kept
18 by the secured party identifies the collateral a debtor may simi-
19 larly request the secured party to approve or correct a list of
20 the collateral.

21 (2) The secured party must comply with such a request
22 within two weeks after receipt by sending a written correction or
23 approval. If the secured party claims a security interest in all
24 of a particular type of collateral owned by the debtor he may in-
25 dicate that fact in his reply and need not approve or correct an
26 itemized list of such collateral. If the secured party without
27 reasonable excuse fails to comply he is liable for any loss
28 caused to the debtor thereby; and if the debtor has properly in-
29 cluded in his request a good faith statement of the obligation or

1 a list of the collateral or both the secured party may claim a
2 security interest only as shown in the statement against persons
3 misled by his failure to comply. If he no longer has an interest
4 in the obligation or collateral at the time the request is re-
5 ceived he must disclose the name and address of any successor in
6 interest known to him and he is liable for any loss caused to the
7 debtor as a result of failure to disclose. A successor in inter-
8 est is not subject to this section until a request is received by
9 him.

10 (3) A debtor is entitled to such a statement once
11 every six months without charge. The secured party may require
12 payment of a charge not exceeding \$10 for each additional state-
13 ment furnished.

14 Part 3

15 Rights of Third Parties; Perfected and
16 Unperfected Security Interests;

17 Rules of Priority

18 Sec. 9.301. PERSONS WHO TAKE PRIORITY OVER UNPERFECTED
19 SECURITY INTERESTS; "LIEN CREDITOR".

20 (1) Except as otherwise provided in subsection (2), an
21 unperfected security interest is subordinate to the rights of

22 (a) persons entitled to priority under Section
23 9.312.;

24 (b) a person who becomes a lien creditor without
25 knowledge of the security interests and before it is perfect-
26 ed;

27 (c) in the case of goods, instruments, documents,
28 and chattel paper, a person who is not a secured party and
29 who is a transferee in bulk or other buyer not in ordinary

1 course of business to the extent that he gives value and
2 receives delivery of the collateral without knowledge of the
3 security interest and before it is perfected;

4 (d) in the case of accounts, contract rights, and
5 general intangibles, a person who is not a secured party and
6 who is a transferee to the extent that he gives value with-
7 out knowledge of the security interest and before it is per-
8 fected.

9 (2) If the secured party files with respect to a pur-
10 chase money security interest before or within ten days after the
11 collateral comes into possession of the debtor, he takes priority
12 over the rights of a transferee in bulk or of a lien creditor
13 which arise between the time the security interest attaches and
14 the time of filing.

15 (3) A "lien creditor" means a creditor who has acquired
16 a lien on the property involved by attachment, levy or the like
17 and includes an assignee for benefit of creditors from the time
18 of assignment, and a trustee in bankruptcy from the date of the
19 filing of the petition or a receiver in equity from the time of
20 appointment. Unless all the creditors represented had knowledge
21 of the security interests such a representative of creditors is a
22 lien creditor without knowledge even though he personally has
23 knowledge of the security interest.

24 Sec. 9.302. WHEN FILING IS REQUIRED TO PERFECT SECURITY IN-
25 TEREST. SECURITY INTERESTS TO WHICH FILING PROVISIONS OF THIS
26 ARTICLE DO NOT APPLY.

27 (1) A financing statement must be filed to perfect all
28 security interests except the following:

29 (a) a security interest in collateral in posses-

1 sion of the secured party under Section 9.305.;

2 (b) a security interest temporarily perfected in
3 instruments or documents without delivery under Section
4 9.304. or in proceeds for a 10 day period under Section
5 9.306.;

6 (c) a purchase money security interest in farm
7 equipment having a purchase price not in excess of \$2500;
8 but filing is required for a fixture under Section 9.313. or
9 for a motor vehicle required to be licensed;

10 (d) a purchase money security interest in con-
11 sumer goods; but filing is required for a fixture under Sec-
12 tion 9.313. or for a motor vehicle required to be licensed;

13 (e) an assignment of accounts or contract rights
14 which does not alone or in conjunction with other assign-
15 ments to the same assignee transfer a significant part of
16 the outstanding accounts or contract rights of the assignor;

17 (f) a security interest of a collecting bank
18 (Section 4.208.) or arising under the Article on Sales (see
19 Section 9.113.) or covered in subsection (3) of this section.

20 (2) If a secured party assigns a perfected security
21 interest, no filing under this Article is required in order to
22 continue the perfected status of the security interest against
23 creditors of and transferees from the original debtor.

24 (3) The filing provisions of this Article do not ap-
25 ply to a security interest in property subject to a statute

26 (a) of the United States which provides for a
27 national registration or filing of all security interests in
28 such property; or

29 (b) of this state which provides for central fil-

1 ing of, or which requires indication on a certificate of
2 title of, such security interests in such property.

3 Sec. 9.303. WHEN SECURITY INTEREST IS PERFECTED; CONTINUITY
4 OF PERFECTION.

5 (1) A security interest is perfected when it has at-
6 tached and when all of the applicable steps required for perfec-
7 tion have been taken. Such steps are specified in Sections
8 9.302., 9.304., 9.305. and 9.306. If such steps are taken before
9 the security interest attaches, it is perfected at the time when
10 it attaches.

11 (2) If a security interest is originally perfected in
12 any way permitted under this Article and is subsequently per-
13 fected in some other way under this Article, without an inter-
14 mediate period when it was unperfected, the security interest
15 shall be deemed to be perfected continuously for the purposes of
16 this Article.

17 Sec. 9.304. PERFECTION OF SECURITY INTEREST IN INSTRUMENTS,
18 DOCUMENTS AND GOODS COVERED BY DOCUMENTS; PERFECTION BY PERMIS-
19 SIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF
20 POSSESSION.

21 (1) A security interest in chattel paper or negotiable
22 documents may be perfected by filing. A security interest in
23 instruments (other than instruments which constitute part of
24 chattel paper) can be perfected only by the secured party's
25 taking possession, except as provided in subsections (4) and (5).

26 (2) During the period that goods are in the possession
27 of the issuer of a negotiable document therefor, a security in-
28 terest in the goods is perfected by perfecting a security interest
29 in the document, and any security interest in the goods otherwise

1 perfected during such period is subject thereto.

2 (3) A security interest in goods in the possession of
3 a bailee other than one who has issued a negotiable document
4 therefor is perfected by issuance of a document in the name of
5 the secured party or by the bailee's receipt of notification of
6 the secured party's interest or by filing as to the goods.

7 (4) A security interest in instruments or negotiable
8 documents is perfected without filing or the taking of possession
9 for a period of 21 days from the time it attaches to the extent
10 that it arises for new value given under a written security
11 agreement.

