

CHAPTER 396.

UNIFORM SALES ACT.

S. F. 82.

AN ACT to make uniform the law of sales of goods, and repealing all acts or parts of acts inconsistent herewith and providing that this act may be cited as the uniform sales act.

Be it enacted by the General Assembly of the State of Iowa:

PART I.

FORMATION OF THE CONTRACT.

1 SECTION 1. Contracts to sell and sales. (1) A contract to sell
2 goods is a contract whereby the seller agrees to transfer the property
3 in goods to the buyer for a consideration called price.

4 (2) A sale of goods is an agreement whereby the seller trans-
5 fers the property in goods to the buyer for a consideration called the
6 price.

7 (3) A contract to sell or a sale may be absolute or conditional.

8 (4) There may be a contract to sell or a sale between one part
9 owner and another.

1 SEC. 2. Capacity — liabilities for necessities. Capacity to buy
2 and sell is regulated by the general law concerning capacity to con-
3 tract and to transfer and acquire property.

4 Where necessities are sold and delivered to an infant, or to a per-
5 son who by reason of mental incapacity or drunkenness is incompetent
6 to contract, he must pay a reasonable price therefor.

7 Necessaries in this section mean goods suitable to the condition in
8 life of such infant or other person and to his actual requirements at
9 the time of delivery.

FORMALITIES OF THE CONTRACT.

1 SEC. 3. Form of contract or sale. Subject to the provisions of
2 this act and of any statute in that behalf, a contract to sell or a sale
3 may be made in writing (either with or without seal), or by word of
4 mouth, or partly in writing and partly by word of mouth, or may be
5 inferred from the conduct of the parties.

1 SEC. 4. Statute of frauds. (1) A contract to sell or a sale of
2 any goods or choses in action shall not be enforceable by action unless
3 the buyer shall accept part of the goods or choses in action so con-
4 tracted to be sold or sold and actually receive the same or give some-
5 thing in earnest to bind the contract, or in part payment, or unless
6 some note or memorandum in writing of the contract or sale be signed
7 by the party to be charged or his agent in that behalf.

8 (2) The provisions of this section apply to every such contract or
9 sale, notwithstanding that the goods may be intended to be delivered
10 at some future time or may not at the time of such contract or sale
11 be actually made, procured, or provided, or fit or ready for delivery,

12 or some act may be requisite for the making or completing thereof,
13 or rendering the same fit for delivery; but if the goods are to be
14 manufactured by the seller especially for the buyer and are not suit-
15 able for sale to others in the ordinary course of the seller's business,
16 the provisions of this section shall not apply.

17 (3) There is an acceptance of goods within the meaning of this
18 section when the buyer, either before or after delivery of the goods,
19 expresses by words or conduct his assent to becoming the owner of
20 those specific goods.

SUBJECT-MATTER OF CONTRACT. .

1 SEC. 5. Existing and future goods. (1) The goods which form
2 the subject of a contract to sell may be either existing goods, owned
3 or possessed by the seller, or goods to be manufactured or acquired
4 by the seller after the making of the contract to sell, in this act called
5 "future goods".

6 (2) There may be a contract to sell goods, the acquisition of which
7 by the seller depends upon a contingency which may or may not hap-
8 pen.

9 (3) Where the parties purport to effect a present sale of future
10 goods, the agreement operates as a contract to sell the goods.

1 SEC. 6. Undivided shares. (1) There may be a contract to sell
2 or a sale of an undivided share of goods. If the parties intend to
3 affect a present sale, the buyer by force of the agreement becomes an
4 owner in common with the owner or owners of the remaining shares.

5 (2) In the case of fungible goods, there may be a sale of an
6 undivided share of a specific mass, though the seller purports to sell
7 and the buyer to buy a definite number, weight, or measure of the
8 goods in the mass and though the number, weight, or measure of the
9 goods in the mass is undetermined. By such a sale the buyer becomes
10 owner in common of such a share of the mass as the number, weight,
11 or measure bought bears to the number, weight, or measure of the
12 mass. If the mass contains less than the number, weight, or measure
13 bought, the buyer becomes the owner of the whole mass and the seller
14 is bound to make good the deficiency from similar goods unless a con-
15 trary intent appears.

1 SEC. 7. Destruction of goods sold. (1) Where the parties pur-
2 port to sell specific goods, and the goods without the knowledge of the
3 seller have wholly perished at the time when the agreement is made,
4 the agreement is void.

5 (2) Where the parties purport to sell specific goods, and the
6 goods without the knowledge of the seller have perished in part or
7 have wholly or in a material part so deteriorated in quality as to be
8 substantially changed in character, the buyer may at his option treat
9 the sale:

10 (a) As avoided, or

11 (b) As transferring the property in all of the existing goods or in
12 so much thereof as have not deteriorated, and as binding the buyer
13 to pay the full agreed price if the sale was indivisible, or to pay the
14 agreed price for the goods in which the property passes if the sale was
15 divisible.

SEC. 8. Destruction of goods contracted to be sold.

1 (1) Where there is a contract to sell specific goods, and subse-
 2 quently, but before the risk passes the buyer, without any fault on
 3 the part of the seller or the buyer, the goods wholly perish, the con-
 4 tract is thereby avoided.

5 (2) Where there is a contract to sell specific goods, and conse-
 6 quently, but before the risk passes to the buyer, without any fault of
 7 the seller or the buyer, part of the goods perish or the whole or a
 8 material part of the goods so deteriorate in quality as to be sub-
 9 stantially changed in character, the buyer may, at his option treat the
 10 contract;

11 (a) As avoided; or

12 (b) As binding the seller to transfer the property in all of the
 13 existing goods or in so much thereof as have not deteriorated, and as
 14 binding the buyer to pay the full agreed price if the contract was indi-
 15 visible, or to pay the agreed price for so much of the goods as the
 16 seller, by the buyer's option, is bound to transfer if the contract was
 17 divisible.

THE PRICE.

1 **SEC. 9. Definition and ascertainment of price.** (1) The price
 2 may be fixed by the contract, or may be left to be fixed in such man-
 3 ner as may be agreed, or it may be determined by the course of deal-
 4 ing between the parties.

5 (2) The price may be made payable in any personal property.

6 (3) Where transferring or promising to transfer any interest in
 7 real estate constitutes the whole or part of the consideration for
 8 transferring or for promising to transfer the property in goods, this
 9 act shall not apply.

10 (4) Where the price is not determined in accordance with the
 11 foregoing provisions the buyer must pay a reasonable price. What
 12 is a reasonable price is a question of fact dependent on the circum-
 13 stances of each particular case.

1 **SEC. 10. Sale at a valuation.** (1) Where there is a contract to
 2 sell or a sale of goods at a price or on terms to be fixed by a third per-
 3 son, and such third person, without fault of the seller or the buyer,
 4 can not or does not fix the price or terms, the contract or the sale is
 5 thereby avoided; but if the goods or any part thereof have been
 6 delivered to and appropriated by the buyer he must pay a reasonable
 7 price therefor.

8 (2) Where such third person is prevented from fixing the price
 9 or terms by fault of the seller or the buyer, the party not in fault
 10 may have such remedies against the party in fault as are allowed by
 11 Parts IV and V of this act.

CONDITIONS AND WARRANTIES.