12 (5) A security interest remains perfected for a period
13 of 21 days without filing where a secured party having a per-
14 fected security interest in an instrument, a negotiable document
15 or goods in possession of a bailee other than one who has issued
16 a negotiable document therefor

17 (a) makes available to the debtor the goods or
18 documents representing the goods for the purpose of ultimate
19 sale or exchange or for the purpose of loading, unloading,
20 storing, shipping, transshipping, manufacturing, processing
21 or otherwise dealing with them in a manner preliminary to
22 their sale or exchange; or

23 (b) delivers the instrument to the debtor for the
24 purpose of ultimate sale or exchange or of presentation, col-
25 lection, renewal or registration of transfer.

26 (6) After the 21 day period in subsections (4) and (5)
27 perfection depends upon compliance with applicable provisions of
28 this Article.

29 Sec. 9.305. WHEN POSSESSION BY SECURED PARTY PERFECTS SECUR-

1 ITY INTEREST WITHOUT FILING. A security interest in letters of
2 credit and advices of credit (subsection (2) (a) of Section
3 5.116.), goods instruments, negotiable documents or chattel paper
4 may be perfected by the secured party's taking possession of the
5 collateral. If such collateral other than goods covered by a
6 negotiable document is held by a bailee, the secured party is
7 deemed to have possession from the time the bailee receives noti-
8 fication of the secured party's interest. A security interest is
9 perfected by possession from the time possession is taken without
10 relation back and continues only so long as possession is re-
11 tained, unless otherwise specified in this Article. The security
12 interest may be otherwise perfected as provided in this Article
13 before or after the period of possession by the secured party.

14 Sec. 9.306. "PROCEEDS"; SECURED PARTY'S RIGHTS ON DISPOSI-
15 TION OF COLLATERAL.

16 (1) "Proceeds" includes whatever is received when col-
17 lateral or proceeds is sold, exchanged, collected or otherwise
18 disposed of. The term also includes the account arising when the
19 right to payment is earned under a contract right. Money, checks
20 and the like are "cash proceeds". All other proceeds are "non-
21 cash proceeds".

22 (2) Except where this Article otherwise provides, a
23 security interest continues in collateral notwithstanding sale,
24 exchange or other disposition thereof by the debtor unless his
25 action was authorized by the secured party in the security agree-
26 ment or otherwise, and also continues in any identifiable pro-
27 ceeds including collections received by the debtor.

28 (3) The security interest in proceeds is a continuously
29 perfected security interest if the interest in the original col-

1 lateral was perfected but it ceases to be a perfected security
2 interest and becomes unperfected ten days after receipt of the
3 proceeds by the debtor unless

4 (a) a filed financing statement covering the
5 original collateral also covers proceeds; or

6 (b) the security interest in the proceeds is per-
7 fected before the expiration of the ten day period.

8 (4) In the event of insolvency proceedings instituted
9 by or against a debtor, a secured party with a perfected security
10 interest in proceeds has a perfected security interest

11 (a) in identifiable non-cash proceeds;

12 (b) in identifiable cash proceeds in the form of
13 money which is not commingled with other money or deposited
14 in a bank account prior to the insolvency proceedings.

15 (c) in identifiable cash proceeds in the form of
16 checks and the like which are not deposited in a bank ac-
17 count prior to the insolvency proceedings; and

18 (d) in all cash and bank accounts of the debtor,
19 if other cash proceeds have been commingled or deposited in
20 a bank account, but the perfected security interest under
21 this paragraph (d) is

22 (i) subject to any right of set-off; and

23 (ii) limited to an amount not greater than
24 the amount of any cash proceeds received by the debtor
25 within ten days before the institution of the insolvency
26 proceedings and commingled or deposited in a bank ac-
27 count prior to the insolvency proceedings less the
28 amount of cash proceeds received by the debtor and paid
29 over to the secured party during the ten day period.

1 (5) If a sale of goods results in an account or chattel
2 paper which is transferred by the seller to a secured party, and
3 if the goods are returned to or are repossessed by the seller or
4 the secured party, the following rules determine priorities:

5 (a) If the goods were collateral at the time of
6 sale for an indebtedness of the seller which is still unpaid,
7 the original security interest attaches again to the goods
8 and continues as a perfected security interest if it was per-
9 fected at the time when the goods were sold. If the secur-
10 ity interest was originally perfected by a filing which is
11 still effective, nothing further is required to continue the
12 perfected status; in any other case, the secured party must
13 take possession of the returned or repossessed goods or must
14 file.

15 (b) An unpaid transferee of the chattel paper has
16 a security interest in the goods against the transferor.
17 Such security interest is prior to a security interest as-
18 serted under paragraph (a) to the extent that the transferee
19 of the chattel paper was entitled to priority under Section
20 9.308.

21 (c) An unpaid transferee of the account has a
22 security interest in the goods against the transferor. Such
23 security interest is subordinate to a security interest as-
24 serted under paragraph (a).

25 (d) A security interest of an unpaid transferee
26 asserted under paragraph (b) or (c) must be perfected for
27 protection against creditors of the transferor and purchasers
28 of the returned or repossessed goods.

29 Sec. 9.307. PROTECTION OF BUYERS OF GOODS.

1 (1) A buyer in ordinary course of business (subsection
2 (9) of Section 1.201.) other than a person buying farm products
3 from a person engaged in farming operations takes free of a
4 security interest created by his seller even though the security
5 interested is perfected and even though the buyer knows of its
6 existence.

7 (2) In the case of consumer goods and in the case of
8 farm equipment having an original purchase price not in excess of
9 \$2500 (other than fixtures, see Section 9.313.), a buyer takes
10 free of a security interest even though perfected if he buys with-
11 out knowledge of the security interest, for value and for his own
12 personal, family or household purposes or his own farming opera-
13 tions unless prior to the purchase the secured party has filed a
14 financing statement covering such goods.

15 Sec. 9.308. PURCHASE OF CHATTEL PAPER AND NON-NEGOTIABLE
16 INSTRUMENTS. A purchaser of chattel paper or a non-negotiable
17 instrument who gives new value and takes possession of it in the
18 ordinary course of his business and without knowledge that the
19 specific paper or instrument is subject to a security interest has
20 priority over a security interest which is perfected under Section
21 9.304. (permissive filing and temporary perfection). A purchaser
22 of chattel paper who gives new value and takes possession of it
23 in the ordinary course of his business has priority over a security
24 interest in chattel paper which is claimed merely as proceeds of
25 inventory subject to a security interest (Section 9.306.), even
26 though he knows that the specific paper is subject to the security
27 interest.

28 Sec. 9.309. PROTECTION OF PURCHASERS OF INSTRUMENTS AND
29 DOCUMENTS. Nothing in this Article limits the rights of a holder

1 in due course of a negotiable instrument (Section 3.302.) or a
2 holder to whom a negotiable document of title has been duly nego-
3 tiated (Section 7.501.) or a bona fide purchaser of a security
4 (Section 8.301.) and such holders or purchasers take priority over
5 an earlier security interest even though perfected. Filing under
6 this Article does not constitute notice of the security interest
7 to such holders or purchasers.