1 **SEC. 11. Effect of conditions.** (1) Where the obligation of
 2 either party to a contract to sell or a sale is subject to any condition
 3 which is not performed, such party may refuse to proceed with the
 4 contract or sale or he may waive performance of the condition. If

5 the other party has promised that the condition should happen or be
6 performed, such first-mentioned party may also treat the nonperform-
7 ance of the condition as a breach of warranty.

8 (2) Where the property in the goods has not passed, the buyer
9 may treat the fulfillment by the seller of his obligation to furnish
10 goods as described and as warranted expressly or by implication in
11 the contract to sell as a condition of the obligation of the buyer to
12 perform his promise to accept and pay for the goods.

1 SEC. 12. **Definition of express warranty.** Any affirmation of fact
2 or any promise by the seller relating to the good is an express war-
3 ranty if the natural tendency of such affirmation or promise is to
4 induce the buyer to purchase the goods, and if the buyer purchases
5 the goods relying thereon. No affirmation of the value of the goods
6 nor any statement purporting to be a statement of the seller's opinion
7 only shall be construed as a warranty.

1 SEC. 13. **Implied warranties of title.** In a contract to sell or a
2 sale, unless contrary intention appears, there is—

3 (1) An implied warranty on the part of the seller that in case of a
4 sale he has a right to sell the goods, and that in case of a contract to
5 sell he will have a right to sell the goods at the time when the prop-
6 erty is to pass;

7 (2) An implied warranty that the buyer shall have and enjoy
8 quiet possession of the goods as against any lawful claims existing at
9 the time of the sale;

10 (3) An implied warranty that the goods shall be free at the time
11 of the sale from any charge or encumbrance in favor of any third
12 person not declared or known to the buyer before or at the time when
13 the contract or sale is made.

14 (4) This section shall not, however, be held to render liable a
15 sheriff, auctioneer, mortgagee, or other person professing to sell by
16 virtue of authority in fact or law goods in which a third person has
17 a legal or equitable interest.

1 SEC. 14. **Implied warranty in sale by description.** Where there
2 is a contract to sell or a sale of goods by description, there is an
3 implied warranty that the goods shall correspond with the descrip-
4 tion, and if the contract or sale be by sample, as well as by descrip-
5 tion, it is not sufficient that the bulk of the goods corresponds with
6 the sample if the goods do not also correspond with the description.

1 SEC. 15. **Implied warranties of quality.** Subject to the provi-
2 sions of this act and of any statute in that behalf, there is no implied
3 warranty or condition as to the quality or fitness for any particular
4 purpose of goods supplied under a contract to sell or a sale, except
5 as follows:

6 (1) Where the buyer, expressly or by implication, makes known
7 to the seller the particular purpose for which the goods are required,
8 and it appears that the buyer relies on the seller's skill or judgment
9 (whether he be the grower or manufacturer or not), there is an
10 implied warranty that the goods shall be reasonably fit for such pur-
11 pose.

12 (2) Where the goods are bought by description from a seller who
13 deals in goods of that description (whether he be the grower or manu-
14 facturer or not), there is an implied warranty that the goods shall
15 be of merchantable quality.

16 (3) If the buyer has examined the goods, there is no implied war-
 17 ranty as regards defects which such examination ought to have
 18 revealed.

19 (4) In the case of a contract to sell or a sale of a specified article
 20 under its patent or other trade name there is no implied warranty as
 21 to its fitness for any particular purpose.

22 (5) An implied warranty or condition as to quality or fitness for
 23 a particular purpose may be annexed by the usage of trade.

24 (6) An express warranty or condition does not negative a war-
 25 ranty or condition implied under this act unless inconsistent there-
 26 with.

SALE BY SAMPLE.

1 SEC. 16. Implied warranties in sale by sample. In the case of a
 2 contract to sell or a sale by sample;

3 (a) There is an implied warranty that the bulk shall correspond
 4 with the sample in quality.

5 (b) There is an implied warranty that the buyer shall have a rea-
 6 sonable opportunity of comparing the bulk with the sample, except
 7 so far as otherwise provided in section 47 (3).

8 (c) If the seller is a dealer in goods of that kind there is an implied
 9 warranty that the goods shall be free from any defect rendering them
 10 unmerchantable which would not be apparent on reasonable examina-
 11 tion of the sample.

PART II.

TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER.

1 SEC. 17. No property passes until goods are ascertained. Where
 2 there is a contract to sell unascertained goods no property in the
 3 goods is transferred to the buyer unless and until the goods are
 4 ascertained, but property in an undivided share of ascertained goods
 5 may be transferred as provided in section 6.

SEC. 18. Property in specific goods passes when parties so intend.

1 (1) Where there is a contract to sell specific or ascertained goods,
 2 the property in them is transferred to the buyer at such time as the
 3 parties to the contract intend it to be transferred.

4 (2) For the purpose of ascertaining the intention of the parties
 5 regard shall be had to the terms of the contract, the conduct of the
 6 parties, usages of trade, and the circumstances of the case.

1 SEC. 19. Rules for ascertaining intention. Unless a different
 2 intention appears, the following are rules for ascertaining the inten-
 3 tion of the parties as to the time at which the property in the goods is
 4 to pass to the buyer.

5 Rule 1. Where there is an unconditional contract to sell specific
 6 goods in a deliverable state the property in the goods passes to the
 7 buyer when the contract is made, and it is immaterial whether the
 8 time of payment, or the time of delivery, or both, be postponed.

9 Rule 2. Where there is a contract to sell specific goods and the
 10 seller is bound to do something to the goods, for the purpose of put-

11 ting them into a deliverable state, the property does not pass until
12 such thing be done.

13 Rule 3. (1) When goods are delivered to the buyer "on sale or
14 return", or on other terms indicating an intention to make a present
15 sale, but to give the buyer an option to return the goods instead of
16 paying the price, the property passes to the buyer on delivery, but
17 he may revest the property in the seller by returning or tendering the
18 goods within the time fixed in the contract, or, if no time has been
19 fixed, within a reasonable time.

20 (2) When goods are delivered to the buyer on approval or on trial
21 or on satisfaction, or other similar terms, the property therein passes
22 to the buyer—

23 (a) When he signifies his approval or acceptance to the seller or
24 does any other act adopting the transaction;

25 (b) If he does not signify his approval or acceptance to the seller,
26 but retains the goods without giving notice or rejection, then if a
27 time has been fixed for the return of the goods, on the expiration of
28 such time, and if no time has been fixed on the expiration of a reason-
29 able time. What is a reasonable time is a question of fact.

30 Rule 4. (1) Where there is a contract to sell unascertained or
31 future goods by description, and goods of that description and in a
32 deliverable state are unconditionally appropriated to the contract,
33 either by the seller with the assent of the buyer, or by the buyer with
34 the assent of the seller, the property in the goods thereupon passes
35 to the buyer. Such assent may be expressed or implied, and may be
36 given either before or after the appropriation is made.

37 (2) Where, in pursuance of a contract to sell, the seller delivers
38 the goods to the buyer, or to a carrier or other bailee (whether named
39 by the buyer or not) for the purpose of transmission to or holding
40 for the buyer, he is presumed to have unconditionally appropriated
41 the goods to the contract, except in the cases provided for in the next
42 rule and in section 20. This presumption is applicable, although by
43 the terms of the contract the buyer is to pay the price before receiv-
44 ing delivery of the goods, and the goods are marked with the words
45 "collect on delivery" or their equivalents.