8 Sec. 9.310. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION
9 OF LAW. When a person in the ordinary course of his business fur-
10 nishes services or materials with respect to goods subject to a
11 security interest, a lien upon goods in the possession of such
12 person given by statute or rule of law of law for such materials
13 or services takes priority over a perfected security interest un-
14 less the lien is statutory and the statute expressly provides
15 otherwise.

16 Sec. 9.311. ALIENABILITY OF DEBTOR'S RIGHTS: JUDICIAL PROC-
17 ESS. The debtor's rights in collateral may be voluntarily or in-
18 voluntarily transferred (by way of sale, creation of a security
19 interest, attachment, levy, garnishment or other judicial process)
20 notwithstanding a provision in the security agreement prohibiting
21 any transfer or making the transfer constitute a default.

22 Sec. 9.312. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS
23 IN THE SAME COLLATERAL.

24 (1) The rules of priority stated in the following sec-
25 tions shall govern where applicable: Section 4.208. with respect
26 to the security interest of collecting banks in items being col-
27 lected, accompanying documents and proceeds; Section 9.301. on
28 certain priorities; Section 9.304. on goods covered by documents;
29 Section 9.306. on proceeds and repossessions; Section 9.307. on

1 buyers of goods; Section 9.308. on possessory against non-posses-
2 sory interests in chattel paper or non-negotiable instruments;
3 Section 9.309. on security interests in negotiable instruments,
4 documents or securities; Section 9.310. on priorities between per-
5 fected security interests and liens by operation of law; Section
6 9.313. on security interests in fixtures as against interests in
7 real estate; Section 9.314. on security interests in accessions
8 as against interest in goods; Section 9.315. on conflicting secur-
9 ity interests where goods lose their identity or become part of a
10 product; and Section 9.316. on contractual subordination.

11 (2) A perfected security interest in crops for new
12 value given to enable the debtor to produce the crops during the
13 production season and given not more than three months before the
14 crops become growing crops by planting or otherwise takes priority
15 over an earlier perfected security interest to the extent that
16 such earlier interest secures obligations due more than six months
17 before the crops become growing crops by planting or otherwise,
18 even though the person giving new value had knowledge of the
19 earlier security interest.

20 (3) A purchase money security interest in inventory
21 collateral has priority over a conflicting security interest in
22 the same collateral if

23 (a) the purchase money security interest is per-
24 fected at the time the debtor receives possession of the
25 collateral; and

26 (b) any secured party whose security interest is
27 known to the holder of the purchase money security interest
28 or who, prior to the date of the filing made by the holder
29 of the purchase money security interest, had filed a finan-

1 cing statement covering the same items or type of inventory,
2 has received notification of the purchase money security
3 interest before the debtor receives possession of the col-
4 lateral covered by the purchase money security interest; and

5 (c) such notification states that the person giving
6 the notice has or expects to acquire a purchase money secur-
7 ity interest in inventory of the debtor, describing such in-
8 ventory by item or type.

9 (4) A purchase money security interest in collateral
10 other than inventory has priority over a conflicting security
11 interest in the same collateral if the purchase money security
12 interest is perfected at the time the debtor receives possession
13 of the collateral or within ten days thereafter.

14 (5) In all cases not governed by other rules stated in
15 this section (including cases of purchase money security interests
16 which do not qualify for the special priorities set forth in sub-
17 sections (3) and (4) of this section), priority between conflict-
18 ing security interests in the same collateral shall be determined
19 as follows:

20 (a) in the order of filing if both are perfected
21 by filing, regardless of which security interest attached
22 first under Section 9.204.(1) and whether it attached before
23 or after filing;

24 (b) in the order of perfection unless both are
25 perfected by filing, regardless of which security interest
26 attached first under Section 9.204.(1), and, in the case of
27 a filed security interest, whether it attached before or
28 after filing; and

29 (c) in the order of attachment under Section

1 9.204.(1) so long as neither is perfected.

2 (6) For the purpose of the priority rules of the im-
3 mediately preceding subsection, a continuously perfected security
4 interest shall be treated at all times as if perfected by filing
5 if it was originally so perfected and it shall be treated at all
6 times as if perfected otherwise than by filing if it was originally
7 perfected otherwise than by filing.

8 Sec. 9.313. PRIORITY OF SECURITY INTERESTS IN FIXTURES.

9 (1) The rules of this section do not apply to goods
10 incorporated into a structure in the manner of lumber, bricks,
11 tile, cement, glass, metal work and the like and no security in-
12 terest in them exists under this Article unless the structure re-
13 mains personal property under applicable law. The law of this
14 state other than this Act determines whether and when other goods
15 become fixtures. This Act does not prevent creation of an en-
16 cumbrance upon fixtures or real estate pursuant to the law appli-
17 cable to real estate.

18 (2) A security interest which attaches to goods before
19 they become fixtures takes priority as to the goods over the
20 claims of all persons who have an interest in the real estate ex-
21 cept as stated in subsection (4).

22 (3) A security interest which attaches to goods after
23 they become fixtures is valid against all persons subsequently
24 acquiring interests in the real estate except as stated in sub-
25 section (4) but is invalid against any person with an interest in
26 the real estate at the time the security interest attaches to the
27 goods who has not in writing consented to the security interest or
28 disclaimed an interest in the goods as fixtures.

29 (4) The security interests described in subsections (2)

1 and (3) do not take priority over

2 (a) a subsequent purchaser for value of any in-
3 terest in the real estate; or

4 (b) a creditor with a lien on the real estate
5 subsequently obtained by judicial proceedings; or

6 (c) a creditor with a prior encumbrance of re-
7 cord on the real estate to the extent that he makes subse-
8 quent advances

9 if the subsequent purchase is made, the lien by judicial proceed-
10 ings is obtained, or the subsequent advance under the prior en-
11 cumbrance is made or contracted for without knowledge of the
12 security interest and before it is perfected. A purchaser of the
13 real estate at a foreclosure sale other than an encumbrancer pur-
14 chasing at his own foreclosure sale is a subsequent purchaser
15 within this section.

16 (5) When under subsections (2) or (3) and (4) a secured
17 party has priority over the claims of all persons who have inter-
18 ests on the real estate, he may, on default, subject to the pro-
19 visions of Part 5, remove his collateral from the real estate but
20 he must reimburse any encumbrancer or owner of the real estate
21 who is not the debtor and who has not otherwise agreed for the
22 cost of repair of any physical injury, but not for any diminution
23 in value of the real estate caused by the absence of the goods
24 removed or by any necessity for replacing them. A person entitled
25 to reimbursement may refuse permission to remove until the sec-
26 ured party gives adequate security for the performance of this
27 obligation.

28 Sec. 9.514. ACCESSIONS.

29 (1) A security interest in goods which attaches before

1 they are installed in or affixed to other goods takes priority as
2 to the goods installed or affixed (called in this section "acces-
3 sions") over the claims of all persons to the whole except as
4 stated in subsection (3) and subject to Section 9.315(1).

5 (2) A security interest which attaches to goods after
6 they become part of a whole is valid against all persons subse-
7 quently acquiring interests in the whole except as stated in sub-
8 section (3) but is invalid against any person with an interest in
9 the whole at the time the security interest attaches to the goods
10 who has not in writing consented to the security interest or dis-
11 claimed an interest in the goods as part of the whole.