46 Rule 5. If the contract to sell requires the seller to deliver the
47 goods to the buyer, or at a particular place or to pay the freight or
48 cost of transportation to the buyer, or to a particular place, the prop-
49 erty does not pass until the goods have been delivered to the buyer or
50 reached the place agreed upon.

SEC. 20. **Reservation of right of possession or property when
1 goods are shipped.** (1) Where there is a contract to sell specific
2 goods, or where goods are subsequently appropriated to the contract,
3 the seller may, by the terms of the contract or appropriation, reserve
4 the right of possession or property in the goods until certain condi-
5 tions have been fulfilled. The right of possession or property may
6 be thus reserved notwithstanding the delivery of the goods to the
7 buyer or to a carrier or other bailee for the purpose of transmission
8 to the buyer.

9 (2) Where goods are shipped, and by the bill of lading the goods
10 are deliverable to the seller or his agent, or to the order of the seller
11 or of his agent, the seller thereby reserves the property in the goods.
12 But if, except for the form of the bill of lading, the property would

13 have passed to the buyer on shipment of the goods, the seller's prop-
 14 erty in the goods shall be deemed to be only for the purpose of secur-
 15 ing performance by the buyer of his obligations under the contract.

16 (3) Where goods are shipped, and by the bill of lading the goods
 17 are deliverable to the order of the buyer or of his agent, but posses-
 18 sion of the bill of lading is retained by the seller or his agent, the
 19 seller thereby reserves a right to the possession of the goods as against
 20 the buyer.

21 (4) Where the seller of goods draws on the buyer for the price
 22 and transmits the bill of exchange and bill of lading together to the
 23 buyer to secure acceptance or payment of the bill of exchange the
 24 buyer is bound to return the bill of lading if he does not honor the
 25 bill of exchange, and if he wrongfully retains the bill of lading he
 26 acquires no added right thereby. If, however, the bill of lading pro-
 27 vides that the goods are deliverable to the buyer or to the order of
 28 the buyer, or is indorsed in blank or to the buyer by the consignee
 29 named therein, one who purchases in good faith for value the bill of
 30 lading or goods from the buyer will obtain the property in the goods,
 31 although the bill of exchange has not been honored, provided that
 32 such purchaser has received delivery of the bill of lading indorsed
 33 by the consignee named therein, or the goods, without notice of the
 34 facts making the transfer wrongful.

1 SEC. 21. Sale by auction. In the case of sale by auction—

2 (1) Where goods are put up for sale by auction in lots each lot is
 3 the subject of a separate contract of sale.

4 (2) A sale by auction is complete when the auctioneer announces
 5 its completion by the fall of the hammer, or in other customary man-
 6 ner. Until such announcement is made any bidder may retract his
 7 bid, and the auctioneer may withdraw the goods from the sale unless
 8 the auction has been announced to be without reserve.

9 (3) A right to bid may be reserved expressly by or on behalf of
 10 the seller.

11 (4) Where notice has not been given that a sale by auction is
 12 subject to a right to bid on behalf of the seller it shall not be lawful
 13 for the seller to bid himself or to employ or induce any person to bid
 14 at such sale on his behalf, or for the auctioneer to employ or induce
 15 any person to bid at such sale on behalf of the seller or knowingly to
 16 take any bid from the seller or any person employed by him. Any
 17 sale contravening this rule may be treated as fraudulent by the buyer.

1 SEC. 22. Risk of loss. Unless otherwise agreed, the goods remain
 2 at the seller's risk until the property therein is transferred to the
 3 buyer, but when the property therein is transferred to the buyer the
 4 goods are at the buyer's risk whether delivery has been made or not,
 5 except that—

6 (a) Where delivery of the goods has been made to the buyer, or
 7 to a bailee for the buyer, in pursuance of the contract and the property
 8 in the goods has been retained by the seller merely to secure perform-
 9 ance by the buyer of his obligations under the contract, the goods are
 10 at the buyer's risk from the time of such delivery.

11 (b) Where delivery has been delayed through the fault of either
 12 buyer or seller the goods are at the risk of the party in fault as
 13 regards any loss which might not have occurred but for such fault.

TRANSFER OF TITLE.

1 **SEC. 23. Sale by a person not the owner.** (1) Subject to the
2 provisions of this act, where goods are sold by a person who is not
3 the owner thereof, and who does not sell them under the authority or
4 with the consent of the owner, the buyer acquires no better title to
5 the goods than the seller had, unless the owner of the goods is by his
6 conduct precluded from denying the seller's authority to sell.

7 (2) Nothing in this act, however, shall affect:

8 (a) The provisions of any factors' acts, recording acts, or any
9 enactment enabling the apparent owner of goods to dispose of them
10 as if he were the true owner thereof.

11 (b) The validity of any contract to sell or sale under any common
12 law or statutory power of sale or under the order of a court of com-
13 petent jurisdiction.

1 **SEC. 24. Sale by one having a voidable title.** Where the seller
2 of goods has a voidable title thereto, but his title has not been avoided
3 at the time of sale, the buyer acquires a good title to the goods, pro-
4 vided he buys them in good faith, for value, and without notice of the
5 seller's defect of title.

1 **SEC. 25. Sale by seller in possession of goods already sold.** Where
2 a person having sold goods continues in possession of the goods, or
3 of negotiable documents of title to the goods, the delivery or transfer
4 by that person, or by an agent acting for him, of the goods or docu-
5 ments of title under any sale, pledge, or other disposition thereof, to
6 any person receiving and paying value for the same in good faith and
7 without notice of the previous sale, shall have the same effect as if
8 the person making the delivery or transfer were expressly authorized
9 by the owner of the goods to make the same.

1 **SEC. 26. Creditors' rights against sold goods in seller's possession.**
2 Where a person having sold goods continues in possession of the
3 goods, or of negotiable documents of title to the goods and such reten-
4 tion of possession is fraudulent in fact or is deemed fraudulent under
5 any rule of law, a creditor or creditors of the seller may treat the sale
6 as void.

1 **SEC. 27. Definition of negotiable documents of title.** A docu-
2 ment of title in which it is stated that the goods referred to therein
3 will be delivered to the bearer, or to the order of any person named
4 in such document is a negotiable document of title.

1 **SEC. 28. Negotiation of negotiable documents by delivery.** A
2 negotiable document of title may be negotiated by delivery—

3 (a) Where by the terms of the document the carrier, warehouse-
4 man, or other bailee issuing the same undertakes to deliver the goods
5 to the bearer, or

6 (b) Where by the terms of the document the carrier, warehouse-
7 man, or other bailee issuing the same undertakes to deliver the goods
8 to the order of a specified person, and such person or a subsequent
9 indorsee of the document has indorsed it in blank or to bearer.

10 Where by the terms of a negotiable document of title the goods are
11 deliverable to bearer or where a negotiable document of title has been
12 indorsed in blank or to bearer, any holder may indorse the same to

13 himself or to any other specified person, and in such case the docu-
14 ment shall thereafter be negotiated only by the indorsement of such
15 indorsee.

1 **SEC. 29. Negotiation of negotiable documents by indorsement.** A
2 negotiable document of title may be negotiated by the indorsement of
3 the person to whose order the goods are by the terms of the docu-
4 ment deliverable. Such indorsement may be in blank, to bearer, or
5 to a specified person. If indorsed to a specified person, it may be
6 again negotiated by the indorsement of such person in blank, to
7 bearer, or to another specified person. Subsequent negotiation may
8 be made in like manner.

SEC. 30. Negotiable documents of title marked "Not negotiable."
1 If a document of title which contains an undertaking by a carrier,
2 warehouseman, or other bailee to deliver the goods to the bearer, to
3 a specified person or order, or to the order of specified person, or
4 which contains words of like import, has placed upon it the words
5 "not negotiable," "nonnegotiable," or the like, such a document may,
6 nevertheless, be negotiated by the holder and is a negotiable document
7 of title within the meaning of this act. But nothing in this act con-
8 tained shall be construed as limiting or defining the effect upon the
9 obligations of the carrier, warehouseman, or other bailee issuing a
10 document of title of placing thereon the words "not negotiable," "non-
11 negotiable," or the like.

1 **SEC. 31. Transfer of nonnegotiable documents.** A document of
2 title which is not in such form that it can be negotiated by delivery
3 may be transferred by the holder by delivery to a purchaser or donee.
4 A nonnegotiable document cannot be negotiated, and the indorsement
5 of such a document gives the transferee no additional right.

1 **SEC. 32. Who may negotiate a document.** A negotiable docu-
2 ment may be negotiated by any person in possession of the same,
3 however such possession may have been acquired, if by the terms of
4 the document the bailee issuing it undertakes to deliver the goods
5 to the order of such person, or if at the time of negotiation the docu-
6 ment is in such form that it may be negotiated by delivery.

SEC. 33. Rights of person to whom document has been negotiated.
1 A person to whom a negotiable document of title has been duly nego-
2 tiated acquires thereby:
3 (a) Such title to the goods as the person negotiating the docu-
4 ment to him had or had ability to convey to a purchaser in good faith
5 for value and also such title to the goods as the person to whose order
6 the goods were to be delivered by the terms of the document had or
7 had ability to convey to a purchaser in good faith for value, and
8 (b) The direct obligation of the bailee issuing the document to
9 hold possession of the goods for him according to the terms of the
10 document as fully as if such bailee had contracted directly with him.

SEC. 34. Rights of person to whom document has been transferred.
1 A person to whom a document of title has been transferred, but not
2 negotiated, acquires thereby, as against the transferor, the title to the
3 goods, subject to the terms of any agreement with the transferor.

4 If the document is nonnegotiable, such person also acquires the
 5 right to notify the bailee who issued the document of the transfer
 6 thereof, and thereby to acquire the direct obligation of such bailee to
 7 hold possession of the goods for him according to the terms of the
 8 document.

9 Prior to the notification of such bailee by the transferor or trans-
 10 feree of a nonnegotiable document of title, the title of the
 11 transferee to the goods and the right to acquire the obligation of such
 12 bailee may be defeated by the levy of an attachment or execution
 13 upon the goods by a creditor of the transferor, or by notification to
 14 such bailee by the transferor or a subsequent purchaser from the
 15 transferor of a subsequent sale of the goods by the transferor.

SEC. 35. Transfer of negotiable document without indorsement.

1 Where a negotiable document of title is transferred for value by
 2 delivery, and the indorsement of the transferor is essential for nego-
 3 tiation, the transferee acquires a right against the transferor to com-
 4 pel him to indorse the document unless a contrary intention appears.
 5 The negotiation shall take effect as of the time when the indorsement
 6 is actually made.

1 **SEC. 36. Warranties on sale of document.** A person who for
 2 value negotiates or transfers a document of title by indorsement or
 3 delivery, including one who assigns for value a claim secured by a
 4 document of title unless a contrary intention appears, warrants:

- 5 (a) That the document is genuine;
- 6 (b) That he has a legal right to negotiate or transfer it;
- 7 (c) That he has knowledge of no fact which would impair the
 8 validity or worth of the document; and
- 9 (d) That he has a right to transfer the title to the goods and that
 10 the goods are merchantable or fit for a particular purpose, whenever
 11 such warranties would have been implied if the contract of the par-
 12 ties had been to transfer without a document of title the goods repre-
 13 sented thereby.

1 **SEC. 37. Indorser not a guarantor.** The indorsement of a docu-
 2 ment of title shall not make the indorser liable for any failure on the
 3 part of the bailee who issued the document or previous indorsers
 4 thereof to fulfill their respective obligations.

1 **SEC. 38. When negotiation not impaired by fraud, mistake, or**
 2 **duress.** The validity of the negotiation of a negotiable document of
 3 title is not impaired by the fact that the negotiation was a breach of
 4 duty on the part of the person making the negotiation, or by the
 5 fact that the owner of the document was induced by fraud, mistake,
 6 or duress to intrust the possession or custody thereof to such person,
 7 if the person to whom the document was negotiated or a person to
 8 whom the document was subsequently negotiated paid value there-
 9 for, without notice of the breach of duty, or fraud, mistake, or duress.

1 **SEC. 39. Attachment or levy upon goods for which a negotiable**
 2 **document has been issued.** If goods are delivered to a bailee by the
 3 owner or by a person whose act in conveying the title to them to a
 4 purchaser in good faith for value would bind the owner and a nego-
 5 tiable document of title is issued for them they can not thereafter,
 6 while in the possession of such bailee, be attached by garnishment or

6 otherwise or be levied upon under an execution unless the document
7 be first surrendered to the bailee or its negotiation enjoined. The
8 bailee shall in no case be compelled to deliver up the actual possession
9 of the goods until the document is surrendered to him or impounded
10 by the court.

1 SEC. 40. **Creditors' remedies to reach negotiable documents.** A
2 creditor whose debtor is the owner of a negotiable document of title
3 shall be entitled to such aid from courts of appropriate jurisdiction by
4 injunction and otherwise in attaching such document or in satisfying
5 the claim by means thereof as is allowed at law or in equity in regard
6 to property which can not readily be attached or levied upon by
7 ordinary legal process.

PART III.

PERFORMANCE OF THE CONTRACT.

1 SEC. 41. **Seller must deliver and buyer accept goods.** It is the
2 duty of the seller to deliver the goods and of the buyer to accept and
3 pay for them, in accordance with the terms of the contract to sell or
4 sale.

1 SEC. 42. **Delivery and payment are concurrent conditions.** Unless
2 otherwise agreed, delivery of the goods and payment of the price are
3 concurrent conditions; that is to say, the seller must be ready and
4 willing to give possession of the goods to the buyer in exchange for
5 the price and the buyer must be ready and willing to pay the price
6 in exchange for possession of the goods.

1 SEC. 43. **Place, time, and manner of delivery.** (1) Whether it
2 is for the buyer to take possession of the goods or for the seller to
3 send them to the buyer is a question depending in each case on the
4 contract, express or implied, between the parties. Apart from any
5 such contract, express or implied, or usage of trade to the contrary,
6 the place of delivery is the seller's place of business if he have one,
7 and if not his residence; but in case of a contract to sell or a sale of
8 specific goods, which to the knowledge of the parties when the con-
9 tract or the sale was made were in some other place, then that place
10 is the place of delivery.

11 (2) Where by a contract to sell or a sale the seller is bound to send
12 the goods to the buyer, but no time for sending them is fixed, the
13 seller is bound to send them within a reasonable time.