12 (3) The security interests described in subsections (1)
13 and (2) do not take priority over

14 (a) a subsequent purchaser for value of any in-
15 terest in the whole; or

16 (b) a creditor with a lien on the whole subse-
17 quently obtained by judicial proceedings; or

18 (c) a creditor with a prior perfected security
19 interest in the whole to the extent that he makes subsequent
20 advances

21 if the subsequent purchase is made, the lien by judicial proceed-
22 ings obtained or the subsequent advance under the prior perfected
23 security interest is made or contracted for without knowledge of
24 the security interest and before it is perfected. A purchaser of
25 the whole at a foreclosure sale other than the holder of a per-
26 fected security interest purchasing at his own foreclosure sale
27 is a subsequent purchaser within this section.

28 (4) When under subsections (1) or (2) and (3) a secured
29 party has an interest in accessions which has priority over the

1 claims of all persons who have interests in the whole, he may on
2 default subject to the provisions of Part 5 remove his collateral
3 from the whole but he must reimburse any encumbrancer or owner of
4 the whole who is not the debtor and who has not otherwise agreed
5 for the cost of repair of any physical injury but not for any
6 diminution in value of the whole caused by the absence of the
7 goods removed or by any necessity for replacing them. A person
8 entitled to reimbursement may refuse permission to remove until
9 the secured party gives adequate security for the performance of
10 this obligation.

11 Sec. 9.315. PRIORITY WHEN GOODS ARE COMMINGLED OR PROCESSED.

12 (1) If a security interest in goods was perfected and
13 subsequently the goods or a part thereof have become part of a
14 product or mass, the security interest continues in the product
15 or mass if

16 (a) the goods are so manufactured, processed,
17 assembled or commingled that their identity is lost in the
18 product or mass; or

19 (b) a financing statement covering the original
20 goods also covers the product into which the goods have been
21 manufactured, processed or assembled.

22 In a case to which paragraph (b) applies, no separate security
23 interest in that part of the original goods which has been manu-
24 factured, processed or assembled into the product may be claimed
25 under Section 9.314.

26 (2) When under subsection (1) more than one security
27 interest attaches to the product or mass, they rank equally ac-
28 cording to the ratio that the cost of the goods to which each in-
29 terest originally attached bears to the cost of the total product

1 or mass.

2 Sec. 9.316. PRIORITY SUBJECT TO SUBORDINATION. Nothing in
3 this Article prevents subordination by agreement by any person
4 entitled to priority.

5 Sec. 9.317. SECURED PARTY NOT OBLIGATED ON CONTRACT OF
6 DEBTOR. The mere existence of a security interest or authority
7 given to the debtor to dispose of or use collateral does not impose
8 contract or tort liability upon the secured party for the debtor's
9 acts or omissions.

10 Sec. 9.318. DEFENSES AGAINST ASSIGNEE; MODIFICATION OF CON-
11 TRACT AFTER NOTIFICATION OF ASSIGNMENT; TERM PROHIBITING ASSIGN-
12 MENT INEFFECTIVE; IDENTIFICATION AND PROOF OF ASSIGNMENT.

13 (1) Unless an account debtor has made an enforceable
14 agreement not to assert defenses or claims arising out of a sale
15 as provided in Section 9.206. the rights of an assignee are sub-
16 ject to

17 (a) all the terms of the contract between the
18 account debtor and assignor and any defense or claim arising
19 therefrom; and

20 (b) any other defense or claim of the account
21 debtor against the assignor which accrues before the account
22 debtor receives notification of the assignment.

23 (2) So far as the right to payment under an assigned
24 contract right has not already become an account, and notwith-
25 standing notification of the assignment, any modification of or
26 substitution for the contract made in good faith and in accordance
27 with reasonable commercial standards is effective against an as-
28 signee unless the account debtor has otherwise agreed but the as-
29 signee acquires corresponding rights under the modified or substi-

1 tuted contract. The assignment may provide that such modification
2 or substitution is a breach by the assignor.

3 (3) The account debtor is authorized to pay the as-
4 signor until the account debtor receives notification that the
5 account has been assigned and that payment is to be made to the
6 assignee. A notification which does not reasonably identify the
7 rights assigned is ineffective. If requested by the account debtor,
8 the assignee must seasonably furnish reasonable proof that the as-
9 signment has been made and unless he does so the account debtor
10 may pay the assignor.

11 (4) A term in any contract between an account debtor
12 and an assignor which prohibits assignment of an account or con-
13 tract right to which they are parties is ineffective.

14 Part 4

15 Filing

16 Sec. 9.401. PLACE OF FILING; ERRONEOUS FILING; REMOVAL OF
17 COLLATERAL.

18 (1) The proper place to file in order to perfect a
19 security interest is as follows:

20 (a) when the collateral is consumer goods, equip-
21 ment used in farming operations, farm products, or accounts
22 arising from the sale of farm products by a farmer, then the
23 office of the recorder in the recording district of the
24 debtor's residence or if the debtor is not a resident of
25 this state then in the office of the recorder in the record-
26 ing district where the goods are kept, and in addition when
27 the collateral is crops in the office of the recorder in the
28 recording district where the land on which the crops are
29 growing or to be grown is located;

1 (b) when the collateral is goods which at the time
2 the security interest attaches are or are to become fixtures,
3 then in the office where a mortgage on the real estate con-
4 cerned would be filed or recorded;

5 (2) A filing which is made in good faith in an improper
6 place or not in all of the places required by this section is
7 nevertheless effective with regard to any collateral as to which
8 the filing complied with the requirements of this Article and is
9 also effective with regard to collateral covered by the financing
10 statement against any person who has knowledge of the contents of
11 such financing statement.

12 (3) A filing which is made in the proper recording dis-
13 trict continues effective for four months after a change to another
14 district of the debtor's residence or place of business or the
15 location of the collateral, whichever controlled the original fil-
16 ing. It becomes ineffective thereafter unless a copy of the fin-
17 ancing statement signed by the secured party is filed in the new
18 district within said period. The security interest may also be
19 perfected in the new district after the expiration of the four-
20 month period; in such case perfection dates from the time of per-
21 fection in the new district. A change in the use of the collateral
22 does not impair the effectiveness of the original filing.

23 (4) If collateral is brought into this state from
24 another jurisdiction, the rules stated in Section 9.103. determine
25 whether filing is necessary in this state.

26 Sec. 9.402. FORMAL REQUISITES OF FINANCING STATEMENT; AMEND-
27 MENTS.

28 (1) A financing statement is sufficient if it is signed
29 by the debtor and the secured party, gives an address of the sec-

1 ured party from which information concerning the security interest
2 may be obtained, gives a mailing address of the debtor and con-
3 tains a statement indicating the types, or describing the items,
4 of collateral. A financing statement may be filed before a secur-
5 ity agreement is made or a security interest otherwise attaches.
6 When the financing statement covers crops growing or to be grown
7 or goods which are or are to become fixtures, the statement must
8 also contain a description of the real estate concerned. A copy
9 of the security agreement is sufficient as a financing statement
10 if it contains the above information and is signed by both
11 parties.

12 (2) A financing statement which otherwise complies with
13 subsection (1) is sufficient although it is signed only by the
14 secured party when it is filed to perfect a security interest in

15 (a) collateral already subject to a security in-
16 terest in another jurisdiction when it is brought into this
17 state. Such a financing statement must state that the col-
18 lateral was brought into this state under such circumstances.

19 (b) proceeds under Section 9.306. if the security
20 interest in the original collateral was perfected. Such a
21 financing statement must describe the original collateral.

22 (3) A form substantially as follows is sufficient to
23 comply with subsection (1):

24 Name of debtor (or assignee)

25 Address.....

26 Name of secured party (or assignee)

27 1. This financing statement covers the following types
28 (or items) of property:
29 (Describe)

1 2. (If collateral is crops) The above described crops
2 are growing or are to be grown on:

3 (Describe Real Estate)

4 3. (If collateral is goods which are or are to become
5 fixtures) The above described goods are affixed or to
6 be affixed to:

7 (Describe Real Estate)

8 4. (If proceeds or products of collateral are claimed)
9 Proceeds--Products of the collateral are also covered.

10 Signature of Debtor (or Assignor)

11 Signature of Secured Party (or Assignee)

12 (4) The term "financing statement" as used in this
13 Article means the original financing statement and any amendments
14 but if any amendment adds collateral, it is effective as to the
15 added collateral only from the filing date of the amendment.

16 (5) A financing statement substantially complying with
17 the requirements of this section is effective even though it con-
18 tains minor errors which are not seriously misleading.

19 Sec. 9.403. WHAT CONSTITUTES FILING; DURATION OF FILING;
20 EFFECT OF LAPSED FILING; DUTIES OF FILING OFFICER.

21 (1) Presentation for filing of a financing statement
22 and tender of the filing fee or acceptance of the statement by the
23 filing officer constitutes filing under this Article.

24 (2) A filed financing statement which states a maturity
25 date of the obligation secured of five years or less is effective
26 until such maturity date and thereafter for a period of sixty days.
27 Any other filed financing statement is effective for a period of
28 five years from the date of filing. The effectiveness of a filed
29 financing statement lapses on the expiration of such sixty day

1 period after a stated maturity date or on the expiration of such
2 five year period, as the case may be, unless a continuation state-
3 ment is filed prior to the lapse. Upon such lapse the security
4 interest becomes unperfected.

5 (3) A continuation statement may be filed by the secured
6 party (i) within six months before and sixty days after a stated
7 maturity date of five years or less, and (ii) otherwise within
8 six months prior to the expiration of the five year period speci-
9 fied in subsection (2). Any such continuation statement must be
10 signed by the secured party, identify the original statement by
11 file number and state that the original statement is still effec-
12 tive. Upon timely filing of the continuation statement, the
13 effectiveness of the original statement is continued for five
14 years after the last date to which the filing was effective
15 whereupon it lapses in the same manner as provided in subsection
16 (2) unless another continuation statement is filed prior to such
17 lapse. Succeeding continuation statements may be filed in the
18 same manner to continue the effectiveness of the original state-
19 ment. Unless a statute on disposition of public records provides
20 otherwise, the filing officer may remove a lapsed statement from
21 the files and destroy it.

22 (4) A filing officer shall mark each statement with a
23 consecutive file number and with the date and hour of filing and
24 shall hold the statement for public inspection. In addition the
25 filing officer shall index the statements according to the name
26 of the debtor and shall note in the index the file number and the
27 address of the debtor given in the statement.

28 (5) The uniform fee for filing, indexing and furnishing
29 filing data for an original or a continuation statement shall be

1 as prescribed by the administrative director of courts.

2 Sec. 9.404. TERMINATION STATEMENT.

3 (1) Whenever there is no outstanding secured obligation
4 and no commitment to make advances, incur obligations or other-
5 wise give value, the secured party must on written demand by the
6 debtor send the debtor a statement that he no longer claims a
7 security interest under the financing statement, which shall be
8 identified by file number. A termination statement signed by a
9 person other than the secured party of record must include or be
10 accompanied by the assignment or a statement by the secured party
11 of record that he has assigned the security interest to the signer
12 of the termination statement. The uniform fee for filing and in-
13 dexing such an assignment or statement thereof shall be as pres-
14 cribed by the administrative director of courts. If the affected
15 secured party fails to send such a termination statement within
16 ten days after proper demand therefor he shall be liable to the
17 debtor for one hundred dollars, and in addition for any loss
18 caused to the debtor by such failure.

19 (2) On presentation to the filing officer of such a
20 termination statement he must note it in the index. The filing
21 officer shall remove from the files, mark "terminated" and send
22 or deliver to the secured party the financing statement and any
23 continuation statement, statement of assignment or statement of
24 release pertaining thereto.

25 (3) The uniform fee for filing and indexing a termina-
26 tion statement including sending or delivering the financing
27 statement shall be as prescribed by the administrative director
28 of courts.

29 Sec. 9.405. ASSIGNMENT OF SECURITY INTEREST; DUTIES OF

1 FILING OFFICER; FEES.

2 (1) A financing statement may disclose an assignment of
3 a security interest in the collateral described in the statement by
4 indication in the statement of the name and address of the as-
5 signee or by an assignment itself or a copy thereof on the face or
6 back of the statement. Either the original secured party or the
7 assignee may sign this statement as the secured party. On pre-
8 sentation to the filing officer of such a financing statement the
9 filing officer shall mark the same as provided in Section 9.403(4).
10 The uniform fee for filing, indexing and furnishing filing data
11 for a financing statement so indicating an assignment shall be
12 as prescribed by the administrative director of courts.

13 (2) A secured party may assign of record all or a part
14 of his rights under a financing statement by the filing of a
15 separate written statement of assignment signed by the secured
16 party of record and setting forth the name of the secured party
17 of record and the debtor, the file number and the date of filing
18 of the financing statement and the name and address of the as-
19 signee and containing a description of the collateral assigned.
20 A copy of the assignment is sufficient as a separate statement if
21 it complies with the preceding sentence. On presentation to the
22 filing officer of such a separate statement, the filing officer
23 shall mark such separate statement with the date and hour of the
24 filing. He shall note the assignment on the index of the financ-
25 ing statement. The uniform fee for filing, indexing and furnish-
26 ing filing data about such a separate statement of assignment
27 shall be as prescribed by the administrative director of courts.

28 (3) After the disclosure or filing of an assignment
29 under this section, the assignee is the secured party of record.