14 (3) Where the goods at the time of sale are in the possession of
15 a third person, the seller has not fulfilled his obligation to deliver to
16 the buyer unless and until such third person acknowledges to the
17 buyer that he holds the goods on the buyer's behalf; but as against
18 all others than the seller the buyer shall be regarded as having
19 received delivery from the time when such third person first has notice
20 of the sale. Nothing in this section, however, shall affect the opera-
21 tion of the issue or transfer of any document of title to goods.

22 (4) Demand or tender of delivery may be treated as ineffectual
23 unless made at a reasonable hour. What is a reasonable hour is a
24 question of fact.

25 (5) Unless otherwise agreed, the expenses of and incidental to
26 putting the goods into a deliverable state must be borne by the seller.

1 **SEC. 44. Delivery of wrong quantity.** (1) Where the seller
2 delivers to the buyer a quantity of goods less than he contracted to
3 sell, the buyer may reject them, but if the buyer accepts or retains
4 the goods so delivered, knowing that the seller is not going to perform
5 the contract in full, he must pay for them at the contract rate. If,
6 however, the buyer has used or disposed of the goods delivered before
7 he knows that the seller is not going to perform his contract in full,
8 the buyer shall not be liable for more than the fair value to him of
9 the goods so received.

10 (2) Where the seller delivers to the buyer a quantity of goods
11 larger than he contracted to sell, the buyer may accept the goods
12 included in the contract and reject the rest, or he may reject the
13 whole. If the buyer accepts the whole of the goods so delivered, he
14 must pay for them at the contract rate.

15 (3) Where the seller delivers to the buyer the goods he contracted
16 to sell mixed with goods of a different description not included in the
17 contract, the buyer may accept the goods which are in accordance with
18 the contract and reject the rest, or he may reject the whole.

19 (4) The provisions of this section are subject to any usage of
20 trade, special agreement, or course of dealing between the parties.

1 **SEC. 45. Delivery in installments.** (1) Unless otherwise agreed,
2 the buyer of goods is not bound to accept delivery thereof by install-
3 ments.

4 (2) Where there is a contract to sell goods to be delivered by
5 stated installments, which are to be separately paid for, and the seller
6 makes defective deliveries in respect of one or more installments, or
7 the buyer neglects or refuses to take delivery of or pay for one or
8 more installments, it depends in each case on the terms of the contract
9 and the circumstances of the case whether the breach of contract is
10 so material as to justify the injured party in refusing to proceed
11 further and suing for damages for breach of the entire contract, or
12 whether the breach is severable, giving rise to a claim for compensa-
13 tion but not to a right to treat the whole contract as broken.

SEC. 46. Delivery to a carrier on behalf of the buyer.

1 (1) Where, in pursuance of a contract to sell or a sale, the seller
2 is authorized or required to send the goods to the buyer, delivery of
3 the goods to a carrier, whether named by the buyer or not, for the
4 purpose of transmission to the buyer is deemed to be a delivery of the
5 goods to the buyer, except in the cases provided for in section 19, rule
6 5, or unless a contrary intent appears.

7 (2) Unless otherwise authorized by the buyer, the seller must
8 make such contract with the carrier on behalf of the buyer as may be
9 reasonable, having regard to the nature of the goods and the other
10 circumstances of the case. If the seller omits so to do, and the goods
11 are lost or damaged in course of transit, the buyer may decline to
12 treat the delivery to the carrier as a delivery to himself, or may hold
13 the seller responsible in damages.

14 (3) Unless otherwise agreed, where goods are sent by the seller
15 to the buyer under circumstances in which the seller knows, or ought
16 to know, that it is usual to insure, the seller must give such notice

17 to the buyer as may enable him to insure them during their transit,
18 and, if the seller fails to do so, the goods shall be deemed to be at his
19 risk during such transit.*

1 **SEC. 47. Right to examine the goods.** (1) Where goods are
2 delivered to the buyer, which he has not previously examined, he is
3 not deemed to have accepted them unless and until he has had a rea-
4 sonable opportunity of examining them for the purpose of ascertain-
5 ing whether they are in conformity with the contract.

6 (2) Unless otherwise agreed, when the seller tenders delivery of
7 goods to the buyer, he is bound, on request, to afford the buyer a
8 reasonable opportunity of examining the goods for the purpose of
9 ascertaining whether they are in conformity with the contract.

10 (3) Where goods are delivered to a carrier by the seller, in accord-
11 ance with an order from or agreement with the buyer, upon the terms
12 that the goods shall not be delivered by the carrier to the buyer until
13 he has paid the price, whether such terms are indicated by marking
14 the goods with the words "collect on delivery," or otherwise, the buyer
15 is not entitled to examine the goods before payment of the price in
16 the absence of agreement permitting such examination.

1 **SEC. 48. What constitutes acceptance.** The buyer is deemed to
2 have accepted the goods when he intimates to the seller that he has
3 accepted them, or when the goods have been delivered to him, and he
4 does any act in relation to them which is inconsistent with the owner-
5 ship of the seller, or when, after the lapse of a reasonable time, he
6 retains the goods without intimating to the seller that he has rejected
7 them.

1 **SEC. 49. Acceptance does not bar action for damages.** In the
2 absence of express or implied agreement of the parties, acceptance of
3 the goods by the buyer shall not discharge the seller from liability in
4 damages or other legal remedy for breach of any promise or warranty
5 in the contract to sell or the sale. But if, after acceptance of the
6 goods, the buyer fails to give notice to the seller of the breach of any
7 promise or warranty within a reasonable time after the buyer knows,
8 or ought to know, of such breach the seller shall not be liable there-
9 for.

1 **SEC. 50. Buyer is not bound to return goods wrongly delivered.**
2 Unless otherwise agreed, where goods are delivered to the buyer, and
3 he refuses to accept them, having the right so to do, he is not bound
4 to return them to the seller, but it is sufficient if he notifies the seller
5 that he refuses to accept them.

1 **SEC. 51. Buyer's liability for failing to accept delivery.** When
2 the seller is ready and willing to deliver the goods and requests the
3 buyer to take delivery, and the buyer does not within a reasonable
4 time after such request take delivery of the goods, he is liable to the
5 seller for any loss occasioned by his neglect or refusal to take delivery,
6 and also for a reasonable charge for the care and custody of the
7 goods. If the neglect or refusal of the buyer to take delivery amounts
8 to a repudiation or breach of the entire contract, the seller shall have
9 the right against the goods and on the contract hereinafter provided
10 in favor of the seller when the buyer is in default.

[Note.—*"transit" evidently intended.]

PART IV.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

1 SEC. 52. Definition of unpaid seller. (1) The seller of goods is
 2 deemed to be an unpaid seller within the meaning of this act—
 3 (a) When the whole of the price has not been paid or tendered.
 4 (b) When a bill of exchange or other negotiable instrument has
 5 been received as conditional payment, and the condition on which it
 6 was received has been broken by reason of the dishonor of the instru-
 7 ment, the insolvency of the buyer, or otherwise.
 8 (2) In this part of this act the term "seller" includes an agent of
 9 the seller to whom the bill of lading has been indorsed, or a consignor
 10 or agent who has himself paid, or is directly responsible for the price,
 11 or any other person who is in the position of a seller.