1 Sec. 9.406. RELEASE OF COLLATERAL; DUTIES OF FILING OFFICER;
2 FEES. A secured party of record may by his signed statement re-
3 lease all or a part of any collateral described in a filed financ-
4 ing statement. The statement of release is sufficient if it con-
5 tains a description of the collateral being released, the name
6 and address of the debtor, the name and address of the secured
7 party, and the file number of the financing statement. Upon pre-
8 sentation of such a statement to the filing officer he shall mark
9 the statement with the hour and date of filing and shall note the
10 same upon the margin of the index of the filing of the financing
11 statement. The uniform fee for filing and noting such a statement
12 of release shall be as prescribed by the administrative director
13 of courts.

14 Part 5

15 Default

16 Sec. 9.501. DEFAULT; PROCEDURE WHEN SECURITY AGREEMENT
17 COVERS BOTH REAL AND PERSONAL PROPERTY.

18 (1) When a debtor is in default under a security agree-
19 ment, a secured party has the rights and remedies provided in this
20 Part and except as limited by subsection (3) those provided in
21 the security agreement. He may reduce his claim to judgment,
22 foreclose or otherwise enforce the security interest by any avail-
23 able judicial procedure. If the collateral is documents the sec-
24 ured party may proceed either as to the documents or as to the
25 goods covered thereby. A secured party in possession has the
26 rights, remedies and duties provided in Section 9.207. The rights
27 and remedies referred to in this subsection are cumulative.

28 (2) After default, the debtor has the rights and reme-
29 dies provided in this Part, those provided in the security agree-

1 ment and those provided in Section 9.207.

2 (3) To the extent that they give rights to the debtor
3 and impose duties on the secured party, the rules stated in the
4 subsections referred to below may not be waived or varied except
5 as provided with respect to compulsory disposition of collateral
6 (subsection (1) of Section 9.505.) and with respect to redemption
7 of collateral (Section 9.506.) but the parties may by agreement
8 determine the standards by which the fulfillment of these rights
9 and duties is to be measured if such standards are not manifestly
10 unreasonable:

11 (a) subsection (2) of Section 9.502. and subsection
12 (2) of Section 9.504. insofar as they require accounting for
13 surplus proceeds of collateral;

14 (b) subsection (3) of Section 9.504. and subsection
15 (1) of Section 9.505. which deal with disposition of collat-
16 eral;

17 (c) subsection (2) of Section 9.505. which deals
18 with acceptance of collateral as discharge of obligation;

19 (d) Section 9.506. which deals with redemption of
20 collateral; and

21 (e) subsection (1) of Section 9.507. which deals
22 with the secured party's liability for failure to comply with
23 this Part.

24 (4) If the security agreement covers both real and per-
25 sonal property, the secured party may proceed under this Part as
26 to the personal property or he may proceed as to both the real and
27 in respect of the real property in which case the provisions of
28 the personal property in accordance with his rights and remedies
29 this Part do not apply.

1 (5) When a secured party has reduced his claim to
2 judgment the lien of any levy which may be made upon his collateral
3 by virtue of any execution based upon the judgment shall relate
4 back to the date of the perfection of the security interest in such
5 collateral. A judicial sale, pursuant to such execution, is a
6 foreclosure of the security interest by judicial procedure within
7 the meaning of this section, and the secured party may purchase
8 at the sale and thereafter hold the collateral free of any other
9 requirements of this Article.

10 Sec. 9.502. COLLECTION RIGHTS OF SECURED PARTY.

11 (1) When so agreed and in any event on default the
12 secured party is entitled to notify an account debtor or the ob-
13 ligor on an instrument to make payment to him whether or not the
14 assignor was theretofore making collections on the collateral, and
15 also to take control of any proceeds to which he is entitled under
16 Section 9.306.

17 (2) A secured party who by agreement is entitled to
18 charge back uncollected collateral or otherwise to full or limited
19 recourse against the debtor and who undertakes to collect from the
20 account debtors or obligors must proceed in a commercially rea-
21 sonable manner and may deduct his reasonable expenses of realiza-
22 tion from the collections. If the security agreement secures an
23 indebtedness, the secured party must account to the debtor for
24 any surplus, and unless otherwise agreed, the debtor is liable for
25 any deficiency. But, if the underlying transaction was a sale of
26 accounts, contract rights, or chattel paper, the debtor is entitled
27 to any surplus or is liable for any deficiency only if the security
28 agreement so provides.

29 Sec. 9.503. SECURED PARTY'S RIGHT TO TAKE POSSESSION AFTER

1 DEFAULT. Unless otherwise agreed a secured party has on default
2 the right to take possession of the collateral. In taking posses-
3 sion a secured party may proceed without judicial process if this
4 can be done without breach of the peace or may proceed by action.
5 If the security agreement so provides the secured party may re-
6 quire the debtor to assemble the collateral and make it available
7 to the secured party at a place to be designated by the secured
8 party which is reasonably convenient to both parties. Without
9 removal a secured party may render equipment unusable, and may
10 dispose of collateral on the debtor's premises under Section 9.504.

11 Sec. 9.504. SECURED PARTY'S RIGHT TO DISPOSE OF COLLATERAL
12 AFTER DEFAULT; EFFECT OF DISPOSITION.

13 (1) A secured party after default may sell, lease or
14 otherwise dispose of any or all of the collateral in its then con-
15 dition or following any commercially reasonable preparation or
16 processing. Any sale of goods is subject to the Article on Sales
17 (Article II). The proceeds of disposition shall be applied in the
18 order following to

19 (a) the reasonable expenses of retaking, holding,
20 preparing for sale, selling and the like and, to the extent
21 provided for in the agreement and not prohibited by law, the
22 reasonable attorneys' fees and legal expenses incurred by
23 the secured party;

24 (b) the satisfaction of indebtedness secured by
25 the security interest under which the disposition is made;

26 (c) the satisfaction of indebtedness secured by
27 any subordinate security interest in the collateral if written
28 notification of demand therefor is received before distribu-
29 tion of the proceeds is completed. If requested by the

1 secured party, the holder of a subordinate security interest
2 must seasonably furnish reasonable proof of his interest, and
3 unless he does so, the secured party need not comply with his
4 demand.

5 (2) If the security interest secures an indebtedness,
6 the secured party must account to the debtor for any surplus, and,
7 unless otherwise agreed, the debtor is liable for any deficiency.
8 But if the underlying transaction was a sale of accounts, con-
9 tract rights, or chattel paper, the debtor is entitled to any sur-
10 plus or is liable for any deficiency only if the security agree-
11 ment so provides.

12 (3) Disposition of the collateral may be by public or
13 private proceedings and may be made by way of one or more con-
14 tracts. Sale or other disposition may be as a unit or in parcels
15 and at any time and place and on any terms but every aspect of the
16 disposition including the method, manner, time, place and terms
17 must be commercially reasonable. Unless collateral is perishable
18 or threatens to decline speedily in value or is of a type cus-
19 tomarily sold on a recognized market, reasonable notification of
20 the time and place of any public sale or reasonable notification
21 of the time after which any private sale or other intended dis-
22 position is to be made shall be sent by the secured party to the
23 debtor, and except in the case of consumer goods to any other
24 person who has a security interest in the collateral and who has
25 duly filed a financing statement indexed in the name of the debtor
26 in this state or who is known by the secured party to have a secur-
27 ity interest in the collateral. The secured party may buy at any
28 public sale and if the collateral is of a type customarily sold
29 in a recognized market or is of a type which is the subject of

1 widely distributed standard price quotations he may buy at private
2 sale.

3 (4) When collateral is disposed of by a secured party
4 after default, the disposition transfers to a purchaser for value
5 all of the debtor's rights therein, discharges the security in-
6 terest under which it is made and any security interest or lien
7 subordinate thereto. The purchaser takes free of all such rights
8 and interests even though the secured party fails to comply with
9 the requirements of this Part or of any judicial proceedings

10 (a) in the case of a public sale, if the purchaser
11 has no knowledge of any defects in the sale and if he does
12 not buy in collusion with the secured party, other bidders
13 or the person conducting the sale; or

14 (b) in any other case, if the purchaser acts in
15 good faith.

16 (5) A person who is liable to a secured party under a
17 guaranty, indorsement, repurchase agreement or the like and who
18 receives a transfer of collateral from the secured party or is
19 subrogated to his rights has thereafter the rights and duties of
20 the secured party. Such a transfer of collateral is not a sale
21 or disposition of the collateral under this Article.

22 Sec. 9.505. COMPULSORY DISPOSITION OF COLLATERAL; ACCEPTANCE
23 OF THE COLLATERAL AS DISCHARGE OF OBLIGATION.

24 (1) If the debtor has paid sixty per cent of the cash
25 price in the case of a purchase money security interest in con-
26 sumer goods or sixty per cent of the loan in the case of another
27 security interest in consumer goods, and has not signed after de-
28 fault a statement renouncing or modifying his rights under this
29 Part a secured party who has taken possession of collateral must

1 dispose of it under Section 9.504. and if he fails to do so within
2 ninety days after he takes possession the debtor at his option may
3 recover in conversion or under Section 9.507(1). on secured
4 party's liability.

5 (2) In any other case involving consumer goods or any
6 other collateral a secured party in possession may, after default,
7 propose to retain the collateral in satisfaction of the obligation.
8 Written notice of such proposal shall be sent to the debtor and
9 except in the case of consumer goods to any other secured party
10 who has a security interest in the collateral and who has duly
11 filed a financing statement indexed in the name of the debtor in
12 this state or is known by the secured party in possession to have
13 a security interest in it. If the debtor or other person entitled
14 to receive notification objects in writing within thirty days
15 from the receipt of the notification or if any other secured party
16 objects in writing within thirty days after the secured party ob-
17 tains possession the secured party must dispose of the collateral
18 under Section 9.504. In the absence of such written objection
19 the secured party may retain the collateral in satisfaction of
20 the debtor's obligation.

21 Sec. 9.506. DEBTOR'S RIGHT TO REDEEM COLLATERAL. At any
22 time before the secured party has disposed of collateral or entered
23 into a contract for its disposition under Section 9.504. or before
24 the obligation has been discharged under Section 9.505(2). the
25 debtor or any other secured party may unless otherwise agreed in
26 writing after default redeem the collateral by tendering fulfill-
27 ment of all obligations secured by the collateral as well as the
28 expenses reasonably incurred by the secured party in retaking,
29 holding and preparing the collateral for disposition, in arranging

1 for the sale, and to the extent provided in the agreement and not
2 prohibited by law, his reasonable attorneys' fees and legal ex-
3 penses.

4 Sec. 9.507. SECURED PARTY'S LIABILITY FOR FAILURE TO COMPLY
5 WITH THIS PART.

6 (1) If it is established that the secured party is not
7 proceeding in accordance with the provisions of this Part dis-
8 position may be ordered or restrained on appropriate terms and
9 conditions. If the disposition has occurred the debtor or any
10 person entitled to notification or whose security interest has
11 been made known to the secured party prior to the disposition has
12 a right to recover from the secured party any loss caused by a
13 failure to comply with the provisions of this Part. If the col-
14 lateral is consumer goods, the debtor has a right to recover in
15 any event an amount not less than the credit service charge plus
16 ten per cent of the principal amount of the debt or the time price
17 differential plus ten per cent of the cash price.

18 (2) The fact that a better price could have been ob-
19 tained by a sale at different time or in a different method from
20 that selected by the secured party is not of itself sufficient to
21 establish that the sale was not made in a commercially reasonable
22 manner. If the secured party either sells the collateral in the
23 usual manner in any recognized market therefor or if he sells at
24 the price current in such market at the time of his sale or if he
25 has otherwise sold in conformity with reasonable commercial prac-
26 tices among dealers in the type of property sold he has sold in a
27 commercially reasonable manner. The principles stated in the two
28 preceding sentences with respect to sales also apply as may be
29 appropriate to other types of disposition. A disposition which

1 has been approved in any judicial proceeding or by any bona fide
2 creditors' committee or representative of creditors shall conclu-
3 sively be deemed to be commercially reasonable, but this sentence
4 does not indicate that any such approval must be obtained in any
5 case nor does it indicate that any disposition not so approved is
6 not commercially reasonable.

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1 ARTICLE X

2 EFFECTIVE DATE AND REPEALER

3 Sec. 10.101. EFFECTIVE DATE. This Act shall become effec-
4 tive at midnight on December 31st following its enactment. It
5 applies to transactions entered into and events occurring after
6 that date.

7 Sec. 10.102. SPECIFIC REPEALER; PROVISION FOR TRANSITION.

8 (1) The following acts and all other acts and parts of
9 acts inconsistent herewith are hereby repealed:

10 The Uniform Sales Act, Sections 29-1-1 - 29-1-189
11 ACLA 1949, as amended by Ch. 96, SLA 1955.

12 The Uniform Conditional Sales Act, Sections 29-2-1 -
13 29-2-30, ACLA 1949.

14 Uniform Negotiable Instruments Act, Sections
15 27-1-1 - 27-4-6, ACLA 1949.

16 Uniform Warehouse Receipts Act, Sections 31-1-1 -
17 31-5-4, ACLA 1949.

18 Uniform Trust Receipts Law, Sections 1-20, Ch. 40,
19 SLA 1951.

20 Uniform Stock Transfer Act, Sections 1-23, Ch. 148,
21 SLA 1959.

22 Uniform Bills of Lading Act, Sections 24-1-1 -
23 24-5-4, ACLA 1949.

24 Sections 1-12, Ch. 90, SLA 1951, as amended by
25 Section 10(2), Art. I, Ch. 82, SLA 1955.

26 Sections 29-3-1 - 29-3-5, ACLA 1949.

27 Sections 22-6-1 - 22-6-16, ACLA 1949.

28 Sections 3.175 - 3.180, Part D, Title 1, Art. III,
29 Ch. 129, SLA 1951.

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Sections 3.106, 3.107, 3.108, 3.110, 3.111, 3.113,
3.114, 3.117, Part A, Title 1, Art. III, Ch. 129, SLA 1951.