1 SEC. 53. Remedies of an unpaid seller. (1) Subject to the provi-
 2 sions of this act, notwithstanding that the property in the goods may
 3 have passed to the buyer, the unpaid seller of goods, as such, has—
 4 (a) A lien on the goods or right to retain them for the price while
 5 he is in possession of them.
 6 (b) In case of the insolvency of the buyer, a right of stopping the
 7 goods in transit after he has parted with the possession of them.
 8 (c) A right of resale as limited by this act.
 9 (d) A right to rescind the sale as limited by this act.
 10 (2) Where the property in goods has not passed to the buyer the
 11 unpaid seller has, in addition to his other remedies, a right of with-
 12 holding delivery similar to any coextensive with his rights of lien and
 13 stoppage in transit where the property has passed to the buyer.

UNPAID SELLER'S LIEN.

1 SEC. 54. When right of lien may be exercised. (1) Subject to
 2 the provisions of this act, the unpaid seller of goods who is in posses-
 3 sion of them is entitled to retain possession of them until payment or
 4 tender of the price in the following cases, namely:
 5 (a) Where the goods have been sold without any stipulation as
 6 to credit.
 7 (b) Where the goods have been sold on credit, but the term of
 8 credit has expired.
 9 (c) Where the buyer becomes insolvent.
 10 (2) The seller may exercise his right of lien notwithstanding that
 11 he is in possession of the goods as agent or bailee for the buyer.

1 SEC. 55. Lien after part delivery. Where an unpaid seller has
 2 made part delivery of the goods, he may exercise his right of lien on
 3 the remainder unless such part delivery has been made under such
 4 circumstances as to show an intent to waive the lien or right of reten-
 5 tion.

1 SEC. 56. When lien is lost. (1) The unpaid seller of goods loses
 2 his lien thereon—
 3 (a) When he delivers the goods to a carrier or other bailee for
 4 the purpose of transmission to the buyer without reserving the prop-
 5 erty in the goods or the right to the possession thereof.

6 (b) When the buyer or his agent lawfully obtains possession of
7 the goods;

8 (c) By waiver thereof.

9 (2) The unpaid seller of goods, having a lien thereon, does not
10 lose his lien by reason only that he has obtained judgment or decree
11 for the price of the goods.

STOPPAGE IN TRANSITU.

1 SEC. 57. Seller may stop goods on buyer's insolvency. Subject to
2 the provisions of this act, when the buyer of goods is or becomes
3 insolvent, the unpaid seller who has parted with the possession of the
4 goods has the right of stopping them in transitu; that is to say, he
5 may resume possession of the goods at any time while they are in
6 transit and he will then become entitled to the same rights in regard
7 to the goods as he would have had if he had never parted with the
8 possession.

1 SEC. 58. When goods are in transit. (1) Goods are in transit
2 within the meaning of section 57—

3 (a) From the time when they are delivered to a carrier by land or
4 water, or other bailee, for the purpose of transmission to the buyer,
5 until the buyer, or his agent in that behalf, takes delivery of them
6 from such carrier or other bailee;

7 (b) If the goods are rejected by the buyer and the carrier or other
8 bailee continues in possession of them, even if the seller has refused
9 to receive them back.

10 (2) Goods are no longer in transit within the meaning of section
11 57—

12 (a) If the buyer, or his agent in that behalf, obtains delivery of
13 the goods before their arrival at the appointed destination;

14 (b) If, after the arrival of the goods at the appointed destina-
15 tion, the carrier or other bailee acknowledges to the buyer or his agent
16 that he holds the goods on his behalf and continues in possession of
17 them as bailee for the buyer or his agent; and it is immaterial that a
18 further destination for the goods may have been indicated by the
19 buyer;

20 (c) If the carrier or other bailee wrongfully refuses to deliver the
21 goods to the buyer or his agent in that behalf.

22 (3) If goods are delivered to a ship chartered by the buyer, it is
23 a question depending on the circumstances of the particular case
24 whether they are in the possession of the master as a carrier or as
25 agent of the buyer.

26 (4) If part delivery of the goods has been made to the buyer, or
27 his agent in that behalf, the remainder of the goods may be stopped
28 in transitu, unless such part delivery has been made under such cir-
29 cumstances as to show an agreement with the buyer to give up pos-
30 session of the whole of the goods.

1 SEC. 59. Ways of exercising the right to stop. (1) The unpaid
2 seller may exercise his right of stoppage in transitu either by obtain-
3 ing actual possession of the goods or by giving notice of his claim to
4 the carrier or other bailee in whose possession the goods are. Such
5 notice may be given either to the person in actual possession of the

6 goods or to his principal. In the latter case the notice, to be effectual,
7 must be given at such time and under such circumstances that the
8 principal, by the exercise of reasonable diligence, may prevent a deliv-
9 ery to the buyer.

10 (2) When notice of stoppage in transitu is given by the seller to
11 the carrier, or other bailee in possession of the goods, he must rede-
12 liver the goods to, or according to the directions, of the seller. The
13 expenses of such delivery must be borne by the seller. If, however,
14 a negotiable document of title representing the goods has been issued
15 by the carrier or other bailee, he shall not be obliged to deliver or
16 justified in delivering the goods to the seller unless such document is
17 first surrendered for cancellation.

RESALE BY THE SELLER.

1 **SEC. 60. When and how resale may be made.** (1) Where the
2 goods are of a perishable nature, or where the seller expressly reserves
3 the right of resale in case the buyer should make default, or where
4 the buyer has been in default in the payment of the price an unrea-
5 sonable time, an unpaid seller having a right of lien or having stopped
6 the goods in transitu may resell the goods. He shall not thereafter
7 be liable to the original buyer upon the contract to sell or the sale or
8 for any profit made by such resale, but may recover from the buyer
9 damages for any loss occasioned by the breach of the contract or the
10 sale.

11 (2) Where a resale is made, as authorized in this section, the buyer
12 acquires a good title as against the original buyer.

13 (3) It is not essential to the validity of a resale that notice of an
14 intention to resell the goods be given by the seller to the original
15 buyer. But where the right to resell is not based on the perishable
16 nature of the goods, or upon an express provision of the contract or
17 the sale, the giving or failure to give such notice shall be relevant in
18 any issue involving the question whether the buyer had been in default
19 an unreasonable time before the resale was made.

20 (4) It is not essential to the validity of a resale that notice of the
21 time and place of such resale should be given by the seller to the orig-
22 inal buyer.

23 (5) The seller is bound to exercise reasonable care and judgment
24 in making a resale, and subject to this requirement may make a resale
25 either by public or private sale.

RESCISSION BY THE SELLER.

1 **SEC. 61. When and how the seller may rescind the sale.**

2 (1) An unpaid seller having a right of lien or having stopped the
3 goods in transitu, may rescind the transfer of title and resume the
4 property in the goods, where he expressly reserved the right to do so
5 in case the buyer should make default, or where the buyer has been in
6 default in the payment of the price an unreasonable time. The seller
7 shall not thereafter be liable to the buyer upon the contract to sell
8 or the sale, but may recover from the buyer damages for any loss
occasioned by the breach of the contract or the sale.

9 (2) The transfer of title shall not be held to have been rescinded
10 by an unpaid seller until he has manifested by notice to the buyer or
11 by some other overt act an intention to rescind. It is not necessary
12 that such overt act should be communicated to the buyer, but the
13 giving or failure to give notice to the buyer of the intention to rescind
14 shall be relevant in any issue involving the question whether the buyer
15 had been in default an unreasonable time before the right of rescis-
16 sion was asserted.

SEC. 62. **Effect of sale of goods subject to lien or stoppage in transitu.** Subject to the provisions of this act, the unpaid seller's
1 right of lien or stoppage in transitu is not affected by any sale or
2 other disposition of the goods which the buyer may have made, unless
3 the seller has assented thereto.
4 If, however, a negotiable document of title has been issued for
5 goods, no seller's lien or right of stoppage in transitu shall defeat the
6 right of any purchaser for value in good faith to whom such document
7 has been negotiated, whether such negotiation be prior or subse-
8 quent to the notification to the carrier, or other bailee who issued such
9 document of the seller's claim to a lien or right of stoppage in transitu.
10

PART V.

ACTIONS FOR BREACH OF THE CONTRACT.

REMEDIES OF THE SELLER.

1 SEC. 63. **Action for the price.** (1) Where, under a contract to
2 sell or a sale, the property in the goods has passed to the buyer, and
3 the buyer wrongfully neglects or refuses to pay for the goods accord-
4 ing to the terms of the contract or the sale, the seller may maintain
5 an action against him for the price of the goods.

6 (2) Where, under a contract to sell or a sale, the price is payable
7 on a day certain, irrespective of delivery or of transfer of title, and
8 the buyer wrongfully neglects or refuses to pay such price, the seller
9 may maintain an action for the price, although the property in the
10 goods has not passed and the goods have not been appropriated to the
11 contract. But it shall be a defense to such an action that the seller
12 at any time before judgment in such action has manifested an inabil-
13 ity to perform the contract or the sale on his part or an intention not
14 to perform it.

15 (3) Although the property in the goods has not passed, if they
16 can not readily be resold for a reasonable price, and if the provisions
17 of section 64 (4) are not applicable, the seller may offer to deliver
18 the goods to the buyer, and, if the buyer refuses to receive them, may
19 notify the buyer that the goods are thereafter held by the seller as
20 bailee for the buyer. Thereafter the seller may treat the goods as
21 the buyer's and may maintain an action for the price.

SEC. 64. **Action for damages for nonacceptance of the goods.**

1 (1) Where the buyer wrongfully neglects or refuses to accept
2 and pay for the goods, the seller may maintain an action against him
3 for damages for nonacceptance.

4 (2) The measure of damages is estimated loss directly and natur-
5 ally resulting, in the ordinary course of events, from the buyer's
6 breach of contract.

7 (3) Where there is an available market for the goods in question,
8 the measure of damages is in the absence of special circumstances,
9 showing proximate damage of a greater amount, the difference
10 between the contract price and the market or current price at the
11 time or times when the goods ought to have been accepted, or, if no
12 time was fixed for acceptance, then at the time of the refusal to
13 accept.

14 (4) If, while labor or expense of material amount are necessary
15 on the part of the seller to enable him to fulfill his obligations under
16 the contract to sell or the sale, the buyer repudiates the contract or
17 the sale, or notifies the seller to proceed no further therewith, the
18 buyer shall be liable to the seller for no greater damages than the
19 seller would have suffered if he did nothing toward carrying out the
20 contract or the sale after receiving notice of the buyer's repudiation
21 or countermand. The profit the seller would have made if the con-
22 tract or the sale had been fully performed shall be considered in esti-
23 mating such damages.

1 SEC. 65. When seller may rescind contract or sale. Where the
2 goods have not been delivered to the buyer, and the buyer has repu-
3 diated the contract to sell or sale, or has manifested his inability to
4 perform his obligations thereunder, or has committed a material
5 breach thereof, the seller may totally rescind the contract or the sale
6 by giving notice of his election so to do to the buyer.

REMEDIES OF THE BUYER.

1 SEC. 66. Action for converting or detaining goods. Where the
2 property in the goods has passed to the buyer and the seller wrong-
3 fully neglects or refuses to deliver the goods, the buyer may maintain
4 any action allowed by law to the owner of goods of similar kind when
5 wrongfully converted or withheld.

1 SEC. 67. Action for failing to deliver goods. (1) Where the
2 property in the goods has not passed to the buyer, and the seller
3 wrongfully neglects or refuses to deliver the goods, the buyer may
4 maintain an action against the seller for damages for nondelivery.

5 (2) The measure of damages is the loss directly and naturally
6 resulting in the ordinary course of events from the seller's breach of
7 contract.

8 (3) Where there is an available market for the goods in question,
9 the measure of damages, in the absence of special circumstances show-
10 ing proximate damages of a greater amount, is the difference between
11 the contract price and the market or current price of the goods at the
12 time or times when they ought to have been delivered, or, if no time
13 was fixed, then at the time of the refusal to deliver.

1 SEC. 68. Specific performance. Where the seller has broken a
2 contract to deliver specific or ascertained goods, a court having the
3 powers of a court of equity may, if it thinks fit, on the application of
4 the buyer, by its judgment or decree direct that the contract shall be
5 performed specifically, without giving the seller the option of retain-

6 ing the goods on payment of damages. The judgment or decree may
7 be unconditional, or upon such terms and conditions as to damages,
8 payment of the price and otherwise, as to the court may seem just.

1 SEC. 69. Remedies for breach of warranty. (1) Where there is
2 a breach of warranty by the seller, the buyer may, at his election—

3 (a) Accept or keep the goods and set up against the seller the
4 breach of warranty by way of recoupment in diminution or extinc-
5 tion of the price;

6 (b) Accept or keep the goods and maintain an action against the
7 seller for damages for the breach of warranty.

8 (c) Refuse to accept the goods, if the property therein has not
9 passed, and maintain an action against the seller for damages for the
10 breach of warranty.

11 (d) Rescind the contract to sell or the sale and refuse to receive
12 the goods, or, if the goods have already been received, return them or
13 offer to return them to the seller and recover the price or any part
14 thereof which has been paid.

15 (2) When the buyer has claimed and been granted a remedy in
16 any one of these ways, no other remedy can thereafter be granted.

17 (3) Where the goods have been delivered to the buyer, he can
18 not rescind the sale if he knew of the breach of warranty when he
19 accepted the goods, or if he fails to notify the seller within a reason-
20 able time of the election to rescind, or if he fails to return or to offer
21 to return the goods to the seller in substantially as good condition as
22 they were in at the time the property was transferred to the buyer.
23 But if deterioration or injury of the goods is due to the breach of
24 warranty, such deterioration or injury shall not prevent the buyer
25 from returning or offering to return the goods to the seller and rescind-
26 ing the sale.

27 (4) Where the buyer is entitled to rescind the sale and elects to
28 do so, the buyer shall cease to be liable for the price upon returning
29 or offering to return the goods. If the price or any part thereof has
30 already been paid, the seller shall be liable to repay so much thereof
31 as has been paid, concurrently with the return of the goods or immedi-
32 ately after an offer to return the goods in exchange for repayment of
33 the price.

34 (5) Where the buyer is entitled to rescind the sale and elects to
35 do so, if the seller refuses to accept an offer of the buyer to return the
36 goods, the buyer shall thereafter be deemed to hold the goods as
37 bailee for the seller, but subject to a lien to secure the repayment of
38 any portion of the price which has been paid, and with the remedies
39 for the enforcement of such lien allowed to an unpaid seller by section
40 53.

41 (6) The measure of damages for breach of warranty is the loss
42 directly and naturally resulting, in the ordinary course of events,
43 from the breach of warranty.

44 (7) In the case of breach of warranty of quality, such loss, in
45 the absence of special circumstances showing proximate damage of a
46 greater amount, is the difference between the value of the goods at
47 the time of delivery to the buyer and the value they would have had
48 if they had answered to the warranty.