(2) Transactions validly entered into before the ef-
fective date specified in Section 10.101. and the rights, duties
and interests flowing from them remain valid thereafter and may
be terminated, completed, consummated or enforced as required or
permitted by any statute or other law amended or repealed by this
Act as though such repeal or amendment had not occurred.

Sec. 10.103. GENERAL REPEALER. Except as provided in the
following section, all acts and parts of acts inconsistent with
this Act are hereby repealed.

Sec. 10.104. LAWS NOT REPEALED. The Article on Documents
of Title (Article VII) does not repeal or modify any laws pres-
cribing the form or contents of documents of title or the services
or facilities to be afforded by bailees, or otherwise regulating
bailees' businesses in respects not specifically dealt with
herein; but the fact that such laws are violated does not affect
the status of a document of title which otherwise complies with
the definition of a document of title (Section 1.201.)

OFFICIAL CONSOLIDATION OF AMENDMENTS ADOPTED BY
THE HOUSE AND SENATE FOR HOUSE BILL NO. 120

1. Page 10, line 11: Insert a period after the parenthetical reference.
2. Page 10, line 22: Strike the first "an"; substitute "and"
3. Page 20, line 28: After "goods" insert "including the sale or transfer of a boat or vessel"
4. Page 22, line 8: Strike "proaneous"; substitute "poraneous"
5. Page 41, line 5: Place parenthesis after word "delivery"
6. Page 59, line 15: Strike "reasonably"; substitute "reasonable"
7. Page 73, line 7: Change "privisions" to "provisions"
8. Page 75, line 28: Substitute "saved" for "saves"
9. Page 78, line 6: Substitute "dated" for "dates"
10. Page 82, line 10: Substitute "accrued" for "accrued"
11. Page 87, line 17: Substitute "fixed" for "foxed"
12. Page 108, line 25: Substitute "order" for "other"
13. Page 128, line 11: Substitute "under" for "uner"
14. Page 137, line 1: Insert a comma after "item"
15. Page 157, line 23: Substitute "or" for the third "of"
16. Page 161, line 7: Insert a comma after "advise"
17. Page 161, line 18: Strike the second "of"
18. Page 166, line 23: Strike semicolon after "entitled"
19. Page 172, line 6: Strike balance of paragraph after "schedule" and substitute "in the office of the recorder in the recording district in which any part of the goods is located."
20. Page 187, line 21: Substitute "three" for "six"
21. Page 192, line 8: Substitute "negotiates" for "negotiated"
22. Page 202, line 16: Substitute "negotiates" for "negotiated"
23. Page 203, lines 8 & 9: See Note #1 at end of amendments.
24. Page 213, line 10: After "particular" insert "adverse"
25. Page 214, line 25: Strike period
26. Page 218, line 15: Substitute "ineffectiveness" for "effectiveness"

27. Page 221, line 7: Strike "l" in "wrongfull"
28. Page 237, line 27: After "livestock" add "or supplies"
29. Page 240, line 20: Strike line 20 and substitute "may also be subject to other statutes dealing with loans and retail installment sales,"
30. Page 242, line 22: Strike semicolon after "is"
31. Page 245, line 25: Strike the "s" in "interests"
32. Page 246, line 21: Strike the "s" in "interests"
33. Page 248, between lines 2 & 3: Insert subparagraph (4) to read as follows:

"(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official."

34. Page 250, line 3: Insert a comma after "goods"
35. Page 253, line 5: Strike "ed" in "interested"
36. Page 258, line 18: Substitute "in" for the first usage of "on"
37. Page 262, line 20: Strike lines 20 to 29 inclusive and substitute:

"(a) when the collateral is consumer goods, or is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, then in the office of the recorder in the recording district of the debtor's residence or if the debtor is not a resident of this state then in the office of the recorder in the recording district where the goods are kept, and in addition when the collateral is crops in the office of the recorder in the recording district where the land on which the crops are growing or to be grown is located."

38. Page 263, between lines 4 & 5: Insert the following:

"(c) in all other cases in the office of the Department of Administration."

39. Page 263, lines 12 through 22: Delete (3) and insert:

"(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed."

40. Page 264, line 24: Substitute "assignor" for "assignee"

41. Page 269, line 14: Add new section to read as follows:

"Sec. 9.407. INFORMATION FROM FILING OFFICER.

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be as prescribed by the Administrative Director of Courts for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee as prescribed by the Administrative Director of Courts."

42. Page 270, lines 27 & 28: Substitute line 27 for line 28 and vice versa

43. Page 278, line 11: After "by" insert "Section 2,"

44. Strike the periods after numeral references to sections wherever they appear in the middle of the sentence, among them:

Page 97, line 8: After "3.302"
line 16: After "3.302"
Page 108, line 5: After "3.115"
Page 113, line 9: After "3.205" and "3.206"
Page 114, line 2: After "3.502"
line 10: After "3.502"
Page 117, line 8: After "4.210"
Page 136, line 21: After "4.212"
Page 142, line 7: After "3.302"
line 21: After "3.505"
Page 150, line 20: After "4.213" and "4.302"
Page 159, line 19: After "5.102"
Page 164, line 9: After "5.114"
Page 167, line 7: After "2.710"
line 17: After "2.610"
Page 168, line 26: After "5.102(1)"
Page 199, line 16: After "7.205"
Page 226, line 20: After "8.402"
Page 230, line 10: After "9.103"
line 11: After "9.104"
Page 233, line 10: After "9.310"
Page 238, line 21: After "9.502(2)"
Page 240, line 5: After "4.208"
line 6: After "9.113"
Page 245, line 23: After "9.312"

Page 247, line 1: After "9.305"
line 4: After "9.304"
line 5: After "9.306"
line 8: After "9.313"
line 12: After "9.313"
Page 248, line 8: After "9.302", "9.304" and "9.305"
Page 253, line 21: After "9.304"
Page 254, lines 25 to 29: After numeral references to sections
Page 255, lines 1 to 10: After numeral references to sections
Page 256, line 22: After "9.204"
line 26: After "9.204"
Page 257, line 1: After "9.204"
Page 261, line 15: After "9.206"
Page 264, line 19: After "9.306"
Page 270, lines 11 to 21: After 7 numeral references to
sections
Page 275, line 1: After "9.504"
line 3: After "9.507(1)"
line 23: After "9.504"
line 24: After "9.502(2)"
Page 279, line 4: After "10.101"

45. Page 23 of index between lines 9 and 10: Insert "Sec. 9.407. INFORMATION FROM FILING OFFICER 269"

NOTE #1:

Page 203, lines 8 & 9: We notice that cross references to Articles designate the Article by use of Arabic numerals; elsewhere in the Code, Roman numerals are correctly used. This error is present in other portions of the Code and should be corrected.

NOTE #2:

The Committee requests that the engrossing clerical personnel be instructed to strike periods in all other places where they occur in the Code where they are not found in the "1958 Official Text of the Uniform Commercial Code prepared and printed by the American Law Institute and the National Conference of Commissioners on Uniform State Laws."