1 SEC. 70. Interest and special damages. Nothing in this act shall
2 affect the right of the buyer or the seller to recover interest or special

3 damages in any case where by law interest or special damages may
4 be recoverable, or to recover money paid where the consideration for
5 the payment of it has failed.

PART VI.

INTERPRETATION.

1 **SEC. 71. Variation of implied obligations.** Where any right,
2 duty, or liability would arise under a contract to sell or a sale by impli-
3 cation of law, it may be negatived or varied by express agreement or
4 by the course of dealing between the parties, or by custom, if the cus-
5 tom by such as to bind both parties to the contract or the sale.

1 **SEC. 72. Rights may be enforced by action.** Where any right,
2 duty, or liability is declared by this act, it may, unless otherwise by
3 this act provided, be enforced by action.

1 **SEC. 73. Rule for cases not provided for by this act.** In any case
2 not provided for in this act the rules of law and equity, including the
3 law merchant, and in particular the rules relating to the law of prin-
4 cipal and agent and to the effect of fraud, misrepresentation, duress
5 or coercion, mistake, bankruptcy, or other invalidating cause, shall
6 continue to apply to contracts to sell and to sales of goods.

1 **SEC. 74. Interpretation shall give effect to purpose of uniformity.**
2 This act shall be so interpreted and construed as to effectuate its gen-
3 eral purpose to make uniform the laws of those states which enact it.

1 **SEC. 75. Provisions not applicable to mortgages.** The provisions
2 of this act relating to contracts to sell and to sales do not apply, unless
3 so stated, to any transaction in the form of a contract to sell or a sale
4 which is intended to operate by way of mortgage, pledge, charge, or
5 other security.

1 **SEC. 76. Definitions.** (1) In this act, unless the context or
2 subject matter otherwise requires—

3 "Action" includes counterclaim, set-off, and suit in equity.

4 "Buyer" means a person who buys or agrees to buy goods or any
5 legal successor in interest of such person.

6 "Defendant" includes a plaintiff against whom a right of set-off or
7 counterclaim is asserted.

8 "Delivery" means voluntary transfer of possession from one person
9 to another.

10 "Divisible contract to sell or sale" means a contract to sell or a sale
11 in which by its terms the price for a portion or portions of the goods
12 less than the whole is fixed or ascertainable by computation.

13 "Document of title to goods" includes any bill of lading, dock war-
14 rant, warehouse receipt or order for the delivery of goods or any other
15 document used in the ordinary course of business in the sale or trans-
16 fer of goods as proof of the possession or control of the goods or
17 authorizing or purporting to authorize the possessor of the document
18 to transfer or receive, either by indorsement or by delivery, goods
19 represented by such document.

20 "Fault" means wrongful act or default.

21 "Fungible goods" means goods of which any unit is from its nature
22 or by mercantile usage treated as the equivalent of any other unit.

23 "Future goods" means goods to be manufactured or acquired by the
24 seller after the making of the contract of sale.

25 "Goods" include all chattels personal other than things in action and
26 money. The term includes emblements, industrial growing crops,
27 and things attached to or forming part of the land which are agreed
28 to be severed before sale or under the contract of sale.

29 "Order" in sections of this act relating to documents of title means
30 an order by indorsement on the document.

31 "Person" includes a corporation or partnership or two or more per-
32 sons having a joint or common interest.

33 "Plaintiff" includes defendant asserting a right of set-off or counter-
34 claim.

35 "Property" means the general property in goods, and not merely a
36 special property.

37 "Purchaser" includes mortgagee and pledgee.

38 "Purchases" includes taking as a mortgagee or as a pledgee.

39 "Quality of goods" includes their state or condition.

40 "Sale" includes a bargain and sale, as well as a sale and delivery.

41 "Seller" means a person who sells or agrees to sell goods or any legal
42 successor in the interest of such person.

43 "Specific goods" means goods identified and agreed upon at the time
44 a contract to sell or a sale is made.

45 "Value" is any consideration sufficient to support a simple contract.
46 An antecedent or preexisting claim, whether for money or not, con-
47 stitutes value where goods or documents of titles are taken either in
48 satisfaction thereof or as to security therefor.

49 (2) A thing is done "in good faith" within the meaning of this
50 act when it is in fact done honestly, whether it be done negligently
51 or not.

52 (3) A person is insolvent within the meaning of this act who
53 either has ceased to pay his debts in the ordinary course of business
54 or can not pay his debts as they become due, whether he has com-
55 mitted an act of bankruptcy or not, and whether he is insolvent within
56 the meaning of the federal bankruptcy law or not.

57 (4) Goods are in a "deliverable state" within the meaning of this
58 act when they are in such a state that the buyer would, under the
59 contract, be bound to take delivery of them.

SEC. 76a. Act does not apply to existing sales or contracts to sell.

1 None of the provisions of this act shall apply to any sale, or to any
2 contract to sell, made prior to the taking effect of this act.

**SEC. 76b. No repeal of uniform warehouse receipt act or uniform
1 bills of lading act.** Nothing in this act or in any repealing clause
2 thereof shall be construed to repeal or limit any of the provisions of
3 the act to make uniform the law of warehouse receipts, or of the act
4 to make uniform the law of bills of lading, or of the bulk sales law,
5 chapter 64, acts of the thirty-seventh general assembly.

SEC. 77. Inconsistent legislation repealed. All acts or parts of
2 acts inconsistent with this act are hereby repealed, except as pro-
3 vided in section 76b.

1 SEC. 78. Name of act. This act may be cited as the uniform sales
2 act.

Approved April 25, A. D. 1919.

CHAPTER 397.

TEMPORARY QUARANTINE PLACARD.

H. F. 510.

AN ACT to provide for establishing a warning card to be placed on any house, dwelling or place, regarding a communicable disease, where the attending physician is in doubt as to the proper diagnosis, or the householder or person having a communicable disease is in doubt as regards the diagnosis when no physician has been in attendance.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Communicable disease — type undetermined — warning card — form. That all quarantinable and placard diseases shall
2 as soon as possible be definitely diagnosed and the proper placard
3 placed in a conspicuous place on the house, dwelling, or place where
4 the quarantinable or placard disease exists. The sign establishing a
5 quarantine shall be the form adopted by the state board of health. In
6 any event, when the type of the disease is not immediately determined
7 or diagnosed, a warning sign shall be placed upon the house, dwelling
8 or place where the disease exists, giving prominent notice that a com-
9 municable disease exists in the house, dwelling or place, and all per-
10 sons connected therewith shall observe all the requirements of quar-
11 antine, until a proper and correct diagnosis shall have been made,
12 when the proper quarantine placard shall replace the former warning,
13 provided however that such temporary quarantine shall terminate
14 within twenty-four hours after being in force. The warning sign
15 hereinbefore mentioned and required shall be followed in the same
16 manner as a quarantine placard, and shall be in the following form and
17 language:

18 A yellow card, not less than twelve (12) inches square, having
19 printed thereon in large letters "Temporary Quarantine. Keep Out",
20 followed by the words: "Notice! No person shall be permitted to enter
21 or leave these premises except as provided by the rules and regulations
22 of the State Board of Health".

23 "Signed"
24 Mayor or Township Clerk."

25 The form and wording of the warning sign where the diagnosis has
26 not been determined shall be as follows